

USE AND INDEMNIFICATION AGREEMENT

This Use and Indemnification Agreement (the "Agreement"), executed this ____ day of July, 2012, by and between the Village of Orland Park, Illinois (the "Village"), and Metra Triangle FC, LLC (the "Developer"), Witnesses:

Recitals

WHEREAS, Village and the Commuter Rail Division of the Regional Transportation Authority have entered into that certain Wireline Easement Agreement dated July ____, 2012 (the "Easement Agreement");

WHEREAS, pursuant to the Easement Agreement, Village has the right to install and maintain the Wireline (as defined in the Easement Agreement) within the Easement (as defined in the Easement Agreement);

WHEREAS, Village and Developer have entered into that certain Ground Lease dated December 8, 2011 (the "Ground Lease"), pursuant to which Village leases to Developer, and Developer leases from Village, the Land (as defined in the Ground Lease);

WHEREAS, pursuant to the Ground Lease and attendant documents, Developer is developing a multi-use project (the "Project") on the Land;

WHEREAS, Developer seeks to install and maintain the Wireline on behalf of Developer to support the Project; and

WHEREAS, the parties desire to execute this Agreement;

Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged hereby, the parties agree as follows:

1. **Use.** Developer, its members, officers, employees, agents, representatives and/or contractors (the "Developer Parties") shall have all rights to enter upon, access, and use the Premises granted to Village under the Easement Agreement, including, without limitation, the right to use the Easement and install and maintain the Wireline. If Developer installs the Wireline within the Easement, then, for so long as the Wireline remains within the Easement, Developer shall perform, observe, and satisfy all obligations and covenants of Village under the Easement Agreement, including, without limitation, maintenance of the Easement and the Wireline and maintenance of all insurance required to be maintained by Village.

2. **Enforcement.** Village shall: (a) use commercially reasonable efforts to enforce the terms and conditions of the Easement Agreement, including, without limitation, proper recordation thereof; and (b) not consent to a termination of, or otherwise terminate, the Easement Agreement without the prior written consent of Developer.

3. **Indemnification.**

(a) **Developer.** Developer shall indemnify, defend, and hold harmless Village (together with its managers, officials, officers, employees, agents, and representatives) from and against any and all costs, expenses, liabilities, or damages (including, without limitation, reasonable attorneys' fees and costs of enforcement of this right of indemnification) (collectively, the "Claims") arising out of, or in connection with: (i) the Easement Agreement; (ii) the negligence or willful misconduct of any Developer Party in connection with the Easement, the Wireline, and/or this Agreement; or (iii) Developer's breach of this Agreement; provided that in no event shall the foregoing indemnification apply to any Claims arising out

of, or in connection with, the gross negligence or willful misconduct of Village, its managers, officials, officers, employees, agents, representatives, or contractors (the "Village Parties").

(b) **Village.** Village shall indemnify, defend, and hold harmless Developer (together with its members, officers, employees, agents, and representatives) from and against any and all Claims arising out of, or in connection with: (i) the negligence or willful misconduct of any Village Party in connection with the Easement, the Wireline, and/or this Agreement; or (ii) Village's breach of this Agreement; provided that in no event shall the foregoing indemnification apply to any Claims arising out of, or in connection with, the gross negligence or willful misconduct of any Developer Party.

(c) **Survival.** The terms and conditions of this Section shall survive the termination of this Agreement.

4. Termination. This Agreement shall terminate upon the termination of the Easement Agreement.

5. Successors. This Agreement, and all of the terms and conditions hereof, shall inure to the benefit of, and shall be binding upon, the respective heirs, executors, administrators, successors, and assigns of: (a) Village, as the "Grantee" under the Easement Agreement; and (b) Developer, as: (i) the "Tenant" under the Ground Lease; or (ii) the owner of the Land; as the case may be.

6. Authority. Each of the undersigned persons executing this Agreement on behalf of Village and Developer represents and certifies that: (a) he or she is empowered and authorized by all necessary action of Village and Developer, respectively, to execute and deliver this Agreement; (b) he or she has full capacity, power, and authority to enter into and carry out this Agreement; and (c) the execution, delivery, and performance of this Agreement has been authorized by Village and Developer, respectively.

7. Memorandum. At the request of either party, both Village and Developer shall enter into a Memorandum of Use and Indemnification Agreement, in form and substance reasonably satisfactory to both parties (the "Memorandum"), which instrument may be recorded at the requesting party's expense.

8. Miscellaneous. This Agreement shall be binding upon, and inure to the benefit of, Village and Developer, and their respective successors and assigns. The terms and conditions of this Agreement shall be governed by, and construed in accordance with, the laws of the State of Illinois. The section headings shall not be considered in any way to affect the interpretation of this Agreement. The invalidity, illegality, or unenforceability of any one or more of the terms and conditions of this Agreement shall not affect the validity, legality, or enforceability of the remaining terms and conditions hereof. This Agreement shall not be construed to create a contractual relationship with, give rights or benefits to, or create a cause of action in favor of, anyone other than the parties hereto.

[Signature page to follow.]

IN WITNESS WHEREOF, Village and Developer have executed this Agreement as of the date set forth above.

VILLAGE:

THE VILLAGE OF ORLAND PARK, ILLINOIS

By: _____

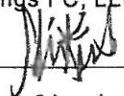
Printed: _____

Title: _____

DEVELOPER:

METRA TRIANGLE FC, LCC

By: Metra Holdings FC, LLC, sole Member

By:  _____

Printed: Chris Kirkes

Title: Member