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Doc ID: 031798690024 Type: GEN
Kind: RESTRICTIVE COVENANT
Recorded: 04/12/2017 at 02:20:32 PM
Fee Amt: \$122.00 Page 1 of 24
Polk County Iowa
JULIE M. HAGGERTY RECORDER
File# 2016-00084667

BK **16439** PG **223-246**

RETURN TO:

Prepared by/Return to: Kathleen Law, 700 Walnut, Suite 1600, Des Moines, Iowa 50309-3899; 515-283-3116

**SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS, EASEMENTS AND RESTRICTIONS FOR TRESTLE CROSSING**

This Second Amended and Restated Declaration of Covenants, Conditions, Easements and Restrictions for Trestle Crossing (the "**Declaration**"), is made this 7th Day of March, 2017, by **CALIBER IOWA, LLC**, an Iowa limited liability company ("**Caliber**"), and **C.D. DEVELOPER, L.L.C.**, an Iowa limited liability company ("**CD**"), and their successors and assigns.

WITNESSETH:

WHEREAS, Caliber is the owner of Lots 30-40 and 50-58, inclusive, in Trestle Crossing Plat 1, an Official Plat, now included in and forming a part of the City of Ankeny, Polk County, Iowa and CD is the owner of Lots 1-74, inclusive, in Trestle Crossing Plat 2, an Official Plat, now included in and forming a part of the City of Ankeny, Polk County, Iowa and CD is also the owner of Lots 1-49, inclusive, in Trestle Crossing Plat 3, an Official Plat, now included in and forming a part of the City of Ankeny, Polk County, Iowa (the "**Addition**");

WHEREAS, Declarant desires to develop the Lots as a single-family home community; and

WHEREAS, Declarant desires to establish covenants, conditions, easements and restrictions governing the Lots for the benefit of the Owners and to provide for the Association to operate and maintain Common Elements of the Addition.

WHEREAS, this Declaration replaces in its entirety the Amended Declaration of Covenants, Conditions, Easements and Restrictions for Trestle Crossing recorded in **Book 16255, Page 121** of the Polk County Records, in part to add Lots 1-49, inclusive, in Trestle Crossing Plat 3 to the property subject to this Declaration.

NOW, THEREFORE, Declarant hereby publishes and declares that all Lots shall be held, sold and conveyed subject to the following covenants, conditions, easements, restrictions, limitations and obligations, all of which are for the purpose of protecting the value and

desirability of the Addition, and all of which shall run with the land and shall be a burden upon and a benefit to any and all parties acquiring or owning any right, title or interest in any part thereof, and their heirs, successors, assigns, grantees, executors, administrators, and devisees.

ARTICLE I

INTENT; DEFINITIONS

1.01 Intent. It is the intent of this Declaration to provide covenants, conditions and restrictions to ensure the proper use and appropriate development of Improvements to each Lot. It is further the intent to provide for the Association to perform the operation, maintenance, repair, replacement, alteration, improvement or modification of the Declarant Improvements.

1.02 Definitions.

- (a) **“Association”** shall mean Trestle Crossing Homeowners Association, a nonprofit corporation organized pursuant to Chapter 504 of the Code of Iowa, and its successors and assigns.
- (b) **“Association Responsibility Elements”** shall mean the following: (i) Outlot “Z” of Trestle Crossing Plat 1, including, but not limited to, the detention pond located in said Outlot “Z”; (ii) Outlot “Z” of Trestle Crossing Plat 2, including, but not limited to, the detention pond located in said Outlot “Z”; and (iii) the private storm water field tile and intakes located on the east side of Lots 9-12, inclusive, the east side of Lots 13-15, inclusive, between Lots 12 and 13, and on the north side of Lots 54-56, inclusive, all as shown on the recorded plat of Trestle Crossing Plat 1.
- (c) **“Board”** shall mean the Board of Directors of the Association duly elected in accordance with the Articles of Incorporation and Bylaws of the Association.
- (d) **“City”** shall mean the City of Ankeny, Polk County, Iowa.
- (e) **“Common Elements”** shall mean those items installed and managed by the Declarant and the Association, including, but not limited to, the Declarant Improvements.
- (f) **“Declarant”** shall mean CALIBER IOWA, LLC, an Iowa limited liability company, and its successors and assigns, and C.D. DEVELOPER, L.L.C., and its successors and assigns. Caliber shall be a co-Declarant with CD (or its successors or assigns) until Caliber no longer owns any of Lots 1-58, inclusive, in Trestle Crossing Plat 1 and CD shall be a co-Declarant with Caliber (or its successors and assigns) until CD no longer owns any of Lots 1-74, inclusive, in Trestle Crossing Plat 2 and Lots 1-49, inclusive, in Trestle Crossing Plat 3. Caliber and CD, as Declarant, shall be the sole voting members so long as each is a co-Declarant pursuant to this section.

- (g) **“Declarant Improvements”** shall mean those Improvements Declarant is to construct within the Addition, including, but not limited to, the Association Responsibility Elements and any additional Improvements that Declarant chooses to construct and deliver to the Association for continued operation, maintenance, repair, replacement, alteration, improvement or modification. Notwithstanding the foregoing, or anything in this Declaration to the contrary, Caliber will be responsible for constructing the portion of the Declarant Improvements in Trestle Crossing Plat 1 and CD will be responsible for constructing the portion of the Declarant Improvements in Trestle Crossing Plat 2 and in Trestle Crossing Plat 3.
- (h) **“Declarant/Owner Remedies”** shall be as defined in Section 6.01 hereof.
- (i) **“Improvements”** shall mean and include private street, parking areas, sidewalks, fences, signs, the private street, landscaping and any structure of any type or kind, and all additions to any of the foregoing.
- (j) **“Lot”** shall mean Lots 1-58, inclusive in Trestle Crossing Plat 1, an Official Plat, now included in and forming a part of the City of Ankeny, Polk County, Iowa, Lots 1-74, inclusive, in Trestle Crossing Plat 2, an Official Plat, now included in and forming a part of the City of Ankeny, Polk County, Iowa, and Lots 1-49, inclusive, in Trestle Crossing Plat 3, an Official Plat, now included in and forming a part of the City of Ankeny, Polk County, Iowa .
- (k) **“Occupant”** shall mean an Owner and any person from time to time entitled to use and occupy any building, or any part of any building on a Lot, under any lease, deed, license or other instrument or arrangement by which such person has acquired rights with respect to the use and occupancy of any building or part of a building on a Lot.
- (l) **“Owner”** shall mean the person or persons who from time to time collectively hold the entire fee title to any Lot, including buyers under executory contracts of sale (but shall not include any person who holds such fee title merely as security for a loan, unless and until such person has succeeded to ownership by enforcement of its remedies under such loan documents).
- (m) **“Recorded Plat”** shall mean the subdivision plats of Trestle Crossing Plat 1, Trestle Crossing Plat 2, and Trestle Crossing Plat 3 as recorded in the Office of the Polk County Recorder.
- (n) **“Unit”** shall mean the dwelling constructed on any Lot.
- (o) **“Zoning Ordinance”** shall mean the zoning ordinances of the City of Ankeny, Iowa.
- (p) Words and phrases in this Declaration, including the acknowledgment, shall be construed as in the singular or plural number, unless the context permits only one such number.

- (q) Words defined elsewhere in this Declaration shall have that meaning throughout the Declaration and not just in the Section in which such word is defined, unless the definition expressly states otherwise.

ARTICLE II

GENERAL USE RESTRICTIONS AND BUILDING SPECIFICATIONS

The Lots shall be held, occupied, sold and conveyed subject to the following use restrictions and building specifications, as well as those restrictions set forth elsewhere in this Declaration:

2.01 Single-family Residence. The use of all Lots shall be limited to single-family residential use and shall be developed with not more than one single-family dwelling each, and may be developed only with such other uses of land or structures customarily incidental and subordinate to the single-family residential use as permitted by the City of Ankeny Zoning Ordinance, unless such uses or structures are otherwise regulated or prohibited by this Declaration. No full-time or part-time business activity may be conducted on any Lot or in any building or structure constructed or maintained on any Lot, except to the extent of a home occupation permitted by the City of Ankeny Zoning Ordinance, and except that home builders may maintain model homes during construction. Construction must be completed within nine (9) months from the date of the issuance of the building permit.

2.02 Architectural Standards.

- (a) Development Approval of Declarant. Lot Owners or builders must provide Declarant, prior to commencement of construction, architectural plans showing elevations from all compass directions and a comprehensive list of building materials for all exterior construction, including decking materials.
- (b) Exterior Foundations. Exposed foundations must be painted to blend with exterior wall finishes or be of stone, stone veneer, brick, or the equivalent.
- (c) Siding. Siding material variations on the elevation for accent purposes are encouraged, but the overall character and predominant siding must be consistent on all elevations of the structure. Siding shall not have a reveal of greater than eight inches (8"). Exterior colors shall be finished with an earth-tone conservative color design. No bright colors of any kind are permitted. A minimum of twenty-five percent (25%) of the front elevation of the dwelling on each Lot shall be covered with a brick, stone, stone veneer or stucco, unless otherwise approved in writing by Declarant. Dwellings located on Lots 18-21 and 32-57 in Trestle Crossing Plat 1 and Lots 30-49 in Trestle Crossing Plat 2 must be constructed with a cement board siding or similar hardboard siding (commonly referred to as "Hardie Plank," "James Hardie Siding," or "LP Smartside"), unless otherwise approved in writing by Declarant. Dwellings located on Lots 1-17, 22-31 and 58 in Trestle Crossing Plat 1,

located on Lots 1-29 and 50-74 in Trestle Crossing Plat 2, and located on Lots 1-49 in Trestle Crossing Plat 3 may be constructed with the above-referenced cement board and/or hardboard siding, or may have the option of using vinyl siding with siding material variations on the elevation for accent purposes. Other materials or colors must be approved in writing by the Declarant.

- (d) Roof Materials. The pitch of the roof on all dwellings must be a minimum of 6/12, unless otherwise approved in writing by Declarant. Notwithstanding the foregoing, Contemporary/Transitional home styles and dwellings will be allowed to have a pitch of the roof of 4/12 or 5/12; provided, however, that such dwellings also include: (i) three-foot (3') overhangs, (ii) Hip roof and (iii) two (2) or more ceiling heights incorporated into the plan, with height variations of two feet (2') or more. All roof materials shall be slate, tile, cedar shakes, or asphalt composition shingles. Shingle colors shall be muted earth tones and shall be compatible with, and complimentary to, the exterior materials and colors of the building structures.
- (e) Garages and Driveways. All residences shall include an attached garage having space for not less than two (2) or more than four (4) automobiles. All driveways must accommodate two (2) cars off-street and must be constructed of concrete. Notwithstanding anything herein to the contrary, the Declarant may approve a larger garage size than indicated in this section upon the submission of plans for such garage. Any such approval shall be in writing by Declarant.
- (f) Minimum House Sizes. All Units shall contain a minimum square footage of living space exclusive of attached garages, breezeways, porches and finished basement areas as follows:
 - 1. One-story dwellings on Lots located on Trestle Crossing Plat 1 and on Trestle Crossing Plat 2 must have a minimum of one thousand four hundred (1,400) square feet of finished area directly under the roof.
 - 2. One-story dwellings on Lots located on Trestle Crossing Plat 3 must have a minimum of one thousand three hundred fifty (1,350) square feet of finished area directly under the roof.
 - 3. One and one-half story dwellings on Lots located on Trestle Crossing Plat 1 and on Trestle Crossing Plat 2 must have a finished floor area of at least one thousand seven hundred (1,700) square feet.
 - 4. One and one-half story dwellings on Lots located on Trestle Crossing Plat 3 must have a finished floor area of at least one thousand five hundred fifty (1,550) square feet.
 - 5. Two-story dwellings on Lots located on Trestle Crossing Plat 1 and on Trestle Crossing Plat 2 must have a finished floor area of at least one thousand eight hundred (1,800) square feet.

6. Two-story dwellings on Lots located on Trestle Crossing Plat 3 must have a finished floor area of at least one thousand six hundred (1,600) square feet.
- (g) Decks and Porches. Decks attached to each house should be built from materials similar to those used on the house. Unpainted and/or un-finished natural wood decks, though appropriate for rear yard spaces, are not acceptable as front entry porches. Entry porches should be designed as integral, yet dominant, features that invite entrance to the dwelling. Columns supporting porch roofs should be massive in scale. Built-up box columns or tapered round columns are encouraged. Handrails shall match the architectural style of the home. No wood steps to front entry porches are permitted.
 - (h) Building Elevation and Drainage Standards. The finished grades for houses constructed on each Lot shall be established to permit positive drainage away from such house and shall match the final grades per the applicable Recorded Plat and final engineered drawings.
 - (i) Development Approval of Declarant. Owners, builders or developers of Lots must secure Declarant's written approval of items A through H of this section prior to start of construction on any Lot. It shall be the sole responsibility of Owners, builders, or developers to submit the plans to Declarant prior to construction.

2.03 Landscaping. All lots shall be sodded, including the front, side and rear yards. Initial landscaping must include a minimum of two (2) two inch (2") caliper trees. All sodding and landscaping shall be completed upon issuance of a certificate of occupancy and thereafter maintained, but in no event shall this be more than twelve (12) months from the date of the issuance of the building permit.

2.04 Fences. No fences, walls, hedges or barriers shall be permitted upon Lots or adjoining property lines except as follows:

- (a) Walls, fences, or hedges along rear property lines and side property lines shall not exceed six feet (6') in height.
- (b) The fence fabric or fence screening material shall be mounted on the exterior face of the fence posts or fence framing. No chain link fence, including a chain link fence around a dog run, shall be permitted unless it is black vinyl clad fence. All fences shall be kept in good repair and attractive appearance.
- (c) No fence shall be built forward of the centerline of the house built on a Lot. All fences shall be wood, wrought iron, vinyl, or vinyl clad chain link. All wood fences shall be natural in color, stained, or painted in soft, earth tone colors so as to blend in with the terrain. All vinyl fences shall be black, white or soft earth tone colors.
- (d) Notwithstanding anything in this Declaration to the contrary, no Lot Owner shall have the right to erect a fence within or across any easement area shown upon the Recorded Plat without the prior consent of the City of Ankeny or the utility company or companies for whose benefit such easement runs. Any fence erected within or

across an easement area without such consent may be taken down by the person for whose benefit such easement runs in the exercise of any rights granted by such easement without any obligation to such Lot Owner to restore or repair such fence.

2.05 Utility Meters. Utility meters shall be hidden architecturally or through the use of remote reading devices.

2.06 Mailboxes. If required by the City of Ankeny, Iowa ordinances, Declarant shall install a "cluster-style" mailbox(es) to serve this block substantially in accordance with the requirements of such ordinances, which mailbox(es), upon installation, shall become the property of the United States Postal Service without any further deed or transaction. Thereafter, the United States Postal Service shall maintain, repair and replace said mailbox(es). If the United States Post Office fails to maintain, repair or replace said mailbox(es), then the owner(s) of each Lot may erect individual mailboxes in the public right-of-way adjacent to their property (or across the street from the Lot on the side of the street on which mail delivery is made) such that the front of the mailbox is at least six inches (6") back from the curb. The mailbox supports for such individual mailboxes shall be constructed of black decorative metal, brick or wood stained in colors similar to the home exterior and shall be installed in such a manner so as not to lean or tilt.

2.07 Playhouse and Utility Buildings. Playhouses, utility buildings, storage sheds or other similar structures shall be permitted, provided that the exterior and the roof of any such structure shall be constructed of the same material, have the same roof pitch, color and appearance as the residential dwelling on the same Lot and shall be located only in rear yards. No such structures shall be located within fifteen feet (15') of any rear or side lot line of such Lot. All such structures shall be in compliance with City of Ankeny codes and regulations.

2.08 Utilities. All utilities, including trunk and service lines for telephone, electricity and cable television, shall be constructed and located underground. No private wells or septic systems shall be permitted on any Lot.

2.09 Security Lighting. Security lighting for driveways, parking and other areas shall be designed, located and directed in a fashion that will avoid direct lighting onto adjoining Lots.

2.10 Sidewalks. Per City of Ankeny code and regulations, sidewalks are required along public streets. The Lot owner shall be responsible for construction of the public sidewalk along each street frontage according to City specifications. Owners of corner Lots shall install sidewalks parallel to all street frontages. The Declarant has no obligation to any Lot Owner to install sidewalks. Sidewalks shall be constructed within one (1) year after the sale of any Lot or at the time of occupancy of any dwelling on the Lot, whichever occurs first. No exceptions to this rule shall be allowed unless granted by the Declarant in writing.

2.11 Garbage Cans and Equipment. No trash receptacles, garbage cans or recycling bins shall be located upon a Lot unless hidden by an attractive screen of suitable height, or unless sunken to ground level in a hole lined with permanent cribbing, except that garbage cans, trash sacks, recycling bins, yard refuse bags and other materials for collection by an authorized refuse collector may be placed at the pickup area designated by the City or its authorized refuse

collection company on the day before collection and may remain until the evening of the day of the scheduled collection of the same. Items such as compost containers, clotheslines, lawn or garden equipment, building materials and other similar items shall be placed out of public view. Firewood shall not be stored on the front side of a house. Stacked firewood in excess of 4' long by 3' high shall be adequately screened from view and must be stacked in the rear yard and be at least twenty feet (20') from any rear or side yard Lot line. Only retractable or collapsible clotheslines are permitted. Such clotheslines shall be located in the rear yard area and shall not be visible from the street. All clotheslines shall be retracted or collapsed when not in use.

2.12 Automotive Repair Prohibited. No automotive repair or rebuilding or any other form of automotive manufacture, whether for hire or otherwise, shall occur on any lot. However, the owner of any Lot may work on any vehicle owned by said Owner inside the garage out of public view.

2.13 Parking, Storage, Tents, Trailers and RV's. No tent, trailer, boat, camper, snowmobiles, motorcycles, four or three wheelers (ATV), motor home, or truck rated larger than 3/4 ton or other movable or temporary structure or enclosure shall be maintained or parked on any Lot or street for more than a cumulative of seven (7) days in any calendar year.

2.14 Temporary Structures/Mobile Homes. No building or structure of temporary character and no trailer, basement, tent, shack, garage or outbuilding shall be used at any time as a residential dwelling on any Lot, either temporarily or permanently. No home or other building shall be moved onto any Lot from outside the development. All homes constructed in this development shall be constructed on-site, and no manufactured or modular housing or mobile homes shall be permitted at any time.

2.15 Swimming Pools/Hot Tubs. Below-ground swimming pools and hot tubs are allowed, subject to the area being fenced according to the fencing requirements in Section 2.04, and any hot tubs being skirted in wood. No above-ground swimming pools shall be permitted on any Lot.

2.16 Satellite Dish. Satellite dishes or parabolic devices in excess of twenty-four inches (24") in diameter used to receive television or other signals from satellites shall not be permitted. The satellite dishes or parabolic devices shall be mounted on the rear elevation or the rear half of the side elevations only. In no event shall a satellite dish or parabolic device be mounted on the front elevation or the front half of a side elevation, or located forward of the centerline of the house.

2.17 Exterior Animal Houses/Invisible fences. Animal runs shall not be permitted, unless they are located at the rear of the house or garage and extend toward the rear of the Lot from that portion of the house or garage which is closest to the rear Lot line. Any animal house shall have the same external appearance, color and roof materials as the home situated on the Lot. No animal house shall exceed twenty (20) square feet in area.

2.18 Towers and Antennas. No extension towers or antennas of any kind shall be constructed or maintained on any Lot or on the exterior of the residence.

2.19 Noxious Activities/Livestock. No noxious or offensive activity, noise or odors shall be permitted on or to escape from any Lot, nor shall anything be maintained or done thereon which is or may become an annoyance or nuisance, either temporarily or permanently. No animal, livestock, pigs or poultry of any kind shall be raised, bred or kept on a Lot, except that dogs, cats and other small, commonly accepted domestic pets may be kept so long as they are not kept, bred or maintained for commercial purposes or sale to the public. All animals shall be tied, kept on a leash, fenced, confined by an underground electrical fence or kept in an animal run at all times.

2.20 Maintenance of Lots & Improvements. The owner or person in possession of any Lot, whether vacant or improved, shall keep or cause to be kept all buildings, fences and other structures and all landscaping located on their property in good repair and shall keep the Lot free of debris. The Lot shall be mowed so that the grass or weeds do not exceed six inches (6") in height.

2.21 Construction Clean Up and Maintenance. Lot owners and their contractors are reminded that construction sites are to be kept clean. Weekly cleanup of trash and debris is required. The street is also to be kept free of debris and mud. The installation by the Lot owner of silt fences or equivalent erosion control is required on the downhill property line(s). The Lot Owners are responsible for their contractors and subcontractors. If a site is found to be in an unacceptable condition, the Lot Owner will be notified by phone and/or letter of violations. Lot Owners will have three (3) days to respond before the work is performed by others and the cost thereof assessed to the Lot Owner. Such cost shall be immediately due upon demand, and shall bear interest at the rate of twelve percent (12%) per annum until paid in full. Such cost, and the accrued unpaid interest thereon, shall become a lien upon said Lot upon the filing of an affidavit in the office of the Recorder for Polk County, Iowa, setting forth the notice, the failure of the Lot Owner to cure such default, the work performed by or on behalf of the person other than the Lot Owner, and the cost thereof.

2.23 Damage or Destruction of Improvements. In the event any residence or other structure constructed on a Lot is damaged, either in whole or in part, by fire or other casualty, said Residence or other structure shall be rebuilt or remodeled within ninety (90) days from date of damage or destruction to comply with this Declaration; or in the alternative, if the residence or other structure is not to be rebuilt, all remaining portions of the damaged structure, including the foundation and all debris, shall be removed from the Lot within thirty (30) days of damage or destruction, and the Lot shall be restored to its natural condition existing prior to the construction of the Residence or other structure.

2.24 Sales Office. Declarant reserves the right to maintain one or more Lots as a model or a sales and display office for itself, for its marketing firm, or for any of the home builders who purchase lots from Declarant; display or post signs of any type or size which are a part of the development and marketing of the Recorded Plat; and to have agents and employees equipment and material on any Lot used as a model or sales office.

ARTICLE III

EASEMENTS AND ENCROACHMENTS

3.01 Easements and Encroachments.

(a) General Easements. Each Lot shall be subject to the following easements in favor of the Association and the other Owners:

(1) Each Lot is burdened with an easement of ingress and egress for construction, maintenance, repair and replacement of Association Responsibility Elements by the Association and the Declarant.

(2) Each Lot is burdened with an easement for surface drainage for the benefit of all other Lots.

(3) Each Lot is burdened with easements for public utilities and sidewalks as may be shown upon the Recorded Plat.

(b) Drainage, Utility, Sewer and Other Easements.

As may be noted on the Recorded Plat, Declarant may reserve certain areas of the Lots for easements. In doing so, it is the intention of Declarant to provide the needed flexibility to itself, for the benefit of all Lots and Owners, to properly install and allow to be maintained all electric and other utility services, (including all lines, pipes, wires, cables, ducts, etc.) to the Units constructed on the various Lots. No other improvements or permanent structures (excluding walkways, driveways and fences) shall be placed within such utility easements and any fences so installed shall be and are expressly subject to the rights (including the right to remove where reasonably necessary without duty of replacement or reimbursement) of any public or private utility to construct, maintain, repair or remove any necessary facilities and the right of Declarant and the Association to provide for and maintain appropriate drainage.

In addition, Declarant has entered into an agreement with the City entitled "Storm Water Management Facility Maintenance Covenant and Permanent Easement Agreement" wherein Declarant, on behalf of the Owners of some or all of the Lots, has agreed to construct and maintain a storm water management facility consisting of the Association Responsibility Elements, and has agreed to appropriate easements required to install and maintain said storm water management facility. Pursuant to that agreement, the Association will be responsible for the ongoing repair, maintenance and replacement of the Association Responsibility Elements. The Association shall also be responsible for complying with all inspection and reporting requirements imposed by the City.

(c) Additional Easement Rights of the Declarant.

