

This instrument was prepared by:
Lisa Conville
QA Business Analyst

Return to:
PNC Bank, National Association
Document Control Center
500 First Avenue
Pittsburgh, PA 15219
Attention: P7-PFSC-04-L

Subordination of Lease Agreement



STATE OF ALABAMA

SHELBY COUNTY

THIS SUBORDINATION OF LEASE AGREEMENT (this "**Agreement**") is made this 30th day of October, 2015, by **FOOD SALES EAST, LLC** (the "**Tenant**"), with an address at 208 Cloverdale Circle, Alabaster, Alabama 35007 and **PERFORMANCE ENTERPRISE, LLC** (the "**Landlord**"), with an address at 208 Cloverdale Circle, Alabaster, Alabama 35007 in favor of **PNC BANK, NATIONAL ASSOCIATION** (the "**Mortgagee**"), with an address at 1927 1st Avenue North, Birmingham, Alabama 35203.

WITNESSETH THAT:

WHEREAS, the Landlord is the fee owner of that certain real property located in 208 Cloverdale Circle, Alabaster, Shelby County, Alabama, and more particularly described in Exhibit "A" attached hereto (the "**Property**");

WHEREAS, pursuant to a loan agreement or letter agreement (as the same may be amended, renewed, replaced or supplemented from time to time, the "**Loan Agreement**") and/or a promissory note (as the same may be amended, renewed, replaced or supplemented from time to time, the "**Note**"), the Mortgagee made one or more loans (the "**Loan**") to the Landlord. The obligations under the Loan Agreement and Note are secured by a mortgage instrument covering the Property (as the same may be amended, renewed, replaced or supplemented from time to time, the "**Mortgage**") dated October 30, 2015, from the Landlord to the Mortgagee, and recorded or to be recorded in the real estate records of

the aforesaid County and State, and are also secured by an assignment of the Landlord's interest in all leases of the Property (as the same may be amended, renewed, replaced or supplemented from time to time, the "**Assignment**") and recorded or to be recorded in the real estate records of the aforesaid County and State (the Loan Agreement, Note, Mortgage, Assignment and any and all other documents executed in connection with the Loan, as the same may be amended, renewed, replaced or supplemented from time to time, collectively the "**Loan Documents**"); and

WHEREAS, under the terms of a certain Lease Agreement dated August 1, 2015 (as the same may be amended, renewed, replaced or supplemented from time to time, the "**Lease**"), the Landlord leased to the Tenant all or certain portions of the Property described in the Lease (the "**Demised Premises**") under the terms and conditions more particularly described therein; and

WHEREAS, the Mortgage provides that the Lease shall be subordinate to the Mortgage and the parties hereto desire to confirm such subordination and to define the terms, covenants and conditions precedent for such rights.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained and intending to be legally bound, the parties hereto agree as follows:

1. **Subordination of Lease.** The Lease and the entire right, title and interest of the Tenant thereunder are and shall be subject and subordinate in all respects to the lien, right, title and terms of the Loan Documents and, in particular, the Mortgage and all advances made or to be made thereunder.

2. **Consent of Tenant.** The Tenant acknowledges notice of and consents to the Mortgage, the Assignment and the terms and conditions thereof. The Tenant agrees to continue making payments of rent and other amounts owed under the Lease to the Landlord, and to otherwise recognize the rights of the Landlord under the Lease, until notified otherwise in writing by the Mortgagee, as herein provided. The Landlord and Tenant agree that, if the Mortgagee delivers to the Tenant a notice stating that a default has occurred under the Loan Documents and requesting that all payments due under the Lease be thereafter paid directly to the Mortgagee, the Tenant shall thereafter make, and is hereby authorized and directed by the Landlord to make, all such payments directly to the Mortgagee, as provided in the Mortgage and the Assignment, without any duty of further inquiry on the part of the Tenant.

3. **Tenant's Duty to Notify Mortgagee of any Default Under the Lease.** The Tenant shall provide the Mortgagee with prompt notice of any asserted default against the Landlord under the Lease. In the event of any act or omission of the Landlord which would give the Tenant the right, immediately or after lapse of time, to cancel or terminate the Lease, or to claim a partial or total eviction or to exercise any other remedy, the Tenant shall not exercise such right or remedy until Mortgagee has received notice and a reasonable period of time to cure said default, said cure period commencing after the end of Landlord's cure period and after Mortgagee is entitled under the Mortgage and the Assignment to remedy same; provided that the Mortgagee shall give the Tenant written notice of its intention to, and shall commence and continue with due diligence to, remedy such act or omission.

Notwithstanding the foregoing, the Mortgagee shall have no obligation to remedy or to continue to remedy any such act or omission.

4. **Modification of Lease.** Without the Mortgagee's prior written consent, the Tenant shall not (a) amend or terminate the Lease, (b) prepay any rent or other sums due under the Lease for more than one month in advance of the due dates thereof, (c) voluntarily surrender the Demised Premises, or (d) assign the Lease or sublet the Demised Premises or any part thereof other than pursuant to the provisions of the Lease.

5. **Representations of Tenant.** The Tenant represents and warrants to the Mortgagee that (a) the Tenant occupies and is the leasehold owner of the Demised Premises pursuant to the terms of the Lease, (b) the Lease is in full force and effect, and the Tenant has no offsets or defenses to the payment of rent or other sums due thereunder, (c) no default exists under the Lease, and (d) all rent and other sums due under the Lease have been paid in full, but have not been paid for more than one month in advance of the due dates thereof.

6. **Application of Casualty Insurance Proceeds and Condemnation Awards.** The Tenant hereby agrees that, notwithstanding anything to the contrary contained in the Lease, the terms and provisions of the Mortgage with respect to the application of casualty insurance proceeds and condemnation awards shall control.

7. **Confirmation of Lease Status.** The Landlord and the Tenant hereby agree that, upon the Mortgagee's request, they shall from time to time execute and deliver to the Mortgagee, and without charge to the Mortgagee, an estoppel certificate setting forth whatever information the Mortgagee may reasonably require to confirm the current status of the Lease including, without limitation, a confirmation that the Lease is and remains in full force and effect.

8. **Notices.** All notices, demands, requests, consents, approvals and other communications required or permitted hereunder must be in writing and will be effective upon receipt. Such notices and other communications may be hand-delivered, sent by facsimile transmission with confirmation of delivery and a copy sent by first-class mail, or sent by nationally recognized overnight courier service, to a party's address set forth above or to such other address as any party may give to the other in writing for such purpose.

9. **Changes in Writing.** No modification, amendment or waiver of, or consent to any departure from, any provision of this Agreement nor consent to any departure by the Landlord or Tenant therefrom will be effective unless made in a writing signed by the Mortgagee, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Landlord or Tenant will entitle the Landlord or Tenant to any other or further notice or demand in the same, similar or other circumstance.

10. **Entire Agreement.** This Agreement constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof.

11. **Counterparts.** This Agreement may be signed in any number of counterpart copies and by the parties hereto on separate counterparts, but all such copies shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by facsimile transmission shall be effective as delivery of a manually executed counterpart. Any party so executing this Agreement by facsimile transmission shall promptly deliver a manually executed counterpart, provided that any failure to do so shall not affect the validity of the counterpart executed by facsimile transmission.

12. **Definitions.** As used in this Agreement, the word "Tenant" shall mean the Tenant and/or the subsequent holder of an interest under the Lease, provided the interest of such holder is acquired in accordance with the terms and provisions of the Lease, and the word "Mortgagee" shall mean the Mortgagee or any subsequent holder or holders of the Mortgage and the Assignment. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the Landlord, the Tenant and the Mortgagee, their heirs, legal representatives, successors and assigns.

13. **Governing Law and Jurisdiction.** This Agreement has been delivered to and accepted by the Mortgagee and will be deemed to be made in the State where the Mortgagee's office indicated above is located. **THIS AGREEMENT WILL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE PARTIES HERETO DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE WHERE THE MORTGAGEE'S OFFICE INDICATED ABOVE IS LOCATED, EXCLUDING ITS CONFLICT OF LAWS RULES.** The Landlord and the Tenant hereby irrevocably consent to the exclusive jurisdiction of any state or federal court in the county or judicial district where the Mortgagee's office indicated above is located; provided that nothing contained in this Agreement will prevent the Mortgagee from bringing any action, enforcing any award or judgment or exercising any rights against the Landlord or Tenant individually, against any security or against any property of the Landlord or Tenant within any other county, state or other foreign or domestic jurisdiction. The Landlord and the Tenant agree that the venue provided above is the most convenient forum for the Mortgagee, the Landlord and the Tenant. The Landlord and the Tenant waive any objection to venue and any objection based on a more convenient forum that either may have in any action instituted under this Agreement.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

14. **WAIVER OF JURY TRIAL.** EACH OF THE LANDLORD AND THE TENANT IRREVOCABLY WAIVE ANY AND ALL RIGHT THAT ANY MAY HAVE TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR CLAIM OF ANY NATURE RELATING TO THIS AGREEMENT, ANY DOCUMENTS EXECUTED IN CONNECTION WITH THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED IN ANY OF SUCH DOCUMENTS. THE LANDLORD AND THE TENANT ACKNOWLEDGE THAT THE FOREGOING WAIVER IS KNOWING AND VOLUNTARY.


The Landlord and the Tenant acknowledge that each has read and understood all the provisions of this Agreement, including the waiver of jury trial, and has been advised by counsel as necessary or appropriate.

WITNESS the due execution hereof as a document under seal, as of the date first written above.

WITNESS/ATTEST:

LANDLORD:

PERFORMANCE ENTERPRISE, LLC

By: 
(SEAL)

Christopher Craddock, Member


Print Name: _____

Title: _____

(Include title only if an officer of entity signing to the right)

TENANT:

FOOD SALES EAST, LLC

By: 
(SEAL)

Christopher Craddock, Managing Member

Print Name: _____

Title: _____

(Include title only if an officer of entity signing to the right)

ACKNOWLEDGMENTS

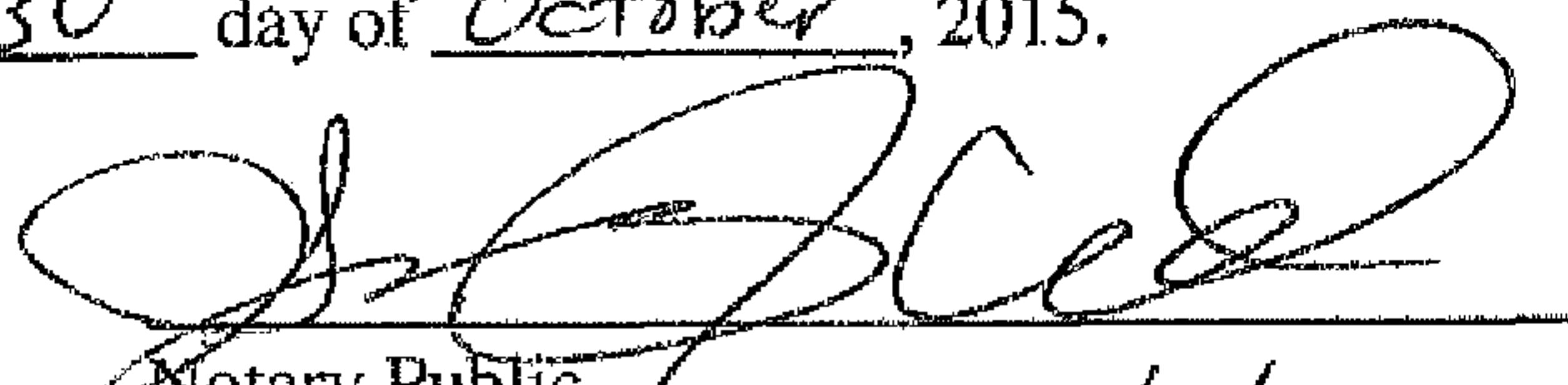
STATE OF Alabama)
Jefferson COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Christopher Craddock, whose name as Member of Performance Enterprise, LLC, a 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 the instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand this the 30 day of October, 2015.

[NOTARIAL SEAL]

SHANNON REID CRULL
 Notary Public, Alabama State At Large
 My Commission Expires April 2, 2016


 Notary Public
 My Commission Expires: 4/2/16

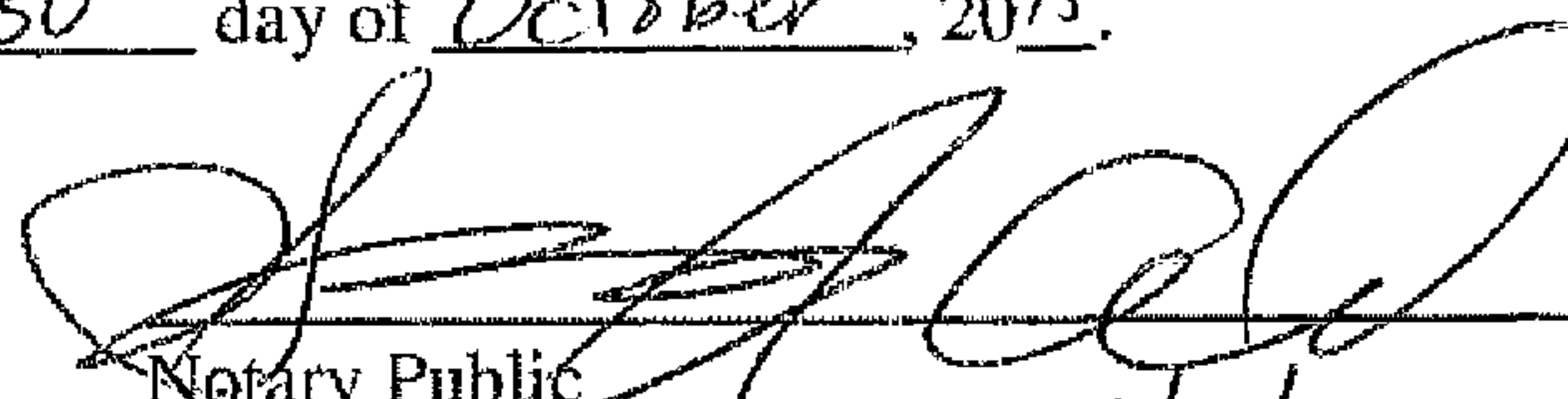
STATE OF Alabama)
Jefferson COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Christopher Craddock, whose name as Managing Member of Food Sales East, LLC, a 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 the instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand this the 30 day of October, 2015.

[NOTARIAL SEAL]

SHANNON REID CRULL
 Notary Public, Alabama State At Large
 My Commission Expires April 2, 2016


 Notary Public
 My Commission Expires: 4/2/16

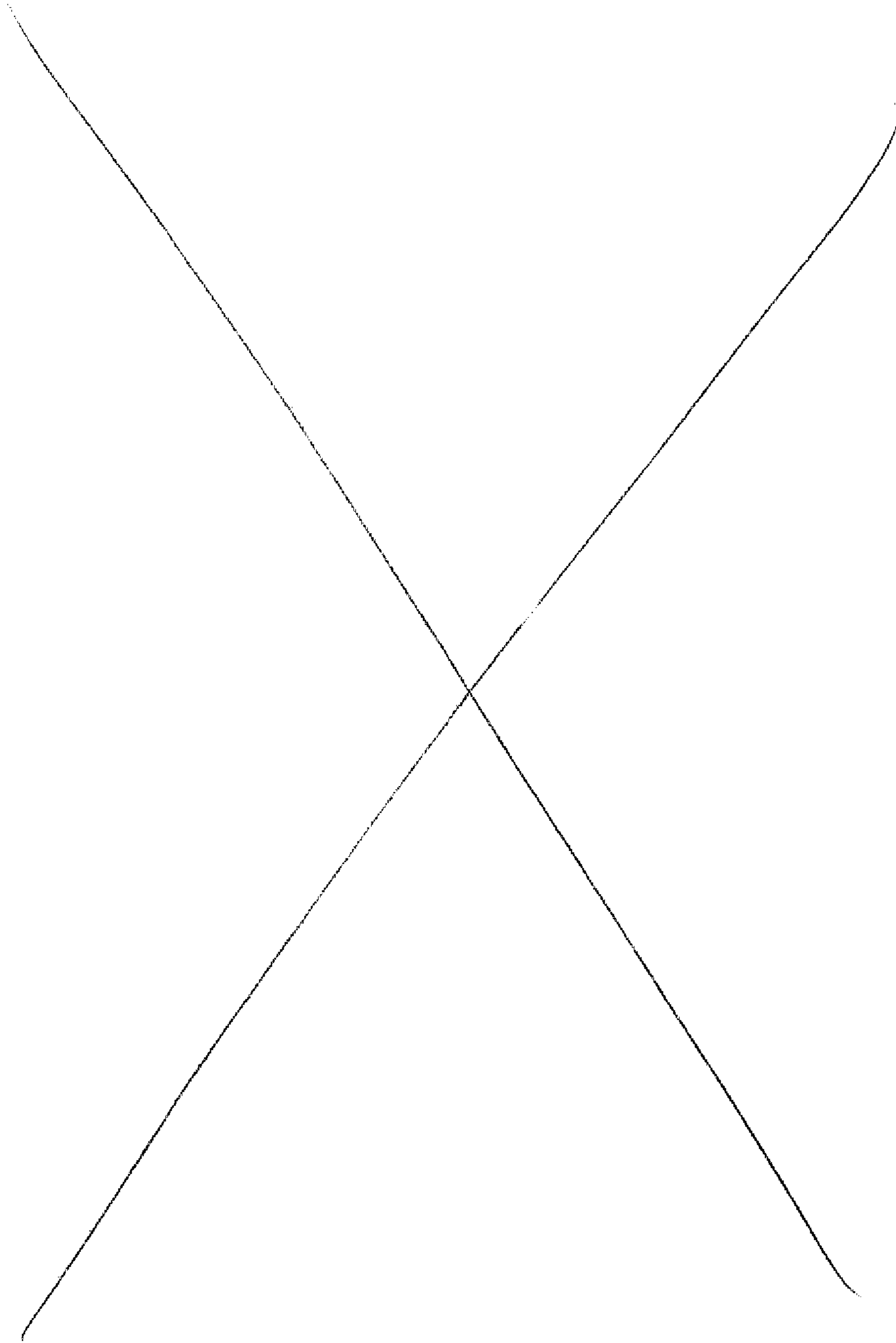


EXHIBIT A

Property Description

208 Cloverdale Circle, Alabaster, Shelby County, Alabama 35007



Filed and Recorded
Official Public Records
Judge James W. Fuhrmeister, Probate Judge,
County Clerk
Shelby County, AL
11/03/2015 04:07:24 PM
\$35.00 CHERRY
20151103000383030

A handwritten signature in black ink, appearing to read "James W. Fuhrmeister", is written over the official text of the recording.