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CITY OF SANTA FE, NEW MEXICO

RESOLUTION NO. 2019-38

INTRODUCED BY:

Councilor Signe I. Lindell

A RESOLUTION

DECLARING THE INTENT OF THE CITY OF SANTA FE TO ISSUE INDUSTRIAL REVENUE BONDS IN A PRINCIPAL AMOUNT UP TO EIGHTY MILLION DOLLARS (\$80,000,000) TO FINANCE ACQUISITION, CONSTRUCTION, AND EQUIPPING OF A NEW ADULT RESIDENTIAL RETIREMENT FACILITY TO BE LOCATED AT 401 OLD TAOS HIGHWAY IN SANTA FE, NEW MEXICO AND FOR THE PURPOSE OF INDUCING EL CASTILLO RETIREMENT RESIDENCES OR ITS SUCCESSORS OR ASSIGNS TO UNDERTAKE THE ACQUISITION, CONSTRUCTION, AND EQUIPPING OF SUCH PROJECT, AND AUTHORIZING THE GIVING AND PUBLICATION OF NOTICES IN CONNECTION WITH SUCH BONDS.

WHEREAS, the Industrial Revenue Bond Act, Sections 3-32-1 through 3-32-16 NMSA 1978, as amended (the "Act"), authorizes the City of Santa Fe, New Mexico (the "City") to issue industrial revenue bonds (the "Bonds") to finance 501(c)(3) corporation "projects" and to improve, construct, acquire, and equip 501(c)(3) corporation "projects" as defined in the Act; and

WHEREAS, the City desires to promote industry and develop trade or other economic

1 activity to secure and maintain a balanced and stable economy in the City and to promote public
2 health, welfare, safety, convenience, and prosperity; and

3 **WHEREAS**, El Castillo Retirement Residences, a New Mexico nonprofit corporation and an
4 organization described in Section 501(c)(3) of the Internal Revenue Code of 1986 ("El Castillo"),
5 proposes to acquire, construct, and equip a new adult residential retirement facility in Santa Fe, New
6 Mexico (the "Project"), which constitutes a 501(c)(3) corporation "project" as defined in the Act; and

7 **WHEREAS**, the Project has been considered by the Governing Body and the Governing
8 Body has concluded that the Project will promote the local health, general welfare, safety,
9 convenience, and prosperity of the inhabitants of the City, and the Governing Body desires to
10 indicate its intent to proceed with the issuance of the Bond for the financing of the Project; and

11 **WHEREAS**, the issuance of the Bonds by the City to finance the Project will constitute one
12 of the inducements for El Castillo to proceed with the Project; and

13 **WHEREAS**, concurrently with the issuance of the Bonds, El Castillo will enter into a lease
14 agreement with the City providing for the payment of lease payments or other payments with respect
15 to the Project sufficient to pay the debt service on the Bonds, subject to the prior approval of the
16 Governing Body; and

17 **WHEREAS**, the Governing Body intends to consider an ordinance (the "Bond Ordinance")
18 approving the issuance of Bonds to finance the Project at its regular meeting on August 14, 2019;
19 and

20 **WHEREAS**, pursuant to Section 3-17-3 NMSA 1978, the City is required to publish notice
21 of the title and subject matter of any ordinance proposed for adoption by the Governing Body not
22 less than two (2) weeks before consideration by the Governing Body of final action thereon; and

23 **WHEREAS**, pursuant to Section 3-32-6.1 of the Act, before adopting an ordinance issuing a
24 Bond, the City is required to give notice to the Board of County Commissioners and the Santa Fe
25 County Assessor of its intent to consider the matter, which notice is to be given at least thirty (30)

1 days prior to the meeting at which final action is to be taken.

2 **NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE**
3 **CITY OF SANTA FE:**

4 **Section 1.** All action (not inconsistent with the provisions of this resolution) heretofore
5 taken by the Governing Body, and the officers and employees of the City, related to the acquisition,
6 construction, and equipping of the Project, and the sale and issuance of the Bonds therefore, be and
7 the same hereby is ratified, approved, and confirmed.

8 **Section 2.** The Governing Body finds that:

9 A. The Project will involve the acquisition, construction and equipping of a new adult
10 residential retirement facility.

11 B. The maximum aggregate face amount of obligations to be issued with respect to the
12 Project is Eighty Million Dollars (\$80,000,000).

13 C. The initial developer and operator of the Project will be El Castillo or its assignee or
14 assignees.

15 D. The location of the Project is 401 Old Taos Highway in Santa Fe, New Mexico.

16 **Section 3.** In order to promote the local health and general welfare, safety, convenience,
17 and prosperity of the inhabitants of the City, it is the Governing Body's intent to consider for
18 adoption an ordinance authorizing the issuance of Bonds in a principal amount up to Eighty Million
19 Dollars (\$80,000,000) in order to defray part or all of the costs of the Project.

20 **Section 4.** The City understands that El Castillo does not intend that the Bonds be a
21 "qualified private activity bond" (other than a "qualified 501(c)(3) bond") as that term is defined in
22 the Internal Revenue Code of 1986, as amended.

23 **Section 5.** If issued, the Bonds will be payable from the revenues of the Project and by
24 El Castillo and will not constitute a debt or indebtedness of the City within the meaning of any
25 provision or limitation of the Constitution or statutes of the State of New Mexico. Nothing contained

1 in this resolution or in any other instrument will be considered as obligating the City to any pecuniary
2 liability or a charge upon the general credit of the City or against its taxing power, it being understood
3 that no costs are to be borne by the City and that all costs incurred by the City in connection with the
4 Bonds are to be promptly reimbursed by El Castillo.

5 **Section 6.** El Castillo agrees to make certain payments in lieu of taxes, as specifically
6 set forth in its application for industrial revenue bonds and Project Plan with the specific amounts to
7 be confirmed in the lease agreement, to the extent that the Project would otherwise be subject to
8 property taxes under New Mexico law if the Project was not the subject of financing with the
9 proceeds of the Bonds. In addition, if the Bonds are issued, El Castillo shall indemnify and hold
10 harmless the City, the Governing Body and their respective officers, employees, designated
11 representatives, and agents (collectively, the "Indemnified Persons") from and against any liability to
12 El Castillo, or to any third parties that may be asserted against the City with respect to the City's
13 ownership of or leasehold interest in the Project or the issuance of the Bonds. The City's adoption of
14 this resolution shall not be deemed a conclusion or expression of approval by the City or by any
15 Indemnified Person of El Castillo or the Project.

16 **Section 7.** El Castillo as agent for the City and consistent with Taxation and Revenue
17 Department Regulation 3.2.212.22 NMAC Renumbered, will acquire the Project. To the extent
18 necessary and as otherwise may be unavailable to El Castillo as a 501(c)(3) organization, the City
19 will, consistent with New Mexico State Law, deliver to El Castillo Type 9 Nontaxable Transaction
20 Certificates ("Certificates") that have been issued to the City by the Taxation and Revenue
21 Department. El Castillo will deliver a Certificate to each person selling tangible personal property to
22 the City (or El Castillo on behalf of the City) for the Project as applicable under the New Mexico
23 Gross Receipts Tax and Compensating Tax Act. For this purpose, by adoption of this Resolution, the
24 City authorizes El Castillo to act as agent for the City. El Castillo shall not use the Certificates other
25 than for the purpose of capital equipment and other tangible personal property, nor shall El Castillo

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use such Certificates after completion of the Project. Prior to the use of such Certificates by El Castillo, as agent for the City, the City Manager and El Castillo will agree to certain procedures regarding the use of the Certificates and protection of the City from any unfunded tax liability.

Section 8. The Governing Body directs that notice, substantially in the following form, be published one time in the Santa Fe New Mexican, a newspaper of general circulation in the City, as soon as is practicable following the adoption of this resolution and, in any event, not later than August 12, 2019, subject to the provisions of Section 10.

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(Form of Notice to be Published)

NOTICE OF CONSIDERATION OF ORDINANCE

AND PUBLIC HEARING

CITY OF SANTA FE, NEW MEXICO

NOTICE IS GIVEN that the Governing Body of the City of Santa Fe, New Mexico (the "City"), will consider the adoption of an ordinance (the "Ordinance") authorizing the issuance of industrial revenue bonds in a principal amount not to exceed Eighty Million Dollars (\$80,000,000) (the "Bonds") to finance the acquisition, construction, and equipping of a new adult residential retirement facility to be located at 401 Old Taos Highway in Santa Fe, New Mexico to be owned and operated by El Castillo Retirement Residences (the "Project"), and all costs incidental to the foregoing, and the issuance of the Bonds, and otherwise relating to the Project, at a regular meeting of the Governing Body on September 11, 2019, at 7:00 p.m. or as soon thereafter as the matter may be heard, in the City Hall Council Chambers, City Hall, 200 Lincoln Avenue, Santa Fe, New Mexico, in the City, being the regular meeting place of the Governing Body. The title and subject matter of the Ordinance are as follows:

**AN ORDINANCE OF THE CITY OF SANTA FE, NEW MEXICO
AUTHORIZING AND PROVIDING FOR THE ISSUANCE AND SALE OF ITS
INDUSTRIAL REVENUE BONDS FOR THE BENEFIT OF EL CASTILLO
RETIREMENT RESIDENCES IN AN AGGREGATE PRINCIPAL AMOUNT
NOT TO EXCEED EIGHTY MILLION DOLLARS (\$80,000,000) FOR THE
PURPOSE OF FINANCING ACQUISITION, CONSTRUCTION, AND
EQUIPPING OF A NEW ADULT RESIDENTIAL RETIREMENT FACILITY TO
BE LOCATED AT 401 OLD TAOS HIGHWAY IN SANTA FE, NEW MEXICO,
AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE AND
PURCHASE AGREEMENT BETWEEN THE CITY AND EL CASTILLO**

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Section 9. The Governing Body directs that a notice in substantially the following form be mailed by registered or certified mail, return receipt requested, to the Santa Fe County Commission and the Santa Fe County Assessor, as soon as is practicable following the adoption of this resolution and, in any event, not later than August 12, 2019:

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(Form of Notice to be Mailed)

[CITY OF SANTA FE LETTERHEAD]

_____ DATE

REGISTERED MAIL
RETURN RECEIPT REQUESTED

Board of County Commissioners
Santa Fe County
c/o _____, County Manager
102 Grant Avenue
Santa Fe, New Mexico 87504

Santa Fe County Assessor
102 Grant Avenue
Santa Fe, New Mexico 87504

Ladies and Gentlemen:

Pursuant to Section 3-32-6.1 NMSA 1978, we write to give you notice that the City of Santa Fe, New Mexico (the "City") intends to consider the issuance of industrial revenue bonds in a principal amount not to exceed Eighty Million Dollars (\$80,000,000) (the "Bonds") to defray the cost of acquiring, constructing and equipping of a new adult residential retirement facility to be located at 401 Old Taos Highway in Santa Fe, New Mexico, (the "Project") for use by El Castillo Retirement Residences. The ordinance under which the Bonds will be considered by the Governing

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Body of the City on or after September 11, 2019, which is at least thirty (30) days after the date of this letter. You may forward your comments and concerns with respect to the Bonds or the Project to the Governing Body, but no approval of the Bonds is required from you and you do not have a veto over the proposed issuance of the Bonds.

Very truly yours,

CITY OF SANTA FE, NEW MEXICO

By _____

Erik Litzenberg

City Manager

(End of Form of Notice to be Mailed)

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1 **Section 10.** The provisions of Sections 8 and 9 of this Resolution are subject to
2 determination by the City Manager or designee that the form of the ordinance and all
3 documents approved as to form thereby shall be in satisfactory form and sufficiently
4 complete by such date to make those documents available for public inspection in the Office
5 of the City Clerk.

6 **Section 11.** The City hereby authorizes El Castillo and any purchaser of the Bonds to
7 distribute an offering document with respect to the public offering of the Bonds, provided that the
8 City takes no responsibility for such offering document other than the description of the City therein.


9 **Section 12.** The Mayor and the City Manager or Acting City Manager are each
10 authorized and empowered to take such steps and to do such things as may be necessary to achieve
11 the purposes of this resolution; provided, however, the issuance of the Bonds and the execution and
12 delivery of any documents to which the City is a party in connection therewith are subject to the
13 approval and authorization by ordinance of the Governing Body.

14 **Section 13.** If any section, paragraph, clause, or provision of this resolution is for any
15 reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section,
16 paragraph, clause, or provision will not affect any of the remaining provisions of this resolution.

17 **Section 14.** All resolutions, or parts thereof, in conflict with this resolution, are repealed;
18 this repealer is not to be construed to revive any order, resolution or part thereof, heretofore repealed.

19 PASSED, APPROVED, and ADOPTED this 31st day of July, 2019.

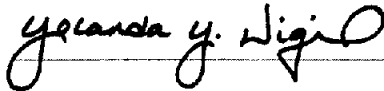
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ALAN M. WEBBER, MAYOR

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ATTEST:



YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:



PETER FRANKLIN on behalf of

ERIN K. McSHERRY, CITY ATTORNEY

Legislation:2019/Resolutions:2019-38 El Castillo Inducement