

FIRST AMENDMENT TO
AMENDED AND RESTATED AGREEMENT OF LEASE

between

FIT STUDENT HOUSING CORPORATION,
as Lessor

and

DORMITORY AUTHORITY OF THE
STATE OF NEW YORK,
as Lessee

Dated as of December __, 2020

Amending and Supplementing the Amended and Restated Agreement of Lease
dated as of April 25, 2007

**FIRST AMENDMENT TO
AMENDED AND RESTATED AGREEMENT OF LEASE**

FIRST AMENDMENT TO AMENDED AND RESTATED AGREEMENT OF LEASE (this “**First Amendment**”), dated as of December __, 2020, by and between FIT STUDENT HOUSING CORPORATION, 227 West 27th Street, New York, New York 10001, a not-for-profit corporation duly incorporated and existing under the laws of the State of New York, as lessor (the “**Corporation**”), and DORMITORY AUTHORITY OF THE STATE OF NEW YORK, 515 Broadway, Albany, New York 12207-2694, a body corporate and politic of the State of New York, constituting a public benefit corporation created pursuant to Chapter 524 of the Laws of 1944 of the State of New York, as amended, as lessee (the “**Authority**”), amending and supplementing the Amended and Restated Agreement of Lease dated as of April 25, 2007 by and between the Corporation and the Authority (the “**Agreement of Lease**”).

WITNESSETH:

WHEREAS, the Corporation is the owner of the Leased Property (as defined in the Agreement of Lease;

WHEREAS, the Corporation has leased to the Authority and the Authority has leased from the Corporation, the Leased Property, pursuant to the provisions of the Agreement of Lease;

WHEREAS, the Corporation and the Authority desire to amend and supplement the Agreement of Lease in connection with the issuance by the Authority of its FIT Student Housing Corporation Insured Revenue Bonds, Series 2020 (the “**Series 2020 Bonds**”).

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereby agree as follows:

1. AUTHORITY FOR THE FIRST AMENDMENT. This First Amendment is adopted pursuant to the provisions of Section 8.07 of the Agreement of Lease.

2. DEFINED TERMS. Unless otherwise expressly provided in this First Amendment, all terms which are defined in Section 1.01 of the Agreement of Lease shall have the same meanings, respectively, in this First Amendment as such terms are given in said Section 1.01 of the Agreement of Lease.

3. AMENDMENTS AND SUPPLEMENTS TO AGREEMENT OF LEASE. From and after the date hereof, the Agreement of Lease shall be amended and supplemented as set forth below in this Section 3.

(a) **Amendments to Section 1.01 of the Agreement of Lease – Definitions.** The definitions of the following terms set forth in Section 1.01 of the Agreement of Lease are hereby amended to read in their entirety as follows (with deletions shown by overstriking and additions shown by double underscoring):

"Resolution" means the FIT Student Housing Corporation Revenue Bond Resolution of the Authority, adopted April 28, 2004, the Series 2004 Resolution adopted by the Authority on April 28, 2004, ~~and~~ the Series 2007 Resolution adopted by the Authority on March 28, 2007, as amended and restated on April 25, 2007, and the Series 2020 Resolution adopted by the Authority on December , 2020, as from time to time further amended or supplemented by Supplemental Resolutions or Series Resolutions in accordance with the terms and provisions thereof.

(b) **Amendment to Section 2.02 of the Agreement of Lease – Term of Lease.** Section 2.02 of the Agreement of Lease is hereby amended to read as follows (with deletion shown by overstriking and addition shown by double underscoring):

The Lease Term shall commence on June 9, 2004 and shall terminate on July 1, ~~2034~~ 2038, unless sooner terminated as hereinafter provided.

(c) **Amendment to Section 2.03 of the Agreement of Lease – Rent.** The second sentence of Section 2.03 of the Agreement of Lease is hereby amended to read as follows (with deletion shown by overstriking and addition shown by double underscoring):

The Corporation hereby acknowledges the receipt of the sum of ~~\$30.00~~ \$34.00, as advance payment of any and all rent due hereunder.

4. COUNTERPARTS. This First Amendment may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

5. LAWS GOVERNING FIRST AMENDMENT. The effect and meanings of this First Amendment and the rights of all parties hereunder shall be governed by, and construed according to, the internal laws of the State without regard to conflicts of laws principles.

6. EFFECT ON OPERATING AGREEMENT. Except as amended and supplemented by this First Amendment, the Agreement of Lease shall remain in full force and effect and is incorporated herein.

7. WHEN EFFECTIVE. This First Amendment shall become effective upon the issuance of the Series 2020 Bonds.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have set their hands as of the date first above written.

FIT STUDENT HOUSING CORPORATION

By _____
Name:
Title:

[FIT STUDENT HOUSING CORPORATION SIGNATURE PAGE TO FIRST AMENDMENT]

**DORMITORY AUTHORITY OF THE STATE
OF NEW YORK**

By _____
Authorized Officer

[DORMITORY AUTHORITY OF THE STATE OF NEW YORK SIGNATURE PAGE TO FIRST AMENDMENT]

ACKNOWLEDGEMENTS

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

On the ____ day of December in the year 2020 before me, the undersigned, a Notary Public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

