

**EXHIBIT A to Fifth Amendment
to the Declaration of Covenants,
Conditions and Restrictions of Shorewalk I**

ARTICLE XXIII

Recreational Common Area

23.1 **Ownership.** Except as otherwise provided herein, title to the Recreational Common Area shall be vested in the Association and no Owner shall have any interest therein except such as accrues by virtue of such Owner's membership in the Association.

23.2 **Existing Improvements.** As of December 1, 1994, Declarant has constructed the Pool and Pool House, the Tennis Courts, the Jogging Path and Boat Docks to which it has assigned eighty-six (86) sequential numerical designations (1 to 86).

23.3 **New Construction.** Subsequent to December 1, 1994, Declarant or its designee may, but shall not be obligated to, construct thirty-six (36) additional Boat Docks. Any such additional Boat Docks constructed by Declarant or its designee shall be of the same grade and quality as the Boat Docks previously constructed by Declarant.

23.4 **Licensing of Boat Docks.**

23.4.1 **Master License.** The right to construct Boat Docks in Geist Reservoir derives from the Master License. The privileges and/or rights under the Master License are terminable at any time by the Indianapolis Water Company for any of the causes specified in the Master License and possibly without cause thereunder or under applicable law. Declarant disclaims any representation or warranty as to the validity or continuing effect of the Master License or the right or privilege of any Owner, the Association or any other person to construct, maintain or use a Boat Dock in Geist Reservoir under or pursuant to the Master License.

23.4.2 **Existing Boat Dock Licenses.** Declarant has heretofore granted to fifty-three (53) designated Owners such privileges or rights as Declarant may have, pursuant to the Master License, as successor in title to Shorewood Corporation, to use and operate designated Boat Docks and to use the adjacent walkways on and about Geist Reservoir for access to the designated Boat Docks, subject to the conditions set forth in the Boat Dock Licenses between Declarant and such Owners executed on or before December 1, 1994.

23.4.3 **Future Boat Dock Licenses.** Declarant shall have the right to grant Boat Dock Licenses to purchasers of thirty-six (36) units in Shorewalk

constructed subsequent to December 1, 1994, on substantially the same terms and conditions as the Existing Boat Dock Licenses except that such newly granted Boat Dock Licenses need not include therein any right of first refusal or option in Declarant and/or the Association to repurchase the Boat Dock. Declarant may charge and retain such license fee in connection with the grant of additional Boat Dock Licenses as it may deem appropriate. Not more than one New Boat Dock shall be licensed to the Owners of a single Unit. Notwithstanding the foregoing, Declarant shall not in any Boat Dock License granted subsequent to December 1, 1994, purport to impose on the licensor thereunder any obligation which is materially more burdensome than the obligations of the licensor under the Existing Boat Dock Licenses.

23.5 Interim Rental of Boat Docks. The Association shall have the right to rent Unlicensed Boat Docks to such Owners of Units in Shorewalk as may be selected by the Board in accordance with an equitable selection process established by the Board. Such rentals shall be for such periods and at such rent and on such other terms and conditions as the Board may establish; provided, however, that the right of the Association to rent Boat Docks shall be subject to the licensing rights of Declarant set forth in Section 23.4.3. In the event Declarant grants a Boat Dock License with respect to an Unlicensed Boat Dock, the rental arrangement between the Association and the Owner selected by the Board to rent such Unlicensed Boat Dock shall terminate on a date designated by Declarant by written notice to the Board which is not earlier than fifteen (15) days following the date on which such notice is given by Declarant.

23.6 Maintenance of Boat Docks. Commencing April 30, 1995, the Association shall be solely responsible for maintenance, repair and replacement of the Boat Docks and the facilities located along the shoreline of Geist Reservoir used or held for use in connection with the Boat Docks and the maintenance of casualty, liability and other customary insurance coverages with respect thereto, the cost of which shall be assessed against only those Owners who hold rights to use Boat Docks. No portion of the cost of the operation, maintenance, repair or replacement of the Boat Docks or related facilities (including dredging costs) shall be assessed against any Owner who does not have the right to use a Boat Dock.

23.7 Annual Boat Dock Fee. An Annual Boat Dock Fee shall be determined annually by the Board based upon its good faith estimate of the costs of operation, maintenance and repair of the Boat Docks and such related facilities, including insurance, reserves for replacements, dredging costs, and reasonable allocations of administrative costs incurred by the Association in connection with the operation, maintenance and repair of the Boat Docks and related facilities. The Annual Boat Dock Fee shall be deemed a part of the Annual Assessment of each Owner who holds a Boat Dock License and shall be payable at the time and in the manner prescribed for payment of the Annual Assessment unless the Board determines another time or manner of payment. In addition to the lien afforded the Association in the case of non-payment of an Annual Assessment, the Board shall have the right to terminate the Boat Dock License of any Owner who fails to pay the Annual Boat Dock Fee in accordance with such procedures as the Board may reasonably determine.

23.8 **Boat Dock Rental Fee.** The Board may establish a Boat Dock Rental Fee for the use by an Owner of an Unlicensed Boat Dock. The amount of the Boat Dock Rental Fee shall be at the Board's discretion, but must be in the same amount for all Unlicensed Boat Docks for similar periods of time. From the Boat Dock Rental Fee received for a particular Unlicensed Boat Dock for a particular calendar year, the Board shall allocate at least an amount equal to the Annual Boat Dock Fee to the cost of maintenance of the Boat Docks as described in Section 23.6. Any excess Boat Dock Rental Fees from a particular Unlicensed Boat Dock may be used for the maintenance of the Boat Docks or set aside in reserve to repurchase Boat Dock Licenses from Owners who offer to sell their licenses to the Association at the licensee's original cost. The Association may not repurchase a Boat Dock License for more than the licensee's original cost.

23.9 **Assignment of Master Lease.** At such time as Declarant has Completed Development, Declarant shall assign its rights under the Master License to the Association.

23.10 **Assignment of Boat Dock Licenses.** On or before April 30, 1995, Declarant shall assign to the Association its rights, as licensor, under each Existing Boat Dock License. Thereafter, Declarant shall, within 30 days following the grant of a Boat Dock License for a New Boat Dock, assign to the Association the rights of Declarant, as licensor, under such Boat Dock License.

23.11 **Termination of Declarant's Licensing Rights.** At such time as Completed Development has occurred, the right of Declarant to grant Boat Dock Licenses shall terminate, and the right to grant Boat Dock Licenses with respect to, or otherwise control the use of, Unlicensed Boat Docks existing as of the date of Completed Development shall vest in the Association.

23.12 **Obligations of the Association.** The Association, subject to the rights of Declarant and the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Recreational Common Area and all improvements thereon (including furnishings and equipment related thereto), and shall keep the Recreational Common Area in good, clean, attractive and sanitary condition, order and repair. The costs of performance by the Association hereunder with respect to the Recreational Common Area exclusive of the Boat Docks shall be assessed against the Owners as part of the Annual Assessment.

23.13 **Damage or Destruction by Owner.** In the event the Recreational Common Area or any part thereof is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents, or member of his family, such owner authorizes the Association to repair said damaged area; and the Corporation shall repair said damaged area in a good workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Association in the discretion of the Board. An amount equal to the costs incurred to effect such repairs shall be assessed against such Owner as a Special Assessment and shall constitute a lien upon the Unit of said Owner.

23.14 **Indemnification.** From and after April 30, 1995, the Association shall indemnify and hold harmless Declarant against all loss or damage incurred as a result of injury to any person or damage to any property, or as a result of, or access to, a Boat Dock by any person, whether or not the holder of a Boat Dock License. Except for any loss or damage incurred by the Association as a consequence of the breach by Declarant of its obligations under Section 23.3, or its warranty under Section 23.15, Declarant shall have no liability to any person with respect to the Boat Docks, the use thereof or access thereto, or with respect to any loss or damage incurred by any person, whether or not the holder of a Boat Dock License, as a consequence of or resulting from the use of, or access to a Boat Dock, any failure or deficiency in the construction or maintenance thereof or any facilities adjacent or appurtenant thereto, or any silting or erosion in or to Geist Reservoir.

23.15 **Warranty of Construction.** Declarant warrants to the Association that the Boat Docks constructed prior to December 1, 1994, were so constructed as to conform in all material respects with the terms and conditions of the Master License in effect at the time they were constructed and that the New Boat Docks will be constructed in such a manner as to conform in all material respects with the terms and conditions of the Master License in effect at the time they are constructed.

OFFICERS AFFIDAVIT

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

PAUL E. McCLELLAN and M.J. NICKEL, being first duly sworn, upon their oaths, state:

1. They are the President and Secretary, respectively, of Shorewalk Community, Inc., an Indiana nonprofit corporation (the "Association").
2. The Association is one and the same entity referenced in the foregoing Fifth Amendment to the Declaration of Covenants, Conditions and Restrictions of Shorewalk I (the "Amendment").
3. They have, on behalf of the Association, executed and delivered the Amendment.
4. The Amendment has been approved by not less than ninety percent (90%) of the Owners of Units in Shorewalk I as evidenced by the signatures of such Owners attached hereto and incorporated herein.
5. All actions required of the Association and the Owners for the authorization, approval and adoption of the Amendment have been taken and done.

EXECUTED this 20th day of April, 1995.

SHOREWALK COMMUNITY, INC.
Paul E. McClellan PRESIDENT

PAUL E. McCLELLAN
(Printed Name)

M.J. Nickel SECRETARY

M.J. NICKEL
(Printed Name)

Subscribed and sworn to before me this 20th day of April, 1995.

Sheryl Lynn Finney
Notary Public Residing in MARION County

My Commission Expires:

1-12-99

SHERYL LYNN FINNEY
(printed name)

This instrument was prepared by Tom Charles Huston, Attorney at Law, Barnes & Thornburg, 1313 Merchants Bank Building, 11 South Meridian Street, Indianapolis, IN 46204.