

LOT LINE AGREEMENT
(C.R.S. § 38-44-112)

THIS LOT LINE AGREEMENT ("Agreement") is entered into this ____ day of _____, 2019, by and between the CITY OF BRIGHTON, COLORADO, a Colorado home rule municipality, ("City") and BARRY K. OHLEMEIER, ("Ohlemeier"), as follows:

WHEREAS, Ohlemeier owns certain Adams County residential real property and improvements, located at 17885 East 160th Avenue, Brighton, CO, described as being a part of the South ½ of the Southeast ¼ of Section 4, Township 1 South, Range 66 West of the 6th P.M., described in the attached **Exhibit A** ("Ohlemeier Property" or "Parcel A"); and

WHEREAS, the City owns certain adjacent and abutting real property and improvements, located at 102 Telluride Street, Brighton, CO generally known as "Fairview Cemetery," also described as being a part of the South ½ of the Southeast ¼ of Section 4, Township 1 South, Range 66 West of the 6th P.M., described in the attached **Exhibit B** ("City Property" or "Parcel B"); and

WHEREAS, the Ohlemeier Property (Parcel A) and the City Property (Parcel B) share a common property boundary line (the "Lot Line"), the specific location of which Lot Line is and has been the subject of uncertainty; and

WHEREAS, in order to remove any uncertainty, the Parties desire and intend by this Agreement, to agree upon, identify, and establish their common Lot Line, and to allow the City to establish certain fencing and other improvements upon and along such Lot Line; and

NOW, THEREFORE, in consideration of the foregoing Recitals which are an enforceable part of this Agreement, and for other good and valuable consideration, the Parties agree as follows:

1. **Lot Line Agreement; Survey; Property Exchange.** Pursuant to C.R.S. § 38-44-112, the Parties hereby covenant, agree, and intend that the Lot Line between the Parcel A and Parcel B is hereby determined, fixed, and permanently established by the Parties, according to the attached **Exhibits C and D** prepared by American West Land Surveying Co. dated April 9, 2013 ("Survey"). Pursuant to the Survey, the Parties agree to complete the following land exchanges as necessary: (i) Ohlemeier will convey to the City certain northern lands along the Lot Line containing approximately **2,122** square feet; and (ii) the City shall convey to Ohlemeier certain southern lands along the Lot Line containing approximately **1,383** square feet. The City will compensate Ohlemeier for the difference in land area of approximately **739** square feet, pursuant to Paragraph 3 below.

2. **Application for Approval.** In furtherance of this Agreement and consistent with the Parties' intent to identify, clarify, and establish the Lot Line, the Parties shall cause an appropriate application to approve the Lot Line to be prepared and filed in the Adams County Planning Department ("Application"). In filing and pursuing the Application (be filed by the Parties jointly as Co-Applicants), the City shall undertake the leading role in collecting and submitting all necessary supporting documents and other required Application information, and Ohlemeier agrees to provide reasonable assistance and good faith cooperation in furtherance of the approval process.

3. Costs and Expenses. In preparing, filing, and otherwise prosecuting the Application to completion, the City shall bear any necessary administrative fees, costs and expenses, including Application fees, recording fees, Surveyor's charges, and related approval costs. Upon approval of the Application, the City shall compensate Ohlemeier the amount of **One Thousand Twelve and 43/100 Dollars (\$1,012.43)** for approximately **739** square feet of land. In the event that Adams County justifiably denies the Application for good cause, then City may at its expense appeal such decision, or may remove any existing fence or other encroachment affecting the area of the Lot Line and may terminate this Agreement.

4. Further Assurances; Additional Documents. The Parties enter into this Agreement cooperatively, in order to determine and establish the common boundary and Lot Line pursuant to Colorado law, to provide certainty and resolve any potential disagreement. The Parties agree to faithfully execute and deliver such additional documents and instruments as may be reasonably necessary to carry out and complete the terms and provisions of this Agreement, without further compensation. Specifically, Ohlemeier shall cause any lender for the Ohlemeier Property to review and consent to this Agreement, including the Application if necessary. Otherwise the Parties shall perform this Agreement diligently and in good faith, and no Party shall take any action inconsistent with this Agreement or contrary to the Application.

5. Time; Governing Law. Time is of the essence hereof. Upon execution of this Agreement the Parties shall commence to diligently and faithfully perform its terms. This Agreement shall inure to the benefit of, and be binding upon, the Parties and their respective heirs, agents, successors and assigns, and shall be construed in accordance with Colorado law.

6. Remedies. In the event of a breach of this Agreement, the Parties shall be entitled to the remedies of specific performance and damages. In the event of a breach, then the non-breaching Party shall be entitled to receive from the breaching Party any actual damages incurred, together with reasonable and necessary attorney's fees and costs incurred to enforce this Agreement.

7. Execution in Counterparts. This Agreement may be signed in counterparts, and may be recorded in the real property records of Adams County, Colorado, at City's expense. Facsimile signatures shall be deemed legal and binding on the Parties to this Agreement, until such time as original signatures are obtained.

WHEREFORE, and in furtherance of the foregoing, the Parties have executed this Agreement as of the date set forth herein above:

CITY OF BRIGHTON

BARRY K. OHLEMEIER

By: _____
Marv Falconburg, Acting City Manager

By: _____
Barry K. Ohlemeier

[illegible]

Subscribed and sworn to before me this ____ day of _____, 2019, by **Marv Falconburg, Acting City Manager of the City of Brighton, Colorado**. Witness my hand and official seal.

My commission expires: _____

Notary Public

[illegible]

Subscribed and sworn to before me this _____ day of _____, 2019, by **Barry K. Ohlemeier**. Witness my hand and official seal.

My commission expires:_____

Notary Public

LENDER CONSENT:

Wells Fargo Bank, N.A.:

By: _____
[Name and Title]