

BULK TELECOMMUNICATIONS AGREEMENT

THIS BULK TELECOMMUNICATIONS AGREEMENT ("**Agreement**") is entered into by and between Del Webb Oak Creek Homeowners Association, Inc., a Florida not for profit corporation ("**Association**"), and Blue Stream Communications, LLC ("**Blue Stream**"). For purposes of this Agreement, the parties agree that the "**Effective Date**" shall be January 1, 2022.

WHEREAS, Association is the homeowners' association for the planned community known as Del Webb Oak Creek (the "**Community**") established pursuant to that certain Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens for Del Webb Oak Creek Homeowners Association to be Recorded in the Office of the Lee County Register of Deeds made by Pulte Home Company, LLC (together with its successors and assigns, the "**Declarant**"), together with all other amendments and supplements thereto, the "**Declaration**". The Association is also governed by the bylaws for the Association ("**Bylaws**"). The Declaration and Bylaws are hereinafter collectively referred to as the "**Governing Documents**."

WHEREAS, pursuant to the Declaration, the Association is authorized to enter into contracts to provide central telecommunication receiving, transmission and distribution systems and related components to serve the Community and is desirous of entering into this Agreement with Blue Stream for Services to be provided by Blue Stream as more particularly set forth herein; and

WHEREAS, Blue Stream is desirous of providing Services to the Community, the Dwelling Units therein, the Association and the Residents upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, IN CONSIDERATION of the promises and covenants contained herein and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS. Capitalized terms not defined in this Section 1 shall have their meaning as set forth in the Agreement and/or Exhibits, as applicable.

1.1. "**Activated Unit**" shall mean a Dwelling Unit that has closed escrow and for which Blue Stream has activated Bulk Services for the Dwelling Unit.

1.2. "**Affiliate**" shall mean any entity which controls, is controlled by, or is under common control with, the party, where "control" of an entity means ownership of 50% or greater of the equity of that entity or the ability to direct the management of that entity.

1.3. "**Agreement**" shall have the meaning set forth in the recitals.

1.4. "**Applicable Laws**" shall mean any applicable laws, rules, regulations, court orders, presidential decrees, statutes, codes, ordinances, rulings, orders (including those rules and regulations of the FCC and the laws, rules and regulations of any state or local regulatory authority and any franchise under which Blue Stream has the right to provide Services). Applicable Laws include building codes, safety laws, FHA/VA requirements, and all occupational safety and health standards promulgated by the Secretary of Labor under the Occupational Safety and Health Act, the Fair Labor Standards Act, the Immigration Reform and Control Act of 1986, any other federal or state labor or employment law, and environmental and natural resource laws, rules and regulations, including ordinances and policies.

1.5. "**Association**" shall have the meaning set forth in the recitals.

1.6. "**Blue Stream Agents**" shall have the meaning set forth in Exhibit C.

- 1.7. **"Blue Stream"** shall have the meaning set forth in the recitals.
- 1.8. **"Bulk Cable TV Service"** shall mean Blue Stream branded TV service with the channel lineup set forth in Exhibit A delivered via a physical fiber cable that is connected to a Dwelling Unit and via a Set Top Box in accordance with the terms of this Agreement.
- 1.9. **"Bulk Comparable"** shall have the meaning set forth in Section 2.2.2.
- 1.10. **"Bulk Internet Service"** shall mean Blue Stream branded, Internet Service provided by Blue Stream on a bulk basis in accordance with the terms of this Agreement via a physical fiber cable that is connected to a Dwelling Unit with specifications set forth in Exhibit B.
- 1.11. **"Bulk Services"** shall mean Bulk Cable TV Service and Bulk Internet Service.
- 1.12. **"Bylaws"** shall have the meaning set forth in the recitals.
- 1.13. **"Closing List"** shall have the meaning set forth in Section 5.1.
- 1.14. **"Common Area"** shall mean the "Common Area" of the Community as defined in the Declaration.
- 1.15. **"Community"** shall have the meaning set forth in the recitals.
- 1.16. **"Comparable"** shall have the meaning set forth in Section 2.3.1.
- 1.17. **"Contract Year"** shall have the meaning set forth in Section 5.4.
- 1.18. **"Core"** shall have the meaning set forth in Section 8.1.
- 1.19. **"Costs"** shall have the meaning set forth in Exhibit C.
- 1.20. **"Declarant"** shall have the meaning set forth in the recitals.
- 1.21. **"Declaration"** shall have the meaning set forth in the recitals.
- 1.22. **"Demarcation Point"** shall have the meaning set forth in Section 3.4.
- 1.23. **"Dwelling Unit"** shall mean any single-family residential dwelling now or hereafter existing within the Community.
- 1.24. **"Easements"** shall have the meaning set forth in Section 13.1.
- 1.25. **"Effective Date"** shall have the meaning set forth in the recitals.
- 1.26. **"FCC"** means the Federal Communications Commission.
- 1.27. **"Governing Documents"** shall have the meaning set forth in the recitals.
- 1.28. **"Grant of Easements"** shall have the meaning set forth in Section 13.2.
- 1.29. **"Initial Year"** shall have the meaning set forth in Section 5.4.
- 1.30. **"Internal Wiring"** shall have the meaning set forth in Section 3.6.
- 1.31. **"Jobsite Rules"** shall have the meaning set forth in Exhibit C.
- 1.32. **"Liens"** shall have their meaning set forth in Exhibit C.
- 1.33. **"Lot"** shall have the meaning set forth in the Declaration.
- 1.34. **"Market Area"** shall have the meaning set forth in Section 2.2.2.
- 1.35. **"Marks"** shall have the meaning set forth in Section 17.14.

1.36. **"Monthly Bulk Services Bill"** means an invoice for the Monthly Bulk Services Fees of each Activated Unit provided to Association by Blue Stream.

1.37. **"Monthly Bulk Services Fee"** shall mean the monthly fee of forty-nine Dollars and ninety-nine Cents (\$49.99) per Dwelling Unit, plus applicable sales taxes and local franchise fees, which are estimated at approximately three (3) Dollars and twenty-five (25) Cents (\$3.25) per Dwelling Unit.

1.38. **"Non-Activating Resident"** shall have the meaning set forth in Section 3.4.

1.39. **"ONT"** means the Optical Network Terminal.

1.40. **"OSHA Regulations"** shall have the meaning set forth in Exhibit C.

1.41. **"Other Equipment"** shall have the meaning set forth in Section 7.

1.42. **"Other Services"** shall include local and long-distance telephone services, TV services and Internet services other than Bulk Services that Blue Stream generally offers to subscribers in Lee County, Florida.

1.43. **"Outage"** shall mean any trouble or service interruption affecting a single Dwelling Unit.

1.44. **"Owner"** shall mean the owner of each Dwelling Unit.

1.45. **"PAE Work"** shall have the meaning set forth in Section 3.4.

1.46. **"PIN"** means personal identification number.

1.47. **"Phone Service"** shall have the meaning set forth in Section 2.3.4.

1.48. **"Pre-activation Equipment"** shall have the meaning set forth in Section 3.4.

1.49. **"Private Rights"** shall mean all rights of third parties under covenants, conditions, restriction and easements affecting the property on which the Community is located and evidenced in the public records for Lee County, Florida.

1.50. **"Resident"** means any resident or occupant of any Dwelling Unit.

1.51. **"Router"** shall have the meaning set forth in Section 7.

1.52. **"Services"** means Bulk Services and Other Services, collectively.

1.53. **"Set Top Box"** shall have the meaning set forth in Section 7.

1.54. **"System"** means all materials, distribution plant and associated electronics and equipment (including, fiber optic cable, ONT, poles, conduits, pipes, underground vaults, cabinets, other types of cables and/or other wireline or wireless delivery systems) installed at the Community by Blue Stream, up to the Demarcation Point and used by Blue Stream for the provision of Services to Dwelling Units. The System specifically excludes Internal Wiring, Pre-activation Equipment and Wireless System.

1.55. **"Term"** shall mean the period of effectiveness of this Agreement as set forth in Section 14.1.

1.56. **"Transition Period"** shall have the meaning set forth in Section 14.2.6.

1.57. **"Wireless System"** shall have the meaning set forth in Section 9.

2. AGREEMENT TO PROVIDE SERVICES

2.1 **Services Generally.** Blue Stream shall provide Services in accordance with Applicable Laws and this Agreement. The Association shall not be responsible in any way for Other Services

subscribed to by Residents. Nothing in this Agreement shall require the Resident to order Blue Stream Services, however, if the Resident orders Services from Blue Stream, Blue Stream shall require Blue Stream and Resident to enter into a service agreement for such Services. Blue Stream is permitted to use Blue Stream Agents to perform installation or removal obligations under this Agreement; provided that: (i) no use of any Blue Stream Agent shall relieve Blue Stream of any of its obligations under this Agreement; and (ii) Blue Stream shall remain fully responsible for each such Blue Stream Agent's acts, omissions and compliance with, and/or breach of, this Agreement.

2.2 Bulk Services.

2.2.1 Changes to Bulk Services Format. Blue Stream may only modify the format, technical specifications and/or means of delivery of the Bulk Services if the delivery of the Bulk Services continues to be transported by underground fiber cable.

2.2.2 Changes to Bulk Cable TV Service Lineup. Blue Stream may make changes, additions or deletions to the initial Bulk Cable TV Service lineup and offering, as reflected in Exhibit A; provided, however, that: (a) the Bulk Cable TV Service lineup shall remain comparable in terms of features and reliability ("**Bulk Comparable**") as to features, content, reliability and number of channels to the lineup in Exhibit A and specifically Blue Stream's then current Core TV lineup (or its successor offering), and to cable television services and cable television channel lineups provided by other providers to other residential customers in Lee County, Florida ("**Market Area**"); and (b) Blue Stream shall give the Association written notice, at least thirty (30) days prior to the effective date of such changes, additions or deletions. For avoidance of doubt, failure of the Bulk Cable TV Service to meet the criteria in this Section 2.2.2 shall be deemed a default under the terms of this Agreement and shall trigger the default provisions in Section 14.2 of this Agreement.

2.2.3 Bulk Cable TV Service Removal. The Association in its sole discretion may remove the Bulk Cable TV Service portion of the Bulk Services anytime during the Term. If the Association exercises this option, the current Monthly Bulk Services Fee will be reduced by twenty (20) Dollars (\$20.00) and the annual rate increases shall be reduced to two percent (2%) per annum thereafter through the remainder of the Term. If Bulk Cable TV Service is removed, the Association agrees it will not enter into a bulk TV agreement with another provider during the Term.

2.2.4 Changes to Bulk Internet Service. Blue Stream shall have the right to make changes or improvements to the Bulk Internet Service; provided, however, that: (a) the Bulk Internet Service shall retain at least the same, or have better upload and download speeds, features and functionality as currently set forth in Exhibit B or its upgraded equivalent pursuant to Section 2.2.5, whichever is better; (b) Bulk Internet Service remains Bulk Comparable to Blue Stream's then current 400 Mbps Internet service (or its successor offering), as it is offered on a retail basis to other residents within the area surrounding the Community; and (c) Blue Stream shall give the Association written notice, at least ninety (90) days prior to the effective date of such changes or improvements. For avoidance of doubt, Blue Stream's failure to provide Bulk Internet Service that meets the criteria set forth in this Agreement shall be deemed a default under the terms of this Agreement and shall trigger the default provisions in Section 14.2.

2.2.5 Bulk Internet Service Speed Increases. On the second and fourth anniversary date of this Agreement, Blue Stream shall increase the Bulk Internet Service speed to 500Mbps and 600Mbps respectively without additional fees to be paid by the Association other than the Fee Adjustment noted in Section 5.4. If during the Term of this Agreement Association requests to increase the speeds of the Bulk Internet Service, Blue Stream agrees to negotiate in good faith the requirements for achieving such increased Bulk Internet Service speeds at the Community.

2.3 Other Services.

2.3.1 Other Services. Blue Stream may contract directly with Residents to provide Other Services directly to Residents. Blue Stream shall set fees for Other Services and bill Residents directly for such fees in accordance with Blue Stream's services agreement with Residents. Fees for Other Services shall be the sole responsibility of the Residents subscribing to Other Services, and the Association shall not be liable for any of Resident's obligations to Blue Stream, including Other Services fees owed by any Resident. Other Services shall, at all times, remain comparable in terms of price, features and reliability ("**Comparable**") to similar services provided by other providers to other residential customers in the Market Area. If a Resident chooses to subscribe to Other Services, monthly costs of Other Services as of the Effective Date are shown in Exhibit E of this Agreement.

2.3.2 Comparable Services. Other Services at the Community shall, at all times during the Term, be Comparable to cable television, Internet, and or local and long-distance telephone services provided by Blue Stream and/or other providers to other residential customers in the Market Area. If Other Services at the Community are not Comparable, the Association and Blue Stream will work together to make the necessary changes needed for the Other Services to become Comparable. Blue Stream covenants, on an ongoing basis, that the technology used by Blue Stream to provide the Services will be competitive and current with technology generally employed by other providers of TV, telephone or Internet access services to residential customers in the state where the Community is located.

2.3.3 Services Fees to Residents. Blue Stream shall send prompt and accurate bills to Residents. The Association assumes no liability or responsibility for any service charges contracted for by Residents, and Blue Stream's sole recourse in connection with such charges is against the Residents. Blue Stream shall be responsible for all billing and collections from Residents. Blue Stream's rates for the Other Services must at all times be consistent with the then-current retail rates offered by Blue Stream to residential customers in the Market Area. Blue Stream's Services shall not require Residents to commit to a contract term for the Services. Blue Stream will make Services available on a month-to-month basis.

2.3.4 Telephone Service. As part of Other Services, Blue Stream will offer and be able to provide landline-based telephone service during the Term ("**Phone Service**"). Phone Service is \$19.95 per month, excluding taxes and fees and includes unlimited local and long-distance service in the U.S., Puerto Rico, Guam, Canada, and the U.S. Virgin Islands and up to 29 calling features as shown on (<https://www.mybluestream.com/support/>). The \$19.95 per month price will not increase during the Term of this Agreement.

2.4 **Services from Other Providers.** Nothing herein shall preclude Residents from receiving cable television, Internet, local or long-distance telephone or any other communications services of any kind, with or without charge from any other provider.

2.5 **Compliance.** Blue Stream shall strictly comply with all Applicable Laws and Private Rights in the performance of this Agreement and shall cooperate fully and promptly with Association in carrying out this Agreement. Blue Stream agrees to abide by the FCC Standard Rules pertaining to standard levels of service as set forth in U.S. Government Title 47 – Chapter 1, Subchapter C, Part 76, Subpart H, Section 76.309 and the Service and Performance levels in Exhibit D of this Agreement.

3. SYSTEM

3.1 **System Responsibility.** Blue Stream shall, at its own expense, be responsible for the installation, maintenance, repair, replacement, relocation and operation of the System, and shall install,

maintain, repair, replace, relocate and operate the System: (a) within rights of access, as specified in Section 15.2 herein that are necessary to transmit Services to each Dwelling Unit within the Community; (b) in accordance with generally accepted engineering and construction practices; and (c) in accordance with all Applicable Laws.

3.2 System Capability. Blue Stream will coordinate with the appropriate power/utility company to install Blue Stream's fiber backbone in a common trench at the same time as the power company installs their backbone "Joint Trench". The System shall be designed and constructed to extend fiber-optic cable to each Dwelling Unit within the Community and to place an ONT at an Association approved location inside the Dwelling Unit. As of the Effective Date, the System shall be capable to deliver and Blue Stream will offer, up to 10 Gigabit Internet service to the ONT. Blue Stream shall have no obligation to rewire the Internal Wiring within a Dwelling Unit to activate Services but may do so under a separate agreement between Blue Stream and a Resident at current market rates. Further, the 10 Gigabit Internet service shall: (a) be available wirelessly via a Blue Stream provided Router once a commercially available 10 Gigabit wireless Router is available to Blue Stream at commercially reasonable costs, and via a wired connection to any Dwelling Unit wall outlet that has a Cat 6 or better wire connection to the ONT; and (b) have a hub site that has commercially reasonable network redundancy via a dual path with a collapsed distance of not more than 5,000 feet from the front entry to the Community. Blue Stream's obligation to provide network redundancy is conditioned upon the timely readiness of roadways and rights-of-way into and throughout the Community. All installations of the System shall be performed only by Blue Stream or its authorized Blue Stream Agents. Upon request by the Association with at least one hundred twenty (120) day notice, Blue Stream shall stock (i.e., have available in a Blue Stream facility to be provided on demand) the System components necessary to activate Services per this Agreement (i.e., fiber, conduit, electronics).

3.3 System Ownership. During the Term, the System shall be and shall remain the sole and exclusive property of Blue Stream and shall not be deemed to be affixed to or to become part of the Community. Blue Stream shall pay for and provide all elements of the System on the Community.

3.4 Pre-activation Equipment. Blue Stream will, at its sole cost, expense and risk install, activate and test Pre-activation Equipment within each Dwelling Unit prior to the initial close of escrow, subject to the provisions of this Section 3.4. "**Pre-activation Equipment**" is defined as Blue Stream installed (i) fiber cable inside the Dwelling Unit to the ONT, (ii) the ONT, and (iii) Wi-Fi Router that allows Residents to connect to Blue Stream's wired or wireless Bulk Internet Service instantly, upon move-in (i.e., no truck roll or tech visit). Blue Stream will install the Pre-activation Equipment for a Dwelling Unit no fewer than two (2) days prior to the Dwelling Unit's estimated close of escrow date, so long as Blue Stream receives an estimated close of escrow date from the Association for the Dwelling Unit ten (10) days prior to such estimated close of escrow date. If Blue Stream fails to install the Pre-activation Equipment in accordance with the foregoing sentence, Blue Stream will, at the Association's discretion, (1) pay the Association a one-time payment of four hundred dollars (\$400.00) per Dwelling Unit that does not have Pre-activation Equipment installed, or (2) provide a temporary mobile hot spot until Bulk Internet Service can be activated. Pre-activation Equipment shall not be considered part of the "System" as defined in this Agreement. Pre-activation Equipment shall be owned by Declarant prior to the close of escrow and owned by Resident after the close of escrow. Installation of Pre-activation Equipment for a Dwelling Unit prior to close of escrow ("**PAE Work**") shall be subject to the terms set forth in Exhibit C. The Association and Blue Stream will meet prior to the first Activated Unit to discuss location of Blue Stream Pre-activation Equipment and to mutually agree upon a demarcation point for each Dwelling Unit ("**Demarcation Point**"). Notwithstanding the foregoing, if any Resident chooses not to activate the Services with Blue Stream for any reason ("**Non-Activating Resident**"), Blue Stream acknowledges that it has no right to enter a Non-

Activating Resident's Dwelling Unit to remove the Pre-activation Equipment, unless requested to do so by the Non-Activating Resident.

3.5 Damages and Repair of Community and System.

3.5.1 Damage by Blue Stream. If Blue Stream, its employees, agents or contractors damage or destroy the Community (including any Dwelling Unit, other improvement or personal property thereon) during the course of its performance of this Agreement then: (a) Blue Stream shall repair any such damage and shall restore any areas of damage to the condition which existed prior to the damage, or (b) if Blue Stream does not complete such repair within ten (10) days of notification, the Association may choose to repair or restore the damaged areas at the sole cost and expense of Blue Stream. If the Association repairs any such damage, then all costs and expenses of the repair and restoration shall be due and payable to the Association within sixty (60) days after written demand by the Association.

3.5.2 Damage by the Association. For so long as Blue Stream owns the System, if the Association, its employees, agents or contractors damage or destroy the System, then Blue Stream will repair or restore the System to the condition which existed prior to the damage, and the Association shall be responsible for associated reasonable costs and expenses, which shall be due and payable to Blue Stream within sixty (60) days after written demand to the Association.

3.5.3 Reimbursement. A party requesting reimbursement pursuant to Section 3.5 shall provide reasonable verification of the costs and expenses incurred. The terms of this Section 3.5 shall survive termination of this Agreement.

3.6 Internal Wiring. Declarant shall own any and all conduit, internal wiring, electronics, cabinets, equipment, and outlets (collectively, "**Internal Wiring**") installed in or on a Dwelling Unit by Declarant until the sale of such Dwelling Unit closes escrow. Once a Dwelling Unit closes escrow, the Resident will own all Internal Wiring.

4. ACTIVATION OF OTHER SERVICES. Subject to the terms and conditions of this Agreement, Blue Stream shall install, test and activate Other Services to a Dwelling Unit within five (5) business days after receipt of a Resident's order.

5. BULK SERVICES FEE

5.1 Fees. By the 15th of each month, the Association shall supply to Blue Stream a list of Dwelling Units that have closed escrow in the previous month ("**Closing List**"). Blue Stream shall bill and the Association shall pay the Monthly Bulk Services Fee. The Monthly Bulk Services Fees pursuant to this Agreement shall be due and payable within thirty (30) calendar days of receipt of a Monthly Bulk Services Bill from Blue Stream. The Association may pass on the Monthly Bulk Service Fee and other costs incurred in connection with this Agreement to the Owners as assessments pursuant to the terms of the Declaration.

5.2 Delinquency. Blue Stream agrees to disconnect Bulk Services to Residents that are more than ninety (90) days delinquent in any monetary obligation owed to the Association. The Association is required to provide notice to Blue Stream at least three (3) business days prior to any disconnections or re-connections of the Bulk Services. The Association shall notify Blue Stream of Residents who are more than ninety (90) days delinquent in any monetary obligation. Bulk Services to the specific Dwelling Units shall remain disconnected until such time as Association notifies Blue Stream that the Resident is no longer delinquent, at which time Blue Stream shall reconnect the Bulk Service. All Bulk Services connect and

disconnect requests must be emailed to Blue Stream at pultesupport@bluestreamfiber.com and Blue Stream can charge the Resident directly for up to a seventy-five dollar (\$75.00) reconnect fee.

5.3 Inaccurate Fees. In the event either party discovers any inaccuracy in the Monthly Bulk Services Fee stated in a Monthly Bulk Services Bill within twelve (12) months following the date of such Monthly Bulk Services Bill, the party receiving the benefit of the overpayment or underpayment of such Monthly Bulk Services Fee shall take all necessary corrective action, including return of the amount of any overpayment or remittance of the amount of any underpayment to the disadvantaged party, within thirty (30) business days of written notice (which can be given electronically) of discovering the inaccuracy. No party hereto has any obligation to correct or any right to demand payment with respect to any billing inaccuracies beyond the twelve (12) month period set forth in this Section 5.3.

5.4 Fee Adjustment. The Monthly Bulk Services Fee shall be adjusted no earlier than twelve (12) months from the closing of the first Dwelling Unit in the Community ("**Initial Year**"). For each year following the Initial Year, starting with the first January after the anniversary of the Effective Date ("**Contract Year**") (for example: if Bulk Services are initially activated October 30, 2021, the first rate increase will begin January 1, 2023) the Monthly Bulk Services Fee may only be adjusted to reflect the changes in such Bulk Services, provided that: (a) at all times during the Term of this Agreement, the adjusted Monthly Bulk Services Fee shall remain throughout the life of this Agreement at a rate that is discounted by at least fifty percent (50%) of the published Blue Stream retail rate on Blue Stream's company website Blue Stream charges non-resident recipients of services (excluding limited-time promotional offers) that are the same as, or Bulk Comparable to, Bulk Services; (b) Blue Stream increases rates no more than four percent (4%) in a single twelve (12) month period for the Bulk Services; (c) Blue Stream gives the Association written notice of any planned rate increase not later than October 1 of the Contract Year prior to the Contract Year in which the increase will take effect; and (d) Blue Stream may increase rates no more than once in any twelve (12) month period.

6. NOTICE OF OTHER SERVICES. If additional services beyond those defined in this Agreement hereafter become available to Blue Stream in the area wherein the Community is located, Blue Stream shall make those services available to Residents. If additional bulk services become available, Blue Stream shall offer such bulk services to Association. Any agreement with respect to additional bulk services shall be mutually agreed to and memorialized in writing and executed by the parties.

7. EQUIPMENT. As part of the Bulk Services, Blue Stream will provide at no cost to Resident or the Association one (1) HD set-top-box with TiVo guide and one (1) remote (collectively, "**Set Top Box**"), and one (1) Gigabit capable wireless router/modem ("**Router**") with managed whole-home WIFI capability as further described in Exhibit D. The initial Router installed by Blue Stream as part of the PAE Work shall be considered "Pre-activation Equipment". The Set Top Box and any equipment other than Pre-Activation Equipment that is provided to Resident is considered "**Other Equipment**". Pre-Activation Equipment and Other Equipment shall collectively be referred to as "**Equipment**." For lost, stolen or damaged Routers or Set Top Boxes, Residents will be charged a fee equal to Blue Stream's standard replacement cost for lost, stolen or damaged Routers or Set Top Boxes currently \$200 per Router and \$75 per Set Top Box, as applicable. Blue Stream will provide Residents with an Equipment responsibility form, which shall include Resident's responsibility to replace lost or damaged Router and Set Top Boxes. Residents may at their option rent additional Other Equipment from Blue Stream at current advertised rates. Each Resident is responsible for the return to Blue Stream of Other Equipment pursuant to Blue Stream's services agreement with Residents. The Association shall have no responsibility regarding Equipment of any kind.

8. COMPLIMENTARY SERVICES

8.1 Complimentary Community Service. During the Term of this Agreement, Blue Stream shall provide HD cable television line-up (currently known as "Core") which currently consists of programming set forth in Exhibit A, to no more than six (6) locations, and wired high speed Internet service (1 Gigabit or equivalent) with static IP address capability to no more than six (6) locations within the Community at no charge to the Association, at locations to be agreed upon by the Association and Blue Stream. Locations may include, but are not limited to, gates, guard houses, amenity centers, sales centers, model units within the Community and construction trailer/office.

8.2 Gigabit Service for the Community. Upon the Effective Date, Blue Stream shall offer Internet service at the rate of up to ten (10) Gigabits per second or faster to the Community. Internet speeds offered to the Community by Blue Stream shall be the same or faster Internet speeds Blue Stream offers in the Market Area.

9. WIRELESS INTERNET CONNECTION. Blue Stream shall pay for, design, engineer, construct, operate and maintain, during the Term a wireless Internet connection on certain areas of the Community under the managed wireless services standard (802.11ac) or better ("Wireless System"). The Wireless System shall be available at no additional charge to all Residents. Blue Stream will use industry standard designs to maintain a Wireless System that will cover the vast majority, but no less than 90%, of the footprint of the following areas of the Community: guard houses, amenity centers (not to exceed ten thousand square feet in coverage), sales centers, model units within the Community, construction trailer/office, and outdoor pool. The Wireless System shall be branded Blue Stream and shall provide customer service Bulk Comparable to Blue Stream's Bulk Internet Service provided to the Community. Design and performance criteria for the Wireless System will provide a service level that meets or exceeds all current specifications associated with Blue Stream wireless Internet services within the Market Area. The maximum Wireless System speed shall be equal to the Bulk Internet Service speed.

10. NETWORK MONITORING: Blue Stream monitors its network status and its fiber to the Community network twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five (365) days a year. The monitoring solution provides Blue Stream with bandwidth utilization, threshold alerts, latency and other beneficial information. Based on utilization reports Blue Stream performs upgrades to the network as needed. All of Blue Stream's interfaces are graphed and monitored, in case there is an event and Blue Stream has network congestion (bandwidth beyond Blue Stream's threshold), Blue Stream will receive an alert and respond accordingly to resolve. The Association may request an on-site test once a quarter to verify download speeds.

11. BLUESTREAM OBLIGATIONS

11.1 Hours of Work. Blue Stream shall conduct all activities on the Community during regular business hours of 8 a.m. through 5 p.m., six (6) days a week (excludes Sundays), except in case of emergency or interruption of service, and shall make reasonable efforts to minimize any disturbance to Residents.

11.2 Permits and Approvals. Blue Stream represents and warrants that it has, and at all times throughout the Term of this Agreement shall maintain, in full force and effect, all such licenses, permits, approvals and authorizations from applicable governmental agencies as are necessary or required in connection with the installation, use, operation and maintenance of the System.

11.3 No Installation Fee. Blue Stream shall not charge an installation or activation fee for the activation of Bulk Services on the initial set up at each Dwelling Unit. Any subsequent installation or activation of Bulk Services at a Dwelling Unit shall not exceed fifty dollars (\$50.00) per set up.

11.4 Records and Inspections. Blue Stream shall keep or cause to be kept accurate records of Resident accounts, including names, service addresses, telephone numbers and other pertinent account information. Such records, excluding any information that is regulated by government entities, e.g., PIN, shall be available for inspection and audit by an authorized agent of the Association during business hours and on reasonable notice to Blue Stream no more than one (1) time per year.

11.5 Service Level Agreement. Blue Stream shall adhere to the minimum Service and Performance levels included in Exhibit D for the Term of this Agreement.

11.5.1 The Association shall have a right to audit Blue Stream service and performance levels upon written request (including e-mail). The right to audit may be exercised up to once per six (6) month period, unless Blue Stream is found to be out of compliance with any service and performance level; in that case, the audit may occur once every thirty (30) days until the service and performance level is achieved. The audit will be conducted via a service and performance level report provided by Blue Stream to the Association within three (3) business days of a written request by the Association.

11.5.2 Excluding Section 7 of Exhibit D, should Blue Stream be found to not meet a service and performance level in any given month, Blue Stream will be assessed a penalty equal to five percent (5%) of the monthly total cost of Bulk Services, excluding taxes and government fees, up to a maximum penalty of Twenty Thousand Dollars (\$20,000.00) in any consecutive six (6) month period. Any penalty will be paid to the Association as a direct payment and not as a bill credit.

11.5.3 In addition to any other remedies available to Association under this Agreement, in the event that Service issues related to Service and Performance levels for Bulk Internet Service Availability and/or Speed or Bulk Cable TV Service Availability are reported or experienced by 5% or more of Residents at closed homes within a Community ("Community-wide Service Failure"), Blue Stream shall: (a) provide Association with a Blue Stream operations report within 24 hours of Association's written request; (b) begin to cure Service issues reported by Residents on the same or next business day; (c) meet with Association within twenty (24) hours to jointly test Service and Performance levels and to agree on a resolution plan to remedy the Service issues. Service issues of the nature described in this Section 11.5.3 shall be fully resolved within thirty (30) days of the day in which the Community-wide Service Failure occurs. Blue Stream shall work in good faith to resolve such issues prior to the conclusion of the thirty (30) day timeframe.

11.5.4 With respect to service levels for Bulk Internet Service Availability and/or Speed or Bulk Cable TV Service Availability, the following shall constitute an unacceptable level of service: (a) a failure to meet the same minimum service level set forth in Exhibit D in any three (3) consecutive months; (b) a failure to meet the same minimum service level set forth in Exhibit D three (3) times in any rolling twelve (12) month period ("Unacceptable Service"). Unacceptable Service constitutes a breach of Blue Stream's obligations under this Agreement and

Association may, in its sole discretion, immediately terminate this Agreement, in whole or in part after notifying Blue Stream. Failure by Association to exercise its termination rights for an event of Unacceptable Service will not affect or prejudice Association's right to terminate for a subsequent event of Unacceptable Service.

11.6 Pedestals. Blue Stream will use surface grade fiber optic hand-holes in lieu of pedestals in the Community. As needed per the approved design by Association before placement, above ground cabinets will be placed throughout the Community at mutually agreed locations. The cabinets will have an above ground foot-print no larger than approved by the Association before placement. Blue Stream will maintain the cabinets in a neat and presentable manner and landscape around them.

11.7 Buyer Call-in Number. Blue Stream shall offer and provide to all Residents and the Association a dedicated local or toll-free number for the exclusive use by Residents. The dedicated number will be used to order Services, report service interruptions and for general questions. Calls to the dedicated number will be handled by Blue Stream customer service representatives who have been trained on Bulk Services offerings for the Community. Hours of operation for the dedicate number shall be twenty-four (24) hours per day, seven (7) days a week.

12. ASSOCIATION OBLIGATIONS

12.1 Site Plan. The Association will provide Blue Stream with relevant site plans, plats and utility plans at least one-hundred eighty (180) days before the first Activated Unit.

12.2 Microduct. Association will place in the home a microduct or smurf tube that runs from an exterior wall to a wiring panel. Location of microduct is at sole discretion of Association but will at a minimum extend from the exterior of the Dwelling Unit to the Wiring Panel inside the Dwelling Unit and not consist of any ninety degree bends.

12.3 Wiring Panel. Association will place a wiring panel in the Dwelling Unit in a reasonably easy to access location. The panel door shall use latches and not screws. The Association will place a 120v outlet in or near the wiring panel.

13. EASEMENTS

13.1 Grant of Easement. Upon the request of Blue Stream, the Association and Declarant, as applicable, will grant to Blue Stream a satisfactory, recordable, non-exclusive easement over the Lots and Common Area owned by the Association and Declarant to install, construct, operate, maintain, repair, upgrade, replace and remove the System as and to the extent described in this Agreement (the "Easements").

13.2 Easement Utilization; Additional Easements. Subject to the terms and conditions set forth in this Agreement and the Easements granted in Section 13.1 ("Grant of Easements"), and to the extent Blue Stream is reasonably required or authorized to do so under separate agreements with Residents of Dwelling Units or with the Association, Blue Stream may utilize the Easements to the extent reasonably required for installing, relocating, reinstalling, maintaining, repairing, upgrading, operating and removing the System. Subject to the approval by any applicable public utility whose easements are to be utilized and the terms of any non-exclusive public utility easements (including utility easements shown on any subdivision plat(s) of the Community recorded in the Office of the Register of Deeds for Lee County, Florida, if any, Blue Stream may also utilize any such utility easements to the extent reasonably required for installing, relocating, reinstalling, maintaining, repairing, upgrading, operating and removing the

System. The location of components of the System on the Lots and Common Area will be subject to the prior written approval of the Association or, while Declarant holds Class "B" Membership in the Association (as describe in the Declaration), Declarant. If Blue Stream and the Association mutually determine that Blue Stream needs an easement right that is not provided by the public utility easements or has not been provided by the Grant of Easements, Blue Stream and the Association shall cooperate in negotiating a separate easement agreement that is acceptable to both parties and any other owner of property subject to such easement from whom approval must be obtained, provided that Blue Stream shall not be required to provide any compensation to the Association or Declarant for such easement. In the event that Blue Stream does not have easement rights necessary to access any structure within the Community, Blue Stream shall not be obligated to provide Services to such structure.

13.3 Easement Relocation. Either of the Association and, while Declarant holds Class "B" Membership in the Association (as describe in the Declaration), Declarant shall be entitled to relocate any Easements, provided that substantially equivalent easement areas are provided prior to such relocation.

13.4 Easement Use; Damages as a Result. Any damage to a Lot or Common Area resulting from the exercise of the Easements shall promptly be repaired by, and at the expense of, Blue Stream. The exercise of the Easement shall not unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot or Common Area shall be made only after reasonable notice to the Owner (as to entry onto a Lot) or the Association (as to entry onto Common Area). The exercise of the rights of Blue Stream under the Easements shall not extend to permitting entry into the Dwelling Units or any other structure on any Lot or Common Area, nor shall the System be installed or relocated on the Community, except as approved by Association or, while Declarant holds Class "B" Membership in the Association (as describe in the Declaration), Declarant. Blue Stream shall install the System lines to the outside edge of each Dwelling Unit during the construction of such Dwelling Unit or immediately after service is requested by a Resident.

13.5 Incorporation into Grant of Easements. Unless as expressly amended in any Grant of Easements, the terms of this Agreement will survive and not merge with the execution of any Grant of Easements.

14. TERM; DEFAULT; TERMINATION

14.1 Term. This Agreement shall commence on the Effective Date and terminate seventy-eight (78) months thereafter. At the end of the original term, or any successive term, this Agreement will automatically renew for successive terms of one (1) year each unless either party gives written notice of its intent not to renew to the other party at least ninety (90) days prior to the expiration of the then current term.

14.2 Default and Remedies.

14.2.1 Default and Cure. In the event a party defaults on its obligations under this Agreement, and the default remains uncured for thirty (30) days after the non-defaulting party gives written notice to the defaulting party specifying the default (or such additional period as is expressly approved in writing by the non-defaulting party), then the non-defaulting party may terminate this Agreement. However, if the alleged default is not reasonably curable within the thirty (30) day period, the defaulting party shall have a reasonable period of time to cure the default if it commences the cure within the thirty (30) day period and diligently completes the cure in not more than forty-five (45) days from the notice date.

14.2.2 Remedies. Each party shall be entitled to all rights, privileges and remedies available at law or in equity. All rights, privileges and remedies of the parties are cumulative, and the exercise of any one shall not be a waiver of any other.

14.2.3 Expenses in Event of Uncured Default. If any party is found to have violated the terms of this Agreement by a court of competent jurisdiction, the prevailing party in such an action shall be entitled to reimbursement by the losing party of all costs of litigation, including, but not limited to, court costs and reasonable attorneys' fees, including such costs and fees in any appellate proceeding.

14.2.4 Early Termination. Notwithstanding anything contained herein, either party may terminate this Agreement immediately upon written notice to the other (a) upon insolvency, arrangement with creditors, receivership or dissolution of the other; (b) institution of bankruptcy proceedings by or against the other party; (c) a final order by a governmental entity with appropriate jurisdiction that a component of the Services or the relationship hereunder is contrary to any Applicable Laws or any Private Rights, or (d) by Association or, while Declarant holds Class "B" Membership in the Association (as described in the Declaration), by Declarant for failure of Blue Stream to cure a default within the time provided in Section 14.2.1.

14.2.5 Direct Contract with Residents in Event of Termination. In the event of any non-renewal of the Agreement, Blue Stream shall have the right, but not the obligation, to offer its Services on a subscription basis directly to the Residents of Dwelling Units within the Community, in accordance with its local and or state authority generally to provide its Services throughout the area where the Community is located.

14.2.6 Provision of Services and Ownership of System upon Termination. In the event of any termination or non-renewal of this Agreement, Blue Stream shall, at the Association's request, and subject to the Association's obligation to continue payments hereunder, continue to provide the Services for a period of up to one hundred eighty (180) days to facilitate a transition to a new provider ("**Transition Period**"). During the Transition Period Blue Stream will not be obligated to pay any Service Level penalties. If the Association does not request that Blue Stream continue to provide the Services, such Services will continue up to the effective date of termination or non-renewal of the Agreement. After the Transition Period, or upon termination if Association does not request transition services, Blue Stream shall have the right but not the obligation, to remove all or any part of the System and/or to continue to operate, maintain, improve and otherwise use the System to offer its services on a subscription basis, in accordance with its authority generally to provide its services in the area in which the Community is located. In the event that Blue Stream ceases to use the System altogether and the removal of any equipment, wiring or related items cannot be economically affected, in the judgment of Blue Stream, such unremoved items will become the property of the Association thirty (30) days after written notice to the Association of the abandonment thereof, or such other date as shall be agreed upon by the parties. If Blue Stream, or its Blue Stream Agents, damages the Community during the course of removing its System, then it shall repair any such damage and shall restore any areas of damage to the condition which existed prior to the damage, or the Association can choose to repair or restore the damaged areas at the sole cost and expense of Blue Stream, with such costs and expenses being due and payable to the Association within thirty (30) days after written demand by the Association. Blue Stream's obligation to repair damage shall survive termination of this Agreement for a period of one (1) year. Notwithstanding the foregoing, if Association terminates this Agreement as a result of Blue Stream's breach of this Agreement, Association shall solely and exclusively own all parts of the System and Wireless System located underground without Blue Stream's right of removal, as long as the Association does not permit a successor provider of similar services to utilize any parts of the Blue Stream System and Wireless System located underground.

14.3 **Other Remedies.** In addition to the non-defaulting party's right to terminate under Section 14.2.1, and except as otherwise expressly provided herein, the non-defaulting party shall have all other rights available to it at law or equity. Further, should the Association default under the terms of this Agreement, Blue Stream shall have the right to solicit subscriptions for telecommunications services to Residents on an individual basis.

15. REPRESENTATIONS; WARRANTIES; COVENANTS; CONDITIONS

15.1 **Association Representations and Warranties.** The Association represents and warrants that (a) it has the full power and authority to negotiate, execute, deliver and perform under the terms of this Agreement; (b) the person signing this Agreement is duly authorized to execute and deliver the same on behalf of the Association; (c) the mutual benefits, promises and covenants contained in this Agreement constitute full and adequate consideration to the Association for the rights granted to Blue Stream, and (d) to its actual knowledge, there are no existing telecommunications agreements, nor will there be any such telecommunications agreements during the Term of this Agreement, that would violate the terms of this Agreement.

15.2 **Access.** The Association or the Declarant shall provide Blue Stream with reasonably necessary access to the Community during the timeframe set forth in Section 11.1 in order to perform its obligations in accordance with the terms of this Agreement.

15.3 **Regulatory Approvals.** The obligations of Blue Stream and the Association in this Agreement are wholly contingent and conditioned upon the approval by all federal, state and local regulatory authorities (including the Florida Public Service Commission) having jurisdiction over the installation of System and provision of Services and the issuance of the requisite statutory certificate of authority to provide the Services in the geographic area which includes the Community. Blue Stream shall take all necessary steps to obtain and maintain all such necessary approvals.

15.4 **Private Approvals.** The obligations of Blue Stream and the Association in this Agreement are wholly contingent and conditioned upon the receipt of all approval and consents with respect to the installation of System and provision of Services as may be required for strict compliance with the Private Rights. Blue Stream shall take all necessary steps to obtain all such necessary approvals and consents prior to the installation or operation of the System.

16. LIMITATION OF LIABILITY, INDEMNIFICATION AND INSURANCE

16.1 **Limitation of Liability.** With the exception of gross negligence, willful misconduct and the indemnification and confidentiality obligations set forth herein, neither party to this Agreement is liable to the other party for incidental, special, indirect, punitive or consequential damages, whether by tort or contract, including lost revenues, lost profits or other commercial or economic loss arising out of the performance of this Agreement, regardless of the foreseeability thereof. This Section 16.1 shall survive termination of this Agreement.

16.2 **Indemnification.** Blue Stream shall indemnify, defend and hold harmless the Association, Declarant, their successors and assigns, and their agents, employees, principals, assigns, successors, affiliates, directors and officers from and against any and all liability, loss, damage, claim or expense (including reasonable attorneys' fees and court costs), arising out of: (a) the installation, maintenance, repair, replacement, relocation and operation of the System or Pre-activation Equipment, (b) any violation or alleged violation of any Applicable Laws in connection with the installation, maintenance, repair, replacement, relocation and operation of the System or Pre-activation Equipment by Blue Stream (including

any of its Blue Stream Agents), (c) any claim that the installation, maintenance, repair, replacement, relocation and operation of the System or Pre-activation Equipment, or the provision of the Services, violates or breaches any Private Rights, (d) any interruption, delay, shortage of any Services, (e) any claim, demand, or suit for damages, injunction or other relief to the extent it is caused by or results from the breach or nonperformance of this Agreement, negligence, gross negligence, and/or intentional misconduct, and (f) any actual or alleged infringement of any third party's trade secrets, trademark, copyright, patent or other intellectual property rights by Blue Stream (including any of its Blue Stream Agents). The Association shall indemnify, defend and hold harmless Blue Stream, its personnel, directors, agents and representatives from and against any and all third party claims, damage or expenses to the extent they arise out of: (a) the negligent acts or omissions of the Association, its personnel, directors, agents and representatives in the operation and maintenance of the Community; or (b) Association's breach of this Agreement.

16.3 Insurance. Blue Stream shall procure and maintain, at its sole expense, the insurance requirements set forth in Exhibit F during the Term of this Agreement.

17. MISCELLANEOUS

17.1 Notices. Any notices or payments permitted or required by this Agreement shall be deemed made on the day personally delivered in writing or deposited in the U.S. Mail, postage pre-paid, registered mail, return receipt requested, or by Federal Express, to the other party at the address set forth below or to another address designated by the party by notice consistent with this Section. Notice may also be given by email, provided the recipient acknowledges receipt of the email.

To Blue Stream: Blue Stream Communications, LLC
12409 NW 35th Street
Coral Springs, FL 33065
Attention: Vice President/General Manager
Telephone: (954) 753-0100/Fax: (954) 345-8164

with a Copy to: Blue Stream's Vice President and General Counsel
Philip J. Kantor, Esq.
pkantor@BlueStreamFiber.com

To the Association: PulteGroup - Del Webb Oak Creek Homeowners Association, Inc.
24311 Walden Center Dr., Suite 300
Bonita Springs, FL 34134
Attn: Scott Brooks

with a Copy to: PulteGroup
24311 Walden Center Dr., Suite 300
Bonita Springs, FL 34134
Attn: Mike Hueniken

17.2 Cumulative Remedies; No Waiver. Except as otherwise provided herein, all remedies set forth herein are cumulative, are in addition to any other remedies provided for by law, and may, to the extent permitted by law, be exercised concurrently or separately. No term or provision of this Agreement will be deemed waived, and no breach or default will be deemed excused unless such waiver or consent will be in writing and signed by the party claimed to have waived or consented. A consent to waiver of or excuse for a breach or default by any party hereto, whether express or implied, will not constitute a consent to, waiver of, or excuse for any different or subsequent breach or default.

17.3 Partial Invalidity. If any part of any provision, or any provision itself, in this Agreement is determined to be invalid or unenforceable under Applicable Law or governing instrument of any party hereto, including the Governing Documents for the Community, that part or provision will be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts of that provision or the remaining provisions of the Agreement, provided that it does not alter the primary obligations of the parties pursuant to this Agreement.

17.4 Relationship of the Parties. This Agreement creates a contractual relationship between the parties and is not intended to create the relationship of master/servant, principal/agent, independent contractor, employer/employee, partnership or joint venture, or any other relationship where one party could be deemed responsible for the acts or omissions of the other. Further, this Agreement is not intended to create a relationship whereby one party may be rendered liable in any manner for the debts or obligations of the other (whether such debt arises pursuant to this Agreement or elsewhere).

17.5 Acknowledgment and Agreement. The Association and Blue Stream hereby acknowledge that:

17.5.1 Declarant has acted on behalf of the Association in the coordination and negotiation of this Agreement with Blue Stream for the benefit of the Association.

17.5.2 Residents will receive discounted Blue Stream service as a result of bulk discounts in this Agreement.

17.5.3 At the request of Blue Stream, Declarant has agreed to market Blue Stream's Services and Other Services to the Residents and all future Residents purchasing Dwelling Units it may later construct within the Community, until such time as its rights as Declarant under the Governing Documents expire. In consideration of Declarant performing within the scope of marketing services referenced in the immediately preceding sentence, Declarant shall receive compensation from Blue Stream.

17.6 Applicable Law; Disputes.

17.6.1 Applicable Law; Venue. This Agreement shall be governed in all respects by the laws of the State of Florida, without regard to principles of conflicts of law, and all Applicable Laws, as they may be amended from time to time. If either party brings a legal action for the enforcement of or breach of this Agreement, the action shall be filed in the courts of Lee County, Florida.

17.6.2 Disputes. The parties recognize and agree that time is of the essence with respect to the performance by each of its respective obligations under this Agreement, and that such performance shall be done in a timely and cooperative manner. Accordingly, if there is any dispute with respect to the performance of any such obligations that might or would delay its performance under this Agreement, each party shall proceed with the performance of such obligations according to any existing schedule as if such dispute were non-existent. The prevailing party shall recover the reasonable costs and expenses, including

reasonable attorneys' fees, incurred by such party in connection with any proceeding involving enforcement of any of the provisions of this Agreement.

17.7 Binding Effect. All terms and covenants contained in this Agreement shall extend to and be binding and obligatory upon the heirs, executors, administrators, successors, successors in interest, and assigns of the respective parties hereto.

17.8 Headings; Industry Terms. Descriptive headings in this Agreement are for convenience only and do not affect the construction of this Agreement. Words having well-known technical or trade meanings will be so construed, and all listings of items will not be taken to be exclusive, but will include other items, whether similar or dissimilar to those listed, as the context reasonably requires.

17.9 Rule of Construction; Counterparts. No rule of construction requiring interpretation against the drafting party hereof will apply in the interpretation of this Agreement. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all such counterparts shall constitute but one and the same document.

17.10 Entire Agreement; Capitalized Terms. The Agreement includes this document and the schedules and exhibits attached hereto, and any agreement expressly incorporated herein, as the same may be amended, modified or supplemented from time to time. This Agreement contains the entire understanding of the parties with respect to the subject matter of this Agreement and supersedes all prior and/or contemporaneous agreements and understandings, inducements or conditions, whether express or implied, oral or written with respect to the subject matter of the Agreement.

17.11 Force Majeure. The parties hereto shall have no liability to one another for failure to meet its obligations under this Agreement, where such failure is the result, in whole or in part, of any labor dispute, failure of usual sources of supply, war, riot, insurrection, vandalism, commotion, fire, flood, hurricane, earthquake, accident, storm, act of God or government, or any other legally recognized event giving rise to impossibility of performance pursuant to the laws of the State of Florida.

17.12 Amendment. This Agreement may only be amended in writing signed by the parties and, while Declarant holds Class "B" Membership in the Association (as describe in the Declaration), consented to by Declarant. Once an amendment or modification to this Agreement becomes effective in such manner, all references herein to this Agreement shall include such amendment. The parties acknowledge and agree that certain Services are subject to federal, state, and/or local regulation, and that the provision of the Services remain in compliance with Private Rights. To the extent that there are changes in any Applicable Laws or Private Rights applicable to the transactions contemplated by this Agreement, the parties shall enter into good faith negotiations to amend the Agreement so that it complies with the changes in Applicable Laws and Private Rights; provided, however, that if the parties determine that such amendment will materially and adversely affect the prospective operational, financial and economic benefits to the parties as contemplated by this Agreement, the Agreement may be terminated in accordance with the provisions hereof.

17.13 Recitals, Schedules and Exhibits. The recitals set forth on the first page of this Agreement and the schedules and exhibits attached hereto are incorporated herein by this reference and made a binding part of this Agreement.

17.14 Publicity/Trademark Licenses. Neither party may use the other party's name, trademarks, trade names or the name of any Affiliate of the other, or use any photographs or likeness of the property, personnel, or assets of the other in press releases or advertising without such other's prior written

consent. Each party acknowledges the value of the other party's copyrighted material, logo, trademark, trade name, trademark, or any other intellectual property now or hereafter owned by either party (the "Marks") and the associated goodwill and further acknowledges that such goodwill is a property right belonging to the owning party or its Affiliates. Each party will avoid any activity that may be detrimental to the other party's interest, reputation, goodwill or Marks. Nothing in this Agreement will be construed as an assignment or grant of any license or other right, title or interest, either express or implied, with respect to any Marks. Each party shall submit to the other for written approval, prior to publication, all press releases that mention or display the name or Marks of such other or contain language from which a connection to said name and/or Mark may be inferred. No licenses, express or implied, under any patents, copyrights, trademarks, service marks, or trade secrets, are granted to either party by the other party unless otherwise agreed to herein.

17.15 Further Assurances. The parties shall from time to time promptly execute and deliver such further instruments, documents or papers and perform all acts necessary or proper to carry out and effect the terms and provisions of this Agreement.

17.16 Confidentiality/Non-Disclosure. Each party shall keep the terms and conditions of this Agreement in strict confidence and shall not disclose any such information to any third party, except that: (a) each party may disclose such information to any of its current or prospective attorneys, accountants, financial advisors, partners, and/or others as necessary for such party hereto and the Declarant to reasonably conduct its business; and (b) Association may disclose such information to a Resident making a valid request, as may be required by Applicable Law. Each party hereto shall advise such third parties of the confidential nature of this Agreement and, to the extent not prohibited by Applicable Law, require such third parties to maintain its terms and conditions in strict confidence.

17.17 Assignment. Neither party shall assign the Agreement without the prior written consent of the other party and, while Declarant holds Class "B" Membership in the Association (as described in the Declaration), Declarant except that: upon thirty (30) days' prior written notice to Blue Stream, Association may assign this Agreement (i) pursuant to any merger, acquisition, consolidation, sale or other transfer of all or substantially all of the assets or business of the Association; or (ii) to any Affiliate of the Association.

17.18 Survival. All provisions of this Agreement relating to representations, warranties, confidentiality, ownership, indemnification, limitations of liability and any other subject that would, by its nature, be deemed to survive termination of this Agreement (whether or not so expressly stated), will survive the termination or non-renewal of this Agreement.

18. WAIVER OF JURY TRIAL

18.1 Waiver of Jury Trial. FOR THEIR MUTUAL BENEFIT, ASSOCIATION AND BLUESTREAM WAIVE ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS AGREEMENT.

(signature page to follow)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective on the Effective Date.

ASSOCIATION:

Del Webb Oak Creek Homeowners Association, a
Florida non-profit corporation


By: SCOTT BROOKS
Its: President
Date: 1.7.22

Blue Stream Communications, LLC,

By: _____
Its: _____
Date: _____

**PULTE HOME COMPANY, LLC, a Michigan
limited liability company**


By: Michael Hueniker
Its: VP of Legal
Date: 1/15/22

Exhibit A

Bulk Cable TV Lineup

INCLUDED CHANNELS		
Core Digital Lineup		Music Channels
Channel Name	Channel Name	Channel Name
44 A&E	108 LMN	501 The Chill Lounge
7 ABC-WZVN	154 MeTV-WZVN*	502 Broadway
59 AMC	181 Motor Trend	503 Hit List
62 Animal Planet	50 MSNBC	504 No Fences
26 Azteca	40 MTV	505 Rock Alternative
42 BET	77 MTV2	506 Pop Adult
65 Bravo	166 MyNet*	507 Popular Classical
61 Cartoon/Adult Swim	78 National Geographic	508 Maximum Party
5 CBS-WINK	2 NBC-WBBH	509 Classic Rock
75 CMT	141 NBC News 2 Now/Heroes & Icons*	510 Urban Beats
36 CNBC	98 NBCSN	511 Soul Storm
35 CNN	29 Nickelodeon	512 Hip Hop
53 Comedy Central	66 OWN	513 Jazz Now
174 Create-WGCU*	146 Oxygen	514 The Blues
18 CSPAN	43 Paramount Network	515 Gospel
10 CTN-WRXY	3 PBS-WGCU	516 Heavy Metal
6 CW-WXCW	11 QVC	517 Classic Masters
28 Discovery Channel	83 SEC Alternate	518 Folk Roots
63 Disney Channel	82 SEC Network	519 Groove Disco and Funk
55 E!	48 Syfy	520 The Light
149 Escape-WFTX*	15 TBN	521 Rock
32 ESPN	27 TBS	522 Nothin but '90s
33 ESPN2	60 TCM	523 Everything 80's
133 Estrella TV	23 Telemundo	524 Flashback 70's
73 EWTN	175 The Florida Channel-WGCU*	525 Classic R&B Soul
74 Food Network	24 The Weather Channel	526 Country Classics
153 FOX Business Network	57 TLC	527 Easy Listening
37 FOX News	30 TNT	528 Adult Alternative
99 FS1	56 Travel Channel	529 Rock Classics
38 FOX Sports Florida	52 TruTV	530 Hot Country
31 FOX Sports Sun	54 TV Land	531 Smooth Jazz
4 FOX-WFTX	19 Unimas	532 The Spa
49 Freeform	22 Univision	533 Holiday Hits
45 FX	46 USA	534 Bluegrass
67 FXM	41 VH1	535 Jukebox Oldies
81 FXK	34 WE TV	536 Jammin
94 Galavision	14 WGN America	537 Kids Stuff
39 Golf Channel	173 World-WGCU*	538 Latino Urbana
151 Grit-WFTX*	155 WZVN-DABL	539 Latino Tropica
70 Hallmark Channel		540 Retro Latino
71 Hallmark Drama		541 Today's Latin Pop
80 Hallmark Movies & Mysteries		542 Rock En Espanol
47 HGTV		543 Romance Latino
58 History		544 Alt Country/Americana
72 HLN		545 Swinging Standards
96 HSN		546 Dance Clubbin
79 Investigation Discovery		547 Jazz Masters
21 Jewelry TV		548 Chamber Music
176 Kids-WGCU*		549 Eclectic Electronic
150 Laff-WFTX*		550 Y2k
51 Lifetime		

Exhibit B

Bulk Internet Service Features

- 400 Mbps download and 400 Mbps upload speed
- (1) Wi-Fi Gigabit Capable Router
- 24/7 Technical Support
- Wi-Fi Security as provided as a part of Blue Stream's Managed Wi-Fi product
- No overage charges, but subject to the standard residential acceptable usage policy.

EXHIBIT C

Additional Terms Related to Installation of Pre-Activation Equipment.

1. **Authority.** Blue Stream represents and warrants that it shall be properly authorized to do business in any jurisdiction where it shall perform Services and PAE Work, and that it shall be properly licensed by all necessary governmental authorities for the PAE Work, contemplated by this Exhibit C. Blue Stream shall, at its sole cost, obtain all permits required for Blue Stream to perform the PAE Work under this Agreement. It is the responsibility of Blue Stream to maintain current copies of all licenses and certificates of competency required by all jurisdictions where Blue Stream shall perform the PAE Work under this Agreement.

2. **Labor Matters.** Blue Stream acknowledges that neither Blue Stream, its suppliers, subcontractors, laborers, materialmen, engineers, agents, employees, nor any individual who performs work for or at the request of Blue Stream ("**Blue Stream Agents**") are an employee of Declarant and Declarant does not govern, and is not responsible for, any aspect of the employment relationship of Blue Stream's Agents. At Declarant's request, Blue Stream shall remove from the worksite any individual who violates any Jobsite Rules (defined in Section 3 below) or Applicable Laws. Blue Stream represents and warrants that: (a) Blue Stream's employees and Blue Stream Agents shall all be eligible to work legally in the United States; (b) Blue Stream will timely obtain, review and retain all documentation required by Applicable Laws to ensure that each of its employees and all Blue Stream Agents are eligible to work legally in the United States; (c) Blue Stream shall comply with all Applicable Laws and other governmentally required procedures and requirements with respect to work eligibility, including all verifications and affirmation requirements; and (d) Blue Stream shall not knowingly or negligently hire, use, or permit to be hired or used, any person not eligible to work legally in the United States in the performance of PAE Work.

3. **Jobsite Rules and Safety Precautions.** Blue Stream will fully comply (and will cause its employees and Blue Stream Agents to comply) with all Community jobsite rules or regulations, including those that relate to safety, that Declarant may put in place ("**Jobsite Rules**"). Right of entry to a Dwelling Unit shall be at the sole discretion of Declarant. If granted access to the Dwelling Unit, Blue Stream shall act in a manner so as not to unreasonably interfere with construction activities at the Community. While at the Community jobsite, Blue Stream, Blue Stream's employees, and Blue Stream Agents shall conduct themselves in a professional manner, and Blue Stream shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the PAE Work, and shall ensure that all PAE Work areas comply with all safety measures, Jobsite Rules, programs and/or processes initiated by Declarant, Declarant's reasonable requests regarding personal conduct, all Applicable Laws and all applicable industry standards and, subject to mutual agreement between Blue Stream and Declarant or Association, and in accordance with all applicable Association guidelines, specifications and restrictions. Blue Stream shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to: (a) all Blue Stream employees and Blue Stream Agents involved in the PAE Work and all other persons who may be affected thereby; and/or (b) all the PAE Work of Blue Stream and of others and all materials and equipment to be incorporated therein, whether in storage on or off the jobsite. Blue Stream shall immediately advise Declarant of any injury to any of Blue Stream's employees and/or Blue Stream Agents at the jobsite and will provide Declarant with a written report regarding such injury within twenty-four (24) hours of such injury.

4. **Occupational Safety and Health Act.** Blue Stream will fully comply with the Occupational Safety and Health Act of 1970 (and any and all state and local laws related to occupational health and safety) (the "**OSHA Regulations**") in effect during the performance of the PAE Work and will cooperate with Declarant and all subcontractors of Declarant in order to assure compliance with the OSHA

Regulations. Any failure by Blue Stream to perform the PAE Work fully in compliance with OSHA Regulations could result in potential losses to Declarant (potential liability for injuries, administrative fines or penalties, operational costs due to work stoppages, etc.). If Declarant identifies violations of OSHA Regulations or if the Jobsite Rules related to safety by Blue Stream (or its employees or Blue Stream Agents), Blue Stream shall, in addition to and not in place of any and all other rights and remedies that Declarant may have under this Agreement, reimburse Declarant for all costs, fees, damages, fines, penalties, and all other expenses incurred or paid by Declarant (“Costs”). Declarant may offset or back-charge these Costs against amounts that may otherwise be due from Declarant to Blue Stream under this Agreement. Failure to comply with this Section is a default by Blue Stream, giving Declarant the right to exercise any remedies (including termination, penalties and fines) available under this Agreement.

5. Utilities. Prior to any excavation or digging, Blue Stream must verify that there is no conflict with the location of all underground utilities, irrigation and/or landscaping. Blue Stream is responsible for having all existing underground utilities or irrigation systems located prior to excavation or digging. Blue Stream shall perform its Services and PAE Work as to not damage above or below ground utility lines, irrigation systems, sod and shall follow all applicable encroachment standards affecting the utility rights of way and adequately protect its own employees, and those of others and Declarant, in performing the Services and PAE Work. Any area, utilities, irrigation and/or landscaping damaged, altered or disturbed by Blue Stream shall be promptly restored by Blue Stream to the same condition it was in before Blue Stream’s access and actions at Blue Stream’s sole cost. However, Blue Stream shall not be responsible for such damage if the State or local agency responsible for locating utilities does not properly locate utility lines, communications lines or sprinkler systems. If Blue Stream does not complete such repair before Services and PAE Work is completed, Declarant may choose to repair or restore the damaged areas at the sole cost and expense of Blue Stream. In either case, all costs and expenses of the repair and restoration shall be due and payable to Declarant within thirty (30) days after written demand. Blue Stream shall not use any utilities, except ones specifically provided by Declarant, and current Residents’ utilities shall never be used. Blue Stream is responsible to supply any electricity, heat and/or light needed to perform its Services and PAE Work, and Blue Stream shall perform any water pumping necessary to perform its Services and PAE Work.

6. Liens/Waiver of Liens. Blue Stream warrants and guarantees that all Pre-activation Equipment furnished by Blue Stream shall be new, free from defects and free of any Liens. To the extent permitted by Applicable Law, Blue Stream hereby waives its right to claim any Liens against real property upon or in which Blue Stream Pre-activation Equipment supplied to Declarant are delivered, used and/or installed. “**Liens**” means any mechanics’ lien, materialmen’s lien, construction lien, stop notice or bond claim or any attachments, levies, garnishments, security interests, claims, encumbrances or suits.

EXHIBIT D

Service and Performance Levels

1. **Telephone Availability.** Blue Stream shall maintain a local or toll-free telephone number which will be available to Residents twenty-four (24) hours a day, seven (7) days a week, 365 days per year including holidays, with technical support available 24 hours per day. Blue Stream's Customer Service Representatives shall be U.S. based during the Term of this Agreement. Non-U.S. based Service Representatives shall be a default of this Agreement. In addition, under normal operating conditions, Average Speed to Answer ("ASA") shall be maintained at a threshold of one (1:00) minute or less at least 90% of the time to be measured over a 30-day period. This ASA shall exclude any *force majeure* events.
2. **Installation.** Services will be activated within seven (7) business days after Resident request, unless (i) the Resident requests a longer installation period, (ii) Blue Stream is unable to activate Services due to a Resident's failure to provide access (including missed appointments where Blue Stream arrived during the agreed-upon installation period), or (iii) Blue Stream has no control over the timeframe to transfer services from another Phone carrier, however Blue Stream will activate all Services not affected by the other Phone carrier if possible. For purposes of clarification, this Section does not apply to Pre-activation Equipment.
3. **Same Day Support.** Under normal operating conditions (defined below), Blue Stream will make an in-home service visit for a Resident who has lost a Service (e.g., Internet and/or TV Services are unavailable) within four (4) hours of the Resident calling Blue Stream so long as the call is made between 8am and 2pm Monday through Saturday. "Normal Operating Conditions" are defined to exclude *force majeure* events, system wide impacts or other events including but not limited to events caused by third parties that prevents Blue Stream from accessing the Community, otherwise, the Resident will receive an in-home visit the following business day (Monday through Saturday) so long as the Resident calls Blue Stream. Blue Stream shall cure Service issues reported by Residents on the same or next business day at least 90% of the time when measured over a thirty (30) day period. In addition to other remedies available, if Blue Stream does not cure a lost Service on the first visit, the resident will be provided with a one-time twenty-dollar (\$20.00) credit on their Blue Stream account and offered a preferred follow-up visit time. The credit can only be used for Blue Stream Services beyond Bulk Services.
4. **Bulk Internet Service Availability and Speed.** Blue Stream guarantees Bulk Internet Service shall be available 97% of the time measured over a month, 98% of the time when measured over a quarter and 99% of the time when measured over a year. Availability on a monthly basis is calculated by dividing the difference of total number of seconds in a month less the total number of seconds an Outage is uncured for Bulk Internet Service by the total number of seconds in the same month and multiplying by 100. Availability on a quarterly basis is calculated by dividing the difference of total number of seconds in a calendar quarter less the total number of seconds an Outage is uncured for Bulk Internet Service by the total number of seconds in the same calendar quarter and multiplying by 100. Availability on a yearly basis is calculated by dividing the difference of total number of seconds in a calendar year less the total number of seconds an Outage is uncured for Bulk Internet Service by the total number of seconds in the same calendar year and multiplying by 100. The maximum level of throughput rate set forth in Sections 2.2.4 and 2.2.5 of the Agreement, at which the Resident may send and receive Bulk Internet Service at any time and the maximum throughput rate generally will be sustained at least ninety percent (90%) but in no event below eighty percent (80%) of the "up to" speed at ninety-five percent (95%) of the time when measured over a 30-day period. For example, if the "up to" speed is 400Mbps, the minimum guaranteed speed will be 360Mbps or faster. Bulk Internet Service speed will be measured by Blue Stream from a router that is hardwired via an Ethernet connection to an ONT.

5. Bulk Cable TV Service Availability. Blue Stream shall perform System maintenance that may disrupt Services during hours when the least number of Residents are likely using the Services (i.e., between 2am and 6am) and shall notify the Association at least 24 hours in advance of any planned System maintenance that will disrupt Services. Blue Stream shall undertake commercially reasonable methods to notify subscribers at least 24 hours in advance of any planned System maintenance that will disrupt Services. Blue Stream's Bulk TV Service will be available to use by a Resident at least 97% monthly, 98% quarterly and 99% annually. Availability on a monthly basis is calculated by dividing the difference of total number of seconds in a month less the total number of seconds an Outage is uncured for Bulk Cable TV Service by the total number of seconds in the same month and multiplying by 100. Availability is calculated by dividing the difference of total number of seconds in a calendar quarter less the total number of seconds an Outage is uncured for Bulk Cable TV Service by the total number of seconds in the same calendar quarter and multiplying by 100. Availability on a yearly basis is calculated by dividing the difference of total number of seconds in a calendar year less the total number of seconds an Outage is uncured for Bulk Cable TV Service by the total number of seconds in the same calendar year and multiplying by 100.

6. Blue Stream shall provide the Association with a Blue Stream operations report on a quarterly basis via email that will include performance data on Internet performance including speed and availability, up and down times, TV performance and availability, total number of calls to the call center, number of service visits and ONT performance. All service levels are documented within the report. Upon the Association's request, Blue Stream shall provide more frequent reports within three (3) business days of the Association's request (except as otherwise provided for under the Agreement).

7. For any System-wide outage (20% or more Units within the Community) that lasts longer than twenty-four (24) anytime hours, the Association will be provided with a credit equal to 1 day of billing for the Bulk Services at the then current rate, Blue Stream shall begin work immediately (but in any event without two (2) hours of notice by Association and work diligently and continuously to restore any such outage. This credit excludes all *force majeure* events or any event that is outside of Blue Stream's control, such as an outage due to the Ethernet transport circuit. Credits will only be issued for full twenty-four (24) hour periods for the outage and will be issued as a payment to the Association from Blue Stream, not as a bill credit.

8. Blue Stream will provide the following designated representatives: (i) a single point of contact to coordinate and escalate construction and engineering issues, and (ii) a single point of contact to support the Residents and Community sales team and (iii) an on-site representative for up to four (4) days per year on mutually agreed to times and dates. The Association shall provide an air-conditioned space that is at least 10 feet by 10 feet in size and has access to a 120-volt AC outlet to power.

9. So long as the Association provides Blue Stream with at least one hundred twenty (120) days' notice of the required date for Services for a construction trailer (including the turn up date, address and geo-location data), Blue Stream will activate Services. If Services are not active, Blue Stream will pay the Association a one-time payment of one thousand dollars (\$1,000.00) per month per trailer that the Services are not active. This provision shall exclude *force majeure* events, any actions by the Association that prevent Blue Stream from completing the installation or any acts by third parties.

10. So long as the Association provides Blue Stream with at least one hundred twenty (120) days' notice of the required date for Services for a sales center, amenity center or model home (including the turn up date, address and geo-location data), Blue Stream will activate Services. If Services are not active, Blue Stream will pay the Association a one-time payment of one thousand dollars (\$1,000.00) per month per

sales center, amenity center or model that the Services are not activated. This provision shall exclude *force majeure* events, any actions by the Association that prevent Blue Stream from completing the installation or any acts by third parties.

EXHIBIT E

Upgrade Rates

Additional TV Services

Digital Plus	\$20.95
Sports Tier	\$11.95
Blue Latino Tier	\$11.95

Premium Packages

HBO Max	\$15.00
Showtime	\$10.99
Cinemax	\$10.00
Starz	\$14.95
StrazEncore	\$6.95

International Premiums

C1R	\$14.95
RTN	\$14.95
RTN & C1R Combo	\$19.95
RAI	\$9.99
TV Globo	\$19.99
TV5 Monde	\$9.95

TV Equipment & Add-Ons

Additional TiVo Android HD Set Top Box

\$9.99/each

300 DVR Hours	\$5.00
500 DVR Hours	\$10.00

Internet Service Upgrades

600 Mbps/600 Mbps	\$25.00
1 Gig/1 Gig	\$35.00
10 Gig/10 Gig	\$399.00

WiFi Services

Additional WiFi Pods	\$5.00/each
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Phone Service

Unlimited Phone (with TV or Internet)

\$19.95

Home Protection Plan

\$4.95

Exhibit F

Insurance

1. Blue Stream shall carry, with insurance companies rated A VIII or better by A.M. Best Company and reasonably acceptable to Declarant and the Association, the following insurance coverage, continuously during the Term of this Agreement, and thereafter as provided below.
2. Commercial General Liability Coverage.
 - (a) Commercial General Liability ("CGL") insurance coverage shall be on an occurrence form with minimum limits of at least \$5,000,000 per occurrence/\$5,000,000 general aggregate/\$5,000,000 products-completed operations protecting against property damage, bodily injury and personal injury claims arising from the exposures of:
 - (i) Premises or ongoing operations;
 - (ii) Products-completed operations, which shall:
 - (A) cover materials furnished, designed, modified, manufactured, sold, handled, distributed or disposed of in any way by Blue Stream;
 - (B) have a separate aggregate limit at least equal to the CGL per occurrence per limit; and
 - (C) be maintained through the longer of the statute of limitations or repose period for construction defect and products liability claims in the state where the Services or PAE Work is performed and/or System, Pre-activation Equipment and/or Wireless System is used in and/or incorporated into a Dwelling Unit. Policies and/or endorsements cannot include any provisions that terminate products-completed operations coverage at the end of a policy period or limit the coverage in any other way with respect to additional insureds;
 - (iii) Independent contractors;
 - (iv) Contractual liability; and
 - (v) Property damage resulting from explosion, collapse, or underground (x, c, u) exposures (if applicable);
 - (b) The CGL coverage must be primary. Any of Declarant's or Association's insurance shall be considered excess for the purpose of responding to claims. The following wording must be included in the Description of Operations on the Certificate of Insurance: "This insurance is Primary and Non-Contributory."
 - (c) Blue Stream's CGL policy must include a waiver of subrogation in favor of Declarant and Association, and their subsidiaries and affiliates, by referencing and attaching the required endorsement. A copy of such waiver must be attached to the Certificate of Insurance.

- (d) Blue Stream shall add Declarant, the Association and their subsidiaries and affiliates as additional insureds on the CGL policy by having the insurance carrier issue an additional insured endorsement at least as broad as the CG 2010 11/85, affording Declarant and Association all forms of coverage described in this Exhibit. Such additional insured status under the CGL policy must not be limited by amendatory language to the policy. Further, this endorsement shall:
 - (i) Provide coverage for both premises/ongoing operations and products-completed operations to the benefit of the additional insured for a period of at least ten (10) years; and
 - (ii) Provide coverage to the full extent of the actual limits of Blue Stream's coverage even if such actual limits exceed the minimum limits required by this Agreement.
 - (e) Owners and Contractors Protective Liability Policies cannot fulfill the requirement for CGL coverage under this Agreement.
 - (f) In the event that Blue Stream opts to participate in any alternative general liability insurance program offered through Declarant or Association as a means to fulfill the requirement for CGL coverage, Blue Stream agrees that Declarant and/or the Association may deduct premium payments due Blue Stream under this Agreement.
 - (g) In the event that Blue Stream participates in an Owner Controlled Insurance Program arranged by Declarant and/or Association, the CGL requirements are hereby waived for purposes of the applicable Project only. Blue Stream must maintain CGL insurance coverage for ten (10) years after the termination or expiration of this Agreement.
3. Automobile Liability Coverage. Blue Stream shall carry automobile liability coverage with a combined single limit of \$2,000,000 insuring against bodily injury and/or property damage arising out of the operation, maintenance, use, loading or unloading of any auto including owned, non-owned, and hired autos. Declarant, the Association and their subsidiaries and affiliates must be added as additional insureds for automobile liability.
4. Workers' Compensation and Employer's Liability Coverage.
- (a) Blue Stream shall carry workers' compensation insurance providing statutory benefits imposed by Applicable Law such that: (i) Declarant and Association will have no liability to Blue Stream, its employees, or Blue Stream Agents; and (ii) Blue Stream will satisfy all workers' compensation obligations imposed by state law.
 - (b) This policy must include a documented waiver of subrogation in favor of Declarant, the Association and their subsidiaries and affiliates (in states where permitted).
 - (c) If any of Blue Stream's employees or Blue Stream Agents are subject to the rights and obligations of the Longshoremen and Harbor Workers Act or any other maritime law or act, the workers' compensation insurance must be broadened to provide additional required coverage.

- (d) For purposes of workers' compensation coverage, Blue Stream agrees that Blue Stream, Blue Stream's employees and Blue Stream Agents are not employees of Declarant or Association and are therefore not beneficiaries of any Declarant or Association coverage.
 - (e) Blue Stream may satisfy its workers' compensation obligations by providing documentation of current authorization from the appropriate state authorities for the state(s) where the Services or PAE Work is performed and/or Blue Stream performs its obligations under this Agreement indicating that Blue Stream is adequately self-insured for workers compensation claims.
 - (f) Blue Stream agrees to carry employer's liability coverage with limits of not less than:
 - \$1,000,000 Each Accident
 - \$1,000,000 Aggregate Policy Limit for Disease
 - \$1,000,000 Each Employee
 - (g) Where allowed by state law and acceptable to Declarant and the Association, Blue Stream may opt out of the state workers' compensation system. Blue Stream agrees that Blue Stream's employees and Blue Stream Agents are independent contractors and not employees of Declarant or the Association and are therefore not beneficiaries of any Declarant or Association coverage. If Blue Stream has opted out of the state workers' compensation system, Blue Stream shall file the necessary documentation annually and as necessary with the state confirming the independent relationship between Blue Stream, Declarant and Association for purposes of workers' compensation. In those instances, Blue Stream must subscribe to an alternative program which provides substantially the same benefits as those offered by the workers' compensation system and provide proof of such to Declarant and the Association.
5. Umbrella or Excess Coverage. To the extent Blue Stream carries umbrella or excess insurance above the minimum required limits stated in this Agreement, the protection afforded the additional insureds in the umbrella or excess liability insurance shall be as broad or broader, than the coverage present in the underlying insurance and in accordance with this Agreement. Each umbrella or excess liability policy shall specifically state that the insurance provided by Blue Stream shall be considered primary.
6. Cyber Liability Coverage. Blue Stream shall carry cyber liability insurance coverage with a limit not less than \$5,000,000 per occurrence/\$5,000,000 aggregate. Cyber coverage shall be sufficiently broad to respond to the duties and obligations as undertaken by Blue Stream in this Agreement and shall include, but not be limited to, coverage for claims related to invasion of privacy violations, information theft, damage to or destruction of electronic information, release or misappropriation of private information, duplication or alteration of electronic information, extortion, virus transmission, and network security. Blue Stream's policy shall provide coverage for breach response costs as well as regulatory fines and penalties and credit monitoring expenses.
7. Blue Stream must disclose all applicable insurance policy deductibles and/or self-insured retentions ("SIR") and agrees to be liable for all costs within the deductibles and/or SIR.
8. Certificates of Insurance. Blue Stream shall evidence that such insurance is in force by furnishing Declarant and the Association with a certificate of insurance, or if requested by Declarant or the

Association, certified copies of the policies. The certificate shall be provided prior to initiating work and annually thereafter. Renewal certificates shall be provided at least ten (10) days prior to expiration. Notwithstanding the non-renewal or termination of this Agreement, Blue Stream shall provide renewal certificates and endorsements to Declarant and the Association for so long as the applicable insurance is required to be maintained pursuant to this Exhibit. The certificate shall state the type of Services or PAE Work being performed and/or the type of materials and/or services involved, and shall be incorporated into this Agreement. The certificate shall evidence the requirements of this Agreement, including, but not limited to, specifying that:

- (a) Declarant, the Association and their subsidiaries and affiliates, are additional insureds on the CGL and automobile policies, and if applicable, the umbrella and/or excess policies by referencing and attaching the required endorsement;
- (b) The policy does not contain exclusions for the Services, PAE Work and/or for duties performed by Blue Stream pursuant to this Agreement, including, without limitation, residential construction, attached product (if applicable), or liability that arises from a dispute governed by a notice and opportunity to repair statute. The following wording must be included in the Description of Operations on the Certificate of Insurance: "No exclusionary language or limitations relating to residential construction, condominiums, multi-family, or multi-unit dwelling;"
- (c) Blue Stream's coverage is primary, and Declarant or the Association's insurance is excess for any claims. The following wording must be included in the Description of Operations on the Certificate of Insurance: "This insurance is Primary and Non-Contributory;"
- (d) Blue Stream's CGL policy contains contractual liability coverage;
- (e) Blue Stream's workers' compensation policy includes a waiver of subrogation in favor of Declarant, the Association and their subsidiaries and affiliates (in states where permitted), by referencing and attaching the required endorsement;
- (f) All coverage applies in the state where the Services or PAE Work is performed and/or Blue Stream performs its obligations under this Agreement;
- (g) Blue Stream's CGL policy includes a waiver of subrogation in favor of Declarant, the Association and their subsidiaries and affiliates, by referencing and attaching the required endorsement; and
- (h) Blue Stream must provide evidence of Workers Compensation in the states(s) that it operates by either listing on the certificate those states listed in item 3.A. of the Information Page of the Workers Compensation Policy or attaching a copy of the Information Page.
- (i) Declarant or the Association reserves the right to request additional policy and certificate documentation as necessary and such documentation must be reasonably acceptable to Declarant or the Association.

9. Blue Stream Agent(s).

- (a) If Blue Stream should subcontract Services, PAE Work and/or any of its other obligations under this Agreement, Blue Stream shall ensure that each Blue Stream Agent complies

with this Agreement and Blue Stream agrees to be bound to indemnify Declarant and the Association as provided in this Agreement on behalf of Blue Stream Agent(s). In addition, Blue Stream shall require that Blue Stream Agent(s) also be bound to indemnify Declarant and the Association as provided in this Agreement. Blue Stream represents and warrants that Blue Stream Agent(s) shall carry insurance as set forth in this Agreement prior to permitting Blue Stream Agent(s) to perform any of its obligations under this Agreement.

- (b) Blue Stream shall require in its purchase orders that its Blue Stream Agents indemnify Blue Stream, Declarant and the Association from all losses arising from any materials or supplies included in any Services or PAE Work.

10. Modifications to this Agreement.

- (a) Any attempt by Blue Stream to cancel or modify insurance coverage required by this Agreement, or any failure by Blue Stream to maintain such coverage, shall be a default under this Agreement and, upon such default, Declarant or the Association will have the right to immediately terminate this Agreement and/or exercise any of its rights at law or at equity. In addition to any other remedies, Declarant or the Association may, at its discretion, withhold payment of any sums due under this Agreement until Blue Stream provides adequate proof of insurance.
- (b) The amounts and types of insurance set forth above are minimums required by Declarant and the Association and shall not substitute for an independent determination by Blue Stream of the amounts and types of insurance which Blue Stream shall determine to be reasonably necessary to protect itself and its Services or PAE Work.
- (c) Declarant or the Association reserves the right to modify these insurance requirements, and if Blue Stream continues to provide the Services, Blue Stream agrees to be bound by such modifications thirty (30) days after receipt of the modified provisions.