

CITY of ALBUQUERQUE

TWENTY-THIRD COUNCIL

COUNCIL BILL NO. F/S O-19-80 ENACTMENT NO. _____

SPONSORED BY: COUNCILOR BENTON

1 ORDINANCE
2 AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF ALBUQUERQUE,
3 NEW MEXICO TAXABLE INDUSTRIAL REVENUE BOND (ARRIVE
4 ALBUQUERQUE HOTEL PROJECT) SERIES 2019 IN THE MAXIMUM PRINCIPAL
5 AMOUNT OF \$20,800,000 TO PROVIDE FUNDS TO FINANCE THE
6 ACQUISITION, REDEVELOPMENT, RENOVATION, REHABILITATION AND
7 EQUIPPING OF A HOSPITALITY PROJECT; AUTHORIZING THE EXECUTION
8 AND DELIVERY OF AN INDENTURE, LEASE AGREEMENT, BOND PURCHASE
9 AGREEMENT, BOND, AND OTHER DOCUMENTS IN CONNECTION WITH THE
10 ISSUANCE OF THE BOND AND THE PROJECT; MAKING CERTAIN
11 DETERMINATIONS AND FINDINGS RELATING TO THE BOND AND THE
12 PROJECT; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND
13 REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

14 WHEREAS, the City of Albuquerque (the "City") is a legally and regularly created,
15 established, organized, and existing municipal corporation of the State of New
16 Mexico (the "State"); and

17 WHEREAS, pursuant to Sections 3-32-1 through 3-32-16, New Mexico Statutes
18 Annotated, 1978 Compilation, as amended (the "Act"), the City is authorized to
19 acquire industrial revenue bond projects located within the corporate limits of the
20 municipality for the purpose of promoting industry and trade by inducing commercial
21 enterprises to locate or expand in the State of New Mexico; and

22 WHEREAS, pursuant to the Act, the City is authorized to issue revenue bonds for
23 the purpose of defraying the cost of acquiring any project and to secure the payment
24 of such bonds, all as provided in the Act; and

25 WHEREAS, 717 Central Ave Hotel LLC (the "Company") is a limited liability
26 company organized under the laws of the State of New Mexico and is authorized to
27 do business in New Mexico; and

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1 WHEREAS, the Company has requested that the City issue its industrial revenue
2 bond pursuant to the Act for the purpose of providing funds to finance the
3 acquisition, redevelopment, renovation, rehabilitation and equipping of a historic
4 downtown hotel facility within the corporate limits of the City (the "Project"); and

5 WHEREAS, the City Council of the City of Albuquerque (the "Council") has
6 adopted an ordinance establishing the Albuquerque Development Commission (the
7 "Commission") to review projects proposed to be financed with an industrial revenue
8 bond pursuant to the Act pursuant to City Resolution No. 16-1985, as amended; and

9 WHEREAS, the Company has presented to the City and the Commission a
10 proposal (the "Project Plan") whereby the City shall, pursuant to the Act, acquire,
11 redevelop, renovate, rehabilitate and equip a six-story, 75,000 square foot building
12 for use as a boutique hotel (the "Project Property") within the boundaries of the City,
13 and pursuant to which the City would issue its taxable industrial revenue bond in
14 order to finance the Project; and

15 WHEREAS, the Commission has reviewed the Project Plan, and on August 15,
16 2019, has determined that the Company has complied with City Resolution No. 16-
17 1985, and has recommended approval of the Project Plan by the Council; and

18 WHEREAS, under the Company's Project Plan, the City would enter into an
19 Indenture dated as of November 1, 2019 (the "Indenture") between the City and
20 BOKF, NA, or other corporate depository satisfactory to the City to be designated at
21 a later date, as depository (the "Depository"), pursuant to which, together with this
22 ordinance (the "Bond Ordinance"), the City would issue its bond designated as the
23 City of Albuquerque, New Mexico Taxable Industrial Revenue Bond (ARRIVE
24 Albuquerque Hotel Project), Series 2019 (the "Bond"); and

25 WHEREAS, under the Company's Project Plan, the City and the Company would
26 enter into a Lease Agreement dated as of November 1, 2019 (the "Lease"), pursuant
27 to which the Company will lease the Project Property from the City and will make
28 payments to the Depository sufficient to pay the principal of, redemption premium, if
29 any, and interest on the Bond, and to pay all other obligations incurred pursuant to
30 the provisions of the Lease and the Bond Ordinance; and

31 WHEREAS, under the Company's Project Plan, the Lease will provide that the
32 Company or, as applicable, its assignee shall maintain the Project and carry all
33 proper insurance with respect thereto; and

1 WHEREAS, the proceeds of the Bond shall be used for the purpose of financing
2 the completion of the Project (the "Financing"); and

3 WHEREAS, the City is authorized to enter into the Lease, the Indenture, and
4 other related documents and to issue the Bond pursuant to the Act and the Bond
5 Ordinance; and

6 WHEREAS, the Bond in an aggregate principal amount not to exceed
7 \$20,800,000 will be issued, sold and delivered by the City in a private sale to 717
8 Central Ave Hotel Purchaser LLC (the "Purchaser") pursuant to a bond purchase
9 agreement (the "Bond Purchase Agreement") among the City, the Company, and the
10 Purchaser; and

11 WHEREAS, the proceeds of the Bond shall be applied to pay the costs of the
12 Project and to pay certain costs associated with the transaction; and

13 WHEREAS, after having considered the provisions of the Project Plan and the
14 Financing, the Council has concluded that it is in the best interest of the City to
15 authorize the issuance of the Bond to finance the Project, and that the City's
16 issuance of the Bond shall constitute a valid public purpose under the Act; and

17 WHEREAS, the Council has been advised by the Company that the disclosure
18 provisions of Rule 15c2-12 of the Securities and Exchange Commission are not
19 applicable to this transaction inasmuch as the Bond is being sold to the Purchaser,
20 which is an affiliate of the Company, in a private sale without the participation of an
21 underwriter; and

22 WHEREAS, there has been published in the Albuquerque Journal, a newspaper
23 of general circulation in the City, public notice of the Council's intention to adopt this
24 Bond Ordinance, which notice contained certain information concerning the
25 ownership, purpose, location and size of the Project and the Project Property, and
26 the amount of the Bond to be issued to finance the Project, which notice was
27 published at least fourteen (14) days prior to hearing and final action on this Bond
28 Ordinance; and

29 WHEREAS, the proposed forms of the following documents have been filed with
30 the City Clerk and presented to the Council: (1) Project Plan; (2) Lease; (3)
31 Indenture; and, (4) Bond Purchase Agreement (collectively the "Bond Documents");
32 and

1 WHEREAS, the City has delivered notice to Board of County Commissioners and
2 the County Assessor of County of Bernalillo, State of New Mexico, of its intent to
3 consider issuance of the Bond, which notice was given in compliance with Section 3-
4 32-6.1, New Mexico Statutes Annotated, 1978 Compilation, as amended;

5 BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF
6 ALBUQUERQUE:

7 Section 1. RATIFICATION. All actions not inconsistent with the provisions of
8 this Bond Ordinance previously taken by the Council and the officials of the City
9 directed toward approval of the issuance and sale of the Bond be approved and the
10 same hereby are ratified, approved and confirmed.

11 Section 2. THE PROJECT PLAN. The Project to be financed with the Bond
12 consists of the acquisition, redevelopment, renovation, rehabilitation and equipping
13 of a six-story, 75,000 square foot building for use as a boutique hotel within the City.
14 The Company may use additional available money to accomplish the Project. The
15 Project Plan is hereby approved in all respects.

16 Section 3. FINDINGS.

17 (A) General. The Council hereby declares that it has considered all relevant
18 information presented to it relating to the Bond and the Project and hereby finds and
19 determines that the issuance of the Bond pursuant to the Bond Ordinance and the
20 Act to provide funds for the Project is necessary and advisable and in the interest of
21 the public, and will promote the public health, safety, morals, convenience,
22 economy, and welfare of the City and the residents of the City.

23 (B) The Council finds that:

- 24 (1) The Bond will be issued for the purpose of financing the Project;
25 (2) The aggregate face amount of obligations to be issued for the
26 purpose of financing the Project will not exceed \$20,800,000;
27 (3) The developer and operator of the Project is the Company; and,
28 (4) The Project Property is located in the City.

29 Section 4. AUTHORIZATION AND APPROVAL OF THE BOND. To finance
30 the cost of the acquisition, redevelopment, renovation, rehabilitation and equipping
31 of the Project Property, the City hereby authorizes and approves the issuance and
32 sale of its industrial revenue bond to be designated "City of Albuquerque, New
33 Mexico Taxable Industrial Revenue Bond (ARRIVE Albuquerque Hotel Project),

1 Series 2019" in the maximum principal amount of \$20,800,000 and the use of the
2 proceeds of the Bond to finance the cost of the Project and to pay expenses relating
3 thereto.

4 Section 5. SALE OF THE BOND. The sale of the Bond to the Purchaser at a
5 purchase price equal to the par amount of the Bond is hereby authorized and
6 approved.

7 Section 6. FORM AND TERM OF THE BOND. Subject to the limitations set
8 forth in this Bond Ordinance, the Bond shall be: (i) in the form and shall be
9 numbered and dated all as set forth in the Indenture; (ii) payable as to principal and
10 interest, and subject to optional and mandatory redemption and defeasance in the
11 amounts, upon the conditions and at the times and prices set forth in the Indenture;
12 and, (iii) issued in the maximum principal amount of \$20,800,000, bearing interest at
13 the rates and maturing on the dates set forth in the Indenture. The interest rate on
14 the Bond shall not exceed 12% per annum. The Mayor or the Chief Administrative
15 Officer of the City shall sign the Bond.

16 Section 7. AUTHORIZATION OF OFFICERS; APPROVAL OF DOCUMENTS.
17 The form, terms, and provisions of the Bond Documents in the form on deposit in the
18 office of the City Clerk are in all respects approved, authorized, and confirmed, and
19 the City shall enter into such Bond Documents substantially in the form of each such
20 document on deposit with the City Clerk, with only such changes as are not
21 inconsistent with this Bond Ordinance or such other changes as may be approved
22 by supplemental resolution of the Council.

23 (A) The Council authorizes the Mayor or the Chief Administrative Officer of the
24 City to execute and deliver the Bond Documents in the name and on behalf of the
25 City, and the Council authorizes the City Clerk or Deputy City Clerk to attest to, as
26 necessary, the Bond Documents and the Bond with such changes therein as are not
27 inconsistent with this Bond Ordinance.

28 (B) The Mayor, Chief Administrative Officer, Chief Financial Officer, City
29 Treasurer and City Clerk are further authorized to execute, authenticate and deliver
30 such certifications, instruments, documents, letters and other agreements, including
31 security agreements, and to do such other acts and things, either prior to or after the
32 date of delivery of the Bond, as are necessary or appropriate to consummate the
33 transactions contemplated by the Bond Documents.

1 (C) The officers of the City shall take such action as is necessary to effectuate
2 the provisions of the Indenture and shall take such action as is necessary in
3 conformity with the Act and this Bond Ordinance to finance the costs of the Project
4 and for carrying out other transactions as contemplated by this Bond Ordinance and
5 the Bond Documents including, without limitation, the execution and delivery of any
6 closing documents to be delivered in connection with the sale and delivery of the
7 Bond.

8 Section 8. DELIVERY OF THE BOND. Upon the execution of the Bond
9 Documents and the satisfaction of the conditions set forth in the Bond Documents,
10 the Bond shall be executed, authenticated, and delivered to the Purchaser. No
11 Bond shall be valid for any purpose until such Bond has been properly authenticated
12 as set forth in the Indenture.

13 Section 9. FINDINGS REGARDING PAYMENT OF PRINCIPAL AND
14 INTEREST AND OTHER MATTERS. The Council makes the following
15 determinations and findings in accordance with the Act:

16 (A) The amount necessary in each year to pay the principal of and interest on
17 the Bond, assuming issuance of the Bond as of November 1, 2019 in the amount of
18 \$20,800,000 and bearing interest at the rate of 3.00% is as follows:

19	<u>Year Ended</u>	<u>Maturing Principal</u>	<u>Interest Amount</u>	<u>Total Debt Service</u>
20	12/31/20	\$770,817.00	\$613,458.60	\$1,384,275.60
21	12/31/21	\$794,262.14	\$590,013.47	\$1,384,275.60
22	12/31/22	\$818,420.38	\$565,855.22	\$1,384,275.60
23	12/31/23	\$843,313.42	\$540,962.18	\$1,384,275.60
24	12/31/24	\$868,963.60	\$515,312.00	\$1,384,275.60
25	12/31/25	\$895,393.96	\$488,881.64	\$1,384,275.60
26	12/31/26	\$922,628.23	\$461,647.38	\$1,384,275.60
27	12/31/27	\$950,690.85	\$433,584.76	\$1,384,275.60
28	12/31/28	\$979,607.02	\$404,668.58	\$1,384,275.60
29	12/31/29	\$1,009,402.70	\$374,872.90	\$1,384,275.60
30	12/31/30	\$1,040,104.65	\$344,170.95	\$1,384,275.60
31	12/31/31	\$1,071,740.43	\$312,535.17	\$1,384,275.60
32	12/31/32	\$1,104,338.44	\$279,937.16	\$1,384,275.60
33	12/31/33	\$1,137,927.95	\$246,347.65	\$1,384,275.60

1	12/31/34	\$1,172,539.12	\$211,736.48	\$1,384,275.60
2	12/31/35	\$1,208,203.02	\$176,072.58	\$1,384,275.60
3	12/31/36	\$1,244,951.67	\$139,323.93	\$1,384,275.60
4	12/31/37	\$1,282,818.07	\$101,457.54	\$1,384,275.60
5	12/31/38	\$1,321,836.21	\$62,439.40	\$1,384,275.60
6	12/31/39	\$1,362,041.12	\$22,234.48	\$1,384,275.60

7 (B) The terms under which the Project Property is leased provide that the
8 Company shall maintain the Project Property and carry all proper insurance (or self-
9 insure) with respect to the Project Property.

10 (C) The lease rentals payable under the Lease shall be at least sufficient to
11 pay the principal and interest payments on the Bond set forth in Paragraph (A) of
12 this Section 9 when due and otherwise render the financing of the acquisition of the
13 Project Property entirely self-liquidating. There shall be no payments to any reserve
14 fund or sinking fund installment payments.

15 Section 10. STATE TAX MATTERS. The City shall acquire in its name the
16 Project Property, including capital equipment and other tangible personal property
17 used in the Project, and for such acquisitions the City will, consistent with New
18 Mexico law, assist the Company, acting as agent for the City, in obtaining the
19 necessary nontaxable transaction certificates for delivery to vendors as may be
20 applicable under the New Mexico Gross Receipts and Compensating Tax Act.

21 Section 11. LIMITED OBLIGATIONS. The Bond shall be a special limited
22 obligation of the City payable solely from the revenues derived from the Lease and
23 payable by the Company as described in the Indenture, and shall never constitute a
24 debt or indebtedness of the City or the State or any political subdivision thereof
25 within the meaning of any provision or limitation of the State Constitution, statutes, or
26 home-rule charter of the City, and shall not constitute or give rise to a pecuniary
27 liability of the City or a charge against its general credit or taxing power. Nothing
28 contained in the Bond Ordinance or the Bond Documents, or any other instrument,
29 shall be construed as obligating the City (except with respect to the Project Property
30 and the application of the revenues therefrom and the proceeds of the Bond, all as
31 provided in the Bond Documents), nor as incurring a pecuniary liability or charge
32 upon the general credit of the City or against its taxing power, nor shall the breach of
33 any agreement contained in the Bond Ordinance, the Bond Documents, the Bonds,

1 or any other instrument be construed as obligating the City (except with respect to
2 the Project Property and the application of revenues therefrom and the proceeds of
3 the Bond all as provided in the Bond Documents) nor as incurring a pecuniary
4 liability or a charge upon the general credit of the City or against its taxing power, the
5 City having no power to pay out of its general funds, or otherwise contribute any part
6 of the costs of acquiring the Project Property, nor power to operate the Project as a
7 business or in any manner except as lessor and seller of the Project Property.

8 Section 12. APPROVAL OF INDEMNIFICATION. The Council specifically
9 approves the provisions of the Lease relating to indemnification which provide that
10 the Company shall indemnify and hold harmless the City and its City Councilors,
11 officials, members, officers, employees, and agents against liability to the Company
12 or to any third parties that may be asserted against the City, its City Councilors,
13 officials, members, officers, employees, and agents with respect to the City's
14 ownership of the Project Property or the issuance of the Bond and arising from the
15 condition of the Project Property or the acquisition or operation of the Project
16 Property by the Company, except to the extent that Section 56-7-1, New Mexico
17 Statutes Annotated, 1978 Compilation, as amended, applies, and except claims for
18 any loss or damage arising out of or resulting from the gross negligence or willful
19 misconduct of the City or any official, member, officer, employee, or agent of the
20 City.

21 Section 13. BOND ORDINANCE IRREPEALABLE. After the Bond is issued,
22 this Bond Ordinance shall be and remain irrevocable until the Bond, including all
23 interest thereon, is fully paid, cancelled, and discharged, or until there has been
24 defeasance of the Bond in accordance with the Indenture.

25 Section 14. SEVERABILITY. If any section, paragraph, clause or provision of
26 this Bond Ordinance shall for any reason be held to be invalid or unenforceable, the
27 invalidity or unenforceability of that section, paragraph, clause, or provision shall not
28 affect any of the remaining provisions of this Bond Ordinance.

29 Section 15. REPEALER. All by-laws, ordinances, resolutions, and orders, or
30 parts thereof, inconsistent with this Bond Ordinance are repealed by this Bond
31 Ordinance but only to the extent of that inconsistency. This repealer shall not be
32 construed to revive any by-law, ordinance, resolution, or order, or part thereof,
33 previously repealed.

1 Section 16. RECORDING; AUTHENTICATION; PUBLICATION; EFFECTIVE
2 DATE. This Bond Ordinance, immediately upon its final passage and approval, shall
3 be recorded in the ordinance book of the City, kept for that purpose, and shall be
4 there authenticated by the signature of the Mayor and the presiding officer of the
5 City Council, and by the signature of the City Clerk or any Deputy City Clerk, and
6 notice of adoption thereof shall be published once in a newspaper that maintains an
7 office in, and is of general circulation in, the City, and shall be in full force and effect
8 five (5) days following such publication.

9 Section 17. GENERAL SUMMARY FOR PUBLICATION. The title and general
10 summary of the subject contained in the Bond Ordinance shall be published in
11 substantially the following form:

12 CITY OF ALBUQUERQUE, NEW MEXICO
13 NOTICE OF ADOPTION OF ORDINANCE

14 Notice is hereby given of the title and of a general summary of the subject matter
15 contained in City Ordinance F/S O-19-80 (the "Ordinance"), duly adopted and approved by
16 the City Council of the City of Albuquerque, New Mexico, on October 21, 2019. Complete
17 copies of the Ordinance are available for public inspection during the normal and regular
18 business hours of the City Clerk in the office of the City Clerk, Plaza del Sol, 600 2nd Street
19 NW, 7th Floor, Albuquerque, New Mexico.

20 The title of the Ordinance is:

21 AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF ALBUQUERQUE,
22 NEW MEXICO TAXABLE INDUSTRIAL REVENUE BOND (ARRIVE
23 ALBUQUERQUE HOTEL PROJECT) SERIES 2019 IN THE MAXIMUM PRINCIPAL
24 AMOUNT OF \$20,800,000 TO PROVIDE FUNDS TO FINANCE THE
25 ACQUISITION, REDEVELOPMENT, RENOVATION, REHABILITATION AND
26 EQUIPPING OF A HOSPITALITY PROJECT; AUTHORIZING THE EXECUTION
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29 ISSUANCE OF THE BOND AND THE PROJECT; MAKING CERTAIN
30 DETERMINATIONS AND FINDINGS RELATING TO THE BOND AND THE
31 PROJECT; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND
32 REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

33 The title sets forth a general summary of the subject matter contained in the Ordinance.
34