

Drawn by & HOLD FOR:  
 PERRY, PATRICK, FARMER & MICHAUX, P.A. (WP)

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REGISTRATION

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REGISTERED  
 WAKE COUNTY

STATE OF NORTH CAROLINA  
 COUNTY OF WAKE

RESTRICTIVE COVENANTS  
 FOR  
 GRESHAM TRACE

(PHASE I)

KNOW ALL MEN BY THESE PRESENTS, that M/I SCHOTTENSTEIN HOMES, INC., an Ohio corporation (hereinafter "Declarant"), does hereby covenant and agree with all persons, firms, and corporations hereafter acquiring any of the property described as follows on Exhibit A attached hereto and made a part hereof, that all of said Lots are hereby subjected to the following restrictive covenants as to the use thereof, which restrictive covenants shall run with the property, by whomsoever owned, to wit:

1. LAND USE AND BUILDING TYPE. All Lots shall be used for residential purposes. No structure shall be erected, altered, placed or permitted to remain on any Lot other than one detached, single-family dwelling, not to exceed two and one-half (2 1/2) stories in height, a private garage for not more than three (3) cars, and other out-buildings incidental to residential use of the Lot. Nothing herein shall be deemed to prohibit conversion of a Lot to a street or to Common Property.

2. DWELLING SIZE. The minimum heated square footage of a dwelling may not be less than 1200 square feet.

3. BUILDING SETBACKS; HOUSE LOCATION. No dwelling shall be erected or maintained on any Lot outside of the building envelope shown on the recorded plat of the subdivision or as otherwise provided in the Zoning Ordinance of the City of Raleigh as amended from time to time (hereinafter the "Zoning Ordinance"). For purposes of these building setback requirements, decks, porches, eaves, carports and other similar projections shall be deemed to be part of the dwelling only to the extent that the same are deemed to be part of the dwelling under the zoning ordinance of the City of Raleigh as it exists as of the date of these Covenants. Any dwelling erected on a Lot other than a corner lot shall face the street on which the Lot abuts. On corner lots, a dwelling may be erected so as to face the intersection of the two streets on which the Lot abuts.

4. FENCES. No fence or wall shall be erected on any Lot closer to any street than the front or side building setback line. Chain-link or other metal fencing is not permitted. No fence shall exceed six feet (6.0') in height. All fences must

meet the requirements of the Raleigh City Code and must be approved as provided in Paragraph 18 of these Restrictive Covenants. Nothing in this paragraph shall be deemed to apply to or regulate retaining walls made necessary by the slope or grade of any Lot or Lots, nor shall anything in this paragraph apply to any fence installed by the Declarant at any entrance to or along any street within the subdivision.

5. TEMPORARY STRUCTURES. No residence of a temporary nature shall be erected or allowed to remain on any Lot, and no trailer, basement, shack, tent, garage, barn, or any other building of a similar nature shall be used as a residence on any Lot, either temporarily or permanently.

6. PARKING; DRIVEWAYS AND PARKING PADS; ABANDONED VEHICLES. Vehicles may be parked or stored only on portions of a Lot improved for that purpose, i.e., garage, driveway, carport or parking pad. No unenclosed parking shall be constructed or maintained on any Lot except a paved driveway and an attached paved parking pad, which pad shall be designed for the parking of not more than three (3) vehicles. Any driveway or parking pad constructed upon any Lot shall have either an asphaltic concrete surface, a cement concrete surface, or brick pavers.

No mobile house trailer (whether on or off wheels), vehicle or enclosed body of the type which may be placed on or attached to a vehicle (known generally as "recreational vehicles" or "campers"), or commercial vehicle of any kind shall be parked on any street within the subdivision, nor shall any such vehicle be parked or kept on any Lot within the subdivision. Furthermore, no boat or boat trailer shall be parked on any street within the subdivision. A boat and/or boat trailer may be parked or kept on a Lot if it is parked or kept in such a manner that the it is screened from all streets, the Common Property or Restricted Common Property, and all adjacent Lots. Screening may be either by fence or plantings but, in any case, the screening must comply with the Raleigh Zoning Ordinance and be approved pursuant to Paragraph 18 of these Covenants. No tractor trailer trucks or cabs shall be parked on any street or Lot within the subdivision.

No vehicle of any type which is abandoned or inoperative shall be stored or kept on any Lot in such manner as to be seen from any other Lot, any street within the subdivision, or the Common Property or Restricted Common Property, and no automobiles or mechanical equipment may be dismantled or allowed to accumulate on any Lot.

7. ANIMALS. No animals, livestock, or poultry of any kind shall be kept or maintained on any Lot or in any dwelling, except that dogs, cats, or other household pets may be kept or maintained, provided that they are not kept or maintained for commercial purposes.

8. NUISANCES; BUSINESS ACTIVITY. No noxious or offensive trade or activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No business trade or activity may be conducted on any Lot unless permitted by the Raleigh Board of Adjustments.

9. SIGNS. Except as otherwise required by the City of Raleigh, no sign of any kind shall be displayed to the public view on any Lot except signs used by Declarant to advertise Lots for sale during the construction and sales period, one sign of not more than six (6) square feet advertising the property for sale or rent, and signs of not more than six (6) square feet expressing support of or opposition to political candidates or other issues which will appear on the ballot of a primary, general or special election, provided that such political signs shall not be placed on a Lot earlier than sixty (60) days before such election and shall be removed within two (2) days after such election.

10. ANTENNAS; SATELLITE DISHES OR DISCS. No radio or television transmission or reception towers or antennas shall be erected on a Lot other than a customary television or radio reception antenna, which shall not extend more than ten (10) feet above the top roof ridge of the house. However, a satellite antenna receiver or disc will be permitted on a Lot if: (i) the receiver or disc is not larger than two feet (2') in diameter; (ii) the receiver or disc is located on the side of the house away from the street and within the building set back lines applicable to that Lot; and (iii) the receiver or disc is located or screened in such a way that it cannot be seen from any street within the subdivision. Any such screening must be approved as provided in Paragraph 18 of these Covenants. In no event shall any free-standing transmission or receiving tower be permitted on any Lot.

11. SWIMMING POOLS. No above-ground swimming pools shall be permitted in the subdivision, except that small, inflatable wading pools shall be permitted.

12. MAILBOXES. A mailbox approved by the Declarant will be provided and installed by the builder of the dwelling on each Lot. No mailbox shall be placed or maintained on any Lot that does not conform in size, detail, and color to those originally provided by such builder.

13. MAINTENANCE OF LOT; CONSTRUCTION. Each owner shall keep his Lot in an orderly condition and shall keep the improvements

thereon in a suitable state of repair. In the event that any residence or structure on any Lot is destroyed or partially destroyed by fire, Act of God, or as a result of any other act or thing, the owner of such Lot shall repair such damage and/or reconstruct the improvement within twelve (12) months after such damage or destruction; provided, however, that if the structure damaged is not part of or attached to the residence constructed on such Lot, the owner may, at his option, either completely remove the damaged structure and landscape area on which the structure stood or repair or reconstruct the structure.

All construction, landscaping or other work which has been commenced on any Lot shall be continued with reasonable diligence to completion and no partially completed house or other improvement shall be permitted to exist on any Lot, except during such reasonable time period as is necessary for completion. The owner of each Lot shall at all times keep contiguous public streets free from any dirt, mud, garbage, trash or other debris resulting from any such construction on his Lot.

14. CLOTHESLINES. No clothesline may be erected or maintained on any Lot.

15. GARBAGE; UNSIGHTLY STORAGE. All trash and rubbish shall be kept in garbage cans stored behind the house in such a manner as not to be visible from the street upon which the house fronts. No trash, rubbish, stored materials, wrecked or inoperable vehicles, or similar unsightly items shall be allowed to remain on any Lot; provided, however, that the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish, and other debris for collection by governmental or other similar garbage and trash removal units. In the event of curbside trash and/or garbage pickup, trash and/or garbage cans may be moved to the street on the night before the scheduled pickup, but all garbage cans must be returned to approved enclosure the night of the scheduled pickup.

16. SEPTIC TANKS; WELLS. No septic tank shall be installed, used or maintained on any Lot. No well shall be installed, used or maintained on any Lot for human domestic water consumption, nor shall any well be connected in any manner whatsoever to the water mains, laterals and piping serving the dwelling, which mains furnish domestic water from sources beyond the boundaries of the Lot.

17. REMOVAL OF TREES. Except in the case of an emergency situation that does not permit any delay, no tree larger than 6" in diameter at a point measured 3' off the ground shall be removed from any Lot without the approval of the Board of Directors or its designated committee, provided that this provision shall be deemed applicable only to Lots which have been occupied under a certificate of occupancy issued by the City of Raleigh.

18. ARCHITECTURAL CONTROL. After occupancy of a residence on any Lot pursuant to a certificate of occupancy or other similar instrument issued by the appropriate governmental entity, no building, fence, wall, driveway, mailbox, or other structure shall be commenced, erected, maintained, or altered upon any Lot, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, exterior finishes and colors, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of Gresham Trace Homeowners Association, Inc. (hereinafter "Board of Directors"), or by an architectural committee composed of three (3) or more persons appointed by the Board of Directors. The Board of Directors may retain the services of a registered architect to review plans and specifications submitted pursuant to this Paragraph. Prior to commencement of construction of the initial house on each Lot, the review and approval of the plans and specifications set out herein shall be by the Declarant. If the Board of Directors or its designated committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, the plans and specifications shall be deemed to have been approved as submitted. The Association shall have the right to charge a reasonable fee, not to exceed \$75.00, for receiving and processing each application. Nothing herein shall be construed to permit interference with the development of the Lots by Declarant in accordance with its general plan of development. Any approval of plans and specifications by the Association shall not constitute or be construed as an approval by the Association of the structural stability, design, or quality of any building or improvement, or further constitute or be construed as approval by any governmental entity or to be a substitute for approval by the appropriate governmental agency.

19. EXTERIOR MAINTENANCE. The owner of each Lot shall maintain the grounds and improvements situated on his Lot, including, but not limited to, plantings, landscaping and lawns, at all times in a neat and attractive manner satisfactory to the Board of Directors of the Association. Upon the owner's failure to do so, the Association may, at its option, after approval by a majority vote of the Board of Directors, and after giving the owner ten (10) days written notice sent to his last known address, or to the address of the subject premises, have the grass, weeds, shrubs, and vegetation cut when and as often as the same is necessary in its judgment, and have dead trees, shrubs and plants removed from such Lot, and replaced, and may have any portion of the Lot resodded or landscaped, and all expenses incurred by the Association for such work shall be a lien and charge against the Lot on which the work was done and the personal obligation of the then-owner of such Lot.

Upon an owner's failure to maintain the exterior of any structure, including the roof, in good repair and appearance, the Association may, at its option, after approval by a majority vote of the Board of Directors and after giving the owner thirty (30) days written notice sent to his last known address, make repairs and improve the appearance of such structure in a reasonable and workmanlike manner. The cost of any work performed by the Association upon the owner's failure to do so shall be immediately due and owing from the then-owner of the Lot on which the work was performed and shall constitute an assessment against the Lot and the personal obligation of such owner, collectable in a lump sum, and secured by the lien against the Lot as herein provided.

20. UTILITY AND DRAINAGE EASEMENTS; LANDSCAPE AND SIGHT EASEMENTS. Easements for the installation, maintenance and repair of utilities and drainage facilities are reserved as shown on the recorded plat. Within such easements, no structure, planting, or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of the utilities, or which may change the direction of flow or otherwise impede or retard the flow of water through the drainage channels within such easements. Any easements located on a Lot shall be maintained continuously by the owner of such Lot, except for any such improvements for which a public authority or utility company is responsible. Declarant reserves the right to create and impose additional easements or rights-of-way over any unsold Lot or Lots by the recording of appropriate instruments in the Wake County Registry, and such instruments shall not be construed to invalidate any of these covenants.

Declarant reserves an easement in and right at any time in the future to grant a ten-foot right-of-way over, under and along the rear line of each Lot for the installation and maintenance of poles, lines, conduits, pipes and other equipment necessary to or useful for furnishing electric power, gas, telephone service, cablevision or other utilities, including water, sanitary sewage service and storm drainage facilities. Declarant also reserves an easement in and right at any time in the future to grant a five-foot right-of-way over, under and along the side lines of each Lot for the aforementioned purposes.

The Declarant, the Association and their successors and assigns shall at all times have the right of access upon such easements for the purpose of landscaping, planting, mowing, maintaining the area within the foregoing easements or for removing any object placed in the easement area in violation of the provisions of this Section 20.

21. STREET LIGHTING. Declarant reserves the right to subject the real property within the subdivision to a contract with Carolina Power & Light Company, or such other utility company as may be appropriate, for installation of street lighting, which requires a continuing monthly payment to CP&L, or such other utility company, by each residential customer.

22. SUBDIVISION OF LOTS. No Lot shall be subdivided by sale or otherwise so as to reduce the total Lot area shown on the recorded map or plat, except by and with the written consent of the Declarant.

23. UNINTENTIONAL VIOLATIONS. Declarant reserves the right, but shall not be obligated, to waive in writing any violation of the designated and approved building setback lines on any Lot; provided, however, that such violation does not exceed 20% of the applicable requirements, and further provided that no such waiver shall be effective unless the Lot and all structures thereon are in full compliance with the applicable provisions of the Raleigh City Code or a variance has been obtained for such violation.

24. ENFORCEMENT. Enforcement of these covenants shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant herein and enforcement shall be to either restrain violation and/or to recover damages resulting therefrom.

25. SEVERABILITY. Invalidation of any one or more of these covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

26. TERM. These covenants shall run and bind the land and all owners thereof for a period of 25 years from the date these covenants are recorded, after which time, they shall be automatically extended for successive periods of ten (10) years unless altered or amended as set forth below. These covenants may be amended during the first twenty-five year period by an instrument signed by the then-owners of not less than ninety percent (90%) of the Lots, and thereafter an instrument signed by then-owners of not less than seventy-five percent (75%) of the Lots.

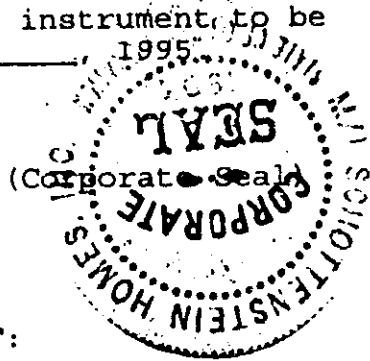
27. GRESHAM TRACE HOMEOWNERS ASSOCIATION. The Lots in this subdivision are part of a planned community known as GRESHAM TRACE. The owners of the Lots are members of the Gresham Trace Homeowners Association, Inc., and are subject to and bound by the Declaration of Covenants, Conditions, and Restrictions of Gresham Trace Homeowners Association, Inc., as recorded in Book 6568 at Page 471, as amended from time to time, in the Wake County Registry, which Declaration provides additional restrictions on such Lots.

28. DECLARANT. Nothing contained herein shall be construed to permit interference with the development of the Lots by Declarant so long as said development follows the general plan of development previously approved by the City of Raleigh and the Federal Housing Administration and/or Veterans Administration. The restrictions contained herein shall not be deemed to apply to any sales office, construction trailer, model home, or other temporary improvement installed by or with the approval of Declarant.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed as of the 21<sup>st</sup> day of June, 1995.

M/I SCHOTTENSTEIN HOMES, INC.  
an Ohio corporation

By: [Signature]  
Donald F. Fraley  
Vice President

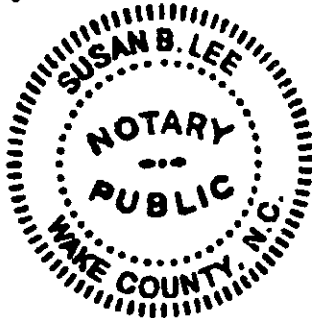


ATTEST:  
[Signature]  
Assistant Secretary

STATE OF NORTH CAROLINA -- COUNTY OF WAKE

I, Susan B. Lee, a Notary Public for said County and State, certify that DONALD F. FRALEY personally appeared before me this day and, being by me duly sworn, says and deposes that he is Vice President of M/I SCHOTTENSTEIN HOMES, INC., an Ohio corporation, that the seal affixed to the foregoing document is the corporate seal of the corporation, that the document was signed and sealed by him as its Vice President and attested by Cathy Ketchel as its Assistant Secretary in behalf of the corporation by its authority duly given. And the said Vice President acknowledged the document to be the act of the corporation.

WITNESS my hand and official seal, this the 21<sup>st</sup> day of June, 1995.



[Signature]  
Notary Public  
My commission expires: 6-17-97

NORTH CAROLINA -- WAKE COUNTY

The foregoing certificate of Susan B. Lee

Notary(ies) Public is (are) certified to be correct. This instrument and this certificate are duly registered at the date and time and in the book and page shown on the first page hereof.

KENNETH C. WILKINS, Register of Deeds

By P. Anne Redd  
Asst./Deputy Register of Deeds

DAR/MIRCS/040395

Exhibit A

That certain real property lying in Wake County, North Carolina, and being more particularly described as follows:

All of that parcel of real property shown on the plat entitled "Gresham Trace Survey For M/I Homes, Neuse River Twp., Wake Co., N.C., Phase I" dated March 24, 1995, prepared by Greenhorne & O'Mara, Inc., recorded at Book 1995, Page 926, of the Wake County Registry, which parcel contains 10.9897 acres, more or less.