


STATE OF ALABAMA)
 :
SHELBY COUNTY)

\$500.00 ~~1455~~


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Shelby Cnty Judge of Probate, AL
01/10/2005 11:42:00 FILED/CERTIFIED

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (this "Agreement") is made and entered into this 11th day of December, 2004, by **TRIAD PROPERTIES, LLC**, an Alabama limited liability company (the "Grantor"), and **ABC POLYMER INDUSTRIES, LLC (f/k/a ALABAMA BAG COMPANY, LLC (f/k/a BIRMINGHAM BAG COMPANY, LLC))**, an Alabama limited liability company (the "Grantee").

W I T N E S S E T H:

WHEREAS, Grantor has agreed to grant and convey to Grantee an easement on, over and across certain real property owned by Grantor, all pursuant to the terms of this Agreement;

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

1. **Grant of Easement.** Grantor does hereby grant, bargain, sell and convey to Grantee certain perpetual, non-exclusive easements as follows:

(a) an easement (the "Railroad Siding Access Easement") for use by Grantee for pedestrian and truck traffic across the real property described on Exhibit A (the "Railroad Siding Easement Area") for Grantee's access to and from the railroad siding (the "Railroad Siding") located on the adjoining real property now owned by CSX Transportation, Inc. ("CSX") for the purpose of loading and unloading goods, products and raw materials related to the business operated by Grantee and being delivered to Grantee by rail cars; and

(b) an easement (the "Pneumatic Lines Easement") for use by Grantee (i) for pneumatic lines, as now located and buried, or to be buried, under the ground and (ii) for access to those pneumatic lines; the Pneumatic Lines Easement shall be five (5) feet in width on either side of a centerline as described on Exhibit B (the "Pneumatic Lines Easement Area") (the Railroad Siding Access Easement and the Pneumatic Lines Easement are collectively referred to in the singular as the "Easement") (the Railroad Siding Easement Area and the Pneumatic Lines Easement Area are collectively referred to as the "Easement Area").

As of this date part of pneumatic lines in the southern portion of the Pnuematic Lines Easement Area are above the ground. Within thirty (30) days after the execution of this Agreement, Grantee shall cause all of the pneumatic lines to be buried and below the

ground. As long as this Agreement shall be in force and effect, Grantee shall keep the pneumatic lines buried at all times. The pneumatic lines shall be buried at a depth so as to permit use of the surface of the Easement Area for industrial traffic without such usage causing damage to the pneumatic lines.

2. **Reservation by Grantor.** Grantor hereby reserves the right, for itself and its successors and assigns, to the use of the Easement Area in any and every manner not inconsistent with the Easement hereby granted to Grantee. Grantor further reserves, at all times, the right to cross the Easement Area by roads, pipe lines, side tracks or other installations which Grantor may desire to construct or erect.

3. **No Obstructions of Easement Area.** Both Grantor and Grantee shall keep the Easement Area unobstructed in their respective uses of the Easement Area.

4. **Termination.** The Easement shall terminate and no longer be of any force and effect (i) if the Easement is abandoned, (ii) if the Railroad Siding is removed and not replaced in the same location within 12 months, (iii) if Grantee's arrangement with CSX is terminated or cancelled so that no goods, products and raw materials related to the business operated by Grantee are being delivered at the Railroad Siding for a period of twelve months or (iv) if Grantee shall fail to comply with applicable law in Grantee's use of the Easement Area.

5. **Relocation of Easement.** Grantor shall have the right to relocate the Easement (either the Railroad Siding Access Easement or the Pneumatic Lines Easement), at the expense of Grantee, provided such relocation (i) results in Grantee having equivalent access to and from the Railroad Siding, (ii) will not cause a circuitous route of access to and from the Railroad Siding and (iii) will not materially change the distance of travel for Grantee to reach the Railroad Siding. Upon receipt of proper documentation establishing the cost incurred by Grantee in relocating any part of the Pneumatic Lines Easement as part of a Grantor-required relocation of the Pneumatic Lines Easement, Grantor shall pay to Grantee an amount equal to the lesser of (i) one-half of the cost incurred by Grantee in any such relocation or (ii) Five Thousand Dollars (\$5,000.00). Such payment obligation of Grantor shall not apply to the extent of any cost attributable to an upgrade of the pneumatic lines from the type, size and number of pneumatic lines currently existing as of the date hereof in the Pneumatic Lines Easement Area. Not less than ninety days advance notice, in writing, of any relocation shall be given by Grantor to Grantee.

6. **Maintenance of Easement Area.** Grantee covenants and agrees to undertake and perform any and all improvement, replacement, maintenance, and repair work for the Easement Area. The Easement Area is to be maintained free of overgrowth, groomed and sightly in appearance. If Grantee fails to perform such maintenance, repair and upkeep then, after prior notice to Grantor of not less than five business days (being any day that is not a Saturday or Sunday or legal holiday in the state of Alabama), Grantor shall be entitled to perform such work and charge the cost to Grantee which Grantee shall pay to Grantor on demand.

7. **Indemnification.** Except for willful or wanton acts of Grantor, Grantee hereby assumes, shall be responsible for and shall defend, indemnify and save Grantor harmless from and against any and all liability, loss, claim, suit, damage, charge or expense which Grantor may suffer, sustain, incur or in any way be subjected to, on account of death of or injury to any person whomsoever (including officers, agents, employees or invitees of Grantor), and for damage to or loss of or destruction of any property whatsoever, arising out of, resulting from, or in any way connected with the use of, or operations on, the Easement Area by Grantee, its officers, employees, agents and contractors. The indemnity provided for in this paragraph shall be deemed to include causes and damages attributable to pollution, harm to the environment and the discharge or release of any substance which is regarded as hazardous or toxic under any federal, state or local law, or otherwise, including human exposure to such substance.

8. **Damage to Pneumatic Lines.** Grantor shall be responsible for any damage to Grantee's pneumatic lines resulting from any usage of the Easement Area by Grantor, its employees, agents, contractors and tenants, except that Grantor shall have no responsibility or liability (i) for any such damage existing on the date hereof or (ii) for any such damage on account of the pneumatic lines being too close to the surface of the Easement Area so that industrial usage of the surface results in damage to the pneumatic lines.

9. **Insurance.** Grantee, at its sole cost and expense, shall procure and maintain in effect throughout the continuance of this Agreement:

(a) A policy of Commercial General Liability Insurance (CGL), naming Grantor (or other future owner of fee title to the Easement Area) as additional insured and with an endorsement covering the obligations of Grantee under this Agreement. A coverage limit of not less than three million dollars (\$3.0 million) Combined Single Limit per occurrence for bodily injury liability and property damage shall be maintained.

(b) A pollution and environmental policy of insurance naming Grantor (or other future owner of the Easement Area) as additional insured and providing a coverage limit of not less than three million dollars (\$3.0 million) for bodily injury liability and property damage resulting from a release of, exposure to, contamination by, clean-up costs for, and a spill of any hazardous or toxic substance under any federal, state or local law or otherwise (including the defense of any associated litigation).

As long as Research Solvents & Chemicals, Inc., an Alabama corporation ("RSC"), is the tenant of the real property adjoining any of the Easement Area, or other entity owned or controlled by any of the members of Grantor, then RSC (or such other affiliated entity, if applicable) shall also be an additional insured on each policy of insurance required by this Agreement. The evidence of insurance coverage shall be provided to Grantor and endorsed to provide for thirty (30) days' notice to Grantor prior

to cancellation or modification of any policy. The existence of such insurance shall not limit Grantee's liability under this Agreement, but shall be security therefor.

Grantor shall have the right to reasonably require an increase in the insured coverage limits set forth herein. If Grantee disagrees with any change requested by Grantor, the parties shall jointly designate within 30 days an insurance representative to determine the coverage as then-customary and in use for comparable arrangements with a railroad involving the use of railroad siding by a private individual or entity.

10. **Compliance with Law.** Grantee shall comply with all laws and governmental requirements in Grantee's usage of the Easement Area. If any use by Grantee shall not be in compliance with law, and such noncompliance is not corrected within ten days' notice to Grantee, then Grantor shall be entitled to terminate this Agreement which shall no longer be of any force and effect. No use can be made of the Easement Area by Grantee which endangers the use by the Grantor of its adjacent property or poses a threat to the safety of Grantor's adjacent property.

11. **Notices.** Any notice, demand or other communication provided for in this Agreement shall be in writing and sent by personal delivery, facsimile (with confirmation of receipt) or registered or certified U.S. Mail with return receipt requested, postage prepaid, to the appropriate party at its address of facsimile number below:

Grantor:	Triad Properties, LLC Post Office Box 660622 Birmingham, Alabama 35266 Attention: Jeffrey O. Miller Fax: 205/822-6357
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If to Grantee:	ABC Polymer Industries, Inc. 300 M.H. Williams Drive Helena, Alabama 35080 Attention: Randy Reed Fax: 205/620-9882
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Addresses for notice may be changed from time-to-time by written notice to the other party hereto which notice shall further be recorded in the Office of the Judge of Probate in Shelby County, Alabama. Any notice of communication shall be effective (i) if given by mail, upon the earlier of (ii) if sent by mail, three business days following deposit in a post office or other official depository under the care and custody of the United States Postal Service or successor institution, (iii) if sent by facsimile on the date of the sender's confirmation of receipt and (iv) if by personal delivery on the date of delivery to the above address.

12. **Covenant Running with the Land.** The Easement and the rights granted herein and agreements made herein shall be covenants running with the land. The Easement and the rights granted herein shall be appurtenances to the Grantee Real Estate.

13. **Private Easement.** The Easement and the rights granted herein shall not create any rights in favor of the general public or in any party other than Grantee. Grantee shall not allow the Easement to be used by any party other than (i) Grantee and (ii) another party using the Easement for the direct benefit of Grantee's business operations.

14. **Amendment.** This instrument may be amended only by an instrument in writing executed by parties and recorded in the public records wherein this instrument is recorded.

15. **Binding Effect.** This instrument shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns, including, without limitation, each succeeding owner of the Easement Area.

16. **Governing Law.** This instrument shall be governed by the law of the state of Alabama. This Agreement shall further be regarded as one involving interstate commerce.

TO HAVE AND TO HOLD to the Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, the Grantor and Grantee have caused this Agreement to be executed on the day and year first above written.

TRIAD PROPERTIES, LLC, an Alabama
limited liability company

By: Jeffrey O. Miller
Its Manager

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 14th day of Dec, 2004.

Douglas J. Hill
Notary Public

[NOTARIAL SEAL]

My commission expires: 9-16-04

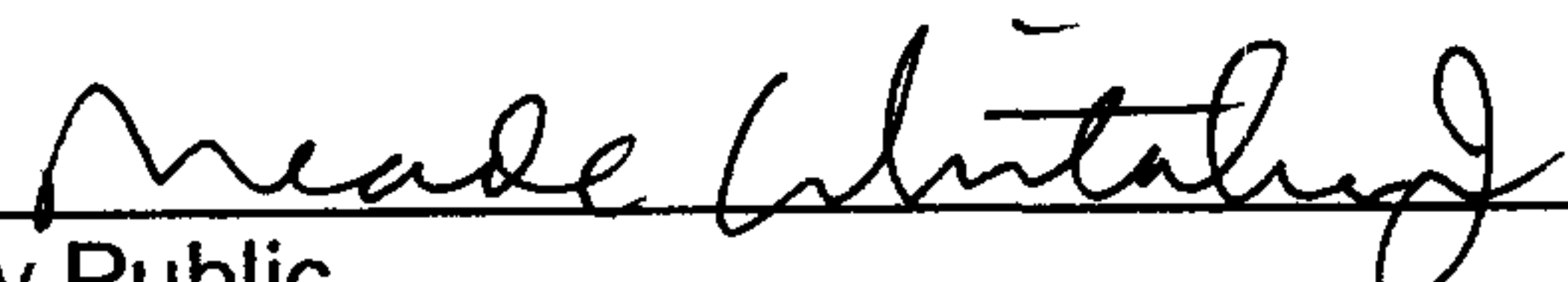
**ABC POLYMER INDUSTRIES, LLC (f/k/a
ALABAMA BAG COMPANY, LLC (f/k/a
BIRMINGHAM BAG COMPANY, LLC)), an
Alabama limited liability company**

By: 
Randy Reed
Its Manager

STATE OF ALABAMA)
 :
SHELBY COUNTY)

I, the undersigned, a notary public in and for said county in said state, hereby certify that **RANDY REED**, whose name as Manager of **ABC POLYMER INDUSTRIES, LLC (f/k/a ALABAMA BAG COMPANY, LLC (f/k/a BIRMINGHAM BAG COMPANY, 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 Manager 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 11th day of Dec., 2004.


Notary Public

[NOTARIAL SEAL]

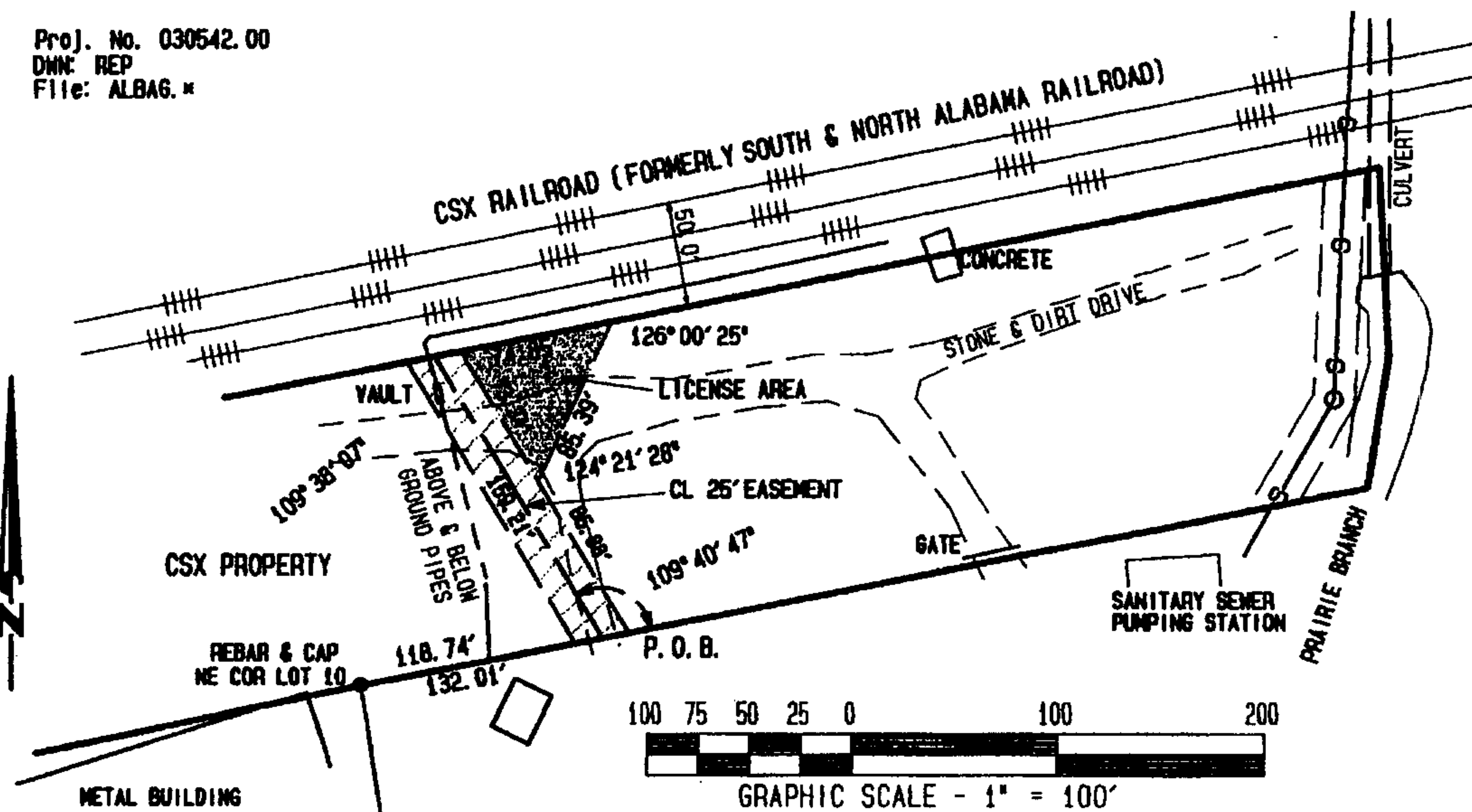
My commission expires: 3/26/07

EXHIBIT A

RAILROAD SIDING EASEMENT AREA

A twenty-five (25) foot easement located in the Southwest quarter of the Northeast quarter of Section 15, Township 20 South, Range 3 West, Shelby County, Alabama, said easement lying 12.5 feet on either side of and parallel to the following described centerline:

Commence at 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 run in a Northeasterly direction along a line lying 200 feet at right angles from and parallel to the centerline of the main track of CSX Railroad for 118.74 feet to the Point of Beginning of the herein described centerline easement; thence deflect $109^{\circ}40'47''$ and run to the left in a Northwesterly direction for 159.21 feet to the Southerly right of way of CSX Railroad, said point lying 50 feet at right angles from the centerline of the main track of said railroad, said point being the end of the herein described centerline easement.



LOT 10 - BLOCK 2
MULLINS EAST SIDE ADD.
TO HELENA
MAP BOOK 4, PAGE 25

EASEMENT LEGAL DESCRIPTION

A twenty-five (25) foot easement located in the Southwest quarter of the Northeast quarter of Section 15, Township 20 South, Range 3 West, Shelby County, Alabama, said easement lying 12.5 feet on either side of and parallel to the following described centerline:

Commence at 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 run in a Northeasterly along a line lying 200 feet at right angles from and parallel to the centerline of the main track of CSX Railroad for 118.74 feet to the Point of Beginning of the herein described centerline easement; thence deflect 109°40'47" and run to the left in a Northwesterly direction for 159.21 feet to the Southerly right of way of CSX Railroad, said point lying 50 feet at right angles from the centerline of the main track of said railroad, said point being the end of the herein described centerline easement.



The purpose of this plat is to show the location of a ~~proposed~~ easement and ~~located~~ located on property CSX property lying in the SW 1/4 of the NE 1/4 of section 15, township 20 South, Range 3 West in Shelby County, (Helena), Alabama. This plat was prepared using information from a survey prepared by me dated March 31, 2004.

Robbin E. Phillips 10/7/04
Robbin E. Phillips, A.L.S. #14976
Paragon Engineering, Inc.
2320 Highland Ave. South
Suite 175
Birmingham, Alabama 35205
(205) 939-1119

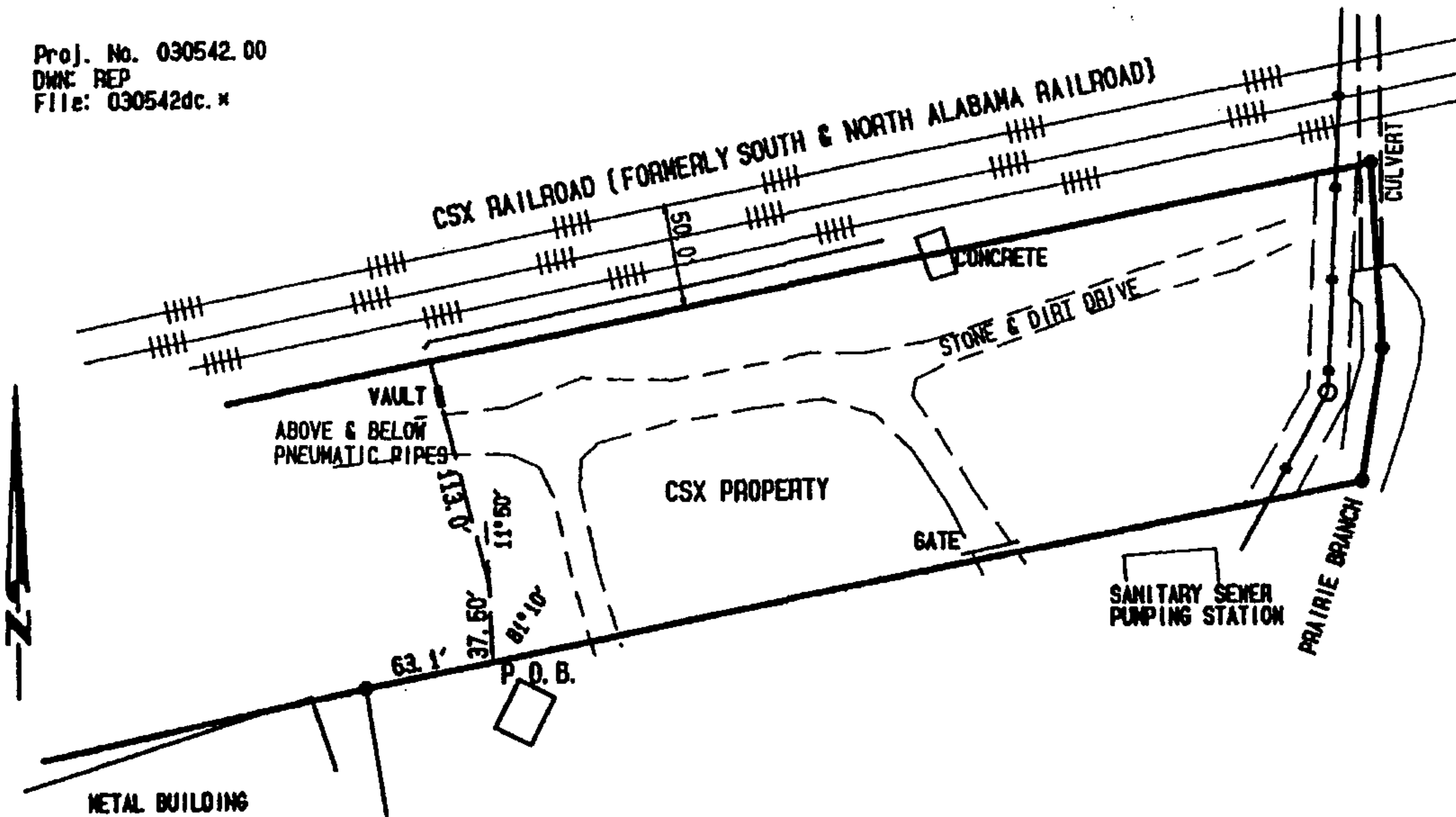
Exhibit A

EXHIBIT B

CENTERLINE OF PNEUMATIC LINES EASEMENT AREA

Commence at 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 run in a Northeasterly direction along a line lying 200 feet at right angles from and parallel to the centerline of the main track of CSX Railroad for 63.1 feet to the Point of Beginning of the herein described centerline; thence deflect $81^{\circ}10'$ and run to the left in a Northerly direction for 37.50 feet; thence deflect $11^{\circ}50'$ and run to the left in a Northwesterly direction for 113.0 feet to the Southerly right of way of CSX Railroad, said point lying 50 feet at right angles from the centerline of the main track of said railroad and being the end of the herein described centerline.

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DWE REP
File: 030542dc.x



LOT 10 - BLOCK 2
MULLINS EAST SIDE ADD.
TO HELENA
MAP BOOK 4, PAGE 25



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Shelby Cnty Judge of Probate, AL
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CENTERLINE PNEUMATIC PIPE LEGAL DESCRIPTION

Commence at 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 run in a Northeasterly along a line lying 200 feet at right angles from and parallel to the centerline of the main track of CSX Railroad for 63.1 feet to the Point of Beginning of the herein described centerline; thence deflect 81°10' and run to the left in a Northerly direction for 37.50 feet; thence deflect 11°50' and run to the left in a Northwesterly direction for 113.0 feet to the Southerly right of way of CSX Railroad, said point lying 50 feet at right angles from the centerline of the main track of said railroad and being the end of the herein described centerline.

The purpose of this plat is to show the location of the existing pneumatic pipeline running from adjacent property across CSX property located in the SE 1/4 of the NW 1/4 and the NE 1/4 of the SW 1/4 of Section 15, township 20 South, range 3 West in Helena, Alabama. This plat was prepared using information from a survey prepared by me dated March 31, 2004.

Robbin E. Phillips
Robbin E. Phillips, AL.L.S. #14976
Paragon Engineering, Inc.
2320 Highland Ave. South
Suite 175
Birmingham, Alabama 35205
(205) 939-1119

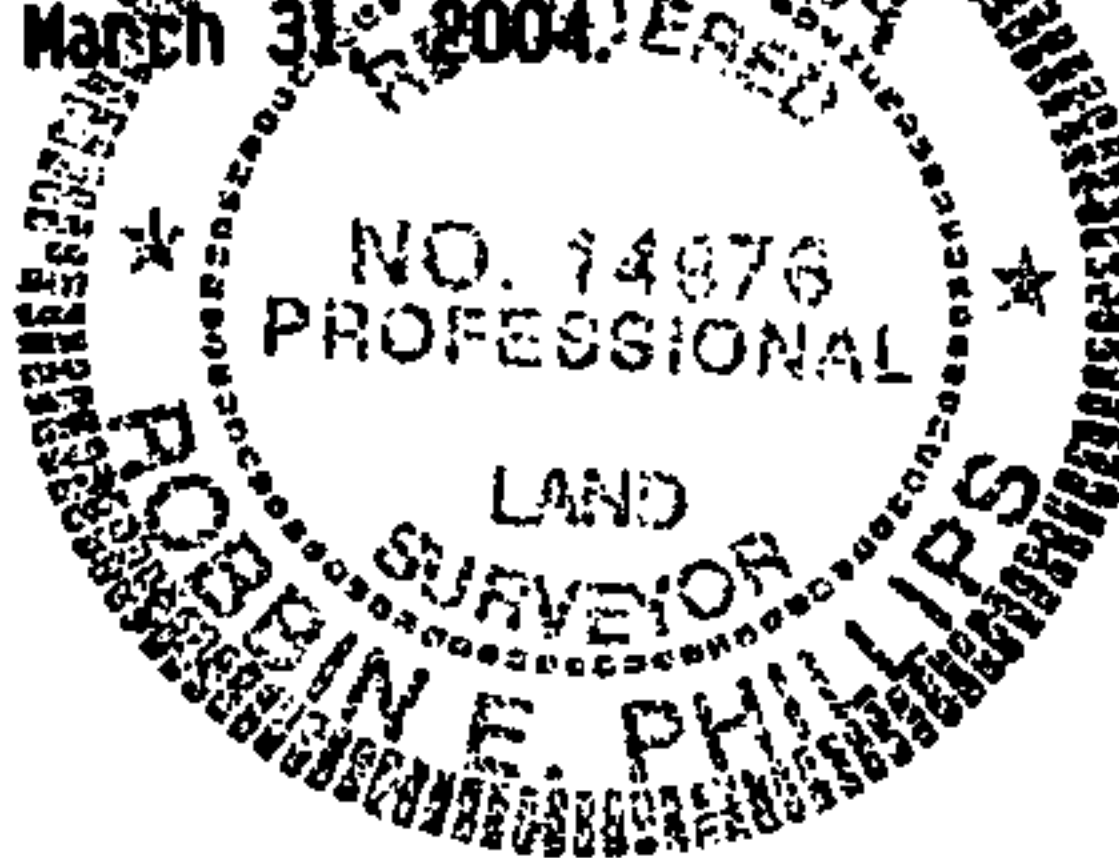


Exhibit B