

WAKE COUNTY, NC 480
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
01/17/2007 AT 15:44:54

BOOK:012360 PAGE:00788 - 00795

Prepared by and after recording, hold for:
Robert J. Ramseur, Jr.
Ragsdale Liggett PLLC
Box #161

STATE OF NORTH CAROLINA
COUNTY OF WAKE

CROSS ACCESS EASEMENT

This Cross Access Easement (the "Easement") is made and entered into as of this 17th day of January, 2007, by **RAYMOND STREET LLC**, a North Carolina limited liability company ("RAYMOND STREET"), **GEPHART HILL PROPERTIES & CONSTRUCTION LLC**, a North Carolina limited liability company ("GEPHART"), **FINCO HOLDINGS LLC**, a North Carolina limited liability company ("FINCO") and **KERR SMITH HOMES & LAND, INC.**, a North Carolina corporation ("KERR-SMITH").

RECITALS

1. RAYMOND is the owner of Lots 1, 2 and 17, as show on the plat recorded in Book of Maps 2006, Page 2670, Wake County Registry, to which reference is made for a more accurate description ("RAYMOND's Property").
2. GEPHART is the owner of Lots 11 and 14, as show on the plat recorded in Book of Maps 2006, Page 2670, Wake County Registry, to which reference is made for a more accurate description ("GEPHART's Property").
3. FINCO is the owner of Lots 15 and 18, as show on the plat recorded in Book of Maps 2006, Page 2670, Wake County Registry, to which reference is made for a more accurate description ("FINCO's Property").

4. KERR-SMITH is the owner of Lots 13 and 16, as show on the plat recorded in Book of Maps 2006, Page 2670, Wake County Registry, to which reference is made for a more accurate description ("KERR-SMITH's Property").
5. Portions of the surfaces of the Lots are to be paved and used for vehicular and pedestrian ingress, egress and regress to and from the adjoining public street currently known as Daisy Street.
6. RAYMOND, GEPHART, FINCO and KERR-SMITH desire to declare perpetual, non-exclusive rights and easements across the proposed paved driveways located on the rear of the Lots, all on the terms and conditions as hereinafter described.

NOW, THEREFORE, in consideration of Ten and no/100 Dollars (\$10.00), the mutual conditions and provisions contained herein, and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, RAYMOND, GEPHART, FINCO and KERR-SMITH agree as follows:

I. ***Definitions.***

- A. *Improvements* means the driveways, roadways and parking lots and appurtenant facilities constructed or to be constructed on the Lots.
- B. *Lot or Lots* means the RAYMOND, GEPHART, FINCO and KERR-SMITH Property, individually or collectively as the context requires.
- C. *Cross Access Easement Area* means the two 18 foot access easements as shown on a map recorded in Book of Maps 2006, Page 2670, Wake County Registry, but excluding the areas used and/or reserved for parking located on the Lots.
- D. *Owner* means the record holder of fee simple title to a Lot, its heirs, legal representatives, successors and assigns, but does not include a person holding legal title merely as security for an obligation.

II. ***Grant of Easements.***

A. Subject to the conditions and limitations hereinafter stated, the Owner of each Lot, as grantor, hereby grants, bargains, sells and conveys to the Owner of the other Lots and its tenants, employees, agents, customers, licensees, guests, and invitees, for the benefit of such Lot and the Owner thereof, as grantee, a perpetual, non-exclusive easement, right-of-way and privilege for unobstructed access, ingress and egress by vehicular and pedestrian traffic, upon, over and across the on-site driveways, aisles, entrances and exits, and other paved areas on the Lots located within the Cross Access Easement Area (the "Cross Access Easement"). The easement of passage and use granted herein shall be solely for the purpose of access, ingress and egress over the Lots to and from Daisy Drive, as shown on the map recorded in Book of Maps 2006, Page 2670, Wake County Registry.

B. Subject to Sections IV and V below, no buildings or other structures shall be constructed by the Owner of a Lot on or so as to encroach into or interfere with the use of the Cross Access Easement Area as contemplated herein, nor shall the Owner of a Lot erect any barrier of any type or interfere with the access and free flow of vehicular and pedestrian traffic

over any portion of the Cross Access Easement Area, except for such temporary closures so as to maintain the Cross Access Easement Area or to prevent a public dedication of same, and then only after prior, written notice has been given to the Owner of the other Lot.

III. *Maintenance of Easement Areas.*

A. Each Owner shall maintain the parking lot and driveways located on its respective Lot that are within the Cross Access Easement Area in a level, evenly paved condition, free of snow, ice and debris.

B. Notwithstanding the foregoing, maintenance of any portion of the Cross Access Easement Area shall include, but not be limited to the following:

(i) *Drives and Cross Access Easement Area.* Maintaining, repairing and replacing all paved surfaces and curves in a smooth and evenly covered condition, including, without limitation, replacement of base, skin patch, resealing and resurfacing. All repair and replacement shall be completed with paving materials of a high and professional quality and shall equal or exceed the minimum standards for paving materials as set forth by the North Carolina Department of Transportation.

(ii) *Debris and Refuse.* Periodic removal of all papers, debris, filth, refuse, ice and snow, including vacuuming and broom sweeping to the extent necessary to keep such Cross Access Easement Area in a first class, clean and orderly condition.

IV. *Rights Reserved By the Owners.* The Owner of each Lot, and its respective successors and assigns, reserves all other rights with regard to the portions of the Cross Access Easement Area located on its Lot, including specifically, without limitation, the following rights:

A. The right to construct, install, use, inspect, maintain, repair and replace water, sewer, storm sewer, surface water drainage, electric, gas and telephone distribution lines and facilities on, over, under, across, and through the Cross Access Easement Area, including specifically, without limitation, the right to grant easements to third parties, municipalities and public utilities for any such lines and facilities.

B. To temporarily use or cause to be withdrawn from use such portions of the Cross Access Easement Area as may be occasioned by the installation, maintenance, or repair of either underground or overhead utility conduits, lines, or facilities, or other improvements.

C. The right to grant other non-exclusive access easements over the Cross Access Easement Area providing for the use of the Cross Access Easement Area by others in common with the Owners of the Lots.

V. *Relocation of the Cross Access Easement Area.* An Owner of a Lot may relocate any or all of the portion of the Cross Access Easement Area lying on its Lot, provided such Owner gives notice to the Owner of the other Lot of such relocation and after such relocation, the other Owner shall have access over such relocated driveways, walkways, entrances, and exits and other paved areas which are the functional equivalent of the access as it existed prior to such relocation. After such relocation, the rights of the Owners to use the Cross Access Easement Area as configured immediately prior to such relocation shall terminate and be transferred to the Cross Access Easement Area as relocated.

VI. *General Provisions.*

A. *Run With the Land; Enforcement.* Except as expressly provided herein, each restriction, easement, or obligation on each Lot shall be a burden on such Lot (and any further subdivision thereof), and each right and privilege benefitting each Lot shall be appurtenant to and for the benefit of such Lot (and any further subdivision thereof), and shall run with such Lot and all of the Lots (and any further subdivision thereof) and may be enforced by each Owner of the Lots.

B. *Successors and Assigns.* This Easement and the restrictions, easements and obligations created hereby shall be binding upon the Owners, their heirs, legal representatives, successors and assigns, and upon any person or entity acquiring any of the Lots, or any portion thereof, or any interest therein, whether by operation of law or otherwise; provided, however, that if an Owner of a Lot sells all or any portion of its interest in such Lot, such owner thereupon shall be released and discharged from any and all obligations as Owner in connection with the property sold by it arising under this Easement accruing after the sale and conveyance of title, but shall remain liable for all obligations arising under this Easement accruing prior to the sale and conveyance of title. The new owner of a Lot or any portion thereof (including, without limitation, any owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all obligations arising under this Easement with respect to such Lot or portion thereof from and after the date of sale and conveyance of title. This Easement and the restrictions, easements and obligations created hereby shall inure to the benefit of the Owners of the Lots, their heirs, legal representatives, successors and assigns, and to any person or entity acquiring a Lot, or any portion thereof, or any interest therein, whether by operation of law or otherwise.

C. *Modification and Termination.* The provisions of this Easement only may be modified, rescinded or amended in whole or in part by the Owners, by an instrument in writing among all of the Owners and duly recorded in the Wake County Registry.

D. *Non-Dedication.* Nothing contained in this Easement shall be deemed to be a gift or dedication of any portion of the Cross Access Easement Area to the general public or for any public use or purpose whatsoever, it being the intention of the Owners that nothing in this Easement, expressed or implied shall confer upon any person, other than as expressly contemplated hereunder any rights or remedies under or by reason of this Easement.

E. *Third Party Beneficiary Rights.* This Easement is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not a party hereto unless otherwise expressly provided herein.

F. *Captions and Headings.* The captions and headings in this Easement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or easements contained herein.

G. *Construction.* In construing the provisions of this Easement and whenever the context so requires, the use of gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

H. *Joint and Several Obligations.* If there is more than one owner of a Lot, the obligations of such Owners of such Lot shall be joint and several.

I. *Multiple Counterparts.* This Easement may be executed in counterparts, each of which shall be deemed as original, but all of which, when taken together, shall constitute but one (1) and the same instrument.

IN WITNESS WHEREOF, this Easement is executed under seal as of the day and year first above written.

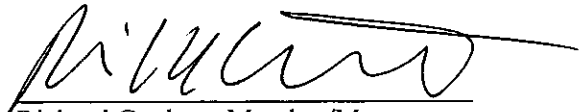
[Signature pages follow.]

Signature Page to
Cross Access Easement

(CORPORATE SEAL)

RAYMOND:

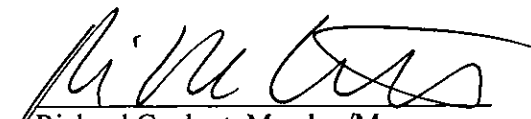
RAYMOND STREET LLC,
a North Carolina limited liability company

By: 
Richard Gephart, Member/Manager

GEPHART:

**GEPHART HILL PROPERTIES &
CONSTRUCTION LLC,**
a North Carolina limited liability company

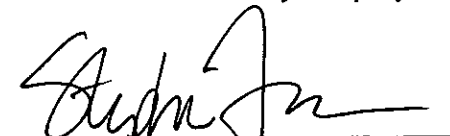
(CORPORATE SEAL)

By: 
Richard Gephart, Member/Manager

FINCO:

FINCO HOLDINGS LLC,
a North Carolina limited liability company

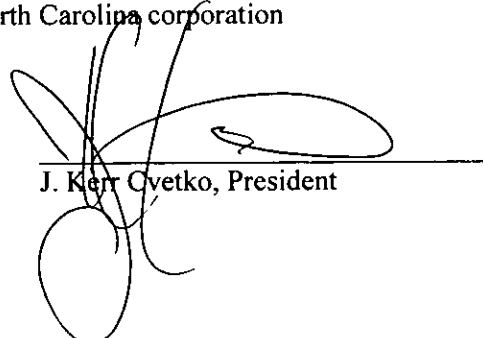
(CORPORATE SEAL)

By: 
Stephen Fincher, Member/Manager

KERR-SMITH:

KERR-SMITH HOMES & LAND, INC.,
a North Carolina corporation

(CORPORATE SEAL)

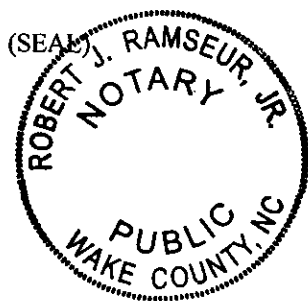
By: 
J. Kerr Ovetko, President

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, a Notary Public of the County and State aforesaid, certify that the following person(s) personally appeared before me this day, each acknowledging that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: **Richard Gephart, as Member/Manager of RAYMOND STREET LLC, a North Carolina limited liability company, and as Member/Manager of GEPHART HILL PROPERTIES & CONSTRUCTION LLC, a North Carolina limited liability company; Stephen Fincher, as Member/Manager of FINCO HOLDINGS LLC, a North Carolina limited liability company; and J. Kerr Cvetko, as President of KERR-SMITH HOMES & LAND, INC., a North Carolina corporation**

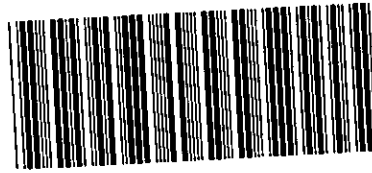
Date: January 11, 2007



A handwritten signature in black ink, appearing to read "Robert J. Ramseur, Jr.", written over a horizontal line.

Robert J. Ramseur, Jr.
Notary Public

My commission expires: August 10, 2011



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**Yellow probate sheet is a vital part of your recorded document.
Please retain with original document and submit for rerecording.**



**Wake County Register of Deeds
Laura M. Riddick
Register of Deeds**

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This Document
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_____ # of Pages
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