

**AMENDED AND RESTATED**  
**NON-EXCLUSIVE EASEMENT**

This Amended and Restated Non-Exclusive Easement (this "Easement"), by and among Royal Oaks, LLC, an Alabama limited liability company, and JWS, LLC, an Alabama limited liability company (together, "Grantor"), and Sterling Oaks, LLC, an Alabama limited liability company ("Grantee"), is dated this 4<sup>th</sup> day of MARCH, 2004.

**RECITALS**

This Easement amends and restates that certain Non-Exclusive Easement filed for record on May 28, 2003 as Instrument Number 20030528000328740, in the Office of the Judge of Probate of Shelby County, Alabama.

Grantee intends to construct a sixty (60) unit condominium development (the "Condominiums") in Hoover, Shelby County, Alabama (the legal description is shown on Exhibit A, attached hereto).

Grantor owns a two-hundred (200) apartment development known as the Royal Oaks Apartments (the "Apartments") located adjacent to the Condominiums (the legal description is shown on Exhibit B).

Grantor has entered into an license agreement (the "License") with the Sterling Oaks Owners' Association, Inc. (the "Association") under the terms and conditions of which the members of the Association, the owners of Condominiums, are permitted to use the tennis courts, swimming pool, exercise room and club house (the "Recreation Facilities") located at the Apartments (a copy of the License is attached as Exhibit C).

The purpose of this Non-Exclusive Easement is to provide access to the Apartments to facilitate the exercise of rights granted under the License. This Non-Exclusive Easement provides rights of pedestrian and vehicular access to and egress from the Recreation Facilities, as well as rights to park vehicles at the Apartments when using the Recreation Facilities. Grantor anticipates that once Grantee's construction financing is in place, Grantee will assign its rights under this Non-Exclusive Easement to the Association, for use and enjoyment by its Members.

NOW, THEREFORE, in consideration of the mutual promises exchanged between the parties, Grantor and Grantee covenant and agree as follows:

1. Subject to the lien of and rights of the holder of that certain Mortgage dated September 14, 1994, in favor of Highland Mortgage Company and subsequently assigned to Reilly Mortgage Group, Inc., such Mortgage being recorded as Instrument #1994-28306 in the Office of the Judge of

Probate of Shelby County, Alabama, Grantor does hereby grant, bargain, sell and convey in favor of Grantee, a Non-Exclusive Easement (the "Easement") for pedestrian and vehicular travel over and on the streets, drives and parking areas of the Apartments for ingress and egress to the Apartments and the Recreation Facilities, together with the right to park vehicles thereon as necessary and useful to enjoy the privileges described in the License. Grantee covenants that it shall, and Grantor expressly grants Grantee the right to, assign this Easement to the Association, subject to the lien of Grantee's construction mortgage.

2. This Easement shall terminate at such time that the License has expired under its own terms, or that it has been terminated under the express terms of the License, and notice thereof has been placed of record.

TO HAVE AND TO HOLD unto the Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, the undersigned have executed this conveyance on this the 4 day of March, 2004.

**Royal Oaks, LLC**

By: **Windy Hill Corporation**  
its sole member

By: Ingram D. Tynes  
Ingram D. Tynes  
As its President

Betty A. Thibodeau  
Witness

**JWS, LLC**

By: James W. Shepherd  
James W. Shepherd  
Sole Member

Betty A. Thibodeau  
Witness

STATE OF ALABAMA     )  
COUNTY OF SHELBY    )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Ingram D. Tynes, whose name as President of Windy Hill Corporation, an Alabama corporation, as Sole Member of Royal Oaks, LLC, an Alabama limited liability company, is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day, that, being informed the contents of the conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation in its capacity as Sole Member of said limited liability company.

Given under my hand and official seal this 4th day of March, 2004.

Kathy F. Dickinson  
Notary Public

My commission expires: June 17, 2004

STATE OF ALABAMA     )  
COUNTY OF SHELBY    )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that James W. Shepherd, whose name as Sole Member of JWS, LLC, an Alabama limited liability company, is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day, that, being informed the contents of the conveyance, he, as Sole Member and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this 4th day of March, 2004.

Kathy F. Dickinson  
Notary Public

My commission expires: June 17, 2007

## **EXHIBIT A**

Lot 2, according to the Survey of Southwood Park Estates, First Addition to Hoover, as recorded in Map Book 17, Page 89, in the Probate Office of Shelby County, Alabama; TOGETHER WITH easement rights granted in that certain Amendment No. 3 to the Declaration of Protective Covenants, Agreements, Easements and charges and Liens recorded in Misc. Book 19, Page 633, in the Probate Office of Shelby County, Alabama.



## **EXHIBIT B**

Part of the N1/2 of Section 30, Township 19 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows: Commence at the Southeast corner of the Northwest 1/4 of Section 30, Township 19 South, Range 2 West, Shelby County, Alabama; thence run in a Westerly direction along the South line of said 1/4 Section for a distance of 2,300.55 feet; thence turn an angle to the right of 86° and run in a Northwesterly direction along the Northeasterly right of way line of U.S. Highway #31 South for a distance of 1,096.84 feet; thence turn an angle to the right of 101° 03' 10" and run in an Easterly direction for a distance of 346.16 feet; thence turn an angle to the left of 71° 19' 50" and run in a Northeasterly direction for a distance of 580.0 feet; thence turn an angle to the right of 18° 59' 22" and run in a Northeasterly direction for a distance of 525.54 feet; thence turn an angle to the right of 101° 40' 03" and run in a Southeasterly direction for a distance of 526.96 feet; thence turn an angle to the right of 31° 30' and run in a Southeasterly direction for a distance of 176.65 feet; thence turn an angle to the right of 0° 14' 53" and run in a Southeasterly direction 60.00 feet to the point of beginning of the following described curve; thence turn an angle from the last described course to the left of 90° to the tangent of a curve to the left having a central angle of 26° 08' 31" and the radius of 438.82 feet; thence run along the arc of said curve in a Northeasterly direction 200.21 feet to the point of beginning; from the point of beginning thus obtained, thence turn an angle to the right from the tangent, if extended to the last described curve, of 98° 10' 47" and run in a Southeasterly direction 453.07 feet; thence turn an angle to the left of 79° 02' and run in a Northeasterly direction 437.50 feet; thence turn an angle to the left of 69° 12' and run in a Northeasterly direction 106.97 feet; thence turn an angle to the right of 69° 12' and run in a Northeasterly direction 135.01 feet; thence turn an angle to the right of 51° 22' 30" and run in a Southeasterly direction 128.00 feet; thence turn an angle to the left of 51° 22' 30" and run in a Northeasterly direction 506 feet; thence turn an angle to the left of 92° 14' and run in a Northwesterly direction 128 feet; thence turn an angle to the left of 31° 36' 13" and run in a Northwesterly direction 200 feet; thence turn an angle to the left of 35° 58' 40" and run in a Northwesterly direction 82.00 feet; thence turn an angle to the right of 66° 44' 03" and run in a Northwesterly direction 190 feet; thence turn an angle to the left of 49° 03' 36" and run in a Northwesterly direction 256.06 feet to a point on the South right of way line of Woods of Riverchase Drive; thence turn an angle to the left of 63° 36' 40" to the tangent of a curve to the left, having a central angle of 1° 25' 23" and a radius of 382.25 feet; thence run along the arc of said curve to the left in a Southwesterly direction along said South line of Woods of Riverchase Drive 9.49 feet to the end of said curve; thence continue along the tangent, if extended to the last described curve, and run in a Southwesterly direction along the South line of said Woods of Riverchase Drive 61.24 feet to the point of beginning of a curve to the right, said curve having a central angle of 45° 57' 43" and a radius of 402 feet; thence run along the arc of said curve to the right along said right of way line in a Southwesterly direction 322.48 feet to the end of said curve and the point of beginning of a curve to the left, said curve having a central angle of 62° and a radius of 342 feet; thence run along the arc of said curve to the left and along said right of way line in a Southwesterly direction 370.08 feet to the end of said curve and the point of beginning of a curve to the right, said curve having a central angle of 24° 03' 59" and a radius of 438.82 feet; thence run along the arc of said curve to the right along said right of way line in a Southwesterly direction 184.32 feet to the point of beginning.

STATE OF ALABAMA       )  
COUNTY OF SHELBY     )

**AMENDED AND RESTATED LICENSE**

This Amended and Restated License (the "License"), by and among Royal Oaks, LLC, an Alabama limited liability company, and JWS, LLC, an Alabama limited liability company (together, "Royal"), Licensor, and Sterling Oaks Owners' Association, Inc. an Alabama not-for-profit corporation, Licensee (the "Association"), is dated this 4th day of March, 2004.

**RECITALS**

This License amends and restates that certain License dated as of May 27, 2003, and filed for record on May 28, 2003, as Instrument Number 20030528000328750 in the Office of the Judge of Probate of Shelby County, Alabama.

Royal owns a two hundred (200) unit apartment development known as the Royal Oaks Apartments (the "Apartments") in Hoover, Shelby County, Alabama (the legal description is shown on Exhibit A, attached hereto). Title to the Apartments and rights granted under this License are subject to the lien of a mortgage (the "Mortgage") dated September 14, 1994, in favor of Highland Mortgage Company and subsequently assigned to Reilly Mortgage Group, Inc., the Mortgage being recorded as Instrument # 1994-28306 in the Office of the Judge of Probate of Shelby County, Alabama

Sterling Oaks, LLC, an Alabama limited liability company ("Sterling"), intends to construct a sixty (60) unit condominium development (the "Condominiums") in Hoover, on real property that is adjacent to the Apartments (the legal description is shown on Exhibit B, attached hereto).

The Association, whose membership is composed of all of the owners of the Condominiums (the "Members"), has requested Royal to make available to the Members the use of the tennis courts, swimming pool, exercise room and club house (the "Recreation Facilities") located at the Apartments. Royal has agreed to such request, subject and according to certain terms and conditions to be set forth in a license agreement with the Association.

This irrevocable License is coupled with an interest and shall continue to be in full force and effect should title to the Apartments be conveyed by the present owners. Take notice, however, that rights granted under this License are subject to the prior rights of the holder of the first mortgage on the Apartments.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, Royal and the Association covenant and agree as follows:

1. Royal grants to the Association the irrevocable License for and during a period of fifteen (15) years for its Members, their guests and invitees when accompanied by an Association Member, at reasonable times and during hours to be determined by Royal, to have the use and enjoyment of the Recreation Facilities; namely, the



tennis courts, swimming pool, exercise room and club house, in the same manner and to the extent that residents of the Apartments are permitted such use and enjoyment, subject to reasonable rules and restrictions as to use and behavior published from time to time by Royal (copies of current Rules are posted in Recreation Facilities and are available upon request through the Association).

2. This License shall renew automatically for a period of fifteen (15) years at the end of the initial fifteen-year term, and at the end of subsequent fifteen-year terms, subject to the right of Royal and of the Association not to renew, by giving the other written notice of non-renewal not less than sixty (60) days prior to the end of the applicable fifteen-year period.
3. The Association shall have the option on the tenth (10<sup>th</sup>) anniversary of the effective date of this License, and at the end of each five-year period thereafter, to cancel this License by giving written notice thereof received by Royal not later than sixty (60) days before the end of the applicable five-year period.
4. In the event that the Apartments are conveyed, the terms of this License shall continue to be binding on and be enforceable against subsequent purchasers, which enforceability shall include, but not be limited to, specific performance.
5. The Association accepts the terms and conditions of this License and agrees:
  - a. To pay to Royal a License fee ("Fee") in the initial annual amount of Fourteen Thousand and No/100 Dollars (\$14,400.00), payable in quarterly installments of \$3,500.00, in advance. The Fee shall increase each year by an amount equal to 2.5% of the Fee paid in the previous year.
  - b. During years one and two, the Fee shall be prorated based on the percentage of the sixty Condominiums that have closed at the time payments are due.
  - c. Royal, and its successors, shall have the right to terminate this License for nonpayment of the Fee in the event that a quarterly payment remains unpaid after written notice to the Association and the passing of a 30-day right to cure the default, followed by a final written notice and right to cure of ten (10) days. Royal and its successors shall also have the right to cancel this License after two (2) written notices to the Association of continued unacceptable behavior or conduct in the Recreation Facilities by persons exercising rights under the License, each followed by a ten (10) day notice of right to cure, provided, however, that the right to cancel based on such conduct and notice must be effected within ten (10) days after the expiration of the cure period provided in the second notice.

- d. In the event the Mortgage or any subsequent first mortgage is foreclosed, or the holder of the Mortgage or subsequent first mortgage takes possession of the Apartments, the holder shall have the option of keeping the License in force upon notice to the Association, or canceling the License upon notice to the Association within ninety (90) days after the date of foreclosure. So long as HUD is a guarantor of the mortgage or mortgagee, the License shall be automatically terminated in the event of foreclosure or the taking of possession of the Apartments by Lender.
  - e. If in the exercise of the reasonable judgment of Royal, its agents or employees, persons accessing the Recreation Facilities under the authority of the License fail to follow posted rules, or are abusive of property or people, the offending persons may be barred from the Apartments premises as reasonably determined by personnel responsible for the use of the Recreation Facilities. In the event that offending behavior of such persons is egregious or continuing, after written notice to the Association, and the expiration of a 30-day right to cure, Royal may permanently bar the use of the Recreation Facilities by the offending users of the License.
  - f. Beginning January 1, 2005, in addition to the 2-1/2% annual increase, Royal may increase the Fee if and to the extent that costs related to the operation and use of the Recreation Facilities attributable to use by persons accessing the facilities under the authority of this License are greater than the 2-1/2% escalation provision contained in Section 5 a, above.
  - g. The Association acknowledges that it is responsible for the conduct of its Members during their exercise of rights under the License. Not only will it make a continuing and diligent effort to see that the Members comply with the published rules regarding use of the Recreation Facilities, the Association will and does indemnify Royal for all damage, cost and harm caused Royal by persons accessing the Recreation Facilities under the authority of this License.
  - h. The Association will upon request provide Royal with a list of the names of the Members of the Association each calendar quarter.
6. Any notice to the Association provided for in this License shall be given by mailing such notice by certified mail addressed to the Association at 820 Shades Creek Parkway, Suite 2300, Birmingham, Alabama 35209, or to such other address as the Association may designate by notice to Royal. Any notice to Royal shall be given by mailing such notice by certified mail, return receipt requested, to Royal at 820 Shades Creek Parkway, Suite 2300, Birmingham, Alabama 35209, or to such other address as Royal may designate by notice to the Association.

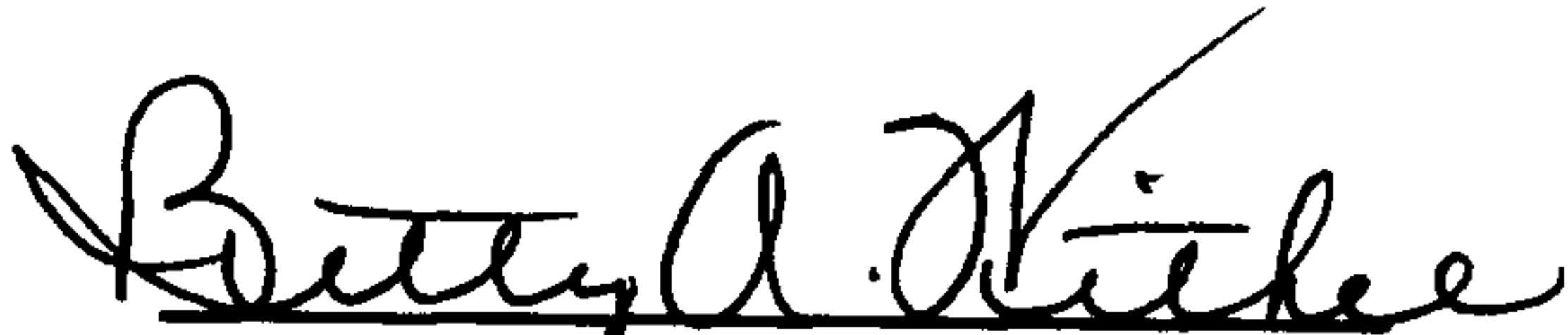


IN WITNESS WHEREOF, the undersigned have executed this instrument as of the day and year first set forth above.


**Royal Oaks, LLC, an Alabama limited liability company**


By: **Windy Hill Corporation, as its sole Member**

By:   
**Ingram D. Tynes, as its President**

  
**Witness**


**JWS, LLC, an Alabama limited liability company**

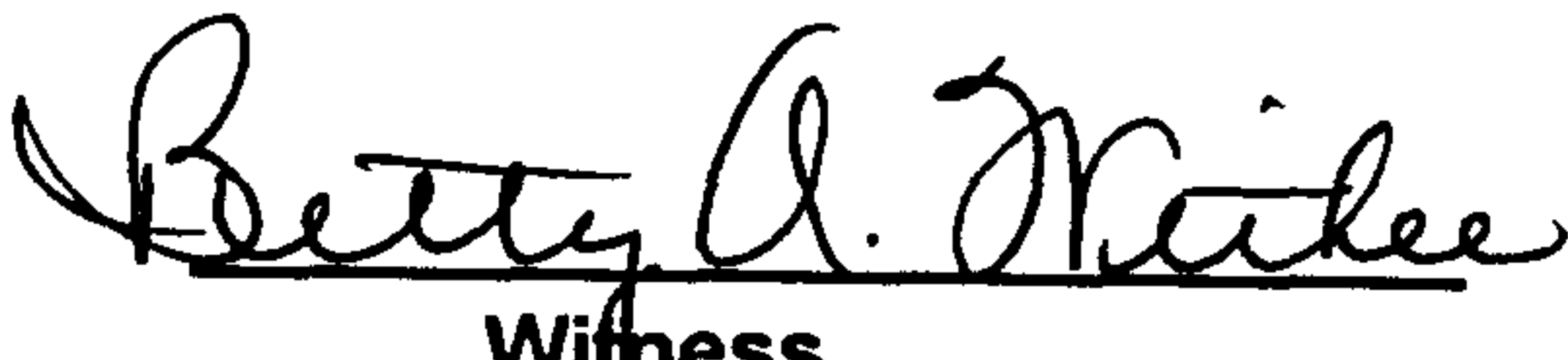
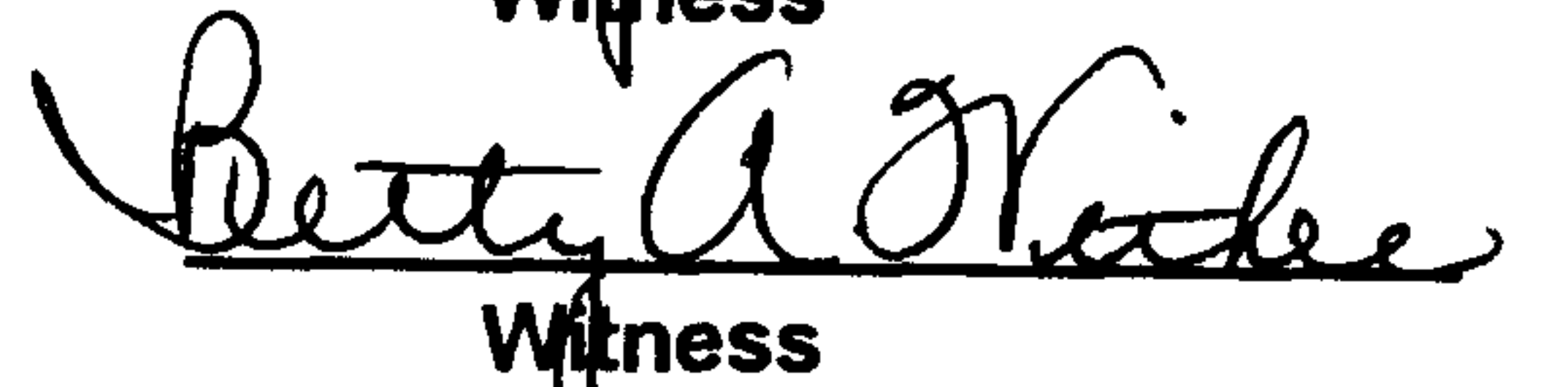
By:   
**James W. Shepherd**  
**Sole Member**

  
**Witness**

**Sterling Oaks Owners' Association, Inc., an Alabama not for profit corporation**

By:   
**Ingram D. Tynes, as its Director**

By:   
**Dawn Ann Tynes, as its Director**

  
**Witness**  
  
**Witness**

STATE OF ALABAMA       )  
COUNTY OF SHELBY       )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Ingram D. Tynes, whose name as President of Windy Hill Corporation, a corporation, in its capacity as sole member of Royal Oaks, 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 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 in its capacity as sole member.

Given under my hand and official seal this 4th day of March, 2004.

Kathy F. Dickinson  
Notary Public

My commission expires: June 17, 2007

STATE OF ALABAMA       )  
COUNTY OF SHELBY       )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that James W. Shepherd, whose name as Sole Member of JWS, 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 the contents of the instrument, he, as Sole Member and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this 4th day of March, 2004.

Kathy F. Dickinson  
Notary Public

My commission expires: June 17, 2007

STATE OF ALABAMA       )  
COUNTY OF SHELBY       )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Ingram D. Tynes, whose name as Director of Sterling Oaks Owners' Association, Inc., a corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day, that, being informed the contents of the instrument, he, as such Director and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this 4th day of March, 2004.

Kathy F. Dickinson  
Notary Public

My commission expires: June 17, 2007

STATE OF ALABAMA       )  
COUNTY OF SHELBY       )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Dawn Ann Tynes, whose name as Director of Sterling Oaks Owners' Association, Inc., a corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day, that, being informed the contents of the instrument, she, as such Director and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this 4th day of March, 2004.

Kathy F. Dickinson  
Notary Public

My commission expires: June 17, 2007

This instrument prepared by:  
James J. Odom, Jr., Esq.  
Post Office Box 11244  
Birmingham, AL 35202-1244



## **EXHIBIT A**

Part of the N1/2 of Section 30, Township 19 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows: Commence at the Southeast corner of the Northwest 1/4 of Section 30, Township 19 South, Range 2 West, Shelby County, Alabama; thence run in a Westerly direction along the South line of said 1/4 Section for a distance of 2,300.55 feet; thence turn an angle to the right of 86° and run in a Northwesterly direction along the Northeasterly right of way line of U.S. Highway #31 South for a distance of 1,096.84 feet; thence turn an angle to the right of 101° 03' 10" and run in an Easterly direction for a distance of 346.16 feet; thence turn an angle to the left of 71° 19' 50" and run in a Northeasterly direction for a distance of 580.0 feet; thence turn an angle to the right of 18° 59' 22" and run in a Northeasterly direction for a distance of 525.54 feet; thence turn an angle to the right of 101° 40' 03" and run in a Southeasterly direction for a distance of 526.96 feet; thence turn an angle to the right of 31° 30' and run in a Southeasterly direction for a distance of 176.65 feet; thence turn an angle to the right of 0° 14' 53" and run in a Southeasterly direction 60.00 feet to the point of beginning of the following described curve; thence turn an angle from the last described course to the left of 90° to the tangent of a curve to the left having a central angle of 26° 08' 31" and the radius of 438.82 feet; thence run along the arc of said curve in a Northeasterly direction 200.21 feet to the point of beginning; from the point of beginning thus obtained, thence turn an angle to the right from the tangent, if extended to the last described curve, of 98° 10' 47" and run in a Southeasterly direction 453.07 feet; thence turn an angle to the left of 79° 02' and run in a Northeasterly direction 437.50 feet; thence turn an angle to the left of 69° 12' and run in a Northeasterly direction 106.97 feet; thence turn an angle to the right of 69° 12' and run in a Northeasterly direction 135.01 feet; thence turn an angle to the right of 51° 22' 30" and run in a Southeasterly direction 128.00 feet; thence turn an angle to the left of 51° 22' 30" and run in a Northeasterly direction 506 feet; thence turn an angle to the left of 92° 14' and run in a Northwesterly direction 128 feet; thence turn an angle to the left of 31° 36' 13" and run in a Northwesterly direction 200 feet; thence turn an angle to the left of 35° 58' 40" and run in a Northwesterly direction 82.00 feet; thence turn an angle to the right of 66° 44' 03" and run in a Northwesterly direction 190 feet; thence turn an angle to the left of 49° 03' 36" and run in a Northwesterly direction 256.06 feet to a point on the South right of way line of Woods of Riverchase Drive; thence turn an angle to the left of 63° 36' 40" to the tangent of a curve to the left, having a central angle of 1° 25' 23" and a radius of 382.25 feet; thence run along the arc of said curve to the left in a Southwesterly direction along said South line of Woods of Riverchase Drive 9.49 feet to the end of said curve; thence continue along the tangent, if extended to the last described curve, and run in a Southwesterly direction along the South line of said Woods of Riverchase Drive 61.24 feet to the point of beginning of a curve to the right, said curve having a central angle of 45° 57' 43" and a radius of 402 feet; thence run along the arc of said curve to the right along said right of way line in a Southwesterly direction 322.48 feet to the end of said curve and the point of beginning of a curve to the left, said curve having a central angle of 62° and a radius of 342 feet; thence run along the arc of said curve to the left and along said right of way line in a Southwesterly direction 370.08 feet to the end of said curve and the point of beginning of a curve to the right, said curve having a central angle of 24° 03' 59" and a radius of 438.82 feet; thence run along the arc of said curve to the right along said right of way line in a Southwesterly direction 184.32 feet to the point of beginning.

**EXHIBIT B**

Lot 2, according to the Survey of Southwood Park Estates, First Addition to Hoover, as recorded in Map Book 17, Page 89, in the Probate Office of Shelby County, Alabama; TOGETHER WITH easement rights granted in that certain Amendment No. 3 to the Declaration of Protective Covenants, Agreements, Easements and charges and Liens recorded in Misc. Book 19, Page 633, in the Probate Office of Shelby County, Alabama.