

1 **CITY OF SANTA FE, NEW MEXICO**

2 **ORDINANCE NO. 2012-36**

3  
4  
5 **AN ORDINANCE**

6 **OF THE CITY OF SANTA FE, NEW MEXICO AUTHORIZING AND PROVIDING FOR THE**  
7 **ISSUANCE AND SALE OF ITS INDUSTRIAL REVENUE BONDS (EL CASTILLO**  
8 **RETIREMENT RESIDENCES) SERIES 2012 IN AN AGGREGATE PRINCIPAL AMOUNT**  
9 **NOT TO EXCEED \$30,000,000 FOR THE PURPOSE OF FINANCING AND REFINANCING**  
10 **IMPROVEMENT, CONSTRUCTION, ACQUISITION AND/OR EQUIPPING OF AN ADULT**  
11 **RESIDENTIAL RETIREMENT FACILITY, MEMORY SUPPORT FACILITY AND NURSING**  
12 **AND ASSISTED LIVING FACILITY LOCATED AT 250 EAST ALAMEDA STREET AND 239**  
13 **EAST DE VARGAS STREET IN SANTA FE, NEW MEXICO, AUTHORIZING THE**  
14 **EXECUTION AND DELIVERY OF AN INSTALLMENT SALE AGREEMENT BETWEEN THE**  
15 **CITY AND EL CASTILLO RETIREMENT RESIDENCES, AN INDENTURE OF TRUST**  
16 **SECURING SAID BONDS, A BOND PURCHASE AGREEMENT, CLOSING DOCUMENTS**  
17 **AND SUCH BONDS IN CONNECTION THEREWITH; PROVIDING FOR THE TERMS OF**  
18 **THE SERIES 2012 BONDS AND MAKING DETERMINATIONS AS TO THE SUFFICIENCY**  
19 **OF THE INSTALLMENT SALE PAYMENTS AND OTHER MATTERS RELATED TO THE**  
20 **PROJECT; AUTHORIZING THE SALE OF SAID BONDS AND ANY ANCILLARY**  
21 **AGREEMENTS IN CONNECTION THEREWITH; AND AUTHORIZING OTHER MATTERS**  
22 **PERTAINING TO THE ISSUANCE OF SAID BONDS.**

23  
24 **WHEREAS**, the City of Santa Fe, New Mexico (the "City") is authorized by Sections 3-32-1  
25 through 3-32-16 NMSA 1978, as amended (the "Act") to issue industrial revenue bonds for the purposes

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

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

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 refinance certain obligations of El Castillo and to finance certain capital costs,  
15 including improving, constructing, acquiring and/or equipping the following: (i) existing facilities at the  
16 adult residential retirement facility and nursing and assisted living facility; (ii) new facilities at the adult  
17 residential retirement facility and nursing and assisted living facility; and (iii) a new memory support  
18 facility owned and operated by El Castillo located within the City (the "Project") at the following  
19 addresses: 250 E. Alameda Street and 239 East De Vargas Street, Santa Fe, New Mexico, to establish a  
20 debt service reserve fund and to pay for certain costs of issuance of such bonds.

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

24         **WHEREAS**, pursuant to and in accordance with the provisions of the Act, the Project is suitable  
25 for use by El Castillo and will be sold by the City to El Castillo pursuant to an Installment Sale Agreement

1 dated as of November 1, 2012 (the "Agreement"); and

2       **WHEREAS**, the City proposes to fund the improvement, construction, acquisition and/or  
3 equipping of the Project as an authorized project under the Act and to finance and refinance the cost  
4 thereof by the issuance of a series of industrial revenue bonds of the City under an Indenture of Trust dated  
5 as of November 1, 2012 (the "Indenture") from the City to The Bank of New York Mellon Trust Company,  
6 National Association, as trustee; and

7       **WHEREAS**, pursuant to and in accordance with provisions of the Act, the City is now prepared  
8 to proceed with financing and refinancing 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 Project)  
10 Series 2012 (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 on  
12 the terms set forth in the Indenture and pursuant to a Bond Purchase Agreement among the City, El  
13 Castillo and the Purchaser (the "Bond Purchase Agreement"); and

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

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

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

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

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

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

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

18           The Bonds shall be dated and numbered and shall be in the form as provided in the Indenture and  
19 shall be otherwise subject to redemption prior to maturity upon the terms and conditions set forth in the  
20 Indenture. The Bonds shall be sold to the Purchaser at the purchase price specified in the Bond Purchase  
21 Agreement. Interest on the Bonds shall be payable at the times specified in Article II of the Indenture.

22           **Section 5.**       The City Council does hereby find, declare and determine that (i) other than the  
23 debt service reserve fund as provided by the Indenture, it is not deemed advisable to establish any reserve  
24 funds in connection with the retirement of the Bonds or the maintenance of the Project, (ii) pursuant to the  
25 Agreement, El Castillo is obligated to maintain the Project and to carry all proper insurance with respect

1 to the Project, and (iii) pursuant to the Agreement, El Castillo is obligated to pay installment sale payments  
 2 sufficient to pay the principal of and interest on the Bonds in each year the Bonds are outstanding and to  
 3 fund any deficiencies in the debt service reserve fund provided in the Indenture.

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

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

Period <u>Ending May 15</u>	Maximum Principal <u>Debt Service</u>	Maximum Interest <u>for such Period</u>	Maximum Annual <u>Debt Service</u>
2013	\$ 170,000	\$1,012,500	\$1,182,500
2014	355,000	2,013,525	2,368,525
2015	380,000	1,989,562	2,369,562
2016	405,000	1,963,912	2,368,912
2017	435,000	1,936,575	2,371,575
2018	465,000	1,907,212	2,372,212
2019	495,000	1,875,825	2,370,825
2020	530,000	1,842,412	2,372,412
2021	565,000	1,806,637	2,371,637
2022	600,000	1,768,500	2,368,500
2023	640,000	1,728,000	2,368,000
2024	685,000	1,684,800	2,369,800
2025	730,000	1,638,562	2,368,562
2026	780,000	1,589,287	2,369,287

Period	Maximum Principal	Maximum Interest	Maximum Annual
<u>Ending May 15</u>	<u>Debt Service</u>	<u>for such Period</u>	<u>Debt Service</u>
2027	835,000	1,536,637	2,371,637
2028	890,000	1,480,275	2,370,275
2029	950,000	1,420,200	2,370,200
2030	1,015,000	1,356,075	2,371,075
2031	1,080,000	1,287,562	2,367,562
2032	1,155,000	1,214,662	2,369,662
2033	1,235,000	1,136,700	2,371,700
2034	1,315,000	1,053,337	2,368,337
2035	1,405,000	964,575	2,369,575
2036	1,500,000	869,737	2,369,737
2037	1,600,000	768,487	2,368,487
2038	1,710,000	660,487	2,370,487
2039	1,825,000	545,062	2,370,062
2040	1,950,000	421,875	2,371,875
2041	2,080,000	290,250	2,370,250
2042	2,220,000	149,850	2,369,850

1 It is hereby determined that the Reserve Fund created under the Indenture is required to be funded  
2 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 facsimile  
4 signature of the Mayor of the City. The Bonds shall be countersigned by the manual or facsimile signature  
5 of the Finance Director of the City, and shall be attested by the manual or facsimile signature of the City  
6 Clerk and shall have impressed or imprinted thereon the official seal of the City. If any of the officers who

1 shall have signed or sealed any of said Bonds shall cease to be such officer of the City before the Bonds so  
2 signed and sealed shall have been actually authenticated by the Trustee or delivered by the City, such  
3 Bonds nevertheless may be authenticated, issued and delivered with the same force and effect as though  
4 the person or persons who signed or sealed such Bonds had not ceased to be such officer or officers of the  
5 City; and also any such Bonds may be signed and sealed on behalf of the City by those persons who, on  
6 the actual date of the execution of such Bonds, shall be the proper officers of the City, although at the  
7 nominal date of such Bonds any such person shall not have been such officer of the City.

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

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

19           **Section 9.**       The Indenture is hereby approved in substantially the form submitted to this  
20 meeting, and the Mayor of the City (or in the event of his unavailability, the Mayor Pro Tem) is hereby  
21 authorized and directed to execute, acknowledge and deliver the Indenture with such changes therein as  
22 shall be approved by the Mayor (or in the event of his unavailability, the Mayor Pro Tem), including  
23 establishment of the final principal amount and interest rate for the Bonds, not to exceed the maximums set  
24 forth in this Ordinance. The execution of such document by the Mayor (or, in the event of his  
25 unavailability, the Mayor Pro Tem) shall constitute conclusive evidence of such approval, and the City

1 Clerk is hereby authorized and directed to attest to the Indenture and to affix to the Indenture the official  
2 seal of the City.

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

11 **Section 11.** The Bond Purchase Agreement is hereby approved in substantially the form  
12 submitted to this meeting, and the Mayor of the City (or in the event of his unavailability, the Mayor Pro  
13 Tem) is hereby authorized to complete such Bond Purchase Agreement and to execute and deliver said  
14 Bond Purchase Agreement on behalf of the City in substantially the form presented to this meeting with  
15 such changes therein as shall be approved by the Mayor (or, in the event of his unavailability, the Mayor  
16 Pro Tem), the execution of such document by the Mayor (or, in the event of his unavailability, the Mayor  
17 Pro Tem) to constitute conclusive evidence of such approval.

18 **Section 12.** The distribution of the Preliminary Official Statement and the Official Statement  
19 are hereby authorized, provided that the City takes no responsibility for the Preliminary Official Statement  
20 or the Official Statement other than the information under the caption "The Issuer".

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

25 **Section 14.** The Bonds are hereby approved for the purpose of Section 147(f) of the Internal



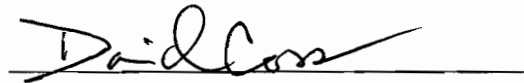
1 Revenue Code of 1986, as amended.

2           **Section 15.**     The provisions of this Ordinance are hereby declared to be separable, and if any  
3 section, phrase or provision shall for any reason be declared to be invalid, such declaration shall not affect  
4 the validity of the remainder of the sections, phrases and provisions.

5           **Section 16.**     All ordinances, orders, resolutions and parts thereof in conflict herewith are  
6 hereby repealed to the extent of such conflict.

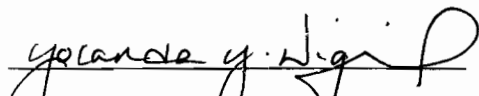
7           **Section 17.**     Immediately after its final passage and approval, this Ordinance shall be signed  
8 and authenticated by the signatures of the Mayor and City Clerk, the seal of the City shall be affixed  
9 hereto, and this Ordinance shall be published by title and summary in the Albuquerque Journal, a  
10 newspaper which maintains an office in, and is of general circulation in the City. This Ordinance shall  
11 become effective five days after such publication and shall be recorded in a book kept for that purpose.

12           PASSED, APPROVED and ADOPTED this 14<sup>th</sup> day of November, 2012.

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14 

15           DAVID COSS, MAYOR

16           ATTEST:

17  
18   
19 YOLANDA Y. VIGIL, CITY CLERK

20           APPROVED AS TO FORM:

21   
22  
23 GENO ZAMORA, CITY ATTORNEY

24  
25           M/Melissa/Ordinances 2012/2012-36 El Castillo Bonds