

\$132,480.00

This document prepared by,
and upon recording, please return to:
H. Dennis Panter & Associates, LLC
1827 Powers Ferry Road
Building 10, Suite 200
Atlanta, Georgia 30339

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE is dated as of this 18th day of May, 1999, by and between PONDER PROPERTIES, LLC (hereinafter referred to as the "Lessor") whose address is 2526 Woodfern Circle, Pelham, AL 35124 and WAFFLE HOUSE, INC., A GEORGIA CORPORATION (hereinafter referred to as the "Lessee") whose principal place of business is located at 5986 Financial Drive, Norcross, Georgia 30071.

WITNESSETH:

Pursuant to that certain Ground Lease Agreement between Lessor and Lessee dated October 8, 1998 (hereinafter referred to as the "Lease"), Lessor leased to Lessee that certain tract or parcel of land located in Shelby County, Alabama described on Exhibit "A" and made a part of this Memorandum of Lease together with all improvements and appurtenant easements, if any (hereinafter referred to as the "Demised Premises").

NOW THEREFORE, for and in consideration of the sum of Ten and No/100 (\$10.00) Dollars, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Lessor and Lessee hereby agree that the Lease includes the following terms, conditions and covenants:

1. **TERM:** The Original Term shall commence on the date of the Lease and end ten (10) years following the date that the restaurant to be located on the Demised Premises opens for business, together with options to extend the term of the Lease for twelve (12) additional extension periods of five (5) years each.

2. **RESTRICTIVE COVENANTS:** Pursuant to the terms of the Lease, Lessor is restricted from buying, selling, leasing or otherwise making available any land either now controlled by Lessor or subsequently acquired by the Lessor within one (1) city block or 1,000 lineal feet, whichever is greater, of the Demised Premises for use for restaurant or food service purposes during the term of the Lease, including any renewal option periods or extensions thereof. The restrictions set forth herein shall be applicable for the maximum restrictable time under the laws of the State of Alabama. Lessor does further agree that Lessor will not convey any parcel of land within the restricted area except by deed or lease containing restrictive covenants equivalent to the above, which fully protect Lessee's interest herein, and any subsequent purchaser or lessee under the Lessor herein is hereby bound by these same provisions and agree that the foregoing covenants are attached to and running with the land encumbered thereby.

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3. **CROSS ACCESS EASEMENT:** Lessor hereby grants to Lessee a non-exclusive easement for the purposes of vehicular and pedestrian ingress and egress over, upon, and across the roadway, pavement, curb cuts, driveways and accessways, sidewalks and walkways, exits and entrances to be located on Lessor's adjoining property described on Exhibit "B" attached hereto and made a part hereof (hereinafter referred to as "Lessor's Adjoining Property"), as said areas may from time to time be modified or relocated. Lessee hereby grants to Lessor a non-exclusive easement for the purposes of vehicular and pedestrian ingress and egress over, upon and across the roadway, pavement, curb cuts, driveways and accessways, sidewalks and walkways, exits and entrances to be located on the Demised Premises, as said areas may from time to time be modified or relocated.

4. **RESTRICTIONS:** Lessor agrees not to allow any structures or businesses either temporary or permanent, to be located on any property owned by the Lessor, including, but not limited to, the Lessor's Adjoining Property, which would impede the visibility from U.S. Highway 31 of the Lessee's sign or building to be located on the Demised Premises. Lessee agrees not to allow any structures or businesses either temporary or permanent, to be located on the Demised Premises which would impede the visibility from U.S. Highway 31 of the Lessor's sign or building to be located on the Lessor's Adjoining Property.

5. **SIGN REMOVAL:** In connection with the construction of a sign by the Lessee on the Demised Premises, the Lessor has agreed to relocate from the Demised Premises the sign currently located on the same, which sign the Lessor agrees to remove within thirty (30) days upon receipt of notice from Lessee requesting the removal of said sign. If Lessor does not remove the sign within thirty (30) days of receipt of the notice from the Lessee, Lessee is hereby authorized and provided with the authority to remove said sign and Lessor agrees to pay all costs and expenses incurred by Lessee in connection with the removal of said sign within thirty (30) days after receipt of a statement from Lessee identifying the costs pertaining to the same. If Lessee is not reimbursed within thirty (30) days from the date of billing, then Lessee shall have the right to offset future rental payments due under the Lease until such time as Lessee has been fully reimbursed for all costs and expenses incurred by it in connection with the removal of said sign.

6. **LEGAL DESCRIPTION:** In the event the legal description attached hereto deviates from the legal description contained in the Lease, the legal description attached to this Memorandum of Lease shall control, and in this regard, this Memorandum of Lease shall effectively modify the legal description contained in the Lease.

7. **GOVERNING LAW:** Notwithstanding any other provision contained in the Lease to the contrary, by their execution hereof, the Lessor and Lessee acknowledge that the laws of the State of Alabama shall govern the interpretation, validity, performance and enforcement of the Lease.

8. **MEMORANDUM:** The rentals to be paid by Lessee and all of the obligations of the rights of the Lessor and Lessee are set forth in the Lease. This instrument is merely a memorandum of the Lease and subject to all of its terms, conditions and provisions and except as set forth herein, in the event of any inconsistency between the terms of the Lease and this

instrument, the terms and conditions of the Lease shall prevail as between the parties. This Memorandum is binding upon and shall inure to the benefit of the heirs, successors, assigns, executors and administrators of the parties.

9. **ASSIGNMENT:** Lessee shall have the right, without first obtaining the consent of the Lessor, to assign its right, title and interest under the Lease and in the Demised Premises to any party, for any lawful purpose or use provided such purpose or use does not place Lessor in violation of the terms and conditions of any other lease or agreement of Lessor regarding or affecting any other property of Lessor located within one (1) city block or 1,000 feet of the Demised Premises. Notwithstanding such assignment or subletting, Lessee shall remain liable under the Lease unless released by Lessor in writing.

LESSOR:

PONDER PROPERTIES, LLC

BY: 

ITS: President

State of Alabama
County of Shelby

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Terry Ponder, whose name as President, of Ponder Property, LCC, 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, that he/she executed the same voluntarily for and as the act of said limited liability company on the day the same bears date.

Given under my hand and official seal this 17th day of May, 1999.


Notary Public

[NOTARIAL SEAL]

My commission expires:

NOTARY PUBLIC STATE OF ALABAMA AT LARGE.
MY COMMISSION EXPIRES: Apr. 7, 2001.
BONDED THRU NOTARY PUBLIC UNDERWRITERS.

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

[SIGNATURES CONTINUED FROM PREVIOUS PAGE]

LESSEE:

WAFFLE HOUSE, INC., A
GEORGIA CORPORATION

BY: [Signature]

ITS: Vice President

ATTEST: [Signature]

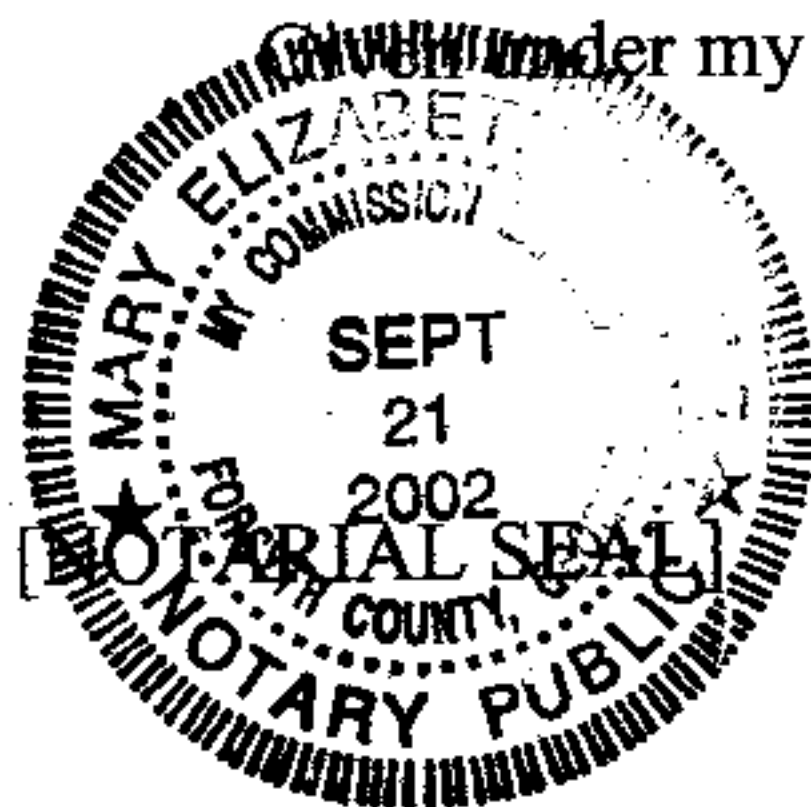
ITS: Asst Sec.

[CORP SEAL]

State of Georgia
County of Gwinnett

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that T.J. Turner and Barry G. Cowart, whose names as Asst Secretary and Vice President, respectively, of Waffle House, Inc., a Georgia Corporation, are signed to the foregoing instrument, and who are known to me, acknowledges before me on this day that, being informed of the contents of said instrument, that they as such officers and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Under my hand and official seal this 1st day of June, 1999.



Mary E. Keeler
Notary Public

My commission expires: Sept 21, 2002

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EXHIBIT "A"
DEMISED PREMISES

STATE OF ALABAMA
SHELBY COUNTY

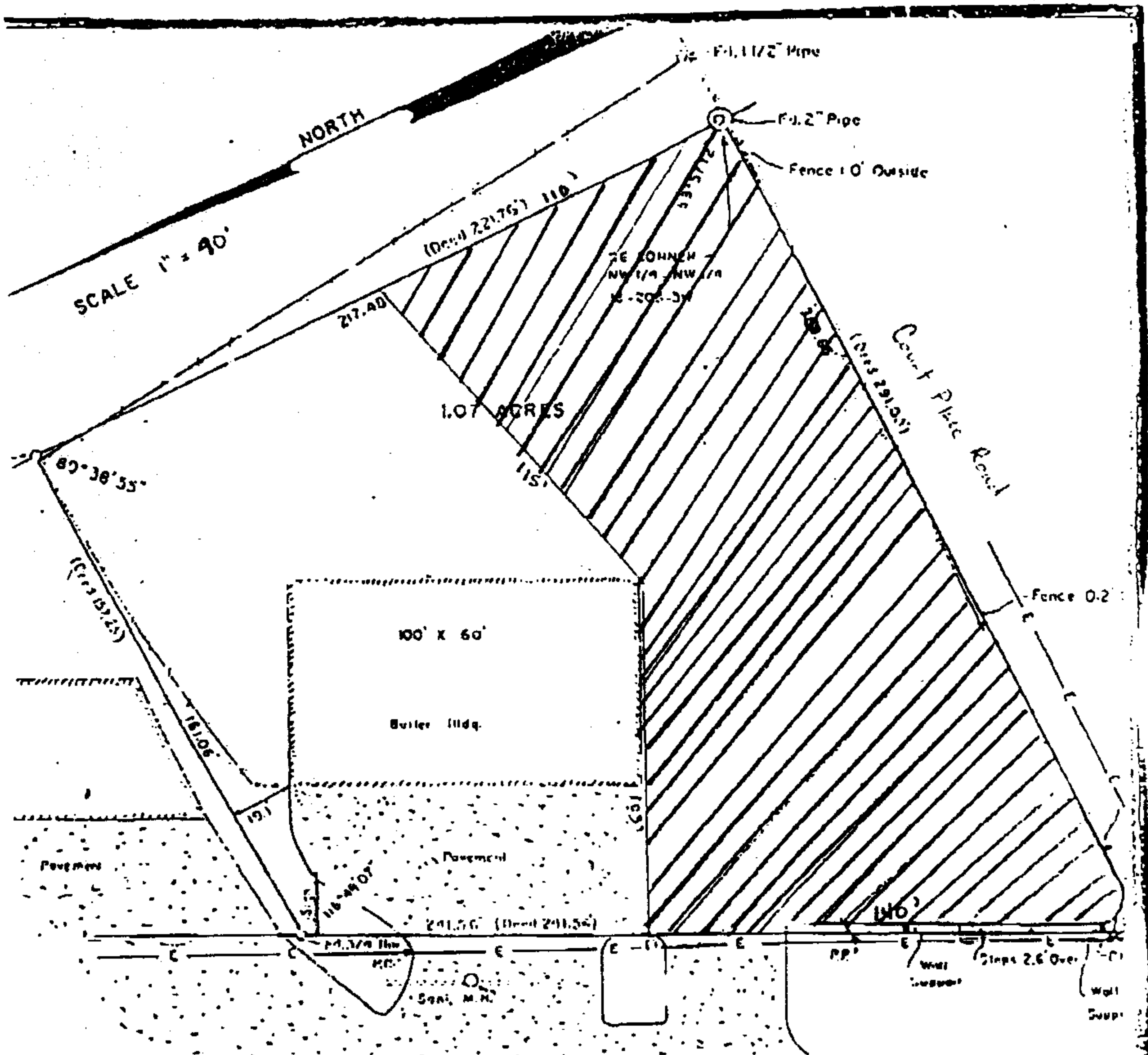
A parcel of land situated in the NW 1/4 of the NW 1/4 of Section 13, Township 20 South, Range 3 West, Shelby County, Alabama, more particularly described as follows:

Commence at a 5/8" rebar found at the southeast corner of the NW 1/4 of the NW 1/4 of said Section 13, said point also being the POINT OF BEGINNING; thence, run northwardly along the east boundary of the NW 1/4 of the NW 1/4 of said Section 13 for a distance of 119.94 feet to a 1/2" rebar and cap set; thence, with an interior angle right of 63°07'11", run southwestwardly for a distance of 106.52 feet to a 1/2" rebar and cap set; thence, with an interior angle right of 234°12'42", run northwestwardly for a distance of 123.14 feet to a 1/2" rebar and cap set on the southeast right-of-way of U.S. Highway No. 31, (200-foot right of-way); thence, with an interior angle right of 89°59'53", run southwestwardly along said right-of-way for a distance of 139.62 feet to a 1/2" rebar and cap set; thence, with an interior angle right of 63°34'58", run eastwardly for a distance of 268.54 feet to the POINT OF BEGINNING, thus forming a closing interior angle right of 89°05'16".

Said parcel contains 0.545 acres (23,727 square feet), more or less.

EXHIBIT "B"
LESSOR'S ADJOINING PROPERTY

[Lessor's Adjoining Property is the entire tract reflected on the portion of the survey set forth below, LESS AND EXCEPT the property described on Exhibit "A" to this instrument]



NORTH BOUND LANE U.S. HIGHWAY 31

Inst # 1999-28761

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SHELBY COUNTY JUDGE OF PROBATE

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