

UTILITY ACCESS AGREEMENT

This Utility Access Agreement ("Agreement") is effective as of July 11, 2024 (the "Effective Date") by and between Metro Fibernet, LLC ("Provider") with offices at 3701 Communications Way, Evansville, IN 47715, and Chateau De Ville of Tallahassee Condominium Association, Inc. ("Owner"), with an address of PO Box 12412, Tallahassee, FL 32317. For convenience, at certain times throughout the Agreement, Provider and Owner are collectively referred to as the "Parties" or individually as a "Party". This Agreement will be for the benefit of and binding upon the Parties and their heirs, representatives, successors and assigns.

1. **Background.** Owner owns the Condominiums commonly known as Chateau DeVille located at 2020 Continental Avenue in the community of Tallahassee, FL (the "Condominiums"). The real property where the Condominiums are located and all of the structures located thereon are collectively referred to herein as the "Property." Provider provides broadband services over a state of the art all fiber network including, but not limited to, fiber television, high-speed Internet connectivity and fiber phone service ("Broadband Services"). Owner wishes for the Property to have access to the Broadband Services and is willing to grant a license to Provider for such purpose. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owner and Provider agree as is more specifically set forth in this Agreement.
2. **Grant of License.** Owner hereby grants, assigns and conveys to Provider and its successors and assigns a nonexclusive license ("License") on, over, across, and throughout the Property to deliver the Broadband Services to the Property and/or to facilitate the delivery of the Broadband Services to other locations. The License extends to all structures and improvements on the Property, including but not limited to, raceways, common areas, risers, ducts, equipment rooms, equipment buildings and utility areas, as may be reasonably necessary for the location, relocation, installation, maintenance, repair, upgrading, monitoring, testing, operation and removal of any equipment, including but not limited to conduit, cabling, network interface devices, and routers, necessary to provide the Broadband Services to the residents located on the Property (collectively the "Equipment").
3. **Term.** This Agreement will commence on the date Provider executes this Agreement and will remain in effect for a period of twenty (20) years. Thereafter, the Agreement will automatically renew for additional five (5) year terms unless either party provides the other party with written notice of its intention to terminate this Agreement at least thirty (30) days prior to the expiration of the then current term.
4. **Equipment.** Prior to installing any Equipment at the Property, Provider shall share its installation plans with Owner and make any modifications to such plans as reasonably requested by Owner. Provider will install the Equipment at its sole expense, and Owner will reasonably cooperate with Provider in connection with the installation of the Equipment, including but not limited to, locating and accessing conduit space in the Condominium buildings for cables to be installed by Provider and selecting outlet locations in each Building and/or Condominium. Unless otherwise agreed between the Parties, Provider shall have all right, title and ownership interest in all of the Equipment installed by Provider. All work will be performed in a clean, safe and workmanlike manner.
5. **Maintenance.** Owner will give Provider access to the Equipment wherever located at the Property, except equipment located in the Condominiums, 24-hours a day, 7 days a week. Provider will maintain the Equipment in a clean, safe and orderly condition. Unless otherwise agreed to by the Parties, within ninety (90) days after termination of this Agreement, Provider may remove Equipment from the Property, and Provider will restore the Property to substantially the same condition that existed as of the date of this Agreement, except for ordinary wear and tear and casualty loss.
6. **Provision of Services and Marketing.** Provider shall be responsible in all respects for the provisioning and delivery of the Broadband Services. Provider shall have the right to market, contact, and install the Broadband Services at the Property. Provider and Owner shall reasonably cooperate with each other regarding the promotion of Provider's Broadband Services. Neither Owner nor Provider shall use the other's name, logo or other intellectual property in any marketing materials without first obtaining such Party's written consent.

7. **Right of First Refusal.** If Owner receives an acceptable bona fide offer from a third party to provide bulk services to the Property that are similar to the Broadband Services (“Offer”), Provider shall have a right of first refusal. Owner shall notify Provider in writing of any Offer which notice shall set forth the material terms of the Offer. Provider shall have thirty (30) days from receipt of such notice to provide an offer to Owner that matches or is superior to the material terms of the Offer. If Provider fails to match the material terms of the Offer within such thirty (30) day period, Owner may accept the Offer from third party. Owner agrees that it will not accept an Offer that purports to prevent Provider from continuing to provide Broadband Services on the Property to its existing customers.

8. **Relocation.** Owner may relocate part or all of the Equipment to another location on the Property, subject to the following: (a) the relocation will be at the expense of Owner; (b) Owner must give Provider at least sixty (60) days prior written notice of the relocation; (c) Provider must approve in writing Owner’s plans to relocate the Equipment prior to the start of relocation work; and (d) the quality and delivery of the Broadband Services will not be adversely affected.

9. **Laws and Regulations.** Provider, at its expense, will obtain all necessary approvals, licenses and permits and will comply with all applicable laws and regulations in connection with Provider’s installation and use of the Equipment.

10. **Interference.** Owner shall not use, or permit any third party to use, any equipment that disturbs, causes interference or is otherwise incompatible with any Equipment installed by Provider at the Property or otherwise interferes with Provider’s ability to provide the Broadband Services.

11. **Liens.** Provider shall not allow any liens to be placed against the Property by any party supplying services or materials on behalf of Provider. If any such lien is placed against the Property, upon notice of the lien, Provider shall take all necessary steps to discharge the lien including, but not limited to, posting a bond. Owner shall not allow any liens to be placed against the Equipment by any party supplying Owner with materials or services. If any such lien is placed against the Equipment, upon notice of the lien, Owner shall take all necessary steps to discharge the lien including, but not limited to, posting a bond. To the maximum extent permitted by law, both Provider and Owner hereby waive any rights each party has at law or in equity to file a lien against the other party’s real or personal property. This Section 11 shall survive the termination of the Agreement.

12. **Representations.** Owner represents to Provider that: (a) it is the authorized representatives of the owners of the Property with the authority to bind such owners; (b) it has the right to enter into this Agreement; (c) the person signing this Agreement has authority to sign; and (d) Provider is entitled to quiet possession for the term of this Agreement if Provider is not in default beyond the expiration of any cure period as provided in this Agreement. Provider represents to Owner that: (a) it is legally authorized to provide the Broadband Services; (b) it has the right to enter into this Agreement, and (c) the person signing this Agreement has authority to sign.

13. **Hazardous Substances.** Owner and Provider will not use or permit the use of any substance, chemical or waste that is identified as hazardous, toxic or dangerous under any Federal, State or local law or regulation that is applicable to the Property (“Hazardous Substance”) in violation of any applicable law. Provider shall not be responsible for the release of any Hazardous Substances that were not brought to the Property by Provider if: (a) the release was not due to Provider’s gross negligence or willful misconduct; and (b) Owner did not disclose the location of the Hazardous Substances to Provider prior to Provider’s commencement of any planned construction or installation activities. Owner represents that it is not aware of the presence on, in or under the Property of any Hazardous Substance as of the Effective Date. This Section 13 shall survive the termination of this Agreement.

14. **Indemnity.** Owner and Provider each indemnifies the other against, and holds the other harmless from, any and all damages, liability and costs arising out of any material breach, misrepresentation, or failure to perform under this Agreement by the indemnifying party, and this indemnification will survive the termination or expiration of this Agreement. This indemnification will not apply to any claims arising from the negligence or intentional misconduct of the indemnified party. Any Party seeking indemnification under this Section 14 shall promptly notify the indemnifying Party in writing describing the claim for indemnification. The failure to provide timely notice of an indemnification claim will not release the indemnifying Party from its obligations under this Section 14 except to the extent that the indemnifying Party is materially and irreversibly prejudiced by such failure. This Section 14 shall survive the termination of this Agreement.

15. **Subordination and Non-disturbance.** Provider confirms that this Agreement and the License are subordinate to any mortgage or deed of trust that is now of record against the Property.

16. **Insurance.** For the duration of this Agreement Provider will maintain commercial general liability insurance with minimum limits of \$1,000,000 combined single limit and per occurrence coverage for bodily injury and property damage. Owner will be named as an additional insured on the policy, and Provider will give Owner a certificate of insurance for such coverage within 30 days after a written request by Owner to Provider. Each Party waives its right to recover against the other Party for any damage, liability or cost that is covered by any insurance policies maintained by the injured Party.

17. **Assignment and Subletting.** Provider will not assign this Agreement without the prior written consent of Owner, which consent will not be unreasonably withheld. Notwithstanding the foregoing, Provider may assign this Agreement without Owner's consent to any party controlling, controlled by or under common control with Provider or to any party who acquires substantially all of the assets or stock of Provider whether by merger or sale. Upon such assignment, Provider will give notice to Owner of the name and address of the assignee after which Provider will be relieved of any further obligation or liability under this Agreement. This Agreement will be for the benefit of and binding upon the Parties and their heirs, representatives, successors and assigns.

18. **Dispute Resolution.** The Parties hereto plan to use due diligence and use their best efforts and work together to implement this Agreement and amicably resolve their differences. However, the Parties understand that issues and conflicts may arise where they reach an impasse. The Parties acknowledge their desire to reach a working solution by using good faith attempts to resolve such issues and conflicts. Any claim or controversy related to or arising out of the Agreement, whether in contract or in tort ("Dispute"), will be resolved on a confidential basis, according to the following process, which either Party may start by delivering to the other Party a written notice describing the Dispute and the amount involved ("Demand").

After receipt of a Demand, authorized representatives of the Parties will meet at a mutually agreed upon time and place to try to resolve the Dispute by negotiation. If the Dispute remains unresolved 30 days after receipt of the Demand, either Party may start binding arbitration. The arbitration will be held in Evansville, Indiana. The Parties will use their best efforts to conclude the arbitration as expediently as possible but in no event later than 60 days following commencement of any proceeding, provided there is no interim relief or court action sought that would delay the parties from resolving the Dispute within such 60 day period. If such interim relief or court action is sought, then the Parties will use their best efforts to conclude the arbitration within 60 days following the final decision of the court in such action. The arbitration will be before a three-arbitrator panel. Each party will select one partial arbitrator, in its sole discretion, to represent its interest at its sole expense. The partial arbitrator may be an employee, director, officer or principal of the party. The final arbitrator, who shall be impartial, will be selected by the two partial arbitrators. In the event the two partial arbitrators shall fail to select an impartial arbitrator, either party may apply to a court of law to have a judge select an impartial arbitrator. The three arbitrators by majority ruling may adopt such procedures as they deem efficient and appropriate for making the determinations submitted to them for adjudication, and the Parties agree that no court shall have the power to interfere with the proceedings and judgments of the arbitrators. No statements by, or communications between, the Parties during negotiation or mediation, or both, will be admissible for any purpose in arbitration. Each party shall bear its internal expenses and its attorney's fees and expenses, and jointly share the cost of the impartial arbitrator; provided. No interest shall be applied to any arbitration award. It is the intent of the Parties to first allow the arbitrators an opportunity to meet and negotiate a decision. However, if an agreement cannot be reached through negotiation, then the decision(s) of a majority of the arbitrators shall be final and binding on the Parties.

Notwithstanding the foregoing, either party hereto may resort to a court by applying for interim relief, without the requirement to post a bond or security, if such party reasonably determines that such relief is necessary because claims for money are not adequate to prevent irreparable injury to it or to a third party. The venue for any such proceeding shall be in Evansville, Indiana. This Section 18 shall survive the termination of this Agreement.

19. **Time of the Essence.** Time is of the essence under this Agreement.

20. **Entire Agreement; Amendments.** This Agreement, which may be executed in counterparts, will constitute the entire agreement between the Parties regarding the subject of this Agreement, and any amendments to this Agreement will be in writing and signed by the Parties.

21. **Headings Not Binding.** The section titles are not part of this Agreement and are for convenience only.

22. **Calendar Days.** Unless otherwise expressly provided in this Agreement, all time periods will be in calendar days.

23. **Notices.** All notices or communications under this Agreement will be in writing and will be given by (i) established express delivery service which maintains delivery records, (ii) hand-delivery, or (iii) certified or registered mail, postage prepaid, return receipt requested. Notices will be effective upon receipt or upon attempted delivery if delivery is refused.

24. **Early Termination.** Either Party will be entitled to terminate this Agreement and exercise any equitable remedies for the default of the other Party, after giving 10 days written notice to the defaulting Party. If a default may not reasonably be cured within the 10 day period, this Agreement cannot be terminated if the defaulting Party commences to cure the default within the 10 day period and proceeds with due diligence to fully cure the default.

25. **Force Majeure.** The performance of a Party and the performance dates set forth in this Agreement will be extended by any causes that are beyond the control of the Party required to perform, such as an act of God, civil or military disturbance and labor or material shortage.

26. **Governing Law.** This Agreement will be governed by and construed under the laws of the state in which the Property is located.

27. **Survival of Terms.** Sections 11, 13, 14 and 18 shall survive termination of this Agreement.

28. **Signature.** The Parties are executing this Agreement as of the date shown above.

CHATEAU DE VILLE OF TALLAHASSEE
CONDOMINIUM ASSOCIATION, INC.

METRO FIBERNET, LLC

BY: _____

BY: _____

Printed Name: _____

Kevin Stelmach

Title: _____

Commercial Market President