

EXHIBIT E

FORM OF EASEMENT AGREEMENT

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (hereinafter this “**Agreement**”) is made as of _____, 20__ (the “**Effective Date**”), by and between FLINT HILLS RESOURCES CORPUS CHRISTI, LLC, a Delaware limited liability company (“**Grantor**”), and the CITY OF CORPUS CHRISTI, TEXAS, a Texas home rule municipality (together with its Permitted Assignees (as defined herein), collectively, “**Grantee**”). As used in this Agreement, the term “**parties**” refers collectively to both Grantor and Grantee.

RECITALS

A. Grantor and Grantee entered into that certain Purchase and Sale Agreement dated as of [___], 2022 (as may be amended from time to time, the “**Purchase and Sale Agreement**”), pursuant to which, among other things, (i) Grantor, as seller, sold and conveyed, and Grantee, as buyer, purchased and received, certain real property located in Nueces County, Texas and more particularly described on Exhibit A attached hereto and made a part hereof (the “**Benefitted Property**”) pursuant to that certain Special Warranty Deed dated as of [___], 20[___] (the “**Deed**”) and (ii) Grantor has agreed to convey to Grantee certain easements over and across certain real property located in the County of Nueces (the “**County**”), State of Texas (the “**State**”), consisting of approximately [___] acres, as more particularly described in Exhibit B attached hereto and made a part hereof for all purposes (the “**Property**”), in connection with Grantee’s construction and operation of a water desalination and treatment plant and related facilities on the Benefitted Property (the “**Project**”). The transactions contemplated by the Purchase and Sale Agreement, including conveyance of the Benefitted Property by Grantor to Grantee pursuant to the Deed, were consummated on the Effective Date.

B. In connection with the development of the Project on the Benefitted Property, certain easements for an intake pump station, pipelines, intake and outfall structures and access are necessary infrastructure for operation of the Project, without which the Project could not operate. This Agreement is being executed pursuant to a development agreement under Texas Local Government Code Section 212.171, et seq., in order to provide the necessary infrastructure for the development of the Benefitted Property which lies within the extraterritorial jurisdiction of the City of Corpus Christi. The terms and considerations of this Agreement are additional terms and considerations pertaining to the development and use of the Benefitted Property in the manner provided herein and are made pursuant to that Development Agreement entered into by and between Grantor and Grantee dated as of [___], 20[___] and recorded in the real property records of Nueces County, Texas on [___], 20[___] as Document number [_____] (the “**Development Agreement**”).

C. Subject to the terms and conditions of this Agreement and pursuant to the terms and conditions of the Purchase and Sale Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows.

AGREEMENT

1. Grant of Easement.

A. Subject to the terms set forth in this Agreement, for \$10.00 and other valuable consideration, the receipt of which is hereby acknowledged by Grantor, Grantor hereby grants to Grantee, and

Grantee hereby accepts from Grantor, the following described easements on the Property (collectively, the “**Easements**”, and the areas upon which the Easements are located, collectively, the “**Easement Areas**”) for the purposes of constructing the improvements described below in connection with the construction and operation of the Project (such improvements, collectively, the “**Easement Improvements**”):

- i. **Pipeline Easement.** Limited, nonexclusive pipeline easements in the approximate locations depicted on Exhibit C-1 attached hereto and incorporated herein by this reference (collectively, the “**Pipeline Easement**” and the Easement Area upon which the Pipeline Easement is located, the “**Pipeline Easement Area**”), which shall be used solely for the installation, inspection, operation, maintenance, repair and replacement of seawater and seawater concentrate pipelines and ancillary facilities and utilities as determined by Grantee to be reasonable or necessary in connection with the Project.
- ii. **Submerged Land Easement.** Limited, nonexclusive easement to submerged land in the approximate locations depicted on Exhibit C-2 attached hereto and incorporated herein by this reference, which shall be used for the installation, inspection, operation, maintenance, repair and replacement of seawater intake and outfall structures as determined by Grantee to be reasonable or necessary to be installed and used in connection with the Project, which may include piping and equipment of seawater and discharge of effluent and ancillary facilities and utilities (collectively, the “**Submerged Land Easement**” and the Easement Area upon which the Submerged Land Easement is located, the “**Submerged Land Easement Area**”).
- iii. **Intake Pump Station Easement.** A limited easement in the approximate location depicted on Exhibit C-3 attached hereto and incorporated herein by this reference, which shall be used for the installation, inspection, replacement and repair of a seawater intake pump station as determined by Grantee to be reasonable or necessary to be installed and operated in connection with the Project (collectively, the “**Intake Pump Station Easement**” and the Easement Area upon which the Intake Pump Station Easement is located, the “**Intake Pump Station Easement Area**”).
- iv. **Access Easement.** Limited, nonexclusive road access easement in the approximate locations depicted on Exhibit C-4 attached hereto and incorporated herein by this reference, which shall be used solely for ingress to and egress from the Construction/Maintenance Easement (as hereinafter defined), Pipeline Easement, Submerged Land Easement and Intake Pump Station Easement (collectively, ingress to and egress from each shall be known as the “**Access Easement**” and the Easement Area upon which the Access Easement are located, the “**Access Easement Area**”).
- v. **Construction/Maintenance Easement.** Limited, nonexclusive easement in the approximate locations depicted on Exhibit C-5 attached hereto and incorporated herein by this reference, which shall be used for the sole purpose of constructing, installing and maintaining the Easement Improvements permitted to be constructed, installed, operated and maintained on the Pipeline Easement Area, Submerged Land Easement Area, and the Intake Pump Station Easement Area, in each case, pursuant to the terms of this Agreement (collectively, construction, installation and maintenance on each of these areas shall be known as the “**Construction/Maintenance Easement**”, and the Easement Area upon which the Construction/Maintenance Easement are located, the “**Construction/Maintenance Easement Area**”).

- vi. **Temporary Soil Storage Easement.** Limited, nonexclusive easement in the approximate locations depicted on Exhibit C-6 attached hereto and incorporated herein by this reference, which shall be used for the sole purpose of temporarily storing excess soil during the construction of the Easement Improvements (the “**Temporary Soil Storage Easement**”, and the Easement Area upon which the Temporary Soil Storage Easement is located, the “**Temporary Soil Storage Easement Area**”).

Grantor grants the Easements, on the terms and conditions set forth herein, to Grantee and Grantee’s successors and assigns, for the benefit of the Benefitted Property, to have and to hold said Easement; and Grantor hereby binds itself and its successors to warrant and forever defend the Easements unto Grantee and Grantee’s successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through, or under Grantor, but not otherwise.

- B. The grant of the Easements are expressly made SUBJECT TO ANY AND ALL (i) easements, servitudes, gores, strips, permits, covenants, conditions, exceptions, reservations, restrictions, limitations and other agreements and all other matters of record, if any, whether expressed or implied by law, or which are apparent upon inspection, and (ii) rights of the public in and to the parts thereof in streets, roads or alleys.

2. **Term.**

- A. This Agreement shall be perpetual, subject to the terms set forth herein.
- B. Notwithstanding the foregoing, Grantor and Grantee agree that this Agreement and Grantee’s rights to the Easements shall automatically terminate without any further action by any party, and shall automatically revert to Grantor, without notice to Grantee, upon the occurrence of any one or more of the following:
 - i. Grantee (or its successors or assigns) notifies Grantor that Grantee (or such successor or assign, as applicable) intends to permanently cease operations or development of the Project;
 - ii. if, after the expiration or termination of Grantor’s Repurchase Right (as defined in the Deed), construction or development of the Project ceases for a continuous period lasting more than one year, subject to possible extension pursuant to Section 9 (Force Majeure) hereof;
 - iii. if, after the commencement of operation of the Project, operation ceases for a continuous period lasting more than five years, without any extension pursuant to Section 9 (Force Majeure); or
 - iv. Grantor takes title to the Benefitted Property pursuant to an exercise of Grantor’s Repurchase Right (as defined in the Deed) or otherwise.
- C. The term of the Temporary Soil Storage Easement shall commence on the date the Project Progress Conditions (as defined in the Deed) have been satisfied and shall terminate automatically and without further action by either party on the date that is thirty days after the date the construction of all Easement Improvements are completed. Upon the termination of the Temporary Soil Storage Easement, Grantee shall repair and restore the Temporary Soil Storage Easement to a substantially

similar condition (and in any event in no worse condition) as the Temporary Soil Storage Easement Area was in immediately prior to this Agreement, subject to any Remediation that Grantee has performed pursuant to this Agreement and all obligations of Grantee under the Soil Management Plan. Grantee's obligations in this Section 2(C) shall survive the expiration or termination of this Agreement.

- D.** Upon such reversion as set forth in Section 2(B) or any other expiration or termination of this Agreement, Grantee covenants and agrees that it shall promptly (and in any event within 30 days following the expiration or termination of the Agreement) (i) execute and record in the land records of the County a release of this Agreement in the form of Exhibit D attached hereto and incorporated herein by reference, (ii) repair and restore the Easement Areas to a substantially similar condition (and in any event in no worse condition) as the Easement Areas were in immediately prior to this Agreement (including, without limitation, removing all equipment and improvements located on the Submerged Land Easement), subject to any Remediation that Grantee has performed pursuant to this Agreement; provided, that at Grantee's request, Grantor may (but is not obligated to) permit Grantee to leave certain improvements on the Easement Areas in-place (including paving, soil reinforcement, leveling, gravel, electrical transformers and other electrical equipment, and other infrastructure that can be repurposed for future development) at no additional cost to Grantor. Any improvements left on the Easement Areas after the expiration or termination of this Agreement in accordance with the forgoing sentence shall be deemed to be the property of Grantor. To the extent required to complete the forgoing repair and restoration activities, the Construction/Maintenance Easement shall continue for the limited purpose of completing such repair and restoration activities have been completed. Upon the expiration or termination of this Agreement, except with respect to obligations of Grantee that expressly survive this Agreement by its terms, Grantee acknowledges and agrees that it shall have no further rights in the Easements. Grantee's obligations in this Section 2(D) shall survive the expiration or termination of this Agreement.

3. Limitations to Grantee's Use of the Easement Areas; Maintenance Obligations.

- A. Use.** Grantee hereby covenants and agrees that the Easement Areas, in each case, will be used solely for the purpose(s) described in Section 1(A). Grantee hereby covenants and agrees that it will (a) not commit waste on the Easements; (b) repair all damage to any of Grantor's Property (as hereinafter defined) caused by its activities on the Easement Areas; and (c) comply with all laws, ordinances, statutes, by-laws, codes, restrictions, rules, regulations and orders of all applicable federal, State and local jurisdictions, including, without limitation, all applicable agencies of any Governmental Body. Except as expressly provided herein, Grantee shall not make any material change to the Easement Areas without Grantor's prior written consent, which may be given or withheld by Grantor in its sole and absolute discretion. Grantee agrees not to bury or burn any rubbish, trash, drums or containers on the Easement Areas. Grantee agrees to dispose of all excavated soil, debris, filth, refuse, surpluses, chemical containers, drums, cartons and discarded materials of every kind off the Easement Areas in compliance with all State or federal requirements and the Soil Management Plan, and to at all times comply fully with all such requirements, whether now enacted or during this Agreement become law. In addition to the foregoing, Grantee agrees to comply, and to cause all Grantee Parties (as hereinafter defined) to comply, with Grantor's safety requirements, as the same may be amended or updated from time to time.
- B. No Right to Erect Improvements.** Except as expressly provided herein for the construction of the Easement Improvements, Grantee shall not be permitted to erect any other permanent improvements, fences, gates or buildings on the Easement Areas without Grantor's prior express

written consent, which consent may be given or withheld by Grantor in its sole and absolute discretion.

- C. No Right to Conduct Environmental Testing.** Except as may be required in connection with any Remediation, Grantee shall not conduct any sort of environmental analysis or environmental investigation of the Easement Areas or any soil removed therefrom. Once soil is removed from the Easement Areas, Grantee shall take title to such soil and shall be solely responsible for its disposal or other placement. To the extent Grantee must conduct environmental analysis of any soil removed from the Easement Areas in order to properly classify, handle, transport, and dispose of such soil, Grantee shall be solely responsible for complying with all Environmental Laws applicable to such activities. Grantee may perform core sampling of the Easement Areas as necessary for structural design analysis of the Easement Improvements by providing Grantor with no less than five Business Days' advance notice of such sampling.
- D. No Interference with Grantor's Property.** Subject to the terms of Sections 3(B) above, Grantee shall not have the right to take any action or to construct or place any gate or other obstruction on the Easement Areas that would (i) restrict Grantor's ability to access, utilize and enjoy Grantor's Property (as hereinafter defined) or any portion thereof, or (ii) create a dangerous condition on Grantor's Property or any portion thereof. Notwithstanding the generality of the forgoing, Grantee acknowledges and agrees that Grantee's use of the Easement Areas and rights under this Agreement are subject to Grantor's operations and environmental monitoring facilities on Grantor's Property, including, without limitation, Grantor's ongoing maintenance of environmental monitoring wells (whether now or hereafter existing). Grantor reserves the right to install additional environmental monitoring facilities on the Easement Areas; provided, that Grantor will provide written notice at least five Business Days' prior to the installation of such additional environmental monitoring facilities.

For the avoidance of doubt, Grantee's failure to comply with the provisions of this Section 3 shall be deemed to be a Default.

4. Special Provisions.

- A. Entry into Easement Areas.** Prior to entry into any of the Easement Areas by Grantee or its employees, contractors or subcontractors, all such persons shall be required to complete the standard safety and risk awareness training program required by Grantor for all of its contractors and subcontractors entering Grantor's Property. Such program shall be available on all Business Days generally and shall not exceed three hours in length.
- B. Notice of Construction and Time Table.** Notwithstanding anything to the contrary set forth in this Agreement, Grantee shall not be permitted to commence construction (other than construction-preparation activities, such as surveying and measuring) on the Easement Areas until (i) Grantee notifies Grantor that it has satisfied the Project Progress Conditions and (ii) Grantee and Grantee's contractor have entered into the Soil Management Plan and submitted the same to Grantor for its signature. Such notice shall be made pursuant to Section 36 hereof and shall include the name, address and telephone number of the parties who will enter the Easement Areas and who will be conducting such construction. In no event shall Grantee conduct operations or construction on any portion of Grantor's Property other than the Easement Areas unless expressly agreed to in a prior writing by Grantor in its sole and absolute discretion. Following the completion of construction of all Easement Improvements, Grantee shall deliver to Grantor an "as built" survey of the Easement Areas demonstrating the location and depths of all underground and above ground

Easement Improvements, which shall be in form and substance satisfactory to Grantor in its reasonable discretion. In the event that the actual location of the Easement Improvements (or any of them) are substantially different from the location of the Easement Areas as described on Exhibit C-1 through C-6, then Grantor and Grantee shall, at Grantor's option, execute and file of record a "Correction Easement" that correctly shows the actual location of the Easement Areas upon which the Easement Improvements are located; provided, that in no event shall the as-built locations of the Easement Areas described in the Correction Easement be greater than, or outside of, the Easement Areas described in this Agreement. Any such reformation of the Easement Areas, however, shall include the locations within the Easement Areas used or required for the installation of cathodic protection, pipeline markers and other ancillary facilities and utilities as part of such adjusted Easement Areas.

C. Fencing Requirements.

- i. Temporary Fencing. Prior to commencement of construction of the Easement Improvements, Grantee shall, at Grantee's sole cost and expense, construct, or cause its general contractor to construct, temporary fencing around the construction operations on the Easement Areas in locations selected by Grantee and its general contractor in their reasonable discretion, provided that such fencing provides a barrier between Grantee's construction activities and Grantor's Property. Continuing throughout the period of construction of the Easement Improvements, Grantee shall be responsible for the ongoing maintenance and repair of such temporary fencing at Grantee's sole cost and expense, and Grantee covenants and agrees to keep such temporary fencing in good working order at all times.
- ii. Permanent Fencing. Upon completion of construction of the Easement Improvements, Grantee shall, at Grantee's sole cost and expense, construct permanent cyclone fencing in a manner reasonably satisfactory to Grantor on the perimeter of the Easement Areas in a location reasonably determined by Grantor and Grantee. Continuing throughout the term of this Agreement, Grantee shall be responsible for the ongoing maintenance and repair of such permanent fencing at Grantee's sole cost and expense, and Grantee covenants and agrees to keep such permanent fencing in good working order at all times.

D. Restoration. In addition to Grantee's obligations under the Soil Management Plan, following the completion of construction, maintenance, repair, or removal of the Easement Improvements, Grantee shall, at Grantee's sole cost and expense, restore the area disturbed by construction as best as practicable to its original preconstruction condition, in accordance with all applicable permits, laws and regulations. Without limiting the foregoing, Grantee's restoration efforts shall include, without limitation, grading and leveling all areas of the Easement Areas disturbed by Grantee's activities to the preconstruction grade and level, adding any additional topsoil (of the same type found within the Easement Areas) necessary to bring the grade of the trench/ditch to the same level as the surrounding undisturbed areas of land, account for soil settlement so that the permanent depth of the pipeline required by Section 4(B) herein is maintained at all times. Restoration and clean-up along the Easement Areas shall be accomplished in a prompt and timely manner, as conditions permit. Grantee's obligations under this Section 4(C) are ongoing during the life and operation of the Project and shall survive the surrender or earlier termination of this Agreement.

E. Warning Signs. Grantee shall install warning signs along the Easement Areas as required by law or as reasonably required by Grantor at Grantee's sole cost and expense.

In the event of any failure by Grantee to (i) construct and maintain the fencing as provided in Section 4(C) above, (ii) complete the restoration of the Easement Areas as provided in Section 4(D) above, (iii) install and maintain the warning signs as provided in Section 4(E) above, (iv) repair any of Grantor's Property in accordance with Section 5 below, or (v) restore or Remediate the Easement Areas as provided in Section 11 below, then, after notice and opportunity to cure as provided in Section 8 below, Grantor shall have the right (but in no event shall be obligated) to perform such services on behalf of Grantee, and Grantee hereby expressly authorizes and retains Grantor to perform such services on behalf of Grantee in such event. For such purposes, this Agreement additionally shall be construed as a contract for services to be provided by Grantor to Grantee, and Grantor shall have all rights available under the law, including Section 271.151, et seq., of the Texas Local Government Code, in connection with enforcing Grantor's rights hereunder.

5. **Damages Caused by Grantee.** Within 60 days of the demand by Grantor, Grantee shall repair any damages caused by Grantee or its contractors to any portions of the Property other than the Easement Areas, including but not limited to any buildings, roads, gates, fences, facilities, equipment, and other personal property and improvements of whatever nature of Grantor or any of Grantor's Affiliates (such personal property, together with the Property, collectively, "**Grantor's Property**"). Upon the completion of construction of Grantee's improvements, Grantee shall restore the Easement Areas and any other portions of Grantor's Property affected by Grantee's construction activities to a substantially similar condition (and in any event in no worse condition) as the Easement Areas, other portions of the Property and Grantor's Property (as applicable) were in prior to the use by Grantee, subject to Remediation; provided, that at Grantee's request, Grantor may (but is not obligated to) permit Grantee to leave certain infrastructure on the Easement Areas in-place (including paving, soil reinforcement, leveling, gravel, electrical transformers and other electrical equipment, and other infrastructure that can be repurposed for future development) at no additional cost to Grantor. Grantee's obligations under this Section 5 shall survive the surrender or earlier termination of this Agreement.

6. **Taxes.**

- A. **Grantee Taxes.** Grantee shall pay prior to delinquency all (if any) taxes, assessments, license fees, charges or other governmental impositions assessed against or levied or imposed upon the Easement Improvements or Grantee's business operations on the Easement Areas. Whenever possible, Grantee shall cause all such items to be assessed and billed separately from Grantor's Property. In the event any such items shall be assessed and billed with the Grantor's Property, Grantee shall pay Grantor its share of such taxes, charges or other governmental impositions within 10 days after Grantor delivers to Grantee a statement and a copy of the assessment or other documentation showing the amount of such impositions. Grantee's obligations under this paragraph shall survive the surrender or earlier termination of this Agreement.
- B. **Real Property Taxes.** Grantor shall pay all real property taxes or assessments levied on the land contained within the Easement Areas.
- C. **Other Taxes.** If, at any time this Agreement is in effect and the Grantee is a taxable entity, and the State or any political subdivision thereof so authorized (including, but not limited to, any county, city, city and county, public corporation, district, or any other political entity) levies or assesses against Grantor a tax, fee or excise (other than a margin tax, income tax, franchise fee or other assessment based on Grantor's income or revenues generally) on (A) any payments remitted to Grantor by Grantee as consideration for the grant of the Easement, (B) the act of entering into this Agreement, or (C) any other tax, fee or excise, however described or identified (including, without limitation, a value-added tax) as a substitute in whole or in part for, any real property taxes (collectively, "**Supplemental Property Taxes**"), Grantee shall pay to Grantor the Supplemental

Property Taxes within 10 days after Grantor delivers to Grantee a statement and a copy of the assessment or other documentation showing the amount of the Supplemental Property Taxes.

7. Assignments and Transfers.

A. No Right to Assign or Transfer. Except with respect to a Permitted Assignment (as hereinafter defined), Grantee shall not assign, transfer, mortgage, or encumber this Agreement, and shall not transfer its interest in the Easement Areas or otherwise allow any other party to utilize the Easement or any part thereof, or allow any other person to be in possession thereof, without the prior written consent of Grantor, which consent may be given or withheld by Grantor in its sole and absolute discretion. Any assignment, transfer, mortgage, or encumbrance, if made in violation of this provision, is void.

B. Permitted Assignment. Grantee may, at its option, assign this Agreement to a third party (a "**Qualified Transferee**") for the same Project purpose, subject to all terms and conditions of this Agreement (such transfer, a "**Permitted Assignment**"). Grantee shall give Grantor no less than 30 days' advance notice of such Permitted Assignment and, upon the effectiveness of such Permitted Assignment, Grantee shall deliver, or cause to be delivered to Grantor, (i) a copy of the recorded deed signed and acknowledged by the Qualified Transferee restating the restrictions in the Deed, and (ii) a Soil Management Plan executed by such Qualified Transferee in the form attached as Exhibit L to the Purchase Agreement, subject to reasonable modifications as may be required by Grantor and Grantee in the event of changes in laws or changes in conditions of the Property.

8. Event of Default. The failure by either party to perform its obligations and/or to comply, in any respect, with any other term or condition of this Agreement or any Project Agreement shall constitute a "**Default**" under this Agreement. Upon the occurrence of a Default and prior to exercising any rights or remedies provided for in this Agreement or at law or in equity for such default, the non-defaulting party shall give written notice to the defaulting party (in accordance with Section 36 hereof) of the existence of such Default. Such notice shall specify the nature of such Default. The defaulting party shall have 60 days after receipt of such written notice to cure such Default (the "**Cure Period**"); provided, that in the event such defaulting party commences the cure of such Default within such period and such Default reasonably requires additional time to cure, then so long as the defaulting party is diligently pursuing the cure of such Default, the Cure Period shall be extended for such additional time as may be reasonably required to complete the cure such Default, provided that such additional Cure Period shall in no event last for more than 180 days. If such Default remains uncured by the defaulting party after the Cure Period ends (as may be extended pursuant to the forgoing sentence), then the non-defaulting party shall have the right, at its option, to seek such monetary damages or equitable relief as may be provided by law or in equity. Without limiting the forgoing, Grantor's remedies under this Agreement shall include, without limitation, all remedies available under Texas Local Government Code 212.172(j), since this Agreement is being made pursuant to and as part of the Development Agreement made under Section 212.171, et seq., all remedies available under Texas Local Government Code 271.151, et seq., the right of specific performance, all remedies provided in this Section 8, and Grantor's reasonable and necessary attorney's fees.

9. Force Majeure. Any failure or delay in performance under this Agreement shall be excused to the extent said failures or delays are proximately caused by an Act of God (e.g., fire, flood, inclement weather, epidemic, pandemic (including, without limitation, COVID-19 or any related disease), or earthquake); war or act of terrorism, including chemical or biological warfare; labor dispute, lockout, strike, or embargo; governmental acts, orders, or restrictions (except acts of the City Council of Corpus Christi); or any other reason where failure to perform is beyond the reasonable control, and is not caused by the intentional or negligent act or failure to act of the party experiencing the difficulty; provided that, as a condition to the

claim of nonliability, the party experiencing the difficulty shall have exercised reasonable efforts to avoid or remedy such force majeure, shall have given the other party prompt written notice, with reasonable detail, following the occurrence of the cause relied upon. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused. In the event that such force majeure delays performance by more than five years from the date of the initial occurrence of such force majeure event, either party shall have the right to deliver written notice of termination of this Agreement to the other party, whereupon the parties shall have no further legal obligation to one another, except for those obligations under this Agreement that specifically survive termination. Notwithstanding anything to the contrary contained in this Agreement, this Section 9 shall not apply with respect to Grantee's obligation to promptly cure a default that can be cured by the payment of money to Grantor.

10. RELEASE, INDEMNITY AND HOLD HARMLESS.

A. Release by Grantee. Grantee, its successors and assigns hereby RELEASES, ACQUITS AND FOREVER DISCHARGES, and WAIVES any and all Losses/Claims against Grantor and Grantor's Affiliates (collectively, the "**Released Parties**") that arise from or relate to Grantee's activities on the Easement Areas, and agrees not to sue any of Released Parties for such Losses/Claims. Without limiting the foregoing, Grantee agrees that the Released Parties shall not be liable to Grantee, its heirs, successors and assigns for Losses/Claims arising from or related to Grantee's exercise of its rights under this Agreement. Grantee assumes all risks and responsibilities for accidents, injuries or death resulting from such injuries or damages to person or property occurring in, on or about the Easement Areas, and to the fullest extent permitted by applicable law, GRANTEE AGREES TO RELEASE THE RELEASED PARTIES FROM ANY AND ALL LOSSES/CLAIMS, (A) ARISING, DIRECTLY OR INDIRECTLY, OUT OF, FROM OR IN CONNECTION WITH, IN WHOLE OR IN PART, THE CONDITION, USE OR CONTROL OF THE EASEMENT AREAS (INCLUDING, WITHOUT LIMITATION, ANY GRANTOR'S PROPERTY, OTHER IMPROVEMENTS, EQUIPMENT AND/OR OTHER PROPERTY OR EQUIPMENT THEREON), OR (B) IMPOSED UPON OR INCURRED BY OR ASSERTED, DIRECTLY OR INDIRECTLY, AGAINST ANY RELEASED PARTY, IN WHOLE OR IN PART, BY REASON OF (I) ANY FAILURE ON THE PART OF GRANTEE TO PERFORM OR COMPLY WITH ANY OF THE TERMS OF THIS AGREEMENT, (II) ANY ENFORCEMENT OR REMEDIAL ACTION TAKEN BY ANY RELEASED PARTY IN THE EVENT OF ANY GRANTEE PARTY'S (AS DEFINED BELOW) FAILURE TO PERFORM OR COMPLY WITH THE TERMS OF THIS AGREEMENT; (III) ANY LITIGATION INVOLVING, CONCERNING OR RESPECTING THIS AGREEMENT, THE PROPERTY OR THE USE OR OCCUPANCY THEREOF BY GRANTEE PARTIES, OR (IV) ANY ACTION BY A LAW ENFORCEMENT OR REGULATORY OFFICIAL WITH RESPECT TO ANY ACT OR CONDUCT BY ANY GRANTEE PARTY IN CONNECTION WITH THE PROPERTY, in each case, except to the extent arising from negligence or willful misconduct of Grantor. Grantee shall release the Released Parties for any damages to the Property or any portion thereof (including, without limitation, any improvements, equipment and/or other personal property or equipment thereon), and for any act or omission by Grantee or any employee, agent, contractor, subcontractor, invitee, licensee, representative, successor, assignee, guest of Grantee or any other person acting on behalf of Grantee (collectively, "**Grantee Parties**," and each individually, a "**Grantee Party**"). For avoidance of doubt, the term "Grantee Parties" shall include Grantee.

B. In the event that Grantee assigns this Agreement to a Qualified Transferee as provided in Section 7 above that is not a governmental entity, such Qualified Transferee, by its acceptance

of a deed from Grantee in accordance with Section 7, AGREES TO PROTECT, DEFEND (UPON REQUEST WITH COUNSEL REASONABLY ACCEPTABLE TO RELEASED PARTIES), INDEMNIFY, REIMBURSE AND HOLD HARMLESS THE RELEASED PARTIES FROM ANY AND ALL LOSSES/CLAIMS, (A) ARISING, DIRECTLY OR INDIRECTLY, OUT OF, FROM OR IN CONNECTION WITH, IN WHOLE OR IN PART, THE CONDITION, USE OR CONTROL OF THE EASEMENT AREAS (INCLUDING, WITHOUT LIMITATION, ANY GRANTOR'S PROPERTY, OTHER IMPROVEMENTS, EQUIPMENT AND/OR OTHER PROPERTY OR EQUIPMENT THEREON), OR (B) IMPOSED UPON OR INCURRED BY OR ASSERTED, DIRECTLY OR INDIRECTLY, AGAINST ANY RELEASED PARTY, IN WHOLE OR IN PART, BY REASON OF (I) ANY FAILURE ON THE PART OF GRANTEE TO PERFORM OR COMPLY WITH ANY OF THE TERMS OF THIS AGREEMENT, (II) ANY ENFORCEMENT OR REMEDIAL ACTION TAKEN BY ANY RELEASED PARTY IN THE EVENT OF ANY GRANTEE PARTY'S (AS DEFINED BELOW) FAILURE TO PERFORM OR COMPLY WITH THE TERMS OF THIS AGREEMENT; (III) ANY LITIGATION INVOLVING, CONCERNING OR RESPECTING THIS AGREEMENT, THE PROPERTY OR THE USE OR OCCUPANCY THEREOF BY GRANTEE PARTIES, OR (IV) ANY ACTION BY A LAW ENFORCEMENT OR REGULATORY OFFICIAL WITH RESPECT TO ANY ACT OR CONDUCT BY ANY GRANTEE PARTY IN CONNECTION WITH THE PROPERTY, in each case, except to the extent arising from negligence or willful misconduct of Grantor. Said Qualified Transferee shall be liable to the Released Parties for any damages to the Property or any portion thereof (including, without limitation, any improvements, equipment and/or other personal property or equipment thereon), and for any act or omission by Grantee or any employee, agent, contractor, subcontractor, invitee, licensee, representative, successor, assignee, guest of Grantee or any other person acting on behalf of Grantee (collectively, "**Grantee Parties**," and each individually, a "**Grantee Party**"). For avoidance of doubt, the term "Grantee Parties" shall include Grantee. For purposes of the indemnity provisions in this Agreement, any act or omission of any Grantee Party (whether or not they are negligent, intentional, willful or unlawful) shall be strictly attributable to Grantee and as such shall fall within the scope of Grantee's obligation to indemnify the Released Parties. The Released Parties need not have first paid any such Losses/Claims to be so indemnified and held harmless by Grantee. Grantee, upon written notice from Grantor, shall defend any Losses/Claims against any Grantor Party at Grantee's sole expense, using legal counsel reasonably satisfactory to Grantor. Grantee shall promptly notify Grantor in writing if Grantee obtains knowledge of any potential Losses/Claims against Grantor in connection with the Property or in any way related to the use of the Property by Grantee, and such notice shall set forth reasonable detail of such potential Losses/Claims. Grantee's obligations under this Section 10 shall survive the surrender or termination of this Agreement.

11. Hazardous Materials. In addition to Grantee's obligations under the Soil Management Plan, Grantee's obligations and responsibilities with respect to Hazardous Materials (as hereinafter defined) shall be as follows:

- A.** Grantee hereby covenants and agrees to use and operate, and shall ensure that all Grantee Parties, use and operate, the Easement and Improvements (if any) in compliance with any and all Environmental Laws (as hereinafter defined), and shall be solely responsible for securing all environmental and other permits and approvals required for Grantee's use and operation of the Easement and Improvements (if any).
- B.** Except for chemicals and fuel of a nature and in quantities reasonably necessary to be used in connection with the construction, operation, maintenance and repair of the Easement Improvements,

Grantee shall not cause or permit any Hazardous Materials to be brought upon, kept, used, stored, generated or disposed of (each, a “Use”) on, in or about the Easement Areas by Grantee, its agents, representatives, employees, contractors or invitees; provided, that Grantee shall have no responsibility for any Hazardous Materials existing in the Easement Areas prior to the Effective Date except to the extent Grantee’s operations disturb such Hazardous Materials. Grantee shall at its own expense be responsible for all Losses/Claims arising out of the Use or disturbance of Hazardous Materials to the extent attributable to Grantee’s operations.

- C. Grantee shall also take any and all actions necessary or desirable to return the Easement Areas to a substantially similar condition (and in any event in no worse condition), subject to Remediation, as existed immediately prior to Grantee’s activity on the Easement Areas.
- D. Grantee will bear the sole cost and expense of properly handling and disposing of all soil excavated on and groundwater removed from the Easement Areas in accordance with the Soil Management Plan (including, without limitation, material excavated from submerged land).
- E. Grantee shall give prompt (within 48 hours) notice to Grantor of Grantee becoming aware of any violation of or noncompliance with the provisions of this Section 11.

This Section 11 shall survive the surrender or termination of this Agreement.

12. Insurance.

- A. **Coverage.** Grantee shall, and shall require its contractors and subcontractors who perform any work in the Easement Areas to, maintain or shall cause to be maintained, in full force and effect throughout the Term, at Grantee’s or Grantee’s contractors’ or subcontractors’ sole cost and expense, the insurance described below with reputable licensed insurance carriers satisfactory to Grantor in its reasonable discretion, with coverages and limits at levels customary in the industry for performing work, activities, operations and services similar to those to be performed as described in this Agreement but at levels not less than the minimums indicated below, and with Grantor named as additional insured to the extent of Grantee’s performance and indemnity obligations under this Agreement:
 - i. **General Liability Insurance.** General liability policy, including contractual liability, insuring Grantee as named insured and Grantor as named insured or additional insureds, as applicable, against any claims of liability of every kind and nature, for bodily injury to, or death of, any person and for damage to the property of any person or legal entity arising out of Grantee’s performance hereunder and caused by Grantee’s or its agents, contractors or employees acts, defaults or negligence in minimum amounts of no less than \$5,000,000.00 per occurrence for bodily injury and property damage with an annual aggregate limit of \$10,000,000.00. Such policy shall also include Premises Medical Expense coverage in the amount of \$5,000.00, Personal and Advertising Injury coverage in the amount of \$1,000,000.00, and Fire Damage (Damage to Rented Premises) in the minimum amount of \$500,000.00. Such insurance may be in combination with one or more underlying and excess policies.
 - ii. **Workers’ Compensation Insurance.** Workers’ Compensation Insurance in the statutory amount required by the Workers’ Compensation Law of the state in which the Easement Areas are located.

- iii. **Employers' Liability Insurance.** Employers' Liability Insurance in the minimum amount of \$500,000.00.
- iv. **Commercial/Business Automobile Liability Insurance.** Insurance covering all vehicles licensed for highway use (owned, hired, leased or borrowed) used by any such party against any claims of liability of every kind and nature, for bodily injury to, or death of, any person and for damage to the property of any person or legal entity in the minimum amount of \$500,000 (combined single limit per occurrence).

Notwithstanding the forgoing, so long as Grantee is a governmental entity that is self-insured, Grantee shall not be obligated to provide any such coverages with Grantor named as an additional insured but otherwise shall have the right to self-insure all or a portion of the forgoing insurance coverage requirements as to Grantee only; provided, that Grantee's self-insurance of the forgoing insurance coverage requirements qualified in such manner shall not limit or otherwise impair the obligation of Grantee's contractors or subcontractors to obtain and maintain the insurance coverage required under this Section 12.

- B. No Further Changes and Rating.** Each of the above policies shall contain provisions giving Grantor and its designated representatives at least 30 days' prior written notice of a material change in or cancellation of coverage; provided, however, in the event such provisions cannot be incorporated in such policies, either by endorsement or otherwise, Grantee is obligated to provide at least 30 days' prior written notice to Grantor of a material change in or cancellation of coverage. If Grantee is advised of any material change in coverage being made by any carrier, Grantee shall so notify Grantor or its designated representatives in writing. The cost of all insurance set forth above shall not be paid by Grantor. All policies required to be carried by Grantee's contractors and subcontractors hereunder shall be issued by an insurance company licensed or authorized to do business in the State and with a rating of at least B+ or better as set forth in the then-current issue of Best's Insurance Reports (as may be amended and updated from time to time), unless otherwise approved by Grantor.
- C. Certificates and Endorsements.** Prior to entering into the Easement Areas and so long as Grantee is not a governmental entity, Grantee shall deliver to Grantor a certificate and endorsement from the insurance company issuing the policy listing Grantor, as named insureds or additional insureds, as applicable, thereunder and, if requested, copies of the policies of insurance representing the required insurance coverage. This requirement is not applicable for Workers' Compensation Insurance, Employers' Liability Insurance, or Commercial/Business Automobile Liability Insurance.
- D. No Limitation of Liability.** The foregoing insurance coverages are minimum requirements and the maintenance thereof shall in no way limit the liability of Grantee under this Agreement. Any insurance maintained by Grantor shall in no way limit the liability of Grantee under this Agreement.
- E. Waiver of Subrogation.** Grantee and Grantor agree on behalf of themselves, and all others under them, including any insurer, to waive all claims against each other for losses occurring due to operations undertaken as per this Agreement, to the extent covered by insurance, and to agree to obtain waivers of subrogation rights from any insurer, if available. This waiver shall apply only to the extent of actual insurance proceeds received with respect to losses occurring due to operations undertaken as per this Agreement existing between Grantor and Grantee and shall not be construed to be a waiver with respect to other operations. This waiver does not apply in any jurisdiction or situation in which such waiver is held to be illegal or against public policy or if

insurance coverage would be voided by the waiver. This Section 12(E) shall survive the surrender or earlier termination of this Agreement.

- F. Miscellaneous.** The insurance policies required to be obtained in this Section 12 (except Workers' Compensation Insurance and Employers' Liability Insurance) shall be primary and non-contributory with any insurance carried by Grantor with respect to any claims arising out of the performance or non-performance of Grantee's duties and activities within the scope of this Agreement or arising from any action or activity on, or condition of, the Property or Easement Areas and the indemnity provided in this Agreement shall not be limited by any insurance proceeds that may be available to Grantee and/or Grantor.

13. Liens.

- A. General.** Grantee shall not incur or suffer any liens or encumbrances to be levied or asserted against the Property other than the Easement provided under this Agreement, the Easement Improvements (if applicable) and any other improvement thereon or appurtenance thereto. Grantee may execute a deed of trust or security agreement in connection with Grantee's rights under this Agreement, the Easement Improvements, and Grantee's personal property, trade fixtures and equipment located upon the Easement Areas; provided, however, that no such security interest shall attach to Grantor's Property.
- B. No Mechanic's, Contractor's, or Materialman's Liens.** Grantee hereby covenants and agrees that it shall keep the Property free from any involuntary liens arising from any work performed, materials furnished or obligations incurred by Grantee with respect to its activities on the Easement Areas. If a mechanic's, contractor's, or materialman's lien is filed on the Property in connection with Grantee's operations on the Easement Areas, then upon Grantor's written notice to Grantee, Grantee shall promptly pay or bond over the lien or otherwise remove the lien from title to the Property. If any such lien remains of record and is not bonded by Grantee within 60 days after such notice from Grantor, then Grantor may, but is not obligated to, discharge the lien. Any amounts paid by Grantor to remove the lien, including, without limitation, costs, expenses, attorneys' fees and interest, shall be due from Grantee to Grantor immediately upon Grantee's receipt of notice thereof. This Section shall survive the expiration or termination of this Agreement.
- C. Estoppel Certificate.** Within 30 days after either party has made a request therefor (and which request shall not be made more than two times per calendar year), the non-requesting party shall sign and deliver to the requesting party a certificate signed by the non-requesting party confirming and containing such factual certifications and representations as to this Agreement as such requesting party, or such requesting party's lender, may reasonably request.

14. Damage by Casualty.

- A.** All personal property of every kind whatsoever brought or placed in or upon any part of the Easement Areas shall be at the risk of Grantee or of the person owning the same, and neither Grantor nor Grantor's Affiliates shall be liable for any loss or damage thereto, whether such loss or damage is caused by any natural occurrence, structural defect or collapse, theft, or by the act of neglect of any person or any other cause of any description.
- B.** As part of the consideration for this Agreement, Grantee does hereby release Grantor and Grantor's Affiliates, from all liability and responsibility for any loss or damage to Grantee's personal property as a result of fire or other casualty, even if such loss or damage is caused by the negligence of Grantor or Grantor's Affiliates.

- C. Grantee shall not commit or permit the commission of any hazardous acts on the Easement Areas or use or permit the use of the Easement Areas in any manner that will increase the existing rates for or cause the cancellation of any fire, liability or other insurance policy insuring the Easement Area, improvements, equipment, the remainder of the Property, or other personal property of Grantor that may be located on the Property or Easement Areas.

- 15. Binding on Successors.** Subject to the termination provisions stated herein and the prohibition on assignment set forth in Section 7 hereof, this Agreement shall bind and inure to the benefit of the parent companies, subsidiaries, affiliates, members, managers, owners, partners, officers, board members, directors, shareholders, executives, employees, insurers, agents, legal representatives, estates, heirs, successors, and assigns of each of the parties hereto, as applicable, except that other than a Permitted Transfer, no assignment or transfer by Grantee without the written consent of Grantor shall vest any right in such assignee or transferee of Grantee.
- 16. No Public Dedication.** Nothing contained in this Agreement shall be deemed a gift or dedication of any portion of the Easement Areas or Property to the general public for the use or benefit of the general public or for any public purpose whatsoever.
- 17. Entire Agreement and Amendments; Recitals.** This Agreement and all exhibits and addenda attached hereto constitute the entire agreement between the parties hereto with respect to the subject matter hereof and no subsequent amendment or agreement shall be binding upon either party unless it is signed by each party.
- 18. Grantor Reservation of Rights.** Grantor reserves the right to use and enjoy the entire Property for any purpose desired by Grantor, including but not limited to, the full, free and perpetual right and privilege, in common with Grantee, to use the Easement Areas for any other purpose desired by Grantor, subject to the specific Easements granted herein. Without limiting the generality of the foregoing, but subject to the specific Easements granted herein, (a) Grantor reserves the right, but not the obligation, in common with Grantee to the extent expressly permitted in this Agreement, to lay, construct and/or maintain utilities, pipelines and wells, (b) Grantor reserves the sole and absolute right, but not the obligation, (i) to lay, construct and/or maintain any other equipment and improvements relating to Grantor's present and future operations on the Property, of whatever kind or nature (collectively, the "**Grantor's Operations**"), (ii) to grant easements, rights-of-way or other interest in and to the Property (including, without limitation, for use for utility lines or in connection with the production, saving, and marketing of Natural Resources or otherwise in connection with Grantor's Operations), (iv) to sell, lease, negotiate and receive surface damages, drill, mine or otherwise extract the Natural Resources from the Property, and (v) to grant contracts, licenses or leases related to any Natural Resources, including, without limitation, oil and gas leases, mineral leases, wind leases, water leases, solar leases, timber leases or contracts, gypsum leases, seismic exploration leases, division orders, pipe line and unitization agreements, and (c) Grantee acknowledges that the owner of any of the rights in Natural Resources, whether Grantor or another party, may have (and expressly reserves hereby) all rights to the Natural Resources; provided that, Grantor does not reserve or retain, and hereby waives and relinquishes any and all rights to use the surface of the Easement Areas for operations in connection with the exploration, development and production of the Natural Resources of whatever kind or nature (the "**Surface Waiver**"). The Surface Waiver shall not restrict Grantor from mining, drilling, exploring, operating, developing or extracting the Natural Resources by means of pooling, directional drilling or other methods that do not require utilization of the surface of the Easement Areas so long as such activities do not cause any interference with the surface of the Easement Areas through subsidence, expansion, or any other shifting. Further, this Agreement is subject to any existing contracts, leases, licenses, easements, rights of way or other interests in and to the Property granted in connection with Grantor's Operations and/or granted for the use and/or removal of any Natural

Resources in, on, about or underlying the Property, if any. For the purposes of this Agreement, the term “**Natural Resources**” shall mean, collectively, all natural resources in, on, about or underlying the Property, including, without limitation, wind, solar, timber, coal, oil and gas and other hydrocarbons, limestone, caliche, gypsum, water, minerals and other similar materials or substances lying on or beneath the surface, but Grantor specifically acknowledges that such reservation of Natural Resources does not in any manner limit Grantee’s ability to draw seawater on and adjacent to the Easement Areas for the purposes of operation of the Project. This Agreement shall confer no rights to Grantee in or to Natural Resources, and, except as expressly set forth in this Agreement, Grantee shall not have the right to use any of Grantor’s Property other than the Easement Areas without the prior written consent of Grantor, which may be withheld in Grantor’s sole and absolute discretion. Except for Grantee’s reasonable exercise of its right to use the Easement Areas in accordance with this Agreement, Grantee hereby covenants and agrees that it shall not (nor shall it allow any Grantee Party to) interfere with the utilization of the surface of the Property in connection with any rights to the Natural Resources.

- 19. Captions and Interpretation; Recitals.** The captions of this Agreement are for convenience only and are not to be construed as a part of this Agreement and shall not be construed as defining or limiting in any way the scope or intent of the provisions hereof. The recitals are incorporated herein by reference and made a part hereof in all respects. This Agreement was initially drafted by Grantor as a matter of convenience and by agreement following negotiations with Grantee. The parties agree that no presumption or interpretation will be imposed by or against either party as a result thereof. Wherever in this Agreement (or any exhibits or addenda attached hereto) Grantor’s approval or consent is required, Grantor’s approval or consent may be withheld in Grantor’s sole and absolute discretion, unless expressly stated otherwise. The use of the terms “hereof,” “hereunder” and “herein” shall refer to this Agreement as a whole except where noted otherwise. Additionally, feminine or neuter pronouns may be substituted for masculine and the plural may be substituted for singular or singular for plural. Whenever in this Agreement (or any exhibits or addenda attached hereto) the term “Property” is used, such use shall refer to the entire Property, including, without limitation, the Easement Areas.
- 20. Limitation on Right of Recovery Against Grantor.** Grantee acknowledges and agrees that the liability of Grantor under this Agreement or any matter relating to or arising out of the occupancy or use of the Easement Areas shall be limited to Grantee’s actual direct, but not consequential, damages therefor. For the purposes of this Section 20, the term “Grantor” shall mean and include all Released Parties. The provisions hereof shall inure to Grantor’s successors and assigns. The foregoing provisions are not intended to relieve Grantor from the performance of any of Grantor’s obligations under this Agreement, but only to limit the personal liability of Grantor in case of recovery of a judgment against Grantor.
- 21. Waivers.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, GRANTEE HEREBY WAIVES THE BENEFIT OF ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY AND/OR THE EASEMENT AREAS, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF TITLE TO THE PROPERTY OR EASEMENT AREAS OR ANY IMPLIED WARRANTY THAT THE EASEMENT AREAS ARE SUITABLE FOR ANY PARTICULAR PURPOSE. NO GRANTOR PARTY HAS MADE ANY REPRESENTATIONS, COVENANTS OR WARRANTIES AS TO TITLE OR ANY OTHER MATTERS AFFECTING OR RELATED TO THE PROPERTY, THE EASEMENT OR THE EASEMENT AREAS AND THE SAME ARE ACCEPTED BY GRANTEE “AS-IS, WHERE-IS.”
- 22. GRANTEE’S VOLUNTARY WAIVER OF SOVEREIGN IMMUNITY FROM LIABILITY AND SUIT.** NOTWITHSTANDING ANY LAW NOW OR HEREINAFTER IN EFFECT TO THE CONTRARY, PURSUANT TO TEXAS LOCAL GOVERNMENT CODE SECTION 271.151, ET SEQ., AND TEXAS LOCAL GOVERNMENT CODE SECTION 212.172(i), GRANTEE HEREBY IRREVOCABLY WAIVES ITS SOVEREIGN IMMUNITY FROM LIABILITY AND SUIT IN ANY

LAWSUIT WITH RESPECT TO ANY ACTION IN ANY COURT OR TRIBUNAL OF COMPETENT JURISDICTION AS TO ALL DISPUTES AND ACTIONS BETWEEN GRANTOR AND GRANTEE WHICH MAY ARISE AS A RESULT OF THIS AGREEMENT. GRANTEE ALSO HEREBY CONSENTS TO AND IRREVOCABLY WAIVES ANY AND ALL OBJECTIONS OR DEFENSES IT MAY HAVE TO SUCH JURISDICTION BASED UPON OR RELATED TO SOVEREIGN IMMUNITY. GRANTEE HEREBY ACKNOWLEDGES AND AGREES THAT IT IS VOLUNTARILY ENTERING INTO THIS AGREEMENT AND ALL ANCILLARY AGREEMENTS RELATED HERETO AND BINDS ITSELF TO THE TERMS OF THIS AGREEMENT AND SUCH ANCILLARY AGREEMENTS IN ALL RESPECTS. To the extent permitted by applicable law, Grantee further waives and stipulates to the inapplicability of any provision of the Corpus Christi City Charter that would bar, limit, or otherwise affect the ability of Grantor to enforce this Agreement. The provisions of this Section 22 shall expressly survive the termination of this Agreement.

23. **JURY WAIVER.** IT IS MUTUALLY AGREED BY AND BETWEEN GRANTOR AND GRANTEE THAT THE RESPECTIVE PARTIES WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES AGAINST THE OTHER ON ANY MATTER WHATSOEVER ARISING OUT OF THIS AGREEMENT.
24. **Venue.** Grantor and Grantee hereby irrevocably submit generally and unconditionally for themselves and in respect of their respective properties and any dispute regarding this Agreement to the jurisdiction of any State court of appropriate jurisdiction or any United States federal court sitting in the county in which the Easement Areas are located. Grantor and Grantee hereby irrevocably waive any objection that Grantor and Grantee may now or hereafter have to the laying of venue in any such court and any claim that any such court is an inconvenient forum. Grantor and Grantee consent to any methods of service of process provided for under applicable laws. The provisions of this Section 24 shall expressly survive the termination of this Agreement.
25. **Choice of Law.** THIS AGREEMENT, AND ALL THE RIGHTS OF THE PARTIES SHALL BE GOVERNED AS TO THE VALIDITY, INTERPRETATION, CONSTRUCTION, ENFORCEMENT AND IN ALL OTHER RESPECTS BY THE LAW OF THE STATE, WITHOUT REGARD TO ITS RULES AND PRINCIPLES REGARDING CONFLICTS OF LAWS OR ANY RULE OR CANON OF CONSTRUCTION WHICH INTERPRETS AGREEMENTS AGAINST THE DRAFTSMAN. The provisions of this Section 24 shall expressly survive the expiration or earlier termination of this Agreement.
26. **Time.** Time is of the essence of this Agreement. The term “**days**” shall be deemed to mean calendar days unless “**Business Days**” are specifically referenced. As used herein, “**Business Days**” means any day that is not a Saturday, Sunday or federal or state holiday. If the expiration date by which a party is required to make a payment or notice to the other party or such other party’s representative under the terms of this Agreement falls on a weekend or on a State or federal holiday, then such expiration date for receipt of payment or notice shall be extended until the next Monday or non-holiday, as the case may be. Otherwise, the expiration date for performance of any action or activity shall be on the calendar day specified, regardless of whether such expiration date falls on a weekend or State or federal holiday.
27. **Severability.** If any clause or provision of this Agreement is illegal, invalid, or unenforceable under present or future laws, then the remainder of this Agreement shall not be affected thereby and in lieu of such clause or provision, there shall be added as a part of this Agreement a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.
28. **No Implied Rights; Development Agreement.** Grantor and Grantee agree that this Agreement will not be construed as conferring any legal or other implied rights, except for those rights and privileges expressly

granted herein; provided, that the parties acknowledge and agree that this Easement Agreement is being entered into in connection with the Development Agreement, and that the provisions of the Development Agreement (including, without limitation, its provisions on remedies and Section 212.172(b)(9), which authorizes the parties to include other lawful terms and considerations the parties consider appropriate) are incorporated herein by reference and made a part hereof.

- 29. No Offer.** The submission of this Agreement to Grantee shall not be construed as an offer, and Grantee shall not have any rights under this Agreement unless Grantor executes a copy of this Agreement and delivers it to Grantee.
- 30. Counterparts.** This Agreement may be executed in any number of counterparts, by facsimile, attachment to an email, portable document format (.pdf) or other electronic transmission, each of which shall be deemed an original for all purposes, with the same effect as if all parties had executed one instrument. Executed signature pages from different counterpart originals of this Agreement may be combined to form a single original instrument for recording and evidentiary purposes.
- 31. Survival of Obligations.** The provisions of this Agreement with respect to any obligation of Grantee to pay any sum owing or to perform any act after the surrender or termination of this Agreement shall survive the surrender or termination of this Agreement, including, without limitation, the provisions of Sections 2(C) and 2(D) (Term), Section 5 (Damages Caused by Grantee), Section 6 (Taxes), Section 10 (Release, Indemnity and Hold Harmless), Section 11 (Hazardous Materials), Section 12 (Insurance), Section 13 (Liens), and Section 22 (Grantee's Voluntary Waiver of Sovereign Immunity from Liability and Suit); provided that, such obligations shall be enforceable for a period of four years following the later to occur of the termination of this Agreement or the discovery of any matters requiring such performance, but in any event no longer than ten years for the date of termination of this Agreement.
- 32. Notice of Action by Law Enforcement or Regulatory Officials.** If, at any time, (a) Grantee is the subject of any action by law enforcement or a regulatory official in connection with (i) any of Grantee's actions or conduct on the Easement Areas, or (ii) the acts of any third party in connection with the Easement Areas, or (b) any law enforcement or regulatory official commences an inspection or other investigation of the Easement Areas or Grantee's activities thereon for any reason, then Grantee is obligated to give immediate written notice (within 48 hours) to Grantor of such action or entry, as applicable. Such action includes, without limitation, known investigations, execution of warrants, seizure and/or destruction of property, arrests, or notice of any type of pending or future legal action, whether regulatory, civil, or criminal.
- 33. Authority.** Grantee and Grantor hereby represent and warrant to each other that: (a) such party is in good standing under the laws of the State; (b) such party has full power and authority to enter into this Agreement and to perform all of such party's obligations under this Agreement; and (c) each person (and all of the persons if more than one signs) signing this Agreement on behalf of such party is duly and validly authorized to do so. Without limiting the generality of the foregoing, Grantee further represents and warrants to Grantor that this Agreement has been approved by resolution or ordinance duly adopted by the City Council of the City of Corpus Christi in accordance with all applicable public notice requirements (including, but not limited to, notices required by the Texas Open Meetings Act) and the individual executing this Agreement on behalf of Grantee has been duly authorized to do so.
- 34. No Joint Venture or Partnership.** It is expressly understood that no Grantor Party shall hereby, in any way or for any purpose whatsoever, become a partner or principal of Grantee in the conduct of Grantee's business or a joint venturer or member of a joint enterprise with Grantee, and any Grantor Party and Grantee will not, by virtue of this Agreement, in any way or for any reason be deemed to have become a partner of the other in the conduct of its business or otherwise, or a joint venturer. In addition, by virtue of this Agreement there shall not be deemed to have occurred a merger of any joint enterprise between

Grantor and Grantee.

- 35. Notices.** Any notice required or permitted to be given hereunder shall be either (i) in writing, sent to the recipient by nationally-recognized overnight delivery service or U.S. registered or certified mail, postage prepaid, return receipt requested or (ii) by electronic mail to the intended addressee at the electronic mail address set forth herein, delivery receipt requested, and accompanied with a hardcopy writing sent by U.S. mail, in each case, addressed as follows:

If to Grantor: Flint Hills Resources Corpus Christi, LLC
Attention: Roger TenNapel
4111 East 37th Street North
Wichita, Kansas 67220
Email: roger.tennapel@fhr.com

With a copy to: Flint Hills Resources Corpus Christi, LLC
Attention: Kim Boatright
4111 East 37th Street North
Wichita, Kansas 67220
Email: kim.boatright@fhr.com

With a copy to
(which shall not
constitute notice) Holland & Knight LLP
Attn: Eugene Segrest, Esq.
One Arts Plaza
1722 Routh Street, Suite 1500
Dallas, Texas 75201
Email: gene.segrest@hklaw.com

If to Grantee: City of Corpus Christi, Texas
Attn: City Manager
1201 Leopard Street
Corpus Christi, Texas 78401
Email: peterz@cctexas.com

City of Corpus Christi, Texas
Attn: City Attorney
1201 Leopard Street
Corpus Christi, Texas 78401
Email: milesr@cctexas.com

City of Corpus Christi, Texas
Attn: Water Department
2726 Holly Road
Corpus Christi, Texas 78415
Email: estebanr2@cctexas.com

For all purposes hereunder, any such notice shall be deemed to have been properly given on the earliest of (a) actual receipt, (b) refusal to accept receipt, (c) the same day it is deposited with a nationally-recognized overnight delivery service with all charges prepaid in full, and (d) three Business Days after depositing the same with the U.S. Postal Service, with postage fully prepaid.

- 36. Defined Terms.** Capitalized terms used in this Agreement and not otherwise defined herein have the

meanings set forth below:

Affiliates: With respect to any Person, any other Person directly or indirectly Controlling or Controlled by or under direct or indirect common Control with such Person.

Control: The possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or general partnership or managing member interests, by contract or otherwise. “**Controlling**” and “**Controlled**” shall have correlative meanings. Without limiting the generality of the foregoing, a Person shall be deemed to Control any other Person in which it owns, directly or indirectly, a majority of the ownership interests.

Environment: Any surface water, groundwater, drinking water supply, soil, sediments, ground surface, subsurface strata or ambient air.

Environmental Condition(s): Any circumstance or set of circumstances in, on, under or about the Property or surrounding properties that arise directly or indirectly out of or related to the presence, suspected presence, release or threatened release of any Hazardous Material.

Environmental Laws: Any and all Legal Requirements or Orders, rules, codes, policies, directives, standards, licenses, or permits of any Governmental Body relating to the Environment (as each and all of the foregoing may be amended from time to time), including, without limitation, those relating to the exposure to, use, Release, emission, presence, storage, treatment, generation, transportation, processing, or handling of Hazardous Materials, or solid or other waste previously, presently or hereafter in effect, including the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; the Federal Insecticide, Fungicide & Rodenticide Act, 7 U.S.C. § 136 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq.; the Clean Water Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq.; and the Emergency Planning and Community Right to Know Act, 42 U.S.C. § 11001 et seq.; and all similar statutes adopted by the State of Texas and/or any other Governmental Body; and any and all implementing regulations relating to any of the foregoing.

Governmental Body: Any (a) nation, state, county, city, town, village, district, territory, or other jurisdiction of any nature; (b) federal, state, local, municipal, foreign, or other government; (c) governmental authority of any nature (including, without limitation, any governmental agency, branch, department, official, or entity and any court or other tribunal); or (d) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature.

Hazardous Material: Any “hazardous waste”, “hazardous substance”, “extremely hazardous substance”, “toxic chemical”, “hazardous chemical”, “toxic pollutants”, “contaminants”, “chemical”, “chemical substance”, “mold” or “asbestos”, including without limitation any petroleum product, lead based paint, asbestos containing material or polychlorinated biphenyl, as such terms are defined in any of the Environmental Laws, or related substances, in such quantities or concentrations as are regulated by such Environmental Laws or other applicable laws, or which may be declared to constitute a material threat to human health or to the Environment; provided, that seawater, water and constituents thereof shall not be considered Hazardous Material.

Legal Requirement: Any order, constitution, law, ordinance, regulation, statute, or treaty issued by any federal, state, local, municipal, foreign, international, multinational, administrative or other Governmental Body, any principle of common law or governmental interpretation thereof.

Losses/Claims: Any and all claims, demands, administrative orders, causes of action (including causes of action in tort), remedial actions, losses, damages, liabilities, judgments, settlements, penalties, fines, costs and expenses (including attorneys' fees and court costs actually incurred) of any and every kind or character, known or unknown, whether based upon negligence, strict liability or otherwise.

Order: Any award, decision, injunction, judgment, decree, order, ruling, subpoena, or verdict entered, issued, made, or rendered by any court, administrative agency, or other Governmental Body or by any arbitrator.

Person: An individual, partnership, joint venture, limited liability company, association, corporation, trust or any other legal entity.

Release or Released: Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, migrating, or disposing (including, without limitation, the abandoning or discarding of barrels, containers and other closed receptacles containing any Hazardous Material) of a substance into the Environment.

Released Parties: Grantor, Grantor's Affiliates, and their respective partners, shareholders, members, officers, agents, employees or representatives.

Remediation: The investigation or remediation of soil, sediments, groundwater or surface water to industrial standards in order to address Releases of Hazardous Materials into such soils, sediments, groundwater or surface water, which may include, without limitation, risk-based remedies and engineering and institutional controls in addition to or in lieu of active cleanup if such measures are sufficient to achieve compliance with requirements of applicable Environmental Laws in effect from time to time. Without limiting the generality of the foregoing, any remediation conducted pursuant to Section 10 of this Agreement or the Soil Management Plan shall be considered "Remediation" for purposes of this Agreement.

[Remainder of Page Intentionally Left Blank; Signature Pages Follow]

IN WITNESS WHEREOF, the parties have signed this Agreement as of the Effective Date.

GRANTOR:

FLINT HILLS RESOURCES CORPUS CHRISTI, LLC,
a Delaware limited liability company

By: _____
Name:
Title:

GRANTEE:

CITY OF CORPUS CHRISTI, TEXAS
a Texas home rule municipality

By: _____
Name:
Title:

APPROVED AS TO LEGAL FORM
This ____ day of _____, 20__.

By: _____
Miles Risley, City Attorney

[Signatures continue on following page]

Exhibit A (to Exhibit E)

Legal Description of the Benefitted Property

[To be inserted or attached]

Exhibit B (to Exhibit E)

Legal Description of the Property

Exhibit C-1 (to Exhibit E)

Description of Pipeline Easement Area

[To be attached]

Exhibit C-2 (to Exhibit E)

Description of Submerged Land Easement Area

[To be attached]

Exhibit C-3 (to Exhibit E)

Description of Intake Pump Station Easement Area

[To be attached]

Exhibit C-4 (to Exhibit E)

Description of Access Easement Area

[To be attached]

Exhibit C-5 (to Exhibit E)

Description of Construction/Maintenance Easement Area

[To be attached]

Exhibit C-6 (to Exhibit E)

Description of Temporary Soil Storage Easement Area

[To be attached]

Exhibit D (to Exhibit E)

FORM OF EASEMENT TERMINATION AGREEMENT

When recorded, please return to:

Holland & Knight LLP
1722 Routh Street, Suite 1500
Attn: Eugene Segrest, Esq.
Dallas, Texas 75201

TERMINATION AND RELEASE OF EASEMENT AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF NUECES §

This TERMINATION AND RELEASE OF EASEMENT AGREEMENT (this “Termination and Release”) is made by the CITY OF CORPUS CHRISTI, TEXAS, a Texas home rule municipality (the “City”) in favor of FLINT HILLS RESOURCES CORPUS CHRISTI, LLC, a Delaware limited liability company (“Owner”).

RECITALS

A. Reference is hereby made to that certain Easement Agreement (the “Easement Agreement”) dated effective as of _____, by and between Owner, as grantor, and City, as grantee, which was recorded on _____ as Document No. _____ in the Official Public Records of Nueces County, Texas, pursuant to which Owner granted to City certain easements (collectively, the “Easements”) over and across a portion of property owned by Owner and more particularly described on Exhibit A attached hereto and made a part hereof for all purposes (such property, the “Property”); and

B. This Termination and Release of Easement Agreement is being executed and delivered contemporaneously with a special warranty deed between the City, as grantor, and Owner, as grantee, of even date herewith covering the Benefitted Property (as defined in the Easement Agreement) located in Nueces County, Texas, which special warranty deed has been executed and delivered pursuant to certain rights of repurchase by Owner concerning such Benefitted Property evidenced in that certain Special Warranty Deed dated effective as of _____ from Owner, as grantor, to the City, as grantee, which was recorded as Document No. _____ in the Official Public Records of Nueces County, Texas; and

C. Pursuant to the terms and conditions of the Easement Agreement, the Easement Agreement and associated Easements have terminated by the terms of the Agreements. Accordingly, the City is executing this Termination and Release as required pursuant to the terms and conditions of the Agreements.

AGREEMENT

NOW THEREFORE, for and in consideration of \$10.00, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged and confessed, the City hereby terminates, discharges, and releases all of its right, title and interest in the Easements and the Easement Agreement.

Except with respect to the obligations of the City set forth in the Agreements that expressly survive termination and release of the Easements and Easement Agreement, which obligations the City acknowledges remain in full force and effect, the City acknowledges and agrees that the Property is released from and is no

longer subject to or burdened by the Easements or the Easement Agreement. The Recitals hereof are incorporated herein by reference and made a part hereof for all purposes.

[Signature page follows]

EXECUTED on the date set forth in the acknowledgment below to be effective as of the ____ day of _____, 20__.

Grantor:

FLINT HILLS RESOURCES CORPUS CHRISTI, LLC, a Delaware limited liability company

By: _____

Name:

Title:

STATE OF _____ §
COUNTY OF _____ § ss.
§

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, the [insert: title/position of signatory] of FLINT HILLS RESOURCES CORPUS CHRISTI, LLC, a Delaware limited liability company, on behalf of the limited liability company.

Type Notary Name: _____

Notary Public in and for the State of _____

My appointment expires _____

[Signature Pages Continue]

GRANTEE:

CITY OF CORPUS CHRISTI, TEXAS,

a Texas home rule municipality

By: _____

Printed Name: _____

Title: _____

APPROVED AS TO LEGAL FORM

This ____ day of _____, 20__.

By: _____
_____, City Attorney

STATE OF TEXAS §

§

COUNTY OF NUECES §

This instrument was acknowledged before me on _____, 20__, by _____,
_____ of the CITY OF CORPUS CHRISTI, TEXAS, a Texas home rule municipality, on behalf
of said municipality.

(seal)

Notary Public, State of Texas

Exhibit A (to Exhibit D to Exhibit E)

(To Termination and Release of Easement Agreement)

[Insert legal description of the Property]