

# THE CITY OF AMARILLO, TEXAS

## *INTERDEPARTMENTAL OFFICE COMMUNICATION*

February 23, 2012

TO: Final Distribution

FROM: Planning Department

SUBJECT: L-12-02 License and Hold Harmless to encumber surface for a retaining wall in the right-of-way of Prestwick Ln. adjacent to Lot 19, Block 7, La Paloma Estates Unit No. 4, in Section 23, Block 9, BS&F Survey, Potter County, Texas.

APPLICANTS: Caleb S. and Abigail Sora Kim

The City Manager approved the above-mentioned item on February 7, 2012. The instrument was filed of record in the Official Public Records of Potter County in Volume 4392, Page 46 on February 13, 2012. Please post your recordings accordingly.



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Kelley Shaw, Planning Director



2.1. LICENSEE shall keep the Encroachment in good and safe condition and repair at all times and in compliance all applicable federal, state and local laws, rules and regulations, at the LICENSEE's sole expense. LICENSEE grants to LICENSOR, its agents and contractors an easement to enter across and upon LICENSEE's property for the purpose of inspecting the Encroachment and, if the license expires or is terminated and LICENSEE fails to remove the Encroachment from the Right-of-Way, then for the additional purpose of removing the Encroachment.

2.2. This license shall not be assigned, sold or in any other manner transferred without the prior written consent of the LICENSOR. Notwithstanding paragraph 2.7 below, breach of this condition shall immediately terminate this license and shall require the removal of the encroachment from the Right-of-Way. Upon failure of LICENSEE to remove the encroachment from the Right-of-Way, LICENSOR will have the right, but not the obligation, to perform such removal at the expense of the then owner of the encroachment being removed.

2.3. LICENSEE WILL INDEMNIFY, DEFEND AND SAVE LICENSOR HARMLESS FROM ANY AND ALL LIABILITY, LOSS, COSTS AND DAMAGES, FOR PERSONAL INJURIES, PROPERTY DAMAGE AND LOSS OF LIFE OR PROPERTY RESULTING FROM, OR IN ANY MANNER CONNECTED WITH, THE EXISTENCE, MAINTENANCE, REPAIR AND USE OF LICENSEE'S ENCROACHMENT INTO THE RIGHT-OF-WAY.

2.4. LICENSOR shall give LICENSEE prompt and timely notice of any claim made or suit instituted in connection with the existence, maintenance, repair and use of the Encroachment which in any way, directly or indirectly, contingently or otherwise, affects or may affect LICENSEE. To the extent that LICENSEE fails to assume the defense of LICENSOR in a timely manner, as required above, LICENSOR shall have the right to compromise and defend the same to the extent of its own interests without waiving its right to call upon LICENSEE for defense or indemnity.

2.5. LICENSOR retains the right to terminate this license and require LICENSEE to remove the Encroachment from the Right-of-Way at the expense of LICENSEE, should LICENSOR find after a public hearing dealing with the matter that the Encroachment into the Right-of-Way unreasonably interferes with the public's use of the Right-of-Way or in any other way hampers the public's rights.

2.6. LICENSEE hereby agrees to assume all costs for any and all damages and repairs to the Right-of-Way and to any public utilities, street services or any other public improvements located in or adjacent to the Right-of-Way, caused by LICENSEE's Encroachment or by LICENSEE, its agents or contractors in maintaining or repairing the Encroachment. LICENSEE further agrees to hold LICENSOR harmless from any costs to LICENSEE occasioned by or necessitated by the relocation of the Encroachment due to entry of the LICENSOR onto the Right-of-Way for maintenance, replacement or repair of the Right-of-Way and any line or lines, including water and sewer lines, located in, under or over the Right-of-Way. In this regard, LICENSEE specifically acknowledges the potential hazards of erecting and placing the Encroachment in the Right-of-Way.

2.7. Any notice required by this Agreement shall be sufficient if served by certified or registered United States mail on City Manager of the City of Amarillo, P.O. Box 1971, Amarillo, Texas, 79105-1971 (LICENSOR) or on Caleb S. or Abigail Sora Kim, 27 Carnoustie Ln., Amarillo, Texas 79124 (LICENSEE).

2.8. LICENSEE's failure to perform any of the duties imposed by this Agreement shall constitute a breach of this Agreement and shall be a cause for termination of this license, if said breach is not cured within ten (10) days of notice of said breach. In the event of breach, LICENSEE agrees to remove the Encumbrances from the Right-of-Way no later than thirty (30) days from its failure to cure the breach as provided above. In the event legal proceedings are necessary to enforce LICENSOR's rights under this Agreement, all costs, including reasonable attorneys' fees, shall be paid by LICENSEE.

### III.

3.1. If any provisions of this Agreement shall be held invalid, the remainder of this Agreement shall not be affected thereby; provided, however, that the remainder of this Agreement remains enforceable in substantial accordance with the original intent of the parties hereto.

3.2. No term of this Agreement shall be deemed waived unless such waiver is in writing signed by the party making the waiver. No delay or omission by either party in exercising or enforcing any right or power hereof shall impair such right or power or be construed to be a waiver thereof. No custom or practice that may evolve between the parties shall be construed to lessen the right of a party to require the performance of the other party in strict accordance

with the terms of this Agreement. A waiver by one party of a failure of the other party in strict accordance with the terms of this Agreement. A waiver by one party of a failure of the other party to fully comply with any of the terms of this Agreement shall not be construed to be a waiver of any subsequent failure to comply or any other failure to comply.

3.3. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies hereunder, at law, or in equity.

3.4. The laws of State of Texas shall govern this Agreement.

3.5. Any modification of this Agreement must be made in writing and must be executed by the parties.

3.6. This Agreement shall be recorded in the Official Records of Potter County, Texas.

3.7. This Agreement incorporates all the agreements, covenants, promises, and understandings between the parties concerning the subject matter hereof, and all such agreements, covenants, promises, and understandings have been merged into this Agreement. No prior agreement, covenant, promise or understanding of the parties, verbal or otherwise, shall be valid or enforceable unless embodied in this Agreement.

EXECUTED by the last of the parties to sign on this 7<sup>th</sup> day of February, 2012.

CITY OF AMARILLO (LICENSOR)

ATTEST:

Donna DeRight  
Donna DeRight, City Secretary

By W. Jarrett Atkinson  
W. Jarrett Atkinson, City Manager

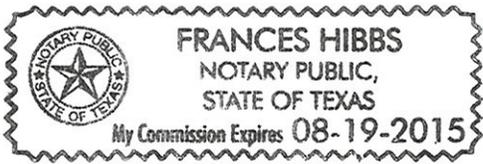
PROPERTY OWNERS (LICENSEE)

Caleb S. Kim  
Caleb S. Kim

Abigail Sora Kim  
Abigail Sora Kim

THE STATE OF TEXAS )  
COUNTY OF POTTER )

This instrument was acknowledged before me on the 8 day of February, 2012 by W. Jarrett Atkinson, City Manager of the City of Amarillo, a Texas municipal corporation, on behalf of said corporation.

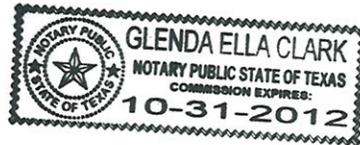


Frances Hibbs  
Notary Public in and for  
The State of Texas

THE STATE OF TEXAS )  
COUNTY OF Potter )

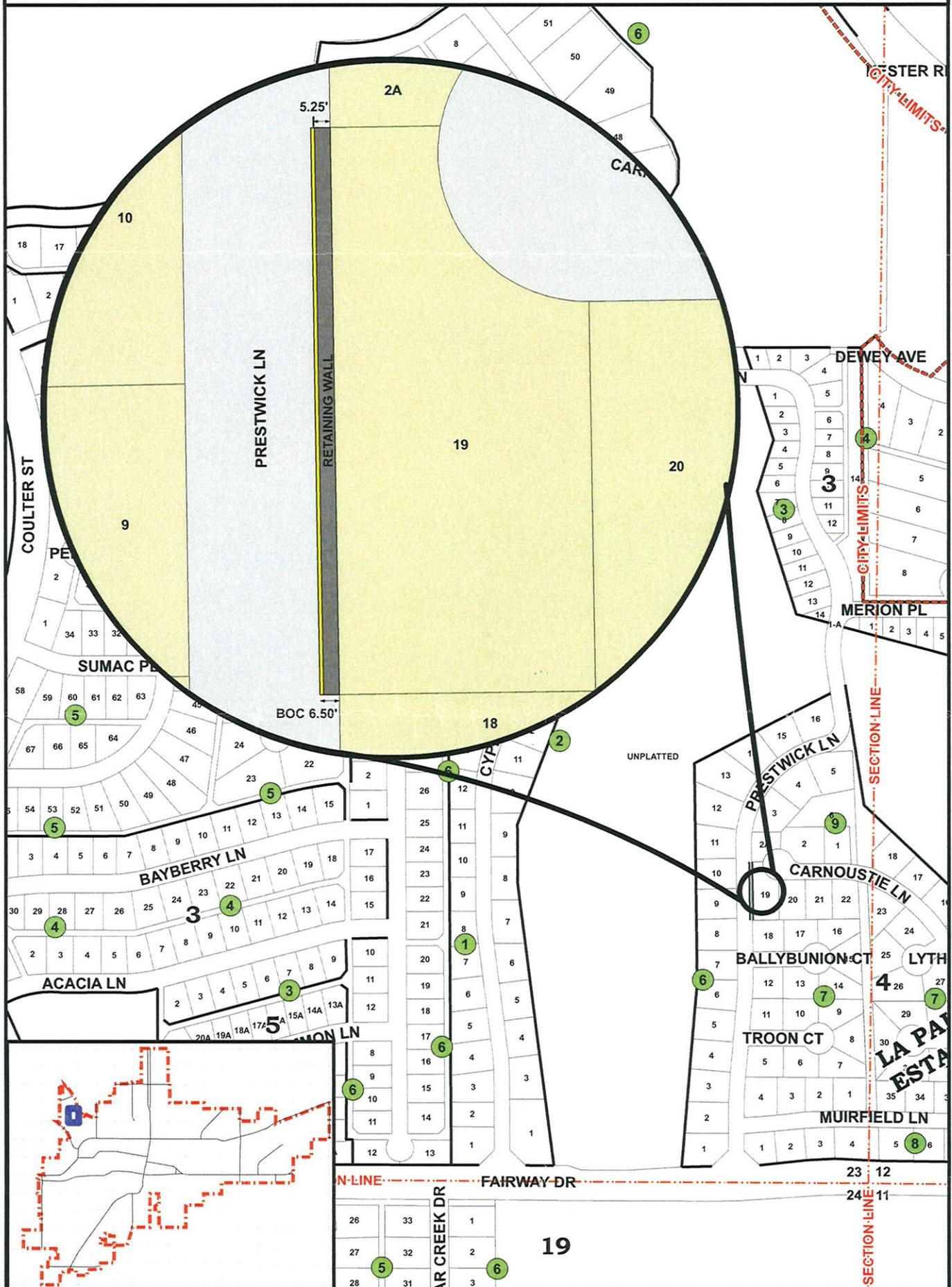
This instrument was acknowledged before me on the 19th day of January, 2012 by Caleb S. and Abigail Sora Kim, on behalf of said entity.

Glenda Ella Clark  
Notary Public in and for  
The State of Texas



Return to:  
DONNA DeRIGHT  
City Secretary, City of Amarillo  
P.O. Box 1971  
Amarillo, Texas 79105-1971

# LICENSE & HOLD HARMLESS



**CITY OF AMARILLO  
PLANNING DEPARTMENT**

**EXHIBIT A**  
 Scale: 1" = 400'  
 Date: 12/30/2011  
 Case No: L-12-02



License and Hold Harmless to encumber surface for a stone retaining wall within the right-of-way of Prestwick Lane, adjacent to the west property line of Lot 19, Block 7, La Paloma Unit No. 4, in Section 23, Block 9, BS&F Survey, Potter County, Texas.

Vicinity: Ballybunion Ct. and Prestwick Ln.

Applicants: Caleb S. Kim & Abigail Sora Kim

AP: J-9

COUNTY CLERK'S MEMO  
 Portions of this document not legible and/or reproducible when received for recording.

Filed AND Recorded  
OFFICIAL PUBLIC RECORDS  
On: Feb 13, 2012 at 09:02A

Receipt# - 168197

Document Number 01210335:

Amount 36.00

Julie Smith  
County Clerk, Potter County

by *lae* Deputy

STATE OF TEXAS COUNTY OF POTTER  
I hereby certify that this instrument was  
FILED on this date and at this time stamped  
hereon by me and was duly RECORDED in the  
OFFICIAL PUBLIC RECORDS OF POTTER COUNTY TEXAS,  
in the volume and page as shown.



Julie Smith, County Clerk  
Potter County

By *Jonathan* Deputy

Any provision herein which restricts the sale,  
rental or use of the described real property  
because of color or race is invalid and  
unenforceable under federal law.

**COUNTY CLERK'S MEMO**

Portions of this document may  
not be legible and/or reproducible  
when received for recording.