

Station Id: MNXJ
COPY



1629604

**REGISTER'S OFFICE
WINNEBAGO COUNTY, WI
RECORDED ON**

02/18/2013 11:08 AM

**JULIE PAGEL
REGISTER OF DEEDS**

RECORDING FEE 30.00

**DECLARATION OF
FIFTH AMENDMENT
TO COVENANTS,
CONDITIONS AND
RESTRICTIONS FOR
LIBERTY HEIGHTS
SUBDIVISION**

Document Number

THIS DECLARATION of AMENDED Conditions, Covenants and Restrictions for LIBERTY HEIGHTS SUBDIVISION, City of Neenah, Winnebago County, Wisconsin, is being made by Red Liberty Holdings XI, LLC, a Delaware Limited Liability Company ("Red Liberty"), as successor in interest to Brighton Point, LLC, as Developer and owner of the following described real estate in the City of Neenah, County of Winnebago, State of Wisconsin.

The Plat of LIBERTY HEIGHTS SUBDIVISION was recorded in the Office of the Register of Deeds of Winnebago County in Cabinet Four (4) of Plats, Page 56, April 25, 2004, as Document No. 1395539. Declaration of Covenants, Conditions and Restrictions for LIBERTY HEIGHTS SUBDIVISION was recorded in the Office of the Register of Deeds of Winnebago County, April 25, 2006, as Document No. 1395540.

THIS SPACE RESERVED FOR RECORDING DATA

Name and Return Address
**Attorney Charles W. Cousland
von Brlesen & Roper, s.c.
411 East Wisconsin Avenue
Suite 1000
Milwaukee, WI 53202**

DECLARATION of AMENDMENT to Covenants, Conditions, and Restrictions for LIBERTY HEIGHTS SUBDIVISION was recorded in the Office of the Register of Deeds of Winnebago County, June 22, 2006 as Document No. 1402200.

DECLARATION of SECOND AMENDMENT to Covenants, Conditions, and Restrictions for LIBERTY HEIGHTS SUBDIVISION was recorded in the Office of the Register of Deeds of Winnebago County, July 2, 2008 as Document No. 1476357, and affects the following real estate:

Lots One (1) through sixty-nine (69), inclusive, and Lots Seventy-one (71) through One Hundred Thirty (130), inclusive, Outlot Three (3), and Outlot Five (5), LIBERTY HEIGHTS SUBDIVISION, City of Neenah, Winnebago County, Wisconsin.

DECLARATION of THIRD AMENDMENT to Covenants, Conditions, and Restrictions for LIBERTY HEIGHTS SUBDIVISION was recorded in the Office of the Register of Deeds of Winnebago County, June 3, 2011 as Document No. 1476357.

DECLARATION of FOURTH AMENDMENT to Covenants, Conditions, and Restrictions for LIBERTY HEIGHTS SUBDIVISION was recorded in the Office of the Register of Deeds of Winnebago County, October 25, 2011 as Document No. 1584338.

Red Liberty, as Developer and Owner, hereby makes the following *FIFTH AMENDMENT* to the Declaration of Covenants, Conditions, and Restrictions of LIBERTY HEIGHTS SUBDIVISION which shall only apply to the following real estate:

Lots One (1) through five (5), inclusive, Lots Ninety-six (96) through Ninety-nine (99), inclusive, Lots Thirty-six (36) through Fifty (50), inclusive, Lots Fifty-two (52) through Fifty-nine (59), inclusive, and Lots Sixty-one (61) through Sixty-two (62), inclusive, LIBERTY HEIGHTS SUBDIVISION, City of Neenah, County of Winnebago, State of Wisconsin.

Red Liberty hereby declares that this *FIFTH AMENDMENT* to the Declaration of Covenants, Conditions and Restrictions of LIBERTY HEIGHTS SUBDIVISION to which the lots or tracts that are affected thereby shall, together with the original Declaration of Covenants, Conditions and Restrictions of LIBERTY HEIGHTS SUBDIVISION (and all amendments thereto), constitute Covenants, Conditions, and Restrictions that run with the land, as provided by law, and shall be binding on all parties and all persons claiming under them, and shall be for the benefit of, and limitations on, all future owners of such affected lots or tracts, and to the extent necessary, Red Liberty does hereby ratify the aforementioned Declaration of Covenants, Conditions, and Restrictions for LIBERTY HEIGHTS SUBDIVISION, City of Neenah, Winnebago County, Wisconsin, and amends as recorded.

Lo

PURPOSE The purpose of these covenants, conditions and restrictions is to ensure the use of the property for attractive residential purposes only, to prevent nuisance, to prevent the impairment of the attractiveness of the property, and to maintain the desired tone of the community, and thereby to secure to each lot owner the full benefit and enjoyment of their property, with no greater restriction on the free and undisturbed use of their property that is necessary to insure the same advantages to all other lot owners.

1. **ARCHITECTURAL CONTROL** No dwelling, house, or other structure shall be erected or constructed on any lot in this subdivision unless and until the plans and specifications have been submitted to, and approved by, the Developer.
2. **LAND USE and BUILDING TYPE** All of the lots shall be restricted to use for Single-Family Residential Purposes. No building shall be erected, altered, placed, or permitted to remain on any of the above lots other than one single-family dwelling not to exceed two and one-half (2 ½) stories in height, with additional limits and conditions as set forth herein. Only Single-Family residences of conventional construction shall be permitted. The front elevation of all residences shall be construction with a minimum of twenty percent (20%) brick or stone. All exposed concrete on the front elevation shall be covered in the identical brick or stone used in the construction of the home.
3. **GRADE** The maximum height of the house foundation may not be more than sixteen (16) inches above ground level adjacent to the house and no more than twenty-four (24) inches above finished street grade, provided however, that all grades shall comply with the Surface Water Drainage Plan approved by the City of Neenah and on file with the City of Neenah.
4. **BASEMENT/FOOTINGS** No slab houses shall be allowed. All residential buildings must have a basement under at least forty percent (40%) of the ground area, and footings of at least four (4) feet in depth, below the balance of the residence.
5. **GARAGES** Every residence shall have a private, attached garage, accommodating not less than two (2) cars, and shall not be less than 484 square feet nor more than the lesser of: (a) 1300 square feet; or (b) the size permitted and approved by the City of Neenah.
6. **ROOF PITCH** The roof pitch on all residences must be a minimum of 6/12 pitch, and the exterior design must be harmonious with the neighborhood. The pitch of any gables coming off the main roof may be less than 6/12 pitch.
7. **PARKING of VEHICLES** Snowmobiles, boats, trailers, semi tractors and trailers, mini-bikes, motorcycles, recreational vehicles, motor homes, campers, fish shanties, or any unlicensed, inoperable, or junk vehicles, shall not be stored on the property other than inside the garage. This restriction is not applicable during the period of construction on the lot.
8. **CONSTRUCTION TIME** All homes shall be completed within twelve (12) months after commencement of building, and shall not be occupied prior to being completed.
9. **FINISHED GRADING AND LAWN** All lawns must be completed with one (1) year of occupancy.
10. **MINIMUM FLOOR PLAN SIZE** The following shall be the minimum floor areas for homes to be constructed on a lot, exclusive of basement area, garage area, and open porch areas.
 - a) Lots One (1) through Five (5), inclusive, the ground floor of a one-story house shall be a minimum of 1600 square feet of living space.
 - b) Lots Ninety-Six (96) through Ninety-Nine (99), inclusive, Lots Thirty-Six (36) through Fifty (50), inclusive, Lots Fifty-Two (52) through Fifty-Nine (59), inclusive, and Lots Sixty-One (61) through Sixty-Two (62), inclusive, the ground floor of a one-story house shall be a minimum of 1700 square feet of living space.
 - c) Lots One (1) through Five (5), inclusive, Lots Ninety-Six (96) through Ninety-Nine (99), inclusive, Lots Thirty-Six (36) through Fifty (50), inclusive, Lots Fifty-Two (52) through Fifty-Nine (59), inclusive, and Lots Sixty-One (61) through Sixty-Two (62), inclusive, shall be a minimum of 1700 square feet of living area in a One and one-half (1 ½) story house, and for Two (2) story and Two and One-Half (2 ½) story houses, the minimum square feet of living space shall be 2000 square feet.
 - d) There shall be no bi-level homes.
 - e) The total living space of a split-level or quad-level house shall be a minimum of 2000 square feet of living space, exclusive of the basement area.
11. **TYPE of CONSTRUCTION** No used buildings or residences shall be moved onto any lot.

12. **STORAGE/UTILITY BUILDING, OUTBUILDING** One storage building or outbuilding shall be permitted per lot, but such building must be the same architectural design as the residence, and must have the same roof design, roof material and siding as the residence. No story building or outbuilding may be greater than sixteen (16) feet by twenty (20) feet in size.
13. **COMPLIANCE with STATE and MUNICIPAL CODES** Setback lines, side yard lines and building codes for any residence shall be in compliance with all ordinances and regulations of the City of Neenah and the State of Wisconsin.
14. **DRIVEWAYS** All driveways are to be hard surfaced to the sidewalk, with concrete or blacktop, or similar surface, within one (1) year of home occupancy.
15. **DRAINAGE PATTERN** The landscaping of each individual lot shall comply with the Drainage Plan approved by the City of Neenah and on file at Neenah City Hall.
16. **TRASH/BURNING/LITTER** All trash and waste shall be kept out of public view and in sanitary containers that shall not be aesthetically offensive nor unsightly. There shall be no burning of any kind, including but not limited to, leaves, upon any lot. No lot shall be used as a dumping ground for litter, unwanted stones, grass clippings, branches, garbage or other rubbish.
17. **ANTENNAS/SATELLITE DISHES** Radio and TV antennas, larger than 24" in diameter, are not allowed on the exterior of a building or on poles. Satellite dishes, larger than 24" in diameter, are allowed, however, they are not allowed in the front or on the roof of a building. Satellite dishes are to be kept to the side or rear of the home and hidden from view as much as possible.
18. **NUISANCES** No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.
19. **ANIMALS** No animals, livestock, reptiles, birds, or poultry of any kind shall be raised, bred, or kept on any lot, except that two (2) dogs and two (2) cats per household may be kept inside the residence, provided they are not kept, bred or maintained for any commercial purpose.

Nothing contained herein, however, shall be construed to permit the keeping of any dog or cat which, in any way, constitutes a nuisance. Pets must be on a leash or otherwise constrained when outside a residence.
20. **SUBDIVIDING** None of the lots may be subdivided or partitioned, except by the Developer.
21. **LIGHTING** All outdoor lighting shall be ornamental. Any pole lighting shall be erected on ornamental poles. Flood lighting may be used provided it is not offensive to the neighboring properties or the roadway.
22. **TEMPORARY STRUCTURES** No structure of a temporary nature, shanty, or similar structure shall be permitted on any lot either temporarily or permanently. No structure other than a fully completed residence shall be occupied.
23. **PRECONSTRUCTION MAINTENANCE** Lot owners are responsible for the maintenance of their lots before construction begins. No trash, waste, weeds, woodpiles, or long grass is permitted.
24. **GROWTH and DEBRIS** The owners of each improved lot shall keep said lot, together with all lands lying to the road right-of-way between the lot and the traveled portion of all roads that abut the lot, mowed and attractive. No refuse pile, rubbish, or unsightly objects shall be allowed to be placed or allowed to remain anywhere thereon; and in the event the owners shall refuse, upon written notification to keep the property free of weeds, underbrush, refuse piles or other unsightly growth or objects, then the agents of the maker of these covenants may enter upon said land and remove same at the expense of the owner, and such entry shall not be deemed a trespass.
25. **WALLS and FENCES** Walls or fencing, excluding hedge fences, shall be approved by the Developer on an individual basis.
26. **ENCROACHMENT** For purposes of these covenants, conditions, and restrictions, eaves, steps, and open porches shall not be considered as part of a building, provided, however, that this paragraph shall not be construed to permit any portion of a building to encroach upon another lot.
27. **SIGNS** No sign of any kind shall be displayed to the public view on any lot except one professional sign, no larger than

one square foot, or one sign no larger than five square feet advertising the property during the construction and/or sales period.

28. **EASEMENTS** Easements for installation and maintenance of utilities and drainage facilities are reserved and restricted as shown on the recorded plat. The easement area of each lot and all improvements on the lot, shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

The following uses, structures, and activities are prohibited in any easement: filling, grading, and excavating; construction or placement of any building or structure; the cultivation of crops, fruits, or vegetables; the planting of trees or shrubs; the dumping or depositing of ashes, waste, compost, fill, or materials of any kind or nature; and the storage of vehicles, equipment, materials or personal property of any kind or nature.

29. **REMOVAL of DIRT** So long as Developer owns any lot in this subdivision, Developer reserve the right to direct the disposition of any dirt which is to be removed from any lot in the subdivision. Such disposition, as directed by the Developer, shall remain within the subdivision.
30. **CLOTHESLINES** No clothesline or laundry line of any kind whatsoever, shall be located in any outdoor area on any lot unless it is of a temporary or completely retractable nature.
31. **EFFECT OF AMENDMENT** This **FIFTH AMENDMENT** to Covenants, Conditions and Restrictions of LIBERTY HEIGHTS SUBDIVISION only affects the subject matter specifically referenced herein, with the original Declaration, Covenants, Conditions and Restrictions of LIBERTY HEIGHTS SUBDIVISION, as amended, still being in effect as to those matters that are not specifically referenced herein. In the event there is a conflict between this **FIFTH AMENDMENT** to Covenants, Conditions and Restrictions of LIBERTY HEIGHTS SUBDIVISION and the original Declaration, Covenants, Conditions and Restrictions of LIBERTY HEIGHTS SUBDIVISION, as amended, the provisions of this **FIFTH AMENDMENT** to Covenants, Conditions and Restrictions of LIBERTY HEIGHTS SUBDIVISION shall control.
32. **SEVERABILITY** Invalidation of any of the conditions, covenants, or restrictions, by judgment or court order, shall in no way affect any of the remaining conditions, covenants, and restrictions, which shall remain in full force and effect.
33. **AMENDMENT** This Declaration may be modified, clarified, changed and/or amended at any time and in any manner by written declaration setting forth such modification, change, clarification and/or amendment, which has been executed by the owners of at least fifty percent (50%) of the lots in the subdivision, in such form as to allow it to be recorded in the Winnebago County Register's Office; provided, however, that such modification, change, clarification and/or amendment shall require the written approval, in recordable form, of Developer, so long as Developer owns any lot(s) in the subdivision. Further, so long as Developer owns any property in the subdivision, Developer, by itself alone, and without approval of any additional lot owners, shall be entitled to modify, clarify, change and/or amend the covenants, conditions, and restrictions. Any amendment or modification of paragraphs 30, 32, 33 and 34, respectively, of this Declaration shall require the written approval of any City and County plat approval authority.
34. **ENFORCEMENT** Enforcement shall be by proceedings at law or equity, against any person or persons violating or attempting to violate any condition, covenant, or restriction, either to restrain such violation or to recover damages. Any lot owner may enforce the provisions of this Declaration by proceedings in law or equity against any person, and the Association may enforce the provisions of this Declaration against an owner of Lots 71-92, violating or attempting to violate the provisions of this Declaration, either to restrain violation or to recover damages, or both. The City of Neenah and Winnebago County may enforce the provisions of paragraphs 30, 32, and 34, respectively, of this Declaration.
35. **RELATION to PUBLIC REGULATIONS** Where the provisions in this Declaration impose greater restrictions than any statute, ordinance, or rule, the provisions of this Declaration shall prevail. Where the provisions of any statute, ordinance, or rule impose greater restrictions than this Declaration, the provisions of the statute, ordinance, or rule shall prevail.
36. **TERM** These conditions, restrictions and requirements are covenants running with the land, and shall become binding upon the grantors and grantees of the property herein, their respective heirs, executors, administrators and assigns, for the period of twenty (20) years from and after the date hereof, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument terminating or reducing the term is executed in accordance with Paragraph 33, above.

IN WITNESS WHEREOF, Developer/Owner has hereunto set its hand and seal on the date written.

Dated this 14th day of February, 2013.

RED LIBERTY HOLDINGS, XI, LLC

By: K. McKenzie
Kevin McKenzie, Authorized Signatory

STATE OF _____)
) SS.
COUNTY OF _____)

Personally came before me on _____, 2013 the above-named Kevin McKenzie in his capacity as Chief Operating Officer of Red Liberty Holdings XI, LLC, and the persons who executed the foregoing instrument and acknowledged the same.

_____ (SEAL)
_____ (NAME)
Notary Public, State of Wisconsin
My Commission: _____

This instrument was drafted by and should be returned to:
Charles W. Cousland, Esq.
Von Briesen & Roper, s.c.
411 East Wisconsin Avenue
Suite 1000
Milwaukee, WI 53202

See Attached


23012848_1.DOCX

STATE OF CALIFORNIA)
COUNTY OF ORANGE)

On February 14, 2013, before me, Lynn Mattson, Notary Public, personally appeared Kevin McKenzie, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (SEAL)
Signature of Notary Public

