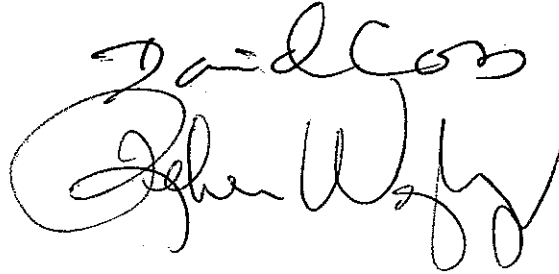


1 CITY OF SANTA FE, NEW MEXICO

2 RESOLUTION NO. 2007-32

3 INTRODUCED BY:

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9  
10 A RESOLUTION

11 **DECLARING THE INTENT OF THE CITY OF SANTA FE TO ISSUE AN INDUSTRIAL**  
12 **REVENUE BOND IN A PRINCIPAL AMOUNT UP TO \$45,000,000 FOR A PROPOSED**  
13 **OFFICE CAMPUS PROJECT LOCATED AT 2300 NORTH RIDGETOP ROAD IN**  
14 **SANTA FE, NEW MEXICO, FOR THE PURPOSE OF INDUCING RIDGETOP ROAD,**  
15 **LLC OR ITS SUCCESSORS OR ASSIGNS TO UNDERTAKE THE ACQUISITION,**  
16 **CONSTRUCTION AND EQUIPPING OF THE PROJECT, AND AUTHORIZING THE**  
17 **GIVING AND PUBLICATION OF NOTICES IN CONNECTION WITH SUCH BOND.**

18  
19 **WHEREAS,** the Industrial Revenue Bond Act, Sections 3-32-1 through 3-32-16  
20 NMSA 1978, as amended (the "Act"), authorizes the City of Santa Fe, New Mexico (the "City")  
21 to issue an industrial revenue bond (the "Bond"), and to acquire "projects" as defined in the Act;  
22 and

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

1           **WHEREAS**, Ridgetop Road, LLC (the “Lessee”), proposes to acquire, construct and  
2 equip an office campus project at 2300 North Ridgetop Road in Santa Fe, New Mexico (the  
3 “Project”), which constitutes a “project” as defined in the Act; and

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

8           **WHEREAS**, the issuance of the Bond by the City to finance the Project will constitute  
9 one of the inducements for the Lessee to proceed with the Project; and

10           **WHEREAS**, concurrently with the issuance of the Bond, the Lessee will enter into a  
11 leasing or other financing agreement with the City providing for the payment of lease rentals or  
12 other payments on the Project sufficient to pay the debt service on the Bond, subject to the prior  
13 approval of the Governing Body; and

14           **WHEREAS**, the Governing Body intends to consider an ordinance (the “Bond  
15 Ordinance”) approving the issuance of Bond to finance the Project at its regular meeting on  
16 May 30, 2007; and

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

21           **WHEREAS**, pursuant to Section 3-32-6.1 of the Act, before adopting an ordinance  
22 issuing a Bond, the City is required to give notice to the Board of County Commissioners and the  
23 Santa Fe County Assessor of its intent to consider the matter, which notice is to be given at least  
24 thirty days prior to the meeting at which final action is to be taken.

25           **NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE**

1 **CITY OF SANTA FE:**

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

6 Section 2. The Governing Body finds that:

7 A. The Project will involve the acquisition, construction and equipping of an  
8 office campus facility.

9 B. The maximum aggregate face amount of obligations to be issued with respect  
10 to the Project is \$45,000,000.

11 C. The initial developer and operator of the Project will be the Lessee or its  
12 assignee or assignees.

13 D. The location of the Project is 2300 North Ridgetop Road in Santa Fe, New  
14 Mexico.

15 Section 3. In order to promote the local health and general welfare, safety,  
16 convenience and prosperity of the inhabitants of the City, it is the Governing Body's intent to  
17 take all necessary and advisable steps to effect the issuance of Bond in a principal amount up to  
18 \$45,000,000 in order to defray part or all of the costs of the Project, provided that this expression  
19 of intent is conditioned upon the issuance of such Bond on or before one year from the date of the  
20 adoption of this resolution.

21 Section 4. The City understands that the Lessee does not intend that the Bond be a  
22 "qualified private activity bond" as that term is defined in the Internal Revenue Code of 1986, as  
23 amended.

24 Section 5. The Bond will be payable from the revenues of the Project and by the  
25 Lessee and will not constitute a debt or indebtedness of the City within the meaning of any

1 provision or limitation of the Constitution or statutes of the State of New Mexico. Nothing  
2 contained in this resolution or in any other instrument will be considered as obligating the City to  
3 any pecuniary liability or a charge upon the general credit of the City or against its taxing power,  
4 it being understood that no costs are to be borne by the City and that all costs incurred by the City  
5 in connection with the Bond are to be promptly reimbursed by the Lessee.

6           Section 6.       The City agrees that the Project will not be subject to property tax nor  
7 any payments in lieu of property tax during the period beginning on the acquisition, construction  
8 and/or installation of the Project by the City and ending on the earlier of 30 years from that date  
9 or the full retirement of the Bond, provided that the Lessee will pay to the City an annual  
10 payment in lieu of taxes of \$25,000. The city will work with the school board and the  
11 Thornburg Corporation to explore opportunities to continue and to expand philanthropic  
12 support for the public schools in Santa Fe through the Partners in Education Foundation.  
13 In addition, if the Bond is issued, the Lessee shall indemnify and hold harmless the City, the  
14 Governing Body and their respective officers, employees, designated representatives and agents  
15 (collectively, the "Indemnified Persons") from and against any liability to the Lessee, or to any  
16 third parties that may be asserted against the City with respect to the City's ownership of or  
17 leasehold interest in the Project or the issuance of the Bond. The City's adoption of this  
18 resolution shall not be deemed a conclusion or expression of approval by the City or by any  
19 Indemnified Person of the Lessee or the Project.

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

1 Tax and Compensating Tax Act. For this purpose, by adoption of this Resolution, the City  
2 authorizes the Lessee to act as agent for the City. The Lessee shall not use the Certificates other  
3 than for the purpose of capital equipment and other tangible personal property, nor shall the  
4 Lessee use such Certificates after completion of the Project. Prior to the use of such Certificates  
5 by the Lessee, as agent for the City, the City Manager and the Lessee will agree to certain  
6 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  
9 time in The Santa Fe New Mexican, a newspaper of general circulation in the City, as soon as is  
10 practicable following the adoption of this resolution and, in any event, not later than May 15,  
11 2007:

12 (Form of Notice to be Published)

13 **NOTICE OF CONSIDERATION OF ORDINANCE**

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

15 **NOTICE IS GIVEN** that the Governing Body of the City of Santa Fe, New Mexico (the  
16 "City"), will consider the adoption of an ordinance (the "Ordinance") authorizing the issuance of  
17 an industrial revenue bond in a principal amount not to exceed \$45,000,000 (the "Bond") to  
18 finance the acquisition, construction and equipping of an office campus facility (the "Project"),  
19 and all costs incidental to the foregoing and the issuance of the Bond, and otherwise relating to  
20 the Project, at a regular meeting of the Governing Body on Wednesday, May 30, 2007, at 7:00  
21 p.m. or as soon thereafter as the matter may be heard, in the City Hall Council Chambers, City  
22 Hall, 200 Lincoln Avenue, Santa Fe, New Mexico, in the City, being the regular meeting place of  
23 the Governing Body. The title and subject matter of the Ordinance are as follows:

24 **AUTHORIZING THE ISSUANCE AND SALE OF A CITY OF SANTA FE, NEW**  
25 **MEXICO INDUSTRIAL REVENUE BOND (RIDGETOP ROAD, LLC PROJECT)**

1 **SERIES 2007 IN THE MAXIMUM PRINCIPAL AMOUNT OF \$45,000,000 TO PROVIDE**  
2 **FUNDS TO FINANCE THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A**  
3 **PROPOSED OFFICE CAMPUS PROJECT LOCATED AT 2300 NORTH RIDGETOP**  
4 **ROAD; AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE,**  
5 **LEASE AGREEMENT, BOND PURCHASE AGREEMENT, THE BOND AND OTHER**  
6 **DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE BOND AND THE**  
7 **PROJECT; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO**  
8 **THE BOND AND THE PROJECT; RATIFYING CERTAIN ACTIONS TAKEN**  
9 **PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS**  
10 **ORDINANCE.**

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

18 Dated: April 13, 2007.

19 Yolanda Y. Vigil

20 City Clerk

21 City of Santa Fe, New Mexico

22 (End of Form of Notice to be Published)

23       Section 9.       The Governing Body directs that the following notice be mailed by  
24 registered or certified mail, return receipt requested, to the Santa Fe County Commission and the  
25 Santa Fe County Assessor, as soon as is practicable following the adoption of this resolution and,

1 in any event, not later than April 27, 2007:

2 (Form of Notice to be Mailed)

3 [CITY OF SANTA FE LETTERHEAD]

4 April 12, 2007

5

6 REGISTERED MAIL

7 RETURN RECEIPT REQUESTED

8

9 Board of County Commissioners

10 Santa Fe County

11 c/o Mr. Roman Abeyta, County Manager

12 102 Grant Avenue

13 Santa Fe, New Mexico 87504

14

15 Hon. Benito J. Martinez, Jr.

16 Santa Fe County Assessor

17 102 Grant Avenue

18 Santa Fe, New Mexico 87504

19

20 Ladies and Gentlemen:

21 Pursuant to Section 3-32-6.1 NMSA 1978, we write to give you notice that the City of  
22 Santa Fe, New Mexico (the "City") intends to consider the issuance of an industrial revenue bond  
23 in a principal amount not to exceed \$45,000,000 (the "Bond") to defray the cost of acquiring,  
24 constructing and equipping of an office campus facility at 2300 North Ridgetop Road in Santa Fe,  
25 New Mexico (the "Project"), for use by Ridgetop Road, LLC. The ordinance under which the

1 Bond would be issued will be considered by the Governing Body of the City on or after May 30,  
2 2007, which is at least thirty days after the date of this letter. You may forward your comments  
3 and concerns with respect to the Bond or the Project to the Governing Body, but no approval of  
4 the Bond is required from you and you do not have a veto over the proposed issuance of the  
5 Bond.

6 Very truly yours,

7 CITY OF SANTA FE, NEW MEXICO

8 By \_\_\_\_\_

9 Galen Buller

10 City Manager

11 (End of Form of Notice to be Mailed)

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

17 Section 11. If any section, paragraph, clause or provision of this resolution is for any  
18 reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section,  
19 paragraph, clause or provision will not affect any of the remaining provisions of this resolution.

20 Section 12. All resolutions, or parts thereof, in conflict with this resolution, are  
21 repealed; this repealer is not to be construed to revive any order, resolution or part thereof,  
22 heretofore repealed.

23 **PASSED, APPROVED AND ADOPTED this 11th day of April, 2007.**



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David Coss

DAVID COSS, MAYOR

ATTEST:

Yolanda Y. Vigil

YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:

Frank D. Katz

FRANK D. KATZ, CITY ATTORNEY