AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT

This AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT ("Agreement") is made and entered into effective as of this 10th day of March 2009, by and between NORTHWEST METROPOLITAN DISTRICT NO. 3 (to be known as Anthem West Metropolitan District), a quasi-municipal corporation and political subdivision of the State of Colorado (the "District") and the CITY AND COUNTY OF BROOMFIELD, a Colorado municipal corporation ("City and County" or the "City") (collectively the "Parties").

RECITALS

WHEREAS, Section 18 (2) (a) of Article XIV of the Constitution of the State of Colorado provides that nothing therein shall be construed to prohibit the State or any of its political subdivisions from cooperating or contracting with one another to provide any function, service or facility lawfully authorized to each of the cooperating or contracting units, including the sharing of costs, the imposition of taxes, or the incurring of debt; and

WHEREAS, Section 29-1-203, C.R.S., as amended, authorizes and enables governments of the State of Colorado to enter into cooperative agreements or contracts; and

WHEREAS, as was required by the District's Service Plan approved by the City on September 18, 2001 ("Original Service Plan"), the District and the City and County entered into an Intergovernmental Agreement dated September 27, 2005 (the "Original Intergovernmental Agreement"); and

WHEREAS, after a hearing held on March 10, 2009, the City and County subsequently approved a First Modification to and Restatement of Original Service Plan for Northwest Metropolitan District No. 3 (to be known as Anthem West Metropolitan District) ("First Modification to Original Service Plan"); and

WHEREAS, the First Modification to Original Service Plan requires an amendment to and restatement of the Original Intergovernmental Agreement; and

WHEREAS, the Parties desire to amend and restate the Original Intergovernmental Agreement and replace it entirely with this Agreement to set forth their agreement as contemplated by the First Modification to Original Service Plan.

NOW THEREFORE, in consideration of the mutual covenants and stipulations contained herein, the Parties hereby agree as follows:

1. <u>Dissolution.</u> As provided in Section VI of the First Modification to Original Service Plan, the District hereby agrees that it, at the request of the City and County, or if the Board of Directors of the District deems it to be in the best interests of the District that the District be dissolved, the District shall initiate and diligently pursue dissolution in accordance with Section 32-1-701, et seq., C.R.S., at such time as: (a) the City and County agrees to provide, or cause to be provided, substantially the same level of operations and maintenance of the District's facilities as the District has provided; (b) all of the proposed improvements and facilities contemplated in the First Modification to Original Service Plan have been constructed

and conveyed to the City and County or other appropriate entity; and (c) all certain proposed debt incurred for such facilities has been repaid or arrangement for repayment has been made.

- 2. <u>Notice Pursuant to 32-1-207 (3), C.R.S.</u> The District hereby agrees that it shall not publish, without receiving the written consent of the City and County, a notice under Section 32-1-207 (3), C.R.S. of its intent to undertake construction of any facility, the issuance of bonds or other financial obligation, the levy of taxes, the imposition of rates, fees, tolls and charges, or any other proposed activity of the District which requires that any action to enjoin such activity as a material departure from the First Modification to Original Service Plan be brought within forty-five (45) days of such notice.
- 3. <u>Construction of Improvements.</u> The Parties acknowledge that as a consequence of the District's organization, the District assumed certain development obligations of JPB Holdings, LLC and the Pulte Home Corporation, or their successors or assigns (collectively, the "Developer"), as set forth in the Preble Creek PUD Managed Growth and Development Agreement between the Developer and the City executed on April 24, 2001 and has or will assume certain development rights and obligations of Pulte Home Corporation ("Pulte") pursuant to that certain proposed Anthem West PUD Managed Growth and Development Agreement between Pulte and the City and County.
- 4. Expansion of District Boundaries or Services. Except for the services and facilities described in the First Modification to Original Service Plan (if any) to be provided outside the District's boundaries or services and facilities described in Subdivision Improvement Agreements (and other development agreements and plans (collectively, the "SIAS") between the City and County and the Developer, prior to expanding its boundaries or services outside the District boundaries, the District shall follow the notification procedure set forth in Section III of the First Modification to Original Service Plan. The District shall not alter its boundaries by inclusion of additional real property in the District boundaries without first providing written notice to the City and County and to the City and County Manager and the City and County Attorney that it has received a petition requesting that additional property be included in the District boundaries, which petition shall be included in the written notice. After receipt of the notice and petition, the governing body of the City and County shall within forty-five (45) days receipt of such notice and petition, either: (a) adopt a resolution of approval authorizing the inclusion; or (b) the City and County acting through the City and County Manager and the City and County Attorney shall submit a written waiver of the City's right to require such resolution; or (c) the City and County acting through the City and County Manager and the City and County Attorney shall file a written objection to the inclusion, each action shall be in the City's sole discretion. Any resolution of approval so adopted or waiver shall be appended to the inclusion petition.
- 5. Ownership, Operation and Maintenance of Improvements. The property within the boundaries of the District is zoned for planned unit development and the District is not anticipated to operate or maintain any improvements. As provided in Section V of the District's First Modification to Original Service Plan, it is anticipated that, following acceptance by the City and County and if agreed to by the City and County in the SIAS the City and County will own, operate and maintain the potable and non-potable water system, the sanitary sewer improvements, and the street improvements. If agreed to by the City and County in the SIAS



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park and recreation improvements will be owned, operated and maintained by the City and County, or, with the consent of the City and County, the District or one or more homeowners or owners associations. Safety protection and transportation improvements will be owned, operated and maintained by the City and County, the Regional Transportation District, the Colorado Department of Transportation or other appropriate jurisdictions.

6. Bonds.

- Bond Issuance Plan. In accordance with Section XI of the First (a) Modification to Original Service Plan, prior to issuance of any bonds, including Subordinate Cash Flow Bonds and any refunding bonds, the District shall submit to the City and County a financial plan which demonstrates the structure of the proposed bond transaction and the District's plan to pay the proposed bonds ("Bond Issuance Plan"). At least fifteen (15) days prior to submitting the Bond Issuance Plan, the District shall submit to the City and County a Notice of Intent to Issue Bonds. The City and County Manager and City and County Attorney shall have forty-five (45) days from the date of receipt of the Bond Issuance Plan in which to object to the Bond Issuance Plan. If the City and County Manager and City and County Attorney fail to object in writing to the District's Bond Issuance Plan within forty-five (45) days of receipt of the Bond Issuance Plan, the City and County Manager and City and County Attorney will be deemed to have approved the Bond Issuance Plan and the District may proceed to issue the bonds in accordance with the Bond Issuance Plan. In the event the City and County objects in writing within the forty-five (45) day period, the District shall proceed with the bond issuance only with the written consent of the City and County Manager and City and County Attorney.
- (b) <u>Voter Authorization and Debt Authority</u>. At elections held on November 6, 2001, May 7, 2002, and November 2, 2004, the District obtained voter approval for the incurrence of general obligation debt in the total amount of \$222,000,000. Notwithstanding the voter-approved authorization, in accordance with Section VIII of the First Modification to Original Service Plan, the District shall not be authorized to issue general obligation bonds or other obligations (other than refunding bonds authorized at the November 2, 2004 election) in excess of One Hundred Eleven Million Dollars (\$111,000,000) ("Debt Authority").

7. Miscellaneous.

(a) <u>Notices</u>. All notices required or permitted to be given hereunder shall be in writing and shall be effective upon personal delivery or three (3) business days following deposit of the notices in the United States Mail, postage prepaid and addressed as follows, or to such other address designated by a party upon notice as herein provided:

To District: Northwest Metropolitan District No. 3

(to be known as Anthem West Metropolitan District)

141 Union Blvd., Suite 150

Lakewood, CO 80228 Attn: AJ Beckman Phone: 303-987-0835

Fax: 303-987-2032

With a copy to:

McGeady Sisneros, P.C.

450 E.17th Avenue, Suite 450

Denver CO 80203

Attn: Mary Jo Dougherty Phone: 303-592-4380 Fax: 303-592-4385

To City:

Broomfield City and County Manager

One DesCombes Drive

Broomfield, Colorado 80020

Phone: 303-438-6300

With a copy to:

Broomfield City and County Attorney

One DesCombes Drive

Broomfield, Colorado 80020

Phone: 303-438-6353

All notices, demands requests or other communications shall be effective upon such personal delivery or one (1) business day after being deposited with United Parcel Service or other nationally recognized overnight air courier service, or three (3) business days after deposit in the United States mail. By giving the other party hereto at least ten (10) days' written notice thereof in accordance with the provisions hereof, each of the Parties shall have the right from time to time to change its address.

- (b) <u>Amendment</u>. This Agreement cannot be amended or modified except by a writing executed by the Parties.
- (c) <u>Negation of Partnership.</u> None of the Parties shall become or be deemed to be a partner, joint venturer or agent of any other Party by reason of the provisions of this Agreement. No Party shall be liable for obligations incurred by any other Party and no Party shall have the power to bind any other Party with regard to any obligations.
- (d) <u>Severability.</u> The invalidity, illegality or unenforceability of any provision of this Agreement shall not render the other provisions invalid, illegal or unenforceable.
- (e) <u>Applicable Law.</u> This Agreement shall be construed and interpreted in accordance with the laws of the State of Colorado.
- (f) <u>Access to Records.</u> Each Party shall have the right to inspect the books and records of all other Parties relating to this Agreement at reasonable times upon reasonable notice.
- (g) <u>Waiver.</u> No failure by any party to insist upon the strict performance of any agreement, term, covenant, or condition hereof or the exercise of any right or remedy consequent upon any default, and no acceptance of full or partial performance during the continuance of any such default, shall constitute a waiver of any such default of such agreement, term, covenant, or condition. No agreement, term, covenant, or condition hereof to be performed

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or complied with by any party, and no default thereof, shall be waived, altered, or modified except by a written instrument executed by the non-defaulting Party or Parties.

- (h) <u>Attorneys' Fees.</u> In the event of any dispute between the Parties to this Agreement arising out of this Agreement, the prevailing Party shall recover its reasonable attorney's fees incurred in connection with such dispute, whether in court or by arbitrator.
- (i) <u>Additional Documents or Action</u>. The Parties agree to execute any additional documents or take any additional action that is necessary to carry out this Agreement.
- (j) <u>Assignment; Delegation</u>. Except as expressly set forth herein or as contemplated hereby, neither this Agreement, nor any of either Parties' rights, obligations, duties or authorities hereunder may be assigned or delegated in whole or in part by any Party without the prior written consent of the other Parties, which consent shall not be unreasonably withheld. Any attempted assignment or delegation in violation of the foregoing shall be deemed void.

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SIGNATURE PAGE FOR INTERGOVERNMENTAL AGREEMENT

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first set forth above.

NORTHWEST METROPOLITAN DISTRICT NO. 3 (to be known as Anthem West Metropolitan District)

By:

Todd Levitt, President

Attest:

Secretary

CITY AND COUNTY OF BROOMFIELD

By:

Mayor

By:

City and County Clerk, De

APPROVED AS TO FORM

 $\mathbf{R}\mathbf{v}$

Hahn, Smith, Walsh & Mancuso, P.C.