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OUTAGAMIE COUNTY
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NOV 15 2004

AT 11 O'CLOCK A.M. P.M.
JANICE FLENZ
REGISTER OF DEEDS

*pd
3/10*

**DECLARATION OF CONDITIONS,
COVENANTS AND RESTRICTIONS
FOR LIBERTY COMMONS AND
1ST ADDITION TO LIBERTY COMMONS**

Subdivisions Located in the
Town of Grand Chute, Outagamie County,
Wisconsin.

Temmer-Haen Development, LLC (hereafter the "Developer"), being the owner of all of the lots in Liberty Commons (Lots 1-21 and Outlot 1), and all of the lots in 1st Addition to Liberty Commons (Lots 22-46 and Outlot 2 and Outlot 3), subdivisions located in the Town of Grand Chute, Outagamie County, Wisconsin, does hereby adopt the following conditions, covenants and restrictions which shall apply to all lots in Liberty Commons and 1st Addition to Liberty Commons (collectively the "Subdivision") and which shall be construed as conditions, covenants and restrictions running with the land and binding upon all parties and persons claiming under them, for the benefit of, and limitations upon, all future owners and persons claiming under them.

Return to:

Atty Steven P. Krause
15 Park Place, Suite 500
Appleton, WI 54914-8250

PART I. RESTRICTIONS ON USE, STRUCTURES AND SITE DEVELOPMENT FOR LOTS 1 THROUGH 46

1. Purpose. The purpose of these covenants, conditions and restrictions is to insure 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 atmosphere and appearance 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 thereof than is necessary to insure the same advantages to all other lot owners.

2. Land Use. All lots shall be used for single family residential purposes only.

3. Building Height. No residence shall exceed two (2) stories in height.

4. Minimum Floor Area. All residences shall contain a minimum square footage in accordance with the following schedule:

<u>Dwelling Type</u>	<u>Minimum Size in Square Feet</u>
One-story	1400
One and one-half story	1250 first floor, 1600 total
Two-story	900 first floor, 1800 total
Split/Tri/Quad levels	1800
Raised ranch	1000 on main level

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Areas known as garages, breezeways, porches and basements shall not be included for purposes of satisfying these square footage requirements.

5. Basement. All residences must have a basement or standard four (4) foot footing walls.

6. Roof Pitch. All residences shall have a roof pitch of not less than 6/12.

7. Garages. All residences shall be built with an attached garage with a capacity for at least two (2) vehicles. Such attached garage shall have a minimum area of 400 square feet.

8. Exterior of Buildings. The exterior of all buildings within the subdivision shall be aesthetically compatible with the surrounding neighborhood. The Architectural Control Committee reserves the right to require that a dwelling contain some brick, stone or alternative architectural treatment, in order to comply with this paragraph. No window air conditioners can be used or installed at any time.

9. Additional Building. In addition to the residence with attached garage, only one additional building shall be constructed on each lot. The detached building -- whether garage, storage building, or a combination of both -- shall not exceed 144 square feet in area. The detached building must be of standard wood and related standard building materials construction. It must have siding similar to the residence and be color-coordinated with the residence.

10. Architectural Control. As long as the Developer owns any lot in the Subdivision, no residence may be constructed without the approval of the Developer. The Developer shall be given a complete set of plans whereby the Developer shall approve or deny the design and location. The external design shall be harmonious and conform to set back lines. Variations are to be approved only where in the opinion of the Developer it is deemed to be harmonious and pleasing to the effect of the entire neighborhood or where variations are required by the topography of the land. Refusal or approval of plans and specifications by the Developer may be based on any ground, including purely aesthetic grounds, in the sole and uncontrolled discretion of the Developer. A copy of the blueprints shall be kept by the Developer. Any changes to plans after submission must be resubmitted to the Developer for approval prior to implementation of any changes. Plans shall be submitted to the following:

Temmer-Haen Development, LLC
3313 Twin Willow Court
Appleton, Wisconsin 54914

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11. Grade/Drainage. All buildings and lot grades shall conform to the drainage plan for the Subdivision, which has been approved and is on file with the Town of Grand Chute and Outagamie County. Site plans (setbacks), building grade, and lot grading shall be set by a registered land surveyor, engineer or the Town of Grand Chute prior to construction. The lot owners shall provide Developer with appropriate evidence that this paragraph has been complied with. No lot owner shall block, dam or otherwise obstruct the flow of surface water drainage so as to cause such water to back-up onto the lot of another property owner or so as to restrict the use or enjoyment of any other lot by any other lot owner. Each lot owner, as a part of the post home construction finish grading/landscaping process, is responsible to bring their lot into specific compliance with the approved Subdivision drainage plan.

12. Completion of Home Requirements. All residences shall be completed within twelve months after commencement of construction, and shall not be occupied prior to completion, and:

(a) All lawns must be completed within twelve (12) months after occupancy.

(b) All driveways are to be hard surfaced, with concrete or blacktop, or similar surface, within twelve (12) months of occupancy.

(c) All aprons are to be concrete. Aprons shall be completed as part of the second road construction phase on all properties that are occupied. Subsequent to the second road construction phase, all other properties must have their aprons completed within twelve (12) months after occupancy.

No tree planted by the Developer in the front of a lot shall be moved, cut down or otherwise disturbed without the written consent of the Developer. Each lot owner shall thereafter bear responsibility to remove and replace any dead or diseased tree within one (1) season after such tree dies or becomes diseased. Any replacement tree shall again be a hardwood tree no smaller than two (2) inches in diameter.

13. Above Ground Swimming Pools. No above ground swimming pool shall be erected on any lot.

14. Temporary Structures. No structures of a temporary nature, such as trailers, mobile homes, campers, tents, shacks, or a similar structure shall be permitted on any lot either temporarily or permanently. No structure other than a fully completed residence shall be occupied.

15. Signs and Antennas. No sign or antenna including outside earth stations (satellite dishes) shall be displayed or exposed to the public view except as follows:

(a) Mini satellite dishes 20 inches or less in diameter, or

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(b) One sign not larger than five square feet advertising the property for sale or rent, or by the builder to advertise the property during the construction and sales period, except that Developer, or its assigns, may utilize signs of not more than 40 square feet each for advertising properties in said subdivision for sale.

16. Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved 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 is responsible.

17. Fill. The Developer reserves the right to direct the disposition of any fill, including excess excavation material which is to be removed from any lot, at the lot owner's expense. However, if such disposition is directed by the Developer, it shall be within a one-mile radius of the lot from which it is being removed. If the Developer does not require specific disposition of any excess fill, the lot owner shall be responsible to locate a site for such disposition and pay all costs associated therewith.

18. Pre-Construction Maintenance. Lot owners are responsible for the maintenance of their lots before construction begins. No trash or waste, weeds, woodpiles, or long grass is permitted.

19. Division of Lots. No lots shall be re-subdivided to create a larger number of lots and not more than one residence shall be erected or constructed upon any lot.

20. Animals. No animals, including reptiles, livestock, birds, or poultry of any kind, shall be raised, bred or kept on any lot, except that dogs, cats or other domestic, household pets may be kept inside a 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 cat or other domestic household pet which, in any way, constitutes a nuisance. No cages or structures of any kind used to house any type of animal outdoors will be constructed or located in the view of any surrounding neighbor.

21. Trash. All garbage and trash shall be stored in sanitary garbage containers which containers shall be stored in the garage.

22. Personal Property Storage. Snowmobiles, boats, trailers, minibikes, motorcycles, recreational vehicles, motor homes, campers, fish shanties or unlicensed, inoperable or junk vehicles shall not be parked or stored on the property other than inside the garage.

23. Nuisances. No noxious or offensive activities shall be carried on upon any lot, nor shall anything be done thereon which may be or become an unreasonable annoyance or nuisance to other lot owners or occupants of residences in the Subdivision.

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24. Compliance with State and Municipal Code/Fences. Setback lines, side yard lines, and building codes for any residence shall be in compliance with all ordinances and regulations of the Town of Grand Chute, Outagamie County and the State of Wisconsin. Fences must also be in compliance with Town, County and State codes, and shall be restricted to the backyard and shall not extend any closer to the street in front of the residence than the furthest back corner of the residence and/or garage.

25. Enforcement. If any lot owner or person in possession of any lot or residence on any lot within the Subdivision shall violate or attempt to violate any of these covenants, it shall be lawful for the Association (as hereinafter defined) or any other person owning any lot or owning or occupying any dwelling on any lot in the Subdivision to prosecute and/or commence proceedings at law or in equity against the person violating or attempting to violate any such covenant, either to prevent such person from doing so or to recover damages for such violation or to restrain the violation. In the event that it becomes necessary to commence litigation or retain an attorney to enforce these covenants, the party found to be in violation of these covenants shall pay for all expenses, including actual attorneys fees and court costs incurred by CPI and/or any owner(s) of a lot(s) who brings any action to enforce these covenants.

26. Term. These covenants and restrictions herein contained shall be in effect for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall automatically be extended for successive periods of ten (10) years, unless an instrument terminating or reducing this term shall be executed and recorded in accordance with the requirements and procedures set forth herein.

27. Amendment. These covenants and restrictions shall run with the land, and all future conveyances of any lots of the Subdivision shall be subject to the conditions, covenants, obligations and restrictions set forth herein. Acceptance of a deed by any purchaser is considered an agreement to observe and abide by such covenants, conditions and restrictions for the protection of all owners of the subdivision. These covenants and restrictions may be removed, modified, annulled, waived, changed and/or amended at any time and in any manner by a written Declaration setting forth such amendment:

(a) By the Developer as long as the Developer owns any lot for sale in the Subdivision; or

(b) After the Developer has sold all lots, by the owners of at least 75% of the lots.

The written Declaration of Amendment shall be recorded in the office of the Register of Deeds for Outagamie County, Wisconsin.

28. Miscellaneous Provision. All future transfers of any lots shall be made subject to the conditions, covenants, obligations and restrictions contained herein. It is understood that the acceptance of a deed by any purchaser is to be considered as an agreement to observe and abide by such

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covenants, conditions, obligations and restrictions for the protection and benefit of all owners of lots in the Subdivision.

29. Invalidity of any Covenants. Should any one of these covenants for any reason be declared invalid, such declaration shall not affect the validity of the remaining covenants, which remaining covenants shall remain in full force and effect as if these covenants had been executed with the invalid portion thereof eliminated.

PART II. RESTRICTIONS ON USE AND DEVELOPMENT FOR OUTLOTS 1 THROUGH 3.

1. Purpose. Portions of Outlot 1 and Outlot 2 shall be permanently maintained as stormwater detention ponds (as such detention ponds are outlined on the recorded Plats of the Subdivision) subject to and consistent with drainage functions and improvements for the benefit of the owners of all of Lots 1 through 46 of the Subdivision. Portions of Outlot 1 and Outlot 3 shall be permanently retained and maintained in a scenic, natural and open condition for conservation and recreational purposes subject to and consistent with their designation as "wetlands" (as such wetland areas are outlined on the recorded Plats of the Subdivision) and subject to and consistent with "wetland regulations". The rest of the areas of Outlot 1, Outlot 2, and Outlot 3 shall be maintained in a scenic and open condition for aesthetic purposes and for the recreational use and benefit of all of Lots 1 through 46.

2. Permitted Uses and Structures. Subject to and consistent with drainage functions and improvements and "wetland regulations", other uses may be made of Outlots 1, 2, and 3 and improvements may be constructed upon Outlots 1, 2, and 3. Such uses and improvements must be consistent with the purposes outlined in paragraph 1 above and not inconsistent with the provisions of paragraph 3 hereafter.

3. Prohibited Uses and Structures. The following uses and structures are prohibited on Outlots 1, 2, and 3: filling, grading and excavating except in connection with a permitted use and structure; deposition and extraction of materials except in connection with a permitted use and structure; motorized vehicles or motorized bikes of any kind or nature except for periodic maintenance; the cultivation of agricultural crops, fruits or vegetables; the dumping of ashes, waste, compost or garbage; and the storage of vehicles or equipment of any kind.

4. Maintenance Easement. There shall be an affirmative duty to maintain, protect and manage Outlots 1, 2, and 3 consistent with the purposes, permitted uses and structures, and prohibited uses and structures enumerated above. The Town of Grand Chute and Outagamie County shall have the unqualified right to enter upon such Outlots for inspection and, if necessary, maintenance in the event of nonperformance.

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PART III. PROPERTY OWNERS' ASSOCIATION AND ASSESSMENTS

A. CREATION AND ORGANIZATION

1. Creation. The Developer has created Liberty Commons Property Owners' Association, Inc. (the "Association") as a nonprofit and nonstock corporation. The Association may adopt Bylaws amplifying upon, but not inconsistent with, the provisions of this Part III.
2. Purpose of Association. The purposes of the Association shall include the following:
 - a. To maintain, improve, police, preserve, protect and use Outlots 1, 2, and 3 consistent with Part II of this Declaration.
 - b. To aid and cooperate with the members of the Association and property owners in the Subdivision in the enforcement of the restrictions in this Declaration.
 - c. To arrange social and recreational functions for its members.
 - d. To do things necessary to promote the general welfare of the lot owners of the Subdivision.
 - e. Pursuant to the provisions of Section 779.70, Wis. Stats., the Association, among other things, does have the power to prepare and annually submit to its membership a budget of the expenditures which it proposes to make for the ensuing year and to assess against all of the lots, and to collect from each lot owner, an assessment to pay the costs of maintaining the necessary organization of the Association and the costs of maintaining, improving, policing, preserving and protecting Outlots 1, 2, and 3.
3. Mandatory Membership. The Association shall have only one class of members. Every beneficial owner (fee simple ownership as distinguished from a security holder) of Lots 1 through 46 of the Subdivision shall be a member of the Association. Membership shall terminate at the time of the member ceasing to be the beneficial owner of a lot.
4. Voting Rights. Each member in good standing shall be entitled to vote on each matter submitted for a vote to the members. A member shall have one vote for each lot owned. Where two or more owners own a lot, only one vote for such lot shall be allowed and the joint owners shall designate and register with the Secretary of the Association, the name of the owner entitled to cast such single vote.
5. Assignment of Rights. An owner who is a member of the Association may assign his or her membership rights to any tenant residing on the lot. Such assignment shall be effected by filing with the secretary of the Association a written notice of assignment signed by the beneficial owner.

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a. The Association shall establish an annual budget in advance for each calendar year of all Association expenses for such year which may be required for the proper operation and management of the Association and for the maintenance, improvement, policing and/or preservation of real estate in which the Association's members shall have common rights of usage and enjoyment. Review and discussion and approval of such annual budget shall be an agenda item at each annual members' meeting of the Association. Copies of such budget shall be

1. Determination of Annual and Special Assessments.

C. FEES AND ASSESSMENTS

3. Vacancies. Vacancies because of death, resignation, disqualification or otherwise may be filled by appointment of the Board until the next annual meeting.

2. Terms and Offices. The Board of Directors shall be elected by the members at the annual meeting for a term of one year. The Board of Directors shall elect officers consisting of president, vice-president, secretary and treasurer. The president shall preside at all meetings. The secretary shall keep the minutes of all meetings of the Association and the Board of Directors. The treasurer shall receive and deposit all Association funds.

1. General Powers. The affairs of the Association shall be managed by the Board of Directors subject to any instructions of the members or subject to the approval of the members as may be expressed by a vote of the members. The Board shall consist of not less than three members of the Association. The Board shall assume management of the Association at the first annual meeting after three-quarters of the lots have been sold by the Developer or within five years of the date of recording of this Declaration, whichever is earlier. Prior to such time, the Developer shall manage the affairs of the Association.

B. BOARD OF DIRECTORS

9. Quorum. The members holding a majority of the votes that may be cast at any meeting shall constitute a quorum at any meeting.

8. Notice of Meetings. Written notice stating the date, time and place of any meeting of members shall be delivered personally or by mail to each member not less than 10 days nor more than 60 days before the date of such meeting.

7. Regular and Special Meetings. In addition to the annual meeting, regular and special meetings may be held at a time and place to be determined by the Board of Directors.

6. Annual Meeting. An annual meeting of the members shall be held in January of each year. The time and place shall be fixed by the Board of Directors.

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delivered to each member along with the notice of annual meeting, if not before.

b. Special assessments, other than those described in subparagraph (a) above, may be made by the Association pursuant to section 779.70, Wis. Stats.

2. Allocation of Assessments. Unless otherwise provided under section 779.70, Wis. Stats., all assessments levied shall be equal in amount against each lot. Assessments shall be due and payable at any time after thirty (30) days from the date of the levy as determined by the board of directors.

3. Collection of and Interest Upon Unpaid Assessment. Any assessment, or installment thereof, not paid when due shall bear interest, at the rate of twelve percent (12%) per annum from the date when due until paid. Each lot owner shall be personally liable to pay any assessment including interest thereon and costs of collection which shall include reasonable attorneys' fees. The Association may bring an action against the lot owner for the collection of any unpaid assessment.

4. Assessments Constitute Liens. All assessments, until paid, together with interest thereon and actual costs of collection, constitute a lien on the lots on which they are assessed, if a claim for lien is filed within six (6) months from the date of the levy in conformity with the provisions of section 779.70, Wis. Stats.

5. Enforcement of Lien. Enforcement of such lien by the Association shall be in conformity with the provisions of section 779.70, Wis. Stats.

6. Assignment of Fees and Assessments. In the event any member whose fees and assessments are paid in full, shall, during the year in which such fees and assessments are paid, terminate his or her membership by sale of his or her lot, he or she shall be entitled to assign to the buyer the benefit of the paid fees and assessment.

PART IV. GENERAL PROVISIONS

1. 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.

2. Severability. Invalidation of any one of the provisions of this Declaration by judgement or order of a court of competent jurisdiction shall not affect any other provision which shall remain in full force and effect.

3. Enforcement. The conditions, covenants, and restrictions of this Declaration shall run with the land and be binding upon the Developer, its successors and assigns. All future transfers of any lots shall be made subject to the restrictions, obligations and conditions set forth in this

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Declaration. It is understood that the acceptance of a deed for any lot by any purchaser is to be considered as an agreement to abide by the restrictions, obligations and conditions of this Declaration. The Association or any lot owner may enforce the provisions of this Declaration by proceedings in law or equity against any person violating or attempting to violate the provisions of this Declaration, either to restrain violation or to recover damages, or both. The Town of Grand Chute and Outagamie County may enforce the provisions of Part II, Part III, and Part IV of this Declaration.

4. Collection of Unpaid Maintenance Charges Upon Outlots.

Each lot and corresponding lot owner(s) who are members of the Association are liable to the Town of Grand Chute as guarantors of their respective portion of all responsibilities of the Association pertaining to repairs, maintenance, weed control, and restoration of required storm water detention and/or retention facilities of the Outlots. If the Association fails to make payments for any of the foregoing matters when required, the Town is hereby granted consent to impose special assessments or charges for such foregoing matters to each privately owned lot and the corresponding lot owner(s) who are members of the Association at the rate of a fraction, the numerator of which shall be one (1) and the denominator of which shall be the total number of all lots whose corresponding lot owners are members in the Association, and to place such unpaid charges on the real estate tax bill for each lot as a lien of each respective lot until paid pursuant to section 66.0627 Wis. Stats. All notice and hearing requirements for assessments or charges made under this provision and under section 66.0703 Wis. Stats. are hereby expressly waived.

5. Modification. Part I of this Declaration can be amended, waived or terminated in whole or part at any time by execution of a written instrument in recordable form by the owners of at least two-thirds of Lots 1 through 46. Any amendment, modification, or full or partial termination of Part II, Part III, or Part IV of this Declaration shall require the same approval of the owners and shall also require the written approval of the Town Board of the Town of Grand Chute and also of the County plat approval authority.

IN WITNESS WHEREOF, Temmer-Haen Development, LLC, has executed this Declaration as of the 8th day of November, 2004.

TEMMER-HAEN DEVELOPMENT, LLC,
a Wisconsin limited liability company

By: James E. Temmer
James E. Temmer, Member

By: Jerome A. Haen
Jerome A. Haen, Member

Signatures of James E. Temmer and Jerome A. Haen authenticated this

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8th day of November, 2004.

Steven P. Krause

Steven P. Krause
Member: State Bar of Wisconsin.

This document drafted by:
Attorney Steven P. Krause
KRAUSE & METZ
15 Park Place, Suite 500
Appleton, WI 54914-8250
(920) 739-5665

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