

1 CITY OF SANTA FE, NEW MEXICO

2 RESOLUTION NO. 2012-83

3 INTRODUCED BY:

4
5 Mayor Coss

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10 A RESOLUTION

11 DECLARING THE INTENT OF THE CITY OF SANTA FE TO ISSUE INDUSTRIAL REVENUE
12 BONDS IN A PRINCIPAL AMOUNT UP TO \$30,000,000 TO FINANCE AND REFINANCE
13 IMPROVEMENTS, CONSTRUCTION, ACQUISITION AND/OR EQUIPPING OF AN ADULT
14 RESIDENTIAL RETIREMENT FACILITY, MEMORY SUPPORT FACILITY AND NURSING AND
15 ASSISTED LIVING FACILITY LOCATED AT 250 EAST ALAMEDA STREET AND 239 EAST DE
16 VARGAS STREET IN SANTA FE, NEW MEXICO, FOR THE PURPOSE OF INDUCING EL
17 CASTILLO RETIREMENT RESIDENCES OR ITS SUCCESSORS OR ASSIGNS TO UNDERTAKE
18 THE IMPROVEMENT, ACQUISITION, CONSTRUCTION AND EQUIPPING OF SUCH
19 PROJECT, AND AUTHORIZING THE GIVING AND PUBLICATION OF NOTICES IN
20 CONNECTION WITH SUCH BONDS.

21
22 WHEREAS, the Industrial Revenue Bond Act, Sections 3-32-1 through 3-32-16 NMSA 1978, as
23 amended (the "Act"), authorizes the City of Santa Fe, New Mexico (the "City") to issue industrial revenue
24 bonds (the "Bonds"), to refinance 501(c)(3) corporation "projects" and to improve, construct, acquire and
25 equip 501(c)(3) corporation "projects" as defined in the Act; and

1 **WHEREAS**, the City desires to promote industry and develop trade or other economic activity to
2 secure and maintain a balanced and stable economy in the City and to promote public health, welfare, safety,
3 convenience and prosperity; and

4 **WHEREAS**, El Castillo Retirement Residences, a New Mexico nonprofit corporation and an
5 organization described in Section 501(c)(3) of the Internal Revenue Code of 1986 ("El Castillo"), proposes to
6 improve, acquire, construct and equip improvements to an adult residential retirement facility, memory support
7 facility and nursing and assisted living facility in Santa Fe, New Mexico (the "Project"), which constitutes a
8 501(c)(3) corporation "project" as defined in the Act; and

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

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

15 **WHEREAS**, concurrently with the issuance of the Bonds, El Castillo will enter into an installment
16 sale or other financing agreement with the City providing for the payment of installment sale payments or other
17 payments on the Project sufficient to pay the debt service on the Bonds, subject to the prior approval of the
18 Governing Body; and

19 **WHEREAS**, the Governing Body intends to consider an ordinance (the "Bond Ordinance") approving
20 the issuance of Bonds to finance and refinance the Project at its regular meeting on November 14, 2012; and

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

25 **WHEREAS**, pursuant to Section 3-32-6.1 of the Act, before adopting an ordinance issuing a Bond,

1 Bond, the City is required to give notice to the Board of County Commissioners and the Santa Fe County
2 Assessor of its intent to consider the matter, which notice is to be given at least thirty days prior to the meeting
3 at which final action is to be taken.

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

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

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

11 A. The Project will involve the improvement, acquisition, construction and equipping of an adult
12 residential retirement facility, memory support facility and nursing and assisted living facility.

13 B. The maximum aggregate face amount of obligations to be issued with respect to the Project is
14 \$30,000,000.

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

17 D. The location of the Project is 250 East Alameda Street and 239 East De Vargas Street in Santa
18 Fe, New Mexico.

19 **Section 3.** In order to promote the local health and general welfare, safety, convenience and
20 prosperity of the inhabitants of the City, it is the Governing Body's intent to take all necessary and advisable
21 steps to effect the issuance of Bonds in a principal amount up to \$30,000,000 in order to defray part or all of
22 the costs of the Project, provided that this expression of intent is conditioned upon the issuance of such Bonds
23 on or before one year from the date of the adoption of this resolution.

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

4 **Section 5.** The Bonds will be payable from the revenues of the Project and by El Castillo and
5 will not constitute a debt or indebtedness of the City within the meaning of any provision or limitation of the
6 Constitution or statutes of the State of New Mexico. Nothing contained in this resolution or in any other
7 instrument will be considered as obligating the City to any pecuniary liability or a charge upon the general
8 credit of the City or against its taxing power, it being understood that no costs are to be borne by the City and
9 that all costs incurred by the City in connection with the Bonds are to be promptly reimbursed by El Castillo.

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

21 **Section 7.** El Castillo as agent for the City and consistent with Taxation and Revenue
22 Department Regulation 3.2.212.22 NMAC Renumbered, will acquire the Project. The City will, consistent
23 with New Mexico State Law, deliver to El Castillo Type 9 Nontaxable Transaction Certificates ("Certificates")
24 that have been issued to the City by the Taxation and Revenue Department. El Castillo will deliver a
25 Certificate to each person selling tangible personal property to the City (or El Castillo on behalf of the City) for

1 behalf of the City) for the Project as applicable under the New Mexico Gross Receipts Tax and Compensating
2 Tax Act. For this purpose, by adoption of this Resolution, the City authorizes El Castillo to act as agent for the
3 City. El Castillo shall not use the Certificates other than for the purpose of capital equipment and other
4 tangible personal property, nor shall El Castillo use such Certificates after completion of the Project. Prior to
5 the use of such Certificates by El Castillo, as agent for the City, the City Manager and El Castillo will agree to
6 certain procedures regarding the use of the Certificates and protection of the City from any unfunded tax
7 liability.

8 **Section 8.** The Governing Body directs that the following notice be published one time in the
9 Santa Fe New Mexican, a newspaper of general circulation in the City, as soon as is practicable following the
10 adoption of this resolution and, in any event, not later October 25, 2012.

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1 (Form of Notice to be Published)

2 NOTICE OF CONSIDERATION OF ORDINANCE

3 CITY OF SANTA FE, NEW MEXICO

4 NOTICE IS GIVEN that the Governing Body of the City of Santa Fe, New Mexico (the "City"), will
5 consider the adoption of an ordinance (the "Ordinance") authorizing the issuance of industrial revenue bonds
6 in a principal amount not to exceed \$30,000,000 (the "Bonds") to finance and refinance the acquisition,
7 construction and equipping of improvements to an adult residential retirement facility, memory support facility
8 and nursing and assisted living facility to be owned and operated by El Castillo Retirement Residences (the
9 "Project"), and all costs incidental to the foregoing and the issuance of the Bonds, and otherwise relating to the
10 Project, at a regular meeting of the Governing Body on November 14, 2012 at 7:00 p.m. or as soon thereafter
11 as the matter may be heard, in the City Hall Council Chambers, City Hall, 200 Lincoln Avenue, Santa Fe, New
12 Mexico, in the City, being the regular meeting place of the Governing Body. The title and subject matter of
13 the Ordinance are as follows:

14 AN ORDINANCE OF THE CITY OF SANTA FE, NEW MEXICO AUTHORIZING
15 AND PROVIDING FOR THE ISSUANCE AND SALE OF ITS INDUSTRIAL
16 REVENUE BONDS (EL CASTILLO RETIREMENT RESIDENCES) SERIES 2012 IN
17 AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$30,000,000 FOR THE
18 PURPOSE OF FINANCING AND REFINANCING IMPROVEMENT,
19 CONSTRUCTION, ACQUISITION AND/OR EQUIPPING OF AN ADULT
20 RESIDENTIAL RETIREMENT FACILITY, MEMORY SUPPORT FACILITY AND
21 NURSING AND ASSISTED LIVING FACILITY LOCATED AT 250 EAST
22 ALAMEDA STREET AND 239 EAST DE VARGAS STREET IN SANTA FE, NEW
23 MEXICO, AUTHORIZING THE EXECUTION AND DELIVERY OF AN
24 INSTALLMENT SALE AGREEMENT BETWEEN THE CITY AND EL CASTILLO
25 RETIREMENT RESIDENCES, AN INDENTURE OF TRUST SECURING SAID

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INDENTURE OF TRUST SECURING SAID BONDS, A BOND PURCHASE AGREEMENT, CLOSING DOCUMENTS AND SUCH BONDS IN CONNECTION THEREWITH; PROVIDING FOR THE TERMS OF THE SERIES 2012 BONDS AND MAKING DETERMINATIONS AS TO THE SUFFICIENCY OF THE INSTALLMENT SALE 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.

The principal of, interest on and redemption price, if any, of the Bonds will never constitute an indebtedness of the City within the meaning of the provision or limitation of the Constitution or laws of the State of New Mexico. The Bonds will never constitute nor give rise to pecuniary liability of the City or a charge against its general credit or taxing powers. The Bonds will mature, bear interest and be subject to prior redemption all in accordance with the Ordinance. A copy of the Ordinance is on file and available for inspection during normal business hours at the office of the City Clerk at City Hall, 200 E. Lincoln Avenue, Santa Fe, New Mexico.

Dated: _____.

Yolanda Y. Vigil
City Clerk
City of Santa Fe, New Mexico

(End of Form of Notice to be Published)

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1 **Section 9.** The Governing Body directs that the following notice be mailed by registered or
2 certified mail, return receipt requested, to the Santa Fe County Commission and the Santa Fe County Assessor,
3 as soon as is practicable following the adoption of this resolution and, in any event, not later than October 14,
4 2012:

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1 (Form of Notice to be Mailed)

2 [CITY OF SANTA FE LETTERHEAD]

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4 _____ DATE

5 REGISTERED MAIL

6 RETURN RECEIPT REQUESTED

7

8 Board of County Commissioners

9 Santa Fe County

10 c/o _____, County Manager

11 102 Grant Avenue

12 Santa Fe, New Mexico 87504

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14 _____

15 Santa Fe County Assessor

16 102 Grant Avenue

17 Santa Fe, New Mexico 87504

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19 Ladies and Gentlemen:

20 Pursuant to Section 3-32-6.1 NMSA 1978, we write to give you notice that the City of Santa Fe, New
21 Mexico (the "City") intends to consider the issuance of industrial revenue bonds in a principal amount not to
22 exceed \$30,000,000 (the "Bonds") to defray the cost of acquiring, constructing and equipping of
23 improvements to an adult residential facility, memory support facility and nursing and assisted living facility at
24 250 East Alameda Street and 239 East De Vargas Street in Santa Fe, New Mexico (the "Project"), for use by
25 El Castillo Retirement Residences. The ordinance under which the Bonds would be issued will be considered

1 would be issued will be considered by the Governing Body of the City on or after November 14, 2012, which
2 is at least thirty days after the date of this letter. You may forward your comments and concerns with respect
3 to the Bonds or the Project to the Governing Body, but no approval of the Bonds is required from you and you
4 do not have a veto over the proposed issuance of the Bonds.

5
6 Very truly yours,

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8 CITY OF SANTA FE, NEW MEXICO

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11 By _____

12 Robert Romero

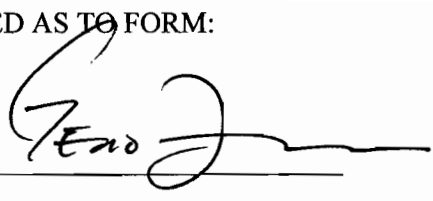
13 City Manager

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15 **(End of Form of Notice to be Mailed)**

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APPROVED AS TO FORM:

A handwritten signature in black ink, appearing to read "Geno Zamora", is written over a horizontal line. The signature is stylized and cursive.

GENO ZAMORA, CITY ATTORNEY

M/Melissa/Resolutions 2012/2012-83 El Castillo Inducement Resolution