AN AGREEMENT BY AND BETWEEN THE CITY AND COUNTY OF BROOMFIELD AND PULTE HOME CORPORATION FOR THE GRANT OF A REVOCABLE PERMIT TO USE AND OCCUPY CITY OPEN LANDS AND PUBLIC RIGHTS-OF-WAY WITHIN THE ANTHEM WEST DEVELOPMENT

1.0 <u>PARTIES</u>. The parties to this Agreement are the City and County of Broomfield, a Colorado municipal corporation and body politic and corporate of the State of Colorado ("City"), and Pulte Home Corporation, a Michigan corporation ("Permittee").

2.0 RECITALS AND PURPOSE.

- 2.1 The City owns the open lands ("Open Lands") and public right-of-way ("Right-of-Way") within the Anthem West Development as defined by the Anthem West PUD, Reception No. 2006006926, recorded June 2, 2006 by City and County of Broomfield as may be amended ("Anthem West PUD").
- 2.2 The Permittee desires to receive a general revocable permit for the placement and maintenance of one or more of the following appurtenances within the Open Lands and Right-of-Way within the Anthem West PUD:
 - Pulte Signage
 - Directional Signage
 - Anthem, Community and Neighborhood Signage
 - Monumentation with Anthem Signage (i.e.: cairns, rock retaining walls, fin walls)
 - Monumentation with Community & Neighborhood Signage (i.e.: cairns rock retaining walls, fin walls)
 - Private Lighting
 - Buffalo Sculptures
 - Pond Water Features (i.e.: pumps, aeration systems, bacterial injection systems)
- 2.3 The City will grant a revocable permit to the Permittee under the terms and conditions as hereinafter specified in this Agreement.
- 3.0 <u>TERMS AND CONDITIONS</u>. FOR AND IN CONSIDERATION of the mutual covenants and promises contained herein, the sufficiency of which is acknowledged, the parties agree as follows:
 - 3.1 The City hereby grants to the Permittee a revocable permit for the installation and maintenance of the items listed in Paragraph 2.2 on Open Lands and Right of Way within the Anthem West PUD.
 - 3.2 The use and occupancy described in paragraph 3.1 above shall continue from the date of this Agreement to the time that this Agreement is terminated. The City may terminate this Agreement at any time by giving



- written notice to the Permittee ten days in advance of the effective date of termination and specifying the date of termination therein.
- 3.3 The Permittee expressly agrees to indemnify and hold harmless the City and any of its officers or employees from any and all claims, damages, liability, or court awards, including costs and attorney's fees that are or may be awarded as a result of any loss, injury or damage sustained or claimed to have been sustained by anyone, including but not limited to, any person, firm, partnership, or corporation, franchisee, in connection with or arising out of any omission or act of commission by Permittee or any of its employees or agents in using and occupying the Open Lands or Right-of-Way.
- 3.4 The Permittee agrees that he will never institute any action or suit at law or in equity against the City or any of its officers or employees, nor institute, prosecute, or in any way aid in the institution or prosecution of any claim, demand, or compensation for or on account of any damages, loss, or injury either to person or property, or both, known or unknown, past, present or future, arising from the revocable permit granted to Permittee in paragraph 3.1 above.
- 3.5 The Permittee agrees to construct, maintain, and repair any structures or improvements listed in Paragraph 2.2 that are located in Open Lands or Right-of-Way at the expense of the Permittee.
- 3.6 The Permittee agrees that the City is not and will not assume any liability, responsibility, or costs for any damage or maintenance to any structures or improvements erected by the Permittee under this Agreement.
- 3.7 This Agreement is subject to the provisions of section 17.9 of the Charter for the City of Broomfield.
- 4.0 <u>ASSIGNMENT</u>. This Agreement allows for Permittee to assign its interest in this Agreement in whole or in part to the Anthem Ranch Community Association, Inc., Colorado nonprofit corporation and/or Anthem Highlands Community Association, Inc., Colorado nonprofit corporation; collectively referred to as the ("Community Associations").
- 5.0 <u>NOTICES</u>. Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if personally served or if sent by certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given at the address set forth on the signature page below, or at such other address as has been previously furnished in writing, to the other party or parties. Such notice shall be deemed to have been given when deposited in the United States Mail.
- 6.0 <u>INTEGRATION AND AMENDMENT</u>. This Agreement represents the entire agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing

signed by the parties. If any other provision of this Agreement is held invalid or unenforceable, no other provision shall be affected by such holding, and all of the remaining provisions of this Agreement shall continue in full force and effect.

- 7.0 <u>GOVERNING LAW</u>. This Agreement shall be governed by the laws of the State of Colorado.
- 8.0 <u>WAIVER OF BREACH</u>. A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be constructed as a waiver of any subsequent breach by either party.
- 9.0 <u>BINDING EFFECT</u>. This Agreement shall inure to the benefit or, and be binding upon, the parties, their respective legal representatives, successors, heirs, and assigns; provided, however, that nothing in this paragraph shall be construed to permit the assignment of this Agreement except as otherwise expressly authorized herein.
- 10.0 <u>EXHIBITS</u>. All exhibits referred to in this Agreement are by reference incorporated herein for all purposes.
- 11.0 <u>PARAGRAPH CAPTIONS</u>. The captions of the paragraphs are set forth only for the convenience and reference of the parties and are not intended in any way to define, limit, or describe the scope or intent of this Agreement.
- 12.0 <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.
- 13.0 <u>NO THIRD PARTY BENEFICIARIES</u>. This Agreement is intended to describe the rights and responsibilities only as to the parties hereto. This Agreement is not intended and shall not be deemed to confer any rights on any person or entity not named as a party hereto.
- 14.0 <u>NO PRESUMPTION</u>. The parties to this Agreement and their attorneys have had a full opportunity to review and participate in the drafting of the final form of this Agreement. Accordingly, this Agreement shall be construed without regard to any presumption or other rule of construction against the party causing the Agreement to be drafted.
- 15.0 <u>EXECUTION IN COUNTERPARTS</u>. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.



3 of 4 R 0.00 D 0.00 City&Cnty Broomfield

	IN WITNESS WHEREOF, this A their respective names as of	Agreement is executed by the Parties hereto in <u>しし</u> , 2009
4 of 4 R 0.00 D 0.00 City&Cnty Broomfield	SEAI.	THE CITY AND COUNTY OF BROOMFIELD, a Colorado municipal corporation & body politic and corporate of the State of Colorado
	ATTEST: Audith X Keiser City & County Clerk, Deputy	Patrick Quinn, Mayor
		APPROVED AS TO FORM: Julian Julian State Stat
		PERMITEE: Pulte Home Corporation, a Michigan corporation By: Its: 6400 S. Fiddlers Green Circle, Suite 1320 Greenwood Village, CO 80111
	STATE OF COLORADO) ss COUNTY OF Douglas)	
	The foregoing instrument was acknowledged before me this	
	Notary Public State of Colorado MSEAMission Expires January 27, 2013	Hotary Public

My Commission Expires: 1/27/2013