

**CONTRACT TO GROUND LEASE (STUDENT HOUSING)**  
(One University)

This **CONTRACT TO GROUND LEASE (STUDENT HOUSING)** (this “**Agreement**”) is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2019 (the “**Effective Date**”) by and between **FAIRFAX COUNTY REDEVELOPMENT AND HOUSING AUTHORITY**, a political subdivision of the Commonwealth of Virginia (the “**FCRHA**”), and **Fairfax Properties I, LLC**, a Delaware limited liability company (together with any assignee permitted under this Agreement, “**Fairfax Properties**”; Fairfax Properties and the FCRHA, are each a “**Party**” and, collectively, the “**Parties**”).

**RECITALS:**

- R-1. The FCRHA is the fee simple owner of an approximately 10.8348-acre tract of land in Fairfax County, Virginia, having the Fairfax County Tax Map Section 57-3 ((1)) Parcels 11A and 11B, and Tax Map Section 57-4 ((1)) Parcel 2B, which land is comprised of (a) the Robinson Square community, which occupies approximately 6.2889 acres of the 10.8348 acres, and consists of 46 townhouse-style family units (the “**Existing RAD Units**”), (b) the FCRHA office building, which occupies approximately 2.1520 acres of the 10.8348 acres, and (c) an approximately 2.3939 acre unimproved tract of land, all of which is described on the attached **Exhibit A** (collectively, the “**Property**”).
- R-2. In July of 2017, the Purchasing Agent of the Fairfax County Department of Purchasing and Supply Management (“**Purchasing Agent**”) received, on behalf of the FCRHA, an unsolicited proposal from One University Development Partners, LLC (“**Development Partners**”) under the Public Private Education Facilities and Infrastructure Act of 2002, as amended, Virginia Code Ann. §§ 56-575.1 to 575.16 (such law, the “**PPEA**”) proposing to redevelop the Property as a mixed income, affordable housing and market rate student housing community comprised of multifamily apartments. The Property’s location and its proximity to George Mason University lends itself to the development of both affordable and student housing.
- R-3. In accordance with the PPEA and the FCRHA PPEA guidelines, the Purchasing Agent issued a “Request for Competing Proposals” in September of 2017 (the “**RCP**”). The RCP included criteria calling for, among other things, creation of additional affordable housing consistent with the Housing Blueprint including affordable senior housing, providing revenue to the FCRHA through long term ground leases, including residential relocation plan for current residents as well as providing on-site or off-site solutions to accommodate certain existing uses, implementation of a comprehensive community outreach strategy, and addressing current transportation issues.
- R-4. Upon evaluation of the responses to the RCP, Development Partner’s proposal was selected. Development Partners proposed, among other things, the construction of one building consisting of 333 units, designed as student housing (“**Student Housing**”).

**Building**”), on a portion of the Property described more fully in Section 1.1 below and on the attached **Exhibit B** (the “**Ground Lease Premises**”).

- R-5. The development of the Student Housing Building, along with related garage parking under the building (the “**Parking Spaces**”), on the Ground Lease Premises shall collectively be referred to as the “**Project**”.
- R-6. On November 1, 2018, the FCRHA and Development Partners entered into an Interim Agreement, which allowed Development Partners to access the Property and perform diligence with regard to the Project.
- R-7. The Project is now subject to Rezoning / Final Development Plan RZ/FDP 2018-BR-025 and Proffered Condition Amendment PCA C-058, approved by the Board of Supervisors of Fairfax County, Virginia on September 24, 2019 (collectively, the “**Land Use Approvals**”) and certain proffers dated September 23, 2019, accepted in connection therewith (the “**Proffers**”).
- R-8. Simultaneously with the execution of this Agreement, the FCRHA and affiliates of Development Partners have entered into two additional Contracts to Ground Lease which, subject to such affiliates satisfying certain conditions precedent as set forth in said contracts, provide that Development Partners, or its permitted subsidiary, affiliate or assignee, will enter into two additional 99-year ground leases for the remaining portions of the Property (collectively, the “**Other Ground Leases**”, and each, an “**Other Ground Lease**”).
- R-9. The FCRHA and Fairfax Properties agree that, subject to One University satisfying certain conditions precedent as set forth in this Agreement below, Fairfax Properties, or its permitted subsidiary, affiliate or assignee, will enter into a 99-year ground lease in the form attached as **Exhibit C** for the Ground Lease Premises (the “**Ground Lease**”).
- R-10. The FCRHA and Fairfax Properties desire to enter into this Agreement setting forth Fairfax Properties’ option to enter into the Ground Lease for the Ground Lease Premises upon the satisfaction of certain conditions, as hereinafter set forth.

NOW, THEREFORE, for and in consideration of the mutual promises of the Parties and of other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the FCRHA and Fairfax Properties agree as follows:

Section 1. **GRANT OF OPTION.**

1.1 Ground Lease Premises. The FCRHA grants to Fairfax Properties an option to lease the Ground Lease Premises, subject to all of the terms and conditions of this Agreement. The term “**Ground Lease Premises**” means (a) the real property more particularly described in Exhibit B to this Agreement and in *Exhibit A* of the Ground Lease, (b) all improvements, equipment and fixtures located on the Ground Lease Premises at the time of the Closing (as defined in Section 7.1 below); and (c) any entitlements, governmental approvals, permits, and other intangible property

associated with the Ground Lease Premises or the improvements, equipment and fixtures located thereon owned by the FCRHA.

1.2 Option. The option described in Section 1.1 is referred to in this Agreement as the “**Option.**”

1.3 Memorandum of Option. Concurrently with the execution of this Agreement, the FCRHA shall execute, acknowledge and deliver to Fairfax Properties a memorandum of option in a recordable form (the “**Option Memorandum**”), which Option Memorandum may be recorded by Fairfax Properties in the Fairfax County, Virginia land records (the “**Land Records**”). No later than five days after the Option has expired or terminated, Fairfax Properties shall deliver to the FCRHA for recordation, duly signed and notarized by Fairfax Properties, documents sufficient to confirm the expiration or termination of the Option and the termination of the recorded Option Memorandum, and otherwise in recordable form and reasonably acceptable to the FCRHA (and this obligation of Fairfax Properties shall survive expiration or termination of this Agreement). If Fairfax Properties records the Option Memorandum in the Land Records, Fairfax Properties shall be responsible for payment of all fees and taxes associated with such recording and with the recording of the termination of the Option Memorandum. The relationship between the FCRHA and Fairfax Properties shall be governed solely by the provisions of this Agreement and not by the Option Memorandum.

1.4 Effect of Agreement; Interest in Real Property. The Parties intend that this Agreement is given by the FCRHA to Fairfax Properties as an option to lease the Ground Lease Premises. The Parties intend that this Agreement creates a valid and present encumbrance on the Ground Lease Premises in favor of Fairfax Properties, effective as of the Effective Date, subject to any and all liens or encumbrances disclosed in the Land Records. Therefore, the Option shall be deemed an encumbrance upon the Ground Lease Premises during the term of this Agreement effective as of the Effective Date and shall be binding upon and inure to the benefit of each of the Parties hereto and their respective successors and assigns (subject to Section 1.7 below).

## Section 2. **INDEPENDENT CONSIDERATION.**

2.1 Consideration. In consideration of and concurrently with the FCRHA entering into this Agreement, Fairfax Properties agrees to pay to the FCRHA the sum of Ten Dollars (\$10.00) as “independent consideration” for the Option (the “**Consideration**”). The Consideration has been bargained for and agreed to as separate and independent consideration for Fairfax Properties’ option to lease the Ground Lease Premises pursuant to the terms herein, and for the FCRHA’s execution and delivery of this Agreement. The Consideration shall be deemed fully earned by the FCRHA upon receipt, and shall be considered non-refundable to Fairfax Properties.

## Section 3. **TERM; EXTENSION PERIOD; EXERCISE OF OPTION.**

3.1 Term of Agreement. The term of this Agreement (the “**Term**”) begins on the Effective Date and will expire at 5:00 p.m. on August 31, 2020 (the “**Initial Tax Credit Date**”).

3.2 Right to Extend. (a) If and on the express condition that One University Family, LLC, the tenant under one of the Other Ground Leases, has received an award of Tax Credits (as

hereinafter defined) on or before the Initial Tax Credit Date, then upon such receipt the Term of this Agreement shall automatically be extended until May 1, 2022 (the “**Initial Expiration Date**”).

(b) If (i) One University Family, LLC has not received an award of Tax Credits on or before the Initial Tax Credit Date, (ii) this Agreement is then in full force and effect and Fairfax Properties is not then in default beyond any applicable notice and cure period under this Agreement, and (iii) One University Family, LLC has elected to extend the term of its Contract to Ground Lease until 5:00 p.m. on August 31, 2021 (the “**Second Tax Credit Date**”); then the Term of this Agreement will automatically extend to the Second Tax Credit Date..

(c) If the Term of this Agreement was automatically extended to the Second Tax Credit Date and thereafter One University Family, LLC receives an award of Tax Credits (as hereinafter defined) on or before the Second Tax Credit Date, then upon such receipt the Term of this Agreement shall automatically be extended until December 1, 2022 (the “**Second Expiration Date**”).

(d) If (i) the Term of this Agreement was automatically extended to the Second Tax Credit Date but One University Family, LLC has not received an award of Tax Credits on or before the Second Tax Credit Date, (ii) this Agreement is then in full force and effect and Fairfax Properties is not then in default beyond any applicable notice and cure period under this Agreement, and (iii) One University Family, LLC has elected to extend the term of its Contract to Ground Lease until 5:00 p.m. on August 31, 2022 (the “**Third Tax Credit Date**”); then the Term of this Agreement will automatically extend to the Third Tax Credit Date.

(e) If the Term of this Agreement was automatically extended to the Third Tax Credit Date and thereafter One University Family, LLC receives an award of Tax Credits (as hereinafter defined) on or before the Third Tax Credit Date, then upon such receipt the Term of this Agreement shall automatically be extended until December 1, 2023 (the “**Third Expiration Date**”).

(f) If and on the express conditions that (i) the Term of this Agreement was automatically extended to the Third Tax Credit Date but One University Family, LLC has not received an award of Tax Credits on or before the Third Tax Credit Date, (ii) this Agreement is then in full force and effect and Fairfax Properties is not then in default beyond any applicable notice and cure period under this Agreement, (iii) One University Family, LLC has elected, and the FCRHA has consented, to extend the term of its Contract to Ground Lease until 5:00 p.m. on August 31, 2023 (the “**Fourth Tax Credit Date**”); then the Term of this Agreement will automatically extend to the Fourth Tax Credit Date.

(g) If the Term of this Agreement was automatically extended to the Fourth Tax Credit Date and One University Family, LLC thereafter receives an award of Tax Credits (as hereinafter defined) on or before the Fourth Tax Credit Date, then upon such receipt the Term of this Agreement shall automatically be extended until December 1, 2024 (the “**Outside Expiration Date**”).

(h) Notwithstanding anything to the contrary contained in this Agreement, in no event shall the Term of this Agreement be extended to a date beyond the Outside Expiration Date.

The term “**Expiration Date**” shall mean the following: the Initial Expiration Date, if One University Family, LLC receives an award of Tax Credits prior to the Initial Tax Credit Date; the Second Expiration Date, if One University Family, LLC receives an award of Tax Credits prior to the Second Tax Credit Date; the Third Expiration Date, if One University Family, LLC receives an award of Tax Credits prior to the Third Tax Credit Date; or the Outside Expiration Date, if One University Family, LLC receives an award of Tax Credits prior to the Fourth Tax Credit Date.

3.3 Condition to Right to Exercise. Fairfax Properties may exercise the Option only if all of the following conditions have been met: (i) all of the conditions precedent set forth in Section 8.1 (except as waived (to the extent waivable) at the sole and absolute discretion of Fairfax Properties), Section 8.2 (except as waived at the sole and absolute discretion of the FCRHA), and Section 8.3 (except as waived at the sole and absolute discretion of the FCRHA) below have been satisfied; and (ii) Fairfax Properties has otherwise performed or satisfied all of its obligations under this Agreement.

3.4 Exercise Notice. Fairfax Properties shall exercise the Option (if at all) at any time during the Term, provided the conditions set forth in Section 3.3 above have been satisfied to the FCRHA’s reasonable satisfaction, by delivering a written notice to the FCRHA (the “**Option Notice**”). The Option Notice shall include: (i) a certification from Fairfax Properties that the conditions precedent set forth in Section 3.3 have been satisfied; and (ii) reasonably detailed supporting documentation of the satisfaction of such conditions (the “**Supporting Documentation**”). Upon the FCRHA’s receipt of the Option Notice, the FCRHA shall have 30 days to review the Supporting Documentation, and within such period the FCRHA shall deliver a written notice to Fairfax Properties either approving the Supporting Documentation, or disapproving all, or a portion, of the Supporting Documentation. If the FCRHA approves the Supporting Documentation, then the Parties shall continue to proceed to the Closing in accordance with this Agreement. If the FCRHA disapproves all, or a portion of, the Supporting Documentation, then the FCRHA’s written notice (the “**Disapproval Notice**”) shall set forth, in reasonable detail, the FCRHA’s objections to the Supporting Documentation, and any such additional information required by the FCRHA to approve the Supporting Documentation. Thereafter, within 30 days following Fairfax Properties’ receipt of the Disapproval Notice, Fairfax Properties shall submit such additional information, or other documentation, requested by the FCRHA in the Disapproval Notice. The process for the FCRHA’s review and approval of the Supporting Documentation shall continue until the FCRHA has approved the Supporting Documentation, and the FCRHA shall have no obligation to execute the Ground Lease until Fairfax Properties has obtained such approval from the FCRHA; provided, however, in no event shall the FCRHA unreasonably withhold, delay, or condition the approval of the Supporting Documentation.

3.5 Failure to Exercise. If Fairfax Properties fails to deliver the Option Notice, or fails to deliver the Supporting Documentation and any additional information required by the FCRHA to approve the Supporting Documentation, by the Expiration Date, then (a) the FCRHA shall have no obligation to refund the Consideration to Fairfax Properties; (b) Fairfax Properties shall promptly deliver to the FCRHA such documentation (fully executed and acknowledged) reasonably requested by the FCRHA to evidence termination of this Agreement and the Option Memorandum, but the failure to deliver such documentation shall not affect the termination of this Agreement and the Option Memorandum; (c) this Agreement shall immediately terminate without

further action of the Parties; and (d) the Parties shall have no further obligations to each other except as otherwise specifically provided in this Agreement. This Section 3.5 is not intended to and does not in any way limit or affect any of the rights or remedies available to any Party to the extent expressly set forth in Section 9 below in the event the other Party defaults in the due and timely performance of any of its obligations, or is in breach of any of its representations and warranties, under this Agreement.

#### Section 4. **TERMS OF LEASE.**

4.1 Form of Lease. At the Closing, the FCRHA and Fairfax Properties shall enter into the Ground Lease, which will be substantially in the form attached hereto as Exhibit C and made a part hereof except to the extent that any terms and conditions are no longer applicable or are otherwise invalid or unenforceable under Virginia laws as of the Closing Date (as defined in Section 7.1 below) or as otherwise mutually agreed to by the FCRHA and Fairfax Properties. Promptly after delivery of the Option Notice, to the extent necessary, the Parties shall meet in good faith to determine if any modifications are necessary to the proposed Ground Lease to reflect any new, or otherwise unanticipated, circumstances regarding the Ground Lease Premises, financing of the Project, or any changes in Virginia law that make any term or provision of the proposed Ground Lease invalid or unenforceable.

#### Section 5. **REPRESENTATIONS AND WARRANTIES OF THE PARTIES.**

5.1 In General. With the exception of those representations and warranties stated in Section 5.2, Fairfax Properties has not relied and will not rely upon any representations or warranties, express or implied, affirmative or negative, concerning the Ground Lease Premises made by the FCRHA, on the FCRHA's behalf, by any of the FCRHA's agents or employees, or otherwise.

5.2 Representations and Warranties of the FCRHA. The FCRHA represents and warrants that the following facts and circumstances are true and correct as of the Effective Date. If any of the following representations and warranties are not true and correct as of the date Fairfax Properties delivers the Option Notice to the FCRHA, the FCRHA shall use reasonable efforts to cause such representations and warranties to be true and correct as of the Closing Date.

(a) Authority, Authorizations and Consents. The FCRHA is a political subdivision of the Commonwealth of Virginia. The FCRHA has all necessary power and authority to enter into this Agreement and to perform its obligations hereunder. The execution, delivery and performance of this Agreement has been duly and validly authorized by all necessary action and proceedings, and no further action or authorization is necessary on the part of the FCRHA in order to consummate the transactions contemplated herein. This Agreement is a legal, valid and binding obligation of the FCRHA, enforceable in accordance with its terms. The FCRHA has obtained all authorizations, consents or approvals of any governmental entity or other person or entity required to be obtained or given in connection with the execution and delivery of this Agreement by the FCRHA or the performance of any of the FCRHA's obligations hereunder.

(b) No Violation. The execution and delivery of this Agreement by the FCRHA, and the performance of its obligations hereunder, do not (i) violate, or conflict with any

of the FCRHA's obligations under, any contract to which it is a party or by which it is bound, or (ii) violate, to the best of its knowledge, (and none of such obligations shall be void or voidable under) any law, regulation, order, arbitration award, judgment or decree to which it is a party or to which it is subject.

(c) Options; Leases. Other than the residents of the Existing RAD Units, no person or entity other than Fairfax Properties holds any option or other right to lease or purchase all or any part of any of the Ground Lease Premises or any interest in the Ground Lease Premises.

5.3 Representations and Warranties of Fairfax Properties. Fairfax Properties represents and warrants that the following facts and circumstances are true and correct as of the Effective Date. If any of the following representations and warranties are not true and correct as of the date Fairfax Properties delivers the Option Notice to the FCRHA, Fairfax Properties shall use reasonable efforts to cause such representations and warranties to be true and correct as of the Closing Date.

(a) Authority, Authorizations and Consents. Fairfax Properties is a Delaware limited liability company. Fairfax Properties has all necessary power and authority to enter into this Agreement and to perform its obligations hereunder. The execution, delivery and performance of this Agreement by Fairfax Properties have been duly and validly authorized by all necessary action and proceedings, and no further action or authorization is necessary on the part of Fairfax Properties in order to consummate the transactions contemplated herein. This Agreement is a legal, valid and binding obligation of Fairfax Properties, enforceable in accordance with its terms. No authorization, consent or approval of, or notice to, any governmental entity or other person or entity is required to be obtained or given in connection with the execution and delivery of this Agreement by Fairfax Properties or the performance of any of Fairfax Properties' obligations hereunder. If Fairfax Properties assigns this Agreement (in accordance with its terms) to another entity acting as the optionee hereunder, such entity shall make the same (but corrected, as necessary) representations set forth in this Section 5.3(a) as of the Closing Date.

(b) No Violation. The execution and delivery of this Agreement by Fairfax Properties, and the performance of its obligations hereunder, do not (i) violate, or conflict with any of Fairfax Properties' obligations under, any contract to which it is a party or by which it is bound, or (ii) violate, to the best of its knowledge, (and none of such obligations shall be void or voidable under) any law, regulation, order, arbitration award, judgment or decree to which it is a party or to which it is subject.

(c) Litigation and Claims. There is no suit, action, arbitration, or legal, administrative, or other proceeding, or governmental investigation pending or, to Fairfax Properties' knowledge, threatened against or affecting any of the transactions contemplated by this Agreement.

5.4 Inaccuracies. If either Party becomes aware of facts or circumstances after the Effective Date that might result in any of that Party's representations or warranties set forth in Section 5.2 or Section 5.3 not being true as of the Closing, such Party shall give prompt written notice to the other Party of such facts or circumstances.

Section 6. **GROUND LEASE PREMISES CONDITION; RIGHT OF ENTRY; EQUITY PARTNER; INTER-PARTY AGREEMENTS.**

6.1 Property and Ground Lease Premises Condition. Fairfax Properties acknowledges that except to the extent of any express representations and warranties set forth in Section 5.2, the FCRHA has made no representations or warranties, express or implied, affirmative or negative, regarding the Property or the Ground Lease Premises or matters affecting the Property or the Ground Lease Premises, whether made by the FCRHA, or on the FCRHA's behalf, or by the FCRHA's agents or employees, or otherwise, and that except as otherwise provided in this Agreement, the leasehold interest in the Ground Lease Premises shall be conveyed subject to, and in accordance with, the terms and conditions of the Ground Lease. For the avoidance of doubt, Fairfax Properties shall accept possession of the Ground Lease Premises on the Ground Lease commencement date "AS IS, WHERE IS, WITH ALL FAULTS", subject to the Title Matters (as defined in the Ground Lease).

6.2 Right of Entry. During the Term, Fairfax Properties shall have reasonable rights of access to the Ground Lease Premises to the extent set forth in this Section 6.2 for the purposes of performing design and engineering analysis including environmental tests and studies and soils borings and tests, provided that neither Fairfax Properties nor its contractors shall unreasonably disrupt the normal operation of the Ground Lease Premises. Fairfax Properties' access hereunder shall be in compliance with all applicable statutes, laws, rules, regulations, ordinances, and orders of any governmental or quasi-governmental authority having jurisdiction over the Ground Lease Premises and Fairfax Properties' and/or its contractors' activities thereon. All such entry shall be coordinated in advance with appropriate representatives of the FCRHA; for purposes of this Section 6.2, the appropriate representatives shall be Kevin (Casey) Sheehan at 703-324-5146 and kevin.sheehan@fairfaxcounty.gov and Rex Peters at 703-324-5143 and john.peters2@fairfaxcounty.gov. Prior to Fairfax Properties entering the Ground Lease Premises, Fairfax Properties (or its contractor) shall obtain and maintain, at Fairfax Properties' (or its contractor's, as the case may be) sole cost and expense, the following insurance coverage, and shall cause each of its agents and contractors to obtain and maintain, and, upon request of the FCRHA, shall deliver to the FCRHA evidence of (i) general liability insurance, from an insurer reasonably acceptable to the FCRHA, in the amount of \$1,000,000.00 combined single limit for personal injury and property damage per occurrence, (ii) workers' compensation insurance at statutory limits, (iii) employer's liability insurance in an amount not less than \$1,000,000, and (iii) professional liability insurance of not less than \$1,000,000 for any access to conduct environmental tests and studies and/or soil borings and tests. Fairfax Properties shall provide the FCRHA with original certificates of insurance for the coverage required above not less than five business days prior to any access, naming the FCRHA and such other parties designated by the FCRHA as additional insureds and otherwise in form reasonably satisfactory to the FCRHA. The FCRHA shall have the right, in its discretion, to accompany Fairfax Properties and/or its contractors. All damage to the Ground Lease Premises resulting from any access by or at the direction of Fairfax Properties or its contractors shall be repaired immediately by Fairfax Properties, at its sole cost and expense, so that the Ground Lease Premises shall be restored to the same condition in which it existed immediately prior to such access. Fairfax Properties shall indemnify, defend and save the FCRHA and its respective Commissioners, agents, directors, officers and employees (collectively, the "**Indemnitees**") harmless from and against any and all losses, liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses (including, without



limitation, engineers', architects' and attorneys' fees and disbursements), which may be suffered by, imposed upon or incurred by or asserted against the FCRHA or any of the Indemnitees as a result of any access pursuant to this Section 6.2. The provisions of this Section 6.2 shall survive Closing or any termination of this Agreement.

6.3 Fairfax Properties' Equity Partner. Fairfax Properties shall promptly commence and use commercially reasonable efforts to secure an equity partner for its development of the Ground Lease Premises on or before the date that is 270 days after the Effective Date (the "**Equity Partner Outside Date**"). Promptly after the request of the FCRHA, Fairfax Properties shall provide the FCRHA with periodic updates with regard to its efforts in securing an equity partner. If Fairfax Properties shall have promptly commenced and used commercially reasonable efforts to secure an equity partner for the Project, then if Fairfax Properties shall not have secured an equity partner for its development of the Ground Lease Premises on or before the Equity Partner Outside Date, Fairfax Properties may, by notice delivered to the FCRHA on or prior to the Equity Partner Outside Date, terminate this Agreement, and except as otherwise expressly set forth in this Agreement, neither the FCRHA nor Fairfax Properties shall have any further liability hereunder. If Fairfax Properties does not timely and properly deliver to the FCRHA notice of Fairfax Properties' election to terminate this Agreement under this Section 6.3 prior to the Equity Partner Outside Date, then Fairfax Properties shall be deemed to have waived its right to terminate this Agreement under this Section 6.3 and this Section 6.3 shall thereafter be null, void and of no further force and effect.

6.4 Development Requirements. Attached to this Agreement as **Exhibit D** are the general development requirements necessary to implement development of the Project (the "**Development Requirements**"). The FCRHA and Fairfax Properties will each act in good faith and use reasonable efforts to modify the Development Requirements as may be determined necessary during the Term of this Agreement.

6.5 If necessary, at Closing, the FCRHA, Fairfax Properties, and the tenants under the Other Ground Leases shall execute and record among the Land Records an agreement to allocate the responsibilities and costs for Proffers for the Project (the "**Proffer Allocation Agreement**"). The FCRHA and Fairfax Properties shall each act in good faith and use reasonable efforts to agree, and shall use reasonable efforts to cause the other tenants to agree, upon the final form of the Proffer Allocation Agreement.

6.6 If necessary, at Closing, the FCRHA, Fairfax Properties, and the other tenants shall execute and record among the Fairfax County Land Records a reciprocal easement agreement to reflect such easements and related provisions as may be necessary for the development, operation, and maintenance (including the performance of and payment for routine and capital maintenance and replacement work) of the Project (the "**REA**"; and together with the Proffer Allocation Agreement, the "**Inter-Party Agreements**"). The FCRHA and Fairfax Properties shall each act in good faith and use reasonable efforts to agree, and shall use reasonable efforts to cause the other tenants to agree, upon the final form of the REA; provided, however, that in no event shall the FCRHA be responsible for any costs relating to the Project.

## Section 7. **CLOSING.**

7.1 Time. If, and on the express condition that, Fairfax Properties delivered the Option Notice, the Supporting Documentation and any additional information required by the FCRHA to approve the Supporting Documentation not later than 30 days prior to the Expiration Date, then on a date prior to the Expiration Date and no later than 90 days after the satisfaction or waiver (if applicable) of the conditions precedent set forth in Section 8.1 and Section 8.2, the Parties shall each execute and exchange original counterparts and deposit into escrow the documents described in Section 7.3 and Section 7.4 below. The Parties shall close the transaction contemplated by this Agreement (the “**Closing**”) on a date (the “**Closing Date**”) that shall be selected by Fairfax Properties giving at least 15 business days’ prior written notice to the FCRHA, unless otherwise agreed in writing by the Parties.

7.2 Escrow. The Parties shall conduct the Closing through a mutually-agreed upon title company (the “**Escrow Agent**”). The terms of this Agreement (including, but not limited to, the terms contained in this Section 7), together with such additional instructions as the Escrow Agent shall reasonably request and to which the Parties shall agree in writing, shall constitute the escrow instructions to the Escrow Agent. If there is any inconsistency between this Agreement and any additional escrow instructions given to the Escrow Agent, this Agreement shall control unless the intent to amend this Agreement is clearly and expressly stated in the additional escrow instructions.

7.3 The FCRHA’s Deposits into Escrow. The FCRHA shall deposit into escrow on or before Closing the following documents:

- (a) Two duly executed counterpart originals of the Ground Lease;
- (b) A duly executed and acknowledged counterpart original memorandum of lease in a reasonable form that has been agreed to by the FCRHA and Fairfax Properties in recordable form for the Ground Lease (the “**Memorandum of Lease**”);
- (c) A certificate of the FCRHA signed by a person duly authorized to do so on behalf the FCRHA affirming that all of the FCRHA’s representations and warranties set forth in Section 5.2 are true in all material respects as of the Closing Date; provided, however, to the extent the FCRHA is aware of facts or circumstances that result in the FCRHA’s representations or warranties set forth in Section 5.2 not being true as of the Closing, the FCRHA shall disclose such facts or circumstances in such certificate (the “**FCRHA Certificate**”);
- (d) Such additional documents, including written escrow instructions consistent with this Agreement, as are both (i) reasonably necessary for the consummation of the transactions contemplated by this Agreement and (ii) reasonably consistent with the forms of such documents typically executed by the FCRHA.

7.4 Fairfax Properties’ Deposits into Escrow. Fairfax Properties shall deposit into escrow on or before Closing:

- (a) Two duly executed counterpart originals of the Ground Lease;

(b) A duly executed and acknowledged counterpart original of the Memorandum of Lease;

(c) Two duly executed counterpart originals of the Guaranty (as defined in the Ground Lease) for the Ground Lease;

(d) A certificate of Fairfax Properties signed by a person duly authorized to do so on behalf of Fairfax Properties, affirming that all of the representations and warranties of Fairfax Properties set forth in Section 5.3 are true in all material respects as of the Closing Date; provided, however, to the extent Fairfax Properties is aware of facts or circumstances that result in Fairfax Properties' representations or warranties set forth in Section 5.3 not being true in all material respects as of the Closing, Fairfax Properties shall disclose such facts or circumstances in such certificate (the "**Fairfax Properties Certificate**");

(e) Such evidence as the Escrow Agent reasonably requires as to the authority of the person or persons executing documents on behalf of Fairfax Properties;

(f) The Base Rent payment in the amount of Ten (\$10) Dollars in immediately available funds;

(g) Such additional documents, including written escrow instructions consistent with this Agreement, as are reasonably necessary for the lease of the Ground Lease Premises in accordance with the terms of this Agreement.

7.5 Closing. When the Escrow Agent has received all documents identified in Section 7.3 and Section 7.4, and has received written notification from Fairfax Properties and the FCRHA that all conditions to Closing have been satisfied or waived; then, and only then, the Escrow Agent shall take the following actions in the following chronological order:

(a) Record in the Land Records the Memorandum of Lease (marked for return to Fairfax Properties) against the Ground Lease Premises;

(b) Deliver to Fairfax Properties: (i) a conformed copy (showing all recording information thereon) of the Memorandum of Lease, (ii) a fully executed original of the Ground Lease; and (iii) the FCRHA Certificate;

(c) Deliver to the FCRHA: (i) a conformed copy (showing all recording information thereon) of the Memorandum of Lease, (ii) a fully executed original of the Ground Lease; (iii) two duly executed counterpart originals of the Guaranty for the Ground Lease; and (iv) the Fairfax Properties Certificate.

7.6 Closing Costs. As additional consideration for this Agreement and the lease of the Ground Lease Premises pursuant to the Ground Lease, Fairfax Properties shall pay all escrow and recording fees and other closing costs charged by the Escrow Agent.

Section 8. **CONDITIONS PRECEDENT; COVENANTS.**

8.1 Fairfax Properties' Conditions. Fairfax Properties' obligations under this Agreement to Close escrow are subject to the fulfillment of the following conditions at or prior to the Closing Date, each of which shall be deemed waived (other than Section 8.1(d) and Section 8.1(e), which may not be waived by Fairfax Properties) unless Fairfax Properties exercises its rights pursuant to Section 8.4 below to terminate the Agreement:

(a) Representations and Warranties. The FCRHA's representations and warranties contained in Section 5.2, as restated as of the Closing in the FCRHA Certificate, shall be true in all material respects at and as of the Closing.

(b) No Exceptions. Any material qualification or any exceptions of any kind to any of the representations or warranties set forth in the FCRHA Certificate shall be acceptable to Fairfax Properties, in its reasonable discretion.

(c) Performance. The FCRHA shall have performed and complied in all material respects with all covenants, agreements, terms and conditions required by this Agreement to be performed or complied with by the FCRHA prior to or at the Closing.

(d) Permits and Construction Approvals. Fairfax Properties shall have applied for all governmental approvals and permits, including building permits for the construction of the Student Housing Building on the Ground Lease Premises.

(e) Financing. Fairfax Properties shall be closing on the equity investment or loan financing or both necessary for the financing of the Project.

8.2 The FCRHA's Conditions. The FCRHA's obligations under this Agreement to Close escrow are subject to the fulfillment of the following conditions at or prior to the Closing Date, each of which shall be deemed waived unless the FCRHA exercises its rights pursuant to Section 8.4 below to terminate the Agreement:

(a) Representations and Warranties. Fairfax Properties' representations and warranties contained in Section 5.3, as restated as of the Closing in the Fairfax Properties Certificate, shall be true in all material respects at and as of the Closing.

(b) No Exceptions. Any material qualification or any exceptions of any kind to any of the representations or warranties set forth in the Fairfax Properties Certificate shall be acceptable to the FCRHA, in its reasonable discretion.

(c) Performance. Fairfax Properties shall have performed and complied in all material respects with all covenants, agreements, terms and conditions required by this Agreement to be performed or complied with by Fairfax Properties prior to or at the Closing.

(d) No Litigation. There shall exist no pending or threatened actions, suits, arbitrations, claims, attachments, proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings by or against Fairfax Properties that would

materially and adversely affect the ability of Fairfax Properties to perform its obligations under this Agreement.

(e) Tax Credits; Financing. One University Family, LLC shall be simultaneously closing on (i) an award from the Virginia Housing and Development Authority (“VHDA”) of nine percent (9%) low-income housing tax credits (the “Tax Credits”) necessary to enable One University Family, LLC to construct the Affordable Housing Family Building on another portion of the Property (and all challenge periods related to such award have expired), and (ii) the equity investment and financing in amounts substantially similar to the amounts set forth in the application to VHDA for the Tax Credits; provided, however, that notwithstanding the foregoing to the contrary, the FCRHA shall have the option, in its sole and absolute discretion, to waive the obligation of Fairfax Properties to the simultaneous closings referenced in clause (i) and clause (ii) above.

(f) Site Plan. Fairfax Properties shall have prepared and submitted the site plan for the Student Housing Building (the “Site Plan”) to the Fairfax County Department of Public Works and Environmental Services (“DPWES”) and shall have received an initial response with comments from the DPWES Land Development Services branch. To the extent required or applicable to obtain necessary financing for the Project, Fairfax Properties shall have caused the Property to have been subdivided.

(g) Plans and Specifications. The FCRHA shall have approved Fairfax Properties’ proposed Plans and Specifications (as defined in the Ground Lease).

(h) Delivery of Option Notice; Approval of Supporting Documentation. Fairfax Properties shall have delivered the Option Notice, the Supporting Documentation and any additional information required by the FCRHA to approve the Supporting Documentation in accordance with Section 3, and the FCRHA has approved the Supporting Documentation in accordance with Section 3.

(i) Other Ground Leases. The FCRHA shall be simultaneously entering into the Other Ground Leases.

(j) Easements; Proffers. The FCRHA, Fairfax Properties, and the other tenants shall be simultaneously entering into the Inter-Party Agreements.

8.3 Additional Fairfax Properties Covenants. In addition to the obligations of Fairfax Properties under Section 8.1 and Section 8.2 above:

(a) Fairfax Properties shall use its best efforts to prosecute the generation, submission and approval of (i) the Site Plan, and (ii) the Plans and Specifications. Prior to submitting the Site Plan for regulatory approval, Fairfax Properties shall obtain the consent of the FCRHA to the proposed submission (or, as applicable, other documentation) and shall submit such materials to the FCRHA for review and approval, not to be unreasonably withheld, conditioned, or delayed. The FCRHA shall respond within ten (10) business days and otherwise reasonably cooperate with Fairfax Properties in the pursuit of the Site Plan.

(b) Fairfax Properties shall promptly commence and diligently pursue until completion all work and actions needed to satisfy the obligations and requirements set forth in Section 8.

If Fairfax Properties fails to satisfy the covenants set forth in this Section, the FCRHA may avail itself of the rights and remedies set forth in Section 8.4 and Section 9 below.

8.4 Satisfaction of Requirements; Failure of Conditions. So long as a Party is not in default hereunder, if any condition to such Party's obligation to proceed with the Closing hereunder has not been satisfied as of the Closing Date or any other applicable date specified in this Agreement, such Party may, in its sole discretion, in addition to its rights in Section 9 below, if applicable, either (a) terminate this Agreement by delivering written notice to the other Party on or before the Closing Date, (b) extend the time available for the satisfaction of such condition (provided however, that such extension may not be beyond the Expiration Date), or (c) elect to close, notwithstanding the non-satisfaction of such condition, in which event such Party shall be deemed to have waived any such condition. If such party elects to proceed pursuant to clause (b) above, and such condition remains unsatisfied after the end of such extension period, then, at such time, such party may elect to proceed pursuant to either clause (a) or (c) of the preceding sentence. If the failure of a condition precedent for the benefit of either Party is not satisfied due to a breach of this Agreement by the other Party (for example, a failure or refusal to perform a Party's obligations under this Agreement), the benefitted Party's rights and remedies shall be as set forth in Section 9.

Section 9. **DEFAULT; REMEDIES.**

9.1 An FCRHA Default. In the case of any default or breach by the FCRHA hereunder, Fairfax Properties shall give the FCRHA written notice of such default or breach and shall provide the FCRHA with 30 days to cure the default or breach. If the FCRHA fails to cure the default or breach within such 30-day period, Fairfax Properties shall be entitled to (a) if and to the extent that such default or breach is reasonably susceptible to cure by the FCRHA, seek specific performance to enjoin the FCRHA to cure such default or breach and consummate the transaction contemplated by this Agreement; or (b) terminate this Agreement and the Option. Upon any termination by Fairfax Properties under this Section 9.1, Fairfax Properties shall be entitled to receive a refund of the Consideration previously paid. Additionally, Fairfax Properties may terminate this Agreement and the Option if any condition to Closing contained in Section 8.1 has not been satisfied or waived by Fairfax Properties in writing by the Closing Date. Notwithstanding anything to the contrary contained in this Agreement, Fairfax Properties' sole remedy for any default or breach by the FCRHA hereunder shall be specific performance (as described in Section 9.1(a)), or terminating this Agreement and the Option (as described in Section 9.1(b)); and in no event shall Fairfax Properties be entitled to recover any monetary damages (other than a refund of the Consideration) or other damages from the FCRHA if the FCRHA defaults or breaches this Agreement.

9.2 Fairfax Properties Default. In the case of any default or breach by Fairfax Properties hereunder, the FCRHA shall give Fairfax Properties written notice of such default or breach and shall provide Fairfax Properties with 30 days to cure the default or breach. If Fairfax Properties fails to cure the default or breach within such 30-day period, the FCRHA may terminate this Agreement and the Option. Additionally, the FCRHA may terminate this Agreement and the Option if any condition to Closing contained in Section 8.2 or Section 8.3 has not been satisfied

or waived by the FCRHA in writing by the Closing Date. The FCRHA's sole remedy for any default or breach by Fairfax Properties hereunder shall be terminating this Agreement and the Option; in no event shall the FCRHA be entitled to any damages from Fairfax Properties if Fairfax Properties defaults or breaches this Agreement.

#### Section 10. **RISK OF LOSS; CONDEMNATION OR CASUALTY**

10.1 Risk of Loss. Risk of loss shall remain with the FCRHA until Closing. The FCRHA shall notify Fairfax Properties of any (i) condemnation or taking by eminent domain of any portions of the Ground Lease Premises or (ii) casualty event affecting the Ground Lease Premises. Fairfax Properties and the FCRHA agree that the FCRHA has no obligation to restore the Ground Lease Premises or the Property in the event of a condemnation or casualty event.

10.2 Obligation to Close. Notwithstanding any condemnation or casualty event, Fairfax Properties shall remain obligated to close under this Agreement so long as such condemnation or casualty event does not materially and adversely affect the Ground Lease Premises. For purposes of this Section, a condemnation or casualty event will "materially and adversely affect the Ground Lease Premises" if, after completion of such condemnation or the occurrence of such casualty event, as applicable, Fairfax Properties would no longer be able to develop the Ground Lease Premises in substantial accordance with the Ground Lease, subject to any minor adjustments caused by such condemnation or casualty event, as applicable. In the event of a condemnation or casualty event that has a material and adverse effect on the Ground Lease Premises, (A) Fairfax Properties shall have the right to terminate this Agreement without liability on its part by so notifying the FCRHA within 15 days of the FCRHA's notification to Fairfax Properties of said condemnation or casualty event, and except as otherwise expressly set forth in this Agreement, neither the FCRHA nor Fairfax Properties shall have any further liability hereunder, and (B) if Fairfax Properties does not so terminate the Agreement, then Fairfax Properties shall remain obligated to close under this Agreement and neither such condemnation or casualty event nor the condition of the Ground Lease Premises thereafter shall be deemed to give rise to a default hereunder.

#### Section 11. **MISCELLANEOUS PROVISIONS.**

11.1 No Brokers, Finders, Etc. Neither Party has engaged any agent, broker, finder or investment or commercial banker in connection with the negotiation, execution or performance of this Agreement, or the transactions contemplated hereby.

11.2 Expenses. Except as specifically set forth herein, whether or not the transaction contemplated by this Agreement is consummated, each of the Parties shall pay their own fees and expenses incident to the negotiation, preparation, execution, delivery and performance of this Agreement.

11.3 Complete Agreement; Waiver and Modification, Etc. This Agreement and the Option to Lease dated as of the date hereof between the FCRHA and Fairfax Properties for the Ground Lease (the "**Option**") constitutes the entire agreement between the Parties pertaining to the subject matter hereof and thereof and supersedes all prior and contemporaneous agreements and understandings of the Parties. There are no representations, warranties, covenants or

conditions by or benefiting any Party except those expressly stated or provided for in this Agreement, any implied representations, warranties, covenants or conditions being hereby expressly disclaimed. No person or entity other than the Parties to this Agreement have any rights or remedies under or in connection with this Agreement, except rights or remedies validly assigned hereunder. No amendment, supplement or termination of or to this Agreement, and no waiver of any of the provisions hereof, shall require the consent of any person or entity other than the Parties hereto, nor shall any such amendment, supplement, termination or waiver be binding on a Party to this Agreement unless made in a writing signed by such Party. To the extent any provision of the Option conflicts with, or is inconsistent with, this Agreement, then this Agreement shall govern and control.

11.4 Notices. Whether expressly so stated or not, whenever it is provided in this Agreement that a notice, demand, request, consent, approval or other communication (each of which is herein referred to as “Notice”) shall or may be given to or served upon either of the Parties by the other, and whenever either of the Parties shall desire to give or serve upon the other any Notice with respect hereto or the Ground Lease Premises, each such Notice shall be in writing and, any law or statute to the contrary notwithstanding, shall not be effective for any purpose unless given or served as follows: (a) by personal delivery (with receipt acknowledged), (b) delivered by reputable, national overnight delivery service (with its confirmatory receipt therefor), next business day delivery specified, or (c) sent by registered or certified United States mail, postage prepaid, return receipt requested, in each case to the Parties as follows:

If to Fairfax Properties, to:

Fairfax Properties I, LLC  
129 N. Patterson Street  
Valdosta, Georgia 31601

And

One University Development Partners, LLC  
c/o SCG Development  
8245 Boone Boulevard, Suite 640  
Vienna, Virginia, 22182

With a copy to:

Klein Hornig LLP  
1275 K Street NW, Suite 1200  
Washington, DC 20005  
Attention: Erik Hoffman

And

Coleman Talley LLP  
109 S. Ashley Street  
Valdosta, GA 31601



Attention: Justin S. Scott

If to the FCRHA, to:

Fairfax County Redevelopment and Housing Authority  
3700 Pender Drive  
Fairfax, Virginia 22030  
Attention: Director, HCD

With copies to:

Office of the County Attorney  
12000 Government Center Parkway, Suite 549  
Fairfax, Virginia 22035-0064  
Attention: County Attorney

Either the FCRHA or Fairfax Properties may change the address(es) to which any such Notice is to be delivered to it by furnishing 10 days' written notice of such change(s) to the other Party in accordance with the provisions of this Section 11.4. Every Notice shall be deemed to have been given or served upon delivery thereof, with failure to accept delivery to constitute delivery for such purpose.

11.5 Governing Law. This Agreement shall be interpreted in accordance with and governed by the laws of the Commonwealth of Virginia.

11.6 Headings; References; "Hereof," Etc. The Section headings in this Agreement are provided for convenience only, and shall not be considered in the interpretation hereof or thereof. References in this Agreement to Sections or Schedules refer, unless otherwise specified, to the designated Section of or Schedule to this Agreement, and terms such as "herein," "hereto" and "hereof" used in this Agreement refer to this Agreement as a whole.

11.7 Successors and Assigns. Fairfax Properties may not assign its rights under this Agreement to any party without the prior written consent of the FCRHA, which may be withheld in the FCRHA's sole and absolute discretion. A sale, assignment, or other transfer of the equity of Fairfax Properties or any direct or indirect parent of Fairfax Properties shall be deemed to be an assignment subject to the restrictions of this Section 11.7. Notwithstanding the foregoing to the contrary, Fairfax Properties shall be permitted to assign its rights under this Agreement to any person or entity which directly or indirectly controls, is controlled by or is under common control with Fairfax Properties, or to any person or entity resulting from a merger or consolidation with Fairfax Properties, or to any person or entity which acquires all the assets of Fairfax Properties' business as a going concern pursuant to a written agreement, reasonably acceptable to the FCRHA, provided that (i) such assignment or sublease is not a subterfuge to avoid the application of the provisions of this Section 11.7, (ii) the assignee assumes, in full, the obligations of Fairfax Properties under this Agreement, pursuant to a written agreement in form reasonably acceptable to the FCRHA, and (iii) Fairfax Properties provides the FCRHA with prior written notice of any such assignment.

11.8 Severability. If for any reason any provision of this Agreement shall be held invalid, illegal or unenforceable in whole or in part in any jurisdiction, then that provision shall be ineffective only to the extent of that invalidity, illegality or unenforceability and in that jurisdiction only, without in any manner affecting the validity, legality or enforceability of the unaffected portion and the remaining provisions in that jurisdiction or any provision of this Agreement in any other jurisdiction.

11.9 Cumulative Rights and Remedies. The rights and remedies of each Party under this Agreement are cumulative, except as otherwise expressly provided.

11.10 Survival of Representations and Warranties. Except as otherwise expressly provided in this Agreement, all representations, warranties, covenants and agreements of the Parties contained in this Agreement shall be considered material and shall be effective and survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and thereby notwithstanding any investigation of the matters covered thereby by or on behalf of any Party benefited by any such representation, warranty, covenant or agreement or any knowledge (actual or constructive) on the part of any Party benefited by any such representation, warranty, covenant or agreement as to the truth or accuracy (or falseness or inaccuracy) thereof.

11.11 Further Assurances. From time to time and at any time after the execution and delivery hereof, each of the Parties, at their own expense, shall execute, acknowledge and deliver any further instruments, documents and other assurances reasonably requested by another Party, and shall take any other action consistent with the terms of this Agreement that may reasonably be requested by another Party to evidence or carry out the intent of or to implement this Agreement.

11.12 Counterparts; Separate Signature Pages. This Agreement may be executed in any number of counterparts, or using separate signature pages. Each such executed counterpart and each counterpart to which such signature pages are attached shall be deemed to be an original instrument, but all such counterparts together shall constitute one and the same instrument.

11.13 Time. **WHETHER EXPRESSLY SO STATED OR NOT IN CONNECTION WITH ANY OBLIGATION, TIME IS OF THE ESSENCE IN THE PERFORMANCE OF EACH PARTY'S RESPECTIVE OBLIGATIONS UNDER THIS AGREEMENT, AND NO NOTICE OF A PARTY'S INTENT TO REQUIRE STRICT COMPLIANCE WITH ANY OF THE DEADLINES SET FORTH IN THIS AGREEMENT IS REQUIRED.** If any time period set forth in this Agreement would otherwise expire on a Saturday, Sunday or holiday, such time period shall be automatically extended to the next business day.

11.14 Estoppel Certificates. Each Party shall, from time to time upon 15 days' prior written request by the other Party, execute, acknowledge and deliver to the requesting Party a certificate signed by an authorized representative of such Party stating whether to the actual knowledge of such Party (without investigation) (a) this Agreement is or is not in full force and effect, (b) this Agreement is or is not unmodified (and, if modified, the details of the modification(s)), and (c) the requesting Party is in default in performance of any covenant, agreement or condition contained in this Agreement, and, if so, specifying each such default of which the non-requesting Party may have actual knowledge.

11.15 Incorporation of Recitals. The Recitals set forth above are hereby incorporated into this Agreement.

*[Signatures on the following pages]*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date first written above.

**FCRHA:**

**FAIRFAX COUNTY REDEVELOPMENT AND HOUSING AUTHORITY,**  
a political subdivision of the Commonwealth of Virginia,

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

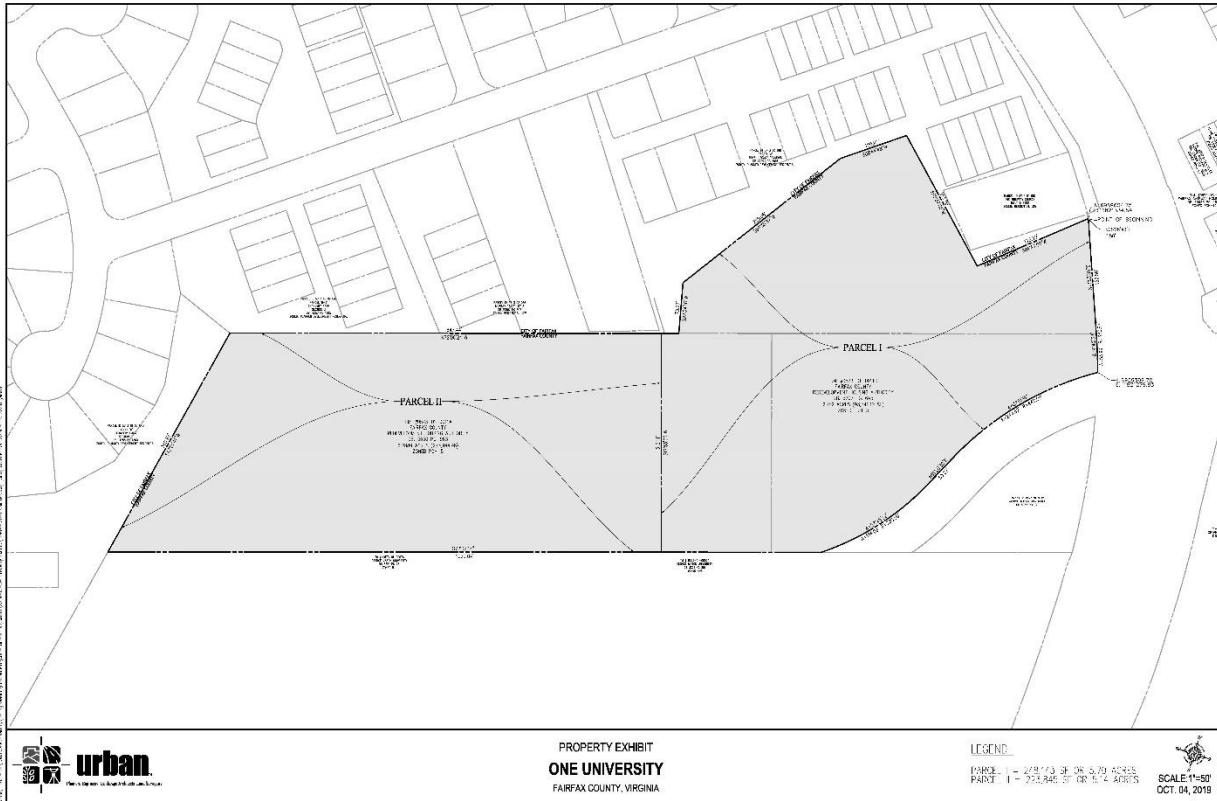
**FAIRFAX PROPERTIES**

**Fairfax Properties I, LLC,**  
a Delaware limited liability company

[By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_]

# EXHIBIT A

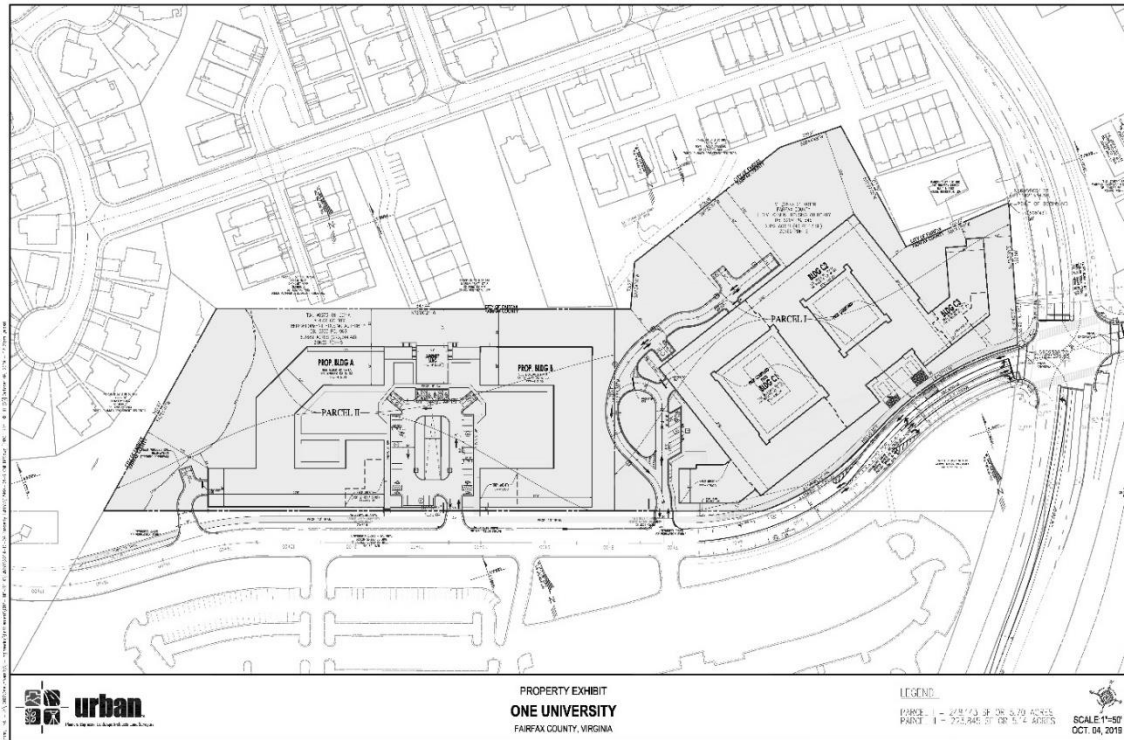
## The Property



# **EXHIBIT B**

## **The Ground Lease Premises**

[The Premises are a to-be-determined portion of the area under and surrounding buildings identified as “BLDG C1”, “BLDG C2”, and “BLDG C3”.]



**EXHIBIT C**  
**The Ground Lease**



## EXHIBIT D

### DEVELOPMENT REQUIREMENTS (One University)

- A. **Anticipated Scope.** Fairfax Properties will construct the Student Housing Building, including certain infrastructure work, in accordance with the Proffers and Site Plan, including:
- i. Curbs, gutters, sanitary sewer mains, manholes, service laterals to behind the curb and gutter, storm drains, and pavement and internal road network;
  - ii. Storm water management facilities, including outfall;
  - iii. Resource Protection Area
  - iv. Landscaped Buffer north of the affordable buildings
  - v. Road improvements and pedestrian safety improvements to the intersection of University Drive and Ox Road, in accordance with VDOT requirements;
  - vi. Frontage improvements along University Drive, in accordance with VDOT requirements;
  - vii. Hauling off necessary soils (including all unsuitable materials), grading and other site work (the foregoing items in this Section A collectively comprise the “**Scope**”).

The ultimate Scope will be finalized by the parties to the Agreement.

- B. **Approval of Drawings, Plans, and Specifications.** In connection with the initial construction and development of the Scope, Fairfax Properties shall submit reasonably detailed construction drawings, plans and specifications to the FCRHA for the FCRHA’s review and approval, subject to an agreed-upon milestone schedule. The FCRHA’s approval of the construction drawings, plans and specifications shall not be unreasonably withheld, conditioned or delayed. FCRHA will respond within ten (10) business days to all such requests for approval, and failure to respond within such time period will be deemed an approval by FCRHA.
- C. **Approval of Contractors.** Final selection by Fairfax Properties of a general contractor (“**General Contractor**”) and Major Subcontractors for the Scope shall be subject to the prior approval of the FCRHA, which approval shall not be unreasonably withheld, conditioned or delayed. A “**Major Subcontractor**” shall mean any subcontractor performing work the cost of which is in excess of ten percent (10%) of the total cost of constructing the Scope, as set forth in the Budget (as defined below). The bidding process and criteria are to be discussed.

- D. **Development Approvals.** Fairfax Properties shall consult and coordinate with the FCRHA regarding all submissions to be made in connection with efforts to obtain all required government approvals for the Scope. Further, Fairfax Properties shall submit its proposed application for each such approval to the FCRHA for its review and approval, subject to an agreed-upon milestone schedule. The FCRHA's approval shall not be unreasonably withheld, conditioned, or delayed. FCRHA will respond within ten (10) business days to all such requests for approval, and failure to respond within such time period will be deemed an approval by FCRHA.
- E. **Supervision.** Fairfax Properties shall supervise, direct and coordinate the construction of the Scope using its best skill and attention. Fairfax Properties acknowledges that Fairfax Properties shall be solely responsible for all construction methods, techniques and procedures employed by Fairfax Properties, its agents, contractors and subcontractors in connection with the construction of the Scope.
- F. **Compliance.** Fairfax Properties shall cause the Scope to be designed and constructed in a good and workmanlike manner, and in compliance with all applicable laws, licensing requirements, and governmental approvals, including, without limitation, the Land Use Approvals and the Proffers. Fairfax Properties shall arrange for the provision of payment and performance bonds in accordance with the PPEA statute.
- G. **Insurance.** Fairfax Properties acknowledges and agrees that it will be required, pursuant to the Ground Lease, to maintain or cause to be maintained the following types of insurance (in amounts provided in the Agreement or as indicated below):
- i. Workers Compensation Insurance, per the Ground Lease;
  - ii. Employer Liability insurance, per the Ground Lease;
  - iii. "All Risk" Builders Risk Insurance, per the Ground Lease;
  - iv. Errors and Omissions Insurance, in commercially reasonable amounts;
  - v. Business Automobile Liability Insurance, in commercially reasonable amounts; and
  - vi. Commercial General Liability Insurance, per the Ground Lease.
- H. **Warranties to the FCRHA; Inspections.** All warranties for the Scope shall run to the FCRHA as well as Fairfax Properties, as applicable and pursuant to the proffers. The contract with the General Contractor shall provide for the ability of the FCRHA: to access the Ground Lease Premises on a reasonable basis and frequency, with prior written notice to Fairfax Properties of no less than five (5) business days prior to such visits; to inspect the construction of the Scope in the presence of a representative selected by Fairfax Properties; and to discuss the Scope with the General Contractor and Fairfax Properties in the presence of a representative selected by Fairfax Properties.
- I. **Completion of Scope.** Fairfax Properties agrees that construction of the Scope will begin promptly after Closing and shall be completed no later than thirty (30) months after Closing, subject to any applicable extensions.