

## Right of Use Agreement (April 2017 Update)

(For Use in Depositing Silt on Homeowner Site Resulting From Homeowner Dredge Project)

This Right of Use Agreement is entered into on \_\_\_\_\_, 2017 between \_\_\_\_\_ (“Homeowner”) and Lake Rosemound Dredging Contractors, LLC (“LRDC”) for the disposal of silt dredged from Lake Rosemound by LRDC on Homeowner’s property. Homeowner herein grants LRDC the right to access and use the following described property, owned in full by the Homeowner (“Homeowner Property”).

Homeowner Property: \_\_\_\_\_

This dredging and deposit of spoil work is being done in accordance with the approved Homeowner Application for dredging and attached Terms & Conditions signed by LRDC and Homeowner (collectively referred to as Application Agreement), dated \_\_\_\_\_. All work performed by the LRDC for the depositing of silt on the Homeowners property is based and conditioned upon the terms and conditions of the Approved Application and any additional terms and conditions specified herein. This Right of Use Agreement together with the Application Agreement shall constitute the complete agreement between LRDC and the Homeowner (hereinafter collectively referred to as “Agreement”). No provision, printed or otherwise, contained in any order, acceptance, confirmation or acknowledgment which is inconsistent with, different from or in addition to these terms and condition shall be accepted by either party unless specifically agreed to it in writing. In the event of a conflict between Sections 3-11 of this Right if Use Agreement and the Application Agreement, this Right of Use Agreement shall prevail.

**1. The Work.** Homeowner allows LDRC the right to enter and use Homeowner’s Property to dispose of silt and spoils collected from Lake Rosemound, install a berm on its property (if applicable) and perform such other work further in the Application Agreement and Exhibit hereto (collectively referred to hereunder as “Work”). The approximate location of where the spoil will be deposited, the berm installed, and the estimated amount of spoil to be deposited thereon is reflected in the attached Exhibit. For purposes of this Agreement, berm shall mean a structure designed to hold silt deposited, including but not limited to Envirotubes, wooden retaining wall or other.

**2. Costs.** The cost of dredging, building the berm, depositing the spoil on Homeowner Property, together with the cost of prepping such property, performing finishing work once depositing has been completing and then further maintaining the property, shall be borne by the parties as set forth in the Application Agreement or otherwise specified in this Right of Use Agreement. performing such other work deemed necessary by LRDC required to carry out its Scope of Work. Homeowner shall bear the costs (if any) to perform work hereunder and further described in the Exhibit hereto.

**3. Right to Use.** Homeowner hereby warrants that he/she/it has the sole right to allow LRDC to dispose the dredging spoils on the Homeowner Property and perform the Work specified in this Agreement on Homeowner’s Property. Homeowner will disclose to LRDC the existence of any servitudes or right of ways on the Homeowner’s Property. If any servitude exists, Homeowner warrants that the Work performed by the LRDC does not interfere with the servitude. LRDC shall have no responsibility or involvement with disputes regarding property lines and/or ownership rights between Homeowner and any other party concerning the Homeowner Property.

**3. Ownership of the Deposits.** Any and all spoils deposited on Homeowner Property by LRDC shall belong to the Homeowner. Homeowner will at all times own the spoils deposited and berm installed on the property, to include any and all liabilities arising from such deposits and berm. The location of such deposit and berm is further specified in the Exhibit hereto. Homeowner shall maintain the property in accordance with LRA bylaws and rules.

**4. Permits.** The LRDC and the Homeowner hereby agree to work together to obtain necessary permits for the Work.

**5. Warranty.** All Work shall be performed hereunder by LRDC in a workmanlike manner, consistent with typical industry practices. If, within 90 days of the performance of the Work, any service is found to be deficient, then LRDC will work with Homeowner to correct the deficiency to the extent possible and within the original scope of work. There are no other warranties, express or implied, except as expressly stated herein. Homeowner's remedies under this warranty are specifically limited to the correction of any deficient services performed by the LRDC and are exclusive of all other remedies.

**6. Obligations of the Homeowner.** The Homeowner shall give access to Homeowner Property necessary for the LRDC in order to carry out the Work. The LRDC and its agents shall have the right to access Homeowner Property from time to time to inspect same, document status, and perform such remedial services (if any) deemed necessary by LRDC. The Homeowner also has a duty to provide the LRDC pertinent property documents, including existing property surveys and conveyance deed, required by LRDC to carry out the scope of work. LRDC has the right, if deemed necessary by LRDC, to obtain a third party survey to verify the property lines, at LRDC's expense. The Homeowner will disclose any hidden conditions on the Homeowner Property, to include buried cables and the like. Further, Homeowner agrees to cooperate with the LRDC in advising impacted neighbors and seeking support, as needed.

**7. Obligations of the LRDC.** LRDC shall supervise and direct the work and shall be solely responsible for and have control over construction means, methods, techniques and sequences of the work. LRDC shall provide the labor, materials, equipment, tools, utilities and other facilities and services necessary for proper execution of the work. At the completion of the work, the LRDC shall remove its equipment, properly dispose of waste materials, and perform such other finishing work tasks specified in the Exhibit hereto.

**8. Limitation of Liability.** LRDC'S LIABILITY IS LIMITED to \$50,000.00 (USD) AND IN NO EVENT WILL LRDC'S CUMULATIVE LIABILITY BE IN EXCESS OF THIS AMOUNT, WHETHER ARISING UNDER WARRANTY, CONTRACT, NEGLIGENCE, STRICT LIABILITY, INDEMNIFICATION, OR ANY OTHER CAUSE OR COMBINATION OF CAUSES WHATSOEVER. LRDC WILL IN NO EVENT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOST PROFIT WHETHER ARISING UNDER WARRANTY, CONTRACT, NEGLIGENCE, STRICT LIABILITY, INDEMNIFICATION, OR ANY OTHER CAUSE OR COMBINATION OF CAUSES WHATSOEVER. THIS LIMITATION SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. HOMEOWNER'S REMEDIES ARE SPECIFICALLY LIMITED TO THIS AMOUNT.

**9. Indemnity.** LRDC, subject to its limitation of liability, shall defend, indemnify and hold harmless the Homeowner and their successors and assigns against all damages, losses, costs, claims, strict

liability claims, liens, encumbrances, liabilities and expenses, as and to the extent arising out of or resulting from the negligent acts of the LRDC. Homeowner shall, at its own cost and expense and to the fullest extent allowed by applicable laws, defend, indemnify and hold harmless LRDC, its parent, affiliates, subsidiaries, officer, directors, employees and agents and their successors and assigns, against all damages, losses, costs, claims, strict liability claims, liens, encumbrances, liabilities and expenses, as and to the extent arising out of or resulting from the negligent acts of the Homeowner or from any breaches of the Homeowner's obligations under this agreement, to include property disputes, servitudes disputes and/or ownership rights regarding Homeowner Property. All liability, losses, damages, costs or expenses resulting from personal injury, including death, loss of or physical damages to property, caused by the joint or concurring acts of the LRDC and Homeowner and their respective officers, directors, employees or agents, shall be borne by the LRDC and the Homeowner to the extent each is determine negligent either by agreement of the parties or by a court of competent jurisdiction. The obligations of the parties under this paragraph shall survive the expiration of this agreement.

**10. Governing Law.** This contract shall be governed by Louisiana law.

**11. Severability.** Invalidity of any of these terms and conditions will not affect the validity of any other provision and the remaining provisions will remain in full force and effect.

**Homeowner**

**LRDC**

\_\_\_\_\_  
**Name:**

\_\_\_\_\_  
**Name:**

**Date:**

**Date:**

**Exhibit to Right of Use Agreement**

**1. Description of site for depositing spoil dredged (Deposit Site)**

Approximate Dimension of the Deposit Site Area:

Estimated amount of Silt to be deposited:

Configuration, Size and location of berm

*Picture/Diagram Reflecting Location of Disposal Area and Position of Berm is attached*

**2. This Deposit Site is being used for the following dredging operations:**

Homeowner Dredge Project:

*Provide Owner with the approved Application for the above*

**3. Scope of Work to be Performed by LRDC on Deposit Site (provide general description of the Work LRDC is to perform on Deposit Site) indicating who pays**

<b>Work to be Performed Prepping</b>	<b>Paying Party (LRDC/Homeowner)</b>

:

<b>Finishing Work to be Performed</b>	<b>Paying Party (LRDC/Homeowner)</b>

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<b>Remedial &amp; Maintenance Work to be Performed</b>	<b>Paying Party (LRDC/Homeowner)</b>

Initials: \_\_\_\_\_

**Homeowner**

\_\_\_\_\_

**LRDC**