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CITY OF SANTA FE, NEW MEXICO

ORDINANCE NO. 2019-20

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 \$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 RETIREMENT RESIDENCES, AN INDENTURE OF TRUST SECURING SAID BONDS, A MORTGAGE, A BOND PURCHASE AGREEMENT, CLOSING DOCUMENTS AND SUCH BONDS IN CONNECTION THEREWITH; PROVIDING FOR THE TERMS OF THE SERIES 2019 BONDS AND MAKING DETERMINATIONS AS TO THE SUFFICIENCY OF THE LEASE PAYMENTS AND OTHER MATTERS RELATED TO THE PROJECT; AUTHORIZING THE SALE OF SAID BONDS AND ANY ANCILLARY AGREEMENTS IN CONNECTION THEREWITH; AND AUTHORIZING OTHER MATTERS PERTAINING TO THE ISSUANCE OF SAID BONDS.

WHEREAS, the City of Santa Fe, New Mexico (the "City") is authorized by Sections 3-32-1 through 3-32-16 NMSA 1978, as amended (the "Act") to issue industrial revenue bonds for the

1 purposes set forth in the Act and to permit the expenditure of the proceeds thereof to defray, among
2 other things, the cost of acquisition, construction and installation of certain facilities constituting a
3 501(c)(3) project (as defined under the Act) and for the purposes of financing in accordance with
4 Section 3-32-6 NMSA 1978; and

5 **WHEREAS**, pursuant to Section 3-32-3 NMSA 1978, of the Industrial Bond Act, "project"
6 also means any land and building or other improvements thereon and all real and personal property
7 deemed necessary in connection therewith whether or not now in existence which shall be within the
8 meaning of the Section; and

9 **WHEREAS**, the City's procedures set forth in Resolution 2012-4 which adopted the City of
10 Santa Fe Industrial Revenue Bond Policy have been substantially complied with; and

11 **WHEREAS**, El Castillo Retirement Residences, a New Mexico nonprofit corporation and an
12 organization described in Section 501(c)(3) of the Internal Revenue Code of 1986 ("El Castillo"), has
13 requested the City to issue a series of its bonds in an amount sufficient, together with other moneys
14 available therefor, to finance certain capital costs, including acquiring, constructing and equipping of
15 a new adult residential retirement facility to be located at 401 Old Taos Highway in Santa Fe, New
16 Mexico (the "Project"); to establish a debt service reserve fund and to pay for certain costs of issuance
17 of such bonds; and

18 **WHEREAS**, in furtherance of the purposes set forth in the Act, the City agrees to finance the
19 Project by the sale and issuance of a series of its industrial revenue bonds and intends to authorize
20 such actions as might be required to implement the financing of the Project; and

21 **WHEREAS**, pursuant to and in accordance with the provisions of the Act, El Castillo has
22 represented to the City that the Project is suitable for use by El Castillo and will be leased by the City
23 to El Castillo pursuant to a Lease and Purchase Agreement (the "Agreement"); and

24 **WHEREAS**, El Castillo has proposed that the City fund the acquisition, construction,
25 equipping, renovation and improvement of the Project as an authorized project under the Act and to

1 finance the cost thereof by the issuance of a series of industrial revenue bonds of the City under an
2 Indenture of Trust (the "Indenture") from the City to The Bank of New York Mellon Trust Company,
3 National Association, as bond trustee and to secure the payment of such bonds with a Mortgage,
4 Security Agreement, Financing Statement and Assignment of Lease and Rents (the "Mortgage") from
5 the City to The Bank of New York Mellon Trust Company, National Association, as master trustee;
6 and

7 **WHEREAS**, pursuant to and in accordance with provisions of the Act, the City is now
8 prepared to proceed with financing the costs of the Project by the issuance and sale of its industrial
9 revenue bonds entitled Retirement Facility Revenue Bonds (El Castillo Retirement Residences
10 Project) Series 2019 (the "Bonds"), such Bonds to be secured by the Indenture; and

11 **WHEREAS**, B.C. Ziegler and Company (the "Purchaser") has offered to purchase the Bonds
12 on the terms set forth in the Indenture and pursuant to a Bond Purchase Agreement among the City,
13 El Castillo and the Purchaser (the "Bond Purchase Agreement"); and

14 **WHEREAS**, the Purchaser intends to distribute a preliminary official statement (the
15 "Preliminary Official Statement") and an official statement (the "Official Statement") in connection
16 with the public offering and sale of the Bonds; and

17 **WHEREAS**, a public hearing has been held in compliance with Section 147(f) of the Internal
18 Revenue Code of 1986, as amended; and

19 **WHEREAS**, there has been presented to the City Council at such meeting: (1) the proposed
20 form of Agreement; (2) the proposed form of Indenture; (3) the proposed form of the Mortgage, (4)
21 the proposed form of a Bond Purchase Agreement; and (5) the proposed form of the Official
22 Statement;

23 **BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:**

24 **Section 1.** The words and terms used in this Ordinance shall have the meanings set forth
25 in the recitals of this Ordinance unless the context clearly indicates another or different meaning or

1 intent.

2 **Section 2.** All action (not inconsistent with the provisions of this Ordinance) heretofore
3 taken by the City Council and the officials of the City directed toward the Project and the sale and
4 issuance of industrial revenue bonds therefor be and the same is hereby ratified, approved and
5 confirmed.

6 **Section 3.** Pursuant to the Act, the Governing Body does hereby authorize the financing
7 of the Project in accordance with the terms of the Agreement and does hereby determine it is in
8 furtherance of the public purposes set forth in the Act; that the Project promotes the local economy,
9 creates and maintains jobs and improves local health and the general welfare by inducing adult
10 residential retirement facilities to locate and expand in the City; and that, therefore, providing
11 financing for the Project through the issuance and sale of the Bonds is in the public interest. The
12 Governing Body further determines that no other public moneys are being expended by virtue of the
13 financing and that assistance to El Castillo as a New Mexico nonprofit and 501(c)(3) corporation is
14 recognized by the Act to further a public purpose. The Governing Body further determines that the
15 procedures set forth in Resolution 2012-4, Industrial Revenue Bond Policy have been substantially
16 complied with.

17 **Section 4.** To finance the costs of the Project, to establish a debt service reserve fund
18 and to pay certain costs of issuance of the Bonds, the City does hereby authorize the issuance of
19 industrial revenue bonds of the City under the Act, to be designated as set forth in the recitals of this
20 Ordinance, in an aggregate principal amount not to exceed \$80,000,000. The Bonds shall bear
21 interest at a rate not to exceed the maximum rate permitted by law and shall have a final stated
22 maturity of not more than 30 years.

23 The Bonds shall be dated and numbered and shall be in the form as provided in the Indenture
24 and shall be otherwise subject to redemption prior to maturity upon the terms and conditions set forth
25 in the Indenture. The Bonds shall be sold to the Purchaser at the purchase price specified in the Bond

1 Purchase Agreement. Interest on the Bonds shall be payable at the times specified in Article II of the
2 Indenture.

3 **Section 5.** The Governing Body does hereby find, declare and determine that (i) other
4 than the debt service reserve fund as provided by the Indenture, it is not deemed advisable to establish
5 any reserve funds in connection with the retirement of the Bonds or the maintenance of the Project,
6 (ii) pursuant to the Agreement, El Castillo is obligated to maintain the Project and to carry all proper
7 insurance with respect to the Project, and (iii) pursuant to the Agreement, El Castillo is obligated to
8 pay lease payments sufficient to pay the principal of and interest on the Bonds in each year the Bonds
9 are outstanding and to fund any deficiencies in the debt service reserve fund provided in the
10 Indenture.

11 In connection with the issuance of the Bonds, the following determinations and findings are
12 hereby made pursuant to Section 3-32-7 of the Act:

13 It is hereby determined and found that the maximum amount that may be necessary in each
14 year to pay the principal of and interest on the Bonds, assuming no Event of Default occurs or is
15 continuing, is as follows:

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Period Ending	Maximum Principal	Maximum Interest	Maximum Annual
<u>May 15</u>	<u>Debt Service</u>	<u>for such Period</u>	<u>Debt Service</u>
2020	-	3,111,111.11	3,111,111.11
2021	-	5,000,000.00	5,000,000.00
2022	-	5,000,000.00	5,000,000.00
2023	-	5,000,000.00	5,000,000.00
2024	11,250,000.00	5,000,000.00	16,250,000.00
2025	12,800,000.00	4,296,875.00	17,096,875.00
2026	815,000.00	3,496,875.00	4,311,875.00
2027	865,000.00	3,445,937.50	4,310,937.50
2028	925,000.00	3,391,875.00	4,316,875.00
2029	980,000.00	3,334,062.50	4,314,062.50
2030	1,040,000.00	3,272,812.50	4,312,812.50
2031	1,105,000.00	3,207,812.50	4,312,812.50
2032	1,175,000.00	3,138,750.00	4,313,750.00
2033	1,245,000.00	3,065,312.50	4,310,312.50
2034	1,325,000.00	2,987,500.00	4,312,500.00
2035	1,410,000.00	2,904,687.50	4,314,687.50
2036	1,500,000.00	2,816,562.50	4,316,562.50
2037	1,590,000.00	2,722,812.50	4,312,812.50
2038	1,690,000.00	2,623,437.50	4,313,437.50
2039	1,795,000.00	2,517,812.50	4,312,812.50
2040	1,910,000.00	2,405,625.00	4,315,625.00
2041	2,030,000.00	2,286,250.00	4,316,250.00
2042	2,155,000.00	2,159,375.00	4,314,375.00
2043	3,830,000.00	2,024,687.50	5,854,687.50
2044	4,070,000.00	1,785,312.50	5,855,312.50
2045	4,325,000.00	1,530,937.50	5,855,937.50
2046	4,595,000.00	1,260,625.00	5,855,625.00
2047	4,880,000.00	973,437.50	5,853,437.50
2048	5,185,000.00	668,437.50	5,853,437.50
2049	5,510,000.00	344,375.00	5,854,375.00

1 It is hereby determined that the Reserve Fund created under the Indenture is required to be
2 funded in the amount of the Reserve Fund Requirement (as defined in the Indenture).

3 **Section 6.** The Bonds shall be executed on behalf of the City with the manual or
4 facsimile signature of the Mayor of the City. The Bonds shall be countersigned by the manual or
5 facsimile signature of the Finance Director of the City, and shall be attested by the manual or
6 facsimile signature of the City Clerk and shall have impressed or imprinted thereon the official seal of
7 the City. If any of the officers who shall have signed or sealed any of said Bonds shall cease to be
8 such officer of the City before the Bonds so signed and sealed shall have been actually authenticated
9 by the Trustee or delivered by the City, such Bonds nevertheless may be authenticated, issued and
10 delivered with the same force and effect as though the person or persons who signed or sealed such
11 Bonds had not ceased to be such officer or officers of the City; and also any such Bonds may be
12 signed and sealed on behalf of the City by those persons who, on the actual date of the execution of
13 such Bonds, shall be the proper officers of the City, although at the nominal date of such Bonds any
14 such person shall not have been such officer of the City.

15 **Section 7.** The Bonds shall be special, limited obligations of the City and, except to the
16 extent payable from Bond proceeds or moneys from the investment thereof, shall be payable solely
17 from the revenues received by or on behalf of the City pursuant to the Agreement and otherwise as
18 provided therein and in the Indenture. The Bonds and interest thereon shall never constitute an
19 indebtedness of the City within the meaning of any constitutional or statutory limitation and shall
20 never constitute nor give rise to a pecuniary liability of the City or a charge against its general credit
21 or taxing powers, and such fact shall be plainly stated on the face of each Bond. The City shall have
22 no obligation with respect to the Project, and all costs, expenses, taxes, governmental charges and
23 fees and charges with respect to the Project shall be paid by El Castillo.

24 **Section 8.** The Bank of New York Mellon Trust Company, National Association is
25 designated as trustee, paying agent and registrar for the Bonds under the Indenture.

1 **Section 9.** The Indenture is hereby approved in substantially the form submitted to this
2 meeting, and the Mayor of the City (or in the event of his unavailability, the Mayor Pro Tem) is
3 hereby authorized and directed to execute, acknowledge and deliver the Indenture with such changes
4 therein as shall be approved by the Mayor (or in the event of his unavailability, the Mayor Pro Tem),
5 including establishment of the final principal amount and interest rate for the Bonds, not to exceed the
6 maximums set forth in this Ordinance. The execution of such document by the Mayor (or, in the
7 event of his unavailability, the Mayor Pro Tem) shall constitute conclusive evidence of such approval,
8 and the City Clerk is hereby authorized and directed to attest to the Indenture and to affix to the
9 Indenture the official seal of the City.

10 **Section 10.** The Agreement between the City and El Castillo is hereby approved in
11 substantially the form submitted to this meeting, and the Mayor of the City (or, in the event of his
12 unavailability, the Mayor Pro Tem) is hereby authorized and directed to execute, acknowledge and
13 deliver the Agreement with such changes therein as shall be approved by the Mayor (or, in the event
14 of his unavailability, the Mayor Pro Tem), the execution of such document by the Mayor (or, in the
15 event of his unavailability, the Mayor Pro Tem) to constitute conclusive evidence of such approval,
16 and the City Clerk is hereby authorized and directed to attest to the Agreement and to affix to such
17 document the official seal of the City.

18 **Section 11.** The Mortgage between the City and El Castillo is hereby approved in
19 substantially the form submitted to this meeting, and the Mayor of the City (or, in the event of his
20 unavailability, the Mayor Pro Tem) is hereby authorized and directed to execute, acknowledge and
21 deliver the Mortgage with such changes therein as shall be approved by the Mayor (or, in the event of
22 his unavailability, the Mayor Pro Tem), the execution of such document by the Mayor (or, in the
23 event of his unavailability, the Mayor Pro Tem) to constitute conclusive evidence of such approval,
24 and the City Clerk is hereby authorized and directed to attest to the Mortgage and to affix to such
25 document the official seal of the City.

1 **Section 12.** The Bond Purchase Agreement is hereby approved in substantially the form
2 submitted to this meeting, and the Mayor of the City (or in the event of his unavailability, the Mayor
3 Pro Tem) is hereby authorized to complete such Bond Purchase Agreement and to execute and deliver
4 said Bond Purchase Agreement on behalf of the City in substantially the form presented to this
5 meeting with such changes therein as shall be approved by the Mayor (or, in the event of his
6 unavailability, the Mayor Pro Tem), the execution of such document by the Mayor (or, in the event of
7 his unavailability, the Mayor Pro Tem) to constitute conclusive evidence of such approval.

8 **Section 13.** The distribution of the Preliminary Official Statement and the Official
9 Statement are hereby authorized, provided that the City takes no responsibility for the Preliminary
10 Official Statement or the Official Statement other than the information under the caption "The
11 Issuer".

12 **Section 14.** Each of the Mayor (or, in the event of his unavailability, the Mayor Pro
13 Tem), the City Clerk and the Finance Director of the City are hereby empowered and directed to
14 execute and deliver the Bonds and all documents, tax agreements and certificates and other
15 instruments which may be required under the terms of the Indenture, the Agreement, the Mortgage,
16 the Bond Purchase Agreement and this Ordinance.

17 **Section 15.** The Bonds and the Project are hereby approved for the purpose of Section
18 147(f) of the Internal Revenue Code of 1986, as amended.


19 **Section 16.** The provisions of this Ordinance are hereby declared to be separable, and if
20 any section, phrase or provision shall for any reason be declared to be invalid, such declaration shall
21 not affect the validity of the remainder of the sections, phrases and provisions.

22 **Section 17.** All ordinances, orders, resolutions and parts thereof in conflict herewith are
23 hereby repealed to the extent of such conflict.

24 **Section 18.** Immediately after its final passage and approval, this Ordinance shall be
25 signed and authenticated by the signatures of the City Attorney, Mayor, and City Clerk, the seal of the

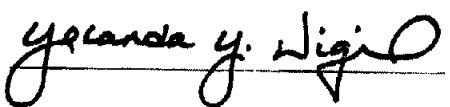
1 City shall be affixed hereto, and this Ordinance shall be published by title and summary in the Santa
2 Fe New Mexican, a newspaper which maintains an office in, and is of general circulation in the City.
3 This Ordinance shall become effective five days after such publication and shall be recorded in a
4 book kept for that purpose.

5 PASSED, APPROVED, and ADOPTED this 11th day of September, 2019

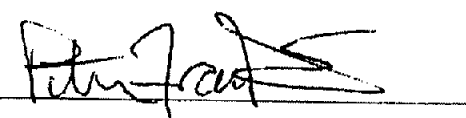
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9 ALAN M. WEBBER, MAYOR

10 ATTEST:

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13 YOLANDA Y. VIGIL, CITY CLERK

14 APPROVED AS TO FORM:

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17 PETER FRANKLIN, BOND COUNSEL on behalf of
18 ERIN K. McSHERRY, CITY ATTORNEY

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24 *Bill No. 2019-18*
25 *Legislation/2019/Ordinances/2019-20 El Castillo IRB*