


This Instrument Prepared By:

Lindsay Whitworth
Maynard, Cooper & Gale, P.C.
1901 Sixth Avenue North
Birmingham, Alabama 35203


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Shelby Cnty Judge of Probate, AL
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DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS (this "Declaration") is hereby declared and imposed upon the real property described below as of October 20, 2017, by **THE C.W.D., LLC**, an Alabama limited liability company, whose mailing address is: 510 Office Park Drive, Suite 210, Birmingham, AL 35223 ("CWD"), **CROSSROADS AT GREYSTONE, LLC**, an Alabama limited liability company, whose mailing address is: 510 Office Park Drive, Suite 210, Birmingham, AL 35223 ("Crossroads"), and **DANTRACT, INC.**, an Alabama corporation, whose mailing address is 510 Office Park Drive, Suite 210, Birmingham, Alabama 35223 ("Dantract") (collectively CWD, Crossroads and Dantract are referred to herein as, "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of the those certain tracts of land in Shelby County, Alabama, more particularly described in Exhibit A attached hereto and made a part hereof (the "Restricted Property").

WHEREAS, Declarant desires to impose certain covenants, restrictions and conditions on the development and use of the Restricted Property and any Subsequent Property (as hereafter defined) in accordance with this instrument for the benefit of the **CAVENDER FAMILY BENEFICIARY OOS, LTD.**, a Texas limited partnership, its affiliates, successors and assigns (the "Benefitted Property Owner"), as the owner of the real property more particularly described on Exhibit B attached hereto ("Benefitted Property").

NOW, THEREFORE, in consideration of the foregoing premises and recitals and the following conditions and agreements, Declarant does hereby impose the following covenants and restrictions on the ownership, use and enjoyment of the Restricted Property, in accordance with the following terms and conditions, and any owner, successor, assign, transferee or grantee or lessee of any interest in the Restricted Property or any portion thereof (whether by acceptance of a deed, a lease, a mortgage or any other instrument) shall be subject to the same.

ARTICLE 1

USE

1.1 Restricted Use.

(a) During the term of this Declaration, no portion of any of the Restricted Property shall be used, leased, operated or occupied as the Restricted Use (the "Protected Use Covenant"). "Restricted Use" shall mean the operation of a retail store selling (i) Western footwear, apparel and accessories and/or (ii) work-related footwear (such as steel-toed and non-steel-toed work boots and shoes) and work-related apparel typically worn in industrial, oil and gas field, manufacturing, farming and

Declaration of Restrictive Covenants

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ranching industries as its Primary Business. "Primary Business" shall mean that a business derives more than twenty-five percent (25%) of its sales from the sale of Western footwear, apparel and accessories and/or work-related footwear (such as steel-toed and non-steel-toed work boots and shoes) and work-related apparel typically worn in industrial, oil and gas field, manufacturing, farming and ranching industries. The term "Western" means a category of clothing which derives its unique style from clothes worn in the 19th century American West and characterized by cowboy hats and boots. The following retail businesses shall expressly be restricted: Boot Barn, Shepler's, Crossroads Western Wear, S&W Western Wear, Rand & Rider Western Store, O.K. Corral, and Chuck's Boots.

(b) Notwithstanding the foregoing, (i) the Protected Use Covenant shall only limit competing uses that are the Primary Business of the party actually occupying and conducting retail sales from any portion of the Restricted Property; (ii) the Protected Use Covenant shall not prohibit other merchants occupying the Restricted Property from engaging in the Restrictive Use so long as the area of the merchant's floor space used for that purpose does not exceed the lesser of (a) two thousand (2,000) square feet of leasable area; and (b) twenty percent (20%) of the floor space of such leasable area, (iii) the Protected Use Covenant shall be subject to the rights of tenants under any leases existing prior to the date hereof.

1.2 **Subsequent Property.** In the event Declarant or Declarant's Affiliate (hereafter defined) acquires or controls additional real property within a three (3) mile radius of the Benefited Property (the "Subsequent Property") (the Subsequent Property and the Restricted Property is collectively referred to herein as the Restricted Property), Declarant (and Declarant's Affiliate, if applicable) shall amend this Declaration to include such Subsequent Property in the definition of Restricted Property and Declarant (and Declarant's Affiliate, if applicable) shall record this Declaration and the accompanying amendment against such Subsequent Property. For purposes of this Declaration, "Declarant's Affiliate" means any Entity directly or indirectly Controlled by Charles W. Daniel. "Controlled" means either the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an Entity, whether through ownership of voting securities or other equity interests, by contract, or otherwise, and "Entity" means any corporation, limited liability company, business unit, joint venture, general partnership, limited partnership, trust or other entity of any nature.

1.3 **Inclusion of Protected Use Covenant in Deeds.** Any deed signed by Declarant and/or Declarant's Affiliate after the date hereof and affecting all or any part of the Restricted Property shall contain the Protected Use Covenant.

1.4 **Leased Property.** In the event Declarant or Declarant's Affiliate leases any of the Restricted Property (a "Lease") Declarant or Declarant's Affiliate shall (i) include the Protected Use Covenants in such Lease and (ii) provided that Declarant or Declarant's Affiliate is the landlord under such Lease at the time of any violation of the Protected Use Covenant, cooperate with Benefited Property Owner's enforcement of the terms of the Protected Use Covenant as to any such tenant, provided, however, that Declarant or Declarant's Affiliate shall have no obligation to exercise any remedies in any Lease against any tenant.

1.5 **Termination.** The Protected Use Covenant shall automatically terminate and be of no further force or effect if (i) at any time Benefitted Property Owner, whose Primary Business is the Restricted Use, ceases to operate on the Benefitted Property for the Restricted Use under the trade name Cavender's (or its successor if such successor continues to sell similar products as Cavender's) for a period in excess of one (1) year (provided such period shall be tolled if such cessation is the result of a casualty, condemnation or event of force majeure and Benefitted Property Owner is diligently working to resume operations thereafter) or (ii) if Benefitted Property Owner fails to open for business on the

Benefitted Property for the Restricted Use by October 20, 2019 (provided such period shall be tolled if such delay is the result of a casualty, condemnation or event of force majeure and Purchaser is diligently working to open for business from the Benefitted Property).

ARTICLE 2

TERM

2.1 **Term**. This Declaration and the rights, obligations and liabilities created herein shall run with the land and extend for a term of forty (40) years from the date hereof, after which time this Declaration shall be automatically renewed and extended for successive and continuous periods of ten (10) years each, unless sooner terminated pursuant to the terms hereof or in writing by Benefitted Property Owner.

ARTICLE 3

3.1 **Remedies**

. In the event of a violation of the Protected Use Covenant by a tenant under a Lease, the sole remedy of Benefitted Property Owner against such party violating the Protected Use Covenant shall be an action for specific performance or damages against such party violating the Protected Use Covenant, provided Declarant has complied with Section 1.4 hereof. In no event shall Benefitted Property Owner have any claims or remedies against Declarant or its successors, provided, however, if (i) Declarant fails to amend this Declaration to include any Subsequent Property as required herein, or (ii) Declarant and/or Declarant's Affiliate breaches any of its obligations, covenants and agreements hereunder, then Benefitted Property Owner shall have all claims and remedies against Declarant and Declarant's Affiliate, as may be provided by law or in equity. Except as limited by the foregoing, Benefitted Property Owner shall have all claims and remedies against third parties (other than Declarant or Declarant's Affiliate) as may be provided by law or in equity against such third party violating the Protected Use Covenant.

ARTICLE 4

MISCELLANEOUS

4.1 **Binding Effect**. The terms of this Declaration shall constitute covenants running with the land and shall inure to the benefit of and be binding upon the signatories hereto and their respective successors and assigns who become parties hereunder.

4.2 **Severability**. Invalidity of any of the provisions contained in this Declaration, or of the application thereof to any person by judgment or court order shall in no way effect any of the other provisions hereof or the application thereof to any other person and the same shall remain in full force and effect.

4.3 **Amendments**. This Declaration may be amended by, and only by, a written agreement signed by the Benefitted Property Owner.

4.4 **Captions and Capitalized Terms.** The captions preceding the text of each article and section are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of the Declaration.

4.5 **Non-waiver.** No waiver of any default by the Benefitted Property Owner shall be implied from any omission by the Benefitted Property Owner to take any action in respect of such default if such default continues or is repeated. No express written waiver of any default shall affect any default or cover any period of time other than the default and period of time specified in such express waiver. One or more written waivers of any default in the performance of any term, provision or covenant contained in this Declaration shall not be deemed to be a waiver of any subsequent default in the performance of the same term, provision or covenant or any other term, provision or covenant contained in this Declaration. The consent or approval by the Benefitted Property Owner to or of any act or request requiring consent or approval shall not be deemed to waive or render unnecessary the consent to or approval of any subsequent or similar acts or requests. The rights and remedies given to the Benefitted Property Owner by this Declaration shall be deemed to be cumulative and no one of such rights and remedies shall be exclusive of any of the others, or if any other right or remedy at law or in equity which Benefitted Property Owner might otherwise have by virtue of a default under this Declaration, and the exercise of one such right or remedy by the Benefitted Property Owner shall not impair Benefitted Property Owner's standing to exercise any other right or remedy.


4.6 **Mortgage Subordination.** Any mortgage, deed of trust, or deed to secure debt affecting any portion of the Restricted Property shall at all times be subject and subordinate to the terms of this Declaration, and any party foreclosing any such mortgage, deed of trust or deed to secure debt, or acquiring title by deed in lieu of foreclosure or trustee's sale shall acquire title subject to all of the terms and provisions of this Declaration. However, no mortgagee, trustee or beneficiary thereunder shall have any liability or obligations hereunder prior to becoming the owner (as opposed to holding title as security for debt or other obligation) of fee simple title to any portion of the Restricted Property, and even then such liability or obligation shall be limited to liabilities and obligations arising from and after such mortgagee's, trustee's or beneficiary's acquisition of fee simple title thereto.

4.7 **Applicable Law/Construction.** This Declaration shall be governed, construed, applied and enforced in accordance with the laws of the State of Alabama.

4.8 **Entire Agreement.** This Declaration, including the Exhibits hereto, set forth the entire understanding and agreement regarding the above matters; all courses of dealing, usage of trade and all prior representations, promises, understandings and agreements, whether oral or written, are suspended by and merged into this Declaration.

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(Signatures appear on the following page)


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IN WITNESS WHEREOF, the undersigned caused this Declaration to be executed effective as of the day and year first above written.

DECLARANT:

THE CWD, L.L.C.,
an Alabama limited liability company

By: *Charles W. Daniel*
Name: Charles W. Daniel
Its: Managing Member

CROSSROADS AT GREYSTONE, LLC
an Alabama limited liability company

By: *Charles W. Daniel*
Name: Charles W. Daniel
Its: Managing Member


DANTRACT, INC.,
an Alabama corporation

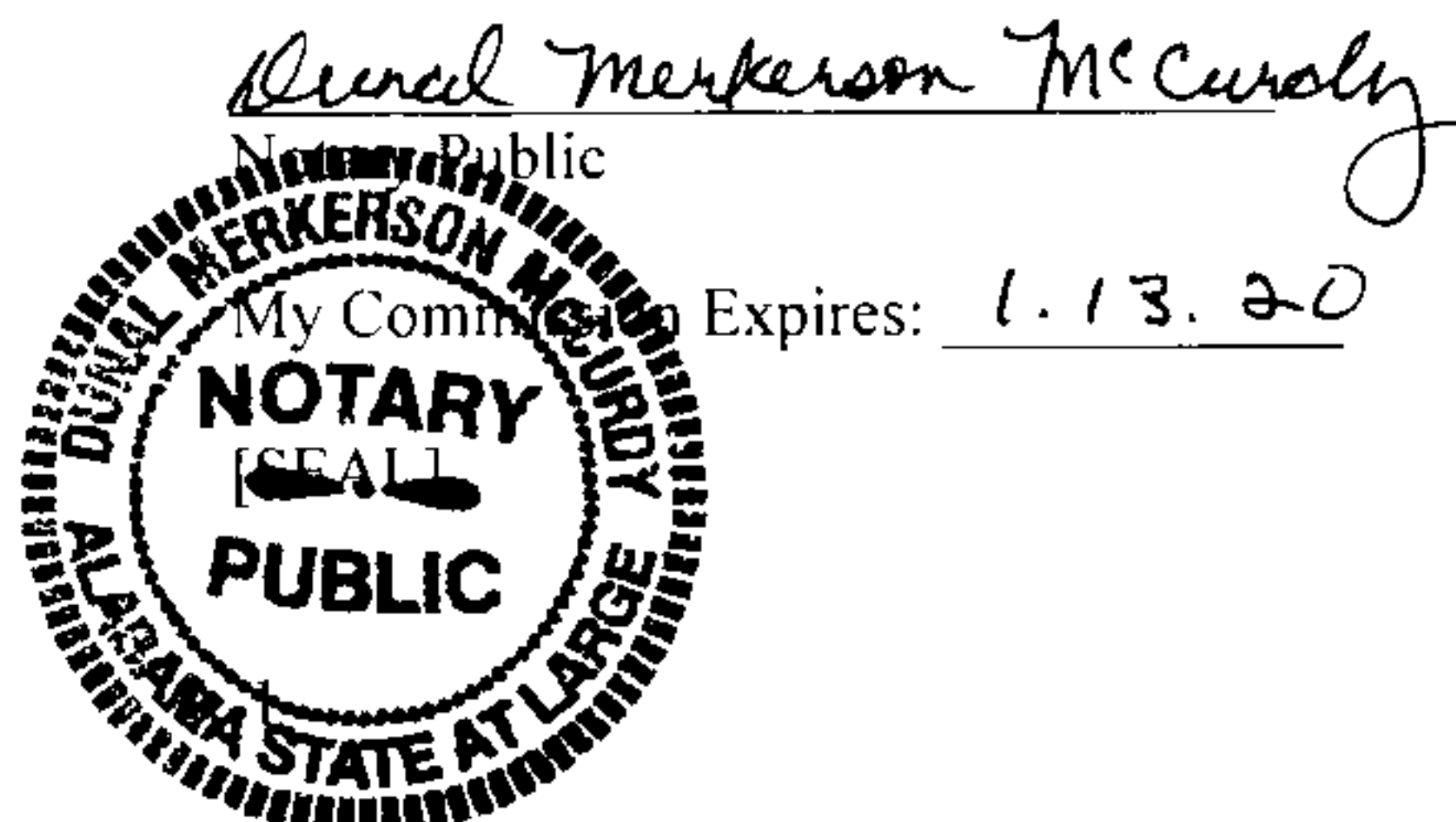
By: *Charles W. Daniel*
Name: Charles W. Daniel
Its: President

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Charles W. Daniel, whose name as Managing Member of The CWD, L.L.C., 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 such instrument, he, 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 19th day of October, 2017.

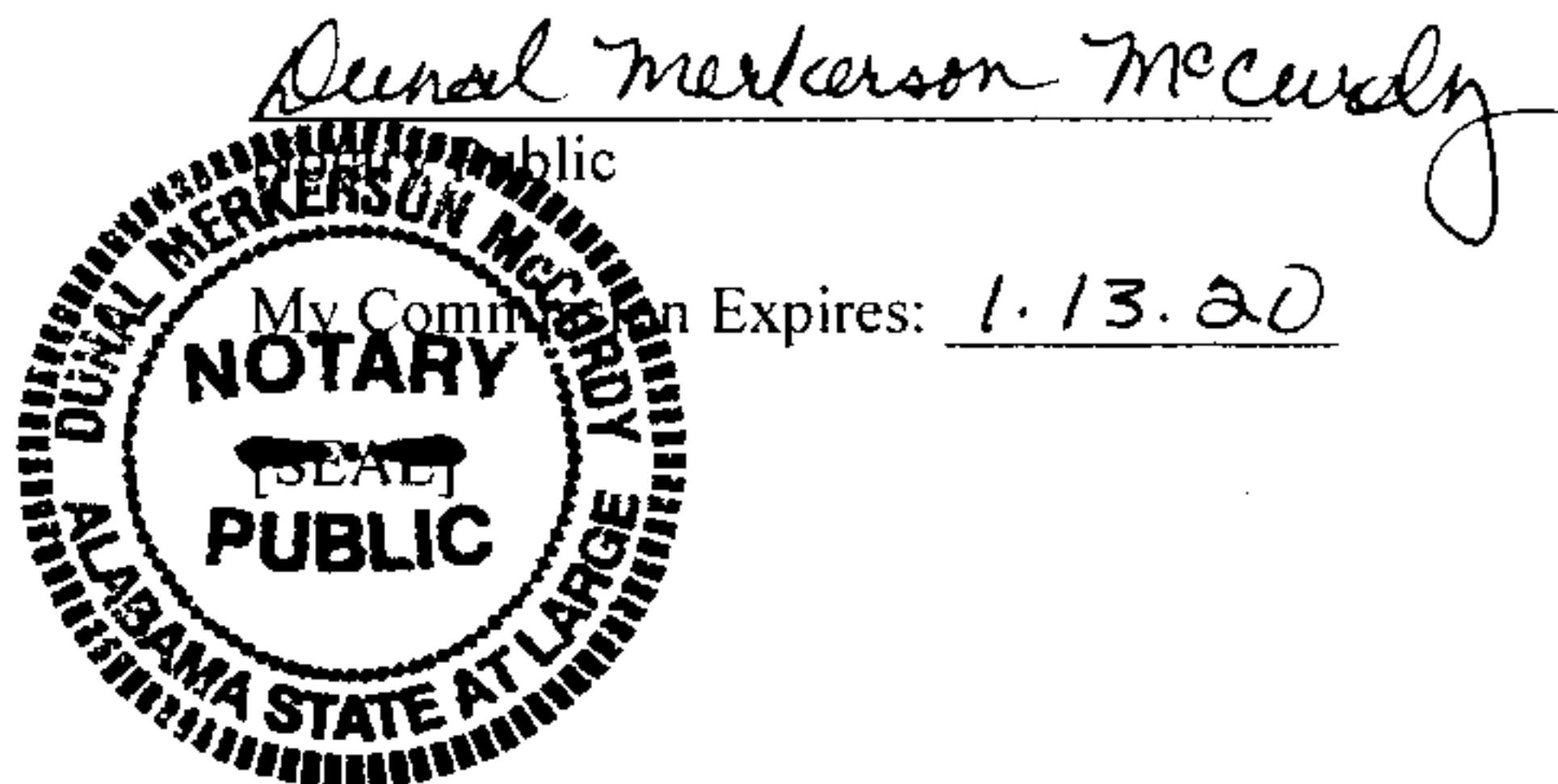

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STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Charles W. Daniel, whose name as Managing Member of Crossroads at Greystone, 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 such instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

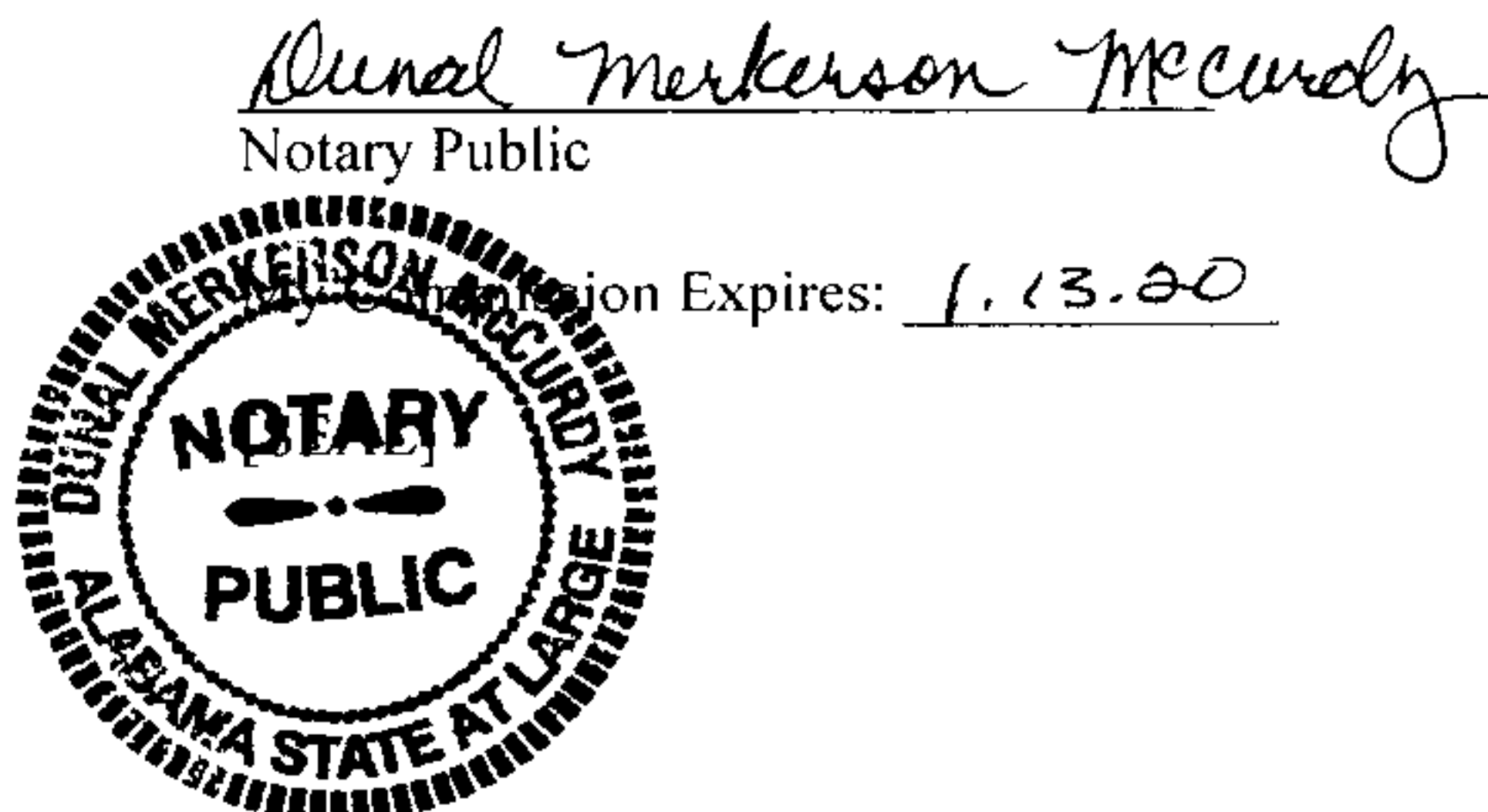
Given under my hand this the 19th day of October, 2017.



STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Charles W. Daniel, whose name as President of DANTRACT, INC., 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 such 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 this the 19th day of October, 2017.



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EXHIBIT A

LEGAL DESCRIPTION OF RESTRICTED PROPERTY

PARCEL 1:

Lots 2 – 6 according to the Final Record Plat of The Crossroads Northeast, recorded as Instrument No. 20050517000236510, being a resurvey of an acreage parcel and Lot 1C School House Properties Subdivision Resurvey No. 1 as recorded in Map Book 24 at Page 39, in the Office of the Judge of Probate of Shelby County, Alabama.

PARCEL 2:

Lot 1A, according to the Resurvey of Lots 1 and 2, The Crossroad at Greystone, as recorded in Map Book 29, page 53, in the Probate Office of Shelby County, Alabama.

PARCEL 3:

That certain parcel of property located in Shelby County, Alabama in Section 31, Township 18 South, Range 1 West, beginning at the northwest corner of the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of said Section 31 south 165 feet, then west 157.08 feet, then northeast 172.1 feet, then east 108.46 feet to the point of beginning. Tax parcel no. 03 9 31 0 001 018.000.

PARCEL 4:

A parcel of land in the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 32, Township 18 South, Range 1 West, more particularly described as follows:

From the SW Corner of said $\frac{1}{4}$ - $\frac{1}{4}$ Section, run North along the West Boundary thereof for a distance of 1167.40 feet to the Northeast right-of-way line of Old U. S. Highway 280; thence turn an angle to the right of 114° 26' 31" and run in a Southeasterly direction along said right-of-way line for a distance of 502.73 feet to the point of beginning of the property herein described; thence turn an angle to the left of 58° 39' 28" and run in a Northeasterly direction for a distance of 83.00 feet to the Northwest right-of-way line of Alabama Highway 119; thence turn an angle to the left of 33° 55' and run in a Northeasterly direction along said right-of-way line for a distance of 55.37 feet; thence turn an angle to the left of 48° 32' 12" and run in a Northwesterly direction for a distance of 123.37 feet to the Southwest right-of-way line of U. S. Highway 280; thence turn an angle to the left of 53° 40' 19" to tangent and run in a Northwesterly direction along said right-of-way line along the arc of a curve to the left having a central angle of 9° 25' 04" and a radius of 2699.79 feet for a distance of 113.92 feet; thence turn an angle to the left of 90° from tangent and run South for a distance of 190.79 feet to Northeasterly right-of-way of Old U. S. Highway 280; thence run Southeasterly along said right-of-way 108.88 feet to the point of beginning, containing 32115.396 square feet or 0.7373 Acres, more or less.




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EXHIBIT B

LEGAL DESCRIPTION OF BENEFITTED PROPERTY

Lot 1A of The Crossroads Northeast being as recorded in Map Book 48, Page 64, Shelby County, Alabama, being a Resurvey of Lot 1, according to the Final Record Plat of The Crossroads Northeast, recorded as Instrument No. 20050517000236510, being a resurvey of an acreage parcel and Lot 1C School House Properties Subdivision Resurvey No. 1 as recorded in Map Book 24 at Page 39, in the Office of the Judge of Probate of Shelby County, Alabama.


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