

**REVOCABLE RIGHT OF WAY LICENSE AND AGREEMENT
FOR CONSTRUCTION, REPAIR, MAINTENANCE, AND REMOVAL OF A
PRIVACY WALL**

THIS LICENSE AND AGREEMENT ("License Agreement") is entered into as of Jan. 21, 2025 by and among the BOARD OF COUNTY COMMISSIONERS OF COUNTY OF ARAPAHOE, COLORADO, a political subdivision of the State of Colorado (the "County") and the HUNTINGTON ESTATES HOME HOMEOWNERS' ASSOCIATION, whose address is 9192 E. Evans Way Denver, CO 80231 (the "HOA").

WHEREAS, the County is the owner of public road right of way in the unincorporated territory of Arapahoe County for and along north side of Iliff Avenue from the Highline Canal to South Dayton Way (the Iliff ROW); and

WHEREAS, in approximately 1989, the County constructed a wooden double-sided fence for noise attenuation purposes within the Iliff ROW (the "Fence"); and

WHEREAS, the Fence has reached the end of its useful life and as such there is no legal obligation incumbent on the County under state or federal requirements to replace the Fence; and

WHEREAS, the HOA and residents desire some manner of fence along this segment of the Iliff ROW for privacy, security, and noise attenuation purposes; and

WHEREAS, the County has priced the cost of construction of a concrete panel wall, similar to other such panel walls in the area and along the Iliff Avenue corridor; and

WHEREAS, the County has obtained cost estimates to build a concrete panel wall similar to panel walls constructed along Iliff Ave. just south of this location and is willing to construct such type wall within and along the Iliff ROW (the "Wall"), provided that the HOA assumes all responsibility for the ownership, maintenance and repair of the Wall, and the County is able to

preserve its authority and control over its ROW, including the ability to make use of the ROW occupied by the Wall, subject to such terms and conditions as provided herein; and

WHEREAS, the HOA desires that the County construct the Wall, convey the Wall to the HOA subject to the terms and conditions contained in this License Agreement (including the retained right of removal described below).

NOW, THEREFORE, IT IS AGREED, by and between the County and the HOA as follows:

1. The County agrees to remove the Fence and construct the Wall at its expense up to the amount of \$270,000 (the "Budgeted Amount"). Any cost overruns above the Budgeted Amount shall be the responsibility of the HOA. The County will use commercially reasonable efforts to construct the wall for an amount not to exceed the Budgeted Amount, and it will promptly notify the HOA of any anticipated cost overruns (i.e., any expected costs above the Budgeted Amount). Should the HOA not approve a cost overrun, then the HOA may terminate this License Agreement by providing notice to the County, and paying to the County the difference between (a) the sum of (i) the unavoidable cost incurred by the County for construction of the Wall, and (ii) the cost to remove the Wall, and (b) the Budgeted Amount.

2. The County will construct the Wall within the Iliff ROW on the northside from the Highline Canal to South Dayton Street (See Exhibit A) on approximately the existing fence alignment, with the Wall to be constructed approximately eight feet in height. The Wall shall be of standard design and shall be of concrete panel type construction. The type and construction of the Wall, and site of the Wall in the Iliff ROW, shall be as shown on Exhibit A, attached hereto and incorporated herein by this reference. Except as provided in the foregoing sentences, the County shall have sole authority and discretion over design and appearance of the Wall and any particular design or customization of the Wall shall be subject to the County's express approval.

In the event the HOA desires, and the County approves, any customization or alternate design that increases the cost of the Wall over the Budgeted Amount, such additional cost shall be at the HOA's sole expense, which amount the HOA shall provide to the County prior to its executing a Contract with the contractor for construction of the Wall.

3. The County will perform or contract for such construction management and professional consulting services as it deems necessary for construction of the Wall. The cost of such professional services will be considered a cost of construction.

4. After the Wall is constructed and finally accepted as completed in accordance with the construction contract and all specifications, the County will convey the Wall to the HOA by bill of sale for the amount of ten (\$10) dollars and other good and valuable consideration as stated herein.

5. Effective upon such delivery of the bill of sale and conveyance of the Wall as provided above, and subject to the terms and conditions stated herein, the HOA is hereby granted a revocable license to maintain the Wall within the Iliff ROW until such time as this License Agreement is terminated as provided in Paragraphs 13 or 14 below. The County may terminate this License Agreement by providing written notice to the HOA. The County may not revoke the license granted under this Paragraph 5 without terminating this License Agreement. This License Agreement is not intended to and shall not be interpreted as granting the HOA any license or authority to locate any other planting, pole, sign or structure, or to make any other use within the Iliff ROW.

6. Subject to the terms of this License Agreement, the HOA may elect to remove and replace the Wall with a new wall or fence. Any new wall or fence construction will be at the decision and cost of the HOA and will require the approval of the County through the permit

process, including a new right-of-way license agreement for placement in the County's right-of-way.

7. In consideration of the County funding the construction of the Wall as provided herein, the HOA agrees and acknowledges that it shall be responsible, at its sole cost, for all repair and maintenance of the Wall, and the HOA shall maintain the Wall in good condition and repair at all times. The maintenance and repair obligations stated in this Paragraph 7 include, but are not limited to, repair of any damage to the Wall caused by weather, catastrophic event, or wear and tear, or caused by any third-party, whether caused by negligence, reckless, or intentional actions and whether by vehicle crash, vandalism, markings, graffiti, or any other actions of third-parties causing any damage to the Wall.

8. In consideration of the County funding the construction of the Wall as provided herein, the HOA agrees and understands that in the event that the County has need of the Iliff ROW for any road or other public purpose that is inconsistent with the presence of the Wall or any portion of the Wall, the County may require the HOA to remove the Wall or such portion from the Iliff ROW at the HOA's sole cost and expense. Such removal shall include the complete removal of the Wall or such portion, including all footings and subsurface elements, columns, and panels and other Wall elements, as well as restoration and grading of the Wall site to County's approved standard. If the County's need for ROW use would require only a partial or temporary removal of a portion of the Wall, the HOA may replace such removed portion at its expense in coordination with the County and subject to the County's approval, and in such case the License shall not terminate as provided below in Paragraphs 13 or 14.

9. In consideration of the County funding the construction of the Wall as provided herein, the HOA agrees and understands that in the event that the County requires removal of the

Wall or any portion thereof as provided in this License Agreement above, the County shall not be required to provide any compensation to the HOA and such removal shall be the responsibility of the HOA. The HOA hereby waives and releases for itself, its homeowners, and any successors in interest to the Wall, any and all claims for any financial compensation or other remuneration under any federal or state law for any condemnation, eminent domain, or takings claim against the County that is or may otherwise be asserted by reason of the County exercising any of its contractual rights as established herein with respect removal of the Wall, and the HOA for itself, its homeowners, and any successors in interest, agrees that the County shall not be required to file any condemnation, eminent domain, or other takings proceedings prior to exercising any of its rights under this License Agreement with respect to the Wall. In the event that the HOA, any homeowner, or any successor in interest files any inverse condemnation or other legal proceeding against the County for damages, compensation, reimbursement, or other claim in law or equity by reason of the County's exercise of its rights hereunder regarding the Wall, the HOA agrees that the provisions of this License Agreement shall be a full defense to any such claim.

10. The HOA shall indemnify and hold the County, and its officers, employees, and agents, harmless from any and all claims, damages, injuries, losses and expenses, including attorney's fees, arising out of or resulting from the HOA failure to maintain or repair the Wall as required herein.

11. The HOA shall maintain for as long as the Wall remains in place in the Iliff ROW comprehensive general liability insurance in commercially reasonable amounts to cover the HOA's indemnification obligations under Paragraph 10 above, and the HOA shall provide the

County, upon the County's conveyance of the Wall to the HOA, and upon request thereafter, a certificate of insurance evidencing such insurance coverage

12. The County may, at any time and without notice, take any emergency action it reasonably deems necessary for the safety of the public, which action may include making any emergency repairs or other action as necessary to stabilize the Wall or reasonably mitigate any public safety issue, and the reasonable cost of such repairs or other action and any necessary restoration of the Iliff ROW or ROW improvements shall be at the HOA's expense. The HOA shall promptly reimburse the County for any such costs upon presentation of the costs to the HOA.

13. This License Agreement shall terminate upon the complete removal of the Wall for any reason provided or authorized herein. Such termination shall be effective upon the County's final acceptance of the work to remove the Wall and the restoration of the Wall site as provided herein.

14. In the event that the HOA desires to remove the Wall of its own accord, this License Agreement may be terminated by the HOA effective upon the County's final acceptance of the work removing the Wall and the restoration of the Wall site as provided herein. Prior to performing any work to so remove the Wall, the HOA shall coordinate with the County and shall obtain all necessary County permits for work within the ROW to remove the Wall.

15. This License Agreement contains the complete and entire agreement between the parties respecting negotiations, agreements, representations and understandings, if any, between the parties.

16. This License Agreement will not be construed as in any way establishing a partnership, joint venture, express or implied agency, or employer-employee relationship

between the HOA and County. Without limiting the generality of the preceding, no party to this License Agreement will be liable for the obligations of another party to this License Agreement except as expressly set forth in this License Agreement.

17. This License Agreement does not create, and will not be construed as creating, any rights enforceable by any third person not a party to this License Agreement.

18. This License Agreement may not be modified or discharged in any respect, except by a further agreement in writing duly executed by the HOA and County or their successors.

19. This License Agreement and the rights and obligations set forth herein shall be binding upon all Parties hereto and to their respective successors in interest to the Wall and to the Cliff ROW.

20. The invalidation of unenforceability in any particular circumstances of any of the provisions of this License Agreement will in no way affect any of the other provisions hereof, which will remain in full force and effect.

21. The prevailing party in any legal proceeding brought to enforce rights hereunder will recover from the other party its reasonable attorney's fees and costs. As used herein the prevailing party will be entitled to recover its costs and attorney's fees in any arbitration, mediation or other form of procedure, whether or not brought to final termination or whether or not incurred before or after the demand for such arbitration, mediation, or other legal procedure.

22. Nothing in this License Agreement shall be construed as or is intended to waive any rights to governmental immunity that the County has under Section 24-10-101, *et seq.*, Colorado Revised Statutes.

Exhibit A
(Exhibit Plan)

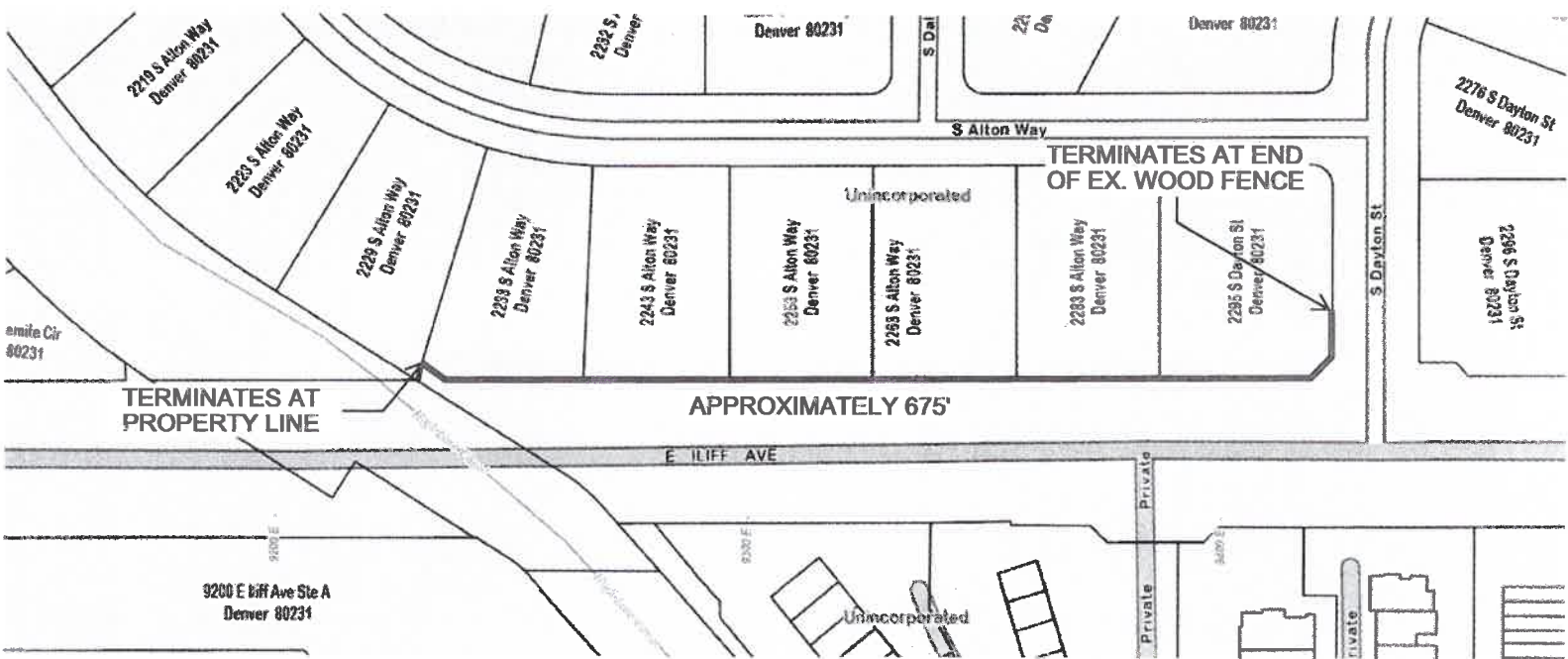


EXHIBIT A