

CITY OF SANTA FE, NEW MEXICO

BILL NO. 2012-36

INTRODUCED BY:

Mayor Coss

AN ORDINANCE

**OF THE CITY OF SANTA FE, NEW MEXICO AUTHORIZING AND PROVIDING FOR THE
ISSUANCE AND SALE OF ITS INDUSTRIAL REVENUE BONDS (EL CASTILLO RETIREMENT
RESIDENCES) SERIES 2012 IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED
\$30,000,000 FOR THE PURPOSE OF FINANCING AND REFINANCING IMPROVEMENT,
CONSTRUCTION, ACQUISITION AND/OR EQUIPPING OF AN ADULT RESIDENTIAL
RETIREMENT FACILITY, MEMORY SUPPORT FACILITY AND NURSING AND ASSISTED
LIVING FACILITY LOCATED AT 250 EAST ALAMEDA STREET AND 239 EAST DE VARGAS
STREET IN SANTA FE, NEW MEXICO, AUTHORIZING THE EXECUTION AND DELIVERY OF
AN INSTALLMENT SALE AGREEMENT BETWEEN THE CITY AND EL CASTILLO
RETIREMENT RESIDENCES, AN 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**

1 **AGREEMENTS IN CONNECTION THEREWITH; AND AUTHORIZING OTHER MATTERS**
2 **PERTAINING TO THE ISSUANCE OF SAID BONDS.**

3
4 **WHEREAS**, the City of Santa Fe, New Mexico (the "City") is authorized by Sections 3-32-1 through
5 3-32-16 NMSA 1978, as amended (the "Act") to issue industrial revenue bonds for the purposes set forth in
6 the Act and to permit the expenditure of the proceeds thereof to defray, among other things, the cost of
7 acquisition, construction and installation of certain facilities constituting a 501(c)(3) project (as defined under
8 the Act) and for the purposes of refinancing in accordance with Section 3-32-6 NMSA 1978; and

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

14 **WHEREAS**, the City's procedures set forth in Resolution 2012-4 which adopted the City of Santa Fe
15 Industrial Revenue Bond Policy will be substantially complied with.

16 **WHEREAS**, El Castillo Retirement Residences, a New Mexico nonprofit corporation and an
17 organization described in Section 501(c)(3) of the Internal Revenue Code of 1986 ("El Castillo"), has
18 requested the City to issue a series of its bonds in an amount sufficient, together with other moneys available
19 therefor, to refinance certain obligations of El Castillo and to finance certain capital costs, including
20 improving, constructing, acquiring and/or equipping the following: (i) existing facilities at the adult residential
21 retirement facility and nursing and assisted living facility; (ii) new facilities at the adult residential retirement
22 facility and nursing and assisted living facility; and (iii) a new memory support facility owned and operated by
23 El Castillo located within the City (the "Project") at the following addresses: 250 E. Alameda Street and 239
24 East De Vargas Street, Santa Fe, New Mexico, to establish a debt service reserve fund and to pay for certain
25 costs of issuance of such bonds.

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

4 **WHEREAS**, pursuant to and in accordance with the provisions of the Act, the Project is suitable for
5 use by El Castillo and will be sold by the City to El Castillo pursuant to an Installment Sale Agreement dated
6 as of November 1, 2012 (the "Agreement"); and

7 **WHEREAS**, the City proposes to fund the improvement, construction, acquisition and/or equipping
8 of the Project as an authorized project under the Act and to finance and refinance the cost thereof by the
9 issuance of a series of industrial revenue bonds of the City under an Indenture of Trust dated as of November
10 1, 2012 (the "Indenture") from the City to The Bank of New York Mellon Trust Company, National
11 Association, as trustee; and

12 **WHEREAS**, pursuant to and in accordance with provisions of the Act, the City is now prepared to
13 proceed with financing and refinancing the costs of the Project by the issuance and sale of its industrial
14 revenue bonds entitled Retirement Facility Revenue Bonds (El Castillo Retirement Residences Project) Series
15 2012 (the "Bonds"), such Bonds to be secured by the Indenture; and

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

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

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

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

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

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

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

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

24 The Bonds shall be dated and numbered and shall be in the form as provided in the Indenture and shall
25 be otherwise subject to redemption prior to maturity upon the terms and conditions set forth in the Indenture.

1 Indenture. The Bonds shall be sold to the Purchaser at the purchase price specified in the Bond Purchase
2 Agreement. Interest on the Bonds shall be payable at the times specified in Article II of the Indenture.

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

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

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

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>
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

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

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

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

25 **Section 9.** The Indenture is hereby approved in substantially the form submitted to this meeting,

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

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

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

24 **Section 12.** The distribution of the Preliminary Official Statement and the Official Statement are
25 hereby authorized, provided that the City takes no responsibility for the Preliminary Official Statement or the

1 or the Official Statement other than the information under the caption "The Issuer".

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

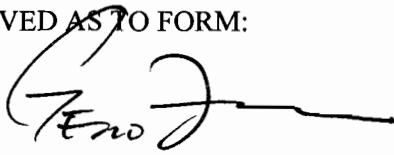
6 **Section 14.** The Bonds are hereby approved for the purpose of Section 147(f) of the Internal
7 Revenue Code of 1986, as amended.

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

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

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

18 APPROVED AS TO FORM:

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21 GENO ZAMORA, CITY ATTORNEY
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