

**EASEMENT AND AGREEMENT FOR
CONSTRUCTION, INSTALLATION AND SHARED MAINTENANCE
OF A GRINDER LIFT STATION**

THIS EASEMENT AND AGREEMENT FOR CONSTRUCTION, INSTALLATION AND SHARED MAINTENANCE OF A GRINDER LIFT STATION (this "Agreement") made and entered into as of the 26th day of June, 2001, by and between **WAFFLE HOUSE, INC.**, a Georgia corporation (hereinafter referred to as "Waffle"), and **JAMES D. WADSWORTH** (hereinafter referred to as "Wadsworth").

WHEREAS, Wadsworth has, by statutory warranty deed of even date herewith, granted and conveyed to Waffle that certain parcel of real estate situated in Shelby County, Alabama, and more particularly described as Lot 1A, according to the Map and Survey of Wadsworth Subdivision (a commercial subdivision) as recorded in Map Book 28, page 2, in the Office of the Judge of Probate of Shelby County, Alabama (hereinafter, the "Waffle Parcel"); and

WHEREAS, Wadsworth is the owner of the adjoining parcel of real estate described as Lot 1, according to the Map and Survey of Wadsworth Subdivision (a commercial subdivision) as recorded in Map Book 28, page 2, in the Office of the Judge of Probate of Shelby County, Alabama (hereinafter, the "Wadsworth Parcel"); and

WHEREAS, Waffle and Wadsworth (at times hereinafter, each a "party" and together, the "parties") have agreed to share a Grinder Lift Station to be located on the Waffle Parcel as shown on the Waffle site plan, attached hereto and made a part hereof as Exhibit A, and the parties have agreed to share in the cost for the acquisition, installation and future maintenance of the Grinder Lift Station on a basis of 70% for Waffle and 30% for Wadsworth; and

WHEREAS, the parties desire to grant and convey to each other a five foot (5') easement on each side of their interior shared boundary line for the Grinder Lift Station and the sewer line (the "connecting sewer line", and together with the Grinder Lift Station, the "System") running from the Grinder lift Station to the public main sewer line; and

WHEREAS, the parties now desire to memorialize the terms and conditions of the aforesaid agreement, all as set forth hereinbelow.

I. GENERAL AGREEMENT

A. ACQUISITION; COST SHARING.

1. Waffle has secured a written bid from Gulf Coast Pump and Equipment, located in Mobile, Alabama, for a Grinder Pump Station, and has developed a total estimated installed cost of \$21,246.00. Except as otherwise expressly provided herein, Waffle and Wadsworth shall share the out-of-pocket costs (purchase price, construction and installation costs, repair and maintenance expenses and costs, etc., hereinafter sometime referred to collectively as the "Costs") of the System on a basis of 70% to Waffle and 30% to Wadsworth (their respective "Proportionate Share"). The parties have

simultaneously herewith entered into an Escrow Agreement to escrow \$25,494.00, being 120% of each party's Proportionate Share of the estimated Costs.

2. If Waffle begins construction of the restaurant on the Waffle Parcel prior to commencement of construction of the business on the Wadsworth Parcel, Waffle shall purchase and install the System to an operating condition during construction of the restaurant but in any event prior to completion of construction of the business on the Wadsworth Parcel. If Wadsworth commences construction of the business on the Wadsworth Parcel prior to commencement of construction of the restaurant on the Waffle Parcel, however, Waffle shall upon written request of Wadsworth promptly purchase (with escrowed funds, to the extent available) the System and have it, together with plans and specifications for installing same, delivered to the address specified by Wadsworth. Wadsworth shall then cause his contractor to install the System to an operating condition during construction of the business on the Wadsworth Parcel but in any event prior to completion of construction of the restaurant on the Waffle Parcel.

B. ACQUISITION, INSTALLATION AND MAINTENANCE.

1. As provided above, Waffle shall cause the purchase of the System and provide plans and specifications approved by Wadsworth, which approval shall not unreasonably be withheld, for its installation. If installation costs exceed the balance remaining in escrow after payment of acquisition costs, the non-installing party shall pay its Proportionate Share of such additional costs pursuant to the Escrow Agreement. All controls/cut off switches for said Grinder Lift Station shall be located in the Easement (as defined below) on the Waffle Parcel and Waffle shall be responsible to take immediate action for any failure or required maintenance of the System to prevent any interruption of business operating on the Waffle Parcel and the Wadsworth Parcel. In the event the System fails or otherwise becomes inoperable despite commercially reasonable best efforts of Waffle, Waffle shall immediately act to restore the System to normal operating condition and proceed diligently thereafter to minimize its duration. Each party shall be and remain solely responsible for all installation, maintenance and repairs required for any sewer lines to or from their respective buildings to the Grinder Lift Station. All maintenance performed on the System shall be in compliance with all state, federal and local governmental requirements and shall be conducted in a manner which shall not unreasonably interfere with the commercial business operation of the other party.

2. Anything elsewhere in this Agreement to the contrary notwithstanding: (i) if the business on either the Wadsworth Parcel or Waffle Parcel first opens for business and begins using the System more than thirty (30) days prior to the day the business on the other Parcel first begins using the System, the Parcel owner who first begins using the System shall be solely responsible for routine repairs and maintenance, and for any extraordinary repairs and maintenance attributable to such owner's negligent acts or omissions (including excessive loading), occurring during and prior to the time the business on the other Parcel begins using the System; (ii) neither party shall improve the System or incur other costs of a capital nature without the prior consent of the other party (such consent not to be unreasonably withheld); (iii) if at any time the capacity of the System must be increased or improved to accommodate the usage by the businesses on the two Parcels, the Proportionate Share of the parties shall be equitably adjusted to

reflect the reasonably determinable future relative use of the System by the respective parties and the parties shall pay the Costs of such capacity increase and future maintenance in accordance with said adjusted Proportionate Shares; and (iv) either party may at any time after initial completion of the System elect to discontinue use of the System (either because it installs another system on its property or otherwise) and cease paying any Costs first arising on or after the date of said discontinuance, provided that the discontinuing party shall first quit-claim all its right, title and interest in the System to the other party, and provided further that the Easement shall continue in full force and effect.

C. NONPERFORMANCE.

1. In the event Waffle fails to perform its obligations under Paragraph B.1. above after reasonable advance notice from Wadsworth, Wadsworth may, at his option (with no obligation to do so, whether under a theory of mitigating damages or otherwise) cause to be performed the work necessary or appropriate, in Wadsworth's opinion, to acquire, install, repair or maintain the System, and invoice Waffle for such costs. All payments required by one party to the other under this Agreement shall be due and payable on or before the end of fifteen (15) days after receipt by the invoiced party of an invoice and reasonable evidence of the cost and payment thereof by the invoicing party.

2. If a party shall fail to pay when due and payable any costs or other sums for which it is responsible hereunder, the party to whom such payment is due shall be entitled to collect from the other party, in addition to the invoiced amount, interest on the invoiced amount from the date payment was due until paid in full in the amount of the existing prime interest rate plus 2%, and together with any attorney fees and arbitration fees attributable to collecting such sums as provided below.

D. ARBITRATION. The parties agree that any disputes or claims arising out of the terms and conditions of this Agreement, including whether such dispute or claim is arbitrable, will be settled by binding arbitration. The arbitration proceedings shall be conducted under the commercial arbitration rules of the American Arbitration Association in effect at the time a demand for arbitration is made. A decision and award of the arbitrator made under the said rules shall be exclusive, final and binding on both parties. The costs and expenses of the arbitration shall initially be borne equally by the parties, but recovery may be requested by the prevailing party as a part of any award determined in the arbitration.

E. ENFORCEMENT. If arbitration or other legal action is necessary to enforce any provision of this Agreement, the prevailing party shall be entitled to recover from the other party all costs and damages incurred by the prevailing party and attributable to the other party's non-performance, including reasonable attorney's fees, provided that costs and damages attributable solely to non-payment of money due shall be calculated and limited as provided in C.1 above.

F. INDEMNIFICATION. Each of Waffle and Wadsworth hereby agrees to indemnify and hold the other (the party required to indemnify the other party under this Paragraph being herein referred to as "Indemnifying Party") harmless from and against any loss, damage, liability or expense, including but not limited to reasonable attorneys' fees and other reasonable legal costs, resulting from any injury or death of any persons, or any loss of or

damage to any property (including but not limited to remediation of contamination to property), caused by or resulting from any act or omission attributable to the Indemnifying Party, its respective agents, employees, guests, customers and invitees, in connection with their respective use of the System.

II. EASEMENT. Waffle hereby grants, bargains, sells and conveys to Wadsworth a 5-foot wide easement on its side of the interior boundary line separating the Waffle Parcel and the Wadsworth Parcel, and Wadsworth hereby grants, bargains, sells and conveys to Waffle a 5-foot wide easement on his side of said boundary line, for purposes of construction, installation, repair, replacement and maintenance of the System. TO HAVE AND TO HOLD each to the other, their respective successors and assigns, forever. Said easement is more particularly described on Exhibit "A" attached hereto and made a part hereof. Each party reserves the right to use that portion of said easement on its respective Parcel for any purpose not inconsistent with the use for which the foregoing grant is made.

III. COVENANTS RUNNING WITH THE LAND. This Agreement and the easements granted hereby shall be of perpetual duration and shall constitute covenants running with the land, benefiting and burdening the Waffle Parcel and the Wadsworth Parcel as set forth herein.

IV. MISCELLANEOUS

1. This Agreement shall, in all respects, be governed, construed, applied and enforced in accordance with the laws of the State of Alabama.
2. Failure by any party to enforce any covenant or restriction herein contained shall in no event be deemed to be a waiver of the right to do so thereafter
3. The provisions of the Agreement may not be modified or amended, except pursuant to a written agreement entered into by each of the parties.
4. The rights, privileges and responsibilities of each of the parties as enumerated hereinabove, shall inure to the benefit of and be binding upon, each of the parties hereto and to their respective successors and assigns, tenants, and licensees.

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5. This Agreement may be executed by facsimile and in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute only one and the same Agreement

WAFFLE HOUSE, INC.,
A Georgia corporation

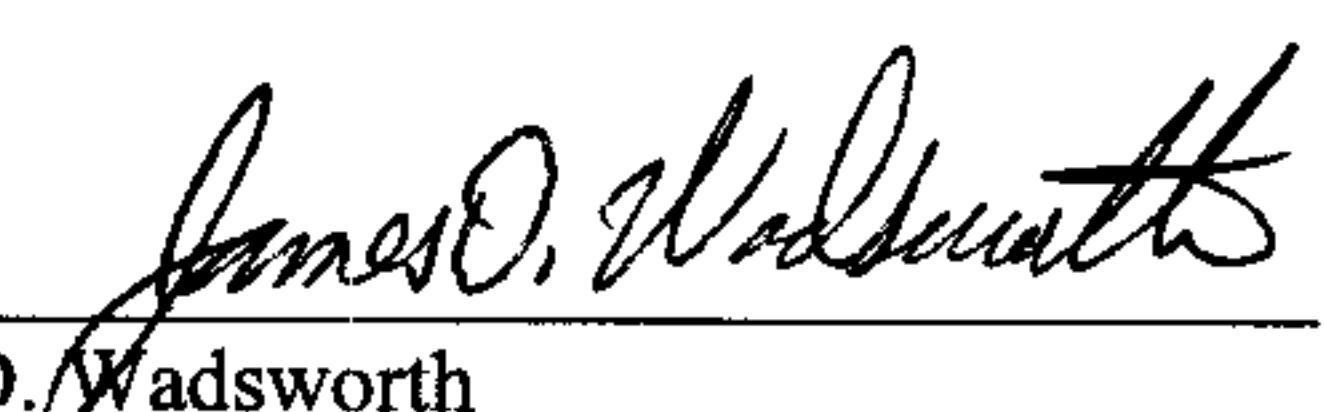
By: 

Richard L. Renninger

Its: Vice President,

Director of Real Estate

Date: 6.26.01

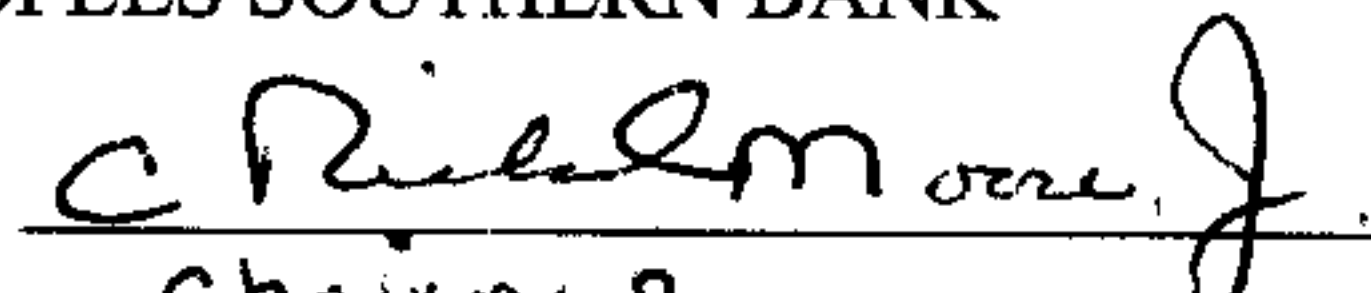

James D. Wadsworth

Date: 6.28.01

JOINDER AND CONSENT OF MORTGAGEE

Peoples Southern Bank, as holder of a mortgage on the Wadsworth Parcel, joins in and executes this Easement and Agreement for Construction, Installation and Shared Maintenance of a Grinder Lift Station, for the sole purpose of consenting to the foregoing agreement.

PEOPLES SOUTHERN BANK

By: 

Its: Chairman

STATE OF GEORGIA)
COUNTY OF Gwinnett)

I, the undersigned, a notary public in and for said county in said state, hereby certify that Richard L. Renninger, whose name as Vice President and Director of Real Estate of Waffle House, Inc., a Georgia corporation, 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 officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this 26 day of June, 2001.

Anita M. Marteny
Notary Public
Notary Public, Gwinnett County, Georgia
My Commission Expires June 3, 2003
My commission expires: _____

[NOTARIAL SEAL]

STATE OF ALABAMA)
COUNTY OF Jefferson)

I, the undersigned, a notary public in and for said county in said state, hereby certify that James D. Wadsworth, whose name 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 executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 28th day of June, 2001.

Kerna C. Buchanan
Notary Public

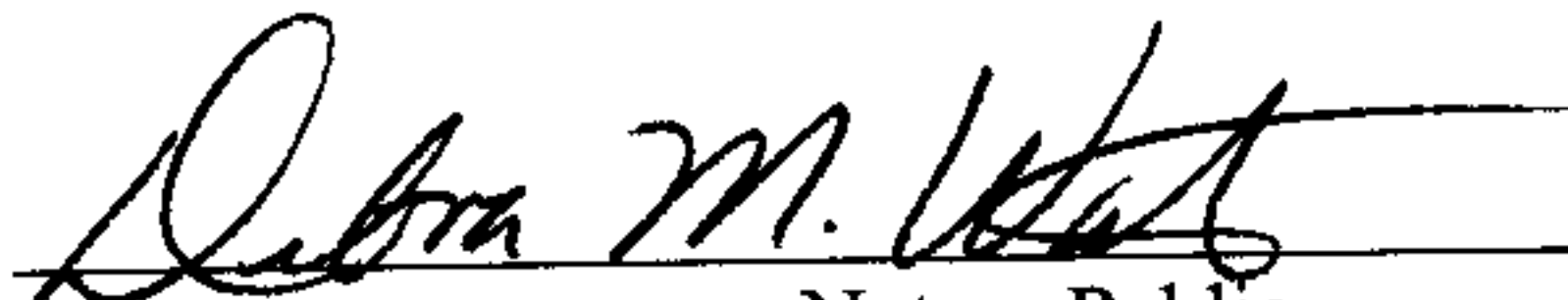
[NOTARIAL SEAL]

My commission expires: 7-04-04

STATE OF ALABAMA)
 :
COUNTY OF CHILTON)

I, the undersigned, a notary public in and for said county in said state, hereby certify that C. Richard Moore, Jr., whose name as Chairman of Peoples Southern Bank, an Alabama corporation, 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 officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this 28 day of June, 2001.



Notary Public

MY COMMISSION EXPIRES JAN. 24, 2004

[NOTARIAL SEAL]

My commission expires: _____

LEGAL DESCRIPTION: EASEMENT #1 - 10' WIDE SANITARY SEWER EASEMENT

STATE OF ALABAMA
SHELBY COUNTY

AN EASEMENT SITUATED IN THE N.E. 1/4 OF SECTION 4, TOWNSHIP 22 SOUTH, RANGE 2 W, SHELBY COUNTY, ALABAMA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE S.E. CORNER OF THE S.E. 1/4 OF THE N.E. 1/4 OF SECTION 4, TOWNSHIP 22 SOUTH, RANGE 2 W, SHELBY COUNTY, ALABAMA AND RUN NORTH ALONG THE EAST LINE OF THE SAID QUARTER-QUARTER LINE FOR 113.74';

THENCE LEFT 86° 25' 30" AND RUN WESTERLY FOR 619.11';

THENCE LEFT 1° 02' 30" AND CONTINUE WESTERLY FOR 30.01';

THENCE RIGHT 91° 23' 20" AND RUN NORTH FOR 30.01';

THENCE LEFT 91° 36' 25" AND RUN WESTERLY FOR 567.45' TO A POINT, SAID POINT BEING ON THE NORTH RIGHT-OF-WAY LINE OF AN UNNAMED STREET.

THENCE RIGHT 1° 21' 08" AND CONTINUE WESTERLY ALONG THE SAID NORTH RIGHT-OF-WAY LINE FOR 310.74';

THENCE RIGHT 51° 17' 03" AND CONTINUE ALONG THE SAID NORTH RIGHT-OF-WAY LINE FOR 3.09' TO A POINT ON THE

EAST RIGHT-OF-WAY LINE OF U. S. HIGHWAY #31;

THENCE RIGHT 21° 45' 27" AND RUN NORTHWESTERLY ALONG SAID EAST RIGHT-OF-WAY LINE FOR 234.25' TO THE POINT OF BEGINNING

AND CENTERLINE OF THE EASEMENT HEREIN DESCRIBED. SAID EASEMENT BEING 5 FEET ON EITHER SIDE OF AND PARALLEL TO THE FOLLOWING DESCRIBED CENTERLINE:

THENCE RIGHT 105°00'00" AND LEAVING SAID RIGHT-OF-WAY LINE AND RUN EASTERLY ALONG SAID CENTERLINE FOR 155.50 FEET TO THE END OF

SAID CENTERLINE AND EASEMENT;

SAID EASEMENT CONTAINS 1555 SQ. FT. (0.04 ACRES, MORE OR LESS).

Inst # 0001-30696

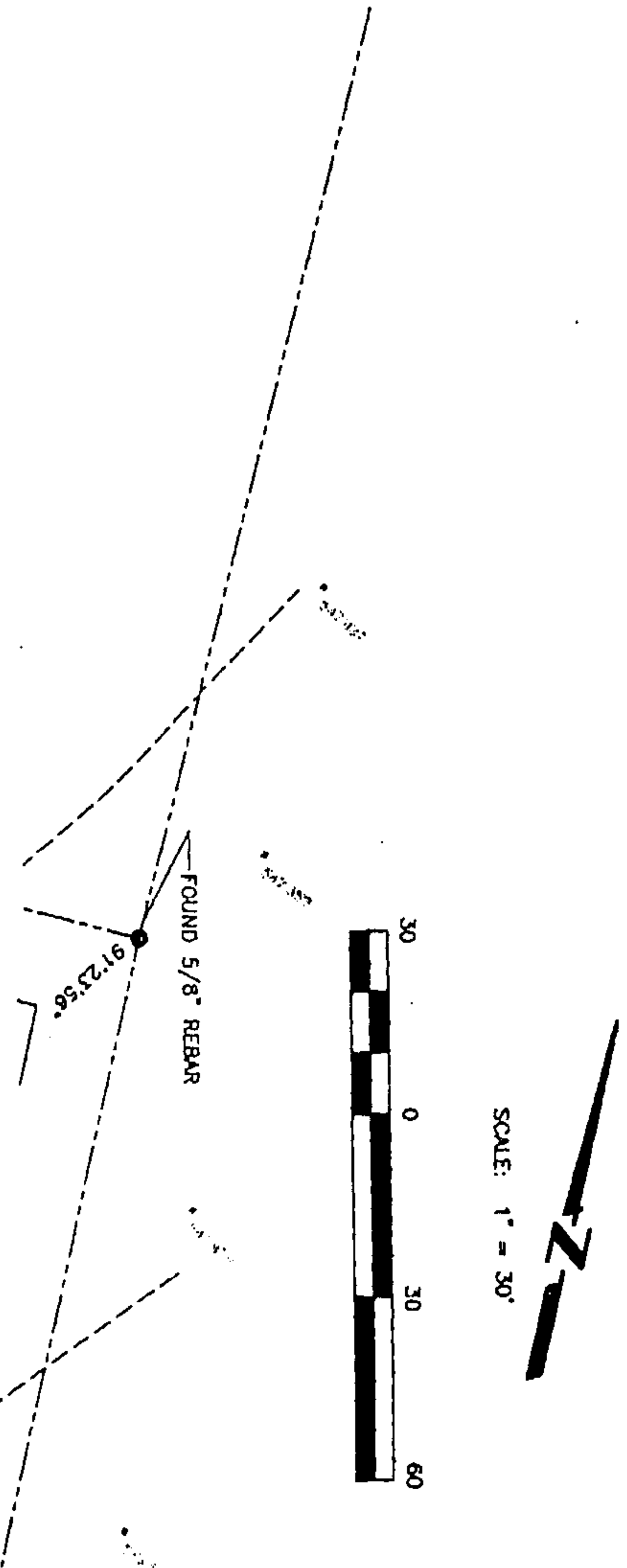
07/24/2001-30696

11:32 AM CERTIFIED

SHELBY COUNTY JUDGE OF PROBATE

008 MSB

33.00



SCALE: 1" = 30'