

DECLARATION OF MAINTENANCE COVENANT AND EASEMENT FOR STORM WATER CONTROL FACILITIES

This Declaration of Maintenance Covenant and Easement for Storm Water Control Facilities ("Declaration") is executed as of the date of last party signed hereto by Braes Bayou Generating, LLC, a Delaware limited liability company ("Declarant").

WHEREAS, Declarant is the owner of the real property described on Exhibit A attached hereto and incorporated by reference (the "Property"); and

WHEREAS, Declarant intends to construct and thereafter maintain storm water control facilities (the "Facilities") on the Property including, but not limited to, conduits, inlets, channels, pipes, retention or detention ponds and other devices and measures, necessary to collect, convey, store and control storm water runoff, to be used for conveying storm water from the Property over, under, across, through and upon a private drainage easement (the "Easement") created herein on the Property and described on Exhibit B attached hereto and incorporated herein by reference (the "Easement Property"); and

WHEREAS, to ensure that the Facilities continue to function according to the design and performance standards to which they were constructed, Declarant is imposing upon the Property, as a covenant running with the land, the obligation to maintain the Facilities until such time, if ever, as the obligation to maintain the Facilities is properly terminated; and

NOW, THEREFORE, in consideration of the foregoing premises, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Declarant declares as follows:

1. **Covenant Running with the Land.** Declarant covenants that the burdens and benefits made and undertaken under this Declaration constitute covenants running with the Property, binding all successors and assigns.
2. **Declarant's Responsibility to Construct and Maintain.** Declarant shall be responsible for the construction of the Facilities. Declarant, its successors and assigns will at all times be responsible for the maintenance, repair and inspection of the Facilities. The Facilities are to be constructed in accordance with all applicable laws, ordinances, regulations, rules, and directives of appropriate governmental authorities.
3. **Location of the Facilities.** The Facilities shall be located on, over, across or under the Easement Property.
4. **Easement.** Declarant dedicates, establishes and declares for the benefit of the Property (or any portion thereof):
 - a. the perpetual, irrevocable and non-exclusive easement, right and privilege to discharge, transport and store storm water from any part of the Property into, over, under, across, through and upon the Facilities and Easement Property; and

- b. the perpetual, irrevocable and non-exclusive easement, right and privilege to use and maintain the Facilities, including the right of access to and from the Facilities, over and across the Easement Property as is reasonably necessary to maintain the Facilities.
- 5. **Relocation of Easement.**
 - a. Upon prior written notice to District (as defined below), Declarant may relocate the Facilities, the Easement and the Easement Property provided that any such relocation will not cause any adverse storm water runoff on adjacent properties. The consent of tenants, mortgagees and beneficiaries and trustees under deeds of trust concerning the affected portions of the Property shall not be required for the relocation to be effective and binding. All relocations of the Facilities, the Easement and the Easement Property shall be accompanied by a letter from a professional engineer licensed in the State of Texas stating that the relocation of the Easement and the Easement Property will not cause any adverse storm water runoff on adjacent properties.
 - b. Relocation of the Easement and the Easement Property is valid from the later of the time of recording in instrument of relocation in the official Records of Fort Bend County, Texas or the effective date stated in the recorded instrument of relocation.
- 6. **Fort Bend County Drainage District.** The Fort Bend County Drainage District (the "District"), or its designee, is authorized to access the Property and the Easement Property as necessary to conduct inspections of the Facilities to ascertain compliance with this Declaration and the District's minimum storm water management practice maintenance requirements ("District Requirements") and if necessary or desirable, to maintain the Facilities as provided under Paragraph 7 below. The District is relieved of all responsibility for the maintenance of the Facilities for the term of this Declaration. In no event shall this Declaration be construed to impose any such obligation on the District.
- 7. **Failure to Maintain.** If Declarant or its successors or assigns fails to maintain the Facilities as required by this Declaration after thirty (30) days written notice thereof, the District, may, but is not obligated to, cause any and all maintenance to be taken and performed and otherwise to take whatever steps the District deems necessary to maintain the Facilities at the Declarant's expense. Declarant shall reimburse the District within thirty (30) days from receipt of written demand (including receipts for paid invoices) from the District all actual costs incurred by the District together with interest thereon from the date such costs are incurred by the District until paid in full, at the lesser of (i) the maximum lawful rate of interest or (ii) fifteen percent (15%) per annum. Nothing in this paragraph or this Declaration, shall create or impose any liability on the District, its agents, employees, successors or assigns, for damages alleged to result from or to be caused by storm water drainage from the Property.
- 8. **Conflicts.** The District Requirements control over any inconsistent provisions of this Declaration. As applicable provisions of the District Requirements are amended, modified, revised, deleted or moved to different sections, this Declaration is deemed to be revised so as to conform to the provisions of the District Requirements as they may exist from time to time and are applicable to the Property or any part thereof. District

shall promptly notify Declarant, in writing, of any such changes to the District Requirements.

9. **Successors and Assigns Bound.** Declarant hereby agrees and acknowledges that maintenance of the Facilities as set forth herein, the cost of maintenance, the District's access to the Facilities, the District's rights of ingress and egress to the Facilities and the District's right to recover all costs if Declarant fails to maintain the Facilities are a burden and restriction on the use of the Property and the provisions of this Declaration shall be binding upon the Declarant, its successors and assigns and upon any future owners of the Property. Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every covenant contained in this Declaration, whether or not any reference to this Declaration is contained in the instrument by which the Property was conveyed to such person. Whenever in this Declaration a reference is made to a party, such reference is deemed to include a reference to the heirs, executors, legal representatives, successors and assigns of such party.
10. **Negation of Partnership.** None of the terms or provisions of this Declaration shall be deemed to create a partnership between or among Declarant and the District or any owners, mortgagees, occupants or otherwise; nor shall it cause them to be considered joint venturers or members of any joint enterprise. This Declaration is not intended nor shall it be construed to create any third party beneficiary rights in any person, except as expressly stated herein.
11. **Enforcement.** If any person, persons, corporation or entity of any other type shall violate or attempt to violate this Declaration, it shall be lawful for the District or its successors to prosecute proceedings at law, or in equity, against the person or entity violating or attempting to violate this Declaration and to prevent the person or entity from violating or attempting to violate the Declaration. The failure at any time to enforce this Declaration by the District or its successors whether any violations hereof are known or not, shall not constitute a waiver or estoppel of the right to do so in the future.
12. **Entire Agreement.** This Declaration contains all the representations and the entire agreement of Declarant with respect to the subject matter. Any prior correspondence, memoranda or agreements or superseded by this Declaration. The provisions of this Declaration shall be construed as a whole according to their common meaning and not strictly for or against Declarant.
13. **Notices.** All notices and approvals required or permitted under this Declaration shall be served by certified mail, return receipt requested, to a party at the respective mailing address set forth on the signature pages attached hereto or at such other address as a party may provide via written notice to the other parties in the manner set forth herein. Date of service of notice shall be the date on which such notice is deposited in a post office of the United States Postal Service or successor governmental agency.
14. **Governing Law; Performance.** This Declaration and its validity, enforcement and interpretation shall be governed by the laws of the State of Texas without regard to any conflict of laws principles and applicable federal law. This Declaration is performable only in Fort Bend County, Texas.

15. **Amendment.** This Declaration may not be amended or abrogated in part or whole, without the express written consent of the District.
16. **Rights of Mortgagees, Trustees or Lienholders.** No violation of any of these restrictions, covenants or conditions shall affect or impair the rights of any mortgagee, trustee or lienholder under any mortgage or deed of trust (each a "Lienholder", and collectively, "Lienholders"), or the rights of any assignee of any Lienholder. Any Lienholder shall have the right but not the obligation, to do any act or thing required to be performed by Declarant under this Declaration, and any such act or thing performed by Lienholders shall be as effective to prevent or cure a default under this Declaration as if done by Declarant. The District agrees that it will promptly notify Lienholders in writing of any breach by Declarant of any terms of this Declaration and will deliver to Lienholders any notices delivered pursuant to this Declaration simultaneously with the delivery thereof to Declarant. If Declarant defaults under this Declaration and such default continues beyond the expiration of any applicable notice and cure period, the District shall, before exercising any remedy, give written notice to Lienholders specifying the default and the steps necessary to cure the same and Lienholders shall thereafter have sixty (60) days after receipt of such notice (or such longer period of time for a nonpayment default as may be reasonably necessary under the circumstances, provided that such Lienholders are diligently pursuing such cure) to cure such default or to cause it to be cured. If Lienholders fail to cure or cause to be cured any such default within the appropriate period set forth above, the District shall have all of its rights and remedies with respect to such default in this Declaration and at law or in equity.
17. **Gender and Grammar.** The singular wherever used herein shall be construed to mean or include the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or other entities or individuals, male or female, shall in all cases be assumed as though in each case fully expressed.
18. **Titles.** The titles of sections contained herein are included for convenience only and shall not be used to construe, interpret or limit the meaning of the term or provision contained in this Declaration.
19. **Recording of Agreement.** This Declaration shall be recorded in the Official Public Records of Fort Bend County, Texas and shall constitute notice to all successors and assigns of the title to the Property of the rights and obligations contained herein.
20. **Joinder of Lienholders.** Reference is hereby made to (i) that certain Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing made by Declarant to Amy M. Mitchell, as trustee for the benefit of MUFG Union Bank, N.A. in its capacity as collateral agent ("Collateral Agent") and MUFG Bank, Ltd., as administrative agent ("Administrative Agent") dated as of November 24, 2020 and recorded on November 25, 2020 in the Official Public Records of Fort Bend County, Texas as instrument no. 2020167963 and (ii) that certain Second Lien Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing made by Declarant to Amy M. Mitchell, as trustee for the benefit of Shell Energy North America (US), L.P. ("Second Lien Collateral Agent") dated as of November 24, 2020 and recorded on November 25, 2020 in the Official Public Records of Fort Bend County, Texas as instrument no.

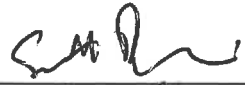
2020167964. Collateral Agent and Second Lien Collateral Agent, as Lienholders, join herein for the purpose of consenting to, ratifying, confirming and adopting this Declaration and for the purpose of subordinating its liens to the same.

- 21. Execution of Document.** The Administrative Agent hereby authorizes and instructs the Collateral Agent to execute and deliver this Declaration.

[signature pages appear on the following pages]

DECLARANT:

BRAES BAYOU GENERATING, LLC,
a Delaware limited liability company

By: 
Name: Scott Blair
Title: General Counsel & Secretary

2001 ProEnergy Boulevard
Sedalia, Missouri, 65301
Attention: Scott Blair


STATE OF MISSOURI

COUNTY OF PETTIS

Before me, the undersigned authority, on this day personally appeared Scott Blair
_____, known to me or proved to me through proper
documentation to be the person whose name is subscribed to the foregoing instrument and
acknowledged to me that he/she executed the same as the act of Braes Bayou Generating,
LLC, a Delaware limited liability company, as its General Counsel + Secretary
_____, for the purposes and consideration therein
expressed.

Given under my hand and seal of office this 30th day of March, 2021.






Notary Public in and for the State of
Missouri

My commission expires: 12/19/2024

SHELL ENERGY NORTH AMERICA (US), L.P.,
not in its individual capacity but
solely as Second Lien Collateral Agent

By: Frank A. Bella  03/30/2021
11:23 AM CDT
Name: Frank A. Bella
Title: Vice President – East Wholesale

1000 Main St., Level 12
Houston, Texas 77002
Attention: Craig D'Andrea

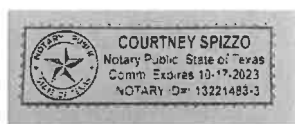
With a copy to:
1000 Main St, Level 12
Houston, Texas 77002
Attn: Contracts Gas & Power
Email: TR-Contract-Coordiators@shell.com

STATE OF TEXAS


COUNTY OF BEXAR

Before me, the undersigned authority, on this day personally appeared Frank A. Bella, known to me or proved to me through proper documentation to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same as the act of Shell Energy North America (US), L.P., as its Vice President – East Wholesale, for the purposes and consideration therein expressed.

Given under my hand and seal of office this 30th day of March, 2021.



Online Notary Public. This notarial act involved the use of
online audio/video communication technology.

Courtney Spizzo  03/30/2021
11:25 AM CDT
Notary Public in and for the State of Texas
My commission expires: 10-17-2023

**AGREED TO AND ACKNOWLEDGED BY:
THE DISTRICT:**

FORT BEND COUNTY DRAINAGE DISTRICT

By: _____
KP George, County Judge

301 Jackson Street
Richmond, Texas 77469

STATE OF TEXAS

COUNTY OF FORT BEND

Before me, the undersigned authority, on this day personally appeared KP George, known to me or proved to me through proper documentation to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same as the act of the Fort Bend County Drainage District _____, as its director and the Fort Bend County Judge, for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, 2021.

Notary Public in and for the State of Texas

My commission expires: _____

EXHIBIT "A"
METES & BOUNDS DESCRIPTION FOR A
2.35 ACRE DETENTION/DRAINAGE EASEMENT

BEING A 2.35 ACRE EASEMENT LOCATED IN THE SAMUEL KENNEDY SURVEY, ABSTRACT NO. 44, FORT BEND COUNTY, TEXAS, BEING A PART OF A CALLED 20.104 ACRE TRACT CONVEYED TO RON SEBESTA, TRUSTEE OF THE RON SEBESTA REALTY RETIREMENT PLAN, AS RECORDED IN CLERK'S FILE NO. 9846326, OFFICIAL PUBLIC RECORDS OF FORT BEND COUNTY, TEXAS (O.P.R.F.B.C.T.) AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

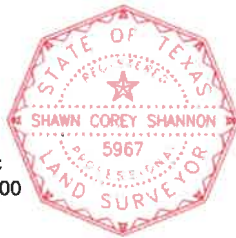
BEGINNING at a calculated point on the west line of said 20.104 acre tract, same being on the east right-of-way line of Lockwood Road, from which a 1/2-inch iron pipe found on the northwest corner of said 20.104 acre tract, and being on the east line of Lockwood Road, bears N04°13'07"W, a distance of 1,073.66 feet; said point of beginning having grid coordinates of N: 13,736,962.19, E: 3,043,156.65;

THENCE, over and across said 20.104 acre tract, the following nine (9) courses and distances:

1. N49°45'35"E, a distance of 485.75 feet to a calculated point for corner;
2. N02°29'36"W, a distance of 136.72 feet to a calculated point for corner;
3. N42°02'26"E, a distance of 59.35 feet to a calculated point for corner;
4. N01°21'46"W, a distance of 346.90 feet to a calculated point for corner;
5. N87°30'23"E, a distance of 324.45 feet to a calculated point for corner;
6. S02°14'26"E, a distance of 159.94 feet to a calculated point for corner;
7. S49°45'35"W, a distance of 458.08 feet to a calculated point for corner;
8. S02°29'36"E, a distance of 90.39 feet to a calculated point for corner;
9. S49°45'35"W, a distance of 497.93 feet to a calculated point on the west line of said 20.104 acre tract, same being the east right-of-way line of Lockwood Road, from which a 5/8-inch iron rod with cap found on the southerly-most corner of said 20.104 acre tract, bears S04°13'07"E, a distance of 61.81 feet;

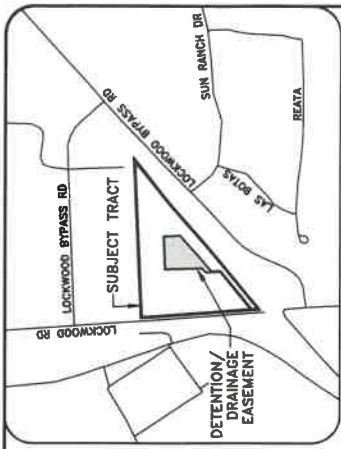
THENCE, along the west line of said 20.104 acre tract and the east right-of-way line of Lockwood Road, N04°13'07"W, a distance of 12.36 feet to the **POINT OF BEGINNING** of the easement herein described, and containing 102,473 sq. ft., or 2.35 acres of land, more or less.

Surveying And Mapping, LLC
11111 Katy Freeway, Suite 200
Houston, Texas 77079
Tx. Firm Reg. No. 10064300



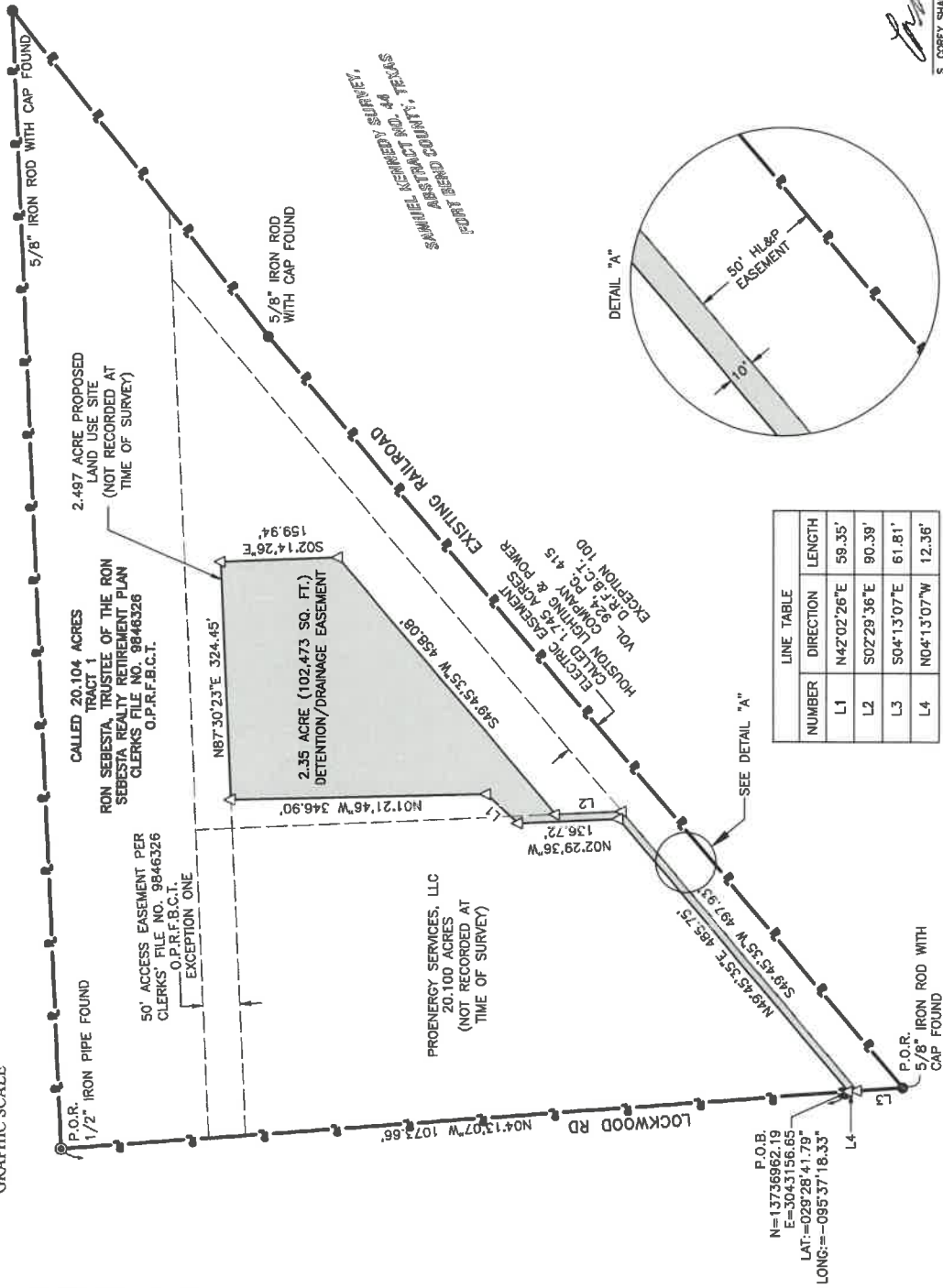

S. Corey Shannon
Registered Professional Land Surveyor
No. 5967 – State of Texas

03/03/2021
Date

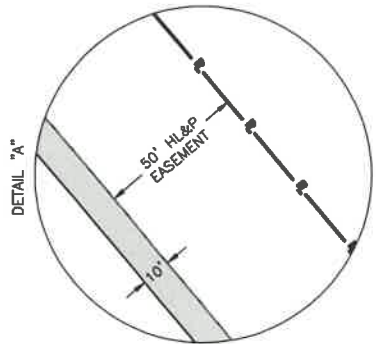


VICINITY MAP
NOT-TO-SCALE

EXHIBIT "B"



LINE NUMBER	DIRECTION	LENGTH
L1	N42°02'26"E	59.35'
L2	S02°29'36"E	90.39'
L3	S04°13'07"E	61.81'
L4	N04°13'07"W	12.36'



LEGEND

- D.R.F.B.C.T. DEED RECORDS OF FORT BEND COUNTY, TEXAS
- O.P.R.F.B.C.T. OFFICIAL RECORDS OF FORT BEND COUNTY, TEXAS
- 5/8" IRON ROD FOUND (UNLESS NOTED)
- 1/2" IRON PIPE FOUND
- △ CALCULATED POINT
- PROPERTY LINE
- - - EXISTING EASEMENT
- DETENTION/DRAINAGE EASEMENT

SURVEY NOTES:

1. BASIS OF BEARING DERIVED FROM THE TEXAS COORDINATE SYSTEM OF 1983, NAD83 (2011), SOUTH CENTRAL ZONE (4202). ALL DISTANCES SHOWN ARE GRID VALUES AND CAN BE CONVERTED TO SURFACE BY APPLYING A SCALE FACTOR OF 0.99998737
2. REFERENCE IS MADE TO THE DESCRIPTION OF EVEN DATE ACCOMPANYING THIS SKETCH.
3. THE PURPOSE OF THIS PLAT IS TO ESTABLISH A BOUNDARY FOR AN EASEMENT ACROSS PARENT TRACT(S).
4. SURVEYING AND MAPPING ACCEPTS NO LIABILITY WITH RESPECT TO THE ACCURACY OF THE RECORD INFORMATION PROVIDED BY OTHERS.



S. COREY SHANNON
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NUMBER 5967

05/03/2021
DATE

11111 Katy Freeway, Suite 200
Houston, Texas 77079
Ofc: 713.973.5100
Fax: 713.973.5150
email: info@sam.biz



FOR NUMBER 60844
DATE 1/20/2021
SURVEYOR S. SHANNON
TECHNICAL S. DOLY
DRAWING DRAINAGE EASEMENT
INCH TO BEING FIELD
PLANNING 3555E

NO.	REVISIONS	BY	DATE

BRAES BAYOU
DETENTION / DRAINAGE EASEMENT
SAMUEL KENNEDY SURVEY, ABSTRACT NO. 44
FORT BEND COUNTY, TEXAS

PROJECT- BRAES BAYOU EASEMENT
SHEET 2
OF 2