

THE CITY OF AMARILLO, TEXAS

INTERDEPARTMENTAL OFFICE COMMUNICATION

February 23, 2012

TO: Final Distribution

FROM: Planning Department

SUBJECT: L-12-03 License and Hold Harmless to encumber surface for a retaining wall in the right-of-way of Prestwick Ln. and a portion of Ballybunion Ct. adjacent to Lot 18, Block 7, La Paloma Estates Unit No. 4, in Section 23, Block 9, BS&F Survey, Potter County, Texas.

APPLICANTS: Charles J. and Kela D. Short

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 53 on February 13, 2012. Please post your recordings accordingly.



Kelley Shaw, Planning Director

LICENSE AND HOLD HARMLESS AGREEMENT

THE STATE OF TEXAS)
)
COUNTY OF POTTER)

This License and Hold Harmless Agreement (“Agreement”) is made by and between the City of Amarillo, a Texas municipal corporation situated in Potter and Randall Counties, Texas, hereinafter called LICENSOR, and Charles J. and Kela D. Short, hereinafter called LICENSEE.

RECITALS

1. LICENSEE owns an existing stone retaining wall within the right-of-way of Prestwick Lane and a portion of Ballybunion Court, adjacent to the west and south property lines of Lot 18, Block 7, La Paloma Estates Unit No. 4, in Section 23, Block 9, BS&F Survey, Potter County, Texas. (“Encroachment”). The general location and details of the Encroachment is shown in detail on the attached Exhibit A to this Agreement.

2. LICENSOR has been requested to accept a dedication of the right-of-way of Prestwick Lane for public use subject to LICENSEE’s existing Encroachment and to thereafter be responsible to repair and maintain said right-of-way.

3. LICENSOR is agreeable to accepting the dedication of the right-of-way of Prestwick Lane for public use (“Right-of-Way”) and to be responsible for repairing and maintaining same, in consideration of all persons and organizations having encroachments in the Right-of-Way entering into this Agreement with LICENSOR regarding their rights, duties and obligations with respect to their respective encroachment.

AGREEMENT

I.

LICENSOR hereby grants LICENSEE a revocable license to maintain the Encroachment in the Right-of-Way in accordance with this Agreement. The term of this license shall be effective as of the date of LICENSOR’s Resolution accepting the dedication of the Right-of-Way and shall continue for the life of the Encroachment, unless earlier terminated as herein provided.

II.

This license is granted upon LICENSEE's agreement to strictly comply with the following terms and conditions:

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 Charles J. or Kela D. Short, 1 Ballybunion Ct., 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 7th day of February, 2012.

CITY OF AMARILLO (LICENSOR)

ATTEST:

Donna DeRight
Donna DeRight, City Secretary

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

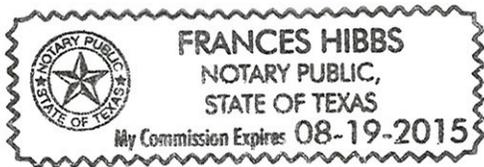
PROPERTY OWNERS (LICENSEE)

Charles J. Short
Charles J. Short

Kela D. Short
Kela D. Short

THE STATE OF TEXAS)
COUNTY OF POTTER)

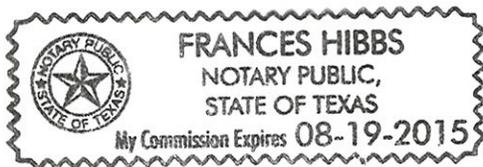
This instrument was acknowledged before me on the 8 day of February, 2012 by W. Jarrett Atkinson, City Manager of the City of Amarillo, a Texas municipal corporation, on behalf of said corporation.



Frances Hibbs
Notary Public in and for
The State of Texas

THE STATE OF TEXAS)
COUNTY OF Potter)

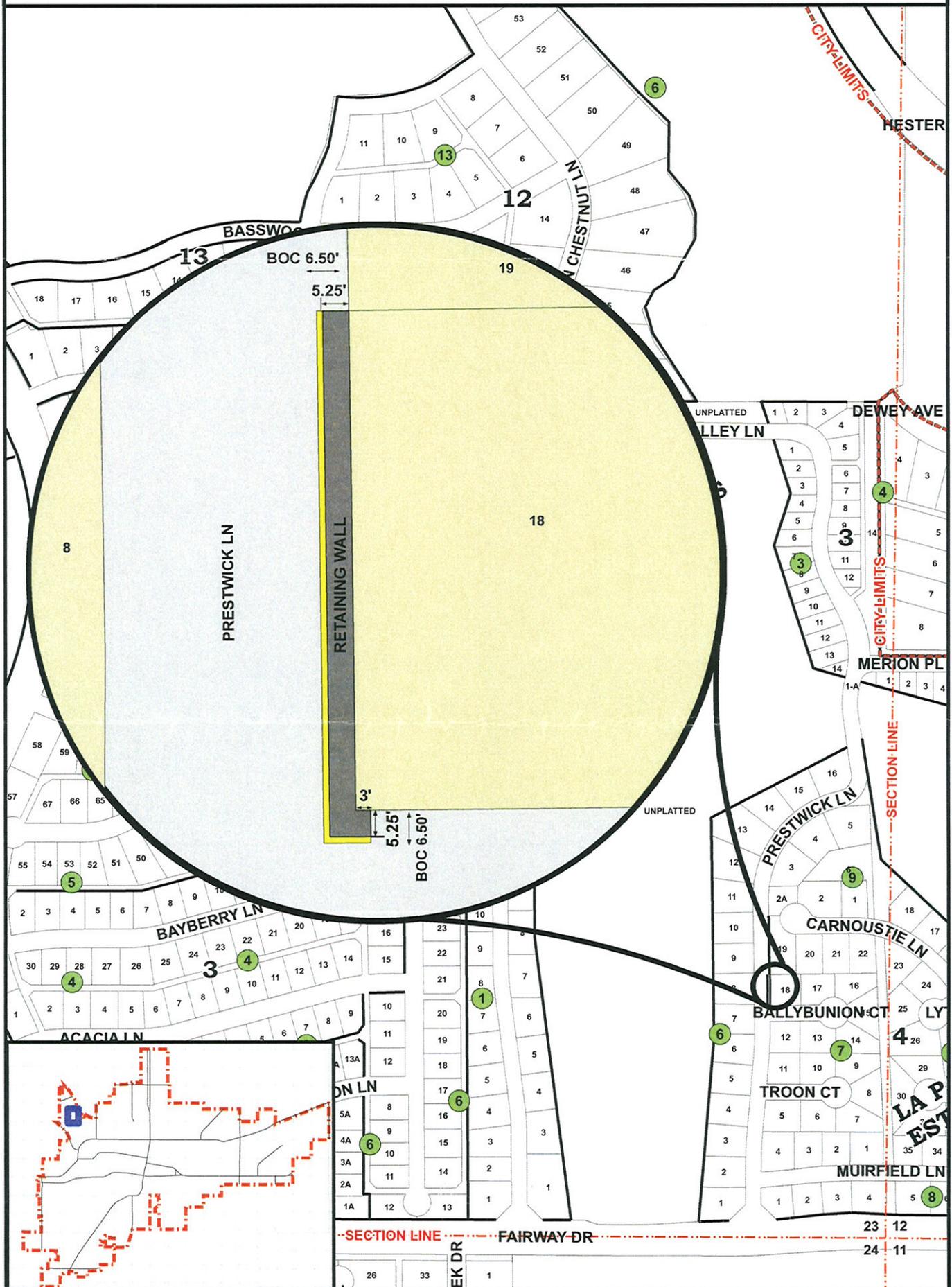
This instrument was acknowledged before me on the 20th day of January, 2012 by Charles J. and Kela D. Short, on behalf of said entity.



Frances Hibbs
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**

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 18, Block 7, La Paloma Unit No. 4, in Section 23, Block 9, BS&F Survey, Potter County, Texas.

EXHIBIT A
Scale: 1" = 400'
Date: 12/30/2011
Case No: L-12-03



Vicinity: Ballybunion Ct. and Prestwick Ln.

Applicants: Charles J. Short & Kela D. Short

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 01210336:

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 Julie Smith 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.