

PREPARED BY AND RETURN TO:

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AGREEMENT FOR CONSTRUCTION OF SUNRAIL STATION

THIS AGREEMENT FOR CONSTRUCTION OF SUNRAIL STATION (“Agreement”), made and entered into this ____ day of _____, 2017 (the “Effective Date”), by and between the **City of Orlando**, Florida, a municipality duly enacted under the laws of the State of Florida, whose address is 400 South Orange Avenue, Orlando, Florida, 32802, “**City**”, and **Lincoln Church Street, LLC**, a Delaware limited liability company with a mailing address of 1380 West Paces Ferry Road, Ste. 1210, Atlanta, GA, 30327, and who is managed by **Lincoln-GP Partners, LLC**, with a mailing address of 1380 West Paces Ferry Road, Ste. 1210, Atlanta, GA, 30327 (hereinafter collectively “**Lincoln**”).

WHEREAS, **Lincoln** is developing certain real property located in downtown Orlando, south of Church Street, north of South Street, east of Garland Avenue and west of the SunRail corridor, consisting of approximately 1.67 acres, more particularly described in **Exhibit “A”**, attached hereto and made a part hereof by reference (“**Lincoln Property**”); and

WHEREAS, pursuant to Master Plan #MPL2015-00009, approved by the **City** on June 16, 2015, **Lincoln** intends to develop that portion of the **Lincoln Property** described on **Exhibit A-1** (the “**Phase I Property**”) as a 25-story building consisting of 180 hotel rooms, approximately 206,600 square feet of office space and +/- 8,200 square feet of ground floor retail and lobby space, (“**Phase I Project**”); and

WHEREAS, **Lincoln** further intends to redevelop the existing Church Street Ballroom, which is located on that portion of the **Lincoln Property** described on **Exhibit A-2** (the “**Phase II Property**”) pursuant to the **City**’s master plan process, which redevelopment program is not yet determined (as it will be so determined, the “**Phase II Project**”); and

WHEREAS, in connection with **Lincoln's** redevelopment of the Lincoln Property into the Phase I Project and the Phase II Project, **City** has requested and **Lincoln** has agreed, subject to and on the terms set forth herein, to construct a commuter rail station along the westerly line of the Lincoln Property, located in both the Phase I Property and the Phase II Property, ("**Station**," to serve the western (southbound) line of the Central Florida Commuter Rail Transit System, ("**SunRail**"), said Station being located in the area generally depicted on **Exhibit "B"**, attached hereto and made a part hereof by reference; and

WHEREAS, **Lincoln** and **FDOT** intend to enter into an agreement which will govern the design, construction and grant of easement for the Station (the "**FDOT Agreement**");

WHEREAS, the portion of the Station located within the Phase I Project will be on the ground floor, with a portion of the second story of the Phase I Project projecting over the Station area to form a colonnade type structure, and as a part of the construction of the Phase I Project, **Lincoln** will construct the foundation, subfloor, eastern wall and overhead colonnade forming the boundaries of the Station Property (the "**Station Phase I Shell**"), with the design and construction of the remainder of the Station on the Phase I Property, including the platform area (the "**Station Buildout**") to occur as more particularly provided herein and in the **FDOT Agreement**; and

WHEREAS, it is the intent of the parties that the Station will become part of **SunRail** and that a permanent easement over the Station Property, as that term is hereinafter defined, will be dedicated to the Florida Department of Transportation, "**FDOT**," the current operator of **SunRail** and owner of the **SunRail** corridor, as and pursuant to the **FDOT Agreement**; and

WHEREAS, the **City** has agreed to fund **Lincoln's** cost to construct the Station, which will allow **Lincoln** to receive the full value of TIF credit-eligible spending on the Station construction; and

WHEREAS, construction of the Station constitutes a public purpose by facilitating relocation of the **Sunrail** Station currently serving the western line from an area south of South Street to a safer and much more convenient and efficient area north of South Street; and

WHEREAS, the parties hereto desire to memorialize their agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency of which is acknowledged by the parties hereto, the **City** and **Lincoln** agree as follows:

1. **Recitals.** The above recitals are true and correct and are incorporated into this substantive body of this Agreement as if set forth therein.

2. **Design and Construction.** **Lincoln** is solely responsible for the permitting, design and construction of the Station, under and in accordance with the FDOT Agreement and this Agreement. **Lincoln** has completed the design of the Station Phase I Shell, “Shell Plans.” **Lincoln** will submit the construction plans for the Station Buildout, “**Buildout Plans**,” to the **City** simultaneously with submittal to FDOT. The Shell Plans and the Buildout Plans are collectively referred to as the “Station Plans.” Before awarding the construction contract for the Station Phase I Shell, **Lincoln** must obtain approval of the Shell Plans by the **City** and FDOT. Before awarding the construction contract for the Station Buildout, **Lincoln** must obtain approval of the final Buildout Plans by the **City** and **FDOT**, and the **City**’s approval shall not be unreasonably withheld, conditioned or delayed if such Buildout Plans reflect a Station comparable to the existing Sunrail stations in downtown Orlando and FDOT has approved the Buildout Plans. **Lincoln** will ensure that the Station Phase I Shell and the Station Buildout, once commenced, are constructed in substantial compliance with the Shell Plans and the Buildout Plans, respectively. Upon completion of the Station, **Lincoln** will cause the contractor for construction of the Station Buildout, “**Contractor**,” to submit to the **City** and **FDOT** a final completion certification, “**Certification**,” for the Station. The Certification will be accompanied by the As-Built drawings for the Station Buildout as well as any related warranties, waivers and releases from contractors, subcontractors and suppliers, test certifications, operation manuals and documentation of approval of the construction by governmental agencies having jurisdiction other than the **City**, if any. Because the **City** is funding **Lincoln**’s cost to construct the Station under this Agreement, and as a condition thereof, **Lincoln** must select the Contractor(s) for construction of the Station consistent with state laws and regulations applicable to public construction projects, including, without limitation Florida Statute §255.20 and Florida Statute §255.0525. If any portion of the Station construction is to occur within the existing Sunrail

corridor, **Lincoln** is responsible for complying with all regulations applicable to activities occurring in railroad right-of-way.

3. **Station Completion.** Provided that the Buildout Plans and the Budget have been approved as provided herein, **Lincoln** will, by December 31, 2024 (subject to extension for delays related to force majeure events): (i) complete construction of the Station, as evidenced by the submittal of a Certification as described in Paragraph 2 above, and (ii) complete conveyance of an easement for the Station Property to **FDOT**, (Or the **Commission**), as described in Paragraph 8, below, failing which **Lincoln** will return to the **City** all City Funds as that term is hereinafter described, distributed under this Agreement. Payment will be made within thirty (30) days of the **City's** notice in writing to **Lincoln** that the Station has not been completed or dedicated as required under this Agreement. If **Lincoln** fails to timely make payment, the full amount owed shall bear interest at the highest rate allowed by law and shall become a lien in favor of the **City** upon the Lincoln Property. The lien will become effective upon the filing of the Claim of Lien by the City in the Official Records of Orange County, Florida and may be foreclosed in the manner provided by Florida law.

4. **Inspection.** The **City** and **FDOT** may inspect the Station work at any time during construction upon reasonable notice to **Lincoln**. The **City** and **FDOT** may also conduct a final inspection of the Station work within thirty (30) days of receipt of the Certification. Upon any such inspections, if the **City** determines that any portion of the Station work is not in compliance with the Plans, the **City**, will notify **Lincoln** in writing of the deficiency(ies). **Lincoln** will diligently, at its cost and without utilizing City Funds, as hereinafter described under this Agreement, conduct the necessary work to remedy the deficiency(ies). **Lincoln** will obtain a revised Certification for the remedial work and submit the revised Certification to the **City** and **FDOT**. This process will be repeated until **Lincoln** obtains the **City's** approval of the deficient Station work.

5. **Warranty Bond.** **Lincoln** will obtain from the Contractor a two-year warranty bond (in a form acceptable to the **City and FDOT**) on the materials and work performed on the Station Buildout in the amount of fifteen percent (15%) of the actual construction labor and material cost of the Station, which bond costs shall be included in the Budget. The **City** and

FDOT shall be named as additional beneficiaries of the bond. The commencement date of the bond shall be the date upon which the Station Buildout is approved by the **City** and **FDOT**.

6. **Payment & Performance Bonds.** **Lincoln** will require the Contractor hired to construct the Station Buildout to obtain performance and payment bonds, prior to commencement of construction of the Station Buildout in a form acceptable to the **City**, with the penal amount of each bond equal to the contract amount for the Station Buildout. The Surety must be authorized to issue bonds in Florida, must be listed in the most recently issued United States Department of the Treasury's "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," as published in the Federal Register and is subject to the final approval of the **City**. The **City** shall be listed as an obligee on each bond. In lieu of such bonds, Lincoln may provide a corporate guaranty and subcontractor bonds, subject to the City's approval of the form of said documents. The costs of such bonds and guaranties shall be included in the Budget.

7. **Non-Conforming Work.** During construction of the Station, if work is discovered, whether by the **City**, **FDOT** or **Lincoln**, which is defective or otherwise non-conforming to the requirements of the Plans, the **City**, on behalf of itself or **FDOT**, or **Lincoln** will promptly notify the other party of such defect or non-compliance. **Lincoln** shall, at its cost and without utilizing City Funds, as hereinafter described, under this Agreement, immediately cause such work to be removed and replaced with conforming work or otherwise remedy the non-conforming work to the satisfaction of the **City** and/or **FDOT**.

8. **Station and Station Property Dedication.** Upon completion of the Station construction, as evidenced by submittal of a Certification and upon the **City's** and **FDOT's** approval of the Station work, **Lincoln** agrees to convey an easement (the "**Station Easement**") over the Station, which will be defined by a survey of the upper, lower and side perimetrical boundaries of the Station, in its as-built condition, "**Station Property**," to **FDOT**, (or the **Commission**), as described in Paragraph 23, below, at no cost, consistent with the requirements of the FDOT Agreement, including though not exclusively, the requirement that the **Station Easement** is marketable and free and clear of any and all encumbrances, mortgages and liens.

9. **Station Cost Submittal.** Following approval of the Buildout Plans, as described

in Paragraph 2, above, Lincoln shall complete a budget for the design and construction of the Station, which shall include: (a) all architectural and engineering fees for completion of the Buildout Plans; (b) any required costs under the FDOT Agreement for permitting, design or construction of the Station; and (c) construction costs for the Station Buildout, including the Station Phase I Shell, (the “**Budget**”). Lincoln shall not be required to commence or complete the Station Buildout if the Budget shows that the costs thereof are in excess of \$1,500,000, unless the **City** agrees to grant Lincoln a Transportation Impact Fee Credit in the amount of the excess cost, to be utilized consistent with City Code, except in the event that such increase over \$1,500,000 is solely due to changes / design requirements of **Lincoln**. The parties agree to work in good faith to agree upon a Budget (and the funding of the costs therein) that allows for the Station Buildout to proceed. If such agreement is not reached after good faith efforts, the City may terminate this Agreement by submitting a written notice of termination to Lincoln. Lincoln will, within thirty days of said notice of termination, return to the City all City Funds, as that term is hereinafter described, distributed under this Agreement and the parties will be relieved of any further obligations hereunder. Within thirty (30) days following issuance of a Certification for the Station, (or a revised Certification under Paragraph 4, above), **Lincoln** will submit to the **City** a calculation of the reasonable costs, actually incurred by **Lincoln** as referenced in the Budget, “Cost Submittal,” along with supporting documentation. Supporting documentation will include written evidence that provides reasonable detail of the costs incurred by **Lincoln** to construct the Station, including though not exclusively, copies of all invoices related thereto. Within thirty (30) days of receipt of the Cost Submittal, City will request any additional information it deems necessary to facilitate the City’s review. **Lincoln** will submit the additional information to the **City** within thirty (30) days of the **City’s** request. As part of the Cost Submittal review process, the **City** will be entitled, though not obligated, to inspect and audit the records supporting the Cost Submittal. Within thirty (30) days of the **City’s** receipt of additional information, or if none was requested, within thirty (30) days of the **City’s** receipt of the Cost Submittal, **City** will determine, in its sole reasonable discretion, the construction costs, “**Costs**,” eligible for payment under this Agreement, including, if applicable, those costs eligible for finalizing the Transportation Impact Fee Credit referenced above. In the event that the Costs are less than the **City Funds**, as hereinafter described and distributed to **Lincoln** under this Agreement, **City** will provide notice to **Lincoln** and **Lincoln** will return the excess **City Funds** to the **City** within thirty (30) days of said notice, failing which the full amount will bear interest at

the highest rate allowed by law and will become a lien in favor of the **City** upon the Lincoln Property. The lien will become effective upon the filing of the Claim of Lien by the **City** in the Official Records of Orange County, Florida and may be foreclosed in the manner provided by Florida law.

10. **City Funding.** The **City's** funds will be utilized by **Lincoln** to pay those reasonable costs actually incurred and referenced in the Budget, in an amount not to exceed One-Million Five Thousand and 0/100 Dollars (\$1,500,000.00) (the "**City Funds**"). Payment of the **City Funds** will occur in three installments. The first installment in the amount of costs actually incurred by Lincoln for design of the Station Phase I Shell will occur, by wire transfer after October 1, 2017 and within thirty (30) days of **Lincoln** providing to the **City**: (i) written evidence of the commencement of vertical construction of the Phase I Project (which includes construction of the Station Phase I Shell for which Lincoln has already incurred design costs); (ii) a fully executed FDOT Agreement in a form acceptable to the City and (iii) a written calculation of the reasonable costs, actually incurred by **Lincoln** for design of the Station Phase I Shell, along with supporting documentation. Supporting documentation will include written evidence that provides reasonable detail of the costs incurred by **Lincoln**, including though not exclusively, copies of all invoices related thereto. The amount of the first installment is at the City's sole reasonable discretion based on Lincoln's written calculation and will not exceed Five Hundred Thousand and 0/100 Dollars (\$500,000.00) A second installment in the amount of One Million and 0/100 Dollars (\$1,000,000.00) less the amount of the first installment, will occur, by wire transfer within thirty (30) days of: (i) the City's issuance of a Certificate of Completion for the Phase I Project; (ii) Lincoln providing written evidence of the City's and FDOT's approval of the final Buildout Plans and (iii) City's approval of the Budget. The third installment of Five Hundred Thousand and 0/100 Dollars (\$500,000.00) will occur, by wire transfer after October 1, 2018, and within thirty (30) days of (i) the submittal of the Certification (or revised Certification if applicable) for the Station, (ii) FDOT's written approval of the Station construction, and (iii) conveyance of the Station Property to FDOT (or the Commission) under the terms of the FDOT Agreement.

11. **Independent Contractors.** **Lincoln**, its agents, Contractor, subcontractors or design engineer, shall perform all activities that are outlined in this Agreement as independent

entities and not as agents, employees or representatives of the **City** or **FDOT**, or their employees or representatives.

12. **Indemnification.** **Lincoln** shall indemnify, defend, release and hold harmless the **City**, its agents, employees and elected and appointed officials, from and against all claims, damages, losses and expenses (including all costs and attorney's fees and all costs and attorney's fees on appeal), arising out of or resulting from this Agreement or construction of the Project, except to the extent that said claims, damages, losses and expenses arise from the negligence of the **City**.

13. **Insurance.** Either **Lincoln** or its Contractor shall at all times during the term of this Agreement and construction of the Project, maintain general public liability insurance in the amount of Two-Million Dollars (\$2,000,000.00) and automobile liability insurance in the amount of One-Million Dollars (\$1,000,000.00) to afford protection against any and all liability, including claims for personal injury, death or property damage arising directly or indirectly out of the Station work performed by **Lincoln** and/or its agents, assigns, employees, Contractor, subcontractors and anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable. Said insurance shall be issued by solvent, reputable insurance companies authorized to do business in the State of Florida, naming the **City** as an additional insured, with a combined-single limit of not less than One-Million Dollars (\$1,000,000.00) with respect to bodily injury or death and property damage. Each of the above liability policies will contain a contractual liability endorsement in favor of the **City**. Said insurance shall also be primary, and not contributory, as to any insurance coverage maintained by **City**. This provision shall survive termination of this Agreement to the extent necessary to protect the **City** from liability arising during the term of this Agreement. Nothing in this Agreement operates as a waiver of sovereign immunity or the limits of liability established under Florida law.

14. **Responsibility for Station and Station Property.** Until the **FDOT** accepts ownership of the Station and Station Property as described in Paragraph 7, above, **Lincoln** owns same and is solely responsible for repair and maintenance of the Station and/or Station Property as well as any and all liability, damages and claims arising from or related to the Station or Station Property.

15. **Default.** Failure by any party to comply with or perform any of the terms, conditions, covenants, agreements or obligations contained in this Agreement to be performed by each of them respectively, shall constitute a default under this Agreement, and if such default is not cured or remedied within sixty (60) days after the non-defaulting party provides written notice to the defaulting party specifying with particularity the nature of such default, the non-defaulting party, in its sole discretion, shall be entitled to exercise any and all rights and remedies available to it under this Agreement, including without limitation, the right to terminate this Agreement, provided, however, that the City shall not have the right to specific performance of the obligation of Lincoln to build the Station, its sole remedy in the event of Lincoln's failure to do so being to terminate the City's obligation to pay for the Station (or to seek reimbursement of funds so expended by the City). Upon any such termination, this Agreement and all rights and obligations created hereunder shall be deemed null and void and of no further force or effect, except as otherwise provided herein. **Lincoln** will, within thirty (30) days of termination per this Paragraph, return to the **City**, all **City Funds** (if any) distributed under this Agreement, failing which the full amount will bear interest at the highest rate allowed by law and will become a lien in favor of the **City** upon the **Lincoln Property**. The lien will become effective upon the filing of the Claim of Lien by the **City** in the Official Records of Orange County, Florida and may be foreclosed in the manner provided by Florida law.

16. **Termination.** This Agreement may be terminated as provided above or by written consent of the parties.

17. **Disputes.** Prior to the institution of any judicial proceedings, the Parties agree to attempt to settle any dispute through the procedure set forth below, if invoked by any Party. The Parties will arrange to hold a meeting within twenty (20) days after delivery of a written notice from either Party. Each Party will have in attendance at such meeting (or available by telephone) a representative with authority to bind the represented Party to any agreement resolving the dispute. At the meeting (and any adjournments thereof), the Parties will negotiate in good faith in an attempt to agree as to whether a dispute exists, the exact nature of the dispute and the manner in which the dispute should be resolved. If deemed appropriate by any Party, a professional mediator may be engaged to assist in resolving the dispute with mediation costs borne equally by the participating Parties. Any resolution of the dispute will be evidenced by a

written agreement setting forth in reasonable detail the actions to be taken by each Party. If no such written agreement is reached within 30 days after the first meeting, the Parties may pursue any legal remedies available to them with respect to such dispute.

18. **Litigation and Attorneys' Fees.** In the event any party to this Agreement should bring suit to enforce or interpret any provision hereof, the predominantly prevailing party shall be entitled to recover reasonable attorneys' fees, paralegals' fees, and costs incurred, whether the same be incurred in pre-litigation negotiation, litigation at the trial level, or upon appeal.

19. **Binding Effect.** The terms and conditions of this Agreement shall run with the title to Lincoln Property and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

20. **No Waiver of Regulatory Authority.** Lincoln acknowledges that the City is the entity responsible for issuing building permits and certain other types of permits which will be required in connection with activities under this Agreement, as well as development of the Lincoln Property, and further acknowledges that nothing in this Agreement constitutes or is intended to operate as a waiver of such regulatory authority or the application of any applicable laws, rules or regulations. Furthermore, nothing herein operates to vest any particular manner or means of development of the Lincoln Property.

21. **Amendment.** This Agreement may not be terminated, modified or amended except by an instrument in writing signed by each of the parties.

22. **Effective Date.** This Agreement shall become effective on the date of full and complete execution by City and Lincoln.

23. **FDOT and Commission.** Under the terms of the Interlocal Operating Agreement for Operation of the Central Florida Commuter Rail System, "SunRail," between FDOT and the Central Florida Commuter Rail Commission, "Commission," FDOT anticipates transferring ownership and operation of SunRail to the Commission in May, 2021. Therefore, due to the potential that the Commission will become the owner/operator of SunRail during the term of this Agreement, all references to FDOT include the Commission.

24. **Transportation Oriented Design.** The foregoing shall not prohibit **Lincoln** from obtaining transportation oriented development incentives under Section 56.15 of the Orlando City Code, in the form of transportation impact fee credits or exemptions, with respect to the Phase I Project or the Phase II Project.

SIGNATURES NEXT PAGE

DRAFT

ATTEST:

CITY OF ORLANDO, FLORIDA, a municipal corporation, organized and existing under the laws of the State of Florida (SEAL)

By: _____
Denise Aldridge, City Clerk

By: _____
Mayor / Mayor Pro Tem

Date: _____

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing was acknowledged before me this ___ day of _____, 2017 by _____, Mayor / Pro Tem and _____, City Clerk, who is personally known to me who did (did not) take an oath.

Name
Notary Public
Serial Number: _____
My Commission Expires: _____

DRAFT

Signed in the presence of Two Witnesses:

LINCOLN CHURCH STREET, LLC, a Delaware limited liability company

Signature
Print Name: _____

By: _____
Name: _____

Signature
Print Name: _____

Title: _____
Date: _____

CORPORATE ACKNOWLEDGMENT

STATE OF _____
COUNTY OF ORANGE

PERSONALLY APPEARED before me, the undersigned authority, _____, as _____, of _____, a Delaware limited liability company. He/she is personally known to me or who has produced _____ as identification.

WITNESS my hand and official seal this _____ day of _____, 2017.

Notary Public
Print Name: _____
My commission expires:

EXHIBIT "A"

DRAFT

EXHIBIT "B"

DRAFT

EXHIBIT "C"

DRAFT