### FINANCE COMMITTEE AGENDA

Date: October 8, 2020

Time: 10:00 am

Location: Virtual Meeting

> I. **Call to Order** Freda Wang

Adoption of the June 11, 2020 Minutes

II. **Finance Update** John Ulberg James Cassidy

> Michline Farag Krista Olson

Linda DeHart 2020 Series Bonds Action Item Pauline Lok

Authorizing and approving the adoption of the resolution entitled "New York City Health and Hospitals Corporation Health System Bonds, 2020 Series Resolution" providing for the issuance of a series of Health System Bonds (the "2020 Series Bonds") in (i) a principal amount not exceeding \$100 million for new money purposes to finance the costs of various capital projects and expenditures at the New York City Health and Hospitals Corporation (the "Corporation"), plus (ii) a principal amount not exceeding \$340 million for the refunding of all or a portion of the 2008 Series Bonds and the 2010 Series Bonds.

IV. Amended and Restated General Resolution Action Item

Authorizing and approving the adoption of the resolution entitled "Amended and Restated General Resolution of the New York City Health and Hospitals Corporation" providing for changes that modernize the General Resolution.

V. **Old Business** Freda Wang

**New Business** VI.

VII. Adjournment

Linda DeHart

Pauline Lok

### **MINUTES**

### Finance Committee Meeting Date: June 11, 2020

### **Board of Directors**

The meeting of the Finance Committee of the Board of Directors was held on June 11, 2020 virtually with Freda Wang presiding as Chairperson.

#### **ATTENDEES**

### **COMMITTEE MEMBERS**

Freda Wang, José Pagán, Mitchell Katz, Sally Hernandez-Piñero, Feniosky Pena-Mora

### **OTHER ATTENDEES**

Unknown

### **H+H STAFF**

- J. Cassidy, Director, Central Finance
- F. Covino, Vice President, Corporate Budget
- L. DeHart, Senior Assistant Vice President, Corporate Reimbursement Services
- M. Farag, Assistant Vice President, Corporate Budget
- C. Hercules, Chief of Staff, Board of Directors
- M. Karlin, Chief Revenue Officer, Revenue Cycle Services
- K. Olson, Senior Assistant Vice President, Corporate Budget
- M. Thompson, Associate Director, Central Finance
- J. Ulberg, Senior Vice President, Central Finance
- J. Weinman, Corporate Comptroller, Central Finance

CALL TO ORDER FREDA WANG

Ms. Freda Wang called the meeting to of the New York City Health + Hospitals Board of Directors Finance Committee Meeting to order at 12:02 p.m.

Upon motion passed and duly seconded the minutes of Finance Committee meeting held on May 14, 2020 was adopted.

Ms. Wang then deferred to the Chief Financial Officer Mr. John Ulberg to provide a financial update discussing the impact of COVID-19 on finances of New York City Health + Hospitals.

#### SENIOR VICE PRESIDENT'S REPORT

**JOHN ULBERG** 

Mr. John Ulberg commenced his presentation by thanking the staff for their extraordinary work and commitment during the last two months.

Mr. Ulberg provided an overview of the agenda. James Cassidy will present an update on the FEMA \$1.1B claim. Linda DeHart will present on the Federal CARES act and two additional allocations expected. We are targeting to end the fiscal year around \$600M cash-on-hand. Michline Farag will talk about our FY21 budget phases and Matthew Siegler will discuss our strategies for bringing in new services, changing business operations, and working with facilities. John will also discuss Medicaid enrollment increases of upwards of 6%. Marji Karlin will provide an overview of our revenue strategies with our insurance partners and other strategies revenue cycle is implementing to streamline operations. Finally, John and Krista Olson will provide an update on Test and Trace.

Mr. Ulberg continued by providing an overview of the revenue decline in the post-COVID period. H+H revenues are down around \$23M per week, that includes both inpatient and outpatient volume and revenue changes. Though we are concerned about the revenue loss, we are hopeful to recoup lost revenue in federal CARES act funding.

Mr. Cassidy provided an overview of the H+H FEMA claim that was submitted for \$650M in March (over \$500M of that was approved). After this submission, our costs were steadily increasing due to staffing needs, alternative sites, equipment needs, testing and lab costs, etc. therefore, the submitted a revised claim with an increased amount totaling \$1.1B. Currently, there are no reimbursements from these claims but are optimistic this will happen soon based on conversations with the State.

Mr. Cassidy moved on to provide an update on Federal Relief. Between the CARES Act and Stimulus 1.5 the provider relief fund is around \$175B, of which just under \$75M has been allocated. It was announced that two additional pools would be made available. The first is another hot zone allocation of \$10B and the second is an additional \$10B for safety net providers.

Mr. Cassidy moved on to provide an overview of the FY20 cash projection. May closed out with a little over \$400M cash-on-hand and we expect to close out the year near \$600M, which is dependent on cash flow from FEMA, Federal Relief, and the \$800M supplemental Medicaid payment that is sitting with the State. We expect \$350M from the State in the UPL payment.

Ms. Farag provided an overview of the FY21 budget phases. The first phase is establishing the baseline budget for FY21 which is based on the FY20 budget. The second phase is layering in the COVID financial impact and other major externalities. The third phase is the post-COVID recovery and new service opportunities.

Mr. Siegler elaborated on the budget strategy by describing the four key areas the third budget phase will focus on which is to grow revenue and control costs. The first is to improve surgical efficiency and margin and grow surgical volume. The second is to revise the ambulatory care model to account for telehealth and volume trends. The third is to create service partnerships across facilities. The fourth is to succeed in value based payment by growing primary care patients, keeping business in the system, and hitting managed care quality measures. In addition, there are opportunities that depend on State policy related to MRT II.

Mr. Ulberg reported that the Medicaid and Essential Plan attribution increased during the COVID period for H+H's major payers, MetroPlus and Healthfirst.

Ms. Karlin reviewed the insurance settlement approach that was the result of a Department of Financial Services circulate letter that directed plans to expedite payment of hospital claims and work with hospitals to provide cash flow liquidity. We sent a letter to each of our major payers requesting an advance and to work with us on a plan to close out ongoing issues related to claims processes.

Ms. Karlin continued by detailing the revenue cycle services path forward in the post-COVID surge period. For over a year they have been working to establish key guiding principles to re-envision revenue cycle in the areas of being patient friendly, efficient, standardized, having clear lines of accountability, and leveraging automation.

Mr. Ulberg continued by reporting on the City's Test and Trace (T2) MOU funds flow proposal between H+H, OMB, and other city agencies. The various revenue streams would flow into a single H+H/T2 account which will be a discrete account for all T2 funds to be deposited. Then an interagency work group facilitated by OMB will make all funding/resource allocation decisions and monitor the spending. The workgroup will have the authorization to reduce program or request additional funding from City Hall if no other Federal resources are identified or available. From there the funds will be distributed to lab testing, the tracing program, the isolation program, and other expenses related to public awareness or program administration.

Ms. Olson detailed what the T2 program is. The goal of the program is to safely re-open NYC by reducing the spread of COVID-19 and ensuring that those with confirmed COVID-19 are both medically monitored and able to safely separate. There are three aspects to the program. The first is testing, which will be made available to New Yorkers at a goal of 50,000 tests given per day by August. The second is tracing, which is a multipronged contract tracing approach that will allow for prompt identification, notification, and monitoring of COVID positive persons. The third is isolation, which will instruct confirmed COVID patients to isolate at home as long as it is safe to do so and if a patient cannot self-isolate at home to provide alternative housing in the form of hotels.

Ms. Olson elaborated further on the MOU between OMB, H+H, DOHMH, and other city agencies as well as the interagency work group. The goal is to secure federal funding before relying on other sources.

Ms. Wang opened up for questions from the members.

Mr. Pagán asked if we will get an increase in Medicaid funding this year per person.

Mr. Ulberg said there are many things H+H is doing to work closely to get funds flowing with the plans including getting a better understanding of the capitated payments, reaching out to the plans to settle on historical claims issues, etc. However, there is still concern over the cost of testing and the burden this will have on the plans.

Ms. Karlin further elaborated by stating that Medicaid enrollment was mostly flat for the year and then during COVID we saw nearly 23K increase in patients.

Mr. Pagán asked if for T2 will be bring employers into contract tracing and if there is an opportunity there.

Ms. Olson replied saying that OMB is modeling the overall impact that COVID is having on the city's economic outlook and is making sure that neutral third parties are weighing in to provide broader insights on the overall economic needs of the city. Other than that, there is not an explicit connection to employers.

Ms. Hernandez-Piñero asked if H+H corporate and facilities have separate cash flows.

Mr. Ulberg replied that it is a system-wide metric but that it is a goal to have the facilities be financially independent.

Dr. Katz added that it is important to aggregate because not all of the hospitals have the same patient mix, volume, etc. so we would not want to standardize budgets across facilities.

Ms. Hernandez-Piñero asked if T2 funding for treatment will be an advance or reimbursement.

Mr. Ulberg replied that our model assumes reimbursement for actual treatment and cost of administering the test.

Mr. Peña-Mora thanked the finance team for their work and efforts to explore all the sources of revenues, available relief, etc. so that we could maintain the financial stability of the system.

Ms. Wang asked if the \$400M cash stance is where we expect to be at year end.

Mr. Ulberg replied that we are confident in the number.

Mr. Cassidy concurred with Mr. Ulberg.

Ms. Wang asked if the UPL payment we expect to receive will change the way we receive the payment going forward.

Mr. Ulberg said it will change the flow of the payments. Previously, they came to us in a lump sum payment but we are trying to build those payments into the base of our premium instead so we will get paid for every unit of service or it gets billed into our capitation payments from MetroPlus and Healthfirst.

Ms. Wang asked if this will happen after the payment is made.

| Mr    | <b>Ulberg</b> | his  | that is | the  | hone | hased | Λn  | MRT   | 11  |
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- Ms. Wang asked if on the insurance settles, we are just taking the opportunity to clean out historical amounts that are owed to us.
- Mr. Ulberg replied that yes that is our strategy.
- Ms. Wang asked if for the \$800M CDC grant for T2 was already deposited into the T2 account.
- Mr. Ulberg replied saying yes but there is a decision to be made about when to pull the money into the account due to penalties associated with timing of the payment.

ADJOURNMENT FREDA WANG

There being no further business the meeting was adjourn at 1:09 p.m.





# NYC Health + Hospitals October 8, 2020

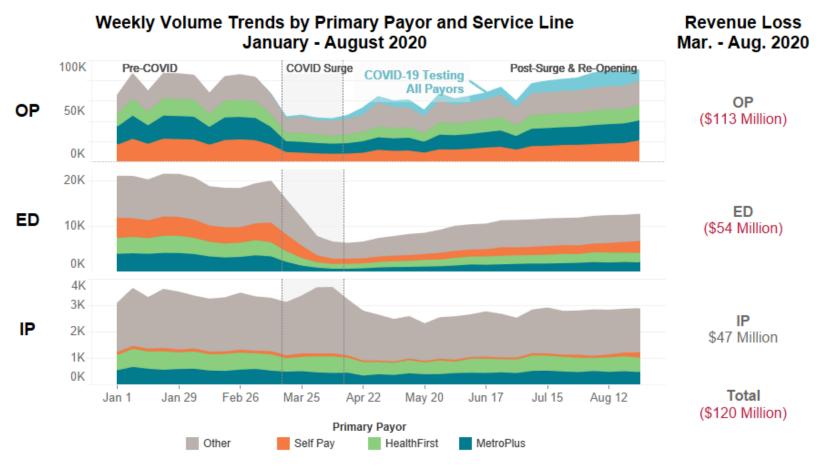


### **FY20 Year-end Close-out Highlights**

- Closing Cash Balance of \$688M, beating our revised COVID-19 impacted target of \$600M.
- Achieved a positive Net Budget Variance at fiscal year end, beating the budget by 2%.
- Patient Care Receipts came in \$166M higher than planned, due to the higher acuity of the COVID patients as well as Revenue Cycle and other targeted efforts improving overall collections.
- Overall, Transformation Plan continued to stay on track despite COVID-19. We met or exceeded our target in:
  - Revenue Cycle (\$286M)
  - 340B pharmacy revenue (\$54M)
  - Enrolling the uninsured (\$60M)
- Key Investments made since FY19:
  - RNs (+116) and other Nursing positions (+138) to ensure quality patient care;
  - Targeted clinical growth initiatives to meet patient care needs while ensuring financial sustainability;
  - Stabilizing and sustaining Revenue Cycle Operations (+83) to enhance and ensure billing integrity.
  - NYSNA/Doctors' Council contract agreements, including COLA increases



### **COVID Utilization and Revenue Impact**



- During the COVID surge revenue earnings were an estimated 13% above baseline due to enhanced rates for COVID patients, off setting impact of OP volume losses. In the Post COVID period, revenue has dipped 17% below baseline.
- An estimated 74% of all revenue loss through August comes from subcap lines of business and may be recoupable in the risk pool
- In the current re-opening period, the estimated weekly revenue loss is projected to be \$15M representing an improvement of 40% over weekly losses in the immediate post COVID period.



# **Managing Risk + Opportunity**

### Risks

- Uncertain State finances (\$14.5B deficit) and potential Medicaid reductions
- Potential COVID second surge/revenue loss
- 340B policy changes

### Opportunities

- DSH cut delay
- MetroPlus and HealthFirst risk pool payments



# **FY21 Cash Projection**

- We anticipate ending September with approximately \$650M cash-on-hand (30 days).
  - This includes the receipt of nearly \$225M in DSH funds.
- The system is currently projected to close October with approximately \$400M (18 days).
- We are working with the State and federal government to expedite additional revenues, including DSH and FEMA funds, to help us maintain a stable cash position to withstand a second COVID surge.



# Medicaid and Essential Plan Attribution Has Continued to Increase in the Post-Surge Period

- The pandemic led to increased unemployment, resulting in more of the population qualifying for Medicaid
- April 1 the State suspended auto-disenrollment for members timing out of coverage
- Phone enrollment has significantly increased for each plan
- Members are not required to send proof of their documentation before eligibility determination

| Line of Business              | Jan     | Feb     | Mar     | Apr     | May     | Jun     | Jul     | Jan-Jul<br>Increase |
|-------------------------------|---------|---------|---------|---------|---------|---------|---------|---------------------|
| MetroPlus (data as of 9/25)   |         |         |         |         |         |         |         |                     |
| Medicaid                      | 333,823 | 332,701 | 332,666 | 338,817 | 347,904 | 361,898 | 370,420 | +36,597             |
| Essential Plan                | 78,207  | 78,295  | 79,171  | 80,039  | 82,128  | 83,180  | 83,671  | +5,464              |
| Healthfirst (data as of 9/24) |         |         |         |         |         |         |         |                     |
| Medicaid                      | 82,701  | 82,541  | 82,485  | 83,319  | 85,051  | 87,806  | 89,370  | +6,669              |
| Essential Plan                | 14,181  | 14,206  | 14,274  | 14,181  | 14,355  | 14,634  | 14,732  | +551                |



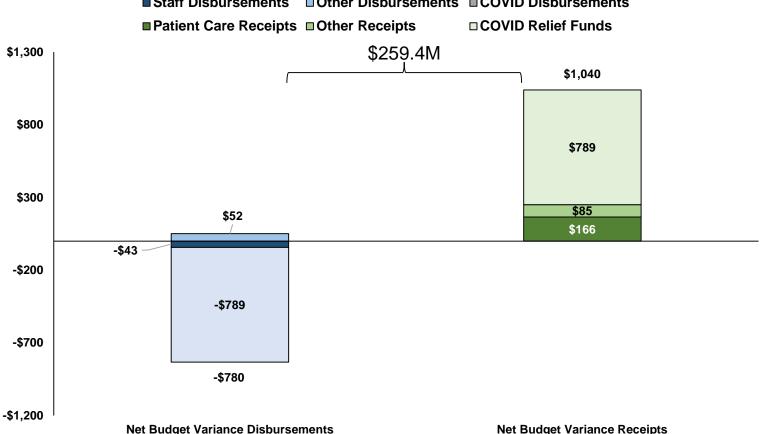
# Financial Performance FY 2020



## FY20 Receipts vs. Disbursements

- Receipts, including Federal Relief Funds, exceeded budget by \$1B while disbursement actuals were over budget by \$780M for a positive net budget variance of \$259.4M.
- COVID costs of \$788.7M paid in FY20 were offset using Federal Relief receipts.
- Patient Care receipts came in \$166M better than projected with I/P revenue exceeding planned by 11% due to COVID cases, offsetting O/P direct patient care revenue losses as well as risk payments coming in lower than planned.

  Staff Disbursements Other Disbursements COVID Disbursements



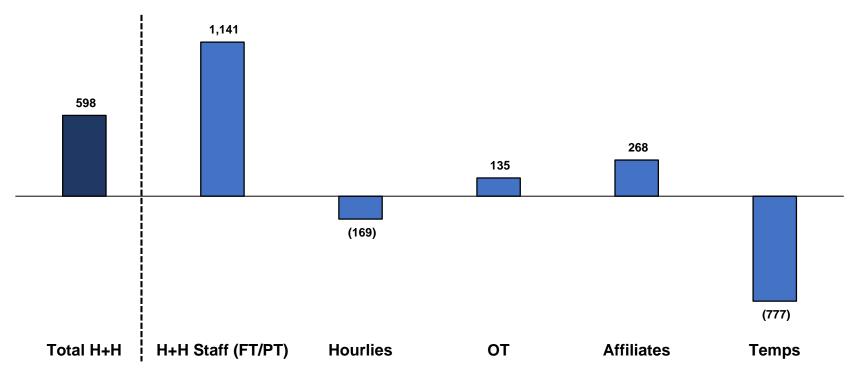


# **Expense** FY 2020



# H+H Global Staff Growth Has Shifted From Temps to Full-Time

- Global Full Time Equivalents (GFTEs) grew by 598 through FY20,
  - continuing to move away from temp hires, FTEs were converted from temporary staff to Full-Time,
  - OT went up covering EVS, Aides and Orderlies and COVID surge work,
  - Affiliates increased due to funded clinical business plans, Kings County hospital staff shift from H+H payroll to Affiliates and emergency and radiology areas.



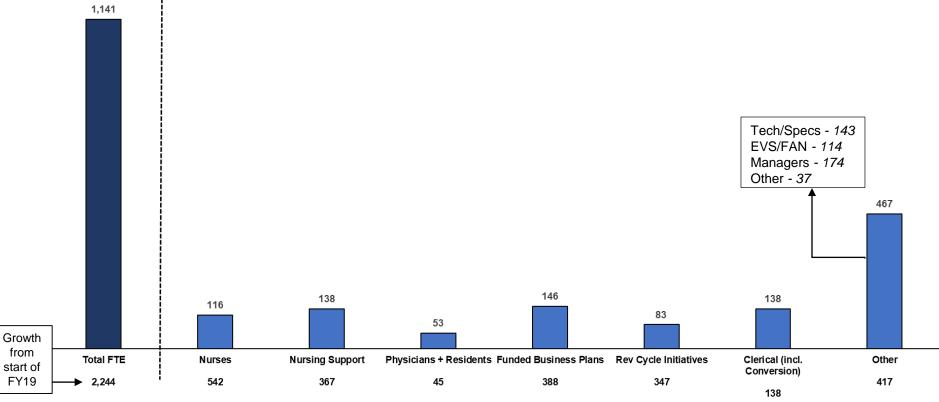
<sup>\*</sup>The staff hired under the T2 Initiative is not included (1,216 FTEs)

<sup>\*\*</sup>Temporary staff hired in response to the COVID effort are not included.



# H+H Recalibrating Staffing Mix to Support Clinical and Revenue Generating Investments and Temp Conversions

- H+H staff growth in FY20 is in line with NYC H+H Strategic Direction, with significant investments in clinical and revenue cycle staff.
- In Nursing, we invested in stabilizing nurse staffing workloads by adding 542 Nurses and 367 Nursing Support in 24 months period.
- Significant investments were made to right-size revenue cycle staffing in FY 19 and 20. We are developing volume and productivity driven staffing models for each workstream to protect the investments already made and to ensure adequate and appropriate staffing levels moving forward.



<sup>\*</sup>The staff hired under the T2 Initiative is not included (1,216 FTEs)

<sup>\*\*</sup>Managerial and supervisory titles include clinical leadership and executive leadership established during COVID surge.



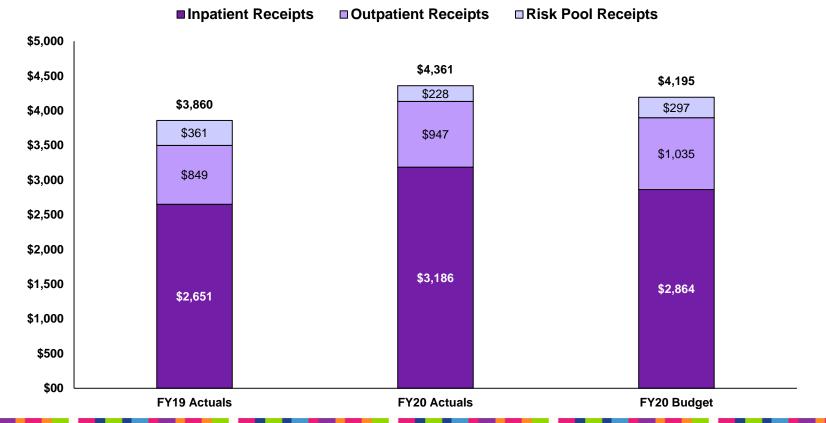
# Revenue FY 2020



### Revenue

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- FY20 patient care revenue is \$500M higher than FY19 actuals.
- Patient revenue improvements can be attributed to a combination of increased patient acuity including COVID patients, increased Medicare rates, and successfully implemented billing cycle initiatives.
- Case Mix Index (CMI) is up by 15% from 1.14 in FY19 to 1.31 in FY20





# **FY21 Budget**



# H+H FY21 Strategic Priorities

- Lead Test & Trace Program (T2)
- Improve OR efficiency and grow OR volume and revenue
- Enhance VBP via primary care panels and leakage reduction
- Patient care revenue growth in managed care and revenue cycle
- Nursing and physician workforce improvements
- Enhance and optimize ExpressCare
- Enhance data and analytics governance
- Invest in pharmacy inventory management system and enhance retail pharmacies
- Invest in special populations, specifically behavioral health, foster care, homeless, and justice-involved
- Improve in quality of care



### Accomplishments at the End of FY21

- City/State Medicaid Funding Initiatives
  - In partnership with State/MCOs, H+H will receive enhanced rates via UPL Conversion proposal
  - Establish H+H as a Center of Excellence for behavioral health
- Revenue Cycle and Managed Care
  - Financially counsel over 80K self-pay patients and enroll them in either NYC Care or insurance
  - Conclude contract rate negotiations with Emblem, Beacon, Cigna, and Wellcare Medicare
  - Reduce administrative denials by at least 5%
- Growth and Service Line Improvements
  - Improve Perioperative workflow by establishing staffing models and standardizing pre-op workflow, in addition to other measures, which will translate to an overall 10% increase in volume.
  - Standardize and centralize H+H Transfer Protocols to increase patient retention and improve billing
  - Execute on business plans to improve care in ED, IP, and Amb Care settings to expand revenue generating services
- Value Based Payment Initiatives
  - PCP/Membership panel reconciliation and target 17,374 net new members in risk contracts.
  - Improve CRG scores through outreach, care gap tool, and improved coding and documentation
  - Convert 1,500 eligible MetroPlus Medicaid members into the HIV SNP or HARP products
- COVID Centers of Excellence
  - Gotham has pledged to open three new facilities which will provide comprehensive outpatient primary care services to support patients recovering from COVID-19.



# FEMA Update/Federal Relief



### **COVID-19 Federal Relief**

- H+H has paid over \$1.0B on COVID-19 through August 31. Current commitments are about \$1.6B.
- We received \$199M FEMA advance and expect to submit another drawdown shortly.
- A second drawdown package for FEMA has been prepared and we have requested an expedited review for payment.
- To date, H+H has received \$1.2B thus far, largely from the Hot Zone (\$754M), Safety-Net (\$359M), and General Allocation Provider Relief Fund (\$69M)
- There are still unallocated Provider Relief Funds from the initial \$175B CARES Act Allocation. We are awaiting further guidance on the distribution methodology as well as a possible future relief bill.
  - We continue to believe that existing, unallocated funds and any new funds should prioritize high-Medicaid and safety-net hospitals as well as State/local relief in order to avoid future funding cuts to H+H from these entities



## **Test and Trace**



### **Test and Trace Financial Update**

- Through August, H+H paid out approximately \$75 million of an anticipated \$280 million of committed expenses.
- The City has provided H+H with sufficient funding to cover expenses to date.
- The City is carefully monitoring the funds available for Test and Trace as additional programming needs arise, such as testing expenses related to the reopening of schools.
- No additional federal funds beyond the ELC grant and FEMA have been announced.

### RESOLUTION

Authorizing and approving the adoption of the resolution entitled "New York City Health and Hospitals Corporation Health System Bonds, 2020 Series Resolution" providing for the issuance of a series of Health System Bonds (the "2020 Series Bonds") in (i) a principal amount not exceeding \$100 million for new money purposes to finance the costs of various capital projects and expenditures at the New York City Health and Hospitals Corporation (the "Corporation"), plus (ii) a principal amount not exceeding \$340 million for the refunding of all or a portion of the 2008 Series Bonds and the 2010 Series Bonds.

WHEREAS, in accordance with the New York City Health and Hospitals Corporation Act, New York Unconsolidated Law Section 7381 *et seq.*, and pursuant to the resolution entitled "Health System Bonds General Resolution" adopted by the Corporation on November 19, 1992, as amended by resolution adopted on December 19, 1996 (hereinafter referred to as the "General Resolution"), which authorizes the issuance from time to time of Health System Bonds and notes of the Corporation in one or more series pursuant to a series resolution authorizing such series; and

WHEREAS, on June 15, 1993, the Corporation issued its Health System Bonds, 1993 Series A in the aggregate principal amount of \$550,000,000 (the "1993 Series Bonds"), which were refunded entirely with the issuance on March 18, 1999 of its Health System Bonds, 1999 Series A in the aggregate principal amount of \$235,700,000 (the "1999 Series Bonds") and the issuance of on January 15, 2003 of its Health System Bonds, 2003 Series A in the aggregate principal amount of \$245,180,000 (the "2003 Series Bonds"); and

WHEREAS, on April 10, 1997, the Corporation issued its Health System Bonds, 1997 Series in the aggregate principal amount of \$320,000,000 (the "1997 Series Bonds"), which were refunded entirely with the issuance on July 25, 2002 of its Health System Bonds, 2002 Series A-H in the aggregate principal amount of \$590,500,000 (the "2002 Series Bonds") that both refunded the 1997 Series Bonds and provided new money funds to finance certain capital projects; and

WHEREAS, on August 21, 2008, the Corporation issued its Health System Bonds, 2008 Series A in the aggregate principal amount of \$268,915,000 (the "2008 Series A Bonds") and on September 4, 2008, the Corporation issued its Health System Bonds, 2008 Series B, C, D, and E in the aggregate principal amount of \$189,000,000 (the "2008 Series B, C, D, and E Bonds", and, together with the 2008 Series A Bonds, the "2008 Series Bonds") that the 2008 Series Bonds refunded the remaining \$346,025,000 of the 2002 Series B, C, D, E, F, G, and H Bonds and provided new money funds to finance certain capital projects; and

WHEREAS, on October 26, 2010, the Corporation issued its Health System Bonds, 2010 Series A in the aggregate principal amount of \$510,460,000 (the "2010 Series Bonds"). The 2010 Series Bonds refunded the remaining \$199,715,000 of the 1999 Series A Bonds, and refunded \$142,315,000 of the 2002 Series A Bonds (with \$11,905,000 of the 2002 Series A Bonds with maturity in 2011, 2012, and 2013 remained un-refunded); and provided new money funds to finance certain capital projects; and

**WHEREAS**, on March 28, 2013, the Corporation issued its Health System Bonds, 2013 Series A in the aggregate principal amount of \$112,045,000 (the "2013 Series Bonds"). The 2013 Series Bonds refunded the remaining \$111,810,000 of the 2003 Series A Bonds, and refunded \$30,675,000 of the 2008 Series A Bonds that matures in 2014 and 2015; and

WHEREAS, the General Resolution permits the issuance by the Corporation of Additional Bonds constituting Parity Indebtedness, as those terms are defined in the General Resolution, on a parity with the 1993 Series Bonds, the 1997 Series Bonds, the 1999 Series Bonds, the 2002 Series Bonds, the 2003 Series Bonds, the 2010 Series Bonds, and the 2013 Series Bonds; and

WHEREAS, the Board of Directors of the Corporation has determined that it is necessary and desirable to authorize and issue pursuant to the General Resolution a series of bonds, as Additional Bonds constituting Parity Indebtedness under the General Resolution, on a parity with the Health System Bonds to provide funds to carry out the purpose set forth in the General Resolution; and

**WHEREAS**, the overall management of the financing and refinancing of the Health System Bonds will be under the direction of the Senior Vice President, Finance and Senior Assistant Vice President, Debt Finance/Corporate Reimbursement Services.

### **NOW THEREFORE**, be it

**RESOLVED**, that the Board of Directors of the Corporation hereby authorizes the adoption of the resolution entitled "New York City Health and Hospitals Corporation Health System Bonds, 2020 Series Resolution" providing for the issuance of a series of Health System Bonds in (i) a principal amount not exceeding \$100 million for new money purposes to finance the costs of various capital projects and expenditures at the Corporation, plus (ii) a principal amount not exceeding \$340 million for the refunding of all or a portion of the 2008 Series Bonds and the 2010 Series Bonds.

### EXECUTIVE SUMMARY Health System Bonds, 2020 Series Resolution

### **Background:**

Using the structure created under the General Resolution, to be amended and restated pursuant to separate resolution presented to the Board of Directors in conjunction with this one, the proposed resolution the Health System Bonds, 2020 Series Resolution ("2020 Series Resolution") authorizes the Corporation to issue bonds not exceeding \$100 million for new money purposes to finance, refinance, and reimburse the Corporation for the costs of various projects and expenditures at the Corporation's facilities; and to issue bonds not exceeding \$340 million for the refunding of the 2008 Series Bonds, the 2010 Series Bonds.

### **Purpose:**

The bond proceeds will provide (i) approximately \$100 million of capital funds to finance the Corporation's capital projects, and (ii) approximately \$380 million for the refunding of all or a portion of the 2008 Series Bonds, the 2010 Series Bonds, the capital reserve fund, the cost of issuance, the escrow account and the capitalized interest account, if any.

Terms as to **Initial Placement** Sale of 2020 Series

Approving the 2020 Series Resolution appoints Morgan Stanley & Co. Inc. as lead managing underwriter, and J.P. Morgan Securities, Inc. and Citigroup Global Markets, Inc. as co-senior managing underwriters (the "Managers") Health System Bonds: for the 2020 Series Bonds. The underwriters shall sell the bonds at the price stated in the Certificate of Determination, and the terms of the Purchase Contract.

### **Bond Structure:**

(1) New Money Bonds: The Corporation is considering the option of issuing up to \$100M as tax-exempt fixed rate bonds. (2) Refunding Bonds: The Corporation is also working to refund all or part of the remaining \$66.155M 2008 Series Bonds and \$255.740M 2010 Series Bonds.

### Ancillary **Documents:**

The following related documents are approved by the Board of Directors per the 2020 Series Resolution, which authorizes the following documents:

- **Contract of Purchase**: The Contract of Purchase will contain the terms (1) between the Corporation and underwriters for the sale of the 2020 Series Bonds.
- Tax Regulatory Agreement: The Tax Regulatory Agreement contains (2) the terms between the Corporation and the Trustee and addresses tax code compliance with the Internal Revenue Code of 1986.
- Official Statement: The Official Statement is the marketing and (3) disclosure document for the Corporation's 2020 Series Bonds.
- **(4)** Continuing Disclosure Agreement: The Continuing Disclosure Agreement will contain terms and provisions requiring the Corporation to disclose certain financial and operational information.
- Other agreement related to the issuance of the 2020 Series Bonds prepared in accordance with industry practice and on the advice of the Managers and the Corporation's bond counsel.

### RESOLUTION

Authorizing and approving the adoption of the resolution entitled "Amended and Restated General Resolution of the New York City Health and Hospitals Corporation" providing for changes that modernize the General Resolution.

WHEREAS, the New York City Health and Hospitals Corporation (the "Corporation") has been duly and validly created as a body corporate and politic constituting a public benefit corporation of the State of New York pursuant to the provisions of the New York City Health and Hospitals Corporation Act, McKinney's Unconsolidated Laws, Section 7381 to 7406, as amended (the "Act"); and

WHEREAS, the Corporation, directly and through its subsidiaries, has full power to operate the health system facilities leased from The City of New York and to control and direct expenditures for the provision of health care services; and

WHEREAS, the Corporation deems it necessary and desirable to provide for the issuance from time to time of bonds of one or more series, not limited as to number, in order to obtain financing or refinancing for the acquisition, equipping, renovation, improvement or operation of its Health System (as hereinafter defined) or for its benefit, including related costs whether directly or indirectly incurred; and

WHEREAS, the Corporation has caused HHC Capital Corporation (as hereinafter defined) to be created and has entered into the Master Assignment and the Tri-Party Agreement (both as hereinafter defined) to provide HHC Capital Corporation with sufficient resources to pay the debt service on the Corporation's Bonds (as hereinafter defined) to be issued or incurred under this Resolution and applicable Series Resolutions; and

WHEREAS, this Resolution shall serve to amend and restate the General Resolution adopted by the Corporation on November 19, 1992, as such General Resolution was previously amended by a Series Resolution adopted by the Corporation on December 19, 1996 (collectively, the "Original Resolution"), all in accordance with the provisions of Sections 902, 903, 1001 and 1002 of the Original Resolution, and this Resolution is, and shall constitute, a Supplemental Resolution under the Original Resolution, and an amendment, restatement and replacement in full of the Original Resolution, in that Section 1001 of the Original Resolution provides that the Original Resolution may be amended with the consent of the Owners of at least a majority in principal amount of Bonds Outstanding at the time such consent is given; and

WHEREAS, on the date of issuance of the Corporation's Series 2020 Bonds (as defined herein), and after giving effect to the issuance of the Series 2020 Bonds and the defeasance or redemption on such date of the Corporation's Series 2008A Bonds (as defined herein) and Series

2010A Bonds (as defined herein) that are being refunded with proceeds of the Series 2020 Bonds, the Corporation will have received the consent to the amendment and restatement of the Original Resolution being implemented pursuant to this Resolution of the Owners of in excess of a majority in principal amount of Bonds Outstanding on such date, in that the purchasers of the Series 2020 Bonds shall consent, and shall be deemed to have consented, to such amendment and restatement of the Original Resolution by this Resolution, and such purchasers of the Series 2020 Bonds shall waive, and shall be deemed to have waived, any and all formal procedural requirements for the implementation of amendments to the Original Resolution, including, but not limited to, the requirements for prior notice, written consents, execution, publication, and timing, that might otherwise be required under the Original Resolution in connection with amendments to the Original Resolution; and

**WHEREAS**, the Board of Directors of the Corporation has determined that it is necessary and desirable to approve the proposed changes in the "Amended and Restated General Resolution"; and

### **NOW THEREFORE**, be it

**RESOLVED**, that the Board of Directors of the Corporation hereby authorizes the adoption of the resolution entitled "Amended and Restated General Resolution of the New York City Health and Hospitals Corporation" providing for changes that modernize the General Resolution.

### **EXECUTIVE SUMMARY**

### **Amended and Restated General Resolution**

**Background:** The Corporation finances its capital projects with funds provided by the

City derived from its municipal bond sales, with funds raised from its own bonds and, to a lesser extent, from other sources. The Corporation's bonds have been issued in the past under the authority of a General Resolution that is supplemented with authority for each issuance. The General Resolution provides the basic structure for the Corporation's issuance of its bonds. The original General Resolution was adopted in 1992 and amended in 1996. After so many years, it is beneficial to update the General Resolution in various technical ways explained in the presentation made with the proposed resolution. None of these changes

substantially change the basic financial or contractual terms.

**Purpose:** The proposed "Amended and Restated General Resolution of the New

York City Health and Hospitals Corporation" proposed changes to the General Resolution (adopted November 19, 1992 and amended by Series Resolution and adopted December 19, 1996) to modernize the General

Resolution to reflect changes over time in the bond market.

**Proposed Changes** 

**to General Resolution:** Please see attached "Proposed Changes to the General Resolution"

presentation.

Effective Date of the Adopted Amended and

**Restated General Resolution:** Date of issuance of the Corporation's 2020 Series Bonds.



# 2020 Financing Proposal

Finance Committee Presentation October 8, 2020



# **Proposal**

- Refund approximately \$330 million of outstanding bonds for \$55 million in savings
- Issue up to \$100 million of new bonds to finance immediate capital needs
- Modernize the language of the General Resolution that authorizes NYC Health + Hospital's bond financing program
  - Also requires approval of a majority of bond holders
- Transaction is anticipated to occur in December



# **Refunding Opportunity & New Money**

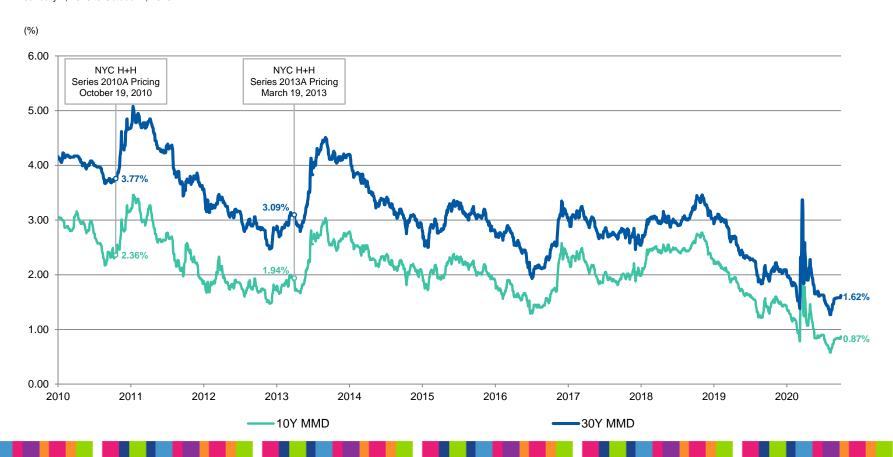
- Historic low borrowing costs present the system with an opportunity to refund existing debt and achieve substantial savings.
- Refunding bonds are expected to generate \$55 million in net present value savings, and will be structured to concentrate savings in the next 4 years.
  - Entirely refunds 2008 Series A Bonds and 2010 Series A Bonds
  - Existing rates and maturities of other outstanding HHC bonds do not present opportunities for savings
- Savings from the refunding will be used to partially offset the cost of borrowing \$100 million of new funds to help address some of the systems' immediate capital improvement and investment needs.
- The refunding also allows for release of over \$19 million from the Capital Reserve Fund, which allows the system to borrow less money to meet its needs.



# **Historical Tax-Exempt Borrowing Rates**

#### 10Y and 30Y MMD Rates Since 2010

January 1, 2010 to October 1, 2020





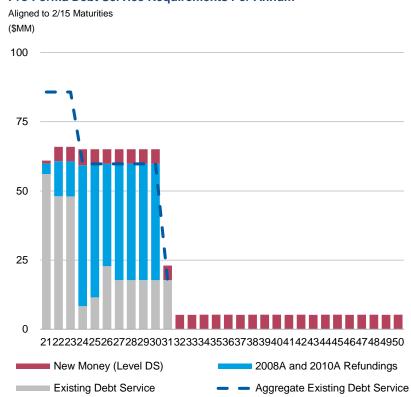
# Tax-Exempt Refunding of Series 2008A and Series 2010A (Upfront Savings) and Tax-Exempt New Money (Level Debt Service)

### **Estimated Financing Statistics**

Market Conditions as of October 1, 2020

| 2020 Financing                                   | Refundings<br>(Upfront) | New Money<br>(Level DS) | Total     |
|--|-------------------------|-------------------------|-----------|
| Total Financing Proceeds                         | \$309,221               | \$100,880               | \$410,101 |
| Capital Reserve Release                          | \$19,781                |                         | \$19,781  |
| Total Sources (\$000s)                           | \$329,002               | \$100,880               | \$429,881 |
| 2020 Uses  | Refundings<br>(Upfront) | New Money<br>(Level DS) | Total     |
| New Money (\$000s)                               |                         | \$100,000               | \$100,000 |
| Refunding of 2008A and 2010A (\$000s)            | \$326,462               |                         | \$326,462 |
| Cost of Issuance (\$000s)                        | \$2,540                 | \$880                   | \$3,419   |
| Total Uses (\$000s)                              | \$329,002               | \$100,880               | \$429,881 |
| Financing Statistics                             | Refundings<br>(Upfront) | New Money<br>(Level DS) | Total     |
| Interest Rate Adjusted for Cost (All-in TIC) (%) | 1.47%                   | 3.13%                   | 2.22%     |
| Weighted Average Maturity (Years)                | 6.4 Years               | 17.9 Years              | 9.3 Years |
| Maximum Annual Debt Service (\$000s)             |                         |                         | \$65,974  |
| Net Present Value Savings (\$000s)               | \$55,535                |                         |           |
| Net Present Value Savings (%)                    | 17.3%                   |                         |           |

#### **Pro Forma Debt Service Requirements Per Annum**



#### Notes:

- Rates as of October 1, 2020. Assumes \$10/bond cost of issuance. NPV Savings are discounted at 1.25%.
- 2. Assumes a settlement in December 2020.
- 3. Totals may not sum due to rounding.



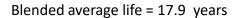
# **MWBE Designation Policy**

- Bonds will be sold on a negotiated basis using the underwriting group appointed through H+H's most recent underwriter approval process, as well as the selling group used by the City of New York.
- A "designation policy" will be established to ensure a minimum of 30% is collectively allocated to the MWBE firms appointed to the H+H underwriting group (5 of 20 firms), with no more than 10% allocated to any one of the five firms.
  - Blaylock Beal Van LLC
  - Loop Capital Markets LLC
  - Ramirez & Company
  - Rockfleet Financial Services
  - Stern Brothers
- Inclusion of the NYC selling group creates the opportunity for additional MWBE firms to participate in retail bond sales.



# **New Money Planned Uses**

| Project Type            | <b>Project Cost</b> | %      |
|-------------------------|---------------------|--------|
| Equipment - Medical     | 10,526,679          | 10.8%  |
| Equipment - Imaging     | 13,180,000          | 13.5%  |
| Equipment - Laboratory  | 270,000             | 0.3%   |
| Equipment - others      | 500,000             | 0.5%   |
| Infrastructure - Roof   | 16,520,000          | 17.0%  |
| Infrastructure - HVAC   | 37,840,000          | 38.9%  |
| Infrastructure - others | 17,380,800          | 17.8%  |
| Regulatory              | 1,156,770           | 1.2%   |
| Total                   | 97,374,249          | 100.0% |

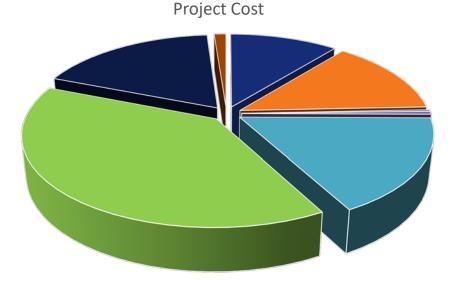




- Equipment others
- Infrastructure others



- Infrastructure Roof
- Regulatory



- Equipment Laboratory
- Infrastructure HVAC



# **General Resolution Background**

- Authorizes and sets parameters for the system's bond financing program
  - Specific financing transactions are authorized by Series Resolutions under the General Resolution
- Constitutes terms and conditions agreed to by bond purchasers
- Adopted in November 1992, and last amended in December 1996
- Amendments must be approved by the board and a majority of all bond holders



# **General Resolution Modernization**

Updates language, removes ambiguity, clarifies existing intent, reflects modern business practice, and provides flexibility in administration

- Replaces outdated terminology, and adds relevant definitions
- Adds or updates names and definitions of entities referenced in the document
- Provides for use of modern technology and reduced use of paper documents
- Clarifies allowable investments for bond proceeds
- Clarifies the role of the trustee

- Adds or further details definitions for calculation of reserve fund requirements, determination of maximum annual debt service, and other bond covenants
- Establishes that the General Resolution only governs bond indebtedness
- Allows use of balloon debt structures.
  - Actual use would be subject to specific board authorization under a series resolution



# Request: Approval of Two Resolutions

- 2020 Series Resolution
  - Authorizes adoption of a Series Resolution under the General Resolution providing for refunding the 2008A and 2010A bonds, and up to \$100 million of new bonds
- General Resolution Amendment
  - Authorizes adoption of the Amended and Restated General Resolution with modernizing language, which would go into effect following completion of the 2020 Series bond sales

### NEW YORK CITY HEALTH AND HOSPITALS CORPORATION

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# NEW YORK CITY HEALTH AND HOSPITALS CORPORATION HEALTH SYSTEM BONDS SERIES RESOLUTION

Authorizing the Issuance of

NEW YORK CITY HEALTH AND HOSPITALS CORPORATION HEALTH SYSTEM BONDS, 2020 SERIES

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Adopted October 29, 2020

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### A SERIES RESOLUTION AUTHORIZING THE ISSUANCE OF NEW YORK CITY HEALTH AND HOSPITALS CORPORATION HEALTH SYSTEM BONDS, 2020 SERIES A

WHEREAS, the New York City Health and Hospitals Corporation (the "Corporation") has adopted a resolution entitled "General Resolution" on November 19, 1992, as amended by resolution adopted on December 19, 1996 (hereinafter referred to as the "General Resolution"), which authorizes the issuance from time to time of Health System Bonds of the Corporation in one or more series pursuant to a Series Resolution authorizing such series; and

WHEREAS, on June 15, 1993, the Corporation issued \$550,000,000 in aggregate principal amount of its Health System Bonds, 1993 Series A (the "1993 Series Bonds"), pursuant to the General Resolution; and

WHEREAS, on April 10, 1997, the Corporation issued \$320,000,000 in aggregate principal amount of its Health System Bonds, 1997 Series A, B, C and D (the "1997 Series Bonds"), pursuant to the General Resolution, as Additional Bonds constituting Parity Indebtedness on a parity with the 1993 Series Bonds; and

WHEREAS, on March 18, 1999, the Corporation issued \$235,700,000 in aggregate principal amount of its Health System Bonds, 1999 Series A (the "1999 Series Bonds"), pursuant to the General Resolution, as Additional Bonds constituting Parity Indebtedness on a parity with the 1993 Series Bonds and the 1997 Series Bonds; and

WHEREAS, on July 25, 2002, the Corporation issued \$590,500,000 in aggregate principal amount of its Health System Bonds, 2002 Series A-H (the "2002 Series Bonds"), pursuant to the General Resolution, as Additional Bonds constituting Parity Indebtedness on a parity with the 1993 Series Bonds, the 1997 Series Bonds and the 1999 Series Bonds; and

WHEREAS, on January 15, 2003, the Corporation issued \$245,180,000 in aggregate principal amount of its Health System Bonds, 2003 Series A (the "2003 Series Bonds"), pursuant to the General Resolution, as Additional Bonds constituting Parity Indebtedness on a parity with the 1993 Series Bonds, the 1997 Series Bonds, the 1999 Series Bonds and the 2002 Series Bonds; and

WHEREAS, on August 21, 2008, the Corporation issued \$268,915,000 in aggregate principal amount of its Health System Bonds, 2008 Series A (the "2008 Series A Bonds"), pursuant to the General Resolution, as Additional Bonds constituting Parity Indebtedness on a parity with the 1993 Series Bonds, the 1997 Series Bonds, the 2002 Series Bonds and the 2003 Series Bonds; and

WHEREAS, on September 4, 2008, the Corporation issued \$189,000,000 in aggregate principal amount of its Health System Bonds, 2008 Series B, C, D and E (the "2008 Series B, C, D and E Bonds", and, together with the 2008 Series A Bonds, the "2008 Series Bonds"), pursuant to the General Resolution, as Additional Bonds constituting Parity Indebtedness on a parity with the 1993 Series Bonds, the 1997 Series Bonds, the 1999 Series Bonds, the 2002 Series Bonds, the 2003 Series Bonds and the 2008 Series A Bonds; and

WHEREAS, on October 26, 2010, the Corporation issued \$510,460,000 in aggregate principal amount of its Health System Bonds, 2010 Series A (the "2010 Series Bonds"), pursuant to the General Resolution, as Additional Bonds constituting Parity Indebtedness on a parity with the 1993 Series Bonds, the 1997 Series Bonds, the 1999 Series Bonds, the 2002 Series Bonds, the 2003 Series Bonds, and the 2008 Series Bonds; and

WHEREAS, on March 28, 2013, the Corporation issued \$112,045,000 in aggregate principal amount of its Health System Bonds, 2013 Series A (the "2013 Series Bonds"), pursuant to the General Resolution, as Additional Bonds constituting Parity Indebtedness on a parity with the 1993 Series Bonds, the 1997 Series Bonds, the 2002 Series Bonds, the 2003 Series Bonds, the 2008 Series Bonds, and the 2010 Series Bonds; and

WHEREAS, the General Resolution permits the issuance by the Corporation of Additional Bonds constituting Parity Indebtedness on a parity with the 1993 Series Bonds, the 1997 Series Bonds, the 1999 Series Bonds, the 2002 Series Bonds, the 2008 Series Bonds and the 2010 Series Bonds; and

WHEREAS, the Board of Directors of the Corporation has determined that it is necessary and desirable to authorize and issue, pursuant to the General Resolution, one or more series of bonds, from time to time, as Additional Bonds constituting Parity Indebtedness under the General Resolution, on a parity with the 1993 Series Bonds, the 1997 Series Bonds, the 1999 Series Bonds, the 2002 Series Bonds, the 2003 Series Bonds, the 2008 Series Bonds, the 2010 Series Bonds, and the 2013 Series Bonds, to be designated "Health System Bonds, 2020 Series A", to provide funds (i) to refund all or a portion of the 2008 Series Bonds and the 2010 Series Bonds, (ii) to finance, refinance and reimburse the Corporation for the costs of various capital projects and expenditures at the Corporation's facilities, (iii) to fund the Capital Reserve Fund, if necessary, and (iv) to pay costs of issuance of the 2020 Series Bonds, all to carry out the purposes permitted in the General Resolution and set forth herein; now, therefore,

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE NEW YORK CITY HEALTH AND HOSPITALS CORPORATION AS FOLLOWS:

#### **ARTICLE I**

### **AUTHORITY AND DEFINITIONS**

**Section 101. Series Resolution.** This Series Resolution is adopted in accordance with Sections 201, 202, 203, 901(1) and 903 of the General Resolution and pursuant to the authority contained in the Act (as defined in the General Resolution). This Series Resolution may be modified as determined by an Authorized Officer subsequent to the date of its adoption and prior to the date of issuance of the 2020 Series Bonds as may be necessary or appropriate to reflect the actual provisions hereof that shall apply to the 2020 Series Bonds; provided, however, that the maximum principal amount set forth in Section 201, the final maturity prescribed by Section 203, and the final sale date prescribed by Section 208 shall not be so modified.

**Section 102. Definitions.** All terms which are defined in Section 103 of the General Resolution shall have the same meanings, respectively, in this Series Resolution. In addition, for the purposes of this Series Resolution, the following terms shall have the meanings set forth below:

"Bond Counsel" shall mean Hawkins Delafield & Wood LLP or such other firm of attorneys retained by the Corporation and specializing in the field of municipal finance and nationally recognized as experts in the field.

"Bonds to be Refunded" shall mean all or portions of the 2008 Series Bonds and/or the 2010 Series Bonds, as are designated as such in the 2020 Series Certificate of Determination.

"Continuing Disclosure Agreement" shall mean the Continuing Disclosure Agreement, by and between the Corporation and the Trustee, relating to the 2020 Series Bonds.

"Contract of Purchase" shall mean the Bond Purchase Agreement(s) with respect to the 2020 Series Bonds, by and between the Corporation and Morgan Stanley & Co. LLC, as senior managing underwriter.

"Official Statement" shall mean the Corporation's Official Statement with respect to the 2020 Series Bonds.

"Rating Agency" shall mean each and any of Fitch, Inc., Moody's Investors Service, Inc. and S&P Global Ratings, a Division of The McGraw-Hill Companies, that has a rating in effect for the 2020 Series Bonds.

"Record Date" shall mean with respect to the 2020 Series Bonds the first day of each February and August, or as otherwise provided in the 2020 Series Certificate of Determination.

"Tax Regulatory Agreement" shall mean the Tax Regulatory Agreement, dated the date of delivery of the 2020 Series Bonds, by and between the Corporation and the Trustee, as it may be amended or supplemented.

"2020 Series Bonds" shall mean the 2020 Series Bonds issued by the Corporation and authorized pursuant to the provisions of this Series Resolution.

"2020 Series Certificate of Determination" shall mean the 2020 Series Certificate of Determination authorized pursuant to Section 210 hereof and in the appropriate form to establish, determine and reflect the terms and provisions of the 2020 Series Bonds, substantially in the form of Exhibit A hereto, with such changes, omissions and insertions as may be approved by the Authorized Officer executing such certificate.

"2020 Series Closing Certificate" shall mean the certificate of the Corporation delivered on the date of initial issuance of the 2020 Series Bonds, which shall set forth the specific application of proceeds of the 2020 Series Bonds as contemplated by Article III of this Series Resolution.

"2020 Series Project" shall mean the capital projects, improvements, renovations, acquisitions, construction, equipping, installation and related expenditures at the Corporation's Health Facilities as described in the 2020 Series Closing Certificate and in the Tax Regulatory Agreement to be financed with proceeds of the 2020 Series Bonds, and the portion of the capital projects, improvements, renovations, acquisitions, construction, equipping and installation with respect to the Corporation's Health Facilities financed or refinanced with the proceeds of the Bonds to be Refunded (all or portions of the 2008 Series Bonds and the 2010 Series Bonds), and to be refinanced with the proceeds of the 2020 Series Bonds.

Section 103. Incorporation of 2020 Series Certificate of Determination. All terms and conditions of the 2020 Series Certificate of Determination are hereby incorporated by reference into this Series Resolution.

### **ARTICLE II**

### **AUTHORIZATION OF 2020 SERIES BONDS**

Section 201. Principal Amount, Designation and Form. Pursuant to the provisions of the General Resolution, a Series of Bonds entitled to the benefit, protection and security of such provisions is hereby authorized in the aggregate principal amount of not exceeding \$440,000,000 for the purpose of (i) refunding all or a portion of the Bonds to be Refunded (all or portions of the 2008 Series Bonds and the 2010 Series Bonds) and (ii) financing, refinancing and reimbursing the Corporation for the costs of various capital projects and expenditures at the Corporation's facilities, as such aggregate principal amount is determined in the 2020 Series Certificate of Determination. Such Bonds shall be designated as, and shall be distinguished from the Bonds of all other Series by the title, "New York City Health and Hospitals Corporation Health System Bonds, 2020 Series A." The 2020 Series Bonds are issued in fully registered form without coupons, as provided in Section 401 hereof.

Section 202. Purposes. The purposes for which the 2020 Series Bonds are being issued are in accordance with the Act and are to provide proceeds of the sale thereof for credit, as provided in Section 401(2) of the General Resolution, to the Bond Proceeds Fund, for transfer (i) to the Construction Fund for (a) transfer to the 2020 Series Construction Account within the Construction Fund to pay Project Costs of the 2020 Series Project, (b) transfer to the 2020 Series Capitalized Interest Account within the Construction Fund to pay a portion of the interest on the 2020 Series Bonds, and (c) transfer to the 2020 Series Cost of Issuance Account within the Construction Fund to pay Costs of Issuance of the 2020 Series Bonds, (ii) to the applicable Redemption Fund or Escrow Fund to refund all or a portion of the Bonds to be Refunded (all or portions of the 2008 Series Bonds and the 2010 Series Bonds), and (iii) to the Capital Reserve Fund in an amount such that the amount on deposit therein on the date of issuance of the 2020 Series Bonds shall at least equal the Capital Reserve Fund Requirement, after giving effect to the issuance of the 2020 Series Bonds and the concurrent redemption, defeasance or discharge of the Bonds to be Refunded (all or portions of the 2008 Series Bonds and the 2010 Series Bonds), to the extent refunded or refinanced with proceeds of the 2020 Series Bonds. Accrued interest, if any, on the 2020 Series Bonds shall be deposited into the Debt Service Fund.

Section 203. Date, Maturities and Interest Rates. The 2020 Series Bonds shall be dated, shall mature on the dates and in the principal amounts and shall bear interest at the rates per annum, all as is determined pursuant to this Article II and in the 2020 Series Certificate of Determination; provided, however, that the final maturity of the 2020 Series Bonds shall not extend beyond February 15, 2050. The General Resolution has been amended by deleting the third paragraph of Section 202 to clarify that Bonds of a Series of like maturity need not bear identical interest rates.

**Section 204. Interest Payments.** The 2020 Series Bonds shall bear interest from their date payable as determined pursuant to this Article II and in the 2020 Series Certificate of Determination, commencing on the first interest payment date therefor identified in the 2020 Series Certificate of Determination. The Record Dates for the 2020 Series Bonds shall be the first day of each February and August, or as otherwise provided in the 2020 Series Certificate of Determination.

**Section 205. Denominations, Numbers and Letters.** The 2020 Series Bonds shall be issued initially in the denomination of \$5,000 or any integral multiple thereof or as otherwise established in the 2020 Series Certificate of Determination. The 2020 Series Bonds shall be lettered R- and shall be numbered from one (1) consecutively upwards.

As provided in Section 206 of the General Resolution, CUSIP identification numbers shall be imprinted on the 2020 Series Bonds, but such numbers shall not constitute a part of the contract evidenced by the 2020 Series Bonds and any error or omission with respect thereto shall not constitute cause for refusal of any purchaser to accept delivery of and pay for the 2020 Series Bonds. In addition, failure on the part of the Corporation to use such CUSIP numbers in any notice to Owners of the 2020 Series Bonds shall not constitute an event of default or any similar violation of the Corporation's contract with such Owners.

As provided in Section 215 of the General Resolution, the 2020 Series Bonds shall be issued in "Book-Entry Only" form, and each maturity of the 2020 Series Bonds shall be evidenced by the issuance of one 2020 Series Bond registered in the name of Cede & Co., as nominee of The Depository Trust Company.

**Section 206. Places of Payment.** The principal and Redemption Price of and interest on the 2020 Series Bonds shall be payable at the corporate trust office of Wilmington Trust, N.A., an affiliate of Manufacturers and Traders Trust Company, of Buffalo, New York, as Trustee. The interest on the 2020 Series Bonds shall be payable to the Owner by check or draft mailed or sent by wire transfer to such Owner's address last appearing on the registration books of the Corporation held and maintained by the Trustee. The place and medium of payment for the 2020 Series Bonds shall be as provided in Section 205 of the General Resolution.

**Section 207. Redemption Prices and Terms.** The 2020 Series Bonds shall be subject to redemption at the Redemption Prices and times as provided in the 2020 Series Certificate of Determination.

Section 208. Sale of 2020 Series Bonds. The 2020 Series Bonds shall be sold at such time and at such price as shall be determined in the 2020 Series Certificate of Determination. Morgan Stanley & Co. LLC is hereby appointed as senior managing underwriter for the 2020 Series Bonds (the "Manager"). The preparation, publication and distribution of the Official Statement (in substantially the form previously utilized by the Corporation, with such changes, omissions, insertions and revisions as the Chief Financial Officer of the Corporation shall have deemed necessary or advisable) is hereby approved. The 2020 Series Bonds shall be sold by the Corporation to a group of underwriters designated in the Contract of Purchase and represented by the Manager, who is acting as representative on behalf of such underwriters including itself, pursuant to the Contract of Purchase, to be executed by the Chairman, Vice Chairman or President or any other Authorized Officer of the Corporation, if at all, on or prior to August 31, 2021, at the purchase price set forth in the 2020 Series Certificate of Determination and on the terms and conditions set forth in the Contract of Purchase and upon the basis of the The Chairman, Vice Chairman or President or any other representations set forth therein. Authorized Officer of the Corporation is hereby authorized and directed to deliver the 2020 Series Bonds to the Trustee for authentication and to instruct the Trustee to deliver the 2020

Series Bonds to said underwriters upon receipt of the aforesaid purchase price, and to execute and deliver all documents and instruments required in connection therewith.

The Chairman, Vice Chairman or President or any other Authorized Officer of the Corporation each is hereby authorized on behalf of the Corporation to execute a Contract of Purchase substantially in the form previously utilized by the Corporation, with the Manager, as representative of the underwriters, providing for the sale to said group of underwriters of the 2020 Series Bonds and said Authorized Officers of the Corporation are hereby authorized and directed to carry out or cause to be carried out all obligations of the Corporation under said Contract of Purchase, when executed. The execution by the Chairman, Vice Chairman or President or any other Authorized Officer of the Corporation of the Official Statement relating to the 2020 Series Bonds substantially in the form previously utilized by the Corporation, with such changes, insertions, or deletions therein as the Chairman, Vice Chairman or President or any other Authorized Officer of the Corporation may approve, and the delivery of said Official Statement to said underwriters, are hereby authorized and the Corporation hereby authorizes said Official Statement and the information contained therein to be used in connection with the sale of the 2020 Series Bonds. The delivery of a Preliminary Official Statement with respect to the 2020 Series Bonds is hereby authorized.

The private sale of the 2020 Series Bonds shall be subject to the prior written approval of the City Comptroller as to the terms and conditions of the 2020 Series Bonds, and the approval of the Mayor of the City, as and if required under the Act, as to the issuance of the 2020 Series Bonds and the use of the proceeds thereof.

The proceeds of any good faith deposit received by the Corporation from the Manager under the terms of the Contract of Purchase for the 2020 Series Bonds shall be deposited by the Corporation with a bank or trust company in a special account established by the President or any other Authorized Officer of the Corporation. Pending the application of the monies so deposited in said special account, such monies, or so much thereof as may be practicable, may be invested in Investment Obligations. The income or interest earned by, or increment to, such special account due to the investment thereof shall be transferred to and deposited in the Revenue Fund.

Section 209. Authorization of Related Documents. The form, terms and provisions of the Contract of Purchase, between the Corporation and the underwriters, substantially in the form previously utilized by the Corporation, providing for the sale of the 2020 Series Bonds by the Corporation to the underwriters, are in all respects approved. The form, terms and provisions of the Escrow Deposit Agreement, between the Corporation and the Trustee, as and if required, substantially in the form previously utilized by the Corporation, providing for the refunding of all or a portion of the Bonds to be Refunded, are in all respects approved. The form, terms and provisions of the Continuing Disclosure Agreement, between the Corporation and the Trustee, substantially in the form previously utilized by the Corporation, providing for the undertaking by the Corporation to provide ongoing continuing secondary market disclosure, are in all respects approved. The form, terms and provisions of the Tax Regulatory Agreement, between the Corporation and the Trustee, substantially in the form previously utilized by the Corporation, providing for compliance with the Code, are in all respects approved. The Chairman, Vice Chairman or President or any other Authorized Officer

of the Corporation is authorized and empowered for and on behalf of the Corporation to execute, acknowledge and deliver the Contract of Purchase, the Escrow Deposit Agreement, the Continuing Disclosure Agreement and the Tax Regulatory Agreement, and the Secretary or any other Authorized Officer of the Corporation is hereby authorized and empowered to attest the same for and on behalf of the Corporation in substantially the forms presented to this meeting, with such changes therein as such Chairman, Vice Chairman or President or any other Authorized Officer of the Corporation executing the same may deem necessary or desirable, his or her execution of the Contract of Purchase, the Escrow Deposit Agreement, the Continuing Disclosure Agreement and the Tax Regulatory Agreement to be conclusive evidence of his or her approval of such changes.

The Chairman, Vice Chairman or President or any other Authorized Officer of the Corporation are each hereby authorized to take any action, execute any document, or give any consent which may from time to time be required by the Corporation under the General Resolution, this Series Resolution, the Contract of Purchase, the Escrow Deposit Agreement, the Continuing Disclosure Agreement or the Tax Regulatory Agreement. Any such action taken or document executed or consent given by such officer in his or her capacity of an officer of the Corporation shall be deemed to be an act by the Corporation.

Section 210. Certificate of Determination. The Chairman, Vice Chairman or President or any other Authorized Officer of the Corporation shall have the power and authority to execute and deliver the 2020 Series Certificate of Determination, which may include, without limitation, provisions (i) fixing the aggregate principal amount of 2020 Series Bonds to be issued, not to exceed \$440,000,000 for the purpose of (i) refunding all or a portion of the Bonds to be Refunded as authorized above, and (ii) financing, refinancing and reimbursing the Corporation for the costs of various capital projects and expenditures at the Corporation's facilities, (iii) fixing the maturity schedule for the 2020 Series Bonds, including amounts of serial bonds and term bonds, with a final maturity not beyond February 15, 2050, (iv) fixing the interest rate or interest rates for the 2020 Series Bonds, or the manner of determining such interest rates, (v) fixing the amounts and times of sinking fund installments on the 2020 Series Bonds, (vi) fixing other redemption provisions, including but not limited to purchase in lieu of optional redemption provisions, for the 2020 Series Bonds, including times and redemption prices, (vii) fixing the purchase price for the 2020 Series Bonds, which may include an underwriting discount and an original issue discount or premium, and (viii) modifying or otherwise completing and finalizing the provisions of the Series Resolution or implementing the terms of the Contract of Purchase.

In addition to any specific authorizations set forth in this Series Resolution, and notwithstanding any other provision of this Series Resolution, pursuant to and as established in the 2020 Series Certificate of Determination, the Corporation may provide a surety bond, insurance policy or other reserve fund credit facility for credit to the Capital Reserve Fund in satisfaction of the Capital Reserve Fund Requirement, and in connection therewith the Corporation is hereby authorized to execute, deliver and perform any necessary, appropriate or convenient agreements, instruments or contracts.

#### ARTICLE III

### **DISPOSITION OF 2020 SERIES BOND PROCEEDS**

Section 301. Bond Proceeds Fund. Pursuant to paragraph (2) of Section 401 of the General Resolution, the Corporation, upon delivery of the 2020 Series Bonds, shall pay over and transfer to the Trustee for deposit into the Bond Proceeds Fund or have credited by the Trustee to the Bond Proceeds Fund, the net proceeds of the 2020 Series Bonds. Monies so deposited or credited to such Bond Proceeds Fund shall be applied as provided in Section 202 hereof, and in accordance with Article IV of the General Resolution, as described in this Article III.

Section 302. Construction Account. There is hereby established, pursuant to Section 401(3) of the General Resolution, the 2020 Series Construction Account within the Construction Fund. Upon receipt of the proceeds of sale of the 2020 Series Bonds, the Corporation shall cause the payment therefrom, through the Bond Proceeds Fund as provided in Section 401(2) of the General Resolution, to the Trustee for deposit into the 2020 Series Construction Account, or have credited by the Trustee to the 2020 Series Construction Account, the sum indicated therefor, if any, in the Corporation's 2020 Series Closing Certificate. If no such sum is indicated, there shall be no deposit of such proceeds into such Account.

Section 303. Capitalized Interest Account. There is hereby established, pursuant to Section 401(4) of the General Resolution, the 2020 Series Capitalized Interest Account within the Construction Fund. Upon receipt of the proceeds of sale of the 2020 Series Bonds, the Corporation shall cause the payment therefrom, through the Bond Proceeds Fund as provided in Section 401(2) of the General Resolution, to the Trustee for deposit into the 2020 Series Capitalized Interest Account, or have credited by the Trustee to the 2020 Series Capitalized Interest Account, the sum indicated therefor, if any, in the Corporation's 2020 Series Closing Certificate. If no such sum is indicated, there shall be no deposit of such proceeds into such Account.

**Section 304. Working Capital Account.** There is hereby established, pursuant to Sections 813(1)(v) and 814 of the General Resolution, the 2020 Series Working Capital Account within the Construction Fund. Upon receipt of the proceeds of sale of the 2020 Series Bonds, the Corporation shall cause the payment therefrom, through the Bond Proceeds Fund as provided in Section 401(2) of the General Resolution, to the Trustee for deposit into the 2020 Series Working Capital Account, or have credited by the Trustee to the 2020 Series Working Capital Account, the sum indicated therefor, if any, in the Corporation's 2020 Series Closing Certificate. If no such sum is indicated, there shall be no deposit of such proceeds into such Account.

Section 305. Cost of Issuance Account. There is hereby established, pursuant to Section 401(5) of the General Resolution, the 2020 Series Cost of Issuance Account within the Construction Fund. Upon receipt of the proceeds of sale of the 2020 Series Bonds, the Corporation shall cause the payment therefrom, through the Bond Proceeds Fund as provided in Section 401(2) of the General Resolution, to the Trustee for deposit into the 2020 Series Cost of

Issuance Account, or have credited by the Trustee to the 2020 Series Cost of Issuance Account, the sum indicated therefor in the Corporation's 2020 Series Closing Certificate.

Section 306. Capital Reserve Fund. Upon receipt of the proceeds of sale of the 2020 Series Bonds, the Corporation shall cause the payment therefrom, through the Bond Proceeds Fund as provided in Section 401(2) of the General Resolution, to the Trustee for deposit into the Capital Reserve Fund, or have credited by the Trustee to the Capital Reserve Fund, the sum indicated therefor in the Corporation's 2020 Series Closing Certificate, which sum shall be an amount such that the amount on deposit in the Capital Reserve Fund on the date of issuance of the 2020 Series Bonds shall at least equal the Capital Reserve Fund Requirement, after giving effect to the issuance of the 2020 Series Bonds and the concurrent redemption, defeasance or discharge of the Bonds to be Refunded, to the extent refunded or refinanced with proceeds of the 2020 Series Bonds.

**Section 307. Interest Income.** Income or interest earned by, or increment to, each 2020 Series Account within the Construction Fund shall be retained in said Account, until the Trustee is otherwise directed in writing by the Corporation, at which time such income or interest earnings shall be transferred by the Trustee to the Revenue Fund.

**Section 308. Refunding.** Upon receipt of the proceeds of sale of any portion of the 2020 Series Bonds issued to refund or refinance all or any portion of the Bonds to be Refunded, the Corporation shall apply the proceeds thereof to such refunding of any such Bonds to be Refunded as may be directed in the Corporation's 2020 Series Closing Certificate.

#### ARTICLE IV

### **FORM OF 2020 SERIES BONDS**

**Section 401. Form of 2020 Series Bonds.** Subject to the provisions of the General Resolution, this Series Resolution, and the 2020 Series Certificate of Determination, the 2020 Series Bonds in registered form shall be of substantially the following form and tenor:

[Form of 2020 Series Bonds]

NO. R-

# NEW YORK CITY HEALTH AND HOSPITALS CORPORATION HEALTH SYSTEM BONDS, 2020 SERIES

| Registered Owner: | Cede & Co.   |
|-------------------|--------------|
| Dated Date:       |              |
| Maturity Date:    | February 15, |
| Principal Sum:    | \$           |
| Interest Rate:    |              |
| CUSIP No.:        |              |

KNOW ALL MEN BY THESE PRESENTS that the NEW YORK CITY HEALTH AND HOSPITALS CORPORATION (the "Corporation"), a body corporate and politic, constituting a public benefit corporation organized and existing under and by virtue of the laws of the State of New York, acknowledges itself indebted to, and for value received, hereby promises to pay to the Registered Owner (stated above), or registered assigns, the Principal Sum (stated above) on the Maturity Date (stated above), unless redeemed prior thereto as hereinafter provided, upon presentation and surrender hereof at the corporate trust office of Wilmington Trust, N.A., an affiliate of Manufacturers and Traders Trust Company, Buffalo, New York, as Trustee under the General Resolution, duly adopted on November 19, 1992, by the Corporation, as amended (the "General Resolution"), or its successors as Trustee (the "Trustee"), and to pay to the Registered Owner hereof interest on the unpaid principal balance hereof from the Dated Date (stated above) to the Maturity Date or earlier redemption of this Bond at the Interest Rate stated above per annum, payable on February 15 and August 15, commencing on \_, \_\_\_. The interest on this Bond, when due and payable, shall be paid to the Registered Owner hereof by check or draft, mailed or sent by wire transfer to such person at his address last appearing on the registration books of the Corporation held by the Trustee. Both principal and interest and redemption premium, if any, on this Bond are payable in any coin or currency of the United States of America which, on the respective dates of payment thereof, shall be legal tender for the payment of public and private debts.

This Bond is a general obligation of the Corporation and is one of a duly authorized issue of bonds of the Corporation designated "New York City Health and Hospitals Corporation Health System Bonds" (herein called the "Bonds"), issued and to be issued in various series under and pursuant to the New York City Health and Hospitals Corporation Act, McKinney's Unconsolidated Laws, Sections 7381 to 7406, inclusive, as amended (the "Act"), and under and pursuant to the General Resolution, and a series resolution authorizing each such series. This Bond is one of a Series of Bonds designated New York City Health and Hospitals Corporation Health System Bonds, 2020 Series (the "2020 Series Bonds"), issued in the aggregate principal amount of \$ under the General Resolution and a Series Resolution of the Corporation adopted October 29, 2020, and entitled "NEW YORK CITY HEALTH AND HOSPITALS CORPORATION HEALTH SYSTEM BONDS SERIES RESOLUTION AUTHORIZING THE ISSUANCE OF NEW YORK CITY HEALTH AND HOSPITALS CORPORATION HEALTH SYSTEM BONDS, 2020 SERIES" (the "Series Resolution", the General Resolution and the Series Resolution being herein collectively referred to as the "Resolutions"). The aggregate principal amount of Bonds which may be issued under the General Resolution is not limited except as provided in the General Resolution and all Bonds issued under the General Resolution are equally secured by the pledges and covenants made therein. Capitalized terms used in this Bond but not defined herein shall have the meanings ascribed to them in the General Resolution.

Copies of the Resolutions are on file at the office of the Corporation and at the corporate trust office of the Trustee, and reference to the Resolutions and any and all supplements thereto and modifications and amendments thereof and to the Act is made for a description of the pledges and covenants securing the 2020 Series Bonds, the nature, extent and manner of enforcement of such pledges and covenants, the rights and remedies of the Owners of the 2020 Series Bonds with respect thereto and the terms and conditions upon which the 2020 Series Bonds are issued and may be issued thereunder. To the extent and in the manner permitted by the terms of the Resolutions, the provisions of the Resolutions or any resolution amendatory thereof or supplemental thereto, may be modified or amended.

This Bond is transferable, as provided in the Resolutions, only upon the books of the Corporation kept for that purpose at the corporate trust office of the Trustee by the Registered Owner hereof in person, or by his attorney duly authorized in writing, upon the surrender of this Bond together with a written instrument of transfer satisfactory to the Trustee duly executed by the Registered Owner or his attorney duly authorized in writing, and thereupon a new registered 2020 Series Bond or Bonds, without coupons, and in the same aggregate principal amount, and of the same maturity, shall be issued to the transferee in exchange therefor as provided in the Resolutions, and upon the payment of the charges, if any, therein prescribed.

The 2020 Series Bonds are issuable in the form of registered bonds, without coupons, in the denomination of \$5,000 or any integral multiple thereof. In the manner, subject to the conditions and upon the payment of the charges, if any, provided in the Resolutions, the 2020 Series Bonds, upon surrender thereof at the corporate trust office of the Trustee with a written instrument of transfer satisfactory to the Trustee, duly executed by the Registered Owner or his attorney duly authorized in writing, may, at the option of the Registered Owner thereof, be exchanged for an equal aggregate principal amount of 2020 Series Bonds, without coupons, of any other authorized denominations of the same maturity.

The 2020 Series Bonds are subject to redemption prior to maturity as provided in the Series Resolution.

Notice of such redemption when required to be given pursuant to the Resolutions shall be mailed, postage prepaid, within the time requirements of the Resolutions, to the Owners of any 2020 Series Bonds or portions thereof to be redeemed, <u>provided</u>, <u>however</u>, that the failure of any Owner to receive notice shall not affect the validity of the proceedings for the redemption of the 2020 Series Bonds or portions of the 2020 Series Bonds owned by any Owners to whom notice has been given in accordance with the provisions of the Resolutions. Notice of redemption having been given, as aforesaid, the 2020 Series Bonds or portions thereof so called for redemption shall become due and payable at the applicable redemption price provided in the Resolutions, and interest on the 2020 Series Bonds or portions thereof so called for redemption shall cease to accrue and become payable from and after the date so fixed for redemption; provided sufficient monies or Government Obligations (as defined in the General Resolution) have been deposited with the Bond Trustee to pay the redemption price of and interest on such 2020 Series Bonds.

The principal of the 2020 Series Bonds may be declared due and payable before the maturity thereof as provided in the Resolutions and the Act.

THE 2020 SERIES BONDS SHALL NOT BE A DEBT OF THE STATE OR OF THE CITY, AND NEITHER THE STATE NOR THE CITY SHALL BE LIABLE THEREON NOR SHALL THEY BE PAYABLE OUT OF ANY FUNDS OTHER THAN THOSE OF THE CORPORATION OR HHC CAPITAL CORPORATION. NEITHER THE CORPORATION NOR HHC CAPITAL CORPORATION HAS ANY TAXING POWER.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required by the Constitution and statutes of the State and the City and by the Act, the bylaws, rules and regulations of the Corporation to happen, to exist, to have happened and to have been performed precedent to and in connection with the issuance of this Bond, and the adoption of the Resolutions, have happened, exist and have been performed in due time, form and manner as so required.

IN WITNESS WHEREOF, the New York City Health and Hospitals Corporation has caused this Bond to be executed in its name by the manual or facsimile signature of its President or another Authorized Officer, and attested by the manual or facsimile signature of the Secretary or another Authorized Officer to the Corporation; and this Bond shall be authenticated by the manual or facsimile signature of an authorized officer of the Trustee, without which authentication this Bond shall not be valid nor entitled to the benefits of the Resolutions, all as of the Dated Date stated above.

# NEW YORK CITY HEALTH AND HOSPITALS CORPORATION

| Attest:  |  |
|--|--|
|  | By:  |
| By: Name: Title:   |  |
|  |  |
| CERTIFICATE OF A   | UTHENTICATION                                  |
| The undersigned hereby certifies within-mentioned Resolutions. | that this is one of the Bonds described in the |
|  | WILMINGTON TRUST, N.A., as Trustee             |
|  | By:  |
| Date of Authentication:, 2020                                  | Authorized Officer                             |

### ASSIGNMENT

For value received the undersigned sells, assigns and transfers this bond to

(Name, Address and Social Security Number or other Identifying Number of Assignee)

and irrevocably appoints \_\_\_\_\_\_ attorney-in-fact to transfer it on the books kept for registration of the bond, with full power of substitution.

NOTE: The signature to this assignment must correspond with the name written on the face of the bond without alteration, enlargement or other change.

Dated:

Signature Guaranteed:

Participant in a Recognized Signature Guarantee Medallion Program

(End of Form of 2020 Series Bond)

By: \_\_

Authorized Signature

**Section 402. Attestation of 2020 Series Bonds.** Any Authorized Officer of the Corporation, other than the Authorized Officer executing the 2020 Series Bonds, is hereby authorized and directed to attest manually or by facsimile the execution of the 2020 Series Bonds in accordance with the provisions of Section 207 of the General Resolution.

### ARTICLE V

### **MISCELLANEOUS**

Section 501. Arbitrage Covenant. The Corporation hereby covenants that it shall comply with each requirement of the Internal Revenue Code of 1986, as amended, necessary to maintain the exclusion of interest on the 2020 Series Bonds that are tax-exempt from gross income for purposes of federal income taxation. The Corporation further covenants that it shall make any and all payments required to be made to the Treasury Department of the United States of America in connection with the 2020 Series Bonds that are tax-exempt pursuant to Section 148(f) of the Code from amounts on deposit in the Funds and Accounts established under the General Resolution or from other monies available to the Corporation. In addition the Corporation hereby agrees not to take any action or fail to take any action which would cause the 2020 Series Bonds to be "arbitrage" bonds within the meaning of Section 148 of the Code.

In furtherance of the covenants contained above, the Corporation hereby agrees to comply with the provisions of the Tax Regulatory Agreement to be executed by the Corporation on the date of the initial issuance and delivery of the 2020 Series Bonds as such Tax Regulatory Agreement may be amended from time to time, as a source of guidance for achieving compliance with the Code.

Section 502. Continuing Disclosure. The Corporation covenants that in accordance with the continuing disclosure requirements set forth in Rule 15c2-12 of the Securities and Exchange Commission (the "Rule") the Corporation shall, to the extent permitted by law, undertake to provide such information with respect to the Corporation as is required by the Rule. The Corporation covenants with the holders from time to time of the 2020 Series Bonds that it will, and hereby authorizes the appropriate officers and employees of the Corporation to take all action necessary or appropriate to, comply with and carry out all of the provisions of the Continuing Disclosure Agreement as amended from time to time. Notwithstanding any other provision of the General Resolution, failure of the Corporation or the Trustee to perform in accordance with the Continuing Disclosure Agreement shall not constitute a default or an Event of Default under the General Resolution, and the rights and remedies provided by the General Resolution upon the occurrence of such a default or an Event of Default shall not apply to any such failure, but the Continuing Disclosure Agreement may be enforced only as provided therein.

Section 503. Amendment and Restatement of General Resolution. The Corporation intends to implement an amendment and restatement of the General Resolution to be effective on the date of issuance of the 2020 Series Bonds, in substantially the form of the Amended and Restated General Resolution attached hereto. The form, terms and provisions of such Amended and Restated General Resolution, providing for amendments to the General Resolution in order to update, modernize, correct and streamline the General Resolution, and being implemented in accordance with the provisions of Sections 902, 903, 1001 and 1002 of the General Resolution, are in all respects approved and such Amended and Restated General Resolution is hereby adopted by the Board of Directors of the Corporation, in substantially the form presented to this meeting, which Amended and Restated General Resolution is intended to become effective on the date of issuance of the 2020 Series Bonds, by virtue of the purchasers of

the 2020 Series Bonds consenting, and being deemed to have consented, to the amendments to the General Resolution being implemented pursuant to the Amended and Restated General Resolution.

Section 504. Effective Date. This Series Resolution shall take effect immediately.

# FORM OF 2020 SERIES A CERTIFICATE OF DETERMINATION

|  | ereby certify and deterr  | Health and Ho<br>Vice President, I                              | ospitals Corpo<br>Finance and                     | oration on Octobe<br>Chief Financial O      | r 29, 2020, I, officer] of such                     |
|--|---|---|---|---|---|
| Series A (the "of the Series A Bonds shall be      | 1. The aggregate Series A Bonds") to be A Bonds shall be their  | e issued and delive<br>date of issuance.<br>, The Series        | red shall be \$_ The first Inte A Bonds shal      | l mature on Februar                         | The dated date for the Series A y 15 of the years   |
|  | <u>2</u>  | 020 Series A Bond   | ds Term Chart                                     |   |   |
|  | \$  | Serial  | 2020 Series A                                     | Bonds                                       |   |
| <u>Year</u>  | Principal<br><u>Amount</u>  | Interest Rate   | <u>Year</u>                                       | Principal<br><u>Amount</u>                  | Interest Rate                                       |
|  | \$  | %   |   | \$  |   |
|  |   |   |   |   |   |
|  |   |   |   |   |   |
|  |   |   |   |   |   |
|  |   |   |   |   |   |
|  |   |   |   |   |   |
| 9  | 5   | % 2020 Series A   | Term Bonds  | due February 15,                            |   |
| option of the maturity, on an accrued interes      | 2. The Series A The Series A Bonds m Corporation, beginning my date upon 30 days' st to the date of redem s for redemption in its s   | aturing after February 15 written notice to ption. The Corpo    | uary 15,, in wh<br>Bondholders a                  | nole or in part, by<br>at a redemption pric | edemption at the lot within each e of 100%, plus    |
| in the respective be selected by equal to the pro- | (b) <u>Mandatory R</u> emption prior to maturize principal amounts as the Trustee as providincipal amount of said date of redemption. | ty, through Sinkin<br>set forth below (the<br>ed in the General | g Fund Payme<br>he particular S<br>Resolution), i | eries A Bonds or pon<br>n each case at a R  | of the years and ortions thereof to edemption Price |
| maturing in  | In accordance with thare hereby established   |   | n, Sinking Fu                                     | nd Payments for the                         | Series A Bonds                                      |

|   | <u>Year</u> | <u>Amount</u> | <u>Year</u> | <u>Amount</u> |
|---|-------------|---------------|-------------|---------------|
| - |             | \$            | *           | \$            |
| - |             |               |             |               |
| - | <del></del> | <del></del>   |             |               |
| - |             | <del></del>   |             |               |
| - |             | <del></del>   |             |               |
| - | <del></del> |               |             |               |
|   |             |               |             |               |

(c) Redemption at Direction of the City. Upon the furnishing by the City of sufficient funds therefor, the Series A Bonds are subject to redemption prior to maturity by the Corporation at the direction of the City, as a whole on any interest payment date not less than twenty years after the original issuance date of the Series A Bonds, at the then applicable optional Redemption Price for the Series A Bonds, plus accrued interest to the date of redemption. Notice of any such redemption shall be published in at least two newspapers published and circulating in the City of New York at least twice, the first publication to be at least thirty (30) days before the redemption date.

| 3.                     | The purcha | se price for the Series A Bonds shall be \$ |       | (beii    | ng the |
|------------------------|------------|---|-------|----------|--------|
| principal amount there | of of \$   | , [plus/less] \$                            | [net] | original | issue  |
| [premium/discount], an | d less \$  | underwriters' discount).                    |       |          |        |

- 4. All proceeds of the sale of the Series A Bonds shall be paid to the Trustee as provided in the Series Resolution and in the 2020 Series A Closing Certificate, against receipt therefor. Such proceeds and moneys shall be deposited by the Trustee as provided in the Series Resolution and in the 2020 Series A Closing Certificate. Moneys on deposit in the Construction Account may, at the option of the Corporation, be used to pay interest on the Series A Bonds prior to, during and for one year after completion of the Project, as provided for Project Costs under the General Resolution, and moneys in the Capitalized Interest Account may, at the option of the Corporation, be used to pay Project Costs, in addition to interest on the Series A Bonds, all as provided in Section 401(3) and (4) of the General Resolution.
- 5. The Bonds to be Refunded shall consist of the Corporation's Health System Bonds, 2008 Series A, and the Corporation's Health System Bonds, 2010 Series A.
- 6. All words and phrases defined in the General Resolution or in the Series Resolution (collectively, the "Resolution") shall have the same meaning herein, unless the context otherwise requires.

<sup>\*</sup> Final Maturity

| IN WITNESS WHEREOF, I have h | ereunto set my hand this                          | , 2020. |
|------------------------------|---|---------|
|                              | NEW YORK CITY HEALTH AND<br>HOSPITALS CORPORATION |         |
|                              | By  |         |

Name:

Title: [Senior Vice President, Finance and Chief Financial Officer]

3

### NEW YORK CITY HEALTH AND HOSPITALS CORPORATION

AMENDED AND RESTATED GENERAL RESOLUTION

AUTHORIZING THE ISSUANCE BY THE
NEW YORK CITY HEALTH AND HOSPITALS CORPORATION OF
SERIES OF HEALTH SYSTEM BONDS; PROVIDING FOR THE
PAYMENT OF AND SECURITY FOR SUCH BONDS; AND PROVIDING
FOR OTHER MATTERS RELATING THERETO

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GENERAL RESOLUTION OF THE NEW YORK CITY HEALTH AND HOSPITALS CORPORATION PROVIDING FOR THE ISSUANCE OF BONDS FOR ITS HEALTH CARE SYSTEM; PROVIDING FOR THE PAYMENT OF AND SECURITY FOR SUCH BONDS, AND PROVIDING FOR OTHER MATTERS RELATING THERETO.

WHEREAS, the New York City Health and Hospitals Corporation (the "Corporation") has been duly and validly created as a body corporate and politic constituting a public benefit corporation of the State of New York pursuant to the provisions of the New York City Health and Hospitals Corporation Act, McKinney's Unconsolidated Laws, Section 7381 to 7406, as amended (the "Act");

WHEREAS, the Corporation, directly and through its subsidiaries, has full power to operate the health system facilities leased from The City of New York and to control and direct expenditures for the provision of health care services;

WHEREAS, the Corporation deems it necessary and desirable to provide for the issuance from time to time of bonds of one or more series, not limited as to number, in order to obtain financing or refinancing for the acquisition, equipping, renovation, improvement or operation of its Health System (as hereinafter defined) or for its benefit, including related costs whether directly or indirectly incurred;

WHEREAS, the Corporation has caused HHC Capital Corporation (as hereinafter defined) to be created and has entered into the Master Assignment and the Tri-Party Agreement (both as hereinafter defined) to provide HHC Capital Corporation with sufficient resources to pay the debt service on the Corporation's Bonds (as hereinafter defined) to be issued or incurred under this Resolution and applicable Series Resolutions;

WHEREAS, this Resolution shall serve to amend and restate the General Resolution adopted by the Corporation on November 19, 1992, as such General Resolution was previously amended by a Series Resolution adopted by the Corporation on December 19, 1996 (collectively, the "Original Resolution"), all in accordance with the provisions of Sections 902, 903, 1001 and 1002 of the Original Resolution, and this Resolution is, and shall constitute, a Supplemental Resolution under the Original Resolution, and an amendment, restatement and replacement in full of the Original Resolution, in that Section 1001 of the Original Resolution provides that the Original Resolution may be amended with the consent of the Owners of at least a majority in principal amount of Bonds Outstanding at the time such consent is given; and

WHEREAS, on the date of issuance of the Corporation's Series 2020 Bonds (as defined herein), and after giving effect to the issuance of the Series 2020 Bonds and the defeasance or redemption on such date of the Corporation's Series 2008A Bonds (as defined herein) and Series 2010A Bonds (as defined herein) that are being refunded with proceeds of the Series 2020 Bonds, the Corporation will have received the consent to the amendment and restatement of the Original Resolution being implemented pursuant to this Resolution of the Owners of in excess of a majority in principal amount of Bonds Outstanding on such date, in that the purchasers of the Series 2020 Bonds shall consent, and shall be deemed to have consented, to such amendment and restatement

of the Original Resolution by this Resolution, and such purchasers of the Series 2020 Bonds shall waive, and shall be deemed to have waived, any and all formal procedural requirements for the implementation of amendments to the Original Resolution, including, but not limited to, the requirements for prior notice, written consents, execution, publication, and timing, that might otherwise be required under the Original Resolution in connection with amendments to the Original Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE NEW YORK CITY HEALTH AND HOSPITALS CORPORATION, AS FOLLOWS:

### ARTICLE I

### STATUTORY AUTHORITY AND DEFINITIONS

Section 101. <u>Authority for This Resolution</u>. This Resolution is adopted pursuant to the provisions of the Act.

Section 102. Resolution Constitutes Contract. In consideration of the purchase and acceptance of any and all of the Bonds issued hereunder by those who shall hold the same from time to time, this Resolution shall be deemed to be and shall constitute a contract between the Corporation and the Owners of its Bonds, and the pledges made in this Resolution and the covenants and agreements herein set forth to be performed by the Corporation shall be for the equal benefit, protection and security of the Owners of any and all of the Bonds, all of which, without regard to the time or times of their issue or maturity, shall be of equal rank without preference, priority or distinction of any of the Bonds over any other Bonds, except as expressly provided in or permitted by this Resolution.

Section 103. <u>Definitions</u>. The following terms shall, for all purposes of this Resolution, have the following meanings unless the context shall clearly indicate some other meaning:

"Accountant's Certificate" shall mean an opinion signed by a firm of certified public accountants of recognized standing selected by the Corporation.

"Act" shall mean the New York City Health and Hospitals Corporation Act, being Chapter 1016 of Laws of New York 1969, as amended, McKinney's Unconsolidated Laws, Sections 7381 to 7406, inclusive.

"Additional Bonds" shall mean the Bonds authorized to be issued or incurred by the Corporation pursuant to the terms and conditions of Section 813 hereof subsequent to the issuance of the first Series of Bonds hereunder.

"Alternative Indebtedness" shall mean any Indebtedness of the Corporation which is not incurred under this Resolution and a Series Resolution.

"Arbitrage Rebate Fund" shall mean the fund by that name established by Section 507.

"Authorized Officer" shall mean (i) in the case of the Corporation, the Chairman, the Vice-Chairman, the President, the Senior Vice President for Finance, the Corporate Comptroller, the General Counsel, or any Vice President, and when used with reference to any act or document also means any other person authorized by a resolution or the by-laws of the Corporation to perform such act or execute such document; and (ii) in the case of the Trustee, the President, a Vice President, an Assistant Vice President, a Corporate Trust Officer, a Trust Officer or an Assistant Trust Officer of the Trustee, and when used with reference to any act or document also means any other person authorized to perform any act or sign any document by or pursuant to a resolution of the Board of Directors of such Trustee or the by-laws of such Trustee.

"Balloon Indebtedness" shall mean (1) long-term Indebtedness, fifteen percent (15%) or more (calculated as of the date of incurrence) of the initial principal amount of which long-term

Indebtedness matures (or is payable at the option of the holder) in any twelve month period, if such fifteen percent (15%) or more is not to be amortized to below fifteen percent (15%) by mandatory redemption prior to such twelve month period, or (2) any portion of an issue of long-term Indebtedness which, if treated as a separate issue of Indebtedness, would meet the test set forth in clause (1) of this definition and which Indebtedness is designated as Balloon Indebtedness in an Authorized Officer's certificate stating that such portion shall be deemed to constitute a separate issue of Balloon Indebtedness.

"Bond" or "Bonds" shall mean any Bond or Bonds issued pursuant to this Resolution and a Series Resolution and which Bond or Bonds are to be secured by a pledge of Health Care Reimbursement Revenues and paid from Tri-Party Payments.

"Bond Counsel" shall mean Hawkins Delafield & Wood LLP or such other firm of attorneys selected by the Corporation specializing in the field of municipal finance and nationally recognized as expert in the field.

"Bond Enhancer" shall mean with respect to any Bonds, a firm, association, corporation, bank or similar institution, public body or governmental agency or instrumentality, which is the issuer of (i) a policy of municipal bond insurance or guaranty constituting a Credit Facility in connection with such Bonds or (ii) a letter of credit, standby bond purchase agreement or other financial instrument constituting a Credit Facility for such Bonds for liquidity or credit purposes, or both, and the successors and assigns of any such entity.

"Bondowner," or "Owner," or "Owner of Bonds," or any similar term, shall mean any person or party who shall be the registered owner or any Outstanding Bonds.

"Bond Proceeds Fund" shall mean the fund by that name established by paragraph (2) of Section 401.

"Business Day" shall mean any day other than a Saturday, Sunday or a day on which the Trustee is authorized by law to remain closed.

"Capitalized Interest Account" shall mean the fund by that name established by paragraph (4) of Section 401.

"Capital Reserve Fund" shall mean the fund by that name established by Section 506.

"Capital Reserve Fund Facility" shall mean a surety agreement or bond, insurance policy or letter of credit or other similar facility which constitutes any part of the Capital Reserve Fund Requirement authorized to be delivered to the Trustee pursuant to this Resolution and satisfying the conditions set forth in paragraph (9) of Section 506 hereof.

"Capital Reserve Fund Requirement" shall mean an aggregate amount equal to, as of any date of calculation, the maximum amount of principal, whether at maturity (other than a maturity resulting from an acceleration) or upon mandatory redemption, and interest (including interest on Variable Rate Indebtedness calculated as provided in the definition thereof) maturing and becoming due in any succeeding fiscal year of the Corporation on all Bonds of the Corporation then Outstanding (other than on any Bonds issued hereunder to refund other obligations of the

Corporation during any period when such Bonds are payable from their own proceeds, prior to a Crossover Date as defined in Section 203). In addition, in connection with the issuance of a Series of Bonds, the Capital Reserve Fund Requirement shall include the maximum amount of principal, whether at maturity (other than a maturity resulting from an acceleration) or upon mandatory redemption, and interest (including interest on Variable Rate Indebtedness calculated as provided in the definition thereof) maturing and becoming due in any succeeding fiscal year of the Corporation on all Bonds of the Corporation then Outstanding, including the Series of Bonds to be issued, but excluding Bonds to be refunded by such Series of Bonds to be issued.

With respect to any Series of Bonds, in lieu of a cash deposit to the Capital Reserve Fund of an amount of funds which, together with other deposits, will equal the Capital Reserve Fund Requirement, the Corporation may provide for a Capital Reserve Fund Facility in an amount which, together with other deposits, will at least be equal to such Capital Reserve Fund Requirement, and such method of funding shall be deemed to satisfy all provisions of this Resolution and the Act with respect to the Capital Reserve Fund Requirement and the amounts required to be on deposit in the Capital Reserve Fund.

"City" shall mean The City of New York.

"Code" shall mean the Internal Revenue Code of 1986, as amended, including applicable regulations and rulings promulgated with respect thereto.

"Commissioner" shall mean the Commissioner of Health of the State, or any officer, board, body, agency or instrumentality of the State which shall hereafter succeed to the powers, functions and duties of the Commissioner.

"Construction Fund" shall mean the fund by that name established by paragraph (3) of Section 401.

"Corporation" shall mean the New York City Health and Hospitals Corporation, a body corporate and politic constituting a public benefit corporation of the State pursuant to the Act.

"Cost of Issuance" shall mean the items of expense incurred or to be reimbursed directly or indirectly to the Corporation in connection with the authorization, sale and issuance of Bonds and the investment of the proceeds of Bonds issued in relation thereto, which items of expense shall include, but not be limited to, printing and reproduction costs, filing and recording fees, initial fees and charges of the Trustee, legal fees and charges, professional consultants' fees, costs of credit ratings, fees and charges for execution, transportation and safekeeping of Bonds, premiums, fees and charges for insurance on such Bonds, costs and expenses of refunding Bonds, and other costs, charges and fees in connection with the foregoing.

"Cost of Issuance Accounts" shall mean the accounts by that name established by paragraph (5) of Section 401.

"Credit Facility" shall mean (a) for purposes of meeting the Capital Reserve Fund Requirement for any Bonds, a Capital Reserve Fund Facility, and (b) for purposes of providing credit or liquidity support, or both, for any Bonds or any maturity or maturities thereof, an

instrument described and designated as such in the Series Resolution authorizing the issuance of such Bonds.

"Debt Service Fund" shall mean the fund by that name established by Section 504.

"Event of Default" shall mean any one or more of those events described in Section 1102.

"Government Obligations" shall mean (i) direct obligations of the United States of America, including book entry securities issued by the United States Treasury (which may include United States Treasury Obligations—State and Local Government Series ("SLGs")), (ii) obligations the principal of and the interest on which are unconditionally guaranteed by the United States of America (other than obligations subject to variation in scheduled principal repayment) to which the full faith and credit of the United States of America are pledged, (iii) investments which evidence direct ownership of future interest and principal payments of United States Treasury bonds, and (iv) a certificate or other instrument which evidences the ownership of, or the right to receive all or a portion of the payment of the principal of or interest on, direct or guaranteed obligations of the United States of America, provided, however, that at the time of investment any of the obligations described above shall qualify as a permitted investment of the Corporation under Section 7392 of the Act.

"Guaranty" shall mean any obligation incurred by the Corporation guaranteeing in any manner, directly or indirectly, or in effect guaranteeing, directly or indirectly, through an agreement, contingent or otherwise, any obligation of any other person or entity, which obligation of such other person or entity would, if such obligation were the obligation of the Corporation, constitute Indebtedness hereunder. A Guaranty may be incurred as Alternative Indebtedness.

"Health Care Reimbursement Revenues" shall mean all revenues, income, receipts and money received by or on behalf of the Corporation or HHC Capital Corporation now or in the future with respect to or arising from the operation of the Health System, including, but not limited to, revenues derived from (i) insurance, (ii) accounts receivable, (iii) medical or hospital expense reimbursement or insurance programs or agreements, (iv) contract rights relating to patient care reimbursement now or hereafter owned, held or possessed by or on behalf of the Corporation or HHC Capital Corporation, (v) general intangibles and (vi) funds appropriated by the City and paid in cash to the Corporation but excluding (1) reimbursement funds from the City for capital program expenditures incurred by the Corporation, (2) revenues derived by Med-Plan and MetroPlus Health Plan, Inc., and their successors, (3) gross revenues derived from the operation of non-patient services facilities, including, but not limited to, cafeterias, parking, and space rentals, (4) proceeds of borrowings and interest earned thereon, (5) gifts, grants, bequests, donations and contributions received by or allocated to the Corporation or any of its subsidiaries or foundations, (6) revenues arising from the disposition of inventory and other tangible and intangible assets, (7) investment earnings or profits on funds of the Corporation not pledged to the repayment of Bonds, (8) revenues arising from medical service plans or other physician, dentist or similar payments to the extent not treated as Corporation revenue for the Corporation's accounting purposes, (9) revenues derived from self-pay patients for patient care services, (10) revenues, income, receipts or money which are released in accordance with a Supplemental Resolution adopted pursuant to Section 901, provided, however, that revenues described in clause (9) shall not be excluded from Health Care Reimbursement Revenues if in any year they shall be greater than five percent (5%) of Health Care Reimbursement Revenues for the Corporation's previous fiscal year, and (11) any revenues derived by the Corporation from a facility or service no longer provided by the Corporation, as permitted under this Resolution.

"Health Facility" shall mean a facility now or hereafter leased or owned and operated by or on behalf of the Corporation for the provision of health care services and administration services and with respect to which the Corporation or HHC Capital Corporation is entitled to receive Health Care Reimbursement Revenues.

"Health System" shall mean, collectively, the Health Facilities of the Corporation now or hereafter operated by or on behalf of the Corporation.

"HHC Capital Corporation" shall mean HHC Capital Corporation, a wholly-owned special purpose subsidiary of the Corporation, and any successor thereto created for the purpose of receiving all Health Care Reimbursement Revenues of the Corporation, disbursing Tri-Party Payments to the Trustee as required under the Tri-Party Agreement, and remitting the remaining balance to the Corporation.

"Indebtedness" shall mean (a) all Bonds plus (b) all Alternative Indebtedness, whether due and payable in all events, or upon the performance of work, possession of property as lessee or rendering of services by others.

"Investment Agreement" shall mean an agreement respecting the investment of proceeds of a Series of Bonds, provided, that any Investment Agreement is provided by a Qualified Financial Institution.

"Investment Obligations" shall mean the following obligations in which monies held under this Resolution and any Series Resolution may be invested, subject to the limitations set forth in Section 7392 of the Act, which limit investments of funds of the Corporation to obligations of the United States, the State, or the City, or obligations the principal of and interest on which are guaranteed by the United States, the State or the City:

- (a) Government Obligations;
- (b) evidence of ownership of a proportionate interest in specified direct obligations of the United States of America, which obligations are held by a bank or trust company organized and existing under the laws of the United States of America or any state thereof in the capacity of custodian, or when "stripped" by the United States Treasury; then by the custodian designated by the United States Treasury;
- (c) debt obligations issued or guaranteed by any of the following agencies or such other like governmental or government-sponsored agencies which may be hereafter created: Federal Home Loan Bank System; Federal National Mortgage Association; Export-Import Bank of the United States; Inter-American Development Bank; or Government National Mortgage Association;
- (d) debt obligations of any state or political subdivision thereof or any agency or instrumentality of such a state or political subdivision, <u>provided</u>, that the principal

or redemption price of and interest on such obligations are secured by and payable from amounts received (without reinvestment) in respect of the principal of and interest on non-callable Government Obligations, and <u>provided further</u> that, at the time of purchase, such obligations are rated by a Rating Agency in the highest rating category assigned by such Rating Agency;

- (e) long-term general obligations of any state or political subdivision thereof or any agency or instrumentality of such a state or political subdivision or of any corporation, <u>provided</u>, that, at the time of purchase, such obligations are rated by a Rating Agency in any of the three highest rating categories assigned by a Rating Agency;
- (f) certificates of deposit issued by, and time deposits in, and bankers' acceptance of, any bank (including the Trustee), any branch of any bank, national banking association or federally chartered savings and loan association; provided, that with respect to any of the foregoing institutions whose long-term unsecured indebtedness is rated less than "A" by a Rating Agency, such certificates of deposit or time deposits are at the time of their purchase (i) issued by the Federal Deposit Insurance Corporation for the full face amount thereof or (ii) to the extent not so insured, collateralized by direct obligations of the United States of America having a market value of not less than the face amount of such certificates and deposits;
- (g) interest bearing notes or interest bearing bonds or similar investment arrangements with any corporate entity certain of whose unsecured or uncollateralized long-term debt obligations are assigned to a rating category at the time of purchase of such obligation no lower than the third highest rating categories of any Rating Agency;
- (h) repurchase agreements for Investment Obligations described in subparagraph (a), (b) or (c) above entered into by the Corporation or the Trustee that is with a domestic bank or trust company (including the Trustee) or securities dealer which is a member of the Securities Investors Protection Corporation, and which is a primary reporting dealer in government securities as determined by the Federal Reserve Bank, or if "primary reporting dealers" cease to be determined by the Federal Reserve Bank, such other comparable standard as the Corporation shall implement pursuant to a Supplemental Resolution; provided, however, that such specified Investment Obligations must be transferred to the Trustee or a third party or custodian that is a bank or trust company with trust powers by physical delivery or by an entry on the records of the Corporation or registrar of such obligations, and the collateral security must continually have a market value at least equal to the amount so invested and the collateral must be free of third party claims. Any investment in a repurchase agreement shall be considered to mature on the date the bank, trust company or recognized securities dealer providing the repurchase agreement is obligated to repurchase the Investment Obligations described in subparagraph (a), (b) or (c) above;
- (i) Investment Agreements with Qualified Financial Institutions;

- (j) interests in a money market mutual fund registered under the Investment Company Act of 1940, 15 U.S.C. Sections 80-1, et seq., as from time to time amended, the portfolio of which is limited to obligations described in subparagraph (a), (b) or (c) above and repurchase agreements fully collateralized thereby <u>provided</u>, that such fund has total assets of at least \$100,000,000 and is rated in the highest rating category by a Rating Agency;
- (k) commercial paper rated at the time of purchase in the highest rating category by a Rating Agency; and
- (l) any other obligations which at the time of investment shall be permitted pursuant to the Act or other applicable law, <u>provided</u>, <u>however</u>, that if the funds invested in any such obligations are pledged for the payment of Bonds hereunder and the Bonds are then rated by a Rating Agency, any such obligation shall be rated at the time of investment in one of the two highest rating categories of such Rating Agency or, if such obligation is not then rated by any Rating Agency, an obligation of comparable credit quality of the same issuer is rated in one of the two highest rating categories of such Rating Agency;

<u>provided</u>, <u>however</u>, that any investment described above shall constitute at the time of purchase a permitted investment under the Act, and <u>provided</u>, <u>further</u>, that any rating category limitation described above shall apply without regard to qualification by symbols such as "+" or "-" or numerical notation.

"Master Assignment" shall mean the agreement, dated as of November 19, 1992, among the Corporation, the Corporation's providers and HHC Capital Corporation, pursuant to which Health Care Reimbursement Revenues due to the Corporation and each of the Corporation's health care providers are irrevocably transferred, conveyed and assigned to HHC Capital Corporation for at least as long as any Bonds are outstanding.

"Net Cash Available for Debt Service" shall mean, for the period in question and in each case determined in accordance with then generally accepted accounting principles, the Net Cash provided by (used in) Operating Activities and Gains and Losses as set forth on the Consolidated Statement of Cash Flows in the audited financial statements of the Corporation, plus interest and amortization on Indebtedness and any cash on hand at the beginning of a fiscal year.

"Outstanding", when used with reference to Bonds, shall mean, as of any date, Bonds which have been delivered under the provisions of this Resolution, except: (i) any Bonds cancelled by the Trustee at or prior to such date, (ii) Bonds for the payment or redemption of which monies or investments as referred to in Section 1302 hereof timely maturing and bearing interest equal to the principal amount or Redemption Price thereof, as the case may be, with interest to the date of maturity or redemption date, shall be held by the Trustee in trust (whether at or prior to the maturity or redemption date), provided, that if such Bonds are to be redeemed, notice of such redemption shall have been given as in Article III provided or provision satisfactory to the Trustee shall have been made for giving of such notice, (iii) Bonds in lieu of or in substitution for which other Bonds shall have been delivered pursuant to Article II or Section 307 or Section 1006 and (iv) Bonds or portions of Bonds deemed to have been paid as provided in

Section 1302. In addition, for the purposes of making the calculations required by Section 813 hereof, the term "Outstanding" shall not include any Bonds issued to refund other obligations of the Corporation but only during the period when such Bonds are payable from their own proceeds prior to a Crossover Date, as defined in Section 203 of the Resolution. Bonds held by the Corporation shall not be deemed to be Outstanding and shall not be entitled to any of the rights, privileges or benefits of this Resolution, including the lien created by this Resolution and the right to receive payment of principal of and interest on said Bonds.

"Project" shall mean any acquisition of land or building site development, construction, reconstruction, alteration, rehabilitation, renovation, expansion or improvement of a Health Facility or any other facility leased to or owned by the Corporation and operated for or on behalf of the Corporation, financing or refinancing of the acquisition, construction, reconstruction, and installation of furnishings and equipment, all as may now or hereafter be permitted under the Act.

"Project Costs" shall mean the costs and expenses or the refinancing of or reimbursement of costs and expenses of a Project, including, but not limited to, (i) costs and expenses of the acquisition of the title to or other interest in real property (including premiums and other charges in connection with obtaining title insurance), including easements, rights-of-way and licenses, (ii) costs and expenses incurred for labor and materials and payments to the Corporation or contractors, builders and materialmen, for the acquisition, construction, installation, reconstruction, rehabilitation, renovation, repair and improvement of a Project, (iii) the cost of surety bonds and insurance of all kinds, that may be required or necessary prior to completion of a Project, which is not paid by a contractor or otherwise provided for, (iv) the costs and expenses for design, test borings, surveys, feasibility studies, estimates, plans and specifications and preliminary investigations therefor, and for supervising construction of a Project, (v) costs and expenses required for the acquisition and installation of equipment or machinery, (vi) all other costs which the Corporation shall be required to pay or capitalize, including but not limited to working capital, for the acquisition, construction, installation, reconstruction, rehabilitation, renovation, repair, improvement, and equipping of a Project, (vii) any sums required to reimburse the Corporation or any related entity for advances made by it for any of the above items or for other costs incurred and for work done by them in connection with a Project (including interest on moneys borrowed from parties other than the Corporation), (viii) interest on the Bonds of a Series prior to, during and for a reasonable period after completion of the acquisition, construction, installation, reconstruction, rehabilitation, renovation, repair, improvement or equipping of a Project, and (ix) fees, expenses and liabilities of the Corporation incurred in connection with such Project or pursuant to this Resolution or a Series Resolution, or for application to working capital purposes of the Corporation to the extent derived from the proceeds of a working capital borrowing authorized and permitted under Section 814 of this Resolution.

"Qualified Financial Institution" shall mean a bank, trust company, national banking association, insurance company, financial services company or other similar organization whose unsecured long-term debt obligations (in the case of a bank, trust company, national banking association or other financial services company) or whose claims paying abilities (in the case of an insurance company) are rated in either of the two highest rating categories by a Rating Agency; provided, that with respect to any provider of an Investment Agreement, such provider must meet the aforementioned rating criteria at the inception of the Investment Agreement, and if during the

term of such Investment Agreement the provider's rating is reduced, the provider will nonetheless be deemed to meet the criteria if:

- (a) with respect to banks domiciled in the United States, the rating is
  - (i) less than AA/Aa but higher than BBB+/Baa1, and the bank provides collateral to be held by a third party at levels equal to 108% if marked to market monthly and 105% if marked to market weekly; or
  - (ii) BBB+ or less but with a collateralization level of 125%, and
- (b) with respect to foreign banks, the rating does not fall to below A-/A3, unless such bank is willing to provide collateral at the same levels as United States banks as described in (a) above.

"Rating Agency" or "Rating Agencies" shall mean S&P Global Ratings, Moody's Investors Service, Inc., and Fitch Ratings, Inc., either singularly or collectively, as the case may be, and any successors or other similar entitles which the Corporation may request to provide a rating for its Bonds.

"Record Date" shall mean the date which is 15 days prior to an interest payment date or redemption date and the date which the Trustee shall use to determine conclusively the registered owners of Bonds of a Series for the purposes of payment on such interest payment date or redemption date unless otherwise determined in a Series Resolution.

"Redemption Fund" shall man the Fund by the name established by Section 505.

"Redemption Price" shall mean, with respect to any Bond, the principal amount thereof, plus the applicable premium, if any, payable upon redemption thereof pursuant to this Resolution and the Series Resolution pursuant to which the same was issued.

"Refunding Bonds" shall mean all Bonds issued and delivered pursuant to Section 203 of this Resolution.

"Resolution" shall mean this Amended and Restated General Resolution as from time to time amended or supplemented by Supplemental Resolutions in accordance with the terms and provisions hereof, as applicable, and any Series Resolutions adopted in connection with the issuance of a Series of Bonds.

"Revenue Fund" shall mean the fund by that name established pursuant to Section 503.

"Serial Bonds" shall mean Bonds which mature in semi-annual or annual installments of principal, which need not be equal and the first installment of which may be deferred.

"Series of Bonds" or "Bonds of a Series" shall mean the Series of Bonds authorized by a Series Resolution.

"Series Resolution" shall mean a resolution of the Corporation authorizing the issuance of a Series of Bonds and establishing the terms and conditions thereof in accordance with the provisions of Article II hereof.

"SIFMA" shall mean the Securities Industry and Financial Markets Association, any successor thereto, or any person acting in cooperation with or under the sponsorship of SIFMA and acceptable to the Corporation.

"SIFMA Index" shall mean, on any date, a rate determined on the basis of the seven-day high grade market index of tax-exempt variable rate demand obligations (the SIFMA Municipal Swap Index), as produced by Municipal Market Data and published or made available by SIFMA, or any person acting in cooperation with or under the sponsorship of SIFMA and acceptable to the Corporation, and effective from such date.

"Sinking Fund Payments" shall mean, with respect to any Series of Bonds, the payments of principal of Term Bonds prior to maturity in accordance with the applicable Series Resolution.

"State" shall mean the State of New York.

"Supplemental Resolution" shall mean a resolution supplemental to or amendatory of this Resolution, adopted by the Corporation in accordance with Article IX.

"Term Bonds" shall mean Bonds not constituting Serial Bonds and for which Sinking Fund Payments are provided and specified by the Series Resolution authorizing the issuance of such Bonds.

"Treasury Department" shall mean the Department of Treasury of the United States of America.

"Tri-Party Agreement" shall mean the agreement, dated as of November 19, 1992, among the Corporation, HHC Capital Corporation and the Trustee, pursuant to which (i) HHC Capital Corporation pledges to the Trustee for the making of Tri-Party Payments for the benefit of the Owners of Bonds of the Corporation, (ii) HHC Capital Corporation shall make Tri-Party Payments to the Trustee, and (iii) the Trustee shall apply such Tri-Party Payments in accordance with this Resolution.

"Tri-Party Payments" shall mean the amounts to be paid for any month by HHC Capital Corporation, on behalf of the Corporation, to the Trustee on a daily basis in order to aggregate sufficient amounts, together with other such payments and other amounts available, to (i) pay the principal and Sinking Fund Payments of and interest on Bonds as the same shall become due, (ii) restore the Capital Reserve Fund to the Capital Reserve Fund Requirement as required by Section 506, and (iii) fund any rebate obligation provided for in Section 507.

"Trustee" shall mean Wilmington Trust, N.A., as affiliate of M&T Bank Corporation, or the commercial bank, trust company or national banking association appointed pursuant to Section 701 to act as trustee hereunder, and its successor or successors, and any other commercial bank, trust company or national banking association at any time substituted in its place pursuant to this Resolution.

"Variable Rate Indebtedness" shall mean obligations for borrowed money, including Bonds, bearing interest at a variable rate or rates, <u>provided</u>, that obligations for borrowed money the interest rate on which shall have been fixed for the remainder of the term thereof shall no longer constitute Variable Rate Indebtedness. For purposes of calculating the amount of interest becoming due in any succeeding fiscal year of the Corporation on Variable Rate Indebtedness, the rate of interest shall be deemed to be the lesser of (i) the maximum permitted rate of interest on such Variable Rate Indebtedness or (ii) at the option of the Corporation, an interest rate equal to the average short-term interest rate over the previous three years on obligations with a short-term rating identical to the rating or ratings on such Variable Rate Indebtedness, as calculated by an investment banking or financial advisory firm selected by the Corporation with a national reputation in the field of municipal finance, or an interest rate equal to the average of the SIFMA Index over the previous three years.

Section 104. <u>Terms of Construction</u>. 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 corporations and associations, including public bodies, as well as natural persons.

The terms "hereby," "hereof," "hereto," "herein," "hereunder," and any similar terms, as used in this Resolution, refer to this Resolution.

### ARTICLE II

## AUTHORIZATION AND ISSUANCE OF BONDS

Section 201. <u>Authorization of Bonds</u>. Bonds of the Corporation are hereby authorized to be issued as hereinafter provided. All Bonds shall be obligations of the Corporation payable from Tri-Party Payments to be made under the Tri-Party Agreement, and all funds and accounts (excluding any Arbitrage Rebate Fund) authorized by this Resolution and established by this Resolution, a Series Resolution or otherwise, all in the manner more particularly provided herein. The aggregate principal amount of Bonds which may be executed, authenticated and delivered is not limited except as provided hereby and by the applicable Series Resolution.

THE BONDS OF THE CORPORATION SHALL NOT BE A DEBT OF THE STATE OR OF THE CITY, AND NEITHER THE STATE NOR THE CITY SHALL BE LIABLE THEREON, NOR SHALL THEY BE PAYABLE OUT OF ANY FUNDS OTHER THAN THOSE OF THE CORPORATION OR HHC CAPITAL CORPORATION. NEITHER THE CORPORATION NOR HHC CAPITAL CORPORATION HAS ANY TAXING POWER.

Section 202. <u>Provisions for Issuance of Bonds</u>. The issuance of Bonds of a Series shall be authorized by a Series Resolution or Series Resolutions adopted by the Corporation. Any such issuance of Bonds shall be subject to the provisions and limitations of this Section 202 and Section 813. Bonds may be issued in one or more Series and shall, in addition to the Title "New York City Health and Hospitals Corporation Health System Bonds", contain an appropriate Series designation.

Each Series Resolution authorizing the issuance of a Series of Bonds shall also specify:

- (i) The authorized principal amount of said Series of Bonds;
- (ii) The purposes for which said Series of Bonds are being issued, which purposes shall be in accordance with the Act;
- (iii) Subject to the provisions of Section 205, the dated date, maturity date or dates and amounts due upon each maturity, the amount and due date of each Sinking Fund Payment, if any, for the Bonds of a Series or the manner of determining the same, the first interest payment date of the Bonds of said Series or the method of determining the same, and the Record Date or Record Dates for the Bonds of said Series;
- (iv) The interest rate or rates, or the manner of determining such rate or rates;
- (v) The denomination or denominations of, and the manner of numbering and lettering, the Bonds of such Series;
- (vi) The place or places of payment of the principal and Redemption Price, if any, and interest on the Bonds of such Series;

- (vii) The Redemption Price or Redemption Prices, if any, and, subject to Article III, the redemption terms, if any, for the Bonds of such Series or the method of determining the same;
- (viii) The provisions for the sale of the Bonds of such Series at public or private sale, the approval of the terms of and the execution and distribution of an official statement or other offering document describing the Bonds of such Series and, if such Bonds are sold at public sale, publication of a notice of sale, and the execution of a contract or contracts of purchase at public or private sale on behalf of the Corporation;
- (ix) The forms of the Bonds of such Series and the form of the Trustee's certificate of authentication thereon:
- (x) The Capital Reserve Fund Requirement for such Series of Bonds;
- (xi) Directions for the application of the proceeds of the Bonds of such Series;
- (xii) The election to deliver such Series of Bonds in certificated form instead of book-entry form as permitted by Section 214;
- (xiii) The officer or employee of the Corporation directed to attest the execution of the Bonds of such Series;
- (xiv) To the extent that interest on a Series of Bonds is to be excluded from gross income for purposes of Federal income taxation, such covenants and other provisions relating to such Series of Bonds as shall be necessary with respect to any such exclusion;
- (xv) If the Bonds of a Series are to be used for the construction of a Health Facility, then, to the extent required by Section 7385(4) of the Act, that the approval of the Mayor has been received in connection with such construction; and
- (xvi) Any other provision deemed advisable by the Corporation, not in conflict with the provisions of this Resolution.

Bonds of a Series may be either Serial Bonds or Term Bonds, or a combination thereof. All Bonds of each said Series of like maturity shall be identical in all respects, except as to denominations, numbers and letters (and except that Bonds of a Series that have the same maturity may bear differing interest rates on a so-called split coupon basis or differing redemption terms). Bonds may also be issued in the form of, or designated as, notes, but all of such shall nevertheless be deemed to be Bonds issued under this Resolution.

In addition, prior to the issuance of any Series of Bonds, there shall be obtained an opinion of Bond Counsel to the effect that this Resolution and the Series Resolution authorizing the Series of Bonds have been duly and lawfully adopted by the Corporation's Board of Directors, that this Resolution and the Series Resolution are in full force and effect and are valid and binding upon

the Corporation and enforceable in accordance with their terms, and that the Corporation is duly authorized and entitled to issue such Series of Bonds and upon the execution and delivery thereof and upon authentication by the Trustee, such Bonds will be duly and validly issued and will constitute valid and binding special obligations of the Corporation entitled to the benefits of this Resolution and the applicable Series Resolution, <u>provided</u>, <u>however</u>, that such opinion may be qualified to the extent that enforceability of rights and remedies may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally or as to the availability of any particular remedy.

Section 203. <u>Provisions for Refunding Bonds</u>. Refunding Bonds of one or more Series may be issued and delivered, subject to the provisions and limitations of this Section 203 and Section 813, for the purpose of refunding any part or all of any one or more Series of Bonds then Outstanding or for the purpose of refinancing any Alternative Indebtedness of the Corporation (the "Refunded Indebtedness"). All Refunding Bonds of each Series shall be executed by the Corporation for issuance under this Resolution and delivered to the Trustee and by it delivered to the Corporation or upon its order, but only upon the receipt by the Trustee of:

- (A) in the case of any Bonds to be refunded,
- (i) Irrevocable instructions to give due notice of redemption of such Bonds to be refunded on a redemption date or dates specified in such instructions;
- (ii) If the Bonds to be refunded are not by their terms subject to redemption within the next succeeding 90 days, irrevocable instructions to give the notice provided for in Section 1302 to the Owners of the Bonds being refunded; and
- (iii) Investment Obligations in such principal amounts, of such maturities, bearing such interest, and otherwise having such terms and qualifications, as shall be necessary to comply with the provisions of Section 1302 and any monies required pursuant to Section 1302, which Investment Obligations and monies shall be held in trust and used only as provided in Section 1302.

or (B) in the case of any Alternative Indebtedness to be refinanced or refunded, evidence of the satisfaction of such requirements relating to the redemption or repayment of such Alternative Indebtedness to be refinanced or refunded as are set forth in the instrument pursuant to which such Alternative Indebtedness was incurred.

If a Series of Refunding Bonds will by its terms be secured by the proceeds thereof plus the investment earnings thereon and any Credit Facility or cash contribution from the Corporation for the period from the date of issuance thereof through and including the date on which such amounts will be used to provide for the payment of and defeasing the lien enjoyed by such Refunded Indebtedness then, in lieu of the requirements of (A) (i), (ii) and (iii) above or of (B) above, as the case may be, the Trustee shall receive monies and/or Investment Obligations which are sufficient, together with the investment earnings thereon and amounts available to be drawn under any Credit Facility held by the Trustee and available therefor, to pay or provide for the payment of the principal and Redemption Price, if any, of and interest on such Refunding Bonds prior to and including the date (the "Crossover Date") on which such Refunded Indebtedness is

to be deemed paid in accordance with the defeasance provisions of the instrument pursuant to which such Refunded Indebtedness was issued or incurred and the principal and Redemption Price, if any, of such Refunded Indebtedness on the Crossover Date.

Section 204. <u>Approval of Sale of Bonds</u>. If such approval be required by the terms of the Act, including Section 7393(3) of the Act, or other applicable provision of law, the Corporation shall not sell any Bonds at a private sale unless such sale and the terms thereof have been approved in writing by the City Comptroller.

Section 205. Place and Medium of Payment; Form and Date. Except as otherwise provided in the applicable Series Resolution, the Bonds shall be payable, with respect to interest, principal and Redemption Price and Sinking Fund Payments, in any coin or currency of the United States of America which at the time of payment is legal tender for the payments of public and private debts (including check or draft payable in such legal tender). Principal, Sinking Fund Payments and Redemption Price of the Bonds of each Series shall be payable at the principal corporate trust office of the Trustee. Interest on Bonds of each Series shall be paid by check or draft mailed by the Trustee or sent by wire transfer or other standard acceptable means to the registered owner thereof at the address thereof as it appears on the Bond registry books of the Corporation held and maintained by the Trustee.

All payments of principal, Sinking Fund Payments or Redemption Price of or interest on Bonds shall specify the CUSIP number or numbers of the Bonds, if applicable, in connection with which such payment is made.

The Bonds of each Series shall be issued in the form of fully registered Bonds without coupons. Any Series Resolution may contain such additional provisions regarding registration, transfer and exchange of Bonds of such Series as are not inconsistent herewith.

Bonds of each Series issued prior to the first interest payment date thereof shall be dated as of the date specified in the Series Resolution authorizing the issuance thereof. Except as otherwise provided in the applicable Series Resolution, Bonds issued on or subsequent to the first interest payment date thereof shall be dated as of the date six months preceding the interest payment date next following the date of delivery thereof, unless such date of delivery shall be an interest payment date, in which case they shall be dated as of such date of delivery; provided, however, that if, as shown by the records of the Trustee, interest on the Bonds of any Series shall be in default, the Bonds of such Series issued in lieu of Bonds surrendered for transfer or exchange may be dated as of the date to which interest has been paid in full on the Bonds surrendered. Bonds of each Series shall bear interest from their date.

For all purposes of the Act relating to or dealing with the date of the Bonds, Bonds of any Series shall be deemed to be dated as of the date specified for the Bonds of such Series in the Series Resolution authorizing the issuance thereof.

Except as otherwise provided in the applicable Series Resolution, all Bonds of each Series shall mature semi-annually on February 15 and August 15, or annually on August 15, of each year in which a maturity is fixed by the applicable Series Resolution. Except as otherwise provided in the applicable Series Resolution, interest on all Bonds of each Series, except the first installment

of interest due on the Bonds of such Series, shall be payable semi-annually on February 15 and August 15 of each year in which an installment of interest becomes due as fixed by the applicable Series Resolution. The first installment of interest due on the Bonds of a Series may be on such date as the Corporation shall determine by Series Resolution.

Section 206. <u>Legends; CUSIP Numbers</u>. The Bonds of each Series may contain or have endorsed thereon such provisions, specifications and descriptive words not inconsistent with the provisions of this Resolution as may be necessary or desirable to comply with custom, or otherwise, as may be determined by the Corporation prior to the delivery thereof.

The Corporation, unless otherwise requested by the purchaser of Bonds upon their initial issuance, shall provide for the assignment of CUSIP numbers for such Bonds and to have such CUSIP numbers printed thereon, and the Trustee shall use such CUSIP numbers in notices of redemption and on all checks payable to Bondowners as a convenience to Bondowners, provided, that any such notice shall state that no representation is made as to the correctness of such number either as printed on such Bonds or as contained in any notice of redemption, and that an error in a CUSIP number as printed on such Bonds or as contained in any notice of redemption shall not affect the validity of the Bonds or the proceedings for redemption.

Section 207. Execution and Authentication. The Bonds shall be executed in the name of the Corporation by the manual or facsimile (including electronic) signature of its Chairman or Vice Chairman, President, Chief Operating Officer or any other Authorized Officer, and attested by the manual or facsimile (including electronic) signature of such officer or employee of the Corporation as shall be directed by the Series Resolution authorizing the issuance thereof, or in such other manner as may be required by law. In case any one or more of the officers or employees who shall have signed any of the Bonds shall cease to be such officer or employee before the Bonds so signed shall have been actually delivered, such Bonds may, nevertheless, be delivered as herein provided and may be issued as if the persons who signed such Bonds had not ceased to hold such offices or be so employed. Any Bond of a Series may be signed on behalf of the Corporation by such persons as at the actual time of the execution of such Bond shall be duly authorized or hold the proper office in or employment by the Corporation, although at the date of delivery of the Bonds of such Series such persons may not have been so authorized nor have held such office or employment.

Section 208. <u>Interchangeability of Bonds</u>. Bonds, upon surrender thereof at the corporate trust office of the Trustee with a written instrument of transfer satisfactory to the Trustee, duly executed by the registered owner or such owner's duly authorized attorney, may, at the option of the registered owner thereof, be exchanged, subject to the provisions of the applicable Series Resolution, for an equal aggregate principal amount of Bonds of the same Series, interest rate and maturity of the same or any other authorized denominations.

Section 209. <u>Negotiability, Transfer and Registry</u>. All the Bonds issued under this Resolution shall, as provided in the Act, be negotiable, subject to the provisions for registration and transfer contained in this Resolution and in the Bonds. So long as any of the Bonds shall remain Outstanding, the Corporation shall maintain and keep, at the corporate trust office of the Trustee, books for the registration and transfer of Bonds; and, subject to the terms of this Resolution and the Series Resolution authorizing a particular Series of Bonds upon presentation

thereof for such purpose at said office, the Corporation shall register or cause to be registered therein, and permit to be transferred thereon, under such reasonable regulations as the Corporation or the Trustee may prescribe, any Bond entitled to registration or transfer. So long as any of the Bonds remain Outstanding, the Corporation shall make all necessary provisions to permit the exchange of Bonds at the corporate trust office of the Trustee.

Section 210. <u>Transfer of Bonds</u>. Each Bond shall be transferable only upon the books of the Corporation which shall be kept for that purpose at the corporate trust office of the Trustee, by the registered owner thereof in person or by his attorney duly authorized in writing, upon surrender thereof together with a written instrument of transfer satisfactory to the Trustee duly executed by the registered owner or his duly authorized attorney (duly authorized in writing) and the payment of a charge sufficient to reimburse the Corporation and the Trustee for any tax, fee or other governmental charge that may be required to be paid in connection with such transfer. Upon the transfer of any such Bond the Corporation shall issue in the name of the transferee a new Bond or Bonds of the same aggregate principal amount and Series, interest rate, and maturity as the surrendered Bonds.

The Corporation and the Trustee shall treat the person in whose name any Outstanding Bond shall be registered upon the books of the Corporation as the absolute owner of such Bond whether such Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal, Sinking Fund Payments and Redemption Price, if any, of and interest on such Bond and for all other purposes, and all such payments so made to any such registered owner or upon his order shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid, and neither the Corporation nor the Trustee shall be affected by any notice to the contrary. The Corporation agrees to indemnify and save the Trustee harmless from and against any and all loss, cost, charge, expense, judgment or liability incurred by it acting in good faith and without negligence hereunder, in so treating such registered owner.

Section 211. Regulations with Respect to Exchanges and Transfers. In all cases in which the privilege of exchanging Bonds or transferring Bonds is exercised, the Corporation shall execute and the Trustee shall deliver Bonds in accordance with the provisions of this Resolution. All Bonds surrendered in any such exchanges or transfers shall forthwith be cancelled by the Trustee. For every such exchange or transfer of Bonds, whether temporary or definitive, the Corporation or the Trustee may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer, which sum or sums shall be paid by the person requesting such exchange or transfer as a condition precedent to the exercise of the privilege of making such exchange or transfer. Notwithstanding any other provision of this Resolution, the cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Corporation or the Trustee incurred in connection therewith (except any applicable tax, fee or other governmental charge) shall be paid by the Corporation as an administrative expense. Unless a shorter period shall be established in the applicable Series Resolution, the Corporation and the Trustee shall not be obligated to make any such exchange or transfer of Bonds of any Series during the fifteen (15) days next preceding an interest payment date on the Bonds of such Series or, in the case of any proposed redemption of Bonds of such Series, next preceding the date of the first giving of notice of such redemption.

Section 212. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Bond shall become mutilated or be destroyed, stolen or lost, the Corporation shall execute and deliver a new Bond of like Series, interest rate, maturity and principal amount as the Bond so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond or in lieu of and substitution for the Bond destroyed, stolen or lost, upon filing with the Corporation evidence satisfactory to the Corporation that such Bond has been destroyed, stolen or lost and proof of ownership thereof, and upon furnishing the Corporation and the Trustee with indemnity satisfactory to them and complying with such other reasonable requirements as the Corporation may prescribe and paying such expenses as the Corporation and the Trustee may incur. All Bonds so surrendered to the Corporation shall be sent to and cancelled by the Trustee. The Corporation shall advise the Trustee of the issuance of substitute Bonds. In case any Bond of a Series which has matured or is about to mature shall become mutilated or be destroyed, lost or stolen, the Corporation may, instead of issuing a Bond in exchange or substitution therefor, pay or authorize the payment of the same (without surrender thereof except in the case of a mutilated Bond) if the applicant for such payment shall furnish to the Corporation and the Trustee such security or indemnity as they may require to save them harmless, and evidence to the satisfaction of the Corporation and the Trustee of the mutilation, destruction, loss or theft of such Bond and of the ownership thereof.

Section 213. <u>Authorization and Preparation of Temporary Bonds and Definitive Bonds</u>. Until the definitive Bonds of any Series are prepared, the Corporation may execute and the Trustee shall deliver temporary Bonds which may be typewritten, printed or otherwise reproduced in lieu of definitive Bonds subject to the same provisions, limitations and conditions as definitive Bonds. The temporary Bonds initially shall be dated as of the initial date of such definitive Bonds, shall be in such denomination or denominations and shall be numbered as prepared and executed by the Corporation, shall be substantially of the tenor of such definitive Bonds but with such omissions, insertions and variations as the Authorized Officers executing the same may in their discretion determine, and may be issued in the form of a single Bond.

Without unreasonable delay after the issuance of temporary Bonds, if any, the Corporation shall cause definitive Bonds of each Series to be prepared, executed and delivered to the Trustee. The definitive Bonds shall be typewritten or lithographed or printed as the Corporation may direct. Temporary Bonds shall be exchangeable for definitive Bonds upon surrender to the Trustee of any such temporary Bond or Bonds, and upon such surrender, the Corporation shall execute and the Trustee shall deliver to the Bondowner of the temporary Bond or Bonds, in exchange therefor, a like principal amount of definitive Bonds in authorized denominations. Until so exchanged the temporary Bonds shall in all respects be entitled to the same benefits as definitive Bonds issued pursuant to this Resolution.

The interest and all other payments on temporary Bonds, when and as payable, shall be paid by check or draft mailed to such registered owner. All temporary Bonds surrendered in exchange for a definitive Bond or Bonds shall be forthwith cancelled by the Trustee.

Section 214. <u>Book-Entry Bonds</u>. (a) Bonds of all Series shall be issued in book-entry or uncertificated form unless the Corporation shall specifically direct the Trustee in the applicable Series Resolution to issue such Series of Bonds in certificated form.

- (b) Unless a Series Resolution shall provide otherwise, each maturity of each Series of Bonds shall be evidenced through the issuance of one Bond registered in the name of Cede & Co. ("Cede") as nominee of The Depository Trust Company ("DTC"). Payments of principal, Redemption Price, Sinking Fund Payments and premium, if any, and interest on the Bonds shall be made in immediately available funds to the account of Cede on each interest payment date at the address indicated for Cede in the registration books of the Corporation kept by the Trustee.
- With respect to Bonds so registered in the name of Cede neither the Corporation (c) nor the Trustee shall have any responsibility or obligation to any Direct Participant or to any Beneficial Owner of such Bonds. The Corporation and the Trustee shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede or any Direct Participant with respect to any beneficial ownership interest in the Bonds, (ii) the delivery to any Direct Participant, Beneficial Owner or other person, other than DTC, of any notice with respect to the Bonds, including any notice of redemption, (iii) the payment to any Direct Participant, Beneficial Owner or other person, other than DTC, of any amount with respect to the payment of the principal, Redemption Price or Sinking Fund Payments of, or interest on, the Bonds or (iv) any consent given or other action taken by DTC as Owner of the Bonds. The Corporation and the Trustee shall treat DTC as the absolute Owner of the Bonds for all purposes whatsoever including (but not limited to) (A) payment of the principal, Redemption Price or Sinking Fund Payments of and interest on each such Bond, (B) giving notices of redemption and other matters with respect to such Bonds, and (C) registering transfers with respect to such Bonds. The Trustee shall pay the principal, Redemption Price or Sinking Fund Payments and interest on all Bonds only to or upon the order of DTC, and all such payments shall be valid and effective to fully satisfy and discharge the Corporation's obligations with respect to such principal, Redemption Price or Sinking Fund Payments and interest to the extent of the sum or sums so paid. No person other than DTC shall receive Bonds evidencing the obligation of the Corporation to make payments of principal, Redemption Price or Sinking Fund Payments of and interest on the Bonds pursuant to this Resolution and the Series Resolution authorizing the issuance of a Series of Bonds. Upon delivery by DTC to the Trustee of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede, and subject to the transfer provisions hereof, the word "Cede" in this Resolution shall refer to such new nominee of DTC.
- (d) DTC may determine to discontinue providing its services with respect to the Bonds at any time by giving reasonable written notice to the Corporation and the Trustee and discharging its responsibilities with respect thereto under applicable law.
- (e) The Corporation, in its sole discretion, may terminate, upon provision of notice to the Trustee, the services of DTC with respect to Bonds if the Corporation determines that the continuation of the system of book-entry-only transfers through DTC (or a successor securities depository) is not in the best interests of the Beneficial Owners of such Bonds or is burdensome to the Corporation, and shall terminate the services of DTC with respect to the Bonds upon receipt by the Corporation and the Trustee of written notice from DTC to the effect that DTC has received written notice from Direct Participants having interests, as shown in the records of DTC, in an aggregate principal amount of not less than fifty percent (50%) of the aggregate principal amount of Bonds Outstanding, to the effect that either (i) DTC is unable to perform its responsibilities with respect to such Bonds, or (ii) a continuation of the requirement that all of the Outstanding

Bonds be registered in the registration books kept by the Trustee in the name of Cede, as nominee of DTC, is not in the best interest of the Beneficial Owners of such Bonds.

- (f) Upon the termination or discontinuance of the services of DTC with respect to the Bonds pursuant to subsection (e) hereof, after which no substitute securities depository willing to undertake the functions of DTC hereunder can be found or which, in the opinion of the Corporation, is willing and able to undertake such functions upon reasonable and customary terms, the Bonds shall no longer be restricted to being registered in the registration books kept by the Trustee in the name of Cede, as nominee of DTC. In such event, the Corporation shall issue and the Trustee shall transfer and exchange Bond certificates, at the sole cost and expense of the Corporation, as requested by DTC or Direct Participants of like principal amount, interest rate, Series and maturity, in authorized denominations to the identifiable Beneficial Owners in replacement of such Beneficial Owners' beneficial interests in the Bonds.
- (g) So long as any Bonds are registered in the name of Cede, as nominee of DTC, all payments with respect to the principal, Redemption Price, Sinking Fund Payments and interest on such Bonds and all notices with respect to such Bonds shall be made and given, respectively, to DTC as provided in the Representation Letter of the Corporation, addressed to DTC with respect to the Bonds.
- (h) In connection with any notice or communication to be provided to Bondowners pursuant to this Resolution or any applicable Series Resolution by the Corporation or the Trustee with respect to any consent or other action to be taken by Bondowners, by the Corporation or by the Trustee, as the case may be, the Trustee shall establish a record date for such consent or other action and give DTC notice of such record date not less than fifteen (15) calendar days in advance of such record date.
- (i) The Corporation and the Trustee may allow DTC, or its nominee, Cede, to make a notation on any Bonds redeemed in part to reflect, for informational purposes only, the principal amount and date of any such redemption.

#### ARTICLE III

## REDEMPTION OF BONDS

Section 301. <u>Privilege of Redemption and Redemption Price</u>. Bonds subject to redemption prior to maturity pursuant to the provisions of this Resolution or a Series Resolution shall be redeemable, in accordance with this Article III, at such times, at such Redemption Prices and upon such terms as may be specified in the Series Resolution authorizing such Series.

Section 302. Redemption at Demand of the City. In accordance with the provisions of Section 7397 of the Act, the City may, upon furnishing sufficient funds therefor, require the Corporation to redeem, prior to maturity, as a whole, any issue of Bonds on any interest payment date not less than twenty years after the original issuance date of the Bonds of such issue at a Redemption Price equal to 105% of their face value, plus accrued interest to the redemption date, or at such lower Redemption Price as may be provided in the Bonds (in the case of the redemption thereof as a whole on the redemption date), plus accrued interest to the redemption date. In addition to the redemption notice requirements set forth in this Resolution, notice of any redemption of Bonds pursuant to this Section 302 shall also be given by publication as required by Section 7397 of the Act.

Section 303. Redemption at the Election of the Corporation. In the case of any redemption of Bonds other than as provided in Section 304, the Corporation shall give written notice to the Trustee of its election to redeem, of the redemption date, of the Series of Bonds, of the principal amounts of the Bonds of each maturity of such Series to be redeemed, of the years in which Sinking Fund Payments are to be reduced, of the amount by which Sinking Fund Payments so determined are to be reduced (which Series, maturities, principal amounts and Sinking Fund Payments shall be determined by the Corporation in its sole discretion, subject to any limitations with respect thereto contained in this Resolution and any Series Resolution and, in the case of the reduction of Sinking Fund Payments, to the further limitation that the aggregate amount of such reductions shall not exceed the principal amounts of Bonds to be redeemed, provided, further, that the principal amount, Sinking Fund Payments and maturities of a particular Series of Bonds so selected by the Corporation as aforesaid shall not have an adverse effect on the ability of the Corporation to pay the principal of and interest on Bonds of such Series remaining Outstanding) and of the monies to be applied to the payment of the Redemption Price. Unless a shorter period shall be established in the applicable Series Resolution, such notice shall be given at least three Business Days prior to the last day on which the Trustee may give notice to the registered Owners pursuant to Section 306 but not more than ninety (90) days prior to the redemption date or such shorter period as the Corporation deems necessary under the circumstances. In the event notice of redemption shall have been given as provided in Section 306, the Trustee, if it holds the monies to be applied to the payment of the Redemption Price, or otherwise the Corporation shall, on or prior to the redemption date, pay or cause to be paid to the Trustee, an amount in cash which, in addition to other monies, if any, available therefor held by the Trustee, will be sufficient to redeem, on the redemption date at the Redemption Price thereof, together with accrued interest to the redemption date, all of the Bonds to be redeemed. The Corporation shall promptly notify the Trustee in writing of all such payments made by the Corporation to the Trustee. Any Bonds that are subject to optional redemption at the election of the Corporation may also, at the option of the Corporation as may be provided in a Series Resolution, be made subject to purchase in lieu of optional redemption.

Section 304. Redemption Otherwise than at Corporation's Election. Whenever by the terms of this Resolution or any Series Resolution the Trustee is required to redeem Bonds other than at the election of the Corporation, the Trustee shall select the Bonds to be redeemed, give the notice of redemption and pay the Redemption Price plus accrued interest to the redemption date, to itself in accordance with the terms of this Article III. Monies set aside for the payment of such Bonds shall be held in trust for the Bondowners in respect of which the same shall have been so set aside.

Section 305. Selection of Bonds to be Redeemed by Lot. Except as otherwise provided in the applicable Series Resolution, in the event of the redemption of less than all of the Outstanding Bonds of like Series and maturity, the Trustee shall assign to each such Outstanding registered Bond of the Series and maturity to be redeemed a distinctive number for each \$5,000 of the principal amount of such Bond and shall select by lot, using such method of selection as it shall deem proper in its discretion, from the numbers assigned to such Bonds as many numbers as, at \$5,000 for each number, shall equal the principal amount of such Bonds to be redeemed. In making such selections the Trustee may draw the Bonds by lot (a) individually or (b) by one or more groups, the grouping for the purpose of such drawing to be by serial numbers (or, in the case of Bonds of a denomination of more than \$5,000, by the numbers assigned thereto as herein provided) which end in the same digit or in the same two digits. In case, upon any drawing by groups, the total principal amount of Bonds drawn shall exceed the amount to be redeemed, the excess may be deducted from any group or groups so drawn in such manner as the Trustee may determine. The Trustee may in its discretion assign numbers to aliquot portions of Bonds and select part of any Bond for redemption. The Bonds to be redeemed shall be the Bonds to which were assigned numbers so selected; provided, however, that only so much of the principal amount of each such Bond of a denomination of more than \$5,000 shall be redeemed as shall equal \$5,000 for each number assigned to it and so selected.

Section 306. Notice of Redemption. When the Trustee shall receive notice from the Corporation of the exercise of its option to redeem Bonds pursuant to Section 303, or when redemption is required pursuant to Section 302 or Section 304, the Trustee shall give notice (in addition to any notice which may be required by the Act), in the name of the Corporation, of the redemption of such Bonds, which notice, at the option of the Corporation, may be conditional or revocable, and which notice shall specify (i) the Series and maturities of the Bonds to be redeemed, (ii) the Redemption Price, (iii) the redemption date, (iv) the place or places where amounts due upon such redemption will be payable and the name and telephone number of a representative of the Trustee to whom inquiries may be directed, (v) whether or not such redemption is conditional or revocable, and (vi) that no representation is made as to the correctness of the CUSIP number either as printed on the Bonds or as contained in such notice and that an error in a CUSIP number as printed on such Bond or as contained in such notice shall not affect the validity of the proceedings for redemption. If less than all of the Bonds of any like Series and maturity are to be redeemed, such notice shall also state the letters and numbers or other distinguishing marks of such Bonds as to be redeemed, including CUSIP numbers and, in the case of Bonds to be redeemed in part only, such notice shall also specify the respective portions of the principal amount thereof to be redeemed. Such notice shall further state that on the redemption date there shall become due and payable upon each Bond to be redeemed the Redemption Price thereof, or the Redemption Price of the specified portions of the principal thereof in the case of Bonds to be redeemed in part only, together with interest accrued to such date and that from and after such date interest thereon shall cease to accrue and be payable. Unless a shorter period shall be established in the applicable Series Resolution, a copy of such notice shall be given by the Trustee first-class mail, postage prepaid not less than twenty (20) days nor more than ninety (90) days prior to the redemption date, to the registered Owners of any Bonds or portions of Bonds which are to be redeemed at their last addresses, if any, appearing upon the registry books. The Trustee shall promptly certify to the Corporation that it has mailed or caused to be mailed such notice to such Owners, and such certificate shall be conclusive evidence that such notice was given in the manner required hereby. The failure of any such Owner to receive notice shall not affect the validity of the proceedings for the redemption of Bonds with respect to which notice has been given in accordance with this Section 306.

Section 307. Payment of Redeemed Bonds. Notice having been given in the manner provided in Section 306, the Bonds or portions thereof so called for redemption shall become due and payable on the redemption date so designated at the Redemption Price, plus interest accrued and unpaid to the redemption date, and, upon presentation and surrender thereof at the offices specified in such notice, together with, in the case of Bonds presented by other than the Owner, a written instrument of transfer duly executed by the registered Owner or his duly authorized attorney, such Bonds, or portions thereof, shall be paid at the Redemption Price plus interest accrued and unpaid to the redemption date. If there shall be drawn for redemption less than all of a Bond, the Corporation shall execute and deliver upon the surrender of such Bond, without charge to the Owner thereof, for the unredeemed balance of the principal amount of the Bond so surrendered, at the option of the Owner thereof, Bonds of like Series and maturity in any of the authorized denominations. The Corporation and the Trustee may agree in writing with any Owner of any Bond that such Owner may, in lieu of surrendering the same for a new Bond as aforesaid, endorse on such Bond a notice of such partial redemption to be made in the form approved by the Corporation and the Trustee and such partial redemption shall be valid upon the payment of the amount thereof to the Owner of any such Bond and the Corporation and the Trustee shall be fully released and discharged from all liability to the extent of such payment irrespective of whether such endorsement shall or shall not have been made upon such Bond by the Owner thereof and irrespective of any error or omission in such endorsement. If, on the redemption date, monies to pay the Redemption Price for the redemption of all the Bonds or portions thereof of any like Series and maturity to be redeemed, together with interest to the redemption date shall be held by the Trustee so as to be available therefor on said date and if notice of redemption shall have been given as aforesaid, then, from and after the redemption date, interest on the Bonds or portions thereof of such Series and maturity so called for redemption shall cease to accrue and become payable. If said monies to pay the Redemption Price shall not be so available on the redemption date, such Bonds or portions thereof shall continue to bear interest until paid at the same rate as they would have borne had they not been called for redemption.

# ARTICLE IV

# CUSTODY AND APPLICATION OF CERTAIN PROCEEDS OF BONDS

Section 401. <u>Establishment of Funds and Accounts</u>. (1) Upon the issuance of the first Series of Bonds, the Corporation and the Trustee shall cause the creation and establishment of the special funds and accounts specified in paragraphs (2), (3), (4) and (5) of this Section 401 to be held in trust for Bondowners.

- There is hereby created and established a special trust account which shall be deposited with and held by the Trustee and which shall be designated as the "Health System Bond Proceeds Fund" (herein sometimes called the "Bond Proceeds Fund"). Upon the issuance, sale and delivery of any Series of Bonds pursuant to this Resolution, the Series Resolution authorizing such Series of Bonds shall provide for the payment into or credit to such Bond Proceeds Fund of the amount of the proceeds derived from the sale of such Series of Bonds designated by such Series Resolution to be deposited in the Bond Proceeds Fund for disbursement in accordance with the provisions of this Resolution and in the amounts set forth in the applicable Series Resolution, (i) to fund Project costs, including working capital costs authorized and permitted pursuant to Section 814 of this Resolution, through deposits to the Construction Fund, including any Construction Accounts, Working Capital Accounts, Cost of Issuance Accounts or Capitalized Interest Accounts established therein, (ii) to fund the payment of Bonds, which may include interest thereon, theretofore issued by the Corporation, (iii) to meet the Capital Reserve Fund Requirement, (iv) to pay all or a portion of the purchase price of Investment Obligations to be held by the Trustee pursuant to the provisions of this Resolution, and (v) to the extent necessary or desirable, to transfer to the Revenue Fund. The amounts withdrawn pursuant to (iv) above shall be redeposited to the Bond Proceeds Fund upon receipt by the Trustee of the first interest payment on the Investment Obligations so purchased.
- deposited with and held by the Trustee and which shall be designated as the "Health System Construction Fund" (herein sometimes called the "Construction Fund") for the credit of which deposits shall be made as hereinafter required. Upon the issuance, sale and delivery of any Series of Bonds pursuant to this Resolution, the Corporation may establish a separate account of the Construction Fund designated "...Series... Construction Account" (inserting therein the name of the Series) for such Series. The Corporation shall direct the Trustee to transfer from the Bond Proceeds Fund and deposit to the credit of the account of the Construction Fund with respect to the Series of Bonds issued to finance such Project that portion of the proceeds of the Series of Bonds to be used to pay Project Costs. As promptly as practicable after receipt of a written requisition signed by an Authorized Officer pursuant to Section 403(2), the Trustee shall pay from the Construction Fund the amount as shall be designated in such written requisition and such payments shall be charged to the designated account of the Construction Fund, which may be used as provided in Section 403(2).
- (4) (a) There is hereby created and established a series of special trust accounts within the Construction Fund which shall be deposited with and held by the Trustee and which shall be designated collectively as the "Health System Capitalized Interest Account" (herein sometimes

called the "Capitalized Interest Account"). Upon the issuance, sale and delivery of any Series of Bonds pursuant to this Resolution, the Series Resolution authorizing such Series of Bonds may, but shall not be required to, establish a separate account designated "...Series... Capitalized Interest Account" (inserting therein the appropriate Series and other necessary designation), and shall provide for the payments into or credit to each such Capitalized Interest Account of the amount of the proceeds derived from the sale of such Series of Bonds, if any, which has been designated by such Series Resolution to be used for the purpose of paying interest on such Series of Bonds prior to, during or after the period of construction of the Project applicable to such Series. Monies in each such Capitalized Interest Account shall be used, to the extent available, for the purpose of paying interest on such Series of Bonds in accordance with written instructions of the Corporation. Any monies on deposit in a Capitalized Interest Account not used to pay interest on such Series of Bonds shall upon written direction of the Corporation be transferred to the Construction Fund or the Bond Proceeds Fund.

- (b) At the time of each deposit into a Capitalized Interest Account, the Corporation shall advise the Trustee in writing as to the Series of Bonds with respect to which such deposit is made.
- (c) To the extent that funds are available, the Trustee shall transfer on the day preceding each interest payment date from the Capitalized Interest Account relating to a Series of Bonds to the Revenue Fund an amount such that the amount then on deposit in the Revenue Fund at least equals the amount of interest on all Bonds of such Series then Outstanding that will be accrued and unpaid as of such interest payment date.
- (d) If at the time of occurrence of any of the events described in Section 406 the balance of monies on deposit in a Capitalized Interest Account includes any original proceeds of the Series of Bonds for which the Capitalized Interest Account was established, such original proceeds may be used only to pay a Project Cost unless the Corporation obtains an opinion of Bond Counsel permitting such other usage as may be directed by the Corporation to the Trustee.
- There is hereby created and established a series of special trust accounts within the (5) Construction Fund which shall be deposited with and held by the Trustee and which shall be designated collectively "Health System Cost of Issuance Account" (herein sometimes called the "Cost of Issuance Account"). Upon the issuance, sale and delivery of any Series of Bonds pursuant to this Resolution, the Series Resolution authorizing such Series of Bonds may, but is not required to, establish a separate account designated "...Series... Cost of Issuance Account" (inserting therein the appropriate Series and other necessary designation), and shall provide for the payment into or credit to each such Cost of Issuance Account of the amount of the proceeds derived from the sale of such Series of Bonds, if any, which has been designated by such Series Resolution to be used for the purpose of paying the Costs of Issuance of such Series of Bonds. Said amounts shall be expended for Costs of Issuance of such Series of Bonds, and for no other purpose, upon requisition signed by an Authorized Officer stating the amount and purpose of any such payment. Upon payment of all Costs of Issuance for such Series of Bonds, any amount remaining in such Account shall be paid to and deposited in the Construction Fund or the Bond Proceeds Fund upon receipt by the Trustee of a certificate of an Authorized Officer stating that such monies are no longer needed for the payment of Costs of Issuance, whereupon such Account shall be closed.

(6) Nothing contained herein shall be construed to prohibit the deposit of monies or investments in any Fund or Account from sources other than the proceeds of sale of a Series of Bonds.

# Section 402. <u>Lien of Bondowners on Bond Proceeds</u>.

- (a) Subject to the provisions of Section 403 hereof, the monies deposited to the credit of the Bond Proceeds Fund and the Construction Fund from the sale of a Series of Bonds, including all Investment Obligations held as investments thereof and the proceeds of such investments, shall be held in trust and applied only for the purpose of disbursement as permitted by Sections 401 and 403, as applicable, or as otherwise permitted by this Resolution, and all such monies are hereby pledged to the Trustee, pending such application, for the benefit of the Owners of such Series of Bonds and for the security of the payment of the principal of, Sinking Fund Payments and interest on such Series of Bonds, and shall at all times be subject to the lien of such pledge until paid out and transferred as herein provided.
- (b) Subject to the provisions of Section 401 hereof, the monies deposited into or credited to each Cost of Issuance Account and each Capitalized Interest Account, including all Investment Obligations held as investments thereof and the proceeds of such investments, shall be held in trust and applied only for the purpose of disbursement as permitted by this Article IV, and all such monies are hereby pledged to the Trustee pending such application, for the benefit of the Owners of such Series of Bonds and for the security of the payment of interest on such Series of Bonds, and shall at all times be subject to the lien of such pledge until paid out and transferred as herein provided.
- (c) The pledges created in the foregoing subsections of this Section 402 shall be valid and binding from and after the date of adoption of the Original Resolution on November 19, 1992, and all monies and securities in the Funds and Accounts established by Section 401 hereby pledged 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 and binding as against all parties having claims of any kind in tort, contract or otherwise against the Corporation, irrespective of whether such parties have notice thereof.
- Section 403. <u>Construction Fund and Bond Proceeds Fund</u>. (1) All payments from the Construction Fund and the Bond Proceeds Fund shall be subject to the provisions and restrictions of this Resolution, and the Corporation covenants that it will not cause or permit to be paid from the Construction Fund or the Bond Proceeds Fund any sums except in accordance with such provisions and restrictions. In addition to the withdrawals permitted by subsections (2), (3) and (4) of this Section 403 with respect to amounts on deposit in the Construction Fund, the Corporation may direct the Trustee to apply such amounts to the payment of all or a portion of the purchase price of Investment Obligations which Investment Obligations are to be held by the Trustee pursuant to the provisions of this Resolution. The amounts withdrawn pursuant to the preceding sentence shall be redeposited to the Construction Fund upon receipt by the Trustee of the first interest payment on the Investment Obligations so purchased.
- (2) The Trustee shall from time to time pay out, or permit the withdrawal of, monies in the Construction Fund for the purpose of paying a Project Cost, which shall include the funding

of Costs of Issuance, upon receipt by the Trustee of a written requisition of the Corporation signed by an Authorized Officer or its duly authorized agent stating the amount to be paid and the account from which such payment is to be made.

Upon receipt of each such requisition, the Trustee shall pay each such item from the Construction Fund, or shall deliver to the Corporation or at the Corporation's or its duly authorized agent's direction, checks or drafts for the payment thereof, or shall make arrangements for the transfer and deposit of the amount for such payment, as the Corporation or its duly authorized agent shall request.

- (3) The Trustee shall from time to time pay out, or permit the withdrawal of monies from the Bond Proceeds Fund to fund the payment of Bonds, which may include interest thereon, theretofore issued by the Corporation, upon receipt by the Trustee of:
  - (a) a written requisition of the Corporation signed by an Authorized Officer stating (i) the issue of Bonds with respect to which the payment is to be made, and (ii) the amount to be transferred; and
  - (b) for Bonds issued for a term of longer than one year and not for the purpose set forth in Section 814 hereof a certificate signed by an Authorized Officer stating that an amount at least equal to the Capital Reserved Fund Requirement for the Bonds is on deposit in the Capital Reserve Fund.

Upon receipt of each such requisition, the Trustee shall make arrangements for the transfer and deposit of the amount for such payment, as the Corporation shall request.

(4) Upon the application of monies in the Bond Proceeds Fund pursuant to paragraph (3) above the Corporation shall pay over for transfer to the Trustee for deposit into the Construction Fund, as shall be directed by the Corporation, any unexpended Bond proceeds then remaining in the applicable account of the Corporation. Investment earnings or other monies then remaining on deposit in the applicable account of the Corporation shall, as directed by the Corporation, be transferred to the Trustee for deposit at the direction of the Corporation in the accounts relating to the Series of Bonds from which such amounts were derived.

Section 404. Retention and Inspection of Documents. All requisitions and certificates received by the Trustee, as required in this Article as conditions of payment from the Bond Proceeds Fund or the Construction Fund, may be relied upon by and shall be retained in the possession of the Trustee, subject at all times during normal business hours to the inspection of the Corporation and Bondowners of an aggregate principal amount of not less than \$20,000,000, or their representatives duly authorized in writing.

Section 405. Monthly Statements and Audit Report. The Trustee shall provide the Corporation written monthly statements of the balances in all Funds and Accounts within 5 days after the end of each month. In addition, for each fiscal year of the Corporation during the existence of the Funds and Accounts created pursuant to Section 401, the Corporation shall require an audit report within 10 days after the end of each fiscal year of the Corporation to be made by an officer or employee of the Trustee on behalf of the Trustee covering all receipts and monies then on deposit with the Trustee, in the name of the Trustee or the Corporation, in the

Funds and Accounts created pursuant to Section 401, and any security pledged or provided therefor, any investment thereof, and all disbursements made pursuant to the provisions of this Article. Reports of each such audit shall be mailed by the Trustee to the Corporation.

Section 406. <u>Transfer of Surplus or Undisbursed Funds</u>. (1) In the event the Corporation shall complete all Projects, it may deliver to the Trustee a certificate, signed by an Authorized Officer, certifying such fact and directing that the amounts in the Bond Proceeds Fund and the Construction Fund derived from proceeds of the Bonds, if any, shall be transferred to the Redemption Fund. Upon receipt of each such certificate by the Trustee, the Trustee shall, in accordance with such certificate, transfer such proceeds to the Redemption Fund for the purchase or redemption of Bonds.

- (2) In the event that the Corporation has determined, as evidenced by a certificate of an Authorized Officer, that the best interest of the Corporation would not be served in connection with the financing of Projects, and that, therefore, the Corporation should not proceed to apply monies in the Bond Proceeds Fund and the Construction Fund to the funding of Projects, the Trustee, upon receipt of such certificate, shall deposit such amounts in the Redemption Fund for the purchase or redemption of Bonds.
- (3) In the event of a withdrawal pursuant to either of the preceding subsections of this Section 406 the Corporation may further direct the Trustee to withdraw amounts on deposit in the Cost of Issuance Account and the Capitalized Interest Account with respect to a Series of Bonds and to deposit such amounts in the Redemption Fund for the redemption of Bonds on or before the next available redemption date in such manner as may be necessary to preserve the exclusion from gross income for purposes of federal income taxation of interest on the Bonds which are expected to be excluded from gross income or, with an opinion of Bond Counsel, for such other usage as the Corporation shall direct.

#### ARTICLE V

# ESTABLISHMENT OF FUNDS AND ACCOUNTS AND APPLICATION THEREOF

Section 501. Pledge. The Health Care Reimbursement Revenues and all Funds and Accounts established by this Resolution (except for the Arbitrage Rebate Fund established in Section 507 and except as provided by Section 402 or contemplated by Section 904) including the investments thereof and the proceeds of such investment, if any, are hereby pledged to the Trustee for the payment of the principal, Redemption Price of, Sinking Fund Payments and interest on, the Bonds in accordance with the terms and provisions of this Resolution, subject only to the provisions of this Resolution permitting the application thereof for the purposes and on the terms and conditions set forth in this Resolution. This pledge shall be valid and binding from and after the date of the adoption of the Original Resolution on November 19, 1992, and the Health Care Reimbursement Revenues and all other monies and securities in the Funds and Accounts established by this Resolution (except for the Arbitrage Rebate Fund and except as contemplated by Section 904) hereby pledged 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 and binding as against all parties having claims of any kind in tort, contract or otherwise against the Corporation, irrespective of whether such parties have notice thereof; provided, however, that the pledge created hereby shall be subject to any required application of the earnings on investments to comply with the tax covenants set forth herein or in any applicable Series Resolution. The foregoing notwithstanding, the pledge of the Health Care Reimbursement Revenues described in this Section 501 shall not be in effect for the payment of principal, Redemption Price of, Sinking Fund Payments and interest on any Bonds issued hereunder to refund other obligations of the Corporation during any period when such Bonds are payable from their own proceeds prior to a Crossover Date, as defined in Section 203, so long as the proceeds of such refunding are pledged to the Owners of such Bonds during the period when such Owners are not secured by a pledge of the Health Care Reimbursement Revenues.

Section 502. <u>Establishment of Funds</u>. In addition to the Funds and Accounts established in Section 401, the following special Funds shall be created, established and maintained pursuant to the provisions of this Resolution:

- (1) Revenue Fund
- (2) Debt Service Fund
- (3) Redemption Fund
- (4) Capital Reserve Fund
- (5) Arbitrage Rebate Fund

Section 503. Revenue Fund. (1) There is hereby created and established a "Health System Revenue Fund", which shall be held by the Trustee. All Tri-Party Payments held or collected by the Trustee shall be deposited upon receipt in the Revenue Fund. There shall also be transferred to and deposited in the Revenue Fund any monies available for such purpose as provided herein, including paragraph (4) of Section 401 and paragraph (3) of Section 602 hereof. Monies and the proceeds of sale of securities from time to time in the Revenue Fund shall be paid

out and applied for the uses and purposes for which the same are pledged by the provisions of this Resolution, in the manner provided in this Resolution.

- (2) On or before the Business Day prior to each interest payment date, principal payment date (whether by maturity, acceleration or otherwise), redemption date or Sinking Fund Payment date, as the case may be, while any Bonds remains Outstanding, the Trustee shall (except as contemplated by Section 904) withdraw from the Revenue Fund and deposit to the credit of the Debt Service Fund the following amounts:
  - (A) an amount which, when added to the amount then on deposit in the Debt Service Fund for the payment of interest on Bonds of the Corporation, will on such interest payment date be equal to the installment of the interest on the Bonds then falling due:
  - (B) an amount which, when added to the amount then on deposit in the Debt Service Fund for the payment of the principal of Bonds of the Corporation, will on such principal payment date be equal to the amount of the principal of the Bonds then falling due; and
  - (C) an amount which, when added to the amount then on deposit in the Debt Service Fund for payment of Sinking Fund Payments on the Bonds, will on such Sinking Fund Payment date be equal to the amount of the unpaid Sinking Fund Payments on the Bonds then falling due.
- (3) On or before the fourteenth (14th) day of any month in which a portion of the Tri-Party Payment received by the Trustee is intended to provide for a partial replenishment of the Capital Reserve Fund as provided in paragraph (5) of Section 506, the Trustee shall withdraw from the monies on deposit in the Revenue Fund and deposit to the credit of the Capital Reserve Fund one-twelfth (1/12) of the amount withdrawn in the previous twelve (12) months from the Capital Reserve Fund for the purpose of making up deficiencies in the Debt Service Fund pursuant to the provisions of paragraph (2) of Section 506 and one-twelfth (1/12) of the amount of the Capital Reserve Fund deficiency not arising from a withdrawal from the Capital Reserve Fund so as to make the amount on deposit in the Capital Reserve Fund equal to the Capital Reserve Fund Requirement; provided, however, that the requirements of this subparagraph (3) shall be in compliance with tax covenants set forth herein.
- (4) After providing for all payments required to be made into the Debt Service Fund pursuant to paragraph (2) above (except as contemplated by Section 904) and any withdrawal from the Revenue Fund as provided in any applicable Series Resolution for a Qualified Financial Institution that has provided a Capital Reserve Fund Facility, and after making the transfers, if any, to the Capital Reserve Fund pursuant to paragraph (3) above, the Trustee shall retain the balance of the monies so remaining in the Revenue Fund and credit such amount against future Tri-Party Payments, provided, however, an amount equal to the maximum Tri-Party Payment on all Outstanding Bonds shall at all times be maintained in the Revenue Fund for the purpose of transferring such amount to the Debt Service Fund to the extent that other amounts to be transferred to the Debt Service Fund on or before any payment date described in paragraph (2) of

this Section 503 are insufficient to pay amounts coming due on Bonds and shall not be credited against future Tri-Party Payments.

Section 504. <u>Debt Service Fund</u>. There is hereby created and established a "Health System Debt Service Fund", which shall be held by the Trustee and which shall be used solely for the purpose of paying the principal and Sinking Fund Payments of and interest on Bonds and of retiring such Bonds at or prior to maturity in the manner provided herein and in any Series Resolution. All monies deposited in the Debt Service Fund shall be disbursed and applied by the Trustee at the times and in the manner provided in or contemplated by this Section 504, Section 904 and in Articles XI and XIII.

Except as provided in an applicable Series Resolution, the Trustee shall, on or before the Business Day prior to each interest payment date, pay out of the monies then held in the Debt Service Fund, including the monies deposited therein pursuant to paragraph (2) of Section 503 and paragraph (2) of Section 506, to itself, the amounts required for the payment by it of the interest becoming due on Bonds on such interest payment date. The Trustee shall also pay out of the Debt Service Fund to itself, on any redemption dates for Bonds being refunded by a Series of Refunding Bonds, the amount required for the payment of interest on Bonds then to be so redeemed.

Except as provided in an applicable Series Resolution, the Trustee shall, on or before the Business Day prior to each principal payment date, pay out of the monies then held in the Debt Service Fund, including the monies deposited therein pursuant to paragraph (2) of Section 503 and paragraph (2) of Section 506, to itself, the amounts required for the payment by it of the principal becoming due on Bonds on such principal payment date.

Except as provided in an applicable Series Resolution, the Trustee shall, on or before the Business Day prior to each Sinking Fund Payment date, pay out of the monies then held in the Debt Service Fund, including the monies deposited therein pursuant to paragraph (2) of Section 503 and paragraph (2) of Section 506, to itself, the amounts required for the payment by it of the Sinking Fund Payments becoming due on Bonds on such Sinking Fund Payment date.

At any time during the twelve month period preceding a Sinking Fund Payment date, the Corporation may direct the Trustee to purchase Term Bonds of the maturity of the Series of Bonds with respect to which such Sinking Fund Payment was established. Such purchase shall be made at a time not less than thirty-five (35) days (unless a shorter period shall have been established in the applicable Series Resolution) prior to such Sinking Fund Payment date and at a price not exceeding par plus accrued interest. The Term Bonds so purchased shall be applied as a credit against the next ensuing Sinking Fund Payment to the extent not theretofore applied as a credit against such Sinking Fund Payment. All Term Bonds purchased as aforesaid shall, for the purposes of paragraph (2) of Section 503, be deemed to be part of the Debt Service Fund.

Section 505. <u>Redemption Fund</u>. There is hereby created and established a "Health System Redemption Fund."

(a) The Corporation shall deposit or cause to be deposited in the Redemption Fund such monies as shall be designated to be deposited therein pursuant to the provisions of this

Resolution and any Series Resolution. The Trustee shall promptly apply monies deposited in the Redemption Fund to the purchase of Bonds, at such purchase price, not exceeding the Redemption Price which would be payable on the next ensuing date on which such Bonds are redeemable at the option of the Corporation, as shall be determined by the Corporation in its discretion and as shall be set forth in written instruction to the Trustee. The Trustee, to the extent monies are available in the Debt Service Fund, shall pay the interest accrued on the Bonds so purchased to the date of delivery thereof. Unless a shorter period shall have been established in the applicable Series Resolution, no such purchase shall be made by the Trustee within the period of thirty-five (35) days next preceding a date on which such Bonds are subject to redemption under the provisions hereof. In the event the Trustee is unable to purchase Bonds in accordance with and under the foregoing provisions of this subparagraph (a), the Trustee shall call or cause to be called for redemption on the next applicable redemption date on which such Bonds are redeemable at the option of the Corporation such amount of Bonds as the Corporation, in written instructions to the Trustee, shall determine, at the Redemption Price thereof, as will exhaust said monies as nearly as may be. Such redemption shall be made pursuant to the provisions of Article III hereof. The Trustee, to the extent monies are available in the Debt Service Fund, shall pay the interest accrued on the Bonds so purchased to the date of delivery thereof.

(b) The Corporation may, from time to time, by written instructions direct the Trustee to make purchases under subparagraph (a) above only after receipt of tenders after published or mailed notice. The Corporation may specify the length of notice to be given and the dates on which tenders are to be accepted or may authorize the Trustee to determine the same in its discretion. All such tenders shall be sealed proposals and no tenders shall be considered or accepted at any price exceeding the price specified under subparagraph (a) above for the purchase of Bonds. The Trustee shall accept bids with the lowest price and if the monies available for purchase pursuant to such tenders are not sufficient to permit acceptance of all tenders and there shall be tenders at an equal price above the amount of monies available for purchase, then the Trustee shall select by lot, in such manner as the Trustee shall determine in its discretion, the Bonds tendered which shall be purchased. Unless a shorter period shall have been established in the applicable Series Resolution, no purchase of Bonds, either on tenders or otherwise, shall be made by the Trustee within the period of thirty-five (35) days next preceding any date on which such Bonds are subject to redemption.

Monies on deposit in the Redemption Fund shall be held in trust for and applied to the payment of the Bonds designated by the Corporation.

Section 506. <u>Capital Reserve Fund</u>. (1) There is hereby created and established a "Health System Capital Reserve Fund" which shall be held by the Trustee. Upon the issuance, sale and delivery of a Series of Bonds (except with regard to Bonds secured by their own proceeds prior to a Crossover Date as defined in Section 203), the Corporation shall cause to be deposited into such Capital Reserve Fund an amount at least equal to the Capital Reserve Fund Requirement for such Bonds from the proceeds of the sale of such Series of Bonds or from any other source or sources, and the Trustee shall deposit in and credit to the Capital Reserve Fund all monies transferred from the Revenue Fund pursuant to the provisions of paragraph (3) of Section 503. There shall also be deposited to the Capital Reserve Fund any monies and any Capital Reserve Fund Facility (pursuant to the requirements of paragraph (9) of this Section 506) as directed in writing by an Authorized Officer.

(2) In the event there shall be, on the Business Day prior to any interest payment date, principal payment date, or Sinking Fund Payment date, a deficiency in the Debt Service Fund, the Trustee shall make up such deficiencies from the Capital Reserve Fund, first, by the withdrawal of monies therefrom for that purpose and by the sale or redemption of securities held in the Capital Reserve Fund, and second, to the extent of any shortfall thereof, by payment under a Capital Reserve Fund Facility, in such amounts as will, at the respective time, provide monies in the Debt Service Fund sufficient to make up any deficiency, provided, however, that, if more than one Capital Reserve Fund Facility is held for the credit of the Capital Reserve Fund at the time monies are to be withdrawn therefrom, the Trustee shall obtain payment under each such Capital Reserve Fund Facility, pro rata, based upon the respective amounts then available to be paid thereunder.

With respect to any demand for payment under any Capital Reserve Fund Facility, the Trustee shall make such demand for payment in accordance with the terms of such Capital Reserve Fund Facility at the earliest time provided therein to assure the availability of monies on the interest payment date, principal payment date or Sinking Fund Payment date for which such monies are required, but in no event less than one (1) Business Day prior to any such payment date.

For the purpose of making up any Capital Reserve Fund deficiencies, the Trustee shall, in accordance with the provisions of paragraph (3) of Section 503, transfer into the Capital Reserve Fund from the Revenue Fund, monies therein available for such purpose.

- (3) Monies and securities held in the Capital Reserve Fund shall not be withdrawn therefrom at any time in such amount as would reduce the amount of monies in the Capital Reserve Fund to an amount less than the Capital Reserve Fund Requirement except in accordance with the provisions of and for the purposes prescribed by this Section 506.
- (4) Whenever there shall be a deposit of monies to the Redemption Fund pursuant to the provisions of this Resolution and any Series Resolution which requires or permits the purchase or redemption of Bonds which would result in the reduction of the Capital Reserve Fund Requirement upon the purchase or redemption of such Bonds, the Trustee, upon written direction from the Corporation, shall, in connection with each such event, withdraw from the Capital Reserve Fund and deposit in the Redemption Fund an amount of monies equal to the reduction of the Capital Reserve Fund Requirement (or such lesser amount as determined by the Corporation) which would result upon the redemption of such Bonds upon the next succeeding redemption date.
- (5) In order to assure the maintenance of the Capital Reserve Fund in an amount equal to the Capital Reserve Fund Requirement, the Corporation shall certify to the City on or before February 15 of each year the amount of any shortfall, if any, in the Capital Reserve Fund and the Corporation shall seek replenishment of the Capital Reserve Fund in accordance with the procedures set forth in paragraph (4) of Section 13 of the Act (McKinney's Section 7394). Whenever the Trustee shall withdraw monies pursuant to paragraph (2) of this Section 506, or if the amount on deposit in the Capital Reserve Fund (which shall be valued as provided in paragraph (4) of Section 602) shall be less than the Capital Reserve Fund Requirement, beginning in the month immediately following such withdrawal or date of certification and for eleven

successive months thereafter the Corporation shall cause to be deposited with the Trustee one-twelfth (1/12) of the amount so withdrawn or of the amount of the shortfall in the Capital Reserve Fund Requirement.

- (6) Except as provided in paragraph (7) of this Section 506, whenever the Trustee shall determine that the assets of the Capital Reserve Fund shall be sufficient in the aggregate to provide monies to pay, redeem or retire all Bonds then Outstanding, including such interest thereon as may thereafter become due and payable to their maturity or their date of redemption, no further payments need be made into the Debt Service Fund or the Capital Reserve Fund, and the Trustee shall use and apply such excess in the Capital Reserve Fund to the redemption of the Bonds, on the next redemption date for such Bonds. Such redemption shall be made pursuant to the provisions of Article III hereof.
- Requirement shall only be transferred by the Trustee, from time to time, pursuant to a written direction of the Corporation signed by an Authorized Officer, either to the Construction Fund or the Revenue Fund. The transfer referred to in this paragraph (7) of Section 506 shall be made only to the extent that any such transfer will not reduce the value of the monies and obligations purchased as an investment of monies on deposit in the Capital Reserve Fund (such valuation to be determined in accordance with paragraph (4) of Section 602) to less than the Capital Reserve Fund Requirement. If, upon the payment or retirement of Bonds at maturity or upon their purchase or redemption, the monies and securities in the Capital Reserve Fund are in excess of the Capital Reserve Fund Requirement, and the use or transfer of such excess is not otherwise provided for in this Resolution, the Trustee, upon the written request of the Corporation, shall transfer such excess in the manner directed by the Corporation in writing.
- (8) Whenever Bonds are deemed paid within the meaning of Section 1302, the Trustee shall, in connection with each such payment of Bonds and if directed by the Corporation, withdraw from the Capital Reserve Fund and deposit in such Fund or Account as the Corporation shall direct in writing an amount of monies equal to the reduction of the Capital Reserve Fund Requirement. The amount of monies to be withdrawn from the Capital Reserve Fund in each instance pursuant to the provisions of this paragraph shall be determined by the Corporation and the amount thereof certified to the Trustee in writing, and the Trustee shall include such amount in determining the principal amount of Bonds deemed paid.
- (9) In the event the Corporation deposits or causes to be deposited with the Trustee a Capital Reserve Fund Facility in order to satisfy all or any part of the Capital Reserve Fund Requirement, such Capital Reserve Fund Facility shall conform to the following requirements: (A) if a surety bond or insurance policy, such facility shall be issued by an insurance company or association duly authorized to do business in the State and either (i) the claims paying ability of such insurance company or association is rated in the highest rating category accorded by a nationally recognized insurance rating agency or (ii) obligations insured by a surety bond or an insurance policy issued by such company or association are rated, without regard to qualification of such rating by symbols such as "+" or "-" or numerical notation, in the highest rating category at the time such surety bond or insurance policy is issued by a Rating Agency, (B) if a letter of credit, such facility shall be issued by a bank, a trust company, a national banking association, a corporation subject to registration with the Board of Governors of the Federal Reserve System

under the Bank Holding Company Act of 1956 or any successor provision of law, a federal branch pursuant to the International Banking Act of 1978 or any successor provision of law, or a domestic branch or agency of a foreign bank, which branch or agency is duly licensed or authorized to do business under the laws of any state or territory of the United States of America, the unsecured or uncollateralized long-term debt obligations of which, or long-term obligations secured or supported by a letter of credit issued by such person, are rated at the time such letter of credit is delivered, without regard to qualification of such rating by symbols such as "+" or "-" or numerical notation, in at least the second highest rating category by a Rating Agency.

In addition to the conditions and requirements set forth above, no Capital Reserve Fund Facility shall be deposited in full or partial satisfaction of the Capital Reserve Fund Requirement unless the Trustee and each provider of a Capital Reserve Fund Facility shall have received prior to such deposit (i) an opinion of counsel acceptable to the Trustee and to each provider of a Capital Reserve Fund Facility to the effect that such Capital Reserve Fund Facility has been duly authorized, executed and delivered by the provider thereof and is valid, binding and enforceable in accordance with its terms, (ii) in the event such provider is not a domestic entity, an opinion of foreign counsel in form and substance satisfactory to the Trustee and to each provider and (iii) in the event such Capital Reserve Fund Facility is a letter of credit, an opinion of counsel acceptable to the Trustee and to each provider substantially to the effect that payments under such letter of credit will not constitute avoidable preferences under Section 547 of the United States Bankruptcy Code in a case commenced by or against the Corporation thereunder or under any applicable provisions of the debtor and creditor laws of the State.

Notwithstanding the foregoing, if at any time after a Capital Reserve Fund Facility has been deposited with the Trustee the rating on such Capital Reserve Fund Facility is less than the second highest rating category of a Rating Agency and the unsecured or uncollateralized long-term debt of the provider or the long-term debt obligations secured or supported by a surety bond, insurance policy or letter of credit of a provider is reduced below the third highest rating category of a Rating Agency, the Corporation shall either (i) replace or cause to be replaced said Capital Reserve Fund Facility with another Capital Reserve Fund Facility which satisfies the requirements of the preceding paragraph or (ii) deposit or cause to be deposited (through increased Tri-Party Payments) in the Capital Reserve Fund an amount of money equal to the value of the Capital Reserve Fund Facility of such provider, such deposits to be, as nearly as practicable, in twelve equal monthly installments commencing on the earlier of February 15 or August 15 next succeeding the reduction in said ratings.

Each such surety bond, insurance policy or letter of credit shall be payable in an amount up to the full amount thereof (upon the giving of such notice as may be required thereby) on any date on which moneys are required to be withdrawn from the Capital Reserve Fund and such withdrawal cannot be made without obtaining payment under such Capital Reserve Fund Facility.

For the purposes of this Section and paragraph (4) of Section 602, in computing the amount on deposit in the Capital Reserve Fund, a Capital Reserve Fund Facility shall be valued at the amount available to be paid thereunder on the date of computation; <u>provided</u>, that if the unsecured or uncollateralized long-term debt of such provider, or the long-term debt obligations secured or supported by a surety bond, insurance policy or letter of credit of said provider has been reduced below the ratings required by the first paragraph of this Section 506(9), said Capital

Reserve Fund Facility shall be valued at the lesser of (i) the amount available to be paid thereunder on the date of calculation and (ii) the difference between the amount available to be paid thereunder on the date of issue thereof and an amount equal to a fraction of such available amount the numerator of which is the aggregate number of February 15's and August 15's which have elapsed since such ratings were reduced and the denominator of which is ten.

Section 507. <u>Arbitrage Rebate Fund</u>. There is hereby created and established a "Health System Arbitrage Rebate Fund" which shall not be held in trust for the benefit of Bondowners. The Trustee shall deposit to the appropriate account in the Arbitrage Rebate Fund (a) any moneys delivered to it by the Corporation for deposit therein and (b) notwithstanding any other provisions of Article V, in accordance with the directions of the Corporation, moneys on deposit in any other fund held by the Trustee hereunder at such times and in such amounts as shall be set forth in such directions.

Moneys on deposit in the Arbitrage Rebate Fund shall be applied by the Trustee in accordance with the direction of the Corporation to make payments to the Treasury Department at such times and in such amounts as the Corporation shall determine to be required by the Code to be rebated to the Department of the Treasury of the United States of America. Moneys described in Section 507(a) which the Corporation shall determine to be in excess of the amount required to be so rebated shall remain in the Arbitrage Rebate Fund, be deposited to the Debt Service Fund, or be returned to the Corporation, in accordance with the directions of the Corporation. Moneys described in Section 507(b) which the Corporation determines to be in excess of the amount required to be so rebated shall remain in the Arbitrage Rebate Fund or be deposited to the Debt Service Fund in accordance with the directions of the Corporation.

If and to the extent required by the Code, the Corporation shall periodically, at such times as may be required to comply with the Code, determine or cause to be determined the amount to be rebated to the Treasury Department with respect to each Series of Bonds and direct the Trustee to (i) transfer from any other of the funds held by the Trustee hereunder and deposit to the Arbitrage Rebate Fund, all or a portion of the amount to be rebated with respect to such Series of Bonds and (ii) pay out of the Arbitrage Rebate Fund to the Treasury Department the amount, if any, required by the Code to be rebated thereto.

Section 508. <u>Disposition of Bonds Upon Payment</u>. All Bonds paid and redeemed, or purchased by the Trustee, under the provisions of this Resolution, either at or before maturity, shall be cancelled when such payment, redemption or purchase is made, and such Bonds, unless then held by the Trustee, shall be delivered to the Trustee. All cancelled Bonds may from time to time, upon direction of the Corporation, be cremated or otherwise destroyed by the Trustee, and the Trustee may execute a certificate of cremation or destruction in duplicate describing the Bonds so cremated or destroyed, and one executed certificate shall be filed with the Corporation and the other executed certificate shall be retained by the Trustee.

Section 509. <u>Trustee's Maintenance of Records on Payment of Bonds</u>. In connection with the payment, redemption or purchase of all Bonds under the provisions of this Resolution, the Trustee shall keep accurate records of the source of the monies used to pay, redeem or purchase such Bonds.

Section 510. <u>Credit Facilities</u>. The Trustee agrees to hold each Credit Facility for the benefit of the Owners of Bonds of the Series to which such Credit Facility relates, until such Credit Facility either expires in accordance with its terms or is exchanged for a substitute Credit Facility. In the event that at any time during the term of any Credit Facility any successor Trustee shall be appointed and qualified under this Resolution, the resigning Trustee shall request that the entity that issued the Credit Facility transfer such Credit Facility to the successor Trustee and shall take appropriate steps to accomplish such transfer, all as provided in such Credit Facility. If the resigning Trustee fails to make this request, the successor Trustee shall do so before accepting assignment. The Trustee agrees to notify the Corporation thirty (30) days prior to the expiration date of each Credit Facility held by it and to draw on any Credit Facility two (2) days prior to the expiration date of such Credit Facility unless directed otherwise by an Authorized Officer.

#### ARTICLE VI

## SECURITY FOR DEPOSITS AND INVESTMENT OF FUNDS

Section 601. Security for Deposits. Except as hereinafter provided, all monies held by the Trustee shall be continuously and fully secured for the benefit of the Corporation and the Bondowners by Investment Obligations of a market value equal at all times to the amount of the deposit so held by the Trustee; provided, however, (a) that if the securing of such monies is not permitted by the applicable law, then in such manner as may then be required or permitted by applicable State or federal laws and regulations regarding the security for, or granting a preference in the case of, the deposit of trust funds, and (b) that it shall not be necessary for the Trustee to give security for the deposit of any monies with them held in trust for the payment of the principal, Sinking Fund Payments or Redemption Price of or interest on Bonds, or such amount of monies as is insured by federal deposit insurance or for the Trustee to give security for any monies which shall be represented by obligations purchased under the provisions of this Resolution as an investment of such monies.

Section 602. <u>Investment of Funds and Accounts Held by the Trustee</u>. (1) Upon direction of the Corporation confirmed in writing by an Authorized Officer, monies in the Funds and Accounts established pursuant to this Resolution shall be invested by the Trustee in Investment Obligations specified in such direction so that the maturity date or date of redemption at the option of the holder of such Investment Obligations shall coincide with, as nearly as practicable, but shall not be later than, (i) the times at which monies in said Funds or Accounts will be required for the purposes provided in this Resolution and (ii) any applicable time restrictions required by the Act.

- (2) In lieu of the investment of monies in Investment Obligations described in paragraph (1) of this Section, the Trustee will, upon direction of the Corporation confirmed in writing by an Authorized Officer, deposit monies held by it in interest-bearing time deposits, or interest-bearing notes, make repurchase agreements or reverse repurchase agreements or make other similar investment banking arrangements or make such other investment arrangements involving Investment Obligations or other obligations which permit the Trustee to make the certification required by clause (i) below with itself or with any other bank, trust company, national banking association or bank holding company in the United States, or with any surety or insurance company, or any other public or private corporation or make repurchase or reverse repurchase agreements involving Investment Obligations, with any government bond dealer reporting to, trading with and recognized as a primary dealer by the Federal Reserve Bank of New York and having capital aggregating at least one hundred million dollars (\$100,000,000); provided, that upon the making of such deposit, agreement, investment or arrangement the Trustee will certify in writing to the Corporation:
  - (i) that each such interest-bearing time deposit, interest-bearing note, repurchase agreement, reverse repurchase agreement or other similar banking arrangement or other investment arrangement involving Investment Obligations or other obligations will permit the full principal amount of the monies so placed, together with the investment income agreed to be paid, to be available, without penalty, for use at the times

provided with respect to the investment or reinvestment of such monies and

(ii) that (A) the entity with which such interest-bearing time deposit, interestbearing note, repurchase agreement, or reverse repurchase agreement, or other investment arrangement involving Investment Obligations or other obligations is made must be an entity (1) certain of whose unsecured and uncollateralized long-term debt obligations are assigned to a rating category which is equal to or higher than the rating category the Bonds are assigned by the Rating Agencies (without regard to "+" or "-" or equivalent subgradations) at the time of the making of such investment or (2) certain of whose letters of credit which have been issued in support of certain debt obligations of persons, which debt obligations are assigned to a rating category equal to or higher than the rating category which the Bonds are assigned by the Rating Agencies at the time of the making of such investments, or (B) the performance of the entity with which such interestbearing time deposit, or interest-bearing note, repurchase agreement, reverse repurchase agreement or other investment arrangement involving Investment Obligations or other obligations is made must be secured or guaranteed by contracts, agreements or surety bonds with or from an entity certain of whose unsecured or uncollateralized long-term debt obligations are assigned to a rating category which is equal to or greater than the rating category which the Bonds are assigned by the Rating Agencies (without regard to "+" or "-" or equivalent subgradations) at the time of the making of such investment.

In addition the applicable short-term (rather than long-term) rating category of an entity described above may be utilized in satisfying the requirements of this Section, if an Authorized Officer of the Corporation certifies to the Trustee in connection with an investment, as to which certificate the Trustee may conclusively rely in making such investment, that (i) the use of such short-term rating category has been approved by the Rating Agencies then rating the Bonds and such short-term rating category is at least equivalent to the rating category which the Bonds are assigned by the approving Rating Agencies (without regard to "+" or "-" or equivalent subgradations), (ii) any such investment made with such entity shall be made in accordance with the terms and conditions, including length thereof, specified in the approval of the approving Rating Agencies and (iii) the investment made with such entity would not cause, either directly or indirectly, the approving Rating Agencies to lower the rating category which the Bonds are assigned immediately prior to such proposed investment and, if such approval is from only one Rating Agency, the investment made with such entity shall still satisfy the applicable provisions of this Section for long-term rating requirements as specified above with respect to such other Rating Agency. The Corporation shall require the valuation of the obligations, if any, securing such deposit, agreement, investment or arrangement not less than once each week. Notwithstanding the above, at the direction of the Corporation, the Trustee may also deposit monies held by it with entities not described in clauses (ii) (A) and (B) above, provided, such deposit is fully insured as to principal and interest by Federal deposit insurance and provided, that the Trustee shall certify in writing to the Corporation that each investment shall permit monies so placed and investment income to be paid to be available for use at the times provided. The Corporation shall require the valuation of the obligations if any, securing such interest-bearing deposits, repurchase or reverse repurchase agreement or other similar banking arrangements not less than once each week. The Trustee shall have no responsibilities (except as expressly set forth herein) as to the validity, sufficiency, value, genuineness, ownership or transferability of the obligations, written instructions, or any other documents in connection therewith, and will not be regarded as making nor be required to make, any representations thereto.

Notwithstanding any provision in this Section 602 to the contrary, the Trustee shall be authorized to invest in any investment, at the direction of the Corporation, which is now or may become authorized as investments obligations under the Act.

- (3) Obligations purchased as an investment of monies in any Fund or Account held by the Trustee under the provisions of this Resolution shall be deemed at all times to be a part of such Fund or Account and the income or interest earned by, or incremental to, a Fund or Account due to the investment thereof or an amount equal to such interest or increment thereto shall be transferred by the Trustee upon direction of the Corporation confirmed in writing by an Authorized Officer (or at the direction of Trustee, if the Corporation so fails to direct) to the Construction Fund or the Revenue Fund as earned, or as may otherwise be directed by a Series Resolution.
- (4) In computing the amount in any Fund or Account, except the Capital Reserve Fund, held by the Trustee under the provisions of this Resolution, obligations purchased as an investment of monies therein shall be valued (on each interest payment date for the Bonds in question) at market value and shall include any accrued interest to such date, and any investment of monies pursuant to paragraph (2) of this section, together with any Credit Facility held hereunder, shall be valued at par. For so long as the Act may require, the Capital Reserve Fund shall be valued (on each interest payment date for the Bonds in question) for the purpose set forth in the first sentence of paragraph (5) of Section 506 at the lower of cost or par value, except that for purposes of the second sentence of paragraph (5) of Section 506, the Capital Reserve Fund shall be valued at the lower of cost or market.
- an investment whenever it shall be necessary in order to provide monies to meet any payment or transfer from the Fund or Account for which such investment was made except that, in the case of investment arrangements involving Investment Obligations or other obligations, the Trustee shall sell such obligations in accordance with the terms of said investment arrangement. Notwithstanding the foregoing, the Trustee, whenever it is required to sell any investments held in the Capital Reserve Fund, shall sell such investments as shall be designated by the written direction of the Corporation (or as directed by the Trustee if the Corporation fails to act). The Trustee shall advise the Corporation, in writing, on or before the twentieth day of each calendar month, of the details of all investments held for the credit of each Fund and Account in its custody under the provisions of this Resolution as of the end of the preceding month. The Trustee may act through its investment office in connection with the sale of any obligation pursuant to this Section 602(5).

Section 603. <u>Liability of Trustee for Investments</u>. An Authorized Officer of the Corporation shall authorize, direct and confirm in writing all investments to be made by the

Trustee. If the Corporation fails to direct investments, the Trustee shall invest at its discretion in Investment Obligations. The Trustee shall not be liable or responsible for the making of any investment authorized by the provisions of this Article, in the manner provided in this Article, or for any loss resulting from any such investment so made.

#### ARTICLE VII

#### THE TRUSTEE

Section 701. Trustee; Appointment and Acceptance of Duties. The Trustee shall be appointed by the Corporation prior to the issuance of any Bonds. The Trustee shall be a bank or trust company organized under the laws of the State of New York or a national banking association, doing business and having its principal office in the State of New York, and having a capital and surplus aggregating at least One Hundred Million Dollars (\$100,000,000) if there be such a bank or trust company or national banking association willing and able to accept the office on reasonable and customary terms and authorized by law to perform all the duties imposed upon it by this Resolution. The Trustee, immediately upon such appointment, shall signify its acceptance of the duties and obligations imposed upon it by this Resolution by written instrument of acceptance deposited with the Corporation.

Section 702. <u>Payment Office</u>. The corporate trust office of the Trustee is hereby designated as the office of the Corporation for the payment of the interest on and principal, Sinking Fund Payments or Redemption Price of Bonds, except that interest on all Bonds shall be paid to the registered owners thereof by check or draft mailed or sent by wire transfer to such persons at the addresses last appearing on the registration books of the Corporation held by the Trustee, and the principal and Redemption Price of all Bonds shall be payable at the corporate trust office of the Trustee.

Section 703. Responsibilities of Trustee. (1) The recitals of fact herein and in any Bonds contained shall be taken as the statements of the Corporation and the Trustee does not assume any responsibility for the correctness of the same. The Trustee shall not be deemed to make any representation as to the validity or sufficiency of this Resolution or of any Bonds issued hereunder, and the Trustee shall not incur any responsibility in respect thereof. The Trustee shall not be under any responsibility or duty with respect to the issuance of any Bonds for value or the application of the proceeds thereof or the application of any monies paid to the Corporation. The Trustee shall neither be responsible for, nor chargeable with, knowledge of the terms and conditions of any other agreement, instrument, or document other than this Resolution, whether or not an original or a copy of such agreement has been provided to the Trustee. The Trustee shall have no duty to know or inquire as to the performance or nonperformance of any provision of any other agreement, instrument, or document other than this Resolution. Neither the Trustee nor any of its directors, officers, employees, agents or affiliates shall be responsible for nor have any duty to monitor the performance or any action of the Corporation, HHC Capital Corporation, or any of their directors, members, officers, agents, affiliates or employee, nor shall it have any liability in connection with the malfeasance or nonfeasance by such party. The Trustee may assume performance by all such Persons of their respective obligations. The Trustee shall not be under any obligation or duty to perform any act which would involve it in expense liability to institute or defend any suit under this Resolution or under any Series Resolution, or to advance any of its own monies, unless properly indemnified, provided, however, that the foregoing provisions shall be inapplicable with respect to any expenses of the Trustee incurred in connection with the payment of interest on Bonds, for so long as the Corporation shall comply with Section 705 hereof. The Trustee shall not be liable in connection with the performance of its duties hereunder except for its own negligence, misconduct or default. Except during the continuance of an Event

of Default as described in Section 1102 hereof, the Trustee shall be obligated to perform such duties and only such duties as are specifically set forth herein, and no implied covenants or obligations shall be read into this Resolution against the Trustee.

- (2) In addition to the reports required in Section 602(5) hereof, it shall be the responsibility of the Trustee to give telephonic notice to the Corporation followed by written notice of the failure to receive daily deposits of Health Care Reimbursement Revenues in satisfaction of HHC Capital Corporation's obligation to make Tri-Party Payments.
- (3) In case an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Resolution and any Series Resolution, and use the same degree of care and skill in its exercise as a prudent man would exercise or use under the circumstances in the conduct of his own affairs. The Trustee shall have no enforcement or notification obligations relating to breaches of representations or warranties of any other person. The Trustee shall not be charged with knowledge of (A) any events or other information, or (B) any default under this Resolution or any other agreement unless an Authorized Officer of the Trustee shall have actual knowledge thereof.

Section 704. Evidence on Which Trustee May Act. The Trustee shall be protected in acting upon any notice, direction, resolution, request, consent, order, certificate, report, opinion, bond, or other paper or documents believed by it to be genuine, and to have been signed, or presented by the proper party or parties. The Trustee may consult with counsel, who may or may not be counsel to the Corporation, and the opinion or advice of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it under this Resolution in good faith and in accordance therewith. The Trustee may act through attorneys or agents and shall not be responsible for the acts or omissions of any such attorney or agent appointed with due care.

Whenever the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action under this Resolution, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a certificate of an Authorized Officer or an opinion of counsel, and such certificate or opinion shall be full warrant for any action taken or suffered in good faith under the provisions of this Resolution upon the faith thereof, but in its discretion the Trustee may in lieu thereof accept other evidence of such fact or matter or may require such further or additional evidence as to it may seem reasonable.

Except as otherwise expressly provided in this Resolution, any request, order, notice or other direction required or permitted to be furnished pursuant to any provision hereof by the Corporation to the Trustee shall be sufficiently executed if executed in the name of the Corporation by an Authorized Officer.

Section 705. <u>Compensation</u>. The Corporation shall pay to the Trustee from time to time reasonable compensation for all services rendered under this Resolution, and all reasonable expenses, charges, counsel fees and other disbursements, including those of its attorneys, agents and employees, incurred in and about the performance of its powers and duties under this Resolution, <u>provided</u>, that the Trustee shall not have a lien therefor on any Funds or Accounts at

any time held by it under this Resolution. The Corporation further agrees to indemnify and save the Trustee harmless against any liabilities which it may incur in the exercise and performance of its powers and duties hereunder, and which are not due to its negligence or misconduct. The obligations of the Corporation under this Section shall survive this Resolution.

Section 706. Permitted Acts and Functions. The Trustee may become the owner of any Bonds, with the same rights it would have if it were not such Trustee. The Trustee may act as a depository for, and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Bondowners or to effect or aid in any reorganization growing out of the enforcement of the Bonds or this Resolution whether or not any such committee shall represent the Bondowners of a majority in principal amount of the Bonds then Outstanding. The permissive rights of the Trustee to do things enumerated in this Resolution shall not be construed as a duty and, with respect to such permissive rights, the Trustee shall not be answerable for other than its negligence or misconduct.

Section 707. Resignation of Trustee. The Trustee may at any time resign and be discharged of the duties and obligations created by this Resolution by giving not less than sixty (60) days written notice to the Corporation, and mailing, posting on EMMA or otherwise giving notice thereof, specifying the date when such resignation shall take effect, to Bondowners, and such resignation shall take effect upon the day specified in such notice unless previously a successor shall have been appointed as provided in Section 709, in which event such resignation shall take effect immediately on the appointment of such successor, provided, that such resignation shall not take effect unless and until a successor shall have been appointed.

Section 708. Removal of Trustee. The Trustee shall be removed by the Corporation if at any time so requested by an instrument or concurrent instruments in writing, filed with the Trustee and the Corporation, and signed by the Owners of a majority in principal amount of the Bonds then Outstanding or their attorney-in-fact duly authorized, excluding any Bonds held by or for the account of the Corporation, provided, that such removal shall not take effect unless and until a successor shall have been appointed. The Corporation may also remove the Trustee at any time, except during the existence of an Event of Default as defined in Section 1102 hereof, or the continuance of an event which solely by reason of the passage of time will become an Event of Default, for any reason, by filing with the Trustee an instrument signed by an Authorized Officer of the Corporation appointing a successor Trustee. A copy of each such instrument providing for any such removal shall be delivered by the Corporation to any Bondowner who shall have filed his name and address with the Corporation for such purpose.

Section 709. <u>Appointment of Successor Trustee</u>. In case at any time the Trustee shall resign or shall be removed or shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or if a receiver, liquidator or conservator of the Trustee or if its property, shall be appointed, or if any public officer shall take charge or control of the Trustee or of its property or affairs, the Corporation covenants and agrees that it will thereupon appoint a successor Trustee. The Corporation shall publish, post on EMMA, mail or otherwise give notice of any such appointment made by it to Bondowners within twenty (20) days after such appointment.

If in a proper case no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Section within forty-five (45) days after the Trustee shall have given

to the Corporation written notice, as provided in Section 707 or after a vacancy in the office of the Trustee shall have occurred by reason of its inability to act, the Trustee or any Bondowner may apply to any court of competent jurisdiction to appoint a successor Trustee. Said court may thereupon, after such notice, if any, as such court may deem proper, prescribe and appoint a successor Trustee.

Any Trustee appointed under the provisions of this Section 709 in succession to the Trustee shall be a bank or trust company organized under the laws of the State of New York or a national banking association doing business and having its principal office in the State of New York and having a capital surplus aggregating at least One Hundred Million Dollars (\$100,000,000), if there be such a bank or trust company or national banking association willing and able to accept the office on reasonable and customary terms and authorized by law to perform all the duties imposed upon it by this Resolution.

Section 710. Transfer of Rights and Property to Successor Trustee. Any successor Trustee appointed under this Resolution shall execute, acknowledge and deliver to its predecessor Trustee and also to the Corporation, an instrument accepting such appointment, and thereupon such successor Trustee, without any further act, deed or conveyance, shall become fully vested with all monies, estates, properties, rights, powers, duties and obligations for such predecessor Trustee, with like effect as if originally named as Trustee, but the Trustee ceasing to act shall nevertheless, on the written request of the Corporation or of the successor Trustee, execute, acknowledge and deliver such instruments of conveyance and further assurance and do such other things as may reasonably be required for more fully and certainly vesting and confirming in such successor Trustee all the right, title and interest of the predecessor Trustee in and to any property held by it under this Resolution and shall pay over, assign and deliver to the successor Trustee any money or other property subject to the trusts and conditions herein set forth. Should any deed, conveyance or instrument in writing from the Corporation be required by such successor Trustee for more fully and certainly vesting in and confirming to such successor Trustee any such estates, rights, powers and duties, any and all such deeds, conveyances and instruments in writing shall, on request and so far as may be authorized by law, be executed, acknowledged and delivered by the Corporation.

Section 711. Merger, Conversion or Consolidation. Any company into which the Trustee may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, shall be the successor to such Trustee without the execution or filing of any paper or the performance of any further act, provided, that such company shall be a bank or trust company organized under the laws of the State of New York or a national banking association, and having a capital and surplus aggregating at least One Hundred Million Dollars (\$100,000,000), and shall have an office for the transaction of its business in the State of New York, and shall be authorized by law to perform all the duties imposed upon it by this Resolution.

#### ARTICLE VIII

## GENERAL COVENANTS OF THE CORPORATION

The Corporation covenants and agrees with the Owners of the Bonds as follows:

Section 801. <u>Payment of Bonds</u>. The Corporation shall duly and punctually pay or cause to be paid the principal, Redemption Price and Sinking Fund Payments of every Bond, and the interest thereon, at the dates and places and in the manner provided in the Bonds, according to the true intent and meaning thereof.

Section 802. Extension of Payments. The Corporation shall not directly or indirectly extend or assent to the extension of the maturity of any Bonds or the time of payment of any of the claims for interest by the purchase or funding of such Bonds or claims for interest or by any other arrangement and in case the maturity of any of the Bonds or the time for payment of any such claims for interest shall be extended, such Bonds or claims for interest shall not be entitled in case of any Event of Default under this Resolution to the benefit of this Resolution or to any payment out of any assets of the Corporation or the funds (except funds held in trust for the payment of particular Bonds or claims for interest pursuant to this Resolution) held by the Trustee, except subject to the prior payment of the principal of all Bonds issued and Outstanding the maturity of which has not been extended and of such portion of the accrued interest on the Bonds as shall not be represented by such extended claims for interest. Nothing herein shall be deemed to limit the right of the Corporation to issue Refunding Bonds or other refunding obligations, as permitted hereby and by the Act and such issuance shall not be deemed to constitute an extension of the maturity of the Bonds of a Series refunded.

Section 803. Offices for Payment and Registration of Bonds. The Corporation shall at all times maintain an office or agency in the State of New York, where Bonds may be presented for payment. The Corporation shall at all times maintain an office or agency in the State of New York, where Bonds may be presented for registration, transfer or exchange and the Trustee is hereby appointed as its agent to maintain such office or agency for the registration, transfer or exchange of Bonds.

Section 804. <u>Further Assurances</u>. At any and all times the Corporation shall, so far as it may be authorized or permitted by law, pass, make, do, execute, acknowledge and deliver all and every such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable for the better assuring, conveying, granting, assigning, confirming and effecting all and singular the rights in and to its Health Care Reimbursement Revenues, the assignment thereof under the Tri-Party Agreement, and the causing of the Tri-Party Payments to be made by HHC Capital Corporation, and the Funds and Accounts hereby pledged, and any other monies, securities, funds and property which the Corporation may hereafter intend to or become bound to pledge.

Section 805. <u>Power to Issue Bonds and Make Pledges</u>. The Corporation is duly authorized pursuant to law to create and issue Bonds, to adopt this Resolution, to assign its Health Care Reimbursement Revenues under the Master Assignment and to cause the pledge of the Tri-Party Payments and the Funds and Accounts purported to be pledged by this Resolution in the

manner and to the extent provided in this Resolution. Except as may be contemplated by this Resolution, the pledge of the Health Care Reimbursement Revenues, the Tri-Party Payments and the Funds and Accounts are and will be free and clear of any pledge, lien, charge or encumbrance thereon or with respect thereto prior to, or of equal rank with, the pledge created by this Resolution, and all corporate action on the part of the Corporation to that end has been duly and validly taken. The Bonds and the provisions of this Resolution are and will be the valid and legally enforceable obligations of the Corporation in accordance with their terms and the terms of this Resolution. The Corporation shall at all times, to the extent permitted by law, defend, preserve and protect the pledge of the Health Care Reimbursement Revenues, the Tri-Party Payments and the Funds and Accounts under this Resolution and all the rights of the Bondowners under this Resolution against all claims and demands of all persons whomsoever.

Section 806. Agreement of the State. In accordance with the provisions of Section 14 of the Act (McKinney's Section 7395), the State has pledged to and agreed with the Owners of any and all Bonds of the Corporation that the State will not limit or alter the rights vested by the Act in the Corporation to fulfill the terms of any agreements made with such Owners, or in any way impair the rights and remedies of such Owners until the Bonds, together with the interest thereon, interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such Owner, are fully met and discharged.

Section 807. Accounts and Reports. The Corporation shall keep proper books of record and account in which complete and the correct entries shall be made of its payments of principal and interest made on the Bonds and all Funds and Accounts established by this Resolution, which shall at all reasonable times be subject to the inspection by the Trustee (it being understood that the Trustee shall have no obligation to do so) and by the Owners of an aggregate principal amount of not less than \$20,000,000 of Bonds then Outstanding or their representatives duly authorized in writing. The Corporation shall cause such books and accounts to be audited annually after the end of its fiscal year by a nationally recognized independent public accountant selected by the Corporation. Annually within thirty (30) days after receipt by the Corporation of the report of such audit, a signed copy of such report shall be furnished to the Trustee. Such report shall include at least a statement of all funds (including investments thereof) held by the Trustee pursuant to the provisions hereof and of each Series Resolution; a statement of payments of principal and interest made on the Bonds; a statement that the balance in the Capital Reserve Fund meets the requirements hereof and of each Series Resolution; and a statement that, in making such audit, no knowledge of any Event of Default in the fulfillment of any of the terms, covenants or provisions hereof and of each Series Resolution was obtained, or if knowledge of any such Event of Default was obtained, a statement thereof.

Section 808. <u>Creation of Liens</u>. Subject to the provisions of Section 815, the Corporation covenants and agrees not to create or cause to be created any lien, claim or charge prior or equal to that of the Bonds on or against the proceeds from the sale of Bonds, the Health Care Reimbursement Revenues (whether in the form of accounts, accounts receivable, contract rights or other rights of the proceeds of such rights), the Tri-Party Payments, and the Funds and Accounts established hereby which are pledged hereby; <u>provided</u>, <u>however</u>, that nothing contained herein shall prevent the Corporation from granting to a Bond Enhancer that provides a Credit Facility a charge or lien on Health Care Reimbursement Revenues and Tri-Party Payments as contemplated by Section 904.

Section 809. <u>Tax Exemption; Rebates</u>. For Bonds of each Series the interest on which is to be excluded from gross income for purposes of federal income taxation:

- (a) The Corporation shall comply with each requirement of the Code necessary to maintain the exclusion of interest on the Bonds from gross income for purposes of federal income taxation;
- (b) The Corporation shall make any and all payments required to be made to the Treasury Department of the United States of America in connection with the Bonds pursuant to Section 148(f) of the Code from amounts on deposit in the Funds and Accounts established under this Resolution or from other moneys available to the Corporation; and
- (c) The Corporation shall not take any action or fail to take any action, which would cause the Bonds of a Series to be "arbitrage" bonds within the meaning of Section 148 of the Code.

In furtherance of the covenants contained in this Section 809, the Corporation agrees to comply with the provisions of each tax regulatory agreement or similar tax certificate prepared by Bond Counsel and executed by the Corporation on the date of initial issuance and delivery of the Bonds of a Series, as such tax regulatory agreement or similar tax certificate may be amended from time to time, as a source of guidance for achieving compliance with the Code. For the avoidance of doubt, the Trustee shall have no duty to prepare or file any Federal or state tax report or return with respect to any funds held pursuant to this Resolution or any income earned thereon, except for the delivery and filing of tax information reporting forms required to be delivered and filed with the Internal Revenue Service.

Notwithstanding any other provision hereof to the contrary, the Corporation's failure to comply with the provisions of the Code applicable to the Bonds of a Series shall not entitle the Owner of Bonds of any other Series, or the Trustee acting on their behalf, to exercise any right or remedy provided to Bondowners hereunder based upon the Corporation's failure to comply with the provisions of this Section or of the Code.

Notwithstanding any other provision in this Resolution to the contrary, the Trustee shall have no obligations hereunder relating to arbitrage restrictions or rebate requirements, except to comply with specific written instructions received by the Trustee from the Corporation with respect to deposits into the Arbitrage Rebate Fund and release of moneys therefrom. The Trustee shall not have any responsibility to make any calculations relating to arbitrage restrictions or rebate requirements, or to make any other determinations with respect to the excludability of the interest on the Bonds from gross income for federal income tax purposes or to verify, confirm or review (and the Trustee shall not verify, confirm or review) any such calculations or requirements or determinations made hereunder or under any tax regulatory agreement relating to arbitrage restrictions or rebate requirements, or to take any other action with respect thereto hereunder. The Trustee shall not have any responsibility for verifying (and the Trustee shall not verify, confirm or review) that the use of proceeds of the Bonds is in compliance with the requirements of the Code. The Trustee shall not have any responsibility to notify the Corporation or any other person of any failure by the Corporation or any other person to provide to the Trustee timely written

directions relating to arbitrage restrictions or rebate requirements as required hereunder or under any tax regulatory agreement, including, without limitation, Corporation certifications or directions regarding rebate determinations or rebate payments which may be due and payable to the Internal Revenue Service.

Section 810. <u>Filings of Financing Statements</u>. The Corporation shall file or cause to be filed in the appropriate offices all financing statements which the Corporation determines are necessary or desirable to perfect the security interests granted to the Trustee under the Master Assignment and the Tri-Party Agreement.

- Section 811. <u>Financial Performance</u>. (a) The Corporation represents and warrants that, to the extent permitted by law and subject to any governmental or inter-governmental restrictions, regulations or policies, it has good, right and lawful power to established and collect rates, fees, rents, charges and other revenues and receipts for its patient care services.
- (b) The Corporation agrees to make available to the public multi-year financial forecasts.
- (c) To the extent permitted by law, governmental or inter-governmental restrictions, regulations or policies, the Corporation agrees to conduct its affairs and operations and to fix charges and rates for patient care service as may be necessary, so that its Net Cash Available for Debt Service (as derived from the Corporation's audited financial statements for its most recently completed fiscal year) shall at least equal 1.0 times the actual annual debt service on all Indebtedness then Outstanding maturing or becoming due and payable in such fiscal year.
- (d) Within one hundred and fifty (150) days after the end of each fiscal year of the Corporation, the Corporation shall furnish to the Trustee, a certificate of an Authorized Officer of the Corporation, or, at the option of the Corporation, an Accountant's Certificate, stating that the Corporation has complied with provisions of paragraph (c) of this Section 811. If the Corporation is unable to provide such a certificate demonstrating compliance with paragraph (c) of this Section 811, the Corporation will retain a consultant to make recommendations for actions intended to permit the Corporation to bring itself into compliance with the provisions of paragraph (c) of this Section 811.
- (e) For purposes of calculating maximum annual debt service on the Bonds or on Indebtedness under this Resolution, the following shall apply: (1) If any Bonds or Indebtedness bear interest at a variable interest rate, such Bonds or Indebtedness shall be treated for calculation purposes as Variable Rate Indebtedness; and (2) If any Bonds or Indebtedness constitute Balloon Indebtedness, the provisions of (f) below may, at the option of the Corporation, be applied.
- (f) For purposes of the computation of maximum annual debt service under this Resolution (except for the purpose of determining the Capital Reserve Fund Requirement), whether historic or projected, Balloon Indebtedness shall, at the election of the Corporation, be deemed to be Indebtedness which was payable over (a) thirty (30) years from the date of incurrence of such Indebtedness, on a level debt service basis, and at an interest rate, at the option of the Corporation, equal to either the actual rate borne by such Indebtedness on the date calculated, or an interest rate derived from the SIFMA Index, as such interest rate in either case

may be determined by an Authorized Officer's certificate, (b) the remaining term to maturity of such Indebtedness on a level debt service basis, and at an interest rate, at the option of the Corporation, equal to either the actual rate borne by such Indebtedness on the date calculated, or an interest rate derived from the SIFMA Index, as such interest rate in either case may be determined by an Authorized Officer's certificate, or (c) the term of refinancing if such Indebtedness is subject to a binding commitment for the refinancing of such Indebtedness, at a rate of interest specified in such refinancing commitment, and in each case with level annual debt service. In addition, the calculation of maximum annual debt service for Outstanding Balloon Indebtedness may be further adjusted upon delivery to the Trustee of (A) an Authorized Officer's certificate stating that financing of a stated term (which shall not extend beyond thirty (30) years after such date of calculation), amortization, and interest rate of Outstanding Balloon Indebtedness is reasonably attainable by the Corporation to refund or otherwise directly or indirectly to refinance any amount of such Balloon Indebtedness, in which case the principal of and premium, if any, and interest and other debt service charges on the amount of such Outstanding Balloon Indebtedness so certified to be refundable or refinanceable (whether or not any such refunding or refinancing is imminent) shall be excluded from the calculation of maximum annual debt service and the principal of and premium, if any, and interest and other debt service charges (which need not be based upon level annual debt service) on the theoretical refunding or refinancing Indebtedness as so certified which would result from such theoretical refunding or refinancing if incurred on the first day of the fiscal year of the Corporation for which maximum annual debt service is being calculated, shall be added to such calculation; and/or (B) an Authorized Officer's certificate, accompanied by a written consent or agreement of the obligor on such Balloon Indebtedness agreeing to retire (and such Balloon Indebtedness shall permit the retirement of), or to fund a sinking fund or escrow for, the principal of such Balloon Indebtedness according to a fixed schedule stated in such consent or agreement ending on or before the fiscal year in which such amount is due or could become due or payable in respect of any required purchase or maturity of such Balloon Indebtedness, in which case the principal of (and, in the case of retirement, the premium, if any, and interest and other debt service charges on) such Balloon Indebtedness shall be computed as if the same were due in accordance with such fixed schedule; and/or (C) an Authorized Officer's certificate indicating that principal payments or deposits with respect to specified Indebtedness secured by an irrevocable letter of credit issued by, or an irrevocable line of credit with, a bank rated at least "A" by at least one Rating Agency, or insured by an insurance policy issued by any insurance company rated at least "A" by Alfred M. Best Company or its successors in Best's Insurance Reports or its successor publication, nominally due in the last fiscal year of the Corporation in which such Indebtedness matures shall, at the option of the Corporation, be computed as if such principal payments or deposits were due as specified in any loan or reimbursement agreement issued in connection with such letter of credit, line of credit or insurance policy or pursuant to the repayment provisions of such letter of credit, line of credit or insurance policy, and interest on such Indebtedness after such fiscal year shall be assumed to be payable pursuant to the terms of such loan or reimbursement agreement or repayment provisions.

Section 812. <u>Disposition of Assets</u>. The Corporation may sell, assign, encumber, convey or otherwise dispose of any of its patient care services assets or portions thereof (i) in the case of equipment or inventory if (a) the consideration received upon disposition is equal to or greater than fair market value or (b) the Corporation determines that such assets are worn, obsolete or otherwise not needed for its patient care services and (ii) in the case of a Health

Facility or other physical plant and real property and equipment and inventory, the Corporation has furnished the Trustee a certificate of an Authorized Officer of the Corporation, substantially to the effect that after excluding the revenues and expenses associated with the asset to be sold, assigned, encumbered, conveyed or otherwise disposed of, (x) Health Care Reimbursement Revenues (as derived from the Corporation's most recent, available audited financial statements) are not less than four times the maximum annual debt service on the Bonds then Outstanding, and (y) the ratio of Net Cash Available for Debt Service (as derived from the Corporation's most recent, available audited financial statements) to maximum annual debt service on all Indebtedness then Outstanding shall not be less than 1.0. At or prior to the time of any disposition of a Health Facility under clause (ii) above, the Corporation may also adopt a Supplemental Resolution for the purpose set forth in paragraph (10) of Section 9.01.

Section 813. <u>Issuance of Additional Bonds</u>. (1) Additional Bonds may be issued from time to time for one or more of the following purposes: (i) refunding Outstanding Indebtedness, (ii) advance refunding Outstanding Indebtedness by depositing with the Trustee, in trust for the sole benefit of the owners of such Indebtedness, Investment Obligations in a principal amount satisfactory to the Trustee which, alone or together with the income or increment to accrue thereon, will be sufficient to pay or redeem (when redeemable) and discharge all Indebtedness to be refunded at or before the respective maturity dates; (iii) obtaining funds to pay for the construction, reconstruction, renovation, alteration, rehabilitation, expansion or improvement of Projects; (iv) obtaining funds to complete the construction, reconstruction, renovation, alteration, rehabilitation, expansion or improvement of a Health Facility or any other facility leased to or owned by the Corporation and operated by the Corporation, the financing, refinancing or reimbursement of the acquisition, construction, reconstruction or installation of furnishings and equipment of portions of Projects; (v) obtaining long-term working capital described in Section 814; and (vi) obtaining funds for any other purpose permitted under the Act. The principal amount of such Additional Bonds may include an amount sufficient to make a deposit to the Capital Reserve Fund, to pay the costs and expenses of issuance as well as such capitalized amounts as are permitted by this Resolution. Such Additional Bonds shall be secured by a pledge of Health Care Reimbursement Revenues and be payable from Tri-Party Payments.

(2) All Additional Bonds shall be of the same rank as the Outstanding Bonds, but shall bear such date or dates, bear such interest rate or rates, have such maturity dates, redemption dates and Redemption Prices, and be issued at such prices as shall be determined by the Corporation. Upon the execution and delivery in each instance of a Series Resolution, or in the case of Bonds issued for the purposes stated in clause (1)(iv) above by an appropriate supplement to the applicable Series Resolution, the Corporation shall execute and deliver such Additional Bonds to the Trustee, and the Trustee shall deliver them to the purchasers as may be directed by the Corporation, as hereinafter in this Section provided. Prior to the delivery by the Trustee of any such Additional Bonds there shall be filed with the Trustee all of the following (except for Additional Bonds issued to refund and defease Outstanding Bonds, if the debt service on such Bonds is no greater in any year than the debt service on the Bonds being defeased, in which event the following shall not be required):

A certificate of an Authorized Officer of the Corporation demonstrating satisfaction with any one of the following tests:

- (i) (A) Net Cash Available for Debt Service of the Corporation equal to at least 1.0 times maximum annual debt service on Outstanding Indebtedness of the Corporation as of the end of the most recent fiscal year for which audited financial statements are available, calculated on a *pro forma* basis, assuming that the proposed Additional Bonds were Outstanding as of the end of such fiscal year, and (B) Health Care Reimbursement Revenues equal to at least 4.0 times the maximum annual debt service on Outstanding Bonds as of the end of the most recent fiscal year for which audited financial statements are available, calculated on a *pro forma* basis, assuming that the proposed Additional Bonds were Outstanding as of the end of such fiscal year; or
- (ii) (A) projected Net Cash Available for Debt Service of the Corporation equal to at least 1.0 times projected maximum annual debt service on Outstanding Indebtedness of the Corporation for the first full fiscal year immediately following the issuance of the Additional Bonds (including the Additional Bonds and any other Indebtedness proposed to be issued prior to the end of such fiscal year), and (B) projected Health Care Reimbursement Revenues equal to at least 4.0 times the projected maximum annual debt service on Outstanding Bonds for the first full fiscal year immediately following the issuance of the Additional Bonds (including the Additional Bonds and any other Bonds projected to be issued prior to the end of such fiscal year); or
- (iii) (A) projected Net Cash Available for Debt Service of the Corporation equal to at least 1.0 times projected maximum annual debt service on Outstanding Indebtedness of the Corporation for the second full fiscal year following the completion of the Projects to be financed with the proceeds of the Additional Bonds (including the Additional Bonds and any other Indebtedness proposed to be issued during such period), and (B) projected Health Care Reimbursement Revenues equal to at least 4.0 times the projected maximum annual debt service on Outstanding Bonds for the second full fiscal year following completion of the Projects to be financed with the proceeds of the Additional Bonds (including the Additional Bonds and any other Bonds projected to be issued during such period).

If any Additional Bonds bear interest at a variable interest rate such Bonds shall be treated for calculation purposes as Variable Rate Indebtedness.

In addition to the foregoing, no additional Series of Bonds may be issued under this Resolution:

(a) unless the principal amount of the Bonds then to be issued, together with the principal amount of the Bonds of the Corporation theretofore issued and Outstanding, will not exceed in aggregate principal amount any limitation thereon imposed by law;

- (b) unless in the case of any Series of Bonds other than the first Series of Bonds, there is at the time of the issuance of such Bonds no deficiency in the amounts required by this Resolution or any Series Resolution to be paid into the Debt Service Fund,
- (c) unless the amount of the Capital Reserve Fund, upon the issuance and delivery of such Bonds and the placing in the Capital Reserve Fund of any amounts provided therefor in the Series Resolution authorizing the issuance of such Bonds, shall not be less than the Capital Reserve Fund Requirement; and
- (d) if an Event of Default shall have occurred and the continuing, <u>provided</u>, <u>however</u>, that, such additional Series of Bonds may nevertheless be issued if, in the opinion of the Corporation, such Event of Default shall be cured by such issuance.

Section 814. Working Capital Borrowings. The Corporation may borrow for working capital purposes on a long-term basis (i.e. borrowings that are not to be repaid within the fiscal year of the Corporation in which they were incurred) in a maximum amount at any time equal to 10% of the Health Care Reimbursement Revenues of the Corporation for the previous fiscal year determined from the Corporation's most recent, available audited financial statements. The Corporation may borrow for working capital purposes on a short-term basis in unlimited amounts provided, that the Corporation shall have no such short-term working capital borrowings outstanding on the last day of any fiscal year unless there shall not have been Outstanding short-term working capital borrowings for a continuous period of 30 days during such fiscal year. All short term working capital borrowings may be incurred only as Alternative Indebtedness without regard to the requirements of Section 813(2). Long-term working capital borrowing from any entity other than the City may be incurred as Bonds provided the requirements of Section 813(2) are met, or as Alternative Indebtedness without regard to the requirements of Section 813(2).

Section 815. Medicaid Intercept Financings. The Corporation may enter into financing arrangements or obligations, including financing arrangements or obligations with the New York State Housing Finance Agency and the Dormitory Authority of the State of New York (as successor to the New York State Medical Care Facilities Finance Agency), which by agreement or operation of law subjects a portion of the Health Care Reimbursement Revenues otherwise payable by the State directly or indirectly to the Corporation, its health care providers, or HHC Capital Corporation to being intercepted prior to receipt thereof for the purpose of making payments on bonds or notes secured by such financing arrangements or obligations, only if the Corporation certifies in writing to the Trustee prior to entering into any such arrangement or obligation that such arrangement or obligation, if treated as debt service on Additional Bonds, could be incurred under the provisions of Section 813(2) hereof.

Section 816. <u>Alternative Indebtedness</u>. The Corporation reserves the right to issue Alternative Indebtedness so long as the same is not a prior or parity charge or lien on the Health Care Reimbursement Revenues and the Tri-Party Payments, or payable from the Revenue Fund, the Debt Service Fund, the Capital Reserve Fund or any other Fund or Account created under this Resolution.

Section 817. <u>Waiver of Laws</u>. The Corporation shall not at any time insist upon or plead in any manner whatsoever, or claim or take the benefit or advantage of any stay or extension of

law now or at any time hereafter in force which may effect the covenants and agreements contained in this Resolution, in any Series Resolution or in any Supplemental Resolution or in the Bonds, and all benefit or advantage of any such law or laws is hereby expressly waived by the Corporation.

#### ARTICLE IX

## SERIES RESOLUTIONS AND SUPPLEMENTAL RESOLUTIONS

Section 901. <u>Adoption and Filing</u>. The Corporation may adopt at any time or from time to time Series Resolutions and Supplemental Resolutions without the consent of Bondholders for any one or more of the following purposes, and any such Series Resolution or Supplemental Resolution shall become effective in accordance with its terms upon the filing with the Trustee of a copy thereof certified by an Authorized Officer:

- (1) To provide for the issuance of a Series of Bonds and to prescribe the terms and conditions pursuant to which such Bonds may be issued, paid or redeemed;
- (2) To add additional covenants and agreements of the Corporation for the purpose of further securing the payment of the Bonds, <u>provided</u> such additional covenants and agreements are not contrary to or inconsistent with the covenants and agreements of the Corporation contained in this Resolution;
- (3) To prescribe further limitations and restrictions upon the issuance of Bonds and the incurring of other Indebtedness by the Corporation which are not contrary to or inconsistent with the limitations and restrictions thereon theretofore in effect;
- (4) To surrender any right, power or privilege reserved to or conferred upon the Corporation by the terms of this Resolution;
- (5) To confirm as further assurance any pledge under, and the subjection to any lien, claim, pledge created or to be created by, the provisions of this Resolution;
- (6) To cure any ambiguity or defect or omission or inconsistent provision in this Resolution or in any Series Resolution or Supplemental Resolution or to insert such provisions clarifying matters or questions arising under this Resolution or any Series Resolution or Supplemental Resolution as are necessary or desirable in the event any such modifications are not contrary to or inconsistent with this Resolution as theretofore in effect;
- (7) To modify any of the provisions of this Resolution or any previously adopted Series Resolution or Supplemental Resolution in any other respect, <u>provided</u>, that if such modifications would adversely affect the then existing ratings on the Corporation's Bonds, such modifications shall not be effective until after all Bonds of any Series of Bonds Outstanding as of the date of adoption of such Series Resolution or Supplemental Resolutions shall cease to be Outstanding (except for Bonds which are subject to tender by Bondowners prior to maturity in which case such modifications shall be effective after the designated tender date), and all Bonds issued under such resolutions shall contain a specific reference to the modifications contained in such subsequent resolution;
- (8) To permit the issuance of Bonds in bearer form, <u>provided</u> that the Corporation shall have obtained an opinion of Bond Counsel to the effect that the issuance of

Bonds in bearer form will not adversely affect the exclusion of interest on Bonds from Federal income taxation;

- (9) To modify any of the provisions of paragraph (9) of Section 506 of this Resolution;
- (10) To change the definition of Health Care Reimbursement Revenues to exclude any Health Facility which is being disposed of pursuant to Section 812 of this Resolution; or
- (11) To modify any provision of this Resolution or any previously adopted Series Resolution or Supplemental Resolution <u>provided</u> such modification does not adversely affect the then existing ratings on the Corporation's Bonds.

Section 902. <u>Supplemental Resolutions Effective with Consent of Bondowners</u>. Except as permitted in Section 901, the provisions of this Resolution may be modified at any time or from time to time by a Supplemental Resolution, subject to the consent of the Bondowners in accordance with and subject to the provisions of Article X hereof, such Supplemental Resolution to become effective upon the filing with the Trustee of a copy thereof certified by an Authorized Officer.

Section 903. General Provisions Relating to Series Resolutions and Supplemental Resolutions. This Resolution shall not be modified or amended in any respect except in accordance with and subject to the provisions of this Article IX and Article X. Nothing contained in this Article IX or Article X shall affect or limit the right or obligations of the Corporation to adopt, make, do, execute or deliver any resolution, act or other instrument pursuant to the provisions of Section 804 or the right or obligation of the Corporation to execute and deliver to the Trustee any instrument elsewhere in this Resolution provided or permitted to be delivered to the Trustee.

A copy of every Series Resolution and Supplemental Resolution adopted by the Corporation when filed with the Trustee shall be accompanied by an opinion of Bond Counsel stating that such Series Resolution or Supplemental Resolution has been duly and lawfully adopted in accordance with the provisions of this Resolution, is authorized or permitted by this Resolution, and is valid and binding upon the Corporation and enforceable in accordance with its terms.

The Trustee is hereby authorized to accept delivery of a certified copy of any Series Resolution or Supplemental Resolution permitted or authorized pursuant to the provisions of this Resolution and to make all further agreements and stipulations which may be contained therein, and, in taking such action, the Trustee shall be fully protected in relying on an opinion of Bond Counsel that such Series Resolution or Supplemental Resolution is authorized or permitted by the provisions of this Resolution.

No Series Resolution or Supplemental Resolution changing, amending or modifying any of the rights, protections, immunities, indemnities, duties or obligations of the Trustee may be adopted by the Corporation without the written consent of the Trustee.

Section 904. Provisions Relating to Bond Enhancers. In the event the Corporation shall procure a Credit Facility and in connection therewith agree with a Bond Enhancer to provide credit or liquidity support, or both, to a Series of Bonds, or a maturity or maturities of a Series of Bonds, the Corporation may include such provisions in the Series Resolution adopted by the Corporation in connection with the issuance of the related Series of Bonds, as may be necessary to obtain such Credit Facility and such credit or liquidity support and such provisions shall effect an amendment to this Resolution with respect to such Bondowners, but shall not adversely affect the rights and protections under this Resolution of the Bondowners whose Bonds are not benefitted by such Credit Facility and such credit or liquidity support.

# ARTICLE X

## AMENDMENTS OF RESOLUTION

Section 1001. Powers of Amendments. Except as permitted in Section 901, any modification or amendment of this Resolution and of the rights and obligations of the Corporation or of the Bondowners thereunder, in any particular, may be made by a Supplemental Resolution, with the written consent given as hereinafter provided in Section 1002, (a) of the Owners of at least a majority in principal amount of the Bonds Outstanding at the time such consent is given, and (b) in case less than all of the several Series of Bonds then Outstanding are affected by the modification or amendment, of the Owners of at least a majority in principal amount of the Bonds of each Series so affected and Outstanding at the time such consent is given; provided, however, that if such modification or amendment will by its terms not take effect so long as any Bonds of any specified like Series and maturity remain Outstanding (or for Bonds which are subject to tender by Bondowners prior to maturity, prior to the designated tender date), the consent of the Owners of such Bonds shall not be required and such Bonds shall not be deemed to be Outstanding for the purpose of any calculation of Outstanding Bonds under this Section. No such modification or amendment shall permit a change in the terms of redemption or maturity of the principal of any Outstanding Bond or of any installment of interest thereon or a reduction in the principal amount or the Redemption Price thereof or in the rate of interest thereon without the consent of the Owner of such Bond, or shall reduce the percentages of Bonds the consent of the Owners of which is required to effect any such modification or amendment. For the purposes of this Section, a Series shall be deemed to be affected by a modification or amendment of this Resolution if the same adversely affects or diminishes the rights of the Bondowners of such Series. The Trustee may in its discretion determine whether or not in accordance with the foregoing provisions Bonds of any particular Series or maturity would be affected by any modification or amendment of this Resolution and any such determination shall be binding and conclusive on the Corporation and all Bondowners. The Trustee may request an opinion of counsel, including an opinion of Bond Counsel, as conclusive evidence as to whether Bonds of any particular Series or maturity would be so affected by any such modification or amendment of this Resolution.

Section 1002. Consent of Bondowners. The Corporation may at any time adopt a Supplemental Resolution making a modification or amendment to this Resolution permitted by the provisions of Section 1001, to take effect when and as provided in this Section. A copy of such Supplemental Resolution (or brief summary thereof or reference thereto in form approved by the Trustee) shall be given by the Corporation by mail or by electronic means to the Bondowners. Such Supplemental Resolution shall not be effective unless and until there shall have been obtained (i) the consents of Owners of the percentages of Outstanding Bonds specified in Section 1001, and (ii) an opinion of Bond Counsel stating that such Supplemental Resolution has been duly and lawfully adopted by the Corporation in accordance with the provisions of this Resolution, is authorized or permitted by this Resolution, and is valid and binding upon the Corporation and enforceable in accordance with its terms. Any such consent shall be binding upon the Owner of the Bonds giving such consent and, anything in Section 1201 to the contrary notwithstanding, upon any subsequent Owner of such Bonds and of any Bonds issued in exchange therefor (whether or not such subsequent Owner thereof has notice thereof). At any time after the Owners of the required percentages of Bonds shall have given their consents to the Supplemental Resolution, the Corporation such make and file with the Trustee a written statement that the

Owners of such required percentages of Bonds shall have given such consents. Such written statement shall be conclusive that such consents have been so filed. At any time thereafter, notice stating in substance that the Supplemental Resolution (which may be referred to as a Supplemental Resolution adopted by the Corporation on a stated date, a copy of which is on file with the Trustee) has been consented to by the Owners of the required percentages of Bonds and will be effective as provided in this Section 1002, shall be given to Bondowners by the Corporation by mailing or causing the mailing of such notice to Bondowners. A transcript, consisting of the papers required or permitted by this Section 1002 to be filed with the Trustee, shall be proof of the matters therein stated. Such Supplemental Resolution making such amendment or modification shall be deemed conclusively binding upon the Corporation, the Trustee, and the Owners of all Bonds so affected upon the filing with the Trustee of the proof of the first giving of such notice.

Section 1003. <u>Modifications by Unanimous Consent</u>. The terms and provisions of this Resolution and the rights and obligations of the Corporation and of the Bondowners thereunder may be modified or amended in any respect upon (i) the adoption and filing by the Corporation of a Supplemental Resolution and (ii) the written consent of the Owners of all of the Bonds then Outstanding, such consent to be given as provided in Section 1002, except that no notice to Bondowners that such Supplemental Resolution has been consented to pursuant to Section 1002 either by mailing or publication or otherwise shall be required.

Section 1004. <u>Bondowner Notice</u>. (1) Any provision in this Article for the mailing of a notice or other document to Bondowners shall be fully complied with if it is mailed, postage prepaid (i) to each registered owner of Bonds then Outstanding at his address, if any, appearing upon the registration books of the Corporation, and (ii) to the Trustee. Notwithstanding any other provision of this Resolution, where this Resolution provides for notice of any event (including any notice of redemption or repurchase) to a Bondowner of Bonds held by DTC (whether by mail or otherwise), such notice shall be sufficiently given if given to DTC (or its designee) pursuant to the standing instructions from DTC or its designee, including by electronic mail in accordance with DTC's procedures.

(2) Any provision in this Article for publication of a notice or other matter shall be in the manner directed by the Corporation.

Section 1005. Exclusion of Bonds. Bonds owned or held by or for the account of the Corporation shall not be deemed Outstanding for the purpose of consent or other action or any calculation of Outstanding Bonds provided for in this Article, Article VII and Article XI, and the Corporation shall not be entitled with respect to such Bonds to give any consent or to take any other action provided for in this Article, Article VII and Article XI. At the time of any consent or other action taken under this Article, Article VII and Article XI, the Corporation shall furnish the Trustee a certificate of an Authorized Officer upon which the Trustee may rely, describing all Bonds so to be excluded.

Section 7393(7) of the Act provides that the Corporation shall have the power to purchase any Bonds at a price not exceeding the Redemption Price applicable to such Bonds, and that all Bonds so purchased shall be cancelled.

Section 1006. Notation on Bonds. Bonds delivered after the effective date of any action taken as in Article IX or this Article provided may, and, if the Trustee so determines, shall, bear a notation by endorsement or otherwise in form approved by the Corporation and the Trustee as to such action, and in that case, upon demand of the Owner of any Bond Outstanding at such effective date and upon presentation of such Owner's Bond for the purpose at the principal corporate trust office of the Trustee, suitable notation shall be made on such Bond by the Trustee as to any such action. If the Corporation or the Trustee shall so determine, new Bonds so modified as in the opinion of the Trustee and the Corporation to conform to such action shall be prepared and delivered, and upon demand of the Owners of any Bond then Outstanding shall be exchanged, without cost to such Bondowner, for Bonds then Outstanding upon surrender of such Bonds.

#### ARTICLE XI

## **DEFAULTS AND REMEDIES**

Section 1101. <u>Trustee to Exercise Powers of Statutory Trustee</u>. The Trustee shall be and hereby is vested with all of the rights, powers and duties of a trustee appointed by Bondowners pursuant to Section 17 of the Act (McKinney's Section 7398) and the right of Bondowners to appoint a trustee pursuant to Section 17 of the Act is hereby abrogated in accordance with the provision of paragraph (h) of subdivision 4 of Section 12 of the Act (McKinney's Section 7393).

Section 1102. <u>Events of Default</u>. Each of the following events is hereby declared in "Event of Default," that is to say if:

- (a) the Corporation shall fail to make the payment of the principal, Sinking Fund Payments or Redemption Price of or interest on any Bonds after the same shall become due, whether at maturity, upon call for redemption, or otherwise; or
- (b) the Corporation shall fail to observe and perform the covenants contained in Section 809 hereof and to make any required payments thereunder, and, as a result thereof, the interest on the Bonds shall no longer be excludable from gross income under Section 103 of the Code; or
- (c) the Corporation shall fail or refuse to comply with the provisions of the Act, or shall fail in the performance or observation of any other of the covenants, agreements or conditions on its part contained in this Resolution, any Series Resolution, any Supplemental Resolution, the Tri-Party Agreement or in the Bonds contained, and continuance of such default for a period of sixty (60) days without the Corporation proceeding with reasonable diligence to remedy such failure or non-compliance after notice shall have been given to the Corporation by the Trustee, which may give such notice in its discretion and shall give such notice at the written request of the Owners of not less than twenty-five percent (25%) in principal amount of the Outstanding Bonds; or
- (d) the Corporation or HHC Capital Corporation shall file a petition seeking a composition of indebtedness under the Federal bankruptcy laws or any other applicable law or statute of the United States of America or of the State or, to the extent permitted by law, a proceeding or case shall be commenced without the application or consent of the Corporation in any court of competent jurisdiction seeking (i) liquidation, reorganization, dissolution, winding-up or composition or adjustment of debts or (ii) similar relief under any law applicable to the Corporation relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continued unstayed and in effect for a period of sixty (60) days.

Section 1103. <u>Acceleration</u>. Upon the happening and continuation of an Event of Default specified in Section 1102(a) or upon the acceleration of Alternative Indebtedness of the Corporation with a principal amount in excess of one and one-half percent (1.5%) of Health Care Reimbursement Revenues for the most recent full fiscal year of the Corporation, the Trustee may, and at the written direction of the Owners of not less than twenty-five percent (25%) in principal amount of Outstanding Bonds, shall, thirty (30) days after having given notice in writing delivered to the Corporation, declare the entire principal amount of all of the Bonds then Outstanding hereunder and the interest accrued thereon immediately due and payable.

Section 1104. Remedies. (1) Upon the happening and continuance of any Event of Default specified in Section 1102, then, and in each such case, in addition to the right of acceleration conferred by Section 1103, the Trustee may proceed, and upon the written request of the Owners of not less than twenty-five percent (25%) in principal amount of the Outstanding Bonds shall proceed, in its own name, to protect and enforce its rights and the rights of such Bondowners by such of the following remedies, as the Trustee, being advised by counsel, shall deem most effectual to protect and enforce such rights:

- (a) by suit, action or proceeding in accordance with the Civil Practice Law and Rules to enforce all rights of such Bondowners, including the right to require HHC Capital Corporation to make Tri-Party Payments adequate to carry out the covenants and agreements as to, and pledge of, such Tri-Party Payments and other monies, securities and Fund and Account pledged herein and to require the Corporation and HHC Capital Corporation to carry out any other covenant or agreement with Bondowners and to perform its duties under the Act;
- (b) by bringing suit upon the Bonds;
- (c) by action or suit, require the Corporation to account as if it were the trustee of an express trust for the Bondowners;
- (d) by action or suit, enjoin any acts or things which may be unlawful or in violation of the rights of the Bondowners; and
- (e) take such other action at law or in equity which the Trustee deems desirable or advisable to protect or enforce its rights and the rights of the Bondowners hereunder.
- (2) In the enforcement of any remedy under this Resolution, the Trustee shall be entitled to sue for, enforce payment on and receive any and all amounts then or during any default becoming, and any time remaining, due from the Corporation for principal, Sinking Fund Payments, Redemption Price, interest or otherwise, under any provision of this Resolution or of the Bonds, and unpaid, with interest on overdue payments at the rate of interest specified in the Bonds, together with any and all costs and expenses of collection and of all proceedings hereunder and under any Series Resolution and under such Bonds, without prejudice to any other right or remedy of the Trustee or of the Bondowners, and to recover and enforce any judgment or decree against the Corporation for any portion of such amounts remaining unpaid, with interest, costs

and expenses, and to collect from any monies available for such purpose, in any manner provided by law, the monies adjudged or decreed to be payable.

(3) At any time after the principal of the Bonds shall have been declared to be due and payable pursuant to Section 1103 hereof, before the entry of final judgment or decree in any suit, action or proceeding instituted on account of the Event of Default giving rise to such declaration, and before the completion of the enforcement of any other remedy under this Resolution, the Trustee may annul such declaration and its consequences with respect to any Bonds not then due by their terms if (i) monies shall be available sufficient to pay the charges, compensation, expenses, disbursements, advances and liabilities of the Trustee; (ii) all other amounts then payable by the Corporation hereunder shall have been paid or a sum sufficient to pay the same shall have been deposited with the Trustee; and (iii) every event giving rise to such declaration (other than a default in the payment of the principal of such Bonds then due only because of such declaration) shall have been remedied or withdrawn, as the case may be, to the satisfaction of the Trustee. No such annulment shall extend to or affect any subsequent Event of Default or basis for acceleration or impair any right consequent thereon.

Section 1105. Priority of Payments After Default. (A) In the event that the funds held by the Trustee following the occurrence of an Event of Default shall be insufficient for the payment of interest and principal or Redemption Price then due on any Bonds, such funds (other than funds held for the payment or redemption of particular Bonds which have theretofore become due at maturity or by call for redemption) and any other monies received or collected by the Trustee acting pursuant to the Act and this Article XI, after making provision for the payment of any expenses necessary in the opinion of the Trustee to protect the interests of the Owners of Bonds, and for the payment of the charges and expenses and liabilities incurred and advances made by the Trustee (including counsel's fees) in the performance of its duties under this Resolution, shall be applied as follows:

(1) Unless the principal of all Bonds shall have become or shall have been declared due and payable, all such monies shall be applied:

<u>First</u>: To the payment to the persons entitled thereto of all installments of interest then due on Bonds, in the order of the maturity of the installments of such interest, and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment thereof ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference; and

Second: To the payment to the persons entitled thereto of the unpaid principal, Sinking Fund Payments or Redemption Price of any Bonds which shall have become due whether at maturity or by call for redemption (other than Bonds called for redemption for the payment of which monies are held pursuant to the provisions of this Resolution), in the order of their due dates, and, if the amount available shall not be sufficient to pay in full all Bonds due on any particular date, then to the payment thereof ratably, according to the amounts of principal, Sinking Fund Payments or Redemption Price

due on such date, to the persons entitled thereto, without any discrimination or preference.

- (2) If the principal of any Bonds shall have become due or shall have been declared due and payable, all such monies shall be applied to the payment of the principal and interest then due and unpaid upon Bonds, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bonds over any other Bonds, ratably, according to the amounts due respectively for principal and interest, to the person entitled thereto, without any discrimination or privilege.
- (3) If the principal of all Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded and annulled under the provisions of this Article, then, subject to the provisions of paragraph (1) of this Section, in the event that the principal of all Bonds shall later become due or be declared due and payable, the monies shall be applied in accordance with the provisions of paragraph (2) of this Section.
- Whenever monies are to be applied by the Trustee pursuant to the provisions of this Section, such monies shall be applied by it at such times, and from time to time, as the Trustee in its sole discretion shall determine (subject to Section 508), having due regard for the amount of such monies available for application and the likelihood of additional monies becoming available for such application in the future. The Trustee shall incur no liability whatsoever to the Corporation, to any Bondowner or to any other person for any delay in applying any such monies, so long as the Trustee acts with reasonable diligence, having due regard for the circumstances, and ultimately applies the same in accordance with such provisions of this Resolution as may be applicable at the time of application by the Trustee. Whenever the Trustee shall apply such monies, it shall fix the date upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such date shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such monies and of the fixing of any such date, which in any event shall include prompt notice by first-class United States mail, postage prepaid, to each Bondowner at his address as it appears on the registration books maintained by the Trustee, and shall not be required to make payment to the Owner of any unpaid Bond until such Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if duly paid.

Section 1106. <u>Termination of Proceedings</u>. In case any proceedings taken by the Trustee on account of any Event of Default shall have been discontinued or abandoned for any reason, then in every such case the Corporation, the Trustee and the Bondowners shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies, powers and duties of the Trustee shall continue as though no such proceeding has been taken.

Section 1107. <u>Bondowners' Direction of Proceedings</u>. Anything in this Resolution to the contrary notwithstanding, the Owners of the majority in principal amount of the Bonds then Outstanding shall have the right, by an instrument or concurrent instruments in writing executed and delivered to the Trustee, to direct the method of conducting all remedial proceedings to be taken by the Trustee hereunder, <u>provided</u>, that such direction shall not be otherwise than in accordance with law and the provisions of this Resolution, and that the Trustee shall have the

right to decline to follow any such direction which in the opinion of the Trustee would be unjustly prejudicial to Bondowners not parties to such direction.

Section 1108. Limitation on Rights of Bondowners. No Owner of any Bond shall have any right to institute any suit, action or other proceeding hereunder, or for the protection or enforcement of any right under this Resolution or any right under law, unless such Owner shall have given to the Trustee written notice of the Event of Default or breach of duty on account of which such suit, action or proceeding is to be taken, and unless the Owners of not less than twentyfive (25%) in principal amount of the Bonds then Outstanding shall have made written request to the Trustee after the right to exercise such powers or right of action, as the case may be, shall have accrued, and shall have afforded the Trustee a reasonable opportunity either to proceed to exercise the powers herein granted or granted under law or to institute such action, suit or proceeding in its name and unless, also, there shall have been offered to the Trustee reasonable security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee shall have refused or neglected to comply with such request within a reasonable time; and such notification, request and offer of indemnity are hereby declared in every such case, at the option of the Trustee, to be conditions precedent to the execution of the powers under this Resolution or for any other remedy hereunder or under law. It is understood and intended that no one or more Bondowners hereby secured shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of this Resolution, or to enforce any right hereunder or under law with respect to the Bonds or this Resolution, except in the manner herein provided, and that all proceedings shall be instituted, had and maintained in the manner herein provided and for the benefit of all Owners of the Outstanding Bonds. Notwithstanding the foregoing provisions of this Section or any other provisions of this Article XI, the obligation of the Corporation to pay the principal, Sinking Fund Payments and Redemption Price of and interest on the Bonds to the respective Owners thereof at the respective due dates thereof shall be absolute and unconditional, and nothing herein shall affect or impair the right of action, which is absolute and unconditional, of such Owners to enforce such payment.

Anything to the contrary notwithstanding contained in this Section 1108, or any other provision of this Resolution, each Owner of any Bond by his acceptance thereof shall be deemed to have agreed that any court in its discretion may require, in any suit for the enforcement of any right or remedy under this Resolution, any Series Resolution or any Supplemental Resolution, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the reasonable costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees against any party litigant in any such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this paragraph shall not apply to any suit instituted by the Trustee, to any suit instituted by any Bondowner, or by any group of Bondowners, holding at least twenty-five (25%) in principal amount of the Bonds Outstanding, or to any suit instituted by any Bondowner for the enforcement of the payments of the principal, Sinking Fund Payments or Redemption Price of or interest on any Bond on or after the respective due dates thereof expressed in such Bond.

Section 1109. <u>Possession of Bonds by Trustee Not Required</u>. All rights of action under this Resolution or under any of the Bonds, enforceable by the Trustee, may be enforced by it without the possession of any of the Bonds or the production thereof on the trial or other

proceeding relative thereto, and any such suit, action or proceeding instituted by the Trustee shall be brought in its name for the benefit of all the Owners of such Bonds, subject to the provisions of this Resolution.

Section 1110. <u>Remedies Not Exclusive</u>. No remedy herein conferred upon or reserved to the Trustee or to the Bondowners is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Section 1111. No Waiver of Default. No delay or omission of the Trustee or of any Owner of the Bonds to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or an acquiescence therein, and every power and remedy given by this Resolution to the Trustee and the Bondowners, respectively, may be exercised from time to time and as often as may be deemed expedient.

The Trustee may, and upon written request of the Owners of not less than twenty-five percent (25%) in principal amount of the Outstanding Bonds of a Series or, in the case of an Event of Default specified in paragraph (c) of Section 1102 hereof, the Owners of a majority in principal amount of the Outstanding Bonds, shall, waive any Event of Default which in its opinion shall have been remedied before the entry of final judgment or decree in any suit, action or proceeding instituted by it under the provisions hereof or before the completion of the enforcement of any other remedy hereunder; but no such waiver shall extend to or affect any other existing or any subsequent Events of Default or impair any rights or remedies consequent thereon.

Section 1112. Notice of Event of Default. The Trustee shall give the Corporation immediate notice by telecommunications of each Event of Default. The Trustee shall give to the Bondowners notice of each Event of Default hereunder known to an officer of the Trustee in its corporate trust department within fifteen (15) days after knowledge of the occurrence thereof, unless such Event of Default shall have been remedied or cured before the giving of such notice; provided, however, that, except in the case of a default in the payment of the principal, Sinking Fund Payments or Redemption Price of, or interest on, any Bonds, the Trustee shall be protected in withholding notice thereof to the Owners thereof if and so long as the Trustee in good faith determines that the withholding of such notice is in the best interest of such Owners. Each such notice of Event of Default shall be given by the Trustee by mailing written notice thereof: (i) to all registered Owners of Bonds, as the names and addresses of such Owners appear on the books for registration and transfer of Bonds as kept by the Trustee, and (ii) to such other persons as may be required by law.

#### ARTICLE XII

# EXECUTION OF INSTRUMENTS BY BONDOWNERS AND PROOFS OF OWNERSHIP OF BONDS

Section 1201. Evidence of Signatures of Bondowners and Ownership of Bonds. Any request, direction, consent, revocation of consent, or other instrument in writing required or permitted by this Resolution to be signed or executed by Bondowners may be in any number of concurrent instruments of similar tenor, and may be signed or executed by such Bondowners in person or by their attorneys or agents appointed by an instrument in writing for that purpose. Proof of the execution of any such instrument, or of any instrument appointing any such attorney or agent, and of the holding and ownership of Bonds shall be sufficient for the purpose of this Resolution (except as otherwise herein provided), if made in the following manner:

- (a) The fact and date of the execution by any Bondowner or his attorney or agent of any such instrument and of any instrument appointing any such attorney or agent, may be proved by delivery of a certificate, which need not be acknowledged or verified, of an officer of any bank, trust company, or other depository, or of any notary public, or other officer authorized to take acknowledgements. Where any such instrument is executed by an officer of a corporation or association or a member of a partnership on behalf of such corporation, association or partnership, such certificate shall also constitute sufficient proof of his authority.
- (b) The ownership of Bonds shall be proved by the registry books of the Corporation kept by the Trustee under the provisions of this Resolution.

Nothing contained in this Article shall be construed as limiting the Trustee to such proof, it being intended that the Trustee may accept any other evidence of the matters herein stated which may seem sufficient. Any request or consent of the Owner of any Bond shall bind every future Owner of the same Bond in respect of anything done or suffered to be done by the Corporation or the Trustee in pursuance of such request or consent.

# ARTICLE XIII

## **DEFEASANCE**

Section 1301. Release of Lien of Resolution. If the Corporation shall pay or cause to be paid, or there shall otherwise be paid, to the Bondowners of a Series then Outstanding, the principal, Sinking Fund Payments and Redemption Price, if any, thereof and interest to become due thereon, at the times and in the manner stipulated therein and in this Resolution, then and in that event the covenants, agreements and other obligations of the Corporation to such Bondowners, shall be discharged and satisfied. In such event, subject to any required application of the earnings on investments to comply with the Corporation's tax covenants, the Trustee shall, upon request of the Corporation, execute and deliver to the Corporation all such instruments as may be desirable to evidence any such release and discharge and the Trustee shall pay over or deliver to the Corporation all monies or securities held by it pursuant to this Resolution which are not required for the payment or redemption of Bonds not theretofore surrendered for such payment or redemption. In the event that the Owners of all the Bonds Outstanding have been paid such amounts, the Trustee shall pay over or deliver to the Corporation all remaining monies or securities held by it pursuant to this Resolution which are not required for the payment or redemption of Bonds not theretofore surrendered for such payment or redemption.

Section 1302. <u>Payment of Bonds</u>. Bonds for which sufficient monies, as described in the following paragraph, shall then be held by the Trustee (through deposit by the Corporation of funds for such payment or redemption or otherwise), whether at or prior to the maturity or the redemption date of such Bonds, shall be deemed to have been paid within the meaning of Section 1301.

All Outstanding Bonds of any Series or a portion of all Outstanding Bonds of a Series shall, prior to the maturity or redemption date thereof, be deemed to have been paid within the meaning and with the effect expressed in Section 1301 if (a) in case any of said Bonds are to be redeemed on any date prior to the maturity thereof, the Corporation shall have given to the Trustee in form satisfactory to it irrevocable instructions to provide notice of redemption of such Bonds or portions of Bonds on said date as provided in Article III of this Resolution, (b) there shall have been deposited with the Trustee either monies in an amount which shall be sufficient or noncallable and non-prepayable Government Obligations or non-callable and non-prepayable obligations referred to in clause (b) and (d) of the definition of Investment Obligations, the principal of and the interest on which, when due, will provide monies which, together with the monies, if any, deposited with the Trustee at the same time, shall be sufficient to pay when due the principal, Sinking Fund Payments or Redemption Price, if applicable, of and interest due and to become due on said Bonds on and prior to the redemption date or maturity date thereof, as the case may be, and (c) in the event said Bonds are not by their terms subject to redemption within the next succeeding 90 days, the Corporation shall have given the Trustee in form satisfactory to it irrevocable instructions to mail a notice to the Owners of such Bonds that (i) the deposit required by (b) above has been made with the Trustee and (ii) said Bonds are deemed to have been paid in accordance with this Section and stating such maturity or redemption date upon which monies are to be available for the payment of the principal, Sinking Fund Payments or Redemption Price, if applicable, of said Bonds. Neither the obligations nor monies deposited with the Trustee pursuant to this Section nor principal or interest payments on any such obligations shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal, Sinking Fund Payments or Redemption Price, if any, of and interest on said Bonds or portions of said Bonds, as the case may be; <u>provided</u>, that any cash received from such principal or interest payments on such obligations deposited with the Trustee, if not then needed for such purpose, shall, to the extent practicable, be reinvested in Government Obligations maturing at times and in amounts sufficient to pay when due the principal, Sinking Fund Payments or Redemption Price, if any, of and interest to become due on said Bonds on and prior to such redemption date or maturity date thereof, as the case may be.

Any income or interest earned by, or increment to, the investment of any such monies so deposited, shall, to the extent certified by the Trustee to be in excess of the amounts required hereinabove to pay the principal, Sinking Fund Payments, Redemption Price, if any, of and interest on such Bonds, as realized, shall be transferred by the Trustee to the Corporation, and any such monies so paid by the Trustee to the Corporation shall be released from the lien and pledge created by this Resolution.

Notwithstanding the preceding provisions of this Section 1302, a Series Resolution may modify or restrict the application of this Section 1302 with respect to the Series of Bonds authorized by such Series Resolution.

Anything herein to the contrary notwithstanding, any monies held by the Trustee in trust for the payment and discharge of any of the Bonds of a Series which remain unclaimed for three (3) years after the date when such monies become due and payable upon such Bonds either at their stated maturity dates or by call for earlier redemption, if such monies were held by the Trustee at such date, shall at the written request of the Corporation be repaid by the Trustee to the Corporation as its absolute property and free from trust, and the Trustee shall thereupon be released and discharged with respect thereto and the Owners of Bonds of such Series shall look only to the Corporation for the payment of such Bonds; provided, however, that before being required to make any such payment to the Corporation, the Trustee shall mail a notice that such moneys remain unclaimed and that, after a date named in such notice, which date shall be not less than thirty five (35) nor more than ninety (90) days after the date of giving of such notice, the balance of such moneys then unclaimed shall be returned to the Corporation.

#### ARTICLE XIV

## **MISCELLANEOUS**

Section 1401. <u>Preservation and Inspection of Documents</u>. All documents received by the Trustee under the provisions of this Resolution or any Series Resolution or any Supplemental Resolution shall be retained in its possession and shall be subject at all reasonable times to the inspection of the Corporation, the Trustee, any Bondowner and their agents and representatives, any of whom may make copies thereof.

Section 1402. Parties of Interest. Except as may be contemplated by Section 904, nothing in this Resolution or any Series Resolution or any Supplemental Resolution adopted pursuant to the provisions hereof, expressed or implied, is intended to or shall be construed to confer upon or to give to any person or party other than the Corporation, the Trustee, and the Bondowners any rights, remedies or claims under or by reason of this Resolution, any Series Resolution or any Supplemental Resolution or any covenant, condition or stipulation thereof; and all covenants, stipulations, promises and agreements in this Resolution, any Series Resolution or any Supplemental Resolution contained by or on behalf of the Corporation shall be for the sole and exclusive benefit of the Corporation, the Trustee, and the Owners from time to time of the Bonds.

Section 1403. No Recourse under Resolution or on Bonds. All covenants, stipulations, promises, agreements and obligations of the Corporation contained in this Resolution shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Corporation and not of any member, officer or employee of the Corporation in his individual capacity, and no recourse shall be had for the payment of the principal, Sinking Fund Payments or Redemption Price of or interest on Bonds or for any claim based thereon or on this Resolution against any member, officer or employee of the Corporation or any natural person executing Bonds.

Section 1404. <u>Severability</u>. If any one or more of the covenants, stipulations, promises, agreements or obligations provided in this Resolution on the part of the Corporation or the Trustee, to be performed should be determined by a court of competent jurisdiction to be contrary to law, then such covenant or covenants, stipulation or stipulations, promise or promises, agreement or agreements, obligation or obligations shall be deemed and construed to be severable from the remaining covenants, stipulations, promises, agreements and obligations herein contained and shall in no way affect the validity of the other provisions of this Resolution.

Section 1405. <u>Headings</u>. Any headings preceding the texts of the several Articles and Sections hereof, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Resolution, nor shall they affect its meaning, construction or effect.

Section 1406. <u>Actions by the Corporation</u>. Any time the Corporation is permitted or directed to act pursuant to this Resolution or any Series Resolution or any Supplemental Resolution, such action shall be taken by an Authorized Officer of the Corporation in writing or confirmed in writing except that the following actions may only be taken by resolution of the members of the Corporation: authorization and issuance of Bonds; adoption of Series Resolutions or Supplemental Resolutions; and modifications and amendments pursuant to Article IX and X

herein. Any certificates of the Corporation to be delivered hereunder shall be executed by an Authorized Officer.

Section 1407. Notices. Except as otherwise provided herein, any notices, directions or other instruments required to be given or delivered pursuant hereto or to any Series Resolution or any Supplemental Resolution shall be in writing and shall be delivered by hand or courier service against the written receipt therefor or by overnight delivery service, registered or certified mail addressed in the case of the Corporation, to it to the attention of the Corporation's Senior Vice President for Finance, with a copy to the Corporation's Vice President, Legal Affairs, at 125 Worth Street, Room 527, New York, New York 10013; in the case of HHC Capital Corporation, to it to the attention of HHC Capital Corporation's Corporate Secretary, at 125 Worth Street, New York, New York 10013; and in the case of the Trustee, addressed to it at the principal corporate trust office of the Trustee at the address of such principal corporate trust office.

Section 1408. <u>Electronic Communications</u>. The Trustee agrees to accept and act upon instructions or directions pursuant to this Resolution delivered by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods; provided, however, that the Trustee shall have received an incumbency certificate listing persons designated to give such instructions or directions and containing specimen signatures of such designated persons, which such incumbency certificate shall be amended and replaced whenever a person is to be added or deleted from the listing. If the Corporation elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding if such instructions conflict or are inconsistent with a subsequent written instruction, other than any such loss that is deemed a direct result of the Trustee's negligence or misconduct. The Corporation agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

Section 1409. <u>Survival of Particular Covenants</u>. The obligation of the Corporation to comply with the provisions of Section 809 hereof with respect to amounts to be rebated to the Treasury Department shall remain in full force and effect so long as the Corporation shall be required by the Code to rebate such amounts notwithstanding that Bonds of such Series are no longer Outstanding.

Section 1410. <u>Governing Laws</u>. This Resolution shall be governed by and construed in accordance with the laws of the State and any suits and actions arising out of this Resolution shall be instituted in a court of competent jurisdiction in New York County.

Section 1411. <u>Conflict</u>. All resolutions or parts of resolutions or other proceedings of the Corporation in conflict herewith shall be and the same are repealed insofar as such conflict exists.

Section 1412. <u>Effective Date</u>. This Resolution shall take effect immediately upon its adoption.

Section 1413. <u>Waiver of Trial By Jury</u>. Each of the parties hereto hereby waives the right to trial by jury with respect to any litigation directly or indirectly arising out of, under or in connection with this Resolution.

Section 1414. Force Majeure. The Trustee shall not be responsible or liable for any failure or delay in the performance of its obligations under this Resolution arising out of or caused, directly or indirectly, by circumstances beyond its control, including without limitation, any act or provision of any present or future law or regulation or governmental authority; acts of God; earthquakes; fires; floods; wars; terrorism; civil or military disturbances; sabotage; epidemics; pandemics; riots; interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications service; accidents; labor disputes; acts of civil or military authority or governmental actions; or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility.

Section 1415. <u>Entire Agreement</u>. This Resolution and any exhibits hereto set forth the entire agreement and understanding of the parties related to this transaction and supersedes all prior agreements and understandings, oral or written.

| The provisions of the foregoing Resolution are hereby approved. |      |
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| Dated: November 19, 1992  |      |
| First Amended: December 19, 1996                                |      |
| Amended and Restated: October 29, 2020 and Effective on         | 2020 |