

**THE CORPORATION OF THE
MUNICIPALITY OF ARRAN-ELDERSLIE**

BY-LAW NO. 52-2021

Being a By-law to Authorize an Agreement with EPCOR.

WHEREAS Section 9 of the Municipal Act, 2001, S.O. 2001, as amended, provides a municipality with natural person powers;

AND WHEREAS the Municipality wishes to execute an Agreement with EPCOR;

NOW THEREFORE the Council of the Corporation of the Municipality of Arran-Elderslie enacts as follows:

1. THAT the Municipality executes an Agreement and will be in force once all parties have signed the agreement.
2. THAT the Mayor and Clerk are hereby authorized to execute said Agreement on behalf of the Corporation.
3. THAT a copy of said Agreement be attached hereto and form part of this By-law as Schedule A.
4. THAT this By-law shall come into force and take effect upon the final passing thereof.

READ a FIRST and SECOND time this 30th day of August, 2021.

READ a THIRD time and finally passed this 30th day of August, 2021.

Steve Hammell, Mayor

Christine Fraser-McDonald, Clerk

AGREEMENT TO GRANT
PIPELINE EASEMENT

THIS AGREEMENT made the ____ day of August, 2021.

BETWEEN:

EPCOR NATURAL GAS LIMITED PARTNERSHIP
("EPCOR")

- and -

THE CORPORATION OF THE MUNICIPALITY OF ARRAN-ELDERSLIE
(the "Owner")

WHEREAS:

- A. The Owner is the registered owner in fee simple, of the following lands situate in the Municipality of Arran-Elderslie, County of Bruce more particularly described as:

PIN 33183-0312 - LT 27 PL 73; PT LT 36 PL 73 AS IN CH5413; ARRAN-ELDERSLIE

PIN 33183-0293: LT A PL 132; PT LT B PL 132; PT LT 77-78 PL 73 AS IN R330425; ARRAN-ELDERSLIE

PIN 33183-0217 - PT PARKLT O PL 149 PT 1 & 4 3R7226 BEING RIVERSIDE DRIVE S/T R356523; ARRAN-ELDERSLIE

PIN 33183-0221 - PT PARKLT O PL 149 AS IN CH2012 EXCEPT PT 1 TO 6 3R7226 EXCEPT PT 1 3R7275 & EXCEPT PT 1 & 3 3R5674; S/T R166363; ARRAN-ELDERSLIE

PIN 33183-9282 - LT 33 W/S MAIN ST PL 149; LT 32 W/S MAIN ST PL 132; S/T R166363; ARRAN-ELDERSLIE

PIN 33181-0168: LANES PL 39 EXCEPT PY2573 & R222019; ARRAN-ELDERSLIE

PIN 33181-0163: PT LT 8 S/S ROWE ST PL 12; PT LT 7 PL 39 PARTS 12 & 13, 3R2398; ARRAN-ELDERSLIE

PIN 33242-0186: LT 1 W/S QUEEN ST N PL 255 (SUBDIVISION OF LT 2 PL 58); PT LT 2 W/S QUEEN ST N PL 255 (SUBDIVISION OF LT 3 PL 58); PT LT 2 PL 58 AS IN R54158 EXCEPT PT 1, 3R6818; ARRAN-ELDERSLIE

PIN 33242-0191: FISHER ST PL 58; ARRAN-ELDERSLIE

PIN 33180-267: LT 2 S/S CHURCH ST, 3 S/S CHURCH ST, 4 S/S CHURCH ST, B, C PL 42; LT 1 PL 255 (SUBDIVISION OF LT 5 AND PT LT 6 S/S CHURCH ST PL 42); LT 2 PL 255 (SUBDIVISION OF PT LT 6 S/S CHURCH ST PL 42); LT 2 W/S WATER ST PL 255 (SUBDIVISION OF LT H WATER ST PL 42); LT 4 E/S QUEEN ST N PL 255 (SUBDIVISION OF LT 1 S/S CHURCH ST PL 42); LT 5 E/S QUEEN ST N PL 255 (SUBDIVISION OF LT 1 S/S CHURCH ST PL 42); LT 6 E/S QUEEN ST N PL 255 (SUBDIVISION OF LT 1 S/S CHURCH ST PL 42); LT 1 E/S QUEEN ST N PL 255 (SUBDIVISION OF PT LT A E/S QUEEN ST N AND PT LT H W/S WATER ST PL 42); LT 2 E/S QUEEN ST N PL 255 (SUBDIVISION OF PT LT A AND LT G E/S QUEEN ST N AND PT LT H WATER ST PL 42); LT 3 E/S QUEEN ST N PL 255 (SUBDIVISION OF PT LT 1 S/S CHURCH ST PL 42); LT 3 W/S WATER ST PL 255 (SUBDIVISION OF LT H WATER ST PL 42); PT WATER ST PL PAISLEY PT 1, 2 & 5, 3R1739; ARRAN-ELDERSLIE

PIN 33180-0273: UNNAMED ST PL PAISLEY BTN GOLDIE ST & NORTH ST EXCEPT 3R3711 (AKA RIVER ST); ARRAN-ELDERSLIE

PIN 33180-0225: LT A N/S GOLDIE ST PL PAISLEY; PT LT B N/S GOLDIE ST PL PAISLEY PT 1, 3R3711; ARRAN-ELDERSLIE

PIN 33181-0516: PTUNNAMED ST PL PAISLEY BTN GOLDIE ST & CANROBERT ST, AKA RIVER ST; SAVE AND EXCEPT PT 2 ON 3R10478; ARRAN-ELDERSLIE (the "Lands").

- B. EPCOR has requested the Owner to grant it a right-of-way and easement across a portion of the Lands in accordance with the terms and conditions contained in this Agreement.

IN CONSIDERATION OF the mutual covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged by each of the parties, EPCOR and the Owner agree as follows:

1. CONDITION

1.1 Upon execution of this agreement, the Owner and EPCOR shall agree as to the location of the easement on each property identification number (PIN) set out above.

1.2 Immediately after the PROPOSED location of the easement on each of the PIN's referred to above has been agreed to, EPCOR at its sole expense, shall survey the proposed location of each easement on each PIN and shall prepare at its cost a reference plan to be deposited on title to each PIN to show the location

of said easements. Prior to the registration of said reference plans they shall be approved by the Owner. EPCOR shall pay the cost to register the reference plans.

2. Grant of Easement

2.1 Subject to EPCOR complying with the preceding paragraphs and the owner approving said reference plans, the owner shall grant to EPCOR an easement over the lands described in each reference plans to be deposited on each PIN on the terms and conditions attached hereto as Schedule A.

IN WITNESS WHEREOF EPCOR AND THE OWNER HAVE EXECUTED THIS AGREEMENT ON THE ____ DAY OF _____ 2021.

EPCOR:

**EPCOR NATURAL GAS LIMITED
PARTNERSHIP, by its general partner EPCOR
ONTARIO UTILITIES INC.**

Per: _____
c/s

OWNER:

**THE CORPORATION OF THE MUNICIPALITY
OF ARRAN-ELDERSLIE**

Witness:

Per: _____
Name: Steve Hammell, Mayor

Per: _____
Name: Christine Fraser McDonald, Clerk

We hereby have authority to bind the
corporation c/s

SCHEDULE A
EASEMENT TERMS AND CONDITIONS

1. GRANT

- 1.1 The Owner hereby grants, conveys and transfers unto EPCOR an non-exclusive right, license, liberty, privilege and easement on, over, across, along, in, under and through the portion of the Lands described on the reference plans that have been deposited on title to the following PINS

PIN 33183-0312 - LT 27 PL 73; PT LT 36 PL 73 AS IN CH5413; ARRAN-ELDERSLIE

PIN 33183-0293: LT A PL 132; PT LT B PL 132; PT LT 77-78 PL 73 AS IN R330425; S/T THE RIGHTS OF OWNERS OF ADJOINING PARCELS, IF ANY UNDER R394070; ARRAN-ELDERSLIE

PIN 33183-0217 - PT PARKLT O PL 149 PT 1 & 4 3R7226 BEING RIVERSIDE DRIVE S/T R356523; ARRAN-ELDERSLIE

PIN 33183-0221 - PT PARKLT O PL 149 AS IN CH2012 EXCEPT PT 1 TO 6 3R7226 EXCEPT PT 1 3R7275 & EXCEPT PT 1 & 3 3R5674; S/T R166363; ARRAN-ELDERSLIE

PIN 33183-9282 - LT 33 W/S MAIN ST PL 149; LT 32 W/S MAIN ST PL 132; S/T R166363; ARRAN-ELDERSLIE

PIN 33181-0168: LANES PL 39 EXCEPT PY2573 & R222019; ARRAN-ELDERSLIE

PIN 33181-0163: PT LT 8 S/S ROWE ST PL 12; PT LT 7 PL 39 PARTS 12 & 13, 3R2398; ARRAN-ELDERSLIE

PIN 33242-0186: LT 1 W/S QUEEN ST N PL 255 (SUBDIVISION OF LT 2 PL 58); PT LT 2 W/S QUEEN ST N PL 255 (SUBDIVISION OF LT 3 PL 58); PT LT 2 PL 58 AS IN R54158 EXCEPT PT 1, 3R6818; ARRAN-ELDERSLIE

PIN 33242-0191: FISHER ST PL 58; ARRAN-ELDERSLIE

PIN 33180-267: LT 2 S/S CHURCH ST, 3 S/S CHURCH ST, 4 S/S CHURCH ST, B, C PL 42; LT 1 PL 255 (SUBDIVISION OF LT 5 AND PT LT 6 S/S CHURCH ST PL 42); LT 2 PL 255

(SUBDIVISION OF PT LT 6 S/S CHURCH ST PL 42); LT 2 W/S WATER ST PL 255 (SUBDIVISION OF LT H WATER ST PL 42); LT 4 E/S QUEEN ST N PL 255 (SUBDIVISION OF LT 1 S/S CHURCH ST PL 42); LT 5 E/S QUEEN ST N PL 255 (SUBDIVISION OF LT 1 S/S CHURCH ST PL 42); LT 6 E/S QUEEN ST N PL 255 (SUBDIVISION OF LT 1 S/S CHURCH ST PL 42); LT 1 E/S QUEEN ST N PL 255 (SUBDIVISION OF PT LT A E/S QUEEN ST N AND PT LT H W/S WATER ST PL 42); LT 2 E/S QUEEN ST N PL 255 (SUBDIVISION OF PT LT A AND LT G E/S QUEEN ST N AND PT LT H WATER ST PL 42); LT 3 E/S QUEEN ST N PL 255 (SUBDIVISION OF PT LT 1 S/S CHURCH ST PL 42); LT 3 W/S WATER ST PL 255 (SUBDIVISION OF LT H WATER ST PL 42); PT WATER ST PL PAISLEY PT 1, 2 & 5, 3R1739; ARRAN-ELDERSLIE

PIN 33180-0273: UNNAMED ST PL PAISLEY BTN GOLDIE ST & NORTH ST EXCEPT 3R3711 (AKA RIVER ST); ARRAN-ELDERSLIE

PIN 33180-0225: LT A N/S GOLDIE ST PL PAISLEY; PT LT B N/S GOLDIE ST PL PAISLEY PT 1, 3R3711; ARRAN-ELDERSLIE

PIN 33181-0516: UNNAMED ST PL PAISLEY BTN GOLDIE ST & CANROBERT ST, AKA RIVER ST; ARRAN-ELDERSLIE (the "LANDS")

to lay down, construct, operate, maintain, inspect, patrol (including aerial patrol), alter, relocate, remove, replace, reconstruct and repair a line of pipe together with all facilities or works of EPCOR useful in connection with or incidental to its undertaking, including, but without limiting the generality of the foregoing, all such pipes, drips, valves, fittings, connections, meters, cathodic protection equipment and other equipment and appurtenances, , as may be useful or convenient in connection therewith or incidental thereto for the carriage, transmission, conveyance, transportation, of natural and artificial gas and other gaseous or liquid hydrocarbons and any product or by-product thereof (such line of pipe together with such related facilities or works being referred to collectively as the "**Pipeline**") For clarity, the Pipeline on the Right-of-Way shall be below ground only except for valve box covers located at grade if needed. Excepted as permitted above, EPCOR shall not install above ground Pipeline on the Right-of-Way without the prior written consent of the Owner, which consent shall not be unreasonably withheld

- 1.2 The right to use the Right-of-Way in the manner stated in this Agreement, shall be for as long a period as EPCOR may desire to exercise the right.

2. FEE

- 2.1 Upon the execution of this grant of easement by the Owner to EPCOR, EPCOR shall pay to the Owner the sum of One Dollar (\$1.00) exclusive of Harmonized Sales Tax (the "**Fee**"), the receipt of which will be acknowledged by the Owner. The payment of the Fee by EPCOR will be the sole consideration and inducement for the execution by the Owner of this Agreement and is the total compensation payable by EPCOR to the Owner for the right to use the Rights-of-Way.

3. RIGHT OF ACCESS

- 3.1 EPCOR, acting reasonably shall have the right at any time and from time to time to do whatever may be required, for the enjoyment of the rights granted under this Agreement, including the removal of any boulder or rock or the trimming and removal of all trees, shrubs and other vegetation on, over, across, along, in, under and through the Rights-of-Way as described on said reference plans. At completion of said work EPCOR shall restore the Land to their original condition.
- 3.2 Upon execution of this Agreement by Owner and the EPCOR, EPCOR may ingress and egress at any and all times on, over, along, across, along, in, under and through the Rights-of-Way with its servants, agents, employees, contractors and subcontractors (collectively, the "**Authorized Representatives**"), on foot and/or with vehicles, supplies, machinery and equipment, for all purposes reasonably required in connection with or incidental to the exercise and enjoyment of the rights granted pursuant to this Agreement.
- 3.3 EPCOR and its Authorized Representatives shall have the right of ingress and egress from the Rights-of-Way at any and all times on, over across, along, in, under and through the Lands described on said reference plans for the purposes of exercising the rights granted under this Agreement. This right of access shall be used only in cases of necessity or emergency, subject to the prior approval of the Owner approval which approval shall not be unreasonably withheld. EPCOR shall pay reasonable compensation of the Owner of the Lands for any damage caused by EPCOR and its Authorized Representatives in the exercise of the right of access as granted to EPCOR under this Clause 3.3.
- Land that is broader than the area that the easement will be located in.

- 3.4 The rights, licenses, liberties, privileges and easements specifically described in Clauses 1 and 3 are being referred to collectively as the **"Easement Rights"**.

4. PIPELINE

- 4.1 Notwithstanding any rule of law or equity to the contrary, the Pipeline shall at all times remain a chattel and the personal property of EPCOR or its assigns and shall not become part of the Lands, notwithstanding that it may be annexed or affixed to the Lands or abandoned by EPCOR.
- 4.2 EPCOR shall install, construct, operate and maintain the Pipeline in a responsible manner so as to minimize damage to the Rights-of-Way and shall, where practicable, after any such work restore the Rights-of-Way to substantially their original level and condition, save and except for any soil rise above grade to allow for soil settlement. EPCOR shall not be responsible for any damages caused by subsidence after levelling is completed, provided the subsidence does not occur as a result of negligence on the part of EPCOR. Notwithstanding the foregoing, or Clause 7.1, EPCOR shall only be obligated to compensate the Owner for damage to buildings or improvements that may be placed within the Rights-of-Way, and arising from the exercise by EPCOR of its rights under this Agreement, if EPCOR has given its prior written consent pursuant to Clause 5.2 to the placement of such buildings or improvements within the Rights-of-Way.
- 4.3 EPCOR may at any time for whatsoever reason or cause abandon the Pipeline in accordance with the then-applicable legislation, regulations and governmental directions. In the event of the abandonment of the Pipeline, EPCOR shall, remove the Pipeline in accordance with the then-applicable legislation. In the event of removal, EPCOR shall conserve, reclaim and remediate the portion of the Lands affected by the exercise of the rights herein granted, in accordance with the then-applicable legislation, regulations and governmental directions. In the event of removal, EPCOR agrees to discharge this Agreement and the Easement Rights in the appropriate Land Registry Office within 180 days from the effective date of the removal of the Pipeline.

5. OWNER'S USE OF RIGHT-OF-WAY

- 5.1 The Owner shall not use the Rights-of-Way in any manner which may conflict with the rights of EPCOR as granted to EPCOR pursuant to this Agreement.

- 5.2 The Owner shall not, without the prior written consent of EPCOR, acting reasonably, stockpile, excavate, drill, install, erect, construct or place above, through, on or under the Right-of-Way any pavement, building, fence, pit, well, pipe, foundation, sidewalk, or other structure or improvement, or do or permit to be done any mining, quarrying, land levelling or other work or activity of any like or similar nature on, in or under the Right-of-Way. The Owner shall not permit any of these activities to occur by others.
- 5.3 The Owner shall not alter the surface grade level of the Rights-of-Way in any manner which would affect the rights granted to EPCOR pursuant to this Agreement.
- 5.4 The Owner shall not plant any trees within the Rights-of-Way.
- 5.5 Neither the Owner nor EPCOR shall store or otherwise place toxic, hazardous, dangerous, flammable, potentially explosive, noxious or waste substances or contaminants (the "**Hazardous Materials**") within the Rights-of-Way, nor shall the Owner and EPCOR permit the storage or placement by a third party of such substances within the Rights-of-Way.
- 5.6 EPCOR shall be responsible for the maintenance of the Rights-of-Way, including but not limited to such items as grass cutting and clean-up, replacement and repair of the Rights-of-Way in such a manner that it shall be suitable at all times for EPCOR's use and access as permitted by this Agreement. EPCOR shall undertake any maintenance reasonably directed by the Owner to maintain the said Rights-of-Way within sixty (60) days of receiving written notification.
- 5.7 Subject to the foregoing and to the provisions of applicable legislation, regulations and governmental directions, and provided that there is no interference with the Easement Rights, the Owner shall have the right to use and enjoy the Right-of-Way.

6. ENVIRONMENTAL OBLIGATIONS

- 6.1 EPCOR and the Owner shall comply with all applicable legislation, regulations and governmental direction dealing with environmental issues, including the Hazardous Materials (the "**Environmental Laws**"), related to the Rights-of-Way and adjoining lands.
- 6.2 The Owner represents and warrants that the Rights-of-Way have not been used for the storage of the Hazardous Materials. If EPCOR encounters any Hazardous Materials in undertaking any work within the Rights-of-Way, it shall give notice to the Owner. At the expense of the Owner,

Owner (or, at Owner's option, EPCOR) shall effect the removal of such Hazardous Materials in accordance with the Environmental Laws.

- 6.3 The responsibility of EPCOR and the Owner with respect to environmental obligations, as required by this Agreement, shall continue to be enforceable during and after the termination of this Agreement.

7. INDEMNITY AND COMPENSATION

- 7.1 Except for the gross negligence or willful misconduct directly attributable to the Owner, its employees, agents, contractors, subcontractors and those persons for whom the Owner is responsible in law, EPCOR shall:

- (a) be liable to the Owner for; and
- (b) indemnify and save harmless the Owner, its employees, agents, contractors, subcontractors and those persons for whom the Owner is responsible in law from and against

any and all claims, suits, actions, demands, expenses, damages and costs which may be brought or made against the Owner or which the Owner may pay or incur by reason of any breach, violation or non-performance by EPCOR of any covenant, term or provision of this Agreement, or by reason of the negligence or misconduct of EPCOR, its agents, employees, contractors, subcontractors and those persons for whom EPCOR is responsible in law, in the exercise of the rights as granted to EPCOR under this Agreement.

8. QUIET ENJOYMENT

- 8.1 EPCOR by performing and observing the terms and conditions of this Agreement shall and may peaceably hold and enjoy all the rights granted under this Agreement, without hindrance, molestation or interruption on the part of the Owner or any person claiming by, through, under, from or in trust for, the Owner.

9. ADDRESS FOR CONSENT OR NOTICE

- 9.1 Any written consent required to be obtained from, and any notices to be given to, EPCOR or the Owner, as the case may be, pursuant to this Agreement shall be in writing and obtained or effected by delivering the request or notice to EPCOR or the Owner in person or by registered mail, postage prepaid, addressed as follows:

To EPCOR:

EPCOR Natural Gas Limited Partnership
39 Beech Street East
Alymer, Ontario N5H 3J6

To the Owner:

The Corporation of the Municipality of Arran-Elderslie
1925 Bruce Road 10
Box 70
Chesley Ontario N0G 1L0

When mailed, any such request or notice shall be deemed to be given to, and received by the addressee seven (7) days after the mailing thereof.

10. DISPUTE RESOLUTION

- 10.1** In the event of a determination by either party in regard to a matter in dispute between EPCOR and the Owner as to the interpretation or effect of any of the terms or conditions of this Agreement, and where notice of such determination has been delivered to EPCOR or the Owner, as the case may be, the determination shall be conclusively deemed to have been accepted by the parties, unless, within 120 days of the receipt of notice of the determination the party receiving the notice gives written notice to the other party (the "**Arbitration Notice**") of their desire to have the matter in dispute resolved by arbitration.
- 10.2** Within 30 days of receipt of the Arbitration Notice, the parties shall mutually appoint an arbitrator (the "**Arbitrator**"). In the event that the parties shall fail to agree on the appointment of the Arbitrator, then either party may, on written notice to the other, apply to the Ontario Superior Court of Justice for the appointment of the Arbitrator, pursuant to the *Arbitration Act*, 1991, S.O. 1991, c. 17, as amended (the "**Arbitration Act**").
- 10.3** Any determination of the Arbitrator shall include a determination as to payment of the costs of the arbitration. The determination of the Arbitrator shall be final and binding on the parties and there shall be no right to appeal of such decision to the courts.
- 10.4** Except as modified by this Agreement, the provisions of the Arbitration Act and its regulations or any successive legislation shall apply.
- 10.5** The arbitration shall take place in either the County of Bruce or the County of Grey.

11. GENERAL

11.1 Entire Agreement

There are no conditions, either subsequent or precedent, except as stated in this Agreement. This Agreement is the entire agreement between EPCOR and the Owner and no representations or warranties have been made by EPCOR or the Owner, except as stated in this Agreement.

11.2 Governing Law

This Agreement shall be governed by and construed in accordance with the laws in force in the Province of Ontario and the laws of Canada applicable therein.

11.3 EPCOR's Lands (Dominant Tenement)

The rights granted under this Agreement, including the Easement Rights, are declared to be appurtenant to the lands of EPCOR being:

**PIN 371870188: PART LOT 30 CON 2 DIVISION 3 SULLIVAN PART 1
16R11421 TOGETHER WITH AN EASEMENT OVER PART 2 16R11421
AS IN GY194325 TOWNSHIP OF CHATSWORTH**

11.4 Further Assurances

The parties hereto will execute such further assurances of the Rights-of-Way and the rights granted under this Agreement as may be required.

11.5 Assignment

EPCOR shall, without the consent of the Owner, but upon seven (7) days prior to written notice to the Owner, have the right to assign, in whole or in part, to any person, partnership, trust, government, agency or corporation, the rights granted, transferred and conveyed under this Agreement, including the Easement Rights or to grant the right to use the Rights-of-Way, in whole or in part, in accordance with the terms and conditions contained in this Agreement to any person, partnership, trust, government, agency or corporation. Provided that the assignee shall exercise and deliver an assignment agreement in a form to be provided by EPCOR and approved by the Owner, whereby the assignee agrees to assume and be bound by the terms of this Agreement.

11.6 Enurement

This Agreement, including all covenants contained herein and all rights granted hereunder, is and shall be of the same force and effect for all intents and purposes as a covenant running with the Lands and shall extend to, be binding upon and enure for the benefit of the heirs, executors, administrators, successors-in-title and assigns of the parties respectively.

11.7 Severability

If any term or condition of this Agreement is invalid or unenforceable under any applicable statute or is declared invalid or unenforceable by a court of competent jurisdiction, then such term or condition shall be deemed to be severed from this Agreement, provided however, that the remainder of this Agreement shall not be affected, shall continue in full force and effect and each remaining term and condition shall be valid and be enforced to the fullest extent permitted by law.

11.8 Additional Taxes

EPCOR agrees that no taxes, rates, assessments, charges, levies or impositions of any kind or nature of any governmental authority shall be payable by or placed upon the Owner in relation to any use of the Right-of-Way by EPCOR pursuant to this Agreement, and if any such taxes, rates, assessments, charges, levies or impositions shall be levied, imposed, or placed, EPCOR shall make payment thereof. All taxes or assessments in the nature of sales taxes, good and services taxes or value added taxes which may be charged, levied or assessed as a result of this Agreement, whether or not such taxes are charged, levied or assessed as against the Owner, shall be the responsibility of EPCOR, and EPCOR shall on written demand by the Owner, pay to the Owner any and all such taxes.

11.9 Outstanding Charges, Taxes, Liens, etc.

Notwithstanding any other provision in this Agreement, if EPCOR determines that:

- (a) there are outstanding charges, taxes, builders' liens, writs of execution, judgments or other encumbrances which are registered against the Lands; or
- (b) there are any overdue amounts outstanding under any agreement for sale, mortgage or other financial encumbrance that is registered against the Lands;

EPCOR may, but is not obligated to, pay all or a portion of the compensation or other amounts payable under this Agreement to the holder of such charge, lien, writ of execution, judgment, mortgage or other financial encumbrance, or to such vendor or mortgagee to satisfy and discharge such encumbrance or to obtain a postponement from the encumbrance holder. The payment of any amount to such third party shall be deemed to be payment of such amount to the Owner. For greater certainty, EPCOR shall not be required to obtain the Owner's consent prior to making such payment. EPCOR shall provide to the Owner written confirmation of any such payments within thirty (30) days of making such payments.

11.10 Sole Remedy

It is understood and agreed that notwithstanding any other provision in this Agreement and notwithstanding any rights that any person having an interest may have in law or in equity, should EPCOR fail to pay any payments payable hereunder, the sole remedy of any such person having an interest shall be to recover from EPCOR such amount and any interest payable thereon, and in no event shall such person having an interest for whatever reason, interfere with, hinder, molest or interrupt EPCOR in its enjoyment of any of the rights granted, transferred and conveyed under this Agreement, including the Easement Rights.

11.11 In this Agreement:

- 11.11.1** the word "shall" is to be read and interpreted as mandatory;
- 11.11.2** the word "may" is to be read and interpreted as permissive;
and
- 11.11.3** the word "Owner" shall be read and interpreted as meaning an individual, a partnership, a corporation, a trust, an unincorporated organization, a government, or any department or agency thereof, and the heirs, executors, administrators or other legal representatives of any individual.

11.12 Counterparts

This Agreement may be executed in any number of counterparts and all of which taken together will constitute one and the same instrument. All parties agree that this Agreement may be transmitted by telecopier or electronic transmission via email and that the reproduction of signatures by way of telecopier or electronic transmission via email were executed

originals will be treated as though such reproduction were executed originals and each party undertakes to provide the other with a copy of this Agreement bearing original signatures within a reasonable time after written request therefore.