

Predial Servitude Agreement

* PARISH OF ST. CHARLES

From: RATHBORNE LAND CO., L.L.C.

* STATE OF LOUISIANA

To: ST. CHARLES PARISH

*

EFFECTIVE DATE: February 1, 2008

BE IT KNOWN that on the dates hereinafter indicated but effective on the date indicated above;

BEFORE the undersigned Notaries, each duly commissioned and qualified in and for the Parishes indicated, and in the presence of the hereinafter identified witnesses, personally came and appeared:

Rathborne Land Co., L.L.C., a Louisiana Limited Liability Company represented herein by J. Cornelius Rathborne, its President/Manager, (hereafter referred to as "Rathborne"); and

The Parish of St. Charles, a political subdivision of the State of Louisiana, represented herein by its President, V. J. St. Pierre, who declared that they hereby enter into this Servitude Agreement for themselves, their respective successors and assigns.

WHEREAS, the Parish of St. Charles has constructed a waste water treatment facility known as the Luling Oxidation Pond Wetlands Assimilation Project (the Project) located along the Texaco Road, Luling, La., and

WHEREAS, the Project is designed to discharge its treated effluent into wetlands, and

WHEREAS, Rathborne owns approximately 1,041 acres of wetlands (hereafter the Property) contiguous to the Project, and

WHEREAS, St. Charles Parish wishes to discharge the treated effluent into the Property owned by Rathborne,

NOW THEREFORE, St. Charles Parish and Rathborne hereby agree as follows:

1) **Grant of Servitude.** Rathborne hereby establishes, grants and creates for the benefit of St. Charles Parish a non-exclusive predial servitude to discharge treated effluent from the Project onto, into and to flow over, through and across the Property:

As outlined in red on the attached Exhibits "A" & "B"

The servitude created and granted hereby shall be for the benefit of the Project, its owners and operators, and their respective successors, assigns, employees and contractors.

2) **Extension of Servitude.** In the event the treated effluent discharged from the facility affects more land than described above, Rathborne shall have the right to extend the terms and conditions of this agreement to the additional land or, at its option, the right to require St. Charles Parish to limit the extent of the affect of its discharge.

3) **Commencement of Servitude.** St. Charles Parish shall have the right to commence use of the servitude immediately upon the effective date of the last state or federal permit required for the operation of the Project.

4) **Duration of Servitude.** This servitude shall be in existence during the operation of the Project. In the event the Project shall cease operation for one year or more, the servitude shall terminate one year from the date of last use of the Project.

5) **Retention of Rights.** Rathborne shall retain all rights to the land affected by this agreement except to the extent that such rights may interfere with the servitude. Rathborne specifically retains the right to explore and produce minerals on and from the Property, and to use the surface of the Property for that purpose. No rights other than those specifically transferred herein are granted to St. Charles Parish.

6) **Consideration.** St. Charles Parish and Rathborne acknowledge and agree that the fair market value of the servitude granted herein exceeds the currently available funds for the Project. Therefore, to allow the facility to operate, the parties agree as follows:

a) St. Charles Parish agrees to use its best efforts to obtain wetlands mitigation credits on Rathborne's behalf arising out of the preservation, enhancement or creation of wetlands caused by the discharge of treated effluent from the Project. These efforts include but are not limited to the retention of Dr. John Day or a similarly qualified expert to apply for wetland mitigation credits to the United States Army Corps of Engineers and/or the United States Environmental Protection Agency, and to the Louisiana Department of Environmental Quality and/or the Louisiana Department of Natural Resources;

b) St. Charles Parish agrees to use its best efforts to obtain carbon credits on Rathborne's behalf arising out of the discharge of treated effluent from the Project. These efforts include but are not limited to the retention of Dr. John Day or a similarly qualified expert to apply for carbon credits to the United States Environmental Protection Agency, to the Louisiana Department of Environmental Quality, or to any other public or private entity who assesses or awards carbon credits;

c) The Parties acknowledge that efforts to obtain carbon credits as described above have already begun, and shall be pursued diligently until completion. It is further specifically agreed that this agreement is contingent upon the efforts to obtain both the wetland mitigation credits and the carbon credits. In the event these efforts are

not successful within five (5) years of the effective date of this Agreement, St. Charles Parish agrees either to pay to Rathborne the fair market value of the servitude granted herein valued as of the date of this servitude agreement, or at its option, grant Rathborne or its assignees a credit in said amount against any impact fees or other assessments which may arise out of any other project developed by Rathborne or its assignees;

d) The cost of obtaining and maintaining the credits described above shall be paid by St. Charles Parish,. Further, Rathborne shall be responsible for the marketing and sale of any credits obtained;

e) All credits arising out of the discharge of the treated effluent from the Project shall be transferred and assigned to Rathborne or its assignees as full consideration for the servitude. In the event the credits do not equal or exceed the fair market value of the servitude granted herein, St. Charles Parish shall either pay to Rathborne the fair market value of the servitude less the value of said mitigation and carbon credits or at its option, grant Rathborne or its assignees a credit in said amount against any impact fees or other assessments which may arise out of any other project developed by Rathborne or its assignees, and;

f) The servitude will have a fixed value as of the date of this Agreement, but the value of which will be determined at some future date. If required, St. Charles Parish agrees to pay a single payment amount as consideration for the servitude and Rathborne agrees to accept that payment, less any credits earned by St. Charles Parish for wetlands mitigation credits and carbon credits as recited in 6(e). Should the parties be unable to arrive at an agreeable price as fair market value, then the parties agree to submit this matter to arbitration for finalization. The parties hereby select ADR, inc. as the arbitration firm, and agree to select a single arbitrator from a panel to be nominated by ADR, inc. The arbitration will be conducted pursuant to the rules of ADR, inc.

7) **Permits.** St. Charles Parish hereby represents and warrants that it has obtained, or will obtain, all state and federal permits necessary for the operation of the Project prior to the discharge of any treated effluent onto or into any of the Property.

8) **Operation and Maintenance.** St. Charles Parish, its successors and assigns, shall maintain the Project in good order and repair and shall operate the Project in the manner required by the state and federal permits authorizing its construction and operation.

9) **Pollution.** In the event any discharge from the Project is deemed to be a pollutant or hazardous substance (as defined by federal or state statute or regulation) requiring any remediation pursuant to any state or federal regulatory program, St. Charles Parish agrees that it shall be solely responsible for the performance of any remediation, and the cost thereof, including but not limited to any fines or penalties arising out of any such discharge.

10) **Indemnity and Hold Harmless.** St. Charles Parish hereby agrees to indemnify and hold harmless, protect and defend Rathborne, its officers, directors, agents, or employees, and its subsidiaries or affiliated companies against all claims, demands, suits, costs, losses or damages (Claims) and actual attorney's fees and litigation costs, judgments, or criminal

penalties arising out of this servitude or the discharge or release of any treated effluent, pollutant or hazardous substance (as defined by federal or state statute or regulation) from the Project, including Claims caused in whole or in part by the negligence of St. Charles Parish, except such Claims which are caused by the sole negligence of the parties seeking indemnity hereunder. St. Charles Parish will further be responsible for any damage done by St. Charles Parish, its employees, or contractors who are doing work on behalf of St. Charles Parish.

11) Insurance. Commencing no later than the effective date of this servitude, St. Charles Parish shall, at its expense, maintain comprehensive general liability insurance against claims for personal injury or death, property damage and pollution liability occurring upon, in or about the Property with limits no less than those regularly obtained by St. Charles Parish for its general operations. St. Charles Parish shall cause Rathborne to be named as an additional insured, and shall cause a certificate of insurance to be issued to that effect.

12) Modification. This servitude may only be amended or modified by the parties in writing, which writing shall not become effective until recorded in the conveyance records of St. Charles Parish.

13) Notices. Any notice given arising out of this servitude shall be in writing and shall be: 1) mailed by United States certified mail, postage prepaid, return receipt requested; 2) delivered by recognized overnight courier; 3) delivered in hand; or 4) by e-mail to the respective persons at the addresses stated below or at the last changed address given by such persons by notice as required in this paragraph. Any such notice shall be deemed given on the date actually received.

If to St. Charles Parish

V. J. St. Pierre, Parish Pres.
15045 River Road
Hahnville, LA 70057
vjstpierre@stcharlesgov.net

With copy to:

Leon C. Vial, III
14999 River Road
Luling, LA 70057
svial@stcharlesgov.net

If to Rathborne

Gregory C. Lier
P.O. Box 157
Harvey, LA 70059
greglier@rathborne.com

With copy to:

David C. Loeb
1100 Poydras St., Ste. 1150
New Orleans, LA 70163
dloeb@couhigpartners.com

14) No Joint Venture or Partnership. Nothing contained in this servitude shall be construed to make St. Charles Parish and Rathborne partners or joint venturers, or to render either of them liable for the debts or obligations of the other, except as expressly provided in this agreement.

15) Captions. The headings or captions are for convenience and reference only and in

no way define or limit the scope and content of this agreement or in any way affect its provisions.

16) Counterparts. This agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such together constitute one and the same instrument.

WITNESSES:

RATHBORNE LAND CO., L.L.C.

By: _____

Print Name

Print Name

Sworn to and subscribed before me this _____ day of February, 2009.

NOTARY PUBLIC

THE PARISH OF ST. CHARLES

Print Name

By: _____

Print Name

**V.J. St. Pierre
President**

Sworn to and subscribed before me this _____ day of February, 2009.

NOTARY PUBLIC