

**Prepared by and Return Document to:** Law Office of Schuster, Mick & Friedmann, 318 S. River Park Drive, P.O. Box 609, Guttenberg, IA 52052 (563) 252-1733

## **PROTECTIVE COVENANTS AND RESTRICTIONS OF INCLINE GROVE ESTATES SUBDIVISION PART 2**

The undersigned Moyna Holdings, Inc, (Declarant), being the Owner of all lots in the Subdivision to Kalona, Washington County, Iowa, known as Incline Grove Estates Subdivision Part 2, the plat of which subdivision is recorded at Instrument Number \_\_\_\_\_ in the office of the County Recorder of Washington County, Iowa, for the mutual benefit of those persons who may purchase any of the lots in said subdivision now owned by the undersigned, hereby impose the following covenants and restrictions on each lot in said subdivision, which shall be binding upon all the present and future owners of each and every parcel of ground in said subdivision as covenants running with the land and with such force and effect as if contained in each subsequent conveyance of land.

1. Except for Lot A and Lot B, all lots shall be used only for single-family residential purposes and no construction shall take place on any lot other than a single-family dwelling not exceeding two (2) stories, or two (2) stories and an exposed basement to the side or rear, and an attached garage outbuilding, lawn shed, or gazebo as allowed herein.
2. The following provisions shall be applicable to construction on the subdivision lots:
  - a. No lot shall be subdivided. However, this provision shall not prevent a conveyance of a portion of one lot to the abutting owner of another lot so long as said conveyance does not result in an additional building lot created thereby.
  - b. No residence shall be erected on any lot having a ground floor living area of less than 1,800 square feet in the case of a one-story structure, nor less than 1,200 square feet on the ground floor living area in the case of a one and one-half or two-story structure unless approved by the Declarant. Garages, breezeways, screened porches, open porches, or decks shall not be considered as ground floor area.

- c. No duplexes or more than one single-family dwelling unit shall be allowed on each lot.
- d. Attached Garage. A minimum 2-car attached garage and a maximum 4-car attached garage shall be allowed. Detached garages are allowed, provided they include the same architectural qualities as the residence and are compliant with the outbuilding requirements defined below, and considered an outbuilding
- e. All dwelling units shall have a basement.
- f. Prior to any construction of dwelling units or outbuildings, plans and specifications for the proposed structures shall be submitted to the Declarant. In addition to plans and specifications for structure, the application shall show the location and type of fences, parking areas, sewer facilities, and other relevant matters, including the location on the lot of all proposed improvements, the materials to be used and the exterior color scheme proposed. The application shall also set forth a time schedule for construction of the proposed improvements, and in no event shall an application be approved when the proposed construction will take longer than eighteen (18) months. The Declarant shall approve or disapprove the application within a period of thirty (30) days after receipt of all of the above documents, and in the event of disapproval, shall specify the exact reasons therefore to enable the applicant to correct the application in order to obtain approval. Disapproval of the application shall be for substantial cause, it being the intent of this restriction to permit improvements that will enhance the aesthetics of the subdivision and maintain or improve property values. Split-foyers, A-frames, log cabins, premanufactured or dome houses shall not be permitted. All homes must be built on site and completed within eighteen (18) months of commencement of construction.
- g. No temporary housing (e.g., campers, trailers) allowed before, during or after the construction of a home.
- h. EXTERIOR WALL, ROOF AND WINDOW MATERIALS. Not less than twenty-five percent (25%) of the front wall of any structure built upon the Lots shall be brick, stone, or stucco. All other exterior walls on all structures built upon the Lots may only incorporate any of the following: EIFS, brick, stucco, stone, vinyl, or cemplank or an equivalent product, aluminum, steel, vinyl, horizontal wood lap siding, reverse board and batton (RB&B) or vertical siding.

Roofing materials may incorporate any of the following: Slate, copper, or asphalt shingles with weight not less than two hundred and fifty (250) pounds. Any roof shall have a minimum of 6/12 pitch, unless a lower pitch is approved by the Declarant. Roof forms shall be well organized and consistent in form and pitch on all elevations. Gutters and down spouts shall be used at all eaves. Roof structures such as attic vents, plumbing vents, and exhaust fans shall be located on the rear of the ridge and shall be painted to match the roof color.

Windows may incorporate any of the following: Wood, vinyl, or aluminum clad wood with clear glass or low E glass. No reflective glass will be permitted.

The foregoing requirements, or any one of them, may be waived by Declarant.

- i. VARIANCE. Notwithstanding anything herein to the contrary, the Declarant may, until such time as a Lot has been developed, grant a variance from any of the restrictions and covenants imposed herein as long as the Declarant, at Declarant's sole discretion, determines that such a variance is in the best interest of the development as a whole. At such time as a Lot has been developed (a Single-Family Home has been completed upon the Lot), Declarant's ability to grant variances with respect to that Lot shall terminate.

### 3. OUTBUILDINGS.

- a. All outbuildings must match or complement architectural look of the dwelling.
- b. All outbuildings shall be constructed on a cement foundation with a maximum wall height of sixteen feet (16').
- c. Outbuildings shall have a minimum size of 30'x40' and a maximum foundation size of 40'x60'.
- d. Unattached garages shall be considered an outbuilding. Outbuildings shall contain a maximum garage door opening of fourteen feet (14') and a minimum thirty feet (30') from opening of building concrete approach is required.
- e. The interior floor of any outbuilding shall be paved
- f. No single-pitch roof design is allowed. All outbuildings shall have a gutter system, with no discharge of water onto adjoining lots.
- g. As to Lots 9, 11, 12, 13, or 14, one (1) outbuilding shall be allowed (note: detached garage considered an outbuilding).
- h. Lot 10 may have two (2) outbuildings.
- i. No outbuildings may be built until the dwelling unit located on any lot has been completed.
- j. Lawn Shed. A storage structure shall be permitted in a rear yard, and shall be limited to one per Lot and shall be no larger than two hundred eighty-eight square feet (288 ft<sup>2</sup>) in ground floor area, and no longer than twenty-four feet (24') in length, and no taller than twelve feet (12') at the peak of the roof line. Such storage structure shall be constructed of the same materials, and have siding of the same material and color as the Dwelling Unit on the Lot. A decorative lawn structure, such as a gazebo, is permitted and shall be limited to one per lot, and shall be no larger than three-hundred square feet in ground

floor area and no taller than twelve feet (12') at the peak of the roof line, and must be constructed to the rear of the residential structure. A Lawn Shed or Gazebo as hereby defined shall not be considered an outbuildings for purposes of 3(g) and 3(h), above.

4. DRIVEWAYS.

- a. All driveways shall be crushed asphalt millings, paved concrete, paved asphalt, or brick.
- b. A minimum 30' approach to dwelling or outbuilding shall be paved. Driveways must be maintained at a minimum 12' width, and kept free of all vegetation and detritus/debris.

5. FENCING. Fences may be installed along any boundary line without the approval of the Declarant, however the material to be used must be approved by the Declarant. Fencing shall be limited to no higher than 4' for property boundary lines. Garden fence may be 6' black poly covered chain link fence to enclose a garden to be no larger than 25'x60'. Barbed wire or woven wire fence shall not be permitted within this subdivision.

6. GENERAL.

- a. Prohibited Activity. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done, placed or stored thereon which may be or may become an annoyance or nuisance to the neighborhood, or occasion any noise or offensive odor which might disturb the peace, comfort, or serenity of the occupants of neighboring lots. In addition, no house trailers, cabins, tents, metal storage sheds, or other outbuildings are permitted on any lot, other than those permitted by Paragraph 3 hereof, nor is any basement, garage or outbuildings of any kind to be used as a temporary or permanent residence.
- b. Rubbish. The lot and all improvements located thereon shall be kept in good order and repair, in a safe, clean and attractive condition, and maintained in a first-class manner. No accumulations of garbage, trash, brush, or other debris shall be permitted on the lot.
- c. Containment of Rubbish. No lot shall be used or maintained as a dumping ground for refuse or garbage or the like. When the dwelling unit construction is complete, all residents shall be required to use a standard garbage container provided by any of the local large waste contractors. No containers of a smaller size shall be used for any reason. All containers shall be removed from public view within twenty-four (24) hours of being emptied by the waste contractor.
- d. Utility lines. All electrical, power, water, communication lines, or other connecting utility service lines to dwellings shall be trenched.
- e. Vehicles, etc. No worn out, discarded automobiles, machinery or vehicles, or parts thereof shall be stored on any lot and no part thereof shall be used for the storage of any kind of junk or waste material. Boats, trailers, motorcycles, recreational vehicles, vans, vehicles to be restored, commercial vehicle of any

kind, or other similar items must be kept free from public view and must be parked within a garage or screened paved parking area. Temporary storage of boats and trailers for no more than thirty (30) days while in the state of transfer, etc. shall be allowed.

- f. Pets; Control of Animals. No animals of any kind, including but not limited to, livestock, chicken, or fowl, shall be raised, bred, housed, quartered or kept on any Lot or in any Dwelling Unit, except that dogs, cats, and other ordinary household pets may be kept and housed provided they are not kept, bred, housed or maintained for any commercial purpose. Any such domestic animals kept as pets must be restrained and confined and kept off the premises of other Lot Owners. Such domestic pets must be kept quiet and orderly so as not to disturb the peaceful enjoyment of other Lot and Dwelling Unit Owners.

No animal waste shall be permitted to be uncontrolled for a period of more than twenty-four (24) hours on a pet Owner's Lot and must be removed immediately if said animal waste occurs anywhere in the subdivision or on adjacent Lots other than on said pet Owner's Lot. No pens or runs shall be permitted on a Lot. Underground fences such as "invisible fence" shall be permitted for the purpose of restricting or confining domestic animals. No such underground fencing, however, shall encroach onto any easement or within twenty (20) feet of any Lot line.

- g. Trees. Each Lot Owner shall plant, at a minimum, five (5) trees on the Owner's Lot with at least two (2) trees being planted in the front yard and at least three (3) trees in the rear yard. All front yard trees shall be deciduous. The only trees permitted to be planted are deciduous trees with a minimum trunk diameter of three (3) inches of the following types: *Betula nigra* (River Birch); all Lindens; all maples except silver maple; all oak; and thornless honey locust or other species approved by the Declarant, and coniferous trees with a minimum trunk diameter of two (2) inches of the following types: all spruce; all pine (except Austrian); all fir; Ginkgo; or other species approved by the Declarant. Said trees shall be planted by the Owner within one hundred eighty (180) days of Occupancy. It is the intent to encourage and support shading in this subdivision.
- h. Swimming Pools. Above-ground swimming pools are prohibited. Any in-ground swimming pool, the location of same upon any Lot, and protective fencing surrounding the pool shall be subject to the approval of the Declarant. Design and location of swimming pools must receive prior written approval of the Declarant. Swimming pools must be designed, constructed, installed, operated, and maintained pursuant to applicable ordinances and statutes. Swimming pools must be located in the rear yard.
- i. Solar Panels. Solar panels are allowed only on the roof of the dwelling unit or any outbuilding. No ground installation solar panels are permitted.

- j. Wells. This subdivision has access to a public water system. No wells shall be permitted within this subdivision.
- k. Lawn & Native Grass Seeding. Minimum of 50% of the lot must be vegetated with a lawn mix, mowed and maintained regularly. Noxious weeds shall be controlled. Lot owner is responsible for the maintenance of the City ditch area up to the paved roadway.
- l. Cutting of Grass. Each Lot Owner shall be responsible for cutting the grass on the Lot Owner's lot and the adjoining City ditch area to the edge of the paved roadway.
- m. Mailboxes & 911 Signage. Mail boxes shall be allowed at the end of the driveway adjacent to Vista Drive consistent with US Postal requirements. In addition to the mailbox, a 911 sign shall be located along Vista Drive.
- n. Lighting.
  - i. Exterior security lighting shall be allowed but must be pointed downward and toward the inner portion of a lot. In addition, security light shall be hooded so as to eliminate any inconvenience or nuisance of lights shining on adjoining properties.
  - ii. All exterior sport court or recreational lighting must be extinguished by 11PM
  - iii. Carriage Lights. Every dwelling unit shall have a carriage light and post at least six feet (6') and no more than eight feet (8') in height at the right-of-way line on Vista Drive ten feet (10') from the edge of driveway. The carriage light shall remain lit during all hours of darkness and shall be located on the east side of the driveway. The carriage light shall be approved by the Declarant.
- o. Septic.
  - i. Each dwelling unit shall have a private sewage disposal system, the location and construction of which shall be approved by the Washington County Combined Health District. No structure accessory to the septic system requiring footings or concrete floor or excavation will be allowed. No septic tank, leach field, or discharge may be located closer than 30' from any property line. No discharge can flow onto neighboring subdivision lots.
  - ii. If any private septic system causes pollution or creates any offensive odors or unsightly condition, the owner thereof shall correct said condition within a period of thirty days after being notified in writing by any person having an interest in any lot in the subdivision
- p. Access. No lots in Incline Grove Subdivision Part 2 shall be used for access to adjoining grounds by vehicular traffic.

- q. Clotheslines. Clotheslines of a permanent nature are prohibited. Clotheslines of a temporary nature are allowed. Temporary clotheslines shall be dismantled or retracted when not in use. Temporary clotheslines shall be so located as not to be visible from the street serving the Dwelling Unit. Clothes shall not remain drying for more than a twenty-four (24) hour period.
  - r. Nuisances. No noxious or offensive activity shall be carried on in or upon any Lot or Dwelling Unit. No plants or seeds or other things or conditions, harboring or breeding infectious plant diseases or noxious insects shall be introduced or maintained upon any part of a Lot or Dwelling Unit.
  - s. Firearms. No firearms, air rifles, pellet guns, or BB guns shall be discharged and no hunting of any animals shall be permitted upon any Lot or Dwelling Unit.
  - t. Location of Satellite Dishes. No satellite dishes shall be allowed on any Lot within the subdivision unless located to the rear of the Dwelling Unit on said Lot and shall not exceed thirty inches (30") in size. Exterior television and radio antennas must receive prior approval of the Declarant.
  - u. Signs. No sign, billboard, or advertising device, except those used in the sale of any Lot or Dwelling Unit within the subdivision not to exceed two feet (2') by two feet (2'), shall be placed on any Lot or Dwelling Unit prior to approval of same by the Declarant.
  - v. Firewood. Firewood may be stored within the Dwelling Unit. If stored outside, it shall be stacked immediately adjacent to the rear of the Dwelling Unit in an orderly fashion. If the wood is purchased by the truckload, it must be cut and stacked within two (2) weeks of delivery to the lot.
  - w. Excess Earth Excavated. All earth excavated in the construction of a Dwelling Unit and not used upon the Lot under construction shall be removed by the Lot Owner or building contractor, at the Lot Owner's or contractor's expense to some other location outside of Incline Grove Subdivision Part 2.
7. OTHER PROHIBITED MATTERS. No home occupation or profession shall be conducted in a Dwelling Unit, except that:
- a. A professional or quasi-professional person may use the Dwelling Unit as an ancillary or secondary facility to an office established elsewhere, and
  - b. A single licensed provider may use the Dwelling Unit to provide child care
8. COMMERCIAL BUSINESS. No commercial business shall be run out of any dwelling unit or outbuilding located within this subdivision except as otherwise herein permitted.
9. AMENDMENT. These covenants may be amended at any time by the Declarant so long as the Declarant is the owners of any lot in Incline Grove Subdivision Part 2.

When Declarant no longer owns a lot in Incline Grove Subdivision Part 2, these covenants may be amended by a vote of sixty percent (60%) of the owners. Any amendment of these covenants shall be recorded by the Washington County, Iowa Recorder.

10. SEVERABILITY. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other property provisions which shall remain in full force and effect.
11. DURATION. The covenants and restrictions of these Protective Covenants and Restrictions shall run with and bind the land, for a term of twenty-one (21) years from the date these Protective Covenants and Restrictions are recorded, and may be extended for successive periods of twenty-one (21) years thereafter under Sections 614.24 and 614.25, Code of Iowa, 2020; provided, however that any easements created by these Protective Covenants and Restrictions or the subdivision plat shall be perpetual in nature.
12. REMEDIES. A breach of any of the covenants, conditions, reservations, or restrictions hereby established shall give cause to each and every other lot Owner and the Declarant for the enforcement thereof, and these covenants, conditions, reservations and restrictions shall be covenants running with the land and the breach of any thereof or the continuance of any such breach may be enjoined or remedied by appropriate proceedings by the Owner of any other lot or the Declarant.

The breach of any of the foregoing covenants, conditions, reservations, or restrictions shall not defeat or render invalid the lien of any mortgage made in good faith for value as to any lot or lots or portions of lots, but these covenants, conditions, reservations, or restrictions shall be binding upon and effective against any such mortgagee or Owner.

No delay or omission on the part of the Owners of other lots or the Declarant in exercising any rights, power, or remedy herein provided, or in the event of any breach of the covenants, conditions, reservations, or restrictions herein contained, shall be construed as a waiver thereof or acquiescence therein, except as expressly provided herein.

In the event any one or more of the foregoing covenants, conditions, reservations, or restrictions shall be declared for any reason, by a court of competent jurisdiction, to be null and void, such judgment or decree shall not in any manner whatsoever affect, modify, change, abrogate, or nullify any of the covenants, conditions, reservations or restrictions not so declared to be void, but all of the remaining covenants, conditions, reservations, and restrictions not so expressly held to be void shall continue unimpaired and in full force and effect.

In the event the provisions hereunder are declared void by a court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective, then in that event such terms shall be reduced to a period of time which shall not violate the rules against perpetuities as set forth in the laws of the State of Iowa.



IN WITNESS WHEREOF, the above set forth Protective Covenants and Restrictions for Incline Grove Subdivision Part 2 correctly set forth the provisions of the Protective Covenants and Restrictions, and said Protective Covenants and Restrictions having been duly adopted on this \_\_\_\_ day of \_\_\_\_\_, 2024.

MOYNA HOLDINGS, INC.

By: \_\_\_\_\_  
John P. Moyna, President