

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

**SERIES 2021 RESOLUTION**

**AUTHORIZING**

**EHS TOWERS LLC – CUNY STUDENT HOUSING PROJECT SUBORDINATE  
REVENUE BONDS, SERIES 2021  
IN AN AMOUNT NOT EXCEEDING \$19,000,000**

**Adopted May 19, 2021**

## **SERIES 2021 RESOLUTION**

### **AUTHORIZING**

#### **EHS TOWERS LLC – CUNY STUDENT HOUSING PROJECT SUBORDINATE REVENUE BONDS, SERIES 2021 IN AN AMOUNT NOT EXCEEDING \$19,000,000**

**WHEREAS**, the Dormitory Authority of the State of New York (the “Authority”) duly adopted on May 19, 2021 its EHS Towers LLC – CUNY Student Housing Project Subordinate Revenue Bond Resolution (the “Resolution”); and

**WHEREAS**, the Resolution authorizes the issuance by the Authority, from time to time, of its revenue bonds, in one or more series, for the authorized purposes of the Authority; and

**WHEREAS**, the Resolution provides that bonds of the Authority shall be authorized and issued pursuant to a Series Resolution or Series Resolutions (as therein defined); and

**WHEREAS**, each such Series of Bonds is to be authorized by a separate Series Resolution; and

**WHEREAS**, the Authority deems it necessary and in keeping with its purposes to issue under the Resolution and this Series 2021 Resolution, the Series of Bonds herein authorized for the purpose of lending to the Institution (as this and certain other terms used herein are defined in Section 1.02 hereof) funds sufficient to (i) refinance or refund all or a portion of the debt service due and payable for up to three years on the Outstanding Senior Bonds, (ii) pay all or a portion of the interest accruing on the Series 2021 Bonds (as hereinafter defined) for up to three years, [(iii) fund the Debt Service Reserve Fund to its requirement, including to pay the premium of any Liquidity Facility,] and (iv) pay the Costs of Issuance of the Series 2021 Bonds.

**BE IT RESOLVED** by the Dormitory Authority of the State of New York, as follows:

### **ARTICLE I**

#### **Definitions and Statutory Authority**

**SECTION 1.01. Series 2021 Resolution.** This “Series 2021 Resolution Authorizing EHS Towers LLC – CUNY Student Housing Project Subordinate Revenue Bonds, Series 2021 In An Amount Not Exceeding \$19,000,000” is supplemental to, and constitutes a Series Resolution within the meaning of and is adopted in accordance with Article IX of the resolution adopted by the Authority on May 19, 2021, entitled “EHS Towers LLC – CUNY Student Housing Project Subordinate Revenue Bond Resolution, Adopted May 19, 2021, A

Resolution Authorizing The Issuance By The Dormitory Authority Of A Series Of EHS Towers LLC – CUNY Student Housing Project Subordinate Revenue Bonds; Providing For The Payment Of The Principal Of And Interest On Such Bonds; And Providing For The Rights Of The Holders Thereof” and referred to herein as the “Resolution.”

**SECTION 1.02. Definitions.** (1) All terms which are defined in Section 1.01 of the Resolution shall have the same meanings, respectively, in this Series 2021 Resolution as such terms are given in said Section 1.01 of the Resolution.

(2) In addition, as used in this Series 2021 Resolution, unless the context shall otherwise require, the following terms shall have the following respective meanings:

**“Liquidity Facility”** means a Liquidity Facility, as defined in the Resolution, with respect to the Series 2021 Bonds, pursuant to which the provider thereof is required to purchase or provide moneys for the purchase of Series 2021 Bonds tendered or deemed to have been tendered for purchase;

**“Purchase Price”** means an amount equal to one hundred percent (100%) of the principal amount of any Series 2021 Bond tendered or deemed tendered to the Tender Agent for purchase, plus accrued and unpaid interest thereon to the date of purchase; **provided, however,** if the date of purchase is an interest payment date, then the Purchase Price shall not include accrued and unpaid interest, which shall be paid to the Holder of record on the applicable Record Date;

**“Remarketing Agent”** means the person appointed to serve as the Remarketing Agent in connection with the remarketing of the Series 2021 Bonds which are Option Bonds tendered or deemed to have been tendered for purchase;

**“Remarketing Agreement”** means, with respect to Series 2021 Bonds which are Option Bonds, an agreement by and among the Authority, the Institution and the Remarketing Agent relating to the remarketing of such Series 2021 Bonds;

**“Series 2021 Bonds”** means the Bonds authorized by Article II of this Series 2021 Resolution;

**“Series 2021 Resolution”** means this Series 2021 Resolution Authorizing EHS Towers LLC – CUNY Student Housing Project Subordinate Revenue Bonds, Series 2021 In An Amount Not Exceeding \$19,000,000, adopted May 19, 2021;

**“Tender Agent”** means the person appointed pursuant to this Series 2021 Resolution to serve as the Tender Agent in connection with the tender of Series 2021 Bonds which are Option Bonds.

(3) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include firms, associations and corporations, including public bodies, as well as natural persons.

(4) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder,” and any similar terms, as used in this Series 2021 Resolution, refer to this Series 2021 Resolution.

**SECTION 1.03. Authority for this Series 2021 Resolution.** This Series 2021 Resolution is adopted pursuant to the provisions of the Dormitory Authority Act (being Chapter 524 of the Laws of 1944 of the State, as amended, and constituting Title 4 of Article 8 of the Public Authorities Law, as amended) (the “Act”) and the Resolution.

## ARTICLE II

### Authorization, Terms and Issuance of Series 2021 Bonds

**SECTION 2.01. Authorization of Series 2021 Bonds, Principal Amount, Designation and Series.** A Series of Bonds entitled to the benefit, protection and security of the Resolution is hereby authorized to be issued in an aggregate principal amount not to exceed \$19,000,000. Such Series of Bonds shall be designated as and shall be distinguished from the Bonds of all other Series by the title “EHS Towers LLC – CUNY Student Housing Project Subordinate Revenue Bonds, Series 2021” pursuant to and subject to the terms, conditions and limitations established in the Resolution and this Series 2021 Resolution.

**SECTION 2.02. Purposes.** The purposes for which the Series 2021 Bonds are being issued are to (i) refinance or refund all or a portion of the debt service due and payable for up to three years on the Outstanding Senior Bonds, (ii) pay all or a portion of the interest accruing on the Series 2021 Bonds (as hereinafter defined) for up to three years, (iii) fund the Debt Service Reserve Fund to its requirement, including to pay the premium of any Reserve Fund Facility, and (iv) pay the Costs of Issuance of the Series 2021 Bonds. The Project is as described in Exhibit A to the Loan Agreement.

**SECTION 2.03. Delegation of Authority.** There is hereby delegated to any Authorized Officer of the Authority, subject to the limitations contained herein and in the Resolution and the Act, the power with respect to the Series 2021 Bonds to determine and carry out the following:

(a) The sale of the Series 2021 Bonds at public or private sale; **provided, however,** that in the case of a private sale the purchase price paid by the purchasers thereof shall not be less than ninety-five percent (95%) of the principal amount of the Series 2021 Bonds so sold; the approval of the terms and the publication of an Official Statement describing the Series 2021 Bonds; the publication of a notice of sale; and the execution of a contract or contracts to purchase at public or private sale on behalf of the Authority;

(b) The principal amount of Series 2021 Bonds to be issued; **provided, however,** that the aggregate principal amount of Series 2021 Bonds issued shall not exceed \$19,000,000;

(c) The date or dates, maturity date or dates, and principal amount of each maturity of the Series 2021 Bonds, the amount and date of each Sinking Fund

Installment, if any, and which Series 2021 Bonds are to be Serial Bonds or Term Bonds, if any or the method of determining any or all of the foregoing, and any other terms regarding the payment of the principal amount of the Series 2021 Bonds; **provided, however**, that no Series 2021 Bonds shall mature later than the August 1 following the nineteenth anniversary of the issuance of the Series 2021 Bonds;

(d) The interest rate or rates of the Series 2021 Bonds, the date or dates from which interest on the Series 2021 Bonds shall accrue and the first interest payment date for all or any portion of the Series 2021 Bonds; **provided, however**, that the true interest cost (as determined by an Authorized Officer of the Authority, which determination shall be conclusive) on the Series 2021 Bonds, if on the Issue Date they are fixed rate bonds, shall not exceed ten percent (10.0%) per annum;

(e) The denomination or denominations of and the manner of numbering and lettering the Series 2021 Bonds;

(f) The Series 2021 Bonds which are Book Entry Bonds, if any, and the Depository therefor;

(g) The Trustee and the Paying Agent or Paying Agents and, subject to the provisions of Sections 3.01 and 8.02 of the Resolution, the place or places of payment of the principal, Sinking Fund Installments, if any, or Redemption Price of and interest on the Series 2021 Bonds; **provided, however**, that such Paying Agent or Paying Agents may be appointed by resolution adopted prior to authentication and delivery of the Series 2021 Bonds in accordance with the provisions of Section 8.02 of the Resolution;

(h) The Redemption Price or Redemption Prices, if any, and, subject to Article IV of the Resolution, the redemption terms, if any, for the Series 2021 Bonds; **provided, however**, that the Redemption Price of Series 2021 Bonds subject to redemption at the election or direction of the Authority may be equal to a percentage of the principal amount of the Authorized Bonds to be redeemed, plus accrued interest thereon to the date of redemption, and may alternatively be determined by a formula which is intended to “make whole” the Holders of such Authorized Bonds by setting a Redemption Price based on the expected rate of return to such Holders;

(i) The form of the Series 2021 Bonds and the form of the Trustee’s certificate of authentication thereon;

(j) Whether all or a portion of the Series 2021 Bonds shall be Variable Interest Rate Bonds or Option Bonds, the initial interest rate at which such Series 2021 Bonds shall bear interest, the manner of determining the subsequent interest rate or rates thereon, the date from which interest on such Series 2021 Bonds shall accrue and the first interest payment date therefor; **provided, however**, that the initial interest rate on any such Series 2021 Bonds shall not exceed ten percent (10.0%) per annum;

(k) The Minimum Interest Rate (if any) and the Maximum Interest Rate (if any) for the Series 2021 Bonds which are Variable Interest Rate Bonds or Option Bonds;

(l) The provisions regarding tender for purchase of the Series 2021 Bonds which are Option Bonds and for payment of the Purchase Price thereof;

(m) The Record Date for the Series 2021 Bonds if the Record Date is other than the fifteenth (15th) day of the calendar month next preceding an interest payment date for such Series 2021 Bonds;

(n) The Tender Agent and the Remarketing Agent;

(o) Provisions for the sale or exchange of the Series 2021 Bonds and for the delivery thereof;

(p) For all Series 2021 Bonds other than those denoted as federally taxable, covenants as shall be necessary to maintain the exclusion of interest on such Series 2021 Bonds from gross income for federal income tax purposes;

(q) If applicable, the provisions relating to a municipal bond insurance policy for all or a portion of the Series 2021 Bonds and a Liquidity Facility for any Option Bonds, which may provide that the providers thereof shall have all or any of the rights and remedies of the Holders of the Series 2021 Bonds to which the insurance policy or Liquidity Facility relates and that the related reimbursement obligations shall have all or any of the payment, security and other rights applicable to the Series 2021 Bonds to which such reimbursement obligations relate;

(r) The Debt Service Reserve Fund Requirement for the Series 2021 Bonds;

(s) Directions for the application of the proceeds of the Series 2021 Bonds; and

(t) Any other provisions deemed advisable by an Authorized Officer of the Authority, not in conflict with the provisions hereof or of the Resolution.

Such Authorized Officer shall execute one or more Bond Series Certificates evidencing determinations or other actions taken pursuant to the authority granted herein or in the Resolution, and any such Bond Series Certificate shall be conclusive evidence of the action or determination of such Authorized Officer as to the matters stated therein.

### **ARTICLE III**

#### **Execution and Authentication of the Series 2021 Bonds**

##### **SECTION 3.01. Execution and Authentication of Series 2021 Bonds.**

Pursuant to the provisions of Section 3.03 of the Resolution, the Chairman or other Authorized Officer of the Authority is hereby authorized and directed to execute by his manual or facsimile signature the Series 2021 Bonds in the name of the Authority and the corporate seal (or a facsimile thereof) shall be thereunto affixed, imprinted, engraved or otherwise reproduced thereon. The Secretary or an Assistant Secretary of the Authority is hereby authorized and directed to attest by his manual or facsimile signature the execution of the Series 2021 Bonds.

The Trustee is hereby authorized to authenticate by manual or facsimile signature the Series 2021 Bonds, and deliver the same to or upon the order of the Authority, in such amounts and at such times as the Trustee shall be directed in writing by an Authorized Officer.

**SECTION 3.02. No Recourse on Series 2021 Bonds.** No recourse shall be had for the payment of the principal, Sinking Fund Installments, if any, or Redemption Price of or interest on the Series 2021 Bonds or for any claim based thereon or on this Series 2021 Resolution against any member, officer or employee of the Authority or any person executing the Series 2021 Bonds and neither the members of the Authority nor any other person executing the Series 2021 Bonds of the Authority shall be subject to any personal liability or accountability by reason of the issuance thereof, all such liability being expressly waived and released by every Holder of Series 2021 Bonds by the acceptance thereof.

## ARTICLE IV

### Application of Proceeds

**SECTION 4.01. Application of Proceeds and Deposit of Moneys.** The Trustee shall apply the proceeds of the sale of the Series 2021 Bonds in accordance with the written directions of any Authorized Officer given pursuant to clause (s) of Section 2.03.

**SECTION 4.02. Allocation of Revenues.** All moneys paid to the Trustee under the Loan Agreement shall be applied in accordance with the Resolution.

## ARTICLE V

### Pledge of Funds

**SECTION 5.01. Pledge of Funds.** There is hereby pledged, as security for payment of the Purchase Price of Series 2021 Bonds tendered or deemed tendered for purchase, the rights of the Authority, if any, in and to the proceeds from the remarketing of such Series 2021 Bonds, all amounts obtained under and pursuant to any Liquidity Facility in effect with respect to the Series 2021 Bonds and any income or earnings from the investment of such amounts. The pledge made hereby is valid, binding and perfected from the time when the pledge attaches and the moneys pledged hereby shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be valid, binding and perfected as against all parties having claims of any kind in tort, contract or otherwise against the Authority irrespective of whether such parties have notice thereof. No instrument by which such pledge is created nor any financing statement need be recorded or filed. Any fund or account established pursuant to this Series 2021 Resolution for the payment of the Purchase Price of such Series 2021 Bonds and all moneys and investments held therein, shall be held in trust solely for the benefit of the Holders of such Series 2021 Bonds, shall be applied solely to the payment of such Purchase Price and no Holder of any other Bonds shall have any claim or right therein or thereto.

The obligation of the Authority to pay the Purchase Price of Series 2021 Bonds tendered or deemed tendered for purchase shall be a special obligation of the Authority payable solely from the moneys pledged hereby to the payment thereof.

## ARTICLE VI

### AUTHORIZATION TO EXECUTE AND DELIVER RELATED DOCUMENTS

**SECTION 6.01. Approval and Execution of Loan Agreement.** Any Authorized Officer of the Authority is hereby authorized and directed to execute and deliver a Loan Agreement in the name of and on behalf of the Authority, in such form and containing such terms and conditions as may be approved by said Authorized Officer, said execution being conclusive evidence of such approval.

**SECTION 6.02. Approval and Execution of Purchase Contract; Sale of Bonds.** Any Authorized Officer of the Authority is hereby authorized and directed to determine the terms and purchase price of the Series 2021 Bonds within the limitations set forth in this Series 2021 Resolution and to execute and deliver a purchase contract in the name of and on behalf of the Authority, in such form and containing such terms and conditions as may be approved by said Authorized Officer, said execution being conclusive evidence of such approval. Any Authorized Officer of the Authority is also authorized to sell the Series 2021 Bonds at negotiated sale and is further authorized and directed to make such distribution to prospective purchasers of all documents as he shall deem necessary or desirable to effect a sale of the Series 2021 Bonds.

**SECTION 6.03. Approval and Distribution of Preliminary Official Statement.** The distribution in connection with the sale of the Series 2021 Bonds of a Preliminary Official Statement in such form, with such changes, insertions and omissions as an Authorized Officer deems advisable, is hereby authorized.

**SECTION 6.04. Execution and Delivery of Official Statement.** Any Authorized Officer is also authorized to execute and deliver, on behalf of the Authority, a final Official Statement relating to the Series 2021 Bonds to be dated as of the date of the sale of the Series 2021 Bonds with such changes, insertions and omissions to the Preliminary Official Statement as said Authorized Officer deems advisable, and any amendments or supplements thereto which may be necessary or desirable. After execution, any Authorized Officer of the Authority is hereby authorized to deliver to the purchasers of the Series 2021 Bonds an executed copy or copies of such Official Statement and any amendments or supplements thereto.

**SECTION 6.05. Approval and Execution of Leasehold Mortgage and Ground Lease.** Any Authorized Officer of the Authority is hereby authorized to execute an amendment to the Ground Lease between the Authority and the Institution in the name and on behalf of the Authority, in such form and containing such terms and conditions as may be approved by said Authorized Officer, said execution being conclusive evidence of such approval.

**SECTION 6.06. Approval and Execution of Support Agreement.** Any Authorized Officer of the Authority is hereby authorized to execute a Support Agreement



between the Authority and CUNY in the name and on behalf of the Authority in such form and containing such terms and conditions as may be approved by said Authorized Officer, said execution being conclusive evidence of such approval.

**SECTION 6.07. Execution and Delivery of Documents.** Any Authorized Officer of the Authority is hereby authorized to execute and deliver, in the name and on behalf of the Authority, any and all documents and instruments, and to do and cause to be done any and all acts and things, said Authorized Officer deems necessary or advisable in connection with the offering, sale and issuance of the Series 2021 Bonds and to carry out the transactions contemplated by this Series 2021 Resolution.

## ARTICLE VII

### Miscellaneous

**SECTION 7.01. When Effective.** The Series 2021 Resolution shall become effective immediately upon its adoption.

**SECTION 7.02. Notices.** All notices, consents and approvals required to be given or authorized to be given pursuant to the Loan Agreement and the Resolution shall be in writing and shall be sent by registered or certified mail to the addresses shown below:

- (1) As to the Institution:
- (2) As to the Trustee:
- (3) As to the Authority:
- (4) As to the Bond Insurer:
- (5) As to CUNY:

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