

## ESCROW AGREEMENT

This Escrow Agreement is entered into by and between Knight Enterprises, Inc. (Knight or Grantor), Amicus Management Inc. and the Michigan Department of Environment, Great Lakes, and Energy<sup>1</sup> (EGLE) to provide financial assurance to assure the completion of corrective actions by Knight for the sites listed in Paragraph 5.13 of the Consent Order.

Whereas, the Consent Order requires that Knight perform corrective actions at all of the sites listed in Paragraph 5.13 of the Consent Order; and

Whereas, the Grantor has elected to establish an Escrow pursuant to Section XVI of the Consent Order; and

Whereas, the Grantor, acting through its duly authorized officers, has proposed an Escrow Agent under this Escrow Agreement; and

Whereas, EGLE approves the Escrow Agent proposed by the Grantor; and

Whereas, the Escrow Agent is willing to act as the Escrow Agent;

NOW, THEREFORE, the Grantor, EGLE, and Escrow Agent agree as follows:

### I. DEFINITIONS

"Consent Order" means the Consent Order executed between the Grantor and EGLE on August 3, 2016, Oakland County Circuit Court Docket #14-142024-CE.

"EGLE" means the Director of the Michigan Department of Environment, Great Lakes, and Energy, or his designee, or any successor department or agency, or the Director's authorized representative.

"Escrow Agent" means the escrow agent who enters this Escrow Agreement and any successor or assigns of the Escrow Agent.

"Escrow Agreement" means this Escrow Agreement executed between the Grantor, the Escrow Agent and EGLE.

"Escrow Assets" means cash and/or direct obligations of the United States of America (U.S.A.) or the State of Michigan, or obligations for which the principal and interest are unconditionally guaranteed by the U.S.A. or the State of Michigan, or certificates of deposit of any financial institution to the extent insured by an agency of the United States Government.

"Fiduciary" means any person who exercises any power of control, management, or disposition, or renders investment advice for a fee or other compensation, direct or indirect, with respect to any monies or other property of this Escrow, or has any authority or responsibility to do so, or who has any authority or responsibility in the administration of this Escrow.

"Fund" or "Escrow" means the account by which deposits and earnings are maintained.

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<sup>1</sup> Pursuant to Executive Order 2019-06, effective April 22, 2019, the Michigan Department of Environmental Quality was renamed the Department of Environment, Great Lakes, and Energy.

"Grantor" means Knight Enterprises, Inc., and any successors or assigns of Knight Enterprises, Inc.

All other terms used in this Escrow Agreement which are defined in Part 213 of the NREPA shall have the same meaning as in Part 213 of the NREPA.

## **II. AMOUNT OF ESCROW FUND**

The Grantor shall provide financial assurance in the form of an Escrow as required by the Consent Order. The Escrow shall be secured in the amount of \$476,190.48, being the entire Fund held pursuant to the Escrow Agreement between Knight, Seaver Title Agency, LLC, and EGLE, effective December 20, 2016, and be maintained consistent with the provisions of the Consent Order.

## **III. NOTICES**

All notices, deliveries, or other communications required or permitted hereunder shall be deemed given when sent by facsimile transmission and confirmed by certified or registered mail addressed as follows:

(A) For Escrow Agent:

Amicus Management Inc.  
ATTN: Daniel J. Yeomans  
977 Ada Place Dr  
Grand Rapids, MI 49546  
Telephone No.: (616) 945-2000  
FAX No.: (616) 954-0624

(B) For EGLE:

(1) For questions regarding invoice reimbursement, escrow review and/or financial issues:

Darren Bowling, Enforcement Unit  
Compliance and Enforcement Section  
Remediation and Redevelopment Division  
Michigan Department of Environment, Great Lakes, and Energy  
P.O. Box 30426  
Lansing, Michigan 48909-7926  
Telephone No.: 517-284-5068

FAX No.: 517-241-9581

(2) For payments sent to EGLE:

(Via First Class U.S. Mail)  
Accounting Services Center  
Cashier's Office for EGLE  
P.O. Box 30657  
Lansing, Michigan 48909-8157

(Via Courier)

Accounting Services Center  
Cashier's Office for EGLE  
Van Wagoner Building, 1<sup>st</sup> Floor  
425 West Ottawa Street  
Lansing, Michigan 48933-2125

(C) For Grantor:

Knight Enterprises, Inc.  
ATTN: John Denton  
47705 West Road, Suite B-102  
Wixom, Michigan 48383  
Telephone: 248-308-3970  
FAX No.: 248-924-2416

Knight Enterprises, Inc., and Docket #14-142024-CE shall be included on any notices sent to EGLE.

#### **IV. ESTABLISHMENT OF FUND**

The Grantor and the Escrow Agent hereby establish the Fund for the use and benefit of EGLE and the Grantor with the intent to assure the completion of the corrective actions as described in the Consent Order. The Fund is established initially as consisting of the Escrow Assets described in Exhibit A of this Escrow Agreement, all of which are acceptable to the Escrow Agent. Such Escrow Assets or any other assets subsequently transferred to the Escrow Agent are collectively referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Escrow Agent pursuant to this Escrow Agreement. The Escrow will be held by the Escrow Agent, as hereinafter provided. The Escrow Agent undertakes no responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments required to be made by the Grantor to the Escrow Agent or for payments required of the Grantor. The Escrow Agent shall notify EGLE in writing of contributions made to the Escrow by the Grantor.

#### **V. SECURE PERFORMANCE**

The Fund shall be used and disbursed as described in Section XVI of the Consent Order.

If either party is entitled to withdraw from the Fund, that party will deliver written notice, containing a brief justification for the withdrawal including any applicable supporting documents,



to the Escrow Agent and simultaneously to the other party. If neither EGLE nor Grantor delivers a written objection to the Escrow Agent within 15 business days of receipt of the notice, the Escrow Agent shall disburse the requested funds. If either party delivers a timely objection to the Escrow Agent, the Escrow Agent will retain payment until (1) the Escrow Agent receives written instructions mutually agreed to by EGLE and Grantor, or (2) a court having jurisdiction orders reimbursement. For the purposes of this paragraph, a written objection may be made by email or facsimile.

Funds disbursed to EGLE or Grantor under this paragraph shall be delivered pursuant to Section III (Notices).

Pursuant to Paragraph 16.1(d) of the Consent Order, in the event that any of the Escrow Assets remain in the Fund after twenty (20) years from the Effective Date of the Consent Order, EGLE may request that the Escrow Agent transfer the remaining Escrow Assets to the Environmental Response Fund, or its successor. In such event, the Escrow Agent shall remit payment to EGLE within thirty (30) days of receipt of the request. Escrow Assets disbursed to EGLE under this Paragraph shall be delivered to the address indicated in Subsection (B)(2) of Section III (Notices).

#### **VI. PAYMENTS COMPRISING THE FUND**

The Escrow Assets placed with the Escrow Agent by the Grantor shall consist of cash and/or direct obligations of the U.S.A. or the State of Michigan, or obligations for which the principal and interest are unconditionally guaranteed by the U.S.A. or the State of Michigan, or certificates of deposit of any financial institution to the extent insured by an agency of the United States Government.

#### **VII. ESCROW AGENT MANAGEMENT**

The Escrow Agent shall deposit the Escrow Assets in the Escrow Agent's escrow account, invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with prudent investment guidelines. In investing, reinvesting, exchanging, selling, and managing the Fund, the Escrow Agent or any other fiduciary will discharge its duties with respect to the Fund solely in the interest of the participants and EGLE 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 matter, would use in the conduct of an enterprise of like character and with like aims, except that:

(A) Securities or other obligations of the Grantor or any other owner or operator of a Site, or any of their affiliates as defined in the Investment Companies and Advisors Act of 1940, as amended, 15 U.S.C. Section 80a-2(a), shall not be acquired or held on behalf of the Fund unless they are securities or other obligations of the U.S.A. or the State of Michigan;

(B) The Escrow Agent is authorized to invest the Fund in time or demand deposits of the Escrow Agent or any other financial institution to the extent such Escrow Assets are insured by an agency of the United States Government and to the extent such time and demand deposits shall mature not later than one (1) year from the date of the investment;

(C) The Escrow Agent is authorized to hold cash in an interest-bearing account.

### **VIII. COMMINGLING AND INVESTMENTS**

The Escrow Agent is expressly authorized in its discretion and in accordance with the investment policies and guidelines described in Section VII to transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective fund created by the Escrow Agent in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other escrows participating therein so long as such management does not conflict with the requirements of this Fund. To the extent of the equitable share of the Fund in any such commingled fund, such commingled funds will be part of the Fund.

### **IX. EXPRESS POWERS OF ESCROW AGENT**

Without in any way limiting the powers and discretions conferred upon the Escrow Agent by the other provisions of this Escrow Agreement by law, but subject to the provisions of this Escrow Agreement, the Escrow Agent is expressly authorized and empowered:

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

(B) To register any securities held in the Fund 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 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 Escrow Agent will at all times show that all such securities are part of the Fund;

(C) To deposit any cash in the Fund maintained in any other banking institution affiliated with the Escrow Agent, to the extent insured by an agency of the U.S.A. Government;

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

(E) To comprise or otherwise adjust all claims in favor of or against the Fund.

### **X. TAXES AND EXPENSES**

All taxes of any kind that may be assessed or levied against or in respect to the Fund and monthly maintenance fee (such fee shall include any necessary advice of counsel) incurred by the Escrow Agent or Fund will be paid directly by the Grantor, or reimbursed by Grantor to Escrow Agent, at the option of the Escrow Agent.



#### **XI. ACCOUNTING FOR THE FUND**

The Escrow Agent, shall annually, at least thirty (30) days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and the EGLE a written statement of the current amount in the Fund. Any securities in the Fund shall be valued at market value as of no more than sixty (60) days prior to the anniversary date of establishment of the Fund.

The accounting shall show in reasonable detail the following:

- (A) The total funds deposited into the Fund;
- (B) Accrued earnings (if any) on the funds deposited into the Fund.
- (C) The amount of the funds that have been paid out of the Fund; and
- (D) The remaining balance of the Fund.

#### **XII. ADVICE OF COUNSEL**

The Escrow Agent may from time to time consult with counsel with respect to any questions arising as to the construction of this Escrow Agreement or any action to be taken hereunder.

The Escrow Agent may also simultaneously communicate with both the Grantor and EGLE with respect to any questions arising as to the construction of this Escrow Agreement or any action to be taken hereunder. Both the Grantor and EGLE shall copy the other party on any response to the Escrow Agent's communication.

#### **XIII. ESCROW AGENT COMPENSATION**

The Escrow Agent will be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor. Payment shall be made directly by the Grantor and not from the Fund.

#### **XIV. SUCCESSOR ESCROW AGENT**

The Escrow Agent may be replaced upon providing ninety (90) days written notice to the Escrow Agent from EGLE or the Grantor. The Escrow Agent may resign after giving ninety (90) days written notice to the Grantor and EGLE. In either event, upon written concurrence of EGLE, the Grantor will appoint a successor Escrow Agent who will have the same powers and duties as those conferred upon the Escrow Agent hereunder. Upon acceptance of the appointment of a successor Escrow Agent by EGLE, the successor Escrow Agent and the Grantor will sign a new Escrow Agreement with identical terms as this Escrow Agreement and forward it to EGLE for signature. Upon EGLE signature, the Escrow Agent will assign, transfer, and pay over to the successor Escrow Agent, the funds then constituting the Fund. If for any reason the Grantor 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 Escrow Agent or for instructions. The successor Escrow Agent shall notify EGLE, the Grantor, and the present Escrow Agent in writing by certified mail of the date upon which it will assume administration of the Fund at least ten (10) days before such change becomes effective. Any expenses incurred by the Escrow Agent as a result of any of the actions performed under this Section will be paid as provided in Section X (Taxes and Expenses).

#### **XV. INSTRUCTIONS TO THE ESCROW AGENT**

All orders, requests, and instructions by EGLE to the Escrow Agent will be in writing and signed by EGLE's authorized representative (in accordance with EGLE delegation authority). The Escrow Agent shall act and, in so acting, will be fully protected if acting in accordance with such orders, requests, and instructions. The Escrow Agent will have no duty to act in the absence of such orders, requests, and instructions from EGLE, except as provided for herein. Such orders, request, or instructions may not vary, amend, or supplement the provisions of this Escrow Agreement.

#### **XVI. AMENDMENT OF THE ESCROW AGREEMENT**

This Escrow Agreement may be amended by an instrument in writing executed by the Escrow Agent, Grantor, and EGLE; or by the Escrow Agent and EGLE if the Grantor ceases to exist.

#### **XVII. IRREVOCABILITY AND TERMINATION**

Subject to the right of the parties to amend this Escrow Agreement as provided in Sections XIV (Successor Escrow Agent) and XVI (Amendment of the Escrow Agreement), this Fund will be irrevocable and continue until terminated under paragraph 16.1(d) of the Consent Order or until exhausted by payments under paragraph 16.1(b) or paragraph 16.1(c), or both, of the Consent Order.

If the Escrow Agreement is terminated under paragraph 16.1(d) of the Consent Order, the Escrow Amount shall be transferred to EGLE for deposit in the Environmental Response Fund.

The Escrow Agreement shall be terminated when the Escrow Agent receives written notice from EGLE that the Fund is no longer necessary.

#### **XVIII. IMMUNITY AND INDEMNIFICATION**

The Escrow Agent will not incur personal liability of any nature in connection with any act or omission made in good faith in the administration of this Fund, or in carrying out any directions by EGLE issued in accordance with this Escrow Agreement.

The Escrow Agent will be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Escrow Agent may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense.

#### **XIX. CHOICE OF LAW**

This Escrow Agreement will be administered, construed, and enforced according to the laws of the State of Michigan.

#### **XX. INTERPRETATION**

As used in this Escrow Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Escrow Agreement will not affect the interpretation or the legal efficacy of this Escrow Agreement.

The parties herein enter into and duly execute this Escrow Agreement. Furthermore, the Grantor and Escrow Agent below certify that the wording of this Escrow Agreement is identical to the wording specified by EGLE as of the effective date of this Escrow Agreement which is the date it is entered by the last signatory.

A handwritten signature in blue ink, located in the bottom right corner of the page. It appears to be a stylized 'B' or 'D' followed by a checkmark-like flourish.



FOR KNIGHT ENTERPRISES, INC., THE GRANTOR

By: John D. Denton November 11, 2019  
Signature Date

Name: John D. Denton  
Print or Type

Title: Vice President  
Print or Type

STATE OF MICHIGAN )  
COUNTY OF WAYNE ) SS

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of NOVEMBER, 2019, by JOHN D. DENTON, the VICE PRESIDENT of Knight Enterprises, Inc., a Michigan corporation, on behalf of the corporation, the Grantor named in the foregoing instrument.

Heather R. Hatfield-Clear  
Signature of Notary

Commission Expires: 5/10/2026

HEATHER R. HATFIELD-CLEAR  
Notary Public, State of Michigan  
County of Washtenaw  
My Commission Expires May. 10, 2026  
Acting In the County of WAYNE

FOR AMICUS MANAGEMENT INC., THE ESCROW AGENT

By: *Daniel J. Yeomans* *Dec 2, 2019*  
Signature Date

Name: Daniel J. Yeomans  
Print or Type

Title: President  
Print or Type

STATE OF Michigan )  
COUNTY OF Kent ) SS

The foregoing instrument was acknowledged before me this 2<sup>nd</sup> day of December, 2019, by Daniel J. Yeomans, the President of Amicus Management Inc., a Michigan corporation, on behalf of the company, the Escrow Agent named in the foregoing instrument.

*Starla K McDonald*  
Signature of Notary

Commission Expires: 09.07.22



FOR THE MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY

By: Mike Neller 12/9/19  
~~Kathleen Shirey, Acting Director~~ Mike Neller Date  
Remediation and Redevelopment Division  
Name: MIKE NELLER  
Print or Type  
Title: DIRECTOR, RRD  
Print or Type

STATE OF Michigan )  
COUNTY OF Ingham ) SS

The foregoing instrument was acknowledged before me this 9 day of December, 2019, by Mike Neller, the Director of the Remediation and Redevelopment Division on behalf of EGLE named in the foregoing instrument.

Brian K Muench  
Signature of Notary  
Brian K Muench  
Notary Public, County of Livingston  
Commission Expires: April 13, 2024  
Acting in the County of Ingham



EXHIBIT A

Escrow Assets

The Escrow Fund is established initially as consisting of the following:

\$476,190.48, being the entire Fund held pursuant to the Escrow Agreement between Knight, Seaver Title Agency, LLC, and , effective December 20, 2016, cash

By their signatures below, the parties agree that this Exhibit A is incorporated into and made a part of the Escrow Agreement.

**FOR KNIGHT ENTERPRISES, INC, THE GRANTOR**

By: John D. Denton 11-12-2019  
Signature Date  
Name: John D. Denton  
Print or Type  
Title: Vice President  
Print or Type

**FOR AMICUS MANAGEMENT INC., THE ESCROW AGENT**

By: Daniel J. Yeomans 12/2/2019  
Signature Date  
Name: Daniel J. Yeomans  
Print or Type  
Title: President  
Print or Type

**FOR THE MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY,**

By: Mike Neller 12/9/19  
~~Kathleen Shirey, Acting Chief~~ Mike Neller Date  
Remediation and Redevelopment Division  
Name: Mike Neller  
Print or Type  
Title: DIRECTOR, RRD  
Print or Type

### Escrow Agent Compensation

Pursuant to the Escrow Agreement among Knight Enterprises, Inc., the Michigan Department of Environment, Great Lakes, and Energy, and Amicus Management, Inc. dated \_\_\_\_\_, 2019, Knight Enterprises and Amicus Management (Escrow Agent) agree as follows:

1. The Escrow Agent will be compensated at the following hourly rates:

- |                        |                |
|------------------------|----------------|
| a. Daniel Yeomans      | \$225 per hour |
| b. Project Coordinator | \$165 per hour |
| c. Accountants:        | \$150 per hour |
| d. Mileage:            | IRS rate       |

2. The Escrow Agent will provide Knight Enterprises with monthly invoices for compensation. Knight Enterprises will have 14 days from receipt of an invoice to object to the invoice. Objection may be by first class mail or email. If Knight Enterprises does not object to an invoice, Knight Enterprises will pay the invoice within 21 days after receipt of the invoice. If Knight Enterprises objects to an invoice, Knight Enterprises and the Escrow Agent agree to work in good faith to resolve the objections. If Knight Enterprises and the Escrow Agent cannot resolve the objections, either party may seek available remedies in a court of competent jurisdiction.

3. The work of the Escrow Agent will be performed by the Escrow Agent's personnel consistent with best practices.

Amicus Management, Inc.

Knight Enterprises, Inc.

By: Daniel J. Yeomans  
Printed Name: Daniel J. Yeomans  
Its: President  
Date: 12/2, 2019

By: John D. Denton  
Printed Name: John D. Denton  
Its: Vice President  
Date: November 12, 2019