

PROPOSED AMENDMENTS TO THE RESTRICTIVE COVENANTS
LAKE WAYNOKA SUBDIVISION, BROWN COUNTY, OHIO
(As amended 12-14-1996 and 06-23-2018)
APPROVAL BY WPOA TRUSTEES (7/9/2022)

This document contains the Proposed Amendments to the Restrictive Covenants to be presented to the WPOA members on a ballot to be cast “in-person” on either Saturday September 3, 2022 or Saturday September 10, 2022.

The left-hand column contains the current language of the Restrictive Covenants with language to be eliminated ~~lined out~~. The right-hand column contains the language as it would read after amendment. Added or changed language is **boldfaced and underlined**. Rationale for the changes is highlighted in gray and is NOT a part of the Restrictive Covenant language. It is given to offer a brief summary of rationale for the proposed changes.

PREFACE: Various defined terms are incorporated into the sections throughout these Restrictions/Covenants (the “Covenants”), reflected either by way of words that are Capitalized or words reflected in ALL CAPS unless such defined terms are specifically defined within the body of these Restrictions/Covenants, such terms shall have the same meaning as are ascribed to them in the WPOA Code of Regulations. Otherwise, any Capitalized words with commonly understood meanings (such as, United States, or April), will retain such common meaning.

Original Language (Preamble)	PROPOSED Amended Language (Preamble)
<p>The Warranty Deed from SELLER (Grantor) to PURCHASER (Grantee) shall contain the following restrictive covenants.</p>	<p><u>Any Deed or other form of conveyance</u> from a <u>Transferor</u> (Grantor) to a <u>Transferee</u> (Grantee) <u>for any property located in Lake Waynoka Subdivision</u> shall be subject to the following restrictive covenants, <u>and by such deed or document of conveyance being recorded in the chain of title of such property located in Lake Waynoka Subdivision, the Covenants shall be binding upon and shall run with Lake Waynoka Subdivision property.</u></p> <p><i>Rationale: A variety of types of deeds, as well as other instruments of conveyance are used in property transfers. This language clarifies that ANY deed OR other form of conveyance for ANY property in Lake Waynoka must contain the covenants; and the Covenants are recorded in the chain of title.</i></p>

RESIDENTIAL SUBDIVISION

1. Said lots shall be used exclusively for residential purposes except those lots that may be designated, subject to rezoning (if any), as business areas, commercial areas, or camper areas, on the recorded plats by ~~Lake Waynoka, Inc.~~

RESIDENTIAL SUBDIVISION

1. Said lots shall be used exclusively for residential purposes except those lots that may be designated, subject to rezoning (if any), as business areas, commercial areas, or camper areas, on the recorded plats by **the WPOA Board of Trustees.**

Rationale: *The WPOA through its Trustees is legal successor to Lake Waynoka, Inc.*

1. ~~Not more than one single family dwelling house may be erected or constructed on any one lot and no more than one (1) building for a garage (attached or unattached) and one (1) for storage purpose. Further no building or structure of any kind shall be erected prior to the erection of a dwelling house. No structure shall have tar paper, roll brick siding or similar material on outside walls. All building exteriors must be completed within six (6) months from the date the construction commences. No unattached outbuilding shall be used or occupied as a dwelling house. No house trailers, mobile homes, campers, tents, shacks, or similar structure shall be erected, moved to or placed permanently upon said premises. Overnight campers are restricted to designated camping areas. [As amended 12-14-1996, Official Records Book 80, Page 305]~~

2. Not more than one single family dwelling house may be erected or constructed on any one lot. **Each dwelling must have a garage, attached or unattached. A maximum of three (3) enclosed structures, as defined in the WPOA Building Code or by permitted variance, including storage buildings, per contiguous property are permitted.** Further no building or structure of any kind shall be erected prior to the erection of a dwelling house. No unattached outbuilding shall be used or occupied as a dwelling house.
 - a. **Exterior Requirements:** No structure shall have tar paper, roll brick siding or similar material on outside walls. All building exteriors must be completed within **nine (9) months** from the date the construction commences.
 - b. **Prohibited/Permitted Dwellings and Structures:** No house trailers, mobile homes, **manufactured homes built on a steel chassis (notwithstanding how they are defined by the manufacturer or seller);** campers, tents, shacks, or similar structure shall be erected, moved to or placed permanently upon said premises. **All residential structures must be deeded under Ohio law and subject, unless legally exempted, to real estate tax. Industrialized units (modular homes) are not included in**

- the prohibited dwellings in this section and may be permitted.** Overnight campers are restricted to designated camping areas **unless otherwise provided for in the WPOA Rules and Regulations.** [As amended 12-14-1996, Official Records Book 80, Page 305]
- c. **Construction Standards, Inspections and Approvals: All components and methods of construction must be in full compliance with the Ohio Board of Building Standards (most recent edition), Brown County Building Code, and the WPOA Zoning/Building Code. All dwellings are required to be deeded under the provisions of Ohio law, receive a Certificate of Occupancy from Brown County Building Inspector, and be inspected by and receive approval for occupancy, where applicable, from the WPOA Manager, his designee, or other person(s) as determined by the WPOA Board of Trustees.**
- d. **Existing Permits and Structures: The restrictions set forth in this Paragraph 2b, shall apply ONLY to the construction of those residential structures that have not yet received the requisite permits to initiate construction or relocation, as of the effective date of this amendment. All construction and permits approved prior to enactment, shall be valid and the corresponding construction shall not be in violation of the building code requirements.**
- e. **Failure to Comply: All expenses related to the failure to comply with the building requirements, set forth herein, shall be the sole responsibility of the property owner, including the cost to remove the entire structure, or to modify or otherwise correct the elements of the structure that fail to meet the standards and requirements, as outlined herein. If the WPOA Board of Trustees must take action to remove the structure or bring it into compliance, it may recover all costs of doing so from the violating owner, including the cost of any legal action with attorney fees, that will result in prompt reimbursement to WPOA.**

Rationale: Paragraph 2 of the Restrictive Covenants has been rewritten and reordered to enhance clarity and readability, as well as address additional important matters that have come to the attention of the Building and Zoning, and Rules and Regulations Committees. These include:

1. Additional material has been added to address changes recommended by the Zoning Building Committee: Specify that all lots may have up to three (3) enclosed structures, and extend the time permitted for exterior structures to be completed from six (6) months to nine (9) months. The time extension is needed in response to current supply timelines.
2. Clarifies that mobile homes including “manufactured homes” are prohibited.
3. Clarifies that the WPOA can permit limited temporary camping outside designated areas.
4. Defines that construction must comply with the Ohio Board of Building Standards, and the Brown County Building Code.
5. Adds language to protect structures granted permits or variances prior to this most recent amendment (“grandfathering”).
6. Defines remedies for those who fail to comply with building standards.

BUILDING CODE	BUILDING CODE
<p>3. No residence shall have less than 900 sq. ft. of living space, on the ground floor, or first floor for a two (2) story dwelling and 1050 sq. ft. of living space for a one (1) level dwelling, exclusive of porch and deck areas, breeze-ways, garages, walkways and storage building. No porch or projection of any building shall extend nearer than forty (40) feet to any road right of ways, nor nearer than ten (10) feet to the property line of any abutting property owner, nor within fifty (50) feet from the normal water line of any lake located on Lake Waynoka Subdivision, as the same are shown on recorded plats. [As amended Official Records Book 80, Page 305.]</p> <p>All plans and specifications for any structure or improvement to be erected on or moved upon or to any lot, and the proposed location thereof on any lot or lots, the construction material, the roofs and exterior color schemes, as well as all remodeling, reconstruction, alteration, or additions thereto on any lot shall be subject to and shall require the approval in writing of Lake Waynoka Property Owners Association, Inc. or its duly authorized agent before any such work is commenced. Said Association shall have the right to disapprove any plans, specifications or details submitted to it in the event the same are not in accordance with all the provisions of these restrictions or the rules and regulations promulgated by said Association or when (1) the design or color scheme of the proposed building or other structure is not in harmony with the general surroundings of such lots or with the adjacent buildings or structures, (2) the plans and specifications submitted are incomplete, or (3) the Association deems the plans, specifications or details of any part thereof, to be contrary to the interest, welfare of rights of all or any part of the real property subject hereto, or the owners thereof. The decisions of the Association shall be final. Neither the Association, nor its agents nor Lake Waynoka, Inc shall be responsible for structural</p>	<p>3. No <u>new</u> residence <u>dwelling</u> shall have less than <u>1200</u> sq. ft. of living space, exclusive of <u>basement</u>, porch and deck areas, breeze-ways, garages, walkways and storage building. <u>A two-story dwelling must have no less than 900 sq. ft. of living space on the ground floor.</u> No porch or projection of any building shall extend nearer than forty (40) feet to any road right of ways, nor nearer than ten (10) feet to the property line of any abutting property owner, nor within fifty (50) feet from the normal water line of any lake located on Lake Waynoka Subdivision, as the same are shown on recorded plats. [As amended Official Records Book 80, Page 305.]</p> <p>All plans and specifications for any structure or improvement to be erected on or moved upon or to any lot, and the proposed location thereof on any lot or lots, the construction material, the roofs and exterior color schemes, as well as all remodeling, reconstruction, alteration, or additions thereto on any lot shall be subject to and shall require the approval in writing of <u>the WPOA</u> or its duly authorized agent before any such work is commenced. Said Association shall have the right to disapprove any plans, specifications or details submitted to it in the event the same are not in accordance with all the provisions of these restrictions or the rules and regulations promulgated by said Association or when (1) the design or color scheme of the proposed building or other structure is not in harmony with the general surroundings of such lots or with the adjacent buildings or structures, (2) the plans and specifications submitted are incomplete, or (3) the Association deems the plans, specifications or details of any part thereof, to be contrary to the interest, welfare of rights of all or any part of the real property subject hereto, or the owners thereof. The decisions of the Association shall be final. Neither the Association, nor its agents shall be responsible for structural deficiencies or any other defects in plans or specifications</p>

<p>deficiencies or any other defects in plans or specifications submitted, revised or approved in accordance with the foregoing provisions.</p>	<p>submitted, revised or approved in accordance with the foregoing provisions.</p> <p><i>Rationale:</i> <i>The Zoning/Building Committee requests an increase in dwelling square footage to reflect current building practices.</i></p>
<p>4. No outside toilet shall be allowed on the premises. No untreated waste shall be permitted to enter any lake on Lake Waynoka Subdivision. Each dwelling shall have an individual sanitary unit and the owner of said lot shall install a type of unit that complies in all respects with the requirements of the Brown County Department of Health or other governing legal authority. Each lot owner shall obtain authority from the appropriate legal authority prior to the installation of any sanitary unit and shall further be bound by all orders or recommendations of such authority and/or Authorities with regard to repair, alteration or replacement of the installed sanitary unit and with regard to the water supply to said lot. No drain field or other disposal system shall be allowed nearer than sixty (60) feet to the normal high water mark of any lake on Lake Waynoka Subdivision. No individual water wells shall be allowed on any residential lot, and each resident shall use the water supply from the public Utility Water Company owning and operating waterworks facilities within Lake Waynoka Subdivision. Any malfunction of a sanitary unit, after being reported to the lot owner by the Association or any Board of Health and not repaired within seven (7) days may be cause for termination of water service until such repairs are affected.</p> <p>Lake Waynoka, Inc. has authorized the Brown County Commissioners to establish a Sewer District to serve Lake Waynoka Subdivision. If and when said Sewer District determines it feasible to provide a central sewer system the cost of the same may be assessed to the lot owners of Lake Waynoka Subdivision.</p>	<p>4. No outside toilet shall be allowed on the premises <u>except that the WPOA BOARD of TRUSTEES may authorize the use of portable restrooms.</u> No untreated waste shall be permitted to enter any lake on Lake Waynoka Subdivision. <u>Pursuant to ORC 6119.06(AA), each dwelling or other building containing sanitary facilities shall be connected to the sanitary sewer system operated by the Waynoka Regional Water and Sewer District (the “WRWSD”), its successors or assigns, and thereafter Grantee, his heirs, executors, or assigns shall pay a minimum sewer service fee per month regardless of use.</u></p> <p>No individual water wells shall be allowed on any residential lot, and each resident shall use the water supply from the <u>WRWSD, its successors or assigns.</u></p> <p><i>Rationale:</i> <i>Since these Covenants were first written, the Waynoka Regional Water & Sewer District (WRWSD) was established (1996), and State law and the District’s By-laws and Rules and Regulations contain regulations that cover the language changed or deleted above.</i></p>

MISCELLANEOUS SUBDIVISION RESTRICTIONS	MISCELLANEOUS SUBDIVISION RESTRICTIONS
<p>5. No noxious or offensive trade or activity shall be permitted on any lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No animals or fowl shall be kept or maintained on said lot except customary household pets. No signs of any kind shall be displayed on any lot without the written permission of Lake Waynoka, Inc. or its successors or assigns. All lots must be kept in a tidy manner. Failure to do so will result in maintenance of said lot by the Property Owners Association, in which event a proper charge for the same will be assessed and collected as provided in Restriction Number 8 hereof.</p>	<p>5. No noxious or offensive trade or activity shall be permitted on any lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No animals, including fowl, shall be kept or maintained on said lot except customary household pets. No signs of any kind shall be displayed on any lot without the written permission of the WPOA or its successors or assigns. All lots must be kept in a tidy manner as determined by the BOARD. Failure to do so will result in maintenance of said lot by the WPOA, in which event a proper charge for the same will be assessed and collected as provided in Restriction Number 8 hereof.</p> <p><i>Rationale: This revision reinforces the authority of the WPOA Board to define, establish and enforce standards for appropriate maintenance of property.</i></p>
<p>6. No boat docks, boat covers, floats or other structures extending into the lake shall be constructed or placed into or on said lake without prior written approval of the Lake Waynoka, Inc. or its successors or assigns. Use of the lake shall be in compliance with the rules and regulations of the Lake Waynoka, Inc. Docks and boat covers shall require a permit to install obtained from the Lake Waynoka Property Owners Association (See Code of Regulations for more details).</p> <p>WPOA shall have the authority to remove a deteriorated dock, boat cover, float, or other structures extending into the lake after they have been designated a hazard for the second time by the Lake Advisory Committee and the appropriate notification (registered letter, return receipt requested) has been given to the owner. Placement of this letter in the United States Postal Service shall constitute evidence of delivery when addressed to the address listed in the office of the WPOA. Removal of</p>	<p>6. No boat docks, boat covers, floats or other structures extending into the lake shall be constructed or placed into or on said lake without prior written approval of the WPOA or its successors or assigns. Use of the lake shall be in compliance with the rules and regulations of the WPOA. Docks and boat covers shall require a permit to install obtained from the WPOA. (See Code of Regulations for more details).</p> <p>The WPOA shall have the authority to remove a deteriorated dock, boat cover, float, or other structures extending into the lake after they have been designated a hazard for the second time by the Lake Advisory Committee and the appropriate notification (registered letter, return receipt requested) has been given to the owner. Placement of this letter in the United States Postal Service shall constitute evidence of delivery when addressed to the address listed in the office of the WPOA. Removal of</p>

<p>the deteriorated dock, boat cover, float, or other structures from the Lake will occur sixty (60) days after notification and be at the owner's expense. [As amended 12-14-1996, Official Records Book 80, Page 305]</p>	<p>the deteriorated dock, boat cover, float, or other structures from the Lake will occur sixty (60) days after notification and be at the owner's expense. [As amended 12-14-1996, Official Records Book 80, Page 305]</p> <p><i>Rationale:</i> <i>These changes further update the Covenants replacing Lake Waynoka, Inc.” or “Lake Waynoka Property Owners Association” with “WPOA.”</i></p>
<p>EASEMENT DEFINITIONS</p>	<p>EASEMENT DEFINITIONS</p>
<p>7. Lake Waynoka, Inc. for itself, its successors and licensees reserves an easement upon all sixty (60) foot road rights of way, reserves a fifteen (15) foot wide easement along all road rights of way and a five (5) foot wide easement along the side and rear lines of each and every lot for the purpose of installing, operating and maintaining television cables, utility lines and mains thereon, together with the right to trim and/or cut or remove any trees and/or brush and the right to locate guy wires; braces and anchors wherever necessary for said installations, operations or maintenance; together with the right to install, operate and maintain gas and water mains, sewer lines, culverts, and drainage ditches and other services and appurtenances thereto, for the convenience of the property owners, reserving also the right of ingress and egress to such areas for any of the purposes mentioned above.</p> <p>If and when the Sewer District established by the Brown County Commissioners determines it feasible to install a central sewer system such shall have, and it hereby is, granted the right, along with other authorized utilities, to use the herein reserved easements to install and maintain such central sewer system.</p> <p>Exceptions: (1) where an owner of two or more adjoining lots constructs a building which shall cross over or through a common lot line, said common lot line shall not be subject to the aforementioned five (5) foot easement unless it is shown on recorded plats; (2) no easement shall exist on that portion of any water front lot running along or abutting the shoreline of Lake</p>	<p>7. <u>The WPOA</u> for itself, its successors and licensees reserves an easement upon all sixty (60) foot road rights of way, reserves a fifteen (15) foot wide easement along all road rights of way and a five (5) foot wide easement along the side and rear lines of each and every lot for the purpose of installing, operating and maintaining television cables, utility lines and mains thereon, together with the right to trim and/or cut or remove any trees and/or brush and the right to locate guy wires; braces and anchors wherever necessary for said installations, operations or maintenance; together with the right to install, operate and maintain gas and water mains, sewer lines, culverts, and drainage ditches and other services and appurtenances thereto, for the convenience of the property owners, reserving also the right of ingress and egress to such areas for any of the purposes mentioned above.</p> <p><u>The WRWSD, its successors or assigns,</u> shall have, and it hereby is, granted the right, along with other authorized utilities, to use the herein reserved easements to install and maintain <u>a</u> central sewer system. Exceptions: (1) where an owner of two or more adjoining lots constructs a building which shall cross over or through a common lot line, said common lot line shall not be subject to the aforementioned five (5) foot easement unless it is shown on recorded plats; (2) no easement shall exist on that portion of any water front lot running along or abutting the shoreline of Lake Waynoka, unless shown on the recorded plats, except, however, <u>the WPOA</u> for itself,</p>

<p>Waynoka, unless shown on the recorded plats, except, however, Lake Waynoka, Inc. for itself, its successors, assigns and licensees reserves the right to cause or permit drainage of surface water over and/or through said lots. Lake Waynoka, Inc., its successors or assigns, reserves an easement on, over or under all road rights of way for the purpose of installing, operating, and maintaining the above-mentioned utilities and drainage. The owners of said property shall have no cause or action against Lake Waynoka, Inc., its successors, assigns, or licensees either at law or inequity excepting in case of willful negligence, by reason of any damages caused said property in installing, operating, removing or maintaining the above mentioned installation. Lake Waynoka, Inc., its successors and assigns, reserves all mineral rights to the lands hereto, and the rights for the installation of Cable Vision. [As amended 12-14-1996, Official Records Book 80, Page 305]</p>	<p>its successors, assigns and licensees reserves the right to cause or permit drainage of surface water over and/or through said lots. <u>The WPOA</u>, its successors or assigns, reserves an easement on, over or under all road rights of way for the purpose of installing, operating, and maintaining the above-mentioned utilities and drainage. The owners of said property shall have no cause or action against <u>the WPOA</u>, its successors, assigns, or licensees either at law or inequity excepting in case of willful negligence, by reason of any damages caused said property in installing, operating, removing or maintaining the above mentioned installation. <u>The WPOA</u>, its successors and assigns, reserves all mineral rights to the lands hereto, and the rights for the installation of <u>private and public/quasi-public utilities</u>. [As amended 12-14-1996, Official Records Book 80, Page 30]</p> <p><i>Rationale: These changes further update the Covenants replacing Lake Waynoka, Inc.” with “WPOA” or “Lake Waynoka Property Owners Association;” recognizes the WRWSD; and updates language allowing the WPOA to install utilities, e.g., internet, etc. beyond “Cable Vision.”</i></p>
<p>8. Each LOT OWNER/Grantee/MEMBER in Waynoka Property Owners Association, Inc. (WPOA) and the Lake Waynoka Subdivision shall be subject to the following: 1) An Initiation Fee at the outset of the OWNER becoming a MEMBER of WPOA; 2) An annual Dues assessment, set annually by the BOARD; and 3) An annual Fees assessment, set by the BOARD, each of the three foregoing of which each MEMBER agrees to pay to WPOA, its successors and assigns, as provided in the CODE of said Association, and such Rules & Regulations (R&R’s) as further established to provide clarity and guidance with respect to the foregoing. [As amended 06-23-2018]</p> <p>Unless otherwise explicitly addressed in the CODE, the BOARD shall have the power to establish the date in which the foregoing</p>	<p>8. Each LOT OWNER/Grantee/MEMBER in Waynoka Property Owners Association, Inc. and the Lake Waynoka Subdivision shall be subject to the following: 1) An Initiation Fee at the outset of the OWNER becoming a MEMBER of WPOA; 2) An annual Dues assessment, set annually by the BOARD; and 3) An annual Fees assessment, set by the BOARD, each of the three foregoing of which each MEMBER agrees to pay to WPOA, its successors and assigns, as provided in the CODE of said Association, and such Rules & Regulations (R&R’s) as further established to provide clarity and guidance with respect to the foregoing. [As amended 06-23-2018]</p> <p>Unless otherwise explicitly addressed in the CODE, the BOARD shall have the power to establish the date in which the foregoing</p>

Initiation Fee, annual Dues and annual Fees will be assessed and be due and owing to WPOA. Unless otherwise explicitly addressed in the CODE, the BOARD shall establish the amount of the Initiation Fee assessment to be paid by every new MEMBER. The BOARD may determine, in its reasonable discretion, to set a schedule of proration for the annual Dues and annual Fees to new MEMBERS to WPOA as it determines to be fair and reasonable, and to be applied consistently to all such new MEMBERS after such proration is established. Furthermore, as the CODE may dictate, or as set by the BOARD, a schedule of annual Fees assessment of differing amounts may be established, and if so differing shall be established using fair and reasonable criteria (for example, Lots with improvements (residential dwellings), unimproved Lots, multiple Lots adjoined together and owned by a common MEMBER). [As amended 06-23-2018]

The foregoing are all related to the improvement, maintenance and upkeep of the various common areas owned by WPOA and reserved for the use of the property owners, as originally established by the Covenants (and as subsequently augmented and added and/or reduced thereto, and the annual operating budget as established by the BOARD for the benefit of the WPOA, and, irrespective of whether the privileges of using such area are exercised or not, each new MEMBER shall further, upon becoming a member in said WPOA, pay the initiation fee as established by the WPOA and its BOARD. Grantee agrees that use of any of the above-mentioned areas shall be subject to approval of Grantee, his heirs, executors or assigns, for membership in the WPOA, as herein provided and to comply with the CODE and all rules and regulations from time to time promulgated by said Association. Grantee, for himself, his heirs, executors and assigns, further agrees that the charges herein set forth shall be and constitute a debt which may be collected by suit in any court of competent jurisdiction or otherwise, or

Initiation Fee, annual Dues and annual Fees will be assessed and be due and owing to WPOA. Unless otherwise explicitly addressed in the CODE, the BOARD shall establish the amount of the Initiation Fee assessment to be paid by every new MEMBER. The BOARD may determine, in its reasonable discretion, to set a schedule of proration for the annual Dues and annual Fees to new MEMBERS to WPOA as it determines to be fair and reasonable, and to be applied consistently to all such new MEMBERS after such proration is established. Furthermore, as the CODE may dictate, or as set by the BOARD, a schedule of annual Fees assessment of differing amounts may be established, and if so differing shall be established using fair and reasonable criteria (for example, Lots with improvements (residential dwellings), unimproved Lots, multiple Lots adjoined together and owned by a common MEMBER). [As amended 06-23-2018]

The foregoing are all related to the improvement, maintenance and upkeep of the various common areas owned by WPOA and reserved for the use of the property owners, as originally established by the Covenants (and as subsequently augmented and added and/or reduced thereto **within the Covenants, the CODE and/or the Rules and Regulations duly promulgated therefrom by the WPOA BOARD of TRUSTEES**), and the annual operating budget as established by the BOARD for the benefit of the WPOA, and, irrespective of whether the privileges of using such area are exercised or not, each new MEMBER shall further, upon becoming a member in said WPOA, pay the initiation fee as established by the WPOA and its BOARD. Grantee agrees that use of any of the above-mentioned areas shall be subject to approval of Grantee, his heirs, executors or assigns, for membership in the WPOA, as herein provided and to comply with **these Covenants**, the CODE and all rules and regulations from time to time promulgated by said Association. Grantee, for himself, his heirs, executors and assigns, further agrees that the charges herein set forth shall be and constitute a debt which may be collected by suit

by any means set forth within the CODE or otherwise at law or in equity; and that upon the conveyance of any part of the land described herein, the purchaser thereof and each and every successive owner and/or owners shall from the time of acquiring the covenant and agree, as aforesaid to pay to WPOA, its successors and assigns, all charges past and/or future as provided in, and in strict accordance with the terms and provisions hereof. [As amended 06-23-2018]

As part of the consideration herein, Grantee for himself, his heirs, executors or assigns, agrees that he will not sell, assign or convey to any person or persons, not ~~approved~~ for membership in the ~~Lake Waynoka Property Owners Association, Inc.~~, and all persons owning residential lots in said Subdivision shall be members of said Association.

In order to preserve and protect the integrity and quality of Lake Waynoka for the use and enjoyment of all the property owners of Lake Waynoka Subdivision, the WPOA shall have the special power and authority to require the owner of any lot abutting the Lake to exercise appropriate shoreline erosion control measures to reduce or avoid damage to the Lake as a result of silt deposits. In the event the owner of any lot abutting the Lake fails or refuses to exercise such appropriate shoreline erosion control measures within a reasonable amount of time after being requested to do so by the WPOA, said Association shall have the right to effect such appropriate shoreline erosion control and assess a proper charge for the same against the owner thereof, which said charge, if unpaid, shall constitute a lien encumbrance on or against said lot, tract or parcel of lands, which lien shall be equal to and participate with other liens as provided by law. [As amended 12-14-1996, Official Records Book 80, Page 305]

in any court of competent jurisdiction or otherwise, or by any means set forth within the CODE **and the Rules and Regulations duly promulgated by the WPOA Board of Trustees in furtherance of the same,** or otherwise at law or in equity; and that upon the conveyance of any part of the land described herein, the purchaser thereof and each and every successive owner and/or owners shall from the time of acquiring the **same** covenant and agree, as aforesaid to pay to WPOA, its successors and assigns, all charges past and/or future as provided in, and in strict accordance with the terms and provisions hereof. [As amended 06-23-2018]

As part of the consideration herein, Grantee for himself, his heirs, executors or assigns, agrees that he will not sell, assign or convey to any person or persons, not **eligible** for membership in the **WPOA**, and all persons owning residential lots in said Subdivision shall be members of said Association.

In order to preserve and protect the integrity and quality of Lake Waynoka for the use and enjoyment of all the property owners of Lake Waynoka Subdivision, the WPOA shall have the special power and authority to require the owner of any lot abutting the Lake to exercise appropriate shoreline erosion control measures to reduce or avoid damage to the Lake as a result of silt deposits. In the event the owner of any lot abutting the Lake fails or refuses to exercise such appropriate shoreline erosion control measures within a reasonable amount of time after being requested to do so by the WPOA, said Association shall have the right to effect such appropriate shoreline erosion control and assess a proper charge for the same against the owner thereof, which said charge, if unpaid, shall constitute a lien encumbrance on or against said lot, tract or parcel of lands, which lien shall be equal to and participate with other liens as provided by law. [As amended 12-14-1996, Official Records Book 80, Page 305]

Rationale: New language is recommended by

	<p><i>Legal Counsel to state what documents are relevant to the section. Additionally, the Association does not have a process for “approving” members, however, there are instances where persons are not “eligible” for membership in the Association.</i></p>
<p>POTABLE WATER AVAILABILITY USAGE</p> <p>9. Grantee, for himself, his heirs, executors or assigns, agrees that as a consideration of sale, and as a condition precedent to the installation of water mains adjacent to the lots herein described, which said mains are to be located by Lake Waynoka, Inc., its successors or assigns that the Grantee(s) jointly and severally promise to pay to the Grantor or its assignee a minimum of \$5.00 per month, payable annually in advance, so long as water service is available. Payment thereof for the first year or part thereof shall be due on the first day of the month immediately following the availability of water service to Grantee, his heirs, executors or assigns, whether or not an actual water service connection is then in existence to said Grantee, his heirs, executors or assigns, for the period beginning with said month and ending on March 31st subsequent thereto, and thereafter due and payable in the amount of \$60.00 annually in advance on the 1st day of April of each year. The foregoing charge is for the availability of water service and is not a contribution in aid of construction. The Grantor, its successors or assigns, upon receiving a written request and \$195.00 will install a water service connection from the main to the Grantee's lot line, and thereafter Grantee, his heirs, executors or assigns shall pay a minimum water service fee, regardless of use, of \$5.00 per month in lieu of and in the same manner as the water availability charge. The aforesaid charges are subject to change by the Public Utilities Commission of Ohio. Exceptions and further explanations pertaining to conditions for water service have been, or will be, recorded in the Office of the Recorder of Brown County, Ohio, and are hereby</p>	<p>POTABLE WATER AVAILABILITY USAGE</p> <p>9. Grantee, for himself, his heirs, executors or assigns, agrees that as a consideration of sale, and as a condition precedent to the installation of water mains adjacent to the lots herein described, which said mains are to be located by <u>the Waynoka Regional Water and Sewer District</u>, its successors or assigns, that the Grantee(s) jointly and severally promise to pay to the <u>District</u> or its assignee a minimum of \$5.00 per month, payable annually in advance, so long as water service is available. Payment thereof for the first year or part thereof shall be due on the first day of the month immediately following the availability of water service to Grantee, his heirs, executors or assigns, whether or not an actual water service connection is then in existence to said Grantee, his heirs, executors or assigns, for the period beginning with said month and ending on March 31st subsequent thereto, and thereafter due and payable annually in advance on the 1st day of April of each year. The foregoing charge is for the availability of water service and is not a contribution in aid of construction. The <u>District</u>, its successors or assigns, <u>pursuant to ORC 6119.06 (AA)</u>, upon receiving a written request and <u>the current water tap fee</u> will install a water service connection from the main to the Grantee's lot line, and thereafter Grantee, his heirs, executors or assigns shall pay a minimum water service <u>fee per month</u>, regardless of use, per month in lieu of and in the same manner as the water availability charge. The aforesaid charges are subject to change by the Public Utilities Commission of Ohio. Exceptions and further explanations pertaining to conditions for water service have been, or will be, recorded in the Office of the Recorder of Brown County, Ohio, and are hereby incorporated in and expressly made a part of <u>these Covenants</u> by</p>

<p>incorporated in and expressly made a part of this Agreement by reference.</p> <p>Charges for water service and for the availability of water service which are not paid within ten (10) days after the first day of the month in which they are due shall be increased by a ten percent (10%) overdue charge. Any costs incurred by the Grantor, its successors or assigns, in the collection of the aforesaid charges shall be borne by the Grantee, his heirs, executors or assigns. It is understood and agreed that the above mentioned considerations, if unpaid, shall constitute a lien encumbrance on or against said lot, tract or parcel of lands, which lien shall be equal to and shall participate with other liens as provided by law. With regard to the Agreement to pay the Grantor, its successors or assigns, the aforesaid charges, the Grantee, his heirs, executors or assigns and each successive Grantee, authorizes and empowers any attorney at law to appear in any court of record in the state of Ohio, or elsewhere, from time to time and as many times as shall be deemed necessary by Grantor, its successors or assigns, and waive the issuing and service of process and confess a judgment against said Grantee, his heirs, executors, assigns, or successor or successive Grantees, in favor of such Grantor, its successors or assigns, for the amount then due, together with costs of suit with or without declarations, without defalcations and without stays of execution and thereupon release all errors and waive all rights of appeal.</p>	<p>reference.</p> <p><u>Rationale:</u> <i>Since these Covenants were first written, the Waynoka Regional Water & Sewer District was established (1996). State law and the District's By-laws and Rules and Regulations contain regulations that cover the materials changed or deleted above.</i></p>
	<p style="text-align: center;"><u>EMERGENCY BORROWING AND COLLATERAL</u> <i>(New Paragraph 10 Inserted)</i></p>
	<p><u>10. The WPOA BOARD OF TRUSTEES, as duly elected representatives of the WPOA, shall have the power, in EMERGENCY circumstances, to approve by a two-thirds (2/3) majority of Trustees, the borrowing of any such monies deemed critical for the prevention of irreparable damage to, and/or</u></p>

	<p><u>proper repair and preservation of WPOA assets and the Lake Waynoka Subdivision.</u></p> <p><u>When such emergency borrowing requires security by means of a security interest lien, mortgage, or other similar instrument; or collateral assignment against WPOA common elements, common assessments, fees, or other income realized by the WPOA, such encumbrance identified above, shall be described in the security instrument. Further, to the extent possible, the encumbrance shall be limited to the common elements specifically related to the project for which funds are borrowed.</u></p> <p><u>The WPOA BOARD OF TRUSTEES shall notify the WPOA membership of the reasons, terms, and conditions of any emergency borrowing and/or collateralization in a timely manner.</u></p> <p><i><u>Rationale:</u> State law prohibits homeowners associations like the WPOA from <u>ANY borrowing that uses common assets for collateral unless 75% of the voting power of the Association supports the borrowing. OR unless the members grant such authority in the Restrictive Covenants. For the WPOA this would require three times more affirmative votes than the total votes which have been cast in all previous Lake Waynoka votes. This provision grants the WPOA Board of Trustees <u>LIMITED</u> authority to borrow and use common WPOA assets as collateral in event of a true emergency threatening lake assets. It requires a 2/3 majority vote of the Trustees. This provision protects members, and assists the Board to exercise its fiduciary responsibility to protect lake assets.</u></i></p>
	<p><u>BORROWING AND COLLATERAL FOR OTHER PURPOSES</u> <i>(New Paragraph 11 inserted)</i></p>
	<p><u>11. The WPOA BOARD OF TRUSTEES may borrow funds for the operation, improvement, and betterment of the WPOA and its common areas/common elements, with the approval by a majority of votes cast, by</u></p>

members-in-good-standing of the WPOA. Such vote shall be taken by way of first-class mail, secure electronic means, and/or in-person vote following the procedures set forth in the General Rules and Regulations, Volume III, “Elections Procedures Manual.”

In the event that the WPOA BOARD OF TRUSTEES desires or is required to use either: (i) current and future income, including annual dues, assessments, fees, or other income realized by the WPOA; and/or (ii) the common areas/common elements owned and/or controlled b WPOA (collectively “WPOA Assets”), as collateral for any loans securing the repayment of such monies, the lien, mortgage, or other encumbrance, to the extent possible, shall be limited to the common elements specifically related to the project. The lien or other encumbrance shall include a description of the element(s) and/or funds encumbered.

Rationale: *State law prohibits homeowners associations like the WPOA from ANY borrowing that uses common assets as collateral unless 75% of the voting power of the Association supports the borrowing. OR unless the members grant such authority in the Restrictive Covenants. For the WPOA this would require three times more affirmative votes than the TOTAL votes which have been cast in any previous election or ballot of the membership at Lake Waynoka. This provision grants the WPOA Board of Trustees limited authority to borrow and use common assets as collateral to finance improvements, or operations BUT ONLY with the approval by a majority of the WPOA membership. This provision empowers members to have a significant voice in major projects while allowing the WPOA Board of Trustees to have flexibility in developing plans for the betterment of our Lake Waynoka community and presenting those plans to the members.*

~~10. These restrictions shall be considered as running with the land, and shall bind the Grantees, their heirs, executors, administrators, successors or assigns, and if said Grantees, their heirs, executors, administrators, successors, and assigns, shall violate, or attempt to violate, any of the covenants or restrictions herein contained, it shall be lawful for any person or persons owning any land in the Subdivision to prosecute any proceeding at law or in equity against the person or persons violating or attempting to violate any such covenants or restrictions either to prevent him or them from doing so, or to recover damages for such violation.~~

~~The restrictions, conditions, covenants or agreements set forth in Paragraphs 1,4,5,7,9 and 10 shall continue until January 1, 2020 AD., and all the other restrictions, conditions, covenants or agreements contained herein shall continue until January 1, 1976. All restrictions may be thereafter changed, altered, amended or revoked in whole or in part by the owners of the lots in the Subdivision whenever the owners of at least two thirds of the said lots so agree in writing, or by action of the Lake Waynoka Property Owners Association at a meeting duly called for said purpose by a vote of at least a majority of the members thereof.~~

Any invalidation of any one of these covenants or restrictions shall in no way affect any other of the provisions thereof which shall thereafter remain in full force and effect.

10. 12. These Covenants run with the land, and shall bind the Grantees, their heirs, executors, administrators, successors or assigns, and if said Grantees, their heirs, executors, administrators, successors, and assigns, shall violate, or attempt to violate, any of the covenants or restrictions herein contained, it shall be lawful for any person or persons owning any land in the Subdivision **(and also specifically including WPOA as a “Person” for purposes of such enforcement)** to prosecute any proceeding at law or in equity against the person or persons violating or attempting to violate any such covenants or restrictions either to prevent him or them from doing so, or to recover damages for such violation **as well as and including reasonable attorney’s fees for prosecuting such enforcement.**

The restrictions, conditions, covenants or agreements set forth in these Restrictive Covenants may be changed, altered, amended or revoked in whole or in part by an election which shall be conducted by first-class mail, and/or secure electronic means sent to all MEMBERS-in-good standing, and/or an in-person vote as specifically set forth in the General Rules and Regulations, Volume III, “Elections Procedures Manual.” Such election shall be conducted as may be further provided for in the CODE and/or the Rules and Regulations as duly promulgated therefore by the WPOA Board of Trustees. All amendments shall be enacted upon the approval by a majority of votes, timely and properly cast in a duly called election, by members-in-good-standing.

Any invalidation of any one of these covenants or restrictions shall in no way affect any other of the provisions thereof which shall thereafter remain in full force and effect.

Rationale: *The language defining the WPOA as a “person” is needed to clarify that the Board of Trustees acting in the interest of the WPOA*

membership may act to enforce the covenants. Also, specifies recovery of reasonable attorney's fees.

Further, changes in this paragraph (1) remove no-longer relevant restrictions on when changes can be made to these Covenants, and (2) provide for balloting by electronic means, first class mail ballots, and/or in-person votes. This change will permit and encourage a greater percentage of WPOA members to participate in elections related to the Restrictive Covenants.