

*This instrument prepared by:  
Bobby C. Underwood  
Bradley Arant Rose & White LLP  
2001 Park Place, Suite 1400  
Birmingham, AL 35203-2736*

STATE OF ALABAMA

SHELBY COUNTY

Inst # 2001-30697  
07/24/2001-30697  
11:32 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
009 MSB 35.00

## AGREEMENT OF CROSS-EASEMENTS

**THIS AGREEMENT OF CROSS-EASEMENTS** ("Agreement") is made and executed by and between **JAMES D. WADSWORTH**, an unmarried man ("Wadsworth"), and **WAFFLE HOUSE, INC.**, a Georgia corporation ("Waffle"), as of the 26th day of June, 2001.

### RECITALS:

A. By deed dated as of even date herewith, Wadsworth has conveyed to Waffle that certain parcel of real estate located in Shelby County, Alabama, and 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 (the "Waffle Parcel").

B. Wadsworth is the owner of that certain parcel of real estate located in Shelby County, Alabama, and 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 (the "Wadsworth Parcel"), which adjoins the Waffle Parcel along the southern boundary of the Waffle Parcel.

C. The Waffle Parcel and Wadsworth Parcel both front on U.S. Highway 31, and each will have highway cuts for vehicular ingress and egress between the parcel and U.S. Highway 31. In addition, the Wadsworth Parcel is bounded on its south by an unnamed public road (the "Side Road") and will have a highway cut for vehicular ingress and egress between the Wadsworth Parcel and the Side Road.

D. Waffle and Wadsworth contemplate constructing and operating retail businesses serving the public on their respective parcels and further contemplate that many of the customers of one business will also desire to avail themselves of the services or products of the business on the other parcel.

E. In order to facilitate the use by the customers of the business on one parcel of the business on the other parcel, Wadsworth and Waffle desire to establish the cross-easements described below, subject to the terms and conditions hereof.

**NOW, THEREFORE**, in consideration of the recitals, Ten and No/100 Dollars (\$10.00) in hand paid by each party to the other, the mutual promises and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Grant of Easements.

(a) Waffle does hereby grant, bargain, sell, and convey unto Wadsworth, his heirs, successors, and assigns, a nonexclusive, perpetual easement for vehicular and pedestrian ingress and egress over, on, and across the driveway between the Waffle Parcel and U.S. Highway 31 (said driveway to have a minimum width of 24 feet), and over, on, and across all customer driveways or drive lanes as located on the Waffle Parcel from time to time (the "Waffle Easement"), TO HAVE AND TO HOLD the same unto Wadsworth, his heirs, successors, and assigns, forever, for the uses and purposes herein described.

(b) Wadsworth does hereby grant, bargain, sell, and convey unto Waffle, its successors and assigns, a nonexclusive, perpetual easement for vehicular and pedestrian ingress and egress over, on, and across the driveway between the Wadsworth Parcel and U.S. Highway 31 (said driveway to have a minimum width of 24 feet), over, on and across the driveway between the Wadsworth Parcel and the Side Road (said driveway to have a minimum width of 24 feet) and over, on, and across all customer driveways or drive lanes as located on the Wadsworth Parcel from time to time (the "Wadsworth Easement"), TO HAVE AND TO HOLD the same unto Waffle, its successors and assigns, forever, for the uses and purposes herein described.

2. Use and Purpose of Easements. The Waffle Easement and the Wadsworth Easement are sometimes hereinafter referred to as the "Easements." In granting the Easements, each grantor imposes on the grantee the requirement that the grantee shall use the granted Easement reasonably for the Easement's intended purpose. Waffle acknowledges that it is the intent of the parties that access between the Side Road and the Waffle Parcel through the Wadsworth Parcel shall primarily be for the purpose of allowing vendors and customers of the business on one parcel convenient access to the business on the other parcel rather than as a direct access route between the Waffle Parcel and the Side Road. Accordingly, Waffle shall not erect any signs or publish any maps or directions to indicate to its customers or others that routine direct access to its parcel is intended across the Wadsworth Parcel. Except as otherwise expressly provided herein, Waffle shall not be required, however, to take any affirmative action to prevent its customers, licensees, and invitees who discover and use the Side Road access on their own from using the Side Road access. Each party acknowledges that no parking rights are granted hereby, and each parcel owner has the right to take affirmative action to prevent customer's, employees', licensees' and invitees' of the business on the other parcel from parking on his or its parcel. Additionally, neither party shall permit its employees, contractors or subcontractors to move or operate equipment, machinery or vehicles across or on the other party's parcel, and each party shall use its reasonable best efforts to prevent use of the Easements granted to it herein by heavy trucks or tractor-trailers driven by persons patronizing or serving only one of the businesses, in each case without prior express approval of the other party.

3. Relocation of Easements. The owner of each parcel reserves the right to redesign, redirect and relocate traffic lanes on its parcel from time to time in its or his discretion necessary or

desirable, provided that (i) each parcel owner agrees to maintain at all times ingress and egress drive lanes between its parcel and U.S. Highway 31; (ii) Wadsworth agrees to maintain at all times ingress and egress drive lanes between his parcel and the Side Road; (iii) the parties shall each keep open the curb cut between their respective parcels at the location described on Exhibit A attached hereto and made a part hereof and shall at all times maintain at least one drive lane for ingress and egress on and across its respective parcel between said curb cut and the public road (i.e., Highway 31 and the Side Road) access points referred to in (i) and (ii) above; and (iv) the Easements shall be deemed automatically to be relocated over, on and across the driveways and drive lanes on the burdened property as relocated from time to time on the burdened property. Anything herein to the contrary notwithstanding, each party reserves the right to use the Easement area on its property for any purpose not materially inconsistent with the purposes for which the Easement is granted. Without limiting the generality of the foregoing sentence, Wadsworth reserves the right to construct, install, maintain, fill and refill and otherwise service from time to time underground storage tanks in the Wadsworth Easement, even though such actions may temporarily interfere with traffic on, over and across the Wadsworth Parcel.

4. Indemnity. Each party, for itself, its successors and assigns, hereby covenants and agrees to indemnify, defend, and hold the other party, its successors and assigns, harmless from and against any and all claims, costs, demands, damages, liabilities, judgments, and expenses (including reasonable attorney fees and other reasonable legal costs) for any personal injury (including death) or property damage or any other damages of any nature whatsoever arising out of the negligent or intentionally wrongful use of the Easements by the indemnifying party or its agents, contractors, subcontractors, employees or licensees.

5. Perpetual Easement; Successors and Assigns. Each of the Easements is intended to be appurtenant to the benefitted parcels and shall run with the land. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, successors, and assigns. Notwithstanding the immediately preceding sentence, the Easements and the rights hereunder shall not be leased, conveyed or assigned by the grantee except in conjunction with the lease, transfer or conveyance of his or its respective parcel. The obligations of the parties hereunder shall terminate with respect to a party or any future owner of fee simple legal title to the Easements, as the case may be, upon the conveyance by said party or such future owner, as the case may be, of legal title to its parcel (not including the execution of a mortgage) and shall pass to the transferee of such legal title; provided, that if an event should occur during the grantee's ownership of its parcel which gives rise to any indemnity obligation hereunder, then such indemnity obligation shall be the joint liability and obligation of such party and its grantee and shall survive as the party's personal obligation after conveyance of its parcel.

6. Private Property. This Agreement shall not be construed to create, grant, or dedicate any public rights, privileges, licenses, or easements in the Easements.

7. Entire Agreement. This Agreement contains the entire agreement between the parties hereto in respect of the Easements, and neither party is bound by any previous representations or agreements of any kind regarding the Easements except as herein contained.

8. Waiver. No provision of this Agreement shall be deemed to have been waived unless such waiver is in writing and is signed by the party waiving such provision, and any such

waiver shall be effective only for the specific purpose for which it is given and in the specific instance in which given. The failure of either party to seek redress for violation of, or to insist upon the strict performance of, any covenant or condition of this Agreement in any instance shall not be construed as a waiver or relinquishment for the future performance of such obligations, and such obligations shall continue and remain in full force and effect with respect to any subsequent breach, act or omission.

9. Modification and Amendment. This Agreement shall not be modified or amended in any respect except by a written instrument executed by the parties in the same manner as this Agreement is executed.

10. Notices. All notices and demands to be given or made hereunder shall be in writing and shall be given by (i) personal or hand delivery, (ii) nationally recognized express overnight delivery service (with charges therefor prepaid), or (iii) certified or registered mail, return receipt requested (with postage therefor prepaid). Notices shall be deemed received upon (a) receipt, if hand or personally delivered, (b) the next business day after the notice has been deposited with a nationally recognized express overnight delivery service, or (c) the third business day after the notice has been deposited with the United States Postal Service. Notices shall be provided to the parties at the following addresses:

If to Wadsworth:                      James D. Wadsworth  
   2201 Holiday Inn Drive  
   Clanton, AL 35046

If to Waffle:                              Waffle House, Inc.  
   5986 Financial Drive  
   Norcross, GA 30071

Either party hereto may change the address to which it is to receive notice or the representative to which notice is to be given by written notice to the other party in the manner set forth above.

11. Counterparts. 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.

12. Construction. Both Waffle and Wadsworth have participated in the drafting of this Agreement, and in construing this Agreement, neither party shall have any term or provision construed against it solely by reason of its having drafted the same.

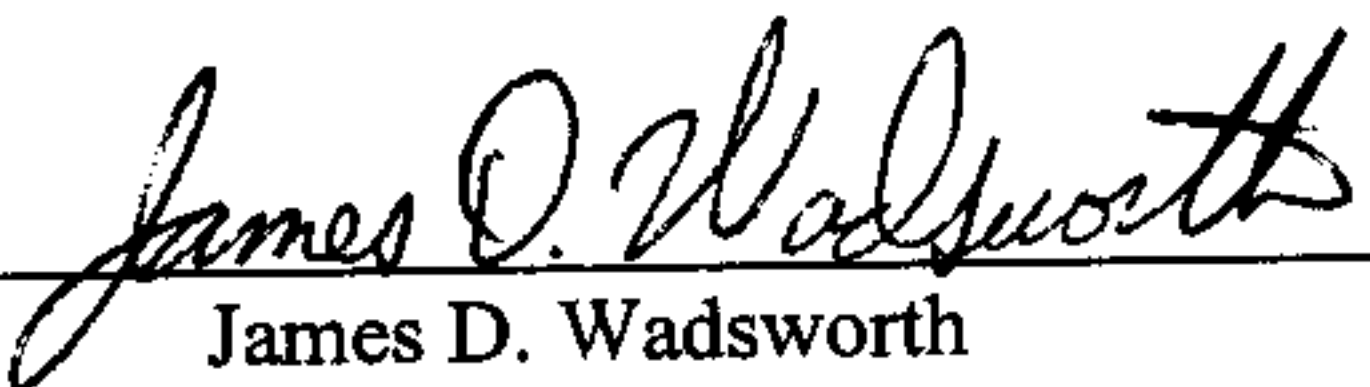
13. Captions and Headings. The captions and headings contained in this Agreement are for convenience of reference only and shall not be used to limit the applicability or meaning of any provisions of this Agreement.

14. Pronouns and Plurals. All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders where the context so requires. The use of the singular form shall include the plural and the use of the plural shall include the singular where the context so requires.

15. Severability. If any provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each provision shall be valid and enforceable to the fullest extent permitted by law.


16. Governing Law. This Agreement shall governed by and construed in accordance with the laws of the State of Alabama.

**IN WITNESS WHEREOF**, Wadsworth and Waffle have executed or caused this Agreement to be executed by their respective duly authorized representatives on the date indicated below but as of the date first above written.

  
James D. Wadsworth

Date: 6-28-01

WAFFLE HOUSE, INC.

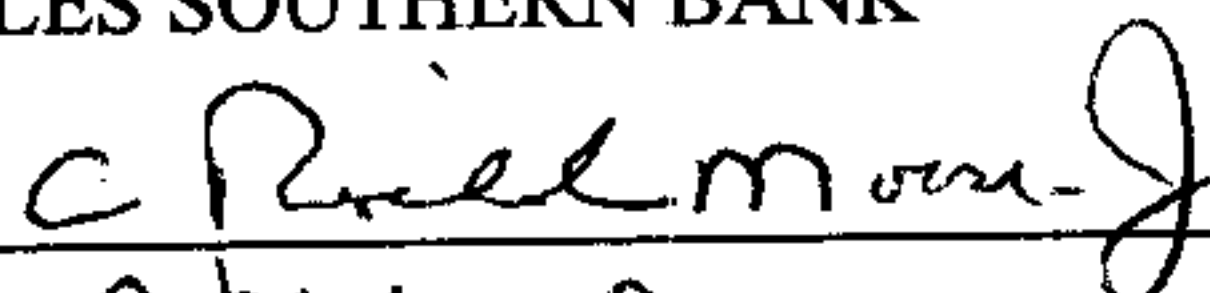
By:   
Its: Vice President Director of Real Estate

Date: 6-26-01

### **JOINDER AND CONSENT OF MORTGAGEE**

Peoples Southern Bank, as holder of a mortgage on the Wadsworth Parcel, joins in and executes this Agreement of Cross-Easements, for the sole purpose of consenting to the foregoing agreement.

PEOPLES SOUTHERN BANK

By:   
Its: Chairman

STATE OF ALABAMA

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:

JEFFERSON COUNTY

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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 28<sup>th</sup> day of June, 2001.

Herman C. Bushman

Notary Public

[NOTARIAL SEAL]

My commission expires: 7-16-01

STATE OF GEORGIA

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COUNTY OF GINNETT

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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, Director of R.E. 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 the 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 the 26 day of June, 2001.

Anita M. Marting

Notary Public

[NOTARIAL SEAL]

My commission expires: Notary Public, Gwinnett County, Georgia  
My Commission Expires June 3, 2003

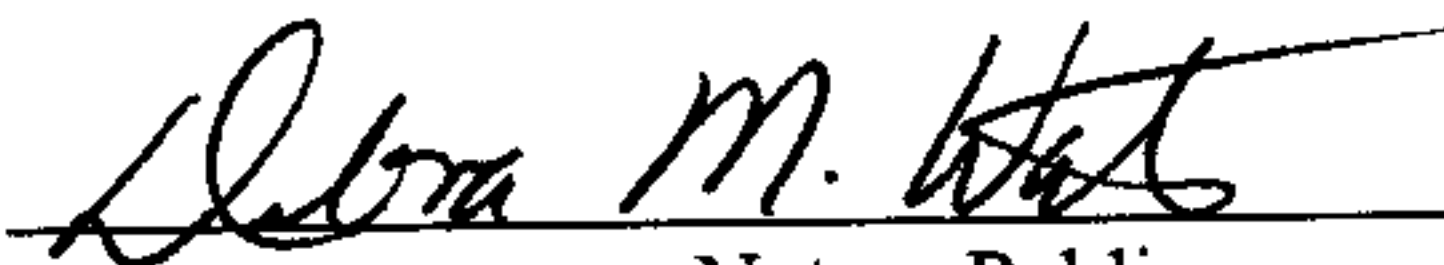
STATE OF ALABAMA

COUNTY OF CHILTON

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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

[NOTARIAL SEAL]

My commission expires: MY COMMISSION EXPIRES JAN. 24, 2004

## **EXHIBIT A**

An easement situated in the NE  $\frac{1}{4}$  of Section 4, Township 22 South, Range 2 W, Shelby County, Alabama, being more particularly described as follows:

Commence at the SE corner of the SE  $\frac{1}{4}$  of the NE  $\frac{1}{4}$  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  $85^{\circ}25'30''$  and run Westerly for 619.11;

thence left  $1^{\circ}02'30''$  and continue Westerly for 30.01';

thence right  $91^{\circ}23'20''$  and run North for 30.01';

thence left  $91^{\circ}36'25''$  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  $1^{\circ}21'08''$  and continue Westerly along the said North right-of-way line for 310.74';

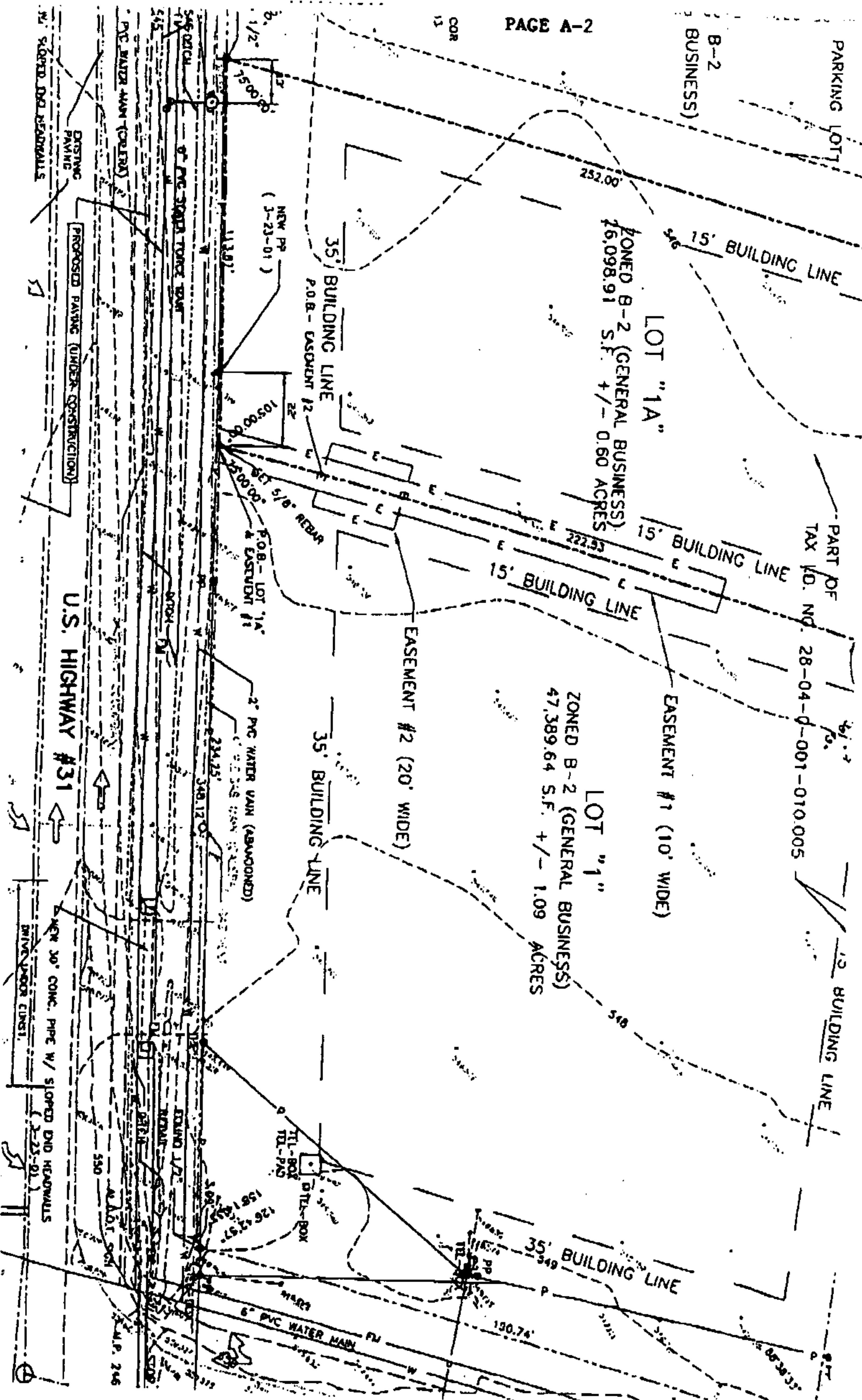
thence right  $51^{\circ}17'03''$  and continue along the said North right-of-way line for 3.09' to a point on the East right-of-way line of U.S. Highway #31;

thence right  $21^{\circ}45'27''$  and run Northwesternly along said East right-of-way line for 234.25' to a point;

thence right  $105^{\circ}00'00''$  and leaving said right-of-way line and run Easterly 31.10 feet to the point of beginning and centerline of the easement herein described, said easement being 10 feet on either side of and parallel to the following described centerline;

thence continue along the last stated course and centerline for 25.00 feet to the end of said centerline and easement.

PAGE A-2



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EXHIBIT A

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