

THIS INSTRUMENT PREPARED BY:

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## ENCROACHMENT AGREEMENT

**THIS ENCROACHMENT AGREEMENT** (this "Agreement") is made and entered into as of the 3<sup>rd</sup> day of August, 2004, by **TRIAD PROPERTIES, LLC**, an Alabama limited liability company ("Triad"), and **HELENA PROPERTIES, LLC**, an Alabama limited liability company ("Helena Properties").

### RECITALS:

A. Helena Properties is the fee owner of a certain parcel of real estate located in Shelby County, Alabama, more particularly described as follows and currently occupied by Harcon, Inc.:

Beginning at the Northwest corner of Lot 1, Block 1, Mullins East Side Addition to Helena, as recorded in Map Book 4, page 25, in the Office of the Judge of Probate of Shelby County and run thence North 82° 28' 39" East along the North line of said Lot 1 a distance of 163.05 feet to the Northwest corner of Lot 15, Block 1, of same said Subdivision; thence run North 82° 17' 12" East along the North line of said Lot 15 a distance of 173.99 feet to the Northeast corner of same said Lot 15; thence continue North 83° 10' 04" East, crossing the Northerly end of the Vacated Mimosa Street a distance of 51.15 feet to the Northwest corner of Lot 9, Block 2 of same said Subdivision; thence continue North 80° 02' 41" East a distance of 180.57 feet to a corner; thence run North 35° 54' 28" East a distance of 38.14 feet to a corner; thence run North 80° 05' 13" East a distance of 231.10 feet to a found capped corner; thence run South 06° 46' 41" East a distance of 87.40 feet to a cross in concrete corner; thence run South 10° 57' 15" East a distance of 91.97 feet to a found rebar corner; thence run South 74° 26' 16" West a distance of 191.12 feet to a found rebar corner;

thence run South 60° 15' 51" West a distance of 42.65 feet to a found rebar corner; thence run South 07° 54' 53" East a distance of 185.78 feet to a set rebar corner on a cul de sac property line having a central angle of 77° 29' 14" and a radius of 50.0 feet; thence run Southwesterly along the arc of said cul de sac distance of 67.62 feet to a set rebar corner; thence run North 85° 24' 07" West a distance of 366.10 feet to a set rebar corner; thence run North 13° 13' 14" West a distance of 127.78 feet to a found rebar corner; thence run South 82° 14' 09" West a distance of 199.32 feet to a found rebar corner on the East margin of Rolling Mill Street; thence run North 02° 58' 06" West along said margin of said street a distance of 199.91 feet to the point of beginning.

(the "HP Property"); and

B. Triad has purchased, an adjacent parcel of real estate located in Shelby County, Alabama, from CSX Transportation, Inc., more particularly described as follows:

A parcel of land situated in the Southwest quarter of the Northwest quarter of Section 14 and in the South one-half of the Northeast quarter, the Southeast quarter of the Northwest quarter, and the Northeast quarter of the Southwest quarter of Section 15, all in Township 20 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southwest corner of the Southwest quarter of the Northwest quarter of Section 14, Township 20 South, Range 3 West, Shelby County, Alabama and run in a Northerly direction along the West line of said quarter-quarter section for 338.76 feet to the Southerly right-of-way of CSX Railroad, (formerly South & North Alabama Railroad), said point lying 50 feet at right angles from the centerline of the existing main track and being the Point Of Beginning of the herein described parcel; thence turn a deflection angle of 103°07'27" to the right and run in a Southeasterly direction along said right of way for 503.52 feet; thence turn an interior angle of 176°45'37" to the chord of a spiral curve to the right and run along the arc of said spiral curve in a Southeasterly direction and along said right of way a chord distance of 226.12 feet; thence turn an interior angle of 168°04'57" from the chord of said spiral curve to the chord of a circular curve to the right having a central angle of



17°00'51" and a radius of 1436.21 feet and run in a Southeasterly direction along the arc of said curve and along said right of way for 426.49 feet to the South line of the Southwest quarter of the Northwest quarter of said Section 14; thence turn an interior angle of 26°07'52" from the chord of the last described curve and run to the right in a Westerly direction along said South line for 91.57 feet to a point lying 100 feet at right angles from the centerline of the aforementioned railroad; thence turn an interior angle of 155°25'00" to the chord of a circular curve to the left having a central angle of 13°52'41" and a radius of 1386.21 feet and run to the right along the arc of said curve to the left and along a curve lying 100 feet from and parallel to said centerline for 335.77 feet; thence turn an interior angle of 190°22'14" from the chord of said circular curve to the chord of a spiral curve to the left and run to the left along the arc of said spiral curve in a Northwesterly direction along a curve lying 100 feet from and parallel to said centerline a chord distance of 221.23 feet; thence turn an interior angle of 183°14'20" from the chord of said spiral curve and run to the left in a Northwesterly direction along a line lying 100 feet from and parallel to said centerline for 491.44 feet to the West line of the Southwest quarter of the Northwest quarter of said Section 14; thence continue along the last described course in a Northwesterly direction for 282.71 feet; thence turn an interior angle of 180°23'35" to the chord of a spiral curve to the left and run to the left along the arc of said spiral curve in a Northwesterly direction along a curve lying 100 feet from and parallel to said centerline a chord distance of 94.73 feet; thence turn an interior angle of 100°34'35" from the chord of said spiral curve and run to the right in a Northerly direction for 5.51 feet; thence turn an interior angle of 260°25'50" and run to the left in a Northwesterly direction for 55.01 feet; thence turn an interior angle of 198°24'27" and run to the left in a Southwesterly direction for 138.59 feet; thence turn an interior angle of 181°02'11" and run to the left in a Southwesterly direction for 230.54 feet; thence turn an interior angle of 181°14'15" and run to the left in a Southwesterly direction for 1647.52 feet to the Northeast corner of Lot 10, Block 2 according to the survey of Mullins East Side Addition to Helena as recorded in Map Book 4, Page 25 in the Probate Office Of Shelby County, Alabama; thence turn an interior angle of 180°46'17" and run to the left in a Southwesterly direction along the North

line of said Lot 10 for 246.06 feet to the Northwest corner of said Lot 10, also lying on the Northerly right of way of Railroad Avenue; thence turn an interior angle of  $179^{\circ}02'43''$  and run to the right in a Southwesterly direction along said Northerly right of way for 211.60 feet; thence turn an interior angle of  $177^{\circ}52'27''$  and run to the right in a Southwesterly direction along said Northerly right of way for 46.11 feet; thence turn an interior angle of  $180^{\circ}52'52''$  and run to the left in a Southwesterly direction along said Northerly right of way for 152.37 feet; thence turn an interior angle of  $166^{\circ}23'19''$  and run to the right in a Northwesterly direction for 159.80 feet; thence turn an interior angle of  $164^{\circ}50'00''$  and run to the right in a Northwesterly direction a distance of 595.40 feet; thence turn an interior angle of  $101^{\circ}56'28''$  and run to the right in a Northerly direction for 24.80 feet to the Southerly right of way of CSX Railroad (formerly South & North Alabama Railroad), said point lying 50' at right angles from the centerline of the main track of said CSX Railroad; thence turn an interior angle of  $85^{\circ}29'52''$  and run to the right in a Southeasterly direction along said right of way for 180.11 feet; thence turn an interior angle of  $182^{\circ}22'45''$  to the chord of a spiral curve to the left and run to the left in a Southeasterly to Easterly direction along the arc of said curve and along said right of way for a chord distance of 233.96 feet; thence turn an interior angle of  $190^{\circ}05'03''$  from the chord of said spiral curve to the chord of a circular curve to the left having a central angle of  $13^{\circ}12'00''$  and a radius of 1482.69 feet and run to the left in an Easterly direction along the arc of said curve and along said right of way for 341.59 feet; thence turn an interior angle of  $188^{\circ}53'16''$  from the chord of the last described curve to the chord of a spiral curve to the left and run to the left in a Northeasterly direction along the arc of said curve and along said right of way a chord distance of 236.23 feet; thence turn an interior angle of  $181^{\circ}27'37''$  from the chord of said spiral curve and run to the left in a Northeasterly direction along said right of way for 1682.78 feet; thence turn an interior angle of  $178^{\circ}19'54''$  to the chord of a spiral curve to the right and run along the arc of said spiral curve in a Northeasterly direction and along said right of way a chord distance of 162.75 feet; thence turn an interior angle of  $170^{\circ}02'31''$  from the chord of said spiral curve to the chord of a circular curve to the right having a central angle of  $17^{\circ}12'27''$  and a radius of 1798.48 feet and run in an



Easterly direction along the arc of said curve and along said right of way for 540.14 feet; thence turn an interior angle of 170°29'47" from the chord of the last described curve to the chord of a spiral curve to the right and run along the arc of said spiral curve a chord distance of 172.96 feet; thence turn an interior angle of 179°00'17" from the chord of said spiral curve and run to the right in a Southeasterly direction along said right of way for 271.05 feet to the point of beginning, containing 11.899 acres, more or less

(the "CSX Property"); and

C. A certain building (the "Building") is situated on the HP Property which encroaches on the CSX Property as shown on Exhibit A attached hereto and incorporated herein by reference (hereinafter, the area of such encroachment is called the "Encroachment Area").

D. The parties are entering into this Agreement to set forth the agreements reached as to the continued use of the Encroachment Area by Helena Properties.

**NOW, THEREFORE**, in consideration of the premises and the mutual promises and covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

(1) Triad hereby grants and conveys to Helena Properties an exclusive easement (the "Easement") on and above the Encroachment Area for the sole purpose of Helena Properties continuing to have the corner of the Building (the "Building Corner") situated on the Encroachment Area, as shown on Exhibit A, in the same location as exists on the date hereof. Helena Properties shall be responsible for maintaining the Encroachment Area at its sole cost and expense.

(2) This Agreement, and the Easement herein provided for, shall terminate, and no longer be of any force and effect, at such time as (i) the Building is removed or is demolished or (ii) the Building Corner is changed or otherwise removed or modified. Helena Properties shall have no right or entitlement to utilize any other area on the CSX Property other than the Encroachment Area pursuant to this Agreement.

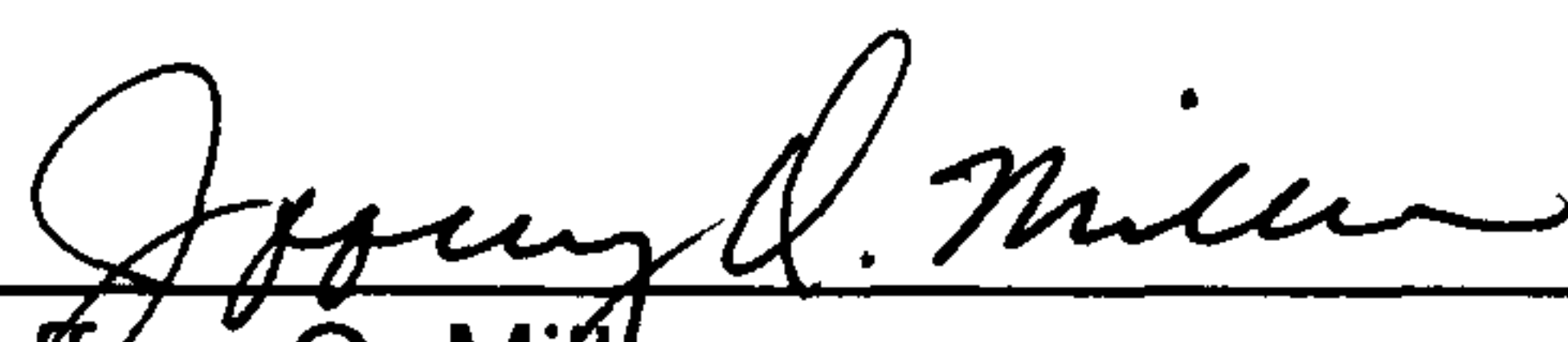
(3) Helena Properties hereby acknowledges (i) that its use of the Encroachment Area is exclusively pursuant to this Agreement and (ii) that it has no other rights in and to the Encroachment Area or any other part of the CSX Property.

(4) Helena Properties agrees to indemnify Triad, and hold Triad harmless from and against, any damages, including, but not limited to reasonable counsel fees, that may be incurred by or asserted against Triad on account of the Building Corner being situated on the Encroachment Area, or other damage to persons and property, resulting from Helena Properties' use of the Encroachment Area.

(5) The Easement and other terms of this Agreement shall be considered covenants running with the land on which the Encroachment Area is located, and both the benefits and burdens thereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

**IN WITNESS WHEREOF**, Triad and Helena Properties have caused this Agreement to be executed and delivered on the day and year first above written.

**TRIAD PROPERTIES, LLC**, an Alabama  
limited liability company

By:   
Jeffrey O. Miller  
Its Member

STATE OF ALABAMA    )  
                                 :  
SHELBY COUNTY        )

I, the undersigned, a notary public in and for said county in said state, hereby certify that **JEFFREY O. MILLER**, whose name as a member of **TRIAD PROPERTIES, LLC**, an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such member and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this 12<sup>th</sup> day of October, 2004.

Jennifer K. Salazar  
Notary Public

[NOTARIAL SEAL]

My commission expires: 8-23-2008

**[SIGNATURES CONTINUED ON THE FOLLOWING PAGE]**



**HELENA PROPERTIES, LLC**, an Alabama  
limited liability company

By: Michael A. Hardin  
Michael Hardin  
Its Managing Member

STATE OF GEORGIA    )  
                              :  
FULTON COUNTY        )

I, the undersigned, a notary public in and for said county in said state, hereby  
certify that **MICHAEL HARDIN**, whose name as Manager Member of **HELENA  
PROPERTIES, LLC**, an Alabama limited liability company, is signed to the  
foregoing instrument, and who is known to me, acknowledged before me on this  
day that, being informed of the contents of said instrument, he, as such member  
and with full authority executed the same voluntarily for and as the act of said  
limited liability company

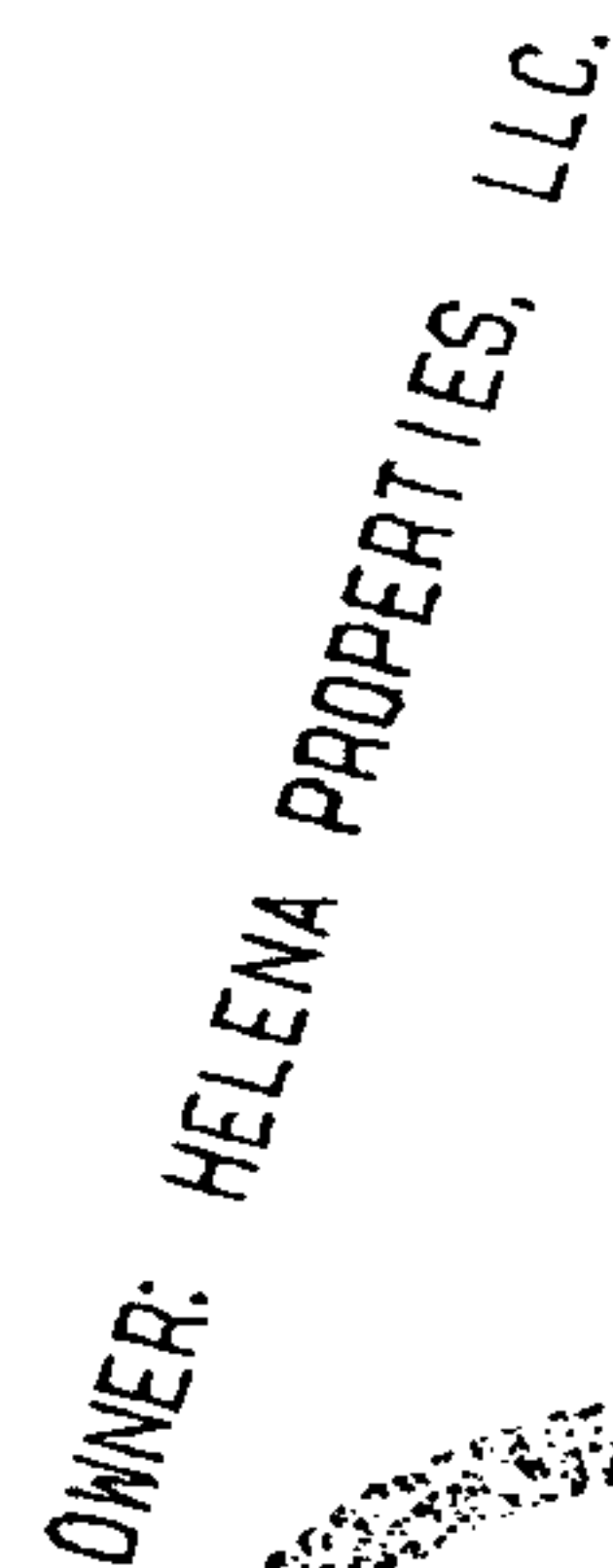
[NOTARIAL SEAL]



Lakeisha Ellis  
Notary Public

My commission expires: September 25, 2007





The purpose of this plat is to show the building encroachment onto the CSX property located in section 5, township 20 South, range 3 West in Helena, Alabama. Plat was prepared using information from a survey prepared by me dated March 31, 2004.

Edh. = Edh.

Robbin E. Phillips, A.I.L.S. #14976  
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Birmingham, Alabama 35205  
(205) 939-1119

