

RETURN TO:

SEL GRIFIN MCLAIN PC
504 South Park, Suite 101
Amarillo, TX 79101-2318

**Declaration of Restrictive Covenants of
Western-Air Addition Unit No. 22
with Side Yard Easements**

CP 10291-1183

Basic Information

Date: June 23, 2016

Declarant Sunbird: **Sunbird Construction, LLC,**
a Texas limited liability company,
105 SW 5th Avenue
Amarillo TX 79101

Declarant Carter: **Clay Carter and Landon Carter**
600 S. Tyler, Ste. 1908
Amarillo, TX 79101

Developer: **Sunbird Construction, LLC,**
a Texas limited liability company

Developer's Address: 105 SW 5th Avenue
Amarillo TX 79101

Property Owners Association: **South Amarillo Business Park Owners Association, Inc.,**
a Texas nonprofit corporation

Mailing Address of Property Owners Association: 600 S. Taylor, Ste 1908
Amarillo TX 79101

Property: **Lots 1-A, 2-A, 3-A, 4-A, 5-A, 6-A, 7-A, and 8-A, Block 5, Western-Air Addition Unit No. 22, an Addition to the City of Amarillo, according to the map or plat thereof recorded under Clerk's File No. 2015009534 of the Official Public Records of RANDALL County, Texas.**

Definitions

"Assessment" means any amount due to the Property Owners Association by an Owner or levied against an Owner by the Property Owners Association under this Declaration.

"Board" means the governing body of the Property Owners Association.

"Covenants" means the covenants, conditions, and restrictions contained in this Declaration.

"Declarant" means Declarant Sunbird and Declarant Carter named under Basic Information above.

"Dedicator Instruments" means this Declaration and the certificate of formation, Bylaws, and rules of the Property Owners Association, as amended.

"Easement" means Easements within the Property for utilities, drainage, access and other purposes as shown on the Plat or of record.

"Easement Area" means all property within the driveways, parking lot and landscaped areas located on each Lot that will be maintained by the Property Owners Association.

"Lot" means each tract of land designated as a lot on the Plat.

"Member" means Owner.

"Owner" means every record Owner of a fee interest in a Lot.

"Plat" means the Plat of the Property recorded in under Clerk's File No. 2015009534 of the Official Public Records of RANDALL County, Texas, and any replat of or amendment to the Plat made in accordance with this Declaration.

"Structure" means any improvement on a Lot, including a building constructed by Developer on each Lot, sidewalk, driveway, parking area, fence or wall.

"Side Yard" means the fence-enclosed area adjacent to and Southwest of the respective building on Lots 1-A, 2-A, 3-A, 4-A, 5-A, 6-A, 7-A and 8-A.

"Side Yard Easement" means that portion of each Side Yard utilized by the Owner of Lots 1-A, 2-A, 3-A, 4-A, 5-A, respectively, [approximately 12 feet in width] title to which is vested in the Owner of the Lot adjacent to and Southwest of those Lots; and that portion of Lot 7-A lying between the east-northeast side of the building constructed on Lot 7-A and the common lot line between Lot 6-A and Lot 7-A.

"Vehicle" means any automobile, truck, motorcycle, boat, trailer, or other wheeled conveyance, whether self-propelled or towed.

Cluses and Covenants

A. Imposition of Covenants

1. Declarant imposes the Covenants on the Property. All Owners and other occupants of the Lots by their acceptance of their deeds, leases, or occupancy of any Lot agree that the Property is subject to the Covenants.

2. The Covenants are necessary and desirable to establish a uniform plan for the development and use of the Property for the benefit of all Owners. The Covenants run with the land and bind all Owners, occupants, and any other person holding an interest in a Lot.

3. Each Owner and occupant of a Lot agrees to comply with the Dedicatory Instruments and agrees that failure to comply may subject him to a fine, an action for amounts due to the Property Owners Association, damages, or injunctive relief.

B. Plat and Easements

1. The Plat, Easements, and all matters shown of record affecting the Property are part of this Declaration and are incorporated by reference.

2. An Owner may use that portion of a Lot lying in an Easement for any purpose that does not interfere with the purpose of the Easement or damage any facilities.

3. Neither Declarants nor any Easement holder is liable for damage to landscaping or a Structure in an Easement.

4. Declarants and each Easement holder may install, maintain, and connect facilities in the Easements.

C. Use and Activities

1. *Permitted Use.* A Lot may be used only for approved Structures.

2. *Prohibited Activities.* Prohibited activities are—

- a. any activity that is otherwise prohibited by the Dedicatory Instruments;
- b. any illegal activity;
- c. any nuisance, noxious, or offensive activity;
- d. any dumping of rubbish;
- e. any storage of—
 - (i) building materials outside the building or Side Yard;
 - (ii) Vehicles, except Vehicles in the building or Side Yard, and inoperable Vehicles;
 - (iii) unsightly objects unless completely shielded by a Structure;
 - (iv) old tires;

- f. any exploration for or extraction of minerals;
- g. any raising of animals, livestock, or poultry;
- h. the display of any sign except—
 - (i) one sign only attached to a Structure of not more than 24 square feet advertising the business of an Owner or tenant;
 - (ii) one sign not more than five square feet advertising the Lot/building for sale or rent;
 - (iii) political signage not prohibited by law or the Dedicatory Instruments;
- i. interfering with a drainage pattern; and
- j. any facility for—
 - o the sale of paraphernalia for use with illicit drugs;
 - o a tattoo parlor;
 - o an adult book store;
 - o an adult theatre;
 - o an adult amusement facility;
 - o selling or displaying pornographic materials;
 - o a bar;
 - o a dance hall;
 - o a bingo hall;
 - o an arcade.

D. Construction and Side Yard Easements and Maintenance Standards

1. *Lots*
 - a. *Subdivision Prohibited.* No Lot may be further subdivided.
 - b. *Easements.* No easement in a Lot may be granted without approval of the Board.
2. *Structures*
 - a. Developer will construct and is in the process of constructing improvements on each Lot.
 - b. Lot 1-A will be improved with a building with approximately 4800 square feet.

- c. Lots 2-A, 3-A and 4-A will be improved with a building of approximately 2400 square feet.
- d. Lots 5-A and 6-A will be improved with a building of approximately 2,000 square feet.
- e. Lots 7-A and 8-A will be improved with a building of approximately 1,600 square feet.

3. *Side Yard Easements*

Declarant hereby establishes and dedicates the following Easements and imposes an exclusive and perpetual easement on each Lot respectively:

- a. Declarant Carter grants and conveys to the Owner of Lot 1-A and its successors and assigns an exclusive and perpetual easement upon, over and across the northeasterly 12 feet of Lot 2-A as measured parallel to the common lot line of Lot 1-A and Lot 2-A.
- b. Declarant Carter grants and conveys to the Owner of Lot 2-A and its successors and assigns an exclusive and perpetual easement upon, over and across the northeasterly 12 feet of Lot 3-A as measured parallel to the common lot line of Lot 2-A and Lot 3-A.
- c. Declarant Carter grants and conveys to the Owner of Lot 3-A and its successors and assigns an exclusive and perpetual easement upon, over and across the northeasterly 12 feet of Lot 4-A as measured parallel to the common lot line of Lot 3-A and Lot 4-A.
- d. Declarant Sunbird grants and conveys to the Owner of Lot 4-A and its successors and assigns an exclusive and perpetual easement upon, over and across the northeasterly 12 feet of Lot 5-A as measured parallel to the common lot line of Lot 4-A and Lot 5-A.
- e. Declarant Sunbird grants and conveys to the owner of Lot 5-A and its successors and assigns an exclusive and perpetual easement upon, over and across the northeasterly 12 feet of Lot 6-A as measured parallel to the common lot line of Lot 5-A and Lot 6-A.
- f. Declarant Sunbird grants and conveys to the Owner of Lot 6-A and its successors and assigns an exclusive and perpetual easement upon, over and across that portion of Lot 7-A lying between the north-northeast wall of the building on Lot 7-A and the common lot line of Lot 6-A and Lot 7-A.

TO HAVE AND TO HOLD each respective Easement, together with all and singular the rights and appurtenances thereto in anywise belonging unto each respective Owner and their successors and assigns forever.

The Side Yard Easements are appurtenant to and run with title to the Lots as part of each respective Lot whether or not the Side Yard Easement is referred to and described in any future conveyance of the Lots.

4. *Fences.* Each Side Yard must be fenced on the front side with steel sheeting to match the steel sheeting on the existing buildings located on the Property. Each Side Yard must be fenced on the rear side with chain-link fencing of not less than 6 feet in height.

5. *Use of Side Yards*

- a. Owners may not construct any permanent improvements on a Side Yard or alter the surface to affect drainage from the Side Yard.
- b. The surface of each Side Yard must be paved with asphalt or concrete or other surface approved by the Property Owners Association.
- c. No hazardous or prohibited substance or materials may be stored in any Side Yard that increases the insurance rate for the adjacent building owner.

6. *Maintenance and Damage*

- a. Each Owner must keep their respective Lot, the Side Yard, and all Structures in a neat, well-maintained, and attractive condition.
- b. Each Owner will be responsible for maintenance and costs related thereto of the fencing, gates and pavement of their respective Lot and Side Yard. Any required repairs or replacements must conform with the materials used in the original construction, unless otherwise approved by the Property Owners Association. The Lot and Side Yards must be kept clean and free of weeds and grass and debris.
- c. In the event a user of a Side Yard causes damage to the adjacent building, all required repairs will be made at the expense of the user responsible for the damage.
- d. In the event damage to an adjacent building is caused by weather related hazards, the Owner and the Owner of the Side Yard Easement property will have access to their buildings to make repairs.
- e. Any Structure that is damaged must be repaired within 90 days (or within a period approved by the Board) and the Lot restored to a clean, orderly, and attractive condition.

7. *Building and Structures*

- a. *Color Changes.* No change to the color of the exterior walls, trim, or roof of a building will be permitted, unless otherwise approved by the Board.
- b. *Driveways and Sidewalks.* All driveways and sidewalks must be surfaced

with concrete or asphalt, unless otherwise approved by the Board.

- c. *Lot Identification.* Lot address numbers and name identification must be aesthetically compatible with the Property.
- d. *Landscaping.* Landscaping must be installed by the Developer. No landscaping that obstructs traffic sight lines may be placed on any Lot.

E. Property Owners Association

1. *Establishment and Governance.* The Property Owners Association is established by filing its certificate of formation and is governed by the certificate, the Declaration, and the Bylaws. The Property Owners Association has the powers of a nonprofit corporation and a property owners association under the Texas Business Organizations Code, the Texas Property Code, and the Dedicatory Instruments.

2. *Rules.* The Board may adopt rules that do not conflict with law or the other Dedicatory Instruments. On request, Owners will be provided a copy of any rules.

3. *Membership and Voting Rights.* Every Owner is a Member of the Property Owners Association. Membership is appurtenant to and may not be separated from ownership of a Lot.

F. Assessments

1. *Authority.* The Board may levy Assessments to fund operating expenses of the Property Owners Association, including maintenance of all landscaping and irrigation and maintenance of all easements and parking, and to improve and replace the Easement Area and landscaping if necessary.

2. *Personal Obligation.* An Assessment is a personal obligation of each Owner when the Assessment accrues.

3. *Creation of Lien.* Assessments are secured by a continuing vendor's lien on each Lot, which lien is reserved by the Declarant and assigned to the Property Owners Association. By acceptance of a deed to a Lot, each Owner grants the lien, together with the power of sale, to the Property Owners Association to secure Assessments.

4. *Commencement.* A Lot becomes subject to Assessments on conveyance of the Lot by Declarant.

5. Regular Assessments

- a. *Rate.* Regular Assessments are levied by the Property Owners Association to fund the anticipated operating and maintenance expenses of the Property Owners Association. Until changed by the Board, the Regular Assessment is \$100.00 per Lot quarter-annually.

- b. *Changes to Regular Assessments.* Regular Assessments may be changed annually by the Board. Written notice of the Regular Assessment will be sent to every Owner at least thirty days before its effective date.
- c. *Collections.* Regular Assessments will be collected quarterly in advance, payable on the 10th day of January, April, July and October of each year. The assessment for 2016 will be prorated.

6. *Special Assessments.* In addition to the Regular Assessments, the Board may levy Special Assessments for the purpose of funding the cost of any construction, reconstruction, repair, or replacement of any capital improvement on the Easement Area or for any other purpose benefiting the Property but requiring funds exceeding those available from the Regular Assessments. Special Assessments must be approved by the Members. Written notice of the terms of the Special Assessment will be sent to every Owner.

7. *Approval of Special Assessments.* Any Special Assessment must be approved by a two-thirds vote at a meeting of the Members in accordance with the Bylaws.

8. *Fines.* The Board may levy a fine against an Owner for a violation of the Dedicatory Instruments as permitted by law.

9. *Subordination of Lien to Mortgages.* The lien granted and reserved to the Property Owners Association is subordinate to any lien granted by an Owner to a lender. The foreclosure of a superior lien extinguishes the Property Owners Association's lien as to Assessments due before the foreclosure.

10. *Delinquent Assessments.* Any Assessment not paid within 30 days after it is due is delinquent.

G. Remedial Rights

1. *Late Charges and Interest.* A late charge of five percent of the delinquent amount is assessed for delinquent payments. Delinquent Assessments accrue interest at the rate of five percent per year. The Board may change the late charge and the interest rate.

2. *Costs, Attorney's Fees, and Expenses.* If the Property Owners Association complies with all applicable notice requirements, an Owner is liable to the Property Owners Association for all costs and reasonable attorney's fees incurred by the Property Owners Association in collecting delinquent Assessments, foreclosing the Property Owners Association's lien, and enforcing the Dedicatory Instruments.

3. *Judicial Enforcement.* The Property Owners Association may bring an action against an Owner to collect delinquent Assessments, foreclose the Property Owners Association's lien, or enforce or enjoin a violation of the Dedicatory Instruments. An Owner may bring an action against another Owner to enforce or enjoin a violation of the Dedicatory Instruments.

4. *Remedy of Violations.* The Property Owners Association may access an Owner's Lot to remedy a violation of the Dedicatory Instruments.

5. *Suspension of Rights.* If an Owner violates the Dedicatory Instruments, the Property Owners Association may suspend the Owner's rights under the Dedicatory Instruments in accordance with law until the violation is cured.

6. *Damage to Property.* An Owner is liable to the Property Owners Association for damage to Common Areas caused by the Owner or the Owner's family, guests, agents, independent contractors, and invitees in accordance with law.

H. Easement Area

1. *Easement Area Easement.* Each Owner has an easement in and to the Easement Area.

2. *Unauthorized Improvements in Easement Area.* An Owner may not erect or alter any Structure on, or clear, landscape, or disturb, any Easement Area except as approved by the Board.

I. General Provisions

1. *Term.* This Declaration runs with the land and is binding for a term of 30 years. The term may be extended for successive terms of 10 years each by a majority of the Members at a meeting in accordance with the Bylaws within six months before the end of the initial term of 30 years. An instrument reflecting the termination of this Declaration will be signed by the Property Owners Association and recorded in the Official Public of Randall County, Texas.

Thereafter, this Declaration automatically continues for successive terms of 10 years each, unless within three months before the end of a term, 60 percent of the Members at a meeting in accordance with the Bylaws elect not to extend the term. An instrument reflecting the termination of this Declaration will be signed by the Property Owners Association and recorded in the Official Public of Randall County, Texas.

2. *No Waiver.* Failure by the Property Owners Association or an Owner to enforce the Dedicatory Instruments is not a waiver.

3. *Corrections.* The Board may correct typographical or grammatical errors, ambiguities, or inconsistencies contained in this Declaration, provided that any correction must not impair or affect a vested property right of any Owner.

4. *Amendment.* This Declaration may be amended at any time by vote of 60 percent of the members in the Property Owners Association at a meeting in accordance with the Bylaws. An instrument containing the approved amendment will be signed by the Property Owners Association and recorded in the Official Public Records of Randall County, Texas.

5. *Conflict.* This Declaration controls over the other Dedicatory Instruments.

This instrument was acknowledged before me on the 24 day of June, 2016, by **Richard G. Ford, Manager of Sunbird Construction, LLC, a Texas limited liability company, on behalf of said company.**

[Seal]

[Signature]
Notary Public

STATE OF TEXAS §
§
COUNTY OF POTTER §



BRANDI M. LORENZ
Notary Public, State of Texas
Notary ID #13007206-2
My Commission Expires 01-09-2019

This instrument was acknowledged before me on the 23rd day of June, 2016, by **Clay Carter.**

[Seal]

[Signature]
Notary Public

STATE OF TEXAS §
§
COUNTY OF POTTER §



KATHLEEN COLLINS
Notary Public, State of Texas
My Commission Expires
June 17, 2019

This instrument was acknowledged before me on the 23rd day of June, 2016, by **Landon Carter.**

[Seal]

[Signature]
Notary Public



KATHLEEN COLLINS
Notary Public, State of Texas
My Commission Expires
June 17, 2019

6. *Severability.* If a provision of this Declaration is unenforceable for any reason, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability does not affect any other provision of this Declaration, and this Declaration is to be construed as if the unenforceable provision is not a part of the Declaration.

7. *Notices.* Any notice required or permitted by the Dedicatory Instruments must be in writing. To the extent required by law, notices regarding remedial rights must be given by certified mail, return receipt requested. All other notices may be given by regular mail. Notice is deemed delivered (whether actually received or not) when properly deposited with the United States Postal Service, addressed to a Member, at the Member's last known address according to the Property Owners Association's records, and the Property Owners Association, the Board, or a managing agent at the Property Owners Association's principal office or another address designated in a notice to the Members. Unless otherwise required by law or the Dedicatory Instruments, actual notice, however delivered, is sufficient.

Sunbird Construction, LLC,
a Texas limited liability company

By: 

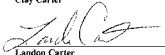
Owen L. Bybee, III, Manager

By: 

Richard G. Ford, Manager



Clay Carter



Landon Carter

STATE OF TEXAS §
§
COUNTY OF POTTER §

This instrument was acknowledged before me on the 24 day of June, 2016, by **Owen L. Bybee, III, Manager of Sunbird Construction, LLC, a Texas limited liability company, on behalf of said company.**

[Seal]


Notary Public

STATE OF TEXAS §
§
COUNTY OF POTTER §



FILED AND RECORDED

OFFICIAL PUBLIC RECORDS



Renee Calhoun

2016011183

06/27/2016 01:55:52 PM

Fee: \$56.00

Renee Calhoun, County Clerk

Randal County, Texas

REST