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BOOK 234 PAGE 608  
OF 687 INST# 156

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**WAHOO AIRPARK SUBDIVISION**

**PROTECTIVE COVENANTS**

THIS DECLARATION OF COVENANTS (hereinafter referred to as the "Declaration") is made and executed as of the 20th day of May, 1999, by Wahoo Industries, Inc., a Nebraska Corporation (hereinafter referred to as the ("Declarant")), and Michael and Linda Collins, (hereinafter referred to as Collins).

**WITNESSETH:**

**WHEREAS**, the Declarant is the Owner of the following described real property:

See Exhibit "A" Attached

And has already conveyed to Michael and Linda Collins, Lot 2, Wahoo Airpark Subdivision, a subdivision as surveyed, platted and recorded, Saunders County, Nebraska.

**WHEREAS**, the Declarant will convey the remainder of said Lots, subject to certain protective covenants, as hereinafter set forth, and

**WHEREAS**, Collins desires Lot 2 to be subject to the following protective covenants also.

**NOW, THEREFORE**, the Declarant and Collins, hereby declare that the Real Estate described above should be held, sold and conveyed, subject to the following Covenants, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of said Lots. These Covenants shall run with said real property and be binding upon all parties having or acquiring any right, title or interest in the above-described real property, or any part thereof, and shall inure to the benefit of each Owner thereof.

**1. DEFINITIONS**

- (a) "Accessory Structure" shall mean a structure which is incidental to and customarily associated with a specific principal use or building on the same site.
- (b) "Declarant" shall mean and refer to Wahoo Industries, Inc., a Nebraska corporation.
- (c) "Lot" shall mean and refer to any plot of land platted as a Lot as shown upon the recorded subdivision plat of Wahoo Airpark Subdivision, or as any such Lot may hereafter be subdivided, replatted or reconfigured, in whole or in part.

- (d) "Owner" shall mean and refer to record Owner, whether one or more persons or entities, of the fee simple title to any Lot within the Subdivision, including contract sellers, but excluding those persons having such interest merely as security for the performance of any obligation (including the trustee under a deed of trust).
- (e) "Subdivision" shall mean Wahoo Airpark Subdivision, as surveyed, platted and recorded, Saunders County, Nebraska.

#### **A. BUILDING SET-BACKS, SIDE YARD, REAR YARD, HEIGHT AND USE**

The applicable zoning regulations (City and Airport Authority) shall govern the height, side yard, rear yard and building set-back requirements and also the permitted use of the premises. The permitted uses will be those applicable to the local zoning authority.

#### **B. OUTSIDE STORAGE AND EXTERIOR MAINTENANCE**

Each owner, tenant or occupant of any building site shall keep said building site and the buildings, improvements and appurtenances thereon properly maintained and repaired and in a safe, clean, neat, wholesome condition, and shall comply in all respects with all governmental statutes, ordinances, regulations, health, police and fire requirements. Each such owner, tenant, or occupant shall remove, at its own expense, any rubbish or trash of any character which may accumulate on its building site and shall keep landscaped areas maintained. Rubbish, trash, garbage or other waste shall be kept in containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. Rubbish and trash shall not be disposed of on the premises by burning in open fires unless by permit only. Location of dumpsters shall be to side or rear of main buildings and not on street.

#### **C. TEMPORARY STRUCTURES AND RESIDENCES**

No trailer, tent, shack, garage, barn or any temporary structure that shall be moved onto premises or erected thereon, shall be used for temporary or permanent operation of the proposed occupant's business, or permitted to remain on premises, unless and until such structure, and the duration of its use on the premises has been approved in writing by the undersigned Declarant.

#### **D. MOVING IN EXISTING STRUCTURES**

No building constructed in another area or addition may be moved onto or permitted to remain on any Lot in this subdivision.

#### **E. TYPE OF CONSTRUCTION**

Building construction shall conform to all applicable building codes and zoning regulations having jurisdiction. Building systems and components shall reflect those systems and components commonly associated with commercial and industrial construction.

Structural systems shall be comprised of structural steel (conventional and preengineered systems) or concrete components. It is encouraged to utilize materials requiring minimal maintenance and upkeep. Materials other than those mentioned above may be submitted for approval to the Declarant.

#### **F. PARKING FACILITIES**

All vehicular parking (customer, visitor, and employee), and unloading must be on private property except for a minimal time period.

All exterior lighting that is located on the building or in the parking areas will be directed to the property on which it is located.

In no case shall any storage, servicing, or dismantling of automobiles or other vehicles be permitted in the parking areas or any area except in an enclosed structure out of public view.

All parking areas shall meet approval of local zoning authority.

#### **G. LOADING AREAS**

All loading and unloading operations shall be off-street. In no case shall loading or unloading interfere with ingress or egress thereto. All loading areas shall be hard surfaced with a suitable dustless material. No loading areas shall be constructed facing any public street or highway without prior written approval of Declarant.

#### **H. ERECTION OF SIGNS**

No owner, lessee, or occupant shall use any part of the premises for erection of signs, billboards, or displays other than those directly advertising the business conducted on such premises. Real estate for sale signs shall be permitted. Written approval of the Declarant is required prior to the erection of any sign.

### **I. LANDSCAPING/GRADING**

Grading and drainage shall be designed in accordance with the subdivision master plan and meet the City of Wahoo standards. The use of retaining walls is discouraged. Where required, retaining walls shall be poured concrete, a masonry retaining wall system such as Keystone, or landscape timbers (designed by a registered structural engineer) where the wall height does not exceed six (6) feet in height. Graded slopes shall have a maximum slope of 3:1 and shall be landscaped to prevent erosion.

Landscaping shall meet the requirements of the local zoning authority for industrial zoned areas.

### **J. MAINTENANCE OF UNDEVELOPED AREAS**

That portion of each tract which is not improved through the construction of buildings, parking facilities, loading facilities and lawn area, as hereinbefore provided, shall be seeded to a cover planting which grows to a height not to exceed approximately eighteen (18) inches and shall be continuously and attractively maintained. Each Lot owner shall be responsible for the maintenance of the property beyond the Lot line up to the edge of the pavement and abutting street or streets.

### **K. BUILDING PLAN AND SPECIFICATION APPROVAL BY THE DECLARANT**

No excavation, fill, grading or other alteration of the topography or drainage of any property described herein shall be commenced and no building or improvement of whatever type other than improvements or alterations to the building shall be constructed, erected or maintained upon the property, nor shall there be any addition or change to the exterior appearance of any building or improvement, including without limitation, the color (other than repainting with the same color of paint as previously existed) of exterior walls, entryways, overhangs, parapets, atriums and fences, except in compliance with plans and specifications therefor, which have been submitted to and approved in writing pursuant to these Covenants by the Declarant.

Prior to the commencement of any construction, all proposed plans and specifications shall be submitted to the Declarant for compliance with these Protective covenants and conformance to the aesthetic intent of the business park. The role of the Declarant is to support and promote design excellence and uphold the integrity of the business park through quality planning and construction. The Declarant shall have the right, in its sole discretion, to refuse to approve any plans and specifications which are not suitable or desirable for aesthetic or other reasons. In reviewing all plans and specifications, the Declarant shall take into consideration the suitability of the proposed building or improvement, the harmony of external design and location in relation to surrounding structures and topography and the effect of the improvements as planned on the outlook from the other properties subject to these covenants and the adjacent public streets. No changes or deviation in or from such grading plans and plans and specifications once approved shall be made without the prior written approval of the Declarant.

The Declarant shall provide a preliminary review of the Schematic Design Documents and a final review upon completion of Construction Documents. The Schematic Design Documents should include architectural building elevations, a preliminary site plan and a preliminary grading plan. Final Construction Documents shall include architectural plans as well as the engineering disciplines involved in the project. All work shall be accomplished by registered professional architects and engineers within their specific disciplines. The procedure will provide helpful comment during early stages of the design process, thus facilitating a timely, efficient review of the Construction Documents.

The Declarant shall issue Schematic Design comments within fourteen (14) calendar days from receipt of the design package, and shall issue Construction Document comments within fourteen (14) calendar days. Failure of the Declarant to issue the Schematic Design comments or the Construction Document comments within the time period set forth herein shall not constitute Declarant's approval of such plans and documents.

No building improvements, landscaping, grading or drainage work shall be commenced, erected or placed on the premises without prior written approval of drawings and specifications therefore given by the Declarant pursuant to these Covenants and shall meet approval of the local zoning authority.

#### **L. AMENDMENTS AND TERMS**

These Covenants may be amended at any time by an instrument signed by the owners of not less than seventy-five (75) percent of the Lots covered by the Covenants. The undersigned Declarant shall have the right to amend these Covenants in its sole discretion during the initial seven (7) year term of these Covenants, and thereafter, the undersigned shall have the right to amend these Covenants or waive provisions of these Covenants for good cause, hardship, unusual circumstances, or as special situations may warrant. These Covenants and restrictions contained in this declaration shall be binding upon and inure to the benefit of the Owners of the Lots subject to these Covenants, and their respective heirs, representatives, successors and assigns, from the date hereof until July 1, 2010, after which time they shall be automatically extended for successive periods of ten (10) years each unless an instrument executed by seventy-five (75) percent of the then Lot Owners executes the appropriate documentation terminating these Covenants and files the same prior to the commencement of such successive ten (10) year period.

#### **M. DURATION**

The Declarant, or any Owner or contract Purchaser of a Lot, shall have the right to enforce, by proceeding at law or in equity, all restrictions and covenants now or hereafter imposed by the provisions of this Declaration, either to prevent or restrain any violation of the same, or to recover damages for such violation. Failure by the Declarant, any Owner or Contract Purchaser to enforce any covenant or restriction herein contained shall, in no event, be deemed a waiver of the right to do so thereafter.

#### **N. SEVERABILITY**

If any term or provision of this Declaration, or the application of it to any person or circumstance shall, to any extent, be invalid and unenforceable, the remainder of this declaration and the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby and each term and provision thereof shall be valid and shall be enforced to the extent permitted by law.

**O. NOTICES**

All notices to be given pursuant to the Declaration shall be in writing and must be given by the United States mail, certified or registered, postage prepaid, properly addressed to the Owner of each Lot (and any prime lessee, where applicable by name and address as shown on the then current property tax rolls in Saunders County, Nebraska. All notices to Declarant shall be sent to it at the following address:

Wahoo Industries, Inc.  
% Terrence A. O'Brien  
P.O. Box 207  
Wahoo, Nebraska 68066

**P. ATTORNEY'S FEES**

In the event any entity which is entitled to the benefits of this Declaration brings any action at law or equity to enforce this Declaration, the prevailing party of such action shall be entitled to recover from the other party its reasonable attorney's fees and all court costs, in addition to all other appropriate relief.

**Q. SUCCESSORS AND ASSIGNS**

The Declaration created hereby shall inure to the benefit of, and be binding upon, the Owners of all Lots within the Subdivision and their respective successors and assigns; provided, however, that if any Owner sells any portion or all of its interest in any Lot, such Owner shall thereupon be released and discharged from any and all obligations as Owner in connection with the property sold by it arising out of this Declaration after the sale and conveyance of title.

**IN WITNESS WHEREOF**, the undersigned has executed this Declaration as of the date first set forth above.

WAHOO INDUSTRIES, INC.

By: Terrence A. O'Brien  
Terrence A. O'Brien, President

By: Stuart Krejci  
Stuart Krejci, Treasurer

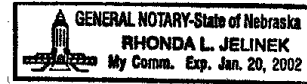
Michael Collins  
Michael Collins

Linda Collins  
Linda Collins

STATE OF NEBRASKA     )  
                                      ) ss.  
COUNTY OF SAUNDERS    )

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of May, 1999, by Terrence A. O'Brien, President and Stuart Krejci, Treasurer of Wahoo Industries, Inc., a Nebraska Partnership.

Rhonda L Jelinek  
Notary Public



STATE OF NEBRASKA     )  
                                      ) ss.  
COUNTY OF SAUNDERS    )

The foregoing instrument was acknowledged before me this 2<sup>nd</sup> day of June, 1999, by Michael and Linda Collins, Husband and Wife.

Rhonda L Jelinek  
Notary Public

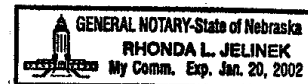




EXHIBIT "A"

A parcel of land located in the Southwest Quarter of Section 26, Township 15 North, Range 7 East of the Sixth P.M., Saunders County, Nebraska, being described as follows: Commencing at the Southwest Corner of said Southwest Quarter, a distance of 721.54 feet to a point on the southerly extension of the West Line of a parcel of land previously described by Deed Record 93, page 75; thence  $S90^{\circ}00'00''E$  (assumed bearing) on the South Line of said Southwest Quarter, a distance of 721.54 feet to a point on the southerly extension of the West Line of a parcel of land previously described by Deed Record 93, page 75; thence  $N00^{\circ}00'00''E$  on said West Line and its southerly extension, a distance of 80.00 feet to a point on the North Line of U.S. Highway No. 77, as previously described by Miscellaneous Record 4, page 142, this being the true point of beginning; thence  $N90^{\circ}00'00''W$  on said North Line, a distance of 427.34 feet; thence continuing on said North Line on a 466.69 foot radius curve to the right, an arc distance of 268.93 feet to a point being 99.7 feet from the West Line of said Southwest Quarter, when measured at right angles, the chord of said curve bears  $N47^{\circ}25'43''W$ , a distance of 265.23 feet; thence  $N14^{\circ}48'56''W$  on said North Line, a distance of 198.70 feet to a point being 49.5 feet from said West Line, when measured at right angles; thence  $N00^{\circ}14'28''W$  on the East Line of Nebraska State Highway No. 109, also previously described by Miscellaneous Record 4, page 142, a distance of 1740.65 feet to a point 30.00 feet south of the Southwest Corner of a parcel of land previously described by Deed Record 143, page 622; thence  $S88^{\circ}56'17''E$ , a distance of 733.39 feet to a point on the West Line of a parcel of land previously described by Miscellaneous Record 19, page 627; thence  $S00^{\circ}00'50''W$  on said West Line, a distance of 700.76 feet; thence  $S89^{\circ}45'32''W$ , a distance of 250.00 feet; thence  $S00^{\circ}14'28''E$  parallel with the East Line of Nebraska State Highway No. 109, as previously described by Miscellaneous Record 4, page 142, a distance of 906.39 feet; thence  $N89^{\circ}45'32''E$ , a distance of 245.97 feet to a point on said West Line; thence  $S00^{\circ}00'50''W$  on said West Line, a distance of 330.58 feet to the Southwest Corner of said parcel; thence  $N90^{\circ}00'00''W$  on the North Line of a parcel of land previously described by Deed Record 93, page 75, a distance of 52.00 feet to the Northwest Corner of said parcel; thence  $S00^{\circ}00'00''E$ , a distance of 160.82 feet to the true point of beginning.

LOTS 1-19 WAHOO INDUSTRIES  
AIRPARK