



ASSOCIATE TREASURER
FINANCIAL SERVICES

RECEIVED
REGION I
122 HULLIHEN HALL
UNIVERSITY OF DELAWARE
NEWARK, DELAWARE 19716-4005
Ph: 302/831-2107
Fax: 302/831-2466
04 SEP 14 10:06

November 30, 2004

K-2

Mr. David Everhart
U. S. NRC Region I
475 Allendale Road
King of Prussia, Pennsylvania 19406-1415

07-01579-19
03010925

Dear Mr. Everhart:

Enclosed please find the Amended and Restated Escrow Agreement increasing the University of Delaware escrow account to cover potential decommission obligations to \$1,125,000 in accordance with Nuclear Regulatory Commission (NRC) regulations. This agreement is "Amended and Restated" because the original agreement from 1994 is irrevocable.

The Agreement includes three attachments: the Specimen Certificate of Events and the two certifications called for by paragraph 19 of the Agreement.

Separate from the agreement, enclosed is a Specimen Certificate to Commence Decommissioning as a submission requested with the Agreement.

The required funds are in the escrow account and it is our belief that this submission meets the NRC regulations with regard to financial assurance for decommission activities.

Sincerely,

Alvin B. Roberson, III
Associate Treasurer –
Financial Services

ABR/std
Enclosures
Cc: Mr. William A. Fendt, U of D

134373

NMSS/RGNI MATERIALS-002

**AMENDED AND RESTATED ESCROW AGREEMENT
BETWEEN
UNIVERSITY OF DELAWARE
AND
WILMINGTON TRUST COMPANY**

ESCROW ACCOUNT NUMBER [REDACTED]

Paragraph 1. Amendment and Restatement of Escrow Account

It is agreed between the parties that the **UNIVERSITY OF DELAWARE**, (herein sometimes referred to as "licensee"), has elected to amend and restate the terms of an escrow account with **WILMINGTON TRUST COMPANY**, (herein sometimes referred to as "escrow agent") Corporate Financial Services, Rodney Square North, 1100 North Market Street, Wilmington, Delaware 19890 (Ms. MaryAnn Rich, Vice President) to provide financial assurance for decommissioning of the facility(ies) in the amount of \$1,125,000. The facility, at the University of Delaware, Newark, Delaware 19716, is covered by NRC license number 07-01579-19.

Paragraph 2. Description of Property in Escrow Account

It is hereby acknowledged by the parties that a \$692,000 United States Treasury note, 2.625% coupon, due 11/15/2006 (value 10/31/2004 - \$692,754.28) and a \$700,000 United States Treasury note, 3.375% coupon, due 9/15/2009 (value 10/31/2004 - \$702,898.00) has been delivered to escrow agent and will remain in the escrow account created by this agreement until one of the three conditions stated in Paragraph 3 of this agreement has been satisfied. The escrow agent shall not be responsible nor shall it undertake any responsibility for the amount of, or adequacy of the escrow account, nor any duty to collect from licensee, any payments necessary to discharge any liabilities of the licensee established by the **NRC**.

THE UNIVERSITY OF DELAWARE warrants to and agrees with **WILMINGTON TRUST COMPANY** that, unless otherwise expressly set forth in this Agreement: there is no security interest in the property in the escrow account or any part thereof; no financing statement under the Uniform Commercial Code is on file in any jurisdiction claiming a security interest in or describing (whether specifically or generally) the escrow account or any part thereof; and the escrow agent shall have no responsibility at any time to ascertain whether or not any security interest exists or to file any financing statement under the uniform Commercial Code with respect to the escrow account or any part thereof.

ESCROW AGREEMENT NUMBER [REDACTED]

Paragraph 3. Conditions of Escrow Agreement

The property described in Paragraph 2, above, will remain in the escrow account created by this agreement until one of the three following conditions has been satisfied: (1) the decommissioning activities required by 10 CFR 30 have been completed, the license has been terminated, the facility site is available for unrestricted use for any public or private purpose, and the escrow account has been terminated by joint notice, in writing, from **UNIVERSITY OF DELAWARE** and the **NUCLEAR REGULATORY COMMISSION (NRC)** or (2) escrow agent, **WILMINGTON TRUST COMPANY**, has been notified by the **NRC**, in writing, that the licensee, **UNIVERSITY OF DELAWARE**, has defaulted on the agreed obligation to carry out the decommissioning for the above listed facility(ies); or (3) **UNIVERSITY OF DELAWARE** delivers to escrow agent substitute securities of equal quality and in sufficient amount to maintain at least \$1,125,000 market value in aggregate the escrow account.

Paragraph 4. Disbursement of Property in Escrow Account

WILMINGTON TRUST COMPANY shall make payments from the escrow account upon the presentation to escrow agent of the following:

- (a) A certificate duly executed by the Secretary of the **UNIVERSITY OF DELAWARE** attesting to the occurrence of the events, and in the form set forth in the attached Specimen Certificate (**APPENDIX A**), and
- (b) A certificate attesting to the following conditions:
 - (1) that decommissioning is proceeding pursuant to an **NRC**-approved plan,
 - (2) that the funds withdrawn will be expended for activities undertaken pursuant to that plan, and
 - (3) that the **NRC** has been given 30 days prior notice of **UNIVERSITY OF DELAWARE's** intent to withdraw funds from the escrow account.

No withdrawal from the account for a particular license can exceed 10 percent of the remaining funds available for that license unless **NRC** written approval is attached.

Or upon **WILMINGTON TRUST COMPANY** receiving written notification of licensee's default from the **NRC**, **WILMINGTON TRUST COMPANY** shall make payments from the escrow account as the **NRC** shall direct, in writing, to provide for the payment of the costs of the required decommissioning activities covered by this agreement. The escrow agent

ESCROW AGREEMENT NUMBER [REDACTED]

shall reimburse the licensee or other persons as specified by the **NRC** from the escrow account for expenses for required activities in such amounts as the **NRC** shall direct in writing. In addition, the escrow agent shall refund to **UNIVERSITY OF DELAWARE** such amounts as the **NRC** specifies, in writing. Upon refund, such funds shall no longer constitute part of the escrow account as described in Paragraph 2, above.

Paragraph 5. Escrow Income

Income earned and received on the securities deposited in the escrow account shall be returned to the **UNIVERSITY OF DELAWARE** as earned as long as the market value of the securities on deposit equal or exceeds the required escrow principal amount.

Paragraph 6. Irrevocability

It is also agreed between the parties that this escrow became irrevocable upon delivery to **WILMINGTON TRUST COMPANY**, the escrow agent, and will remain irrevocable and in full force and effect until the occurrence of one of the conditions described in Paragraph 3, above.

Paragraph 7. Powers of the Escrow Agent

The only powers and duties of the escrow agent shall be to hold the escrow property and to invest and dispose of it in accordance with the terms of this agreement.

Escrow Account Management

The escrow agent shall invest and reinvest the principal and income (to the extent not returned to licensee pursuant to Paragraph 5 herein) of the escrow account and keep the escrow account invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the **UNIVERSITY OF DELAWARE** may communicate in writing to the escrow agent from time to time, subject, however, to the provisions of the escrow account; the escrow agent shall discharge its duties with respect to the escrow account solely in the interest of **NRC** and with the care, skill, prudence, and diligence, under the circumstances then prevailing, that persons of prudence, acting in like capacity and familiar with such matters, would use in the conduct of an enterprise of like character and with like aims; except that:

ESCROW AGREEMENT NUMBER [REDACTED]

- (a) Securities or other obligations of the licensee, or any other owner or operator of the licensed facility(ies), 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 government;
- (b) The escrow agent is authorized to invest the escrow account in time or demand deposits to the extent insured by an agency of the Federal government; and
- (c) The escrow agent is authorized to hold uninvested cash, awaiting investment or distribution for a reasonable time and without liability for the payment of interest thereon.

Express Power of the Escrow Agent

Without in any way limiting the powers and discretion conferred upon the escrow agent by other provisions of this agreement or by law, the escrow agent is expressly authorized and empowered:

- (a) To register any securities held in the escrow account in its own name or in the name of its nominee and to hold any security in bearer form or in book entry, or to deposit or arrange for the deposit of any securities issued by the U. S. Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the escrow agent shall at all times show that all such securities are part of the escrow account;
- (b) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by public or private sale, as necessary for prudent management of the escrow account;
- (c) To deposit any cash in the escrow account in interest-bearing accounts or savings certificates to the extent insured by an agency of the Federal Government;
- (d) To pay taxes, from the account, of any kind that may be assessed or levied against the escrow account and all brokerage commissions incurred by the escrow account.

ESCROW AGREEMENT NUMBER [REDACTED]

Paragraph 8. Annual Valuation

After delivery has been made into this escrow account, the escrow agent shall annually, at least 30 days before the anniversary date of receipt of the property into the escrow account, furnish to the licensee and to the **NRC** a statement confirming the value of the escrow account. Any securities in the account shall be valued at market value as of no more than 60 days before the anniversary date of the establishment of the escrow account. The failure of the licensee to object in writing to the escrow agent within 90 days after the statement has been furnished to the licensee shall constitute a conclusively binding assent by the licensee, barring the licensee from asserting any claims or liability against the escrow agent with respect to the matters disclosed in the statement.

Paragraph 9. Successor Escrow Agent

Upon 90 days prior notice to the **NRC** and the licensee **UNIVERSITY OF DELAWARE**, the escrow agent may resign; upon 90 days notice to the **NRC** and the escrow agent, the licensee, **UNIVERSITY OF DELAWARE**, may replace the escrow agent upon 30 days prior notice to the **NRC**; provided that such resignation or replacement is not effective until the escrow agent has appointed a successor escrow agent and this successor accepts the appointment and is ready to assume its duties as escrow agent. The successor escrow agent shall have the same powers and duties as those conferred upon the escrow agent under this agreement. Upon the successor's acceptance of the appointment, the escrow agent shall assign, transfer, and pay over to the successor the funds and properties then constituting the escrow account. If for any reason the licensee cannot or does not act in the event of the resignation of the escrow agent, the escrow agent may apply to a court of competent jurisdiction for the appointment of a successor, or for instructions. The successor escrow agent shall specify the date on which it assumes administration of the escrow account in writing sent to the licensee, **NRC**, and the current escrow agent by certified mail 10 days before the change becomes effective. Any expenses incurred by the escrow agent as a result of any of the acts contemplated by this paragraph shall be paid as provided in Paragraph 11 of this agreement.

Paragraph 10. Instructions to the Escrow Agent

All orders, requests, and instructions from the licensee to the escrow agent shall be in writing, signed by such persons as are signatories to this agreement, or such other designees as the licensee or the **NRC** may designate in writing. All orders, requests, and instructions from the **NRC** shall be in writing, signed by the designees of the **NRC**. The escrow agent shall be fully protected in acting in accordance with such orders, requests,

ESCROW AGREEMENT NUMBER [REDACTED]

and instructions. The escrow agent 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 licensee or **NRC** under this agreement has occurred. The escrow agent shall have no duty to act in the absence of such orders, requests, and instructions from the licensee and/or **NRC**, except as provided in this agreement.

Paragraph 11. Compensation and Expenses of the Escrow Agent

The fee of the escrow agent for its services in establishing the escrow account shall be in accordance with the standing fee agreement between **WILMINGTON TRUST COMPANY** and the **UNIVERSITY OF DELAWARE**, licensee.

Expenses of the escrow agent for the administration of the escrow account, the compensation of the escrow agent for the services subsequent to the establishing of the escrow account to the extent not paid directly by the licensee, and all other proper charges and disbursements shall be paid from the escrow account.

Paragraph 12. Amendment to this Agreement

This agreement may be amended by an instrument in writing executed by the licensee and the escrow agent, provided the licensee has given prior written notice to **NRC**, and **NRC**, or by the escrow agent and **NRC** if the licensee ceases to exist. All amendments shall meet the relevant regulatory requirements of **NRC**.

Paragraph 13. Termination

This agreement can be terminated by written notice of termination to the escrow agent signed by **UNIVERSITY OF DELAWARE**, licensee, and the **NRC**, or by the **NRC** alone, if the licensee has ceased to exist.

Paragraph 14. Interpretation

This amended and restated escrow agreement constitutes the entire agreement between **UNIVERSITY OF DELAWARE** and **WILMINGTON TRUST COMPANY**. The escrow agent shall not be bound by any other agreement or contract entered into by **UNIVERSITY OF DELAWARE** and the only document that may be referenced in case of ambiguity in this escrow agreement is the licensing agreement between **UNIVERSITY OF DELAWARE** and the United States Nuclear Regulatory Commission or its successor.

ESCROW AGREEMENT NUMBER [REDACTED]

Paragraph 15. Acceptance of Appointment by Escrow Agent

WILMINGTON TRUST COMPANY, Corporate Financial Services, Rodney Square North, Wilmington, Delaware 19890 (Ms. MaryAnn Rich, Vice President) does hereby acknowledge its appointment by **UNIVERSITY OF DELAWARE**, the licensee, to serve as escrow agent for the escrow account created under this agreement and agrees to carry out its obligations and duties as stated in this escrow agreement.

Paragraph 16. Concerning the Escrow Agent

- (a) **Advice from Counsel** - The escrow agent may from time to time consult with counsel with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The escrow agent shall be fully protected, to the extent permitted by law, in acting on the advice of counsel.
- (b) **No Implied Duties** - Escrow Agent undertakes to perform only such duties expressly set forth herein and no implied duties or obligations shall be read into this Agreement against escrow agent.
- (c) **Immunity and Indemnification** - The escrow agent shall not incur liability of any nature in connection with any act or omission, made in good faith, in the administration of the escrow account or in carrying out any directions by the licensee, or the **NRC** issued in accordance with this Agreement. Subject to Paragraph 7 herein, the escrow agent shall be indemnified and saved harmless by the licensee or from the escrow account, or both, from and against liability to which the escrow agent may be subjected by reason of any act hereunder or the existence of the escrow account, including all expenses reasonably incurred in its defense in the event licensee fails to provide such defense.

Paragraph 17. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware.

Paragraph 18. Severability

If any part of this agreement is invalid, it shall not affect the remaining provisions that will remain valid and enforceable.

ESCROW AGREEMENT NUMBER [REDACTED]

Paragraph 19. Actions to Effect This Agreement

This Agreement shall not become effective (and the escrow agent shall have no responsibility hereunder except to return the escrow property to the **UNIVERSITY OF DELAWARE**) until the escrow agent shall have received the following and shall have advised **UNIVERSITY OF DELAWARE** in writing that the same are in form and substance satisfactory to the escrow agent:

- (a) A certified resolution of its Board of Trustees authorizing the making and performance of this Agreement (attached as **APPENDIX B**); and
- (b) A certificate as to the names and specimen signatures of its officers or representatives authorized to sign this Agreement and notices, instructions, and other communications hereunder (attached as **APPENDIX C**).

Paragraph 20. Prior Agreement Superseded

This agreement supercedes and replaces the existing escrow agreement between **UNIVERSITY OF DELAWARE** and **WILMINGTON TRUST COMPANY** dated March 1, 1994 and identified as currently funded in **WILMINGTON TRUST COMPANY** Escrow Account Number [REDACTED]. That agreement is hereby amended and restated upon this agreement becoming effective.

UNIVERSITY OF DELAWARE

By: David E. Hollowell

Name: David E. Hollowell
Title: Executive Vice President and
University Treasurer

WILMINGTON TRUST COMPANY

By: Mary Anh Rich

By: Mary Anh Rich
Title: Vice President
Corporate Financial Services

By: Alvin B. Roberson, III

Name: Alvin B. Roberson, III
Title: Associate Treasurer
Financial Services

Sworn to and subscribed before me this
30th day of November A.D. 2004

Bonnie L. Roberson
Notary Public

University of Delaware
Specimen Certificate of Events

Wilmington Trust Company
Rodney Square North
1100 North Market Street
Wilmington, DE 19890-0001

Attn: Escrow Division

Gentlemen:

In accordance with the terms of the Agreement with you dated _____, I, _____, Vice President and University Secretary hereby certify that the following events have occurred:

1. The University of Delaware is required to commence the decommissioning of its facility located at Newark, Delaware (hereinafter called the decommissioning).
2. The plans and procedures for the commencement and conduct of the decommissioning have been approved by the United States Nuclear Regulatory Commission, or its successor, on _____ (copy of approval attached).
3. The Board of Trustees of the University of Delaware has adopted the attached resolution authorizing the commencement of the decommissioning.

Vice President and Secretary
University of Delaware

Date

**UNIVERSITY OF DELAWARE
Newark, Delaware**

THIS TO CERTIFY THAT at a meeting of the Board of Trustees of the University of Delaware held on May 22, 2001, the following resolution, having originated with, and having been approved on motions duly made and seconded by the appropriate standing committees, was adopted and is in full force and effect:

RESOLVED, that any two of the following: President of the University, Vice President and University Treasurer, Vice President and University Secretary and Associate Treasurer-Financial Services, and Chief Investment Officer are authorized on behalf of the University of Delaware to open and close bank, brokerage, custody, trust, safekeeping, or other accounts on behalf of the University of Delaware, subject to the bylaws of the University of Delaware and resolutions of the Board of Trustees, and to enter into agreements governing the administration of such accounts upon such terms and conditions as such officers shall deem to be requisite and proper, said agreement to provide, among other things, the manner in which such securities and/or property so deposited and the income therefrom may be held, withdrawn and/or disposed of, and shall designate the employees of the University who shall give directions with respect to such securities, property and/or income and any other matters or things reasonably pertinent to the deposit of such securities and/or property.

Any two of the above named officers of the University, subject to the bylaws of the University of Delaware, the resolutions of the Board of Trustees and the laws of the State of Delaware, hereby are authorized on behalf of the University to do the following:

- 1. To establish checking accounts with international banks, such accounts to contain only sufficient funds to meet program needs.**
- 2. To establish petty cash accounts in banks, such accounts to contain only sufficient funds to meet program needs.**
- 3. To designate individual signatures for international and petty cash accounts.**
- 4. To open escrow accounts, pledge collateral, procure letters of credit or other surety instruments.**
- 5. To issue instructions, written or oral, for deposits, withdrawals, or transfer of funds or securities to or from University accounts by electronic means, including, but not limited to, wire transfers, EFT, and lockboxes, or to delegate to other officers and employees the power to take such actions whenever appropriate.**

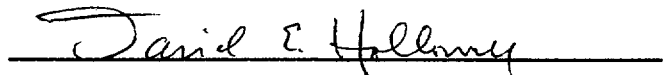
APPENDIX B

6. To purchase, sell, transfer and endorse for sale or transfer any and all securities of the corporation, and to delegate to other officers and employees the power to take such actions as deemed appropriate.
7. To open accounts in any publicly traded mutual fund in the name of the University of Delaware, for the purpose of accepting and holding gifts, or to carry out investment decisions approve by the Board of Trustees Committee on Finance.
8. To instruct or permit any bank or brokerage firm holding any property of the University of Delaware to register said property in the name of such bank or firm's nominee.
9. To instruct or permit any bank or brokerage firm holding any property of the University of Delaware to deposit or arrange for the deposit of such property at Depository Trust Company or any other securities depository or clearing corporation, and to hold such property on behalf of the University of Delaware at any correspondent branch of said bank or firm. Such property may be registered in the depository, bank or firm's nominee name.

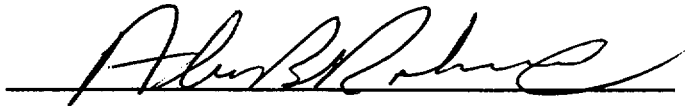
BE IT FURTHER RESOLVED, all and any resolutions previously adopted which are in conflict with this resolution be, and hereby are, revoked or amended to resolve such conflict.

I certify that the following are the genuine signatures of the persons now holding the offices in this corporation indicated next to their respective names.


David E. Hollowell
Executive Vice President
and University Treasurer



Alvin B. Roberson, III
Associate Treasurer - Financial Services



IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the University of Delaware this 30th day of NOVEMBER, 2004.



Pierre D. Hayward, Vice President
and University Secretary

University of Delaware

Certificate of Names and Specimen Signatures

I hereby certify that the individuals listed below are authorized individually to sign any notices, instructions, and other communications made pursuant to the Amended and Restated Escrow Agreement on behalf of the University of Delaware. I further certify the signatures below are their genuine signatures.

Name: David E. Hollowell
Title: Executive Vice President and University Treasurer

Signature: David E. Hollowell

Name: Alvin B. Roberson, III
Title: Associate Treasurer, Financial Services

Signature: Alvin B. Roberson

Name: Sharon D. Flynn
Title: Manager, Investment Accounting

Signature: Sharon D. Flynn

Name: Mark Stalnecker
Title: Chief Investment Officer

Signature: Mark Stal

These individuals are authorized in accordance with the standing resolution of the University of Delaware Board of Trustees, item 5, attachment B.

David E. Hollowell
David E. Hollowell
Executive Vice President
and University Treasurer

Alvin B. Roberson, III
Alvin B. Roberson, III
Associate Treasurer -
Financial Services

IN WITNESS WHEREOF I have hereunto set my hand and the seal of the University of Delaware this 30th day of NOVEMBER, 2004.

Pierre D. Hayward
Pierre D. Hayward, Vice President
and University Secretary

University of Delaware

Specimen Certificate to Commence Decommissioning

I, _____, do hereby certify that I am Vice President and University Secretary of the University of Delaware, a corporation, and that the resolution listed below was duly adopted at a meeting of this Corporation's Board of Trustees on _____, 20____.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the seal of this Corporation this ____ day of _____, 20____.

Vice President and
University Secretary

RESOLVED, that this Board of Trustees hereby authorizes the President, or such other employee of the University of Delaware as he may designate, to commence decommissioning activities at the University of Delaware in accordance with the terms and conditions described to this Board of Trustees at this meeting and with such other terms and conditions as the President shall approve.