

# CITY of ALBUQUERQUE

## TWENTY-THIRD COUNCIL

COUNCIL BILL NO. F/S O-19-80 ENACTMENT NO. 0-2019-033

SPONSORED BY: Isaac Benton, by request

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  
15 created, established, organized, and existing municipal corporation of the State  
16 of New Mexico (the "State"); and

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

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

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

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

9 WHEREAS, the City Council of the City of Albuquerque (the "Council") has  
10 adopted an ordinance establishing the Albuquerque Development Commission  
11 (the "Commission") to review projects proposed to be financed with an  
12 industrial revenue bond pursuant to the Act pursuant to City Resolution No. 16-  
13 1985, as amended; and

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

20 WHEREAS, the Commission has reviewed the Project Plan, and on August  
21 15, 2019, has determined that the Company has complied with City Resolution  
22 No. 16-1985, and has recommended approval of the Project Plan by the  
23 Council; and

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

1 WHEREAS, under the Company's Project Plan, the City and the Company  
2 would enter into a Lease Agreement dated as of November 1, 2019 (the  
3 "Lease"), pursuant to which the Company will lease the Project Property from  
4 the City and will make payments to the Depositary sufficient to pay the principal  
5 of, redemption premium, if any, and interest on the Bond, and to pay all other  
6 obligations incurred pursuant to the provisions of the Lease and the Bond  
7 Ordinance; and

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

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

13 WHEREAS, the City is authorized to enter into the Lease, the Indenture, and  
14 other related documents and to issue the Bond pursuant to the Act and the  
15 Bond Ordinance; and

16 WHEREAS, the Bond in an aggregate principal amount not to exceed  
17 \$20,800,000 will be issued, sold and delivered by the City in a private sale to  
18 717 Central Ave Hotel Purchaser LLC (the "Purchaser") pursuant to a bond  
19 purchase agreement (the "Bond Purchase Agreement") among the City, the  
20 Company, and the Purchaser; and

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

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

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

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

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

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

17 BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF  
18 ALBUQUERQUE:

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

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

28 Section 3. FINDINGS.

29 (A) General. The Council hereby declares that it has considered all  
30 relevant information presented to it relating to the Bond and the Project and  
31 hereby finds and determines that the issuance of the Bond pursuant to the Bond  
32 Ordinance and the Act to provide funds for the Project is necessary and

advisable and in the interest of the public, and will promote the public health, safety, morals, convenience, economy, and welfare of the City and the residents of the City.

(B) The Council finds that:

(1) The Bond will be issued for the purpose of financing the Project;

(2) The aggregate face amount of obligations to be issued for the purpose of financing the Project will not exceed \$20,800,000;

(3) The developer and operator of the Project is the Company; and,

(4) The Project Property is located in the City.

Section 4. AUTHORIZATION AND APPROVAL OF THE BOND. To finance the cost of the acquisition, redevelopment, renovation, rehabilitation and equipping of the Project Property, the City hereby authorizes and approves the issuance and sale of its industrial revenue bond to be designated "City of Albuquerque, New Mexico Taxable Industrial Revenue Bond (ARRIVE Albuquerque Hotel Project), Series 2019" in the maximum principal amount of \$20,800,000 and the use of the proceeds of the Bond to finance the cost of the Project and to pay expenses relating thereto.

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

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

Section 7. AUTHORIZATION OF OFFICERS; APPROVAL OF DOCUMENTS. The form, terms, and provisions of the Bond Documents in the form on deposit in the office of the City Clerk are in all respects approved, authorized, and

1 confirmed, and the City shall enter into such Bond Documents substantially in  
2 the form of each such document on deposit with the City Clerk, with only such  
3 changes as are not inconsistent with this Bond Ordinance or such other changes  
4 as may be approved by supplemental resolution of the Council.

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

10 (B) The Mayor, Chief Administrative Officer, Chief Financial Officer, City  
11 Treasurer and City Clerk are further authorized to execute, authenticate and  
12 deliver such certifications, instruments, documents, letters and other  
13 agreements, including security agreements, and to do such other acts and  
14 things, either prior to or after the date of delivery of the Bond, as are necessary  
15 or appropriate to consummate the transactions contemplated by the Bond  
16 Documents.

17 (C) The officers of the City shall take such action as is necessary to  
18 effectuate the provisions of the Indenture and shall take such action as is  
19 necessary in conformity with the Act and this Bond Ordinance to finance the  
20 costs of the Project and for carrying out other transactions as contemplated by  
21 this Bond Ordinance and the Bond Documents including, without limitation, the  
22 execution and delivery of any closing documents to be delivered in connection  
23 with the sale and delivery of the Bond.

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

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

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

<u>Year Ended</u>	<u>Maturing Principal</u>	<u>Interest Amount</u>	<u>Total Debt Service</u>
12/31/20	\$770,817.00	\$613,458.60	\$1,384,275.60
12/31/21	\$794,262.14	\$590,013.47	\$1,384,275.60
12/31/22	\$818,420.38	\$565,855.22	\$1,384,275.60
12/31/23	\$843,313.42	\$540,962.18	\$1,384,275.60
12/31/24	\$868,963.60	\$515,312.00	\$1,384,275.60
12/31/25	\$895,393.96	\$488,881.64	\$1,384,275.60
12/31/26	\$922,628.23	\$461,647.38	\$1,384,275.60
12/31/27	\$950,690.85	\$433,584.76	\$1,384,275.60
12/31/28	\$979,607.02	\$404,668.58	\$1,384,275.60
12/31/29	\$1,009,402.70	\$374,872.90	\$1,384,275.60
12/31/30	\$1,040,104.65	\$344,170.95	\$1,384,275.60
12/31/31	\$1,071,740.43	\$312,535.17	\$1,384,275.60
12/31/32	\$1,104,338.44	\$279,937.16	\$1,384,275.60
12/31/33	\$1,137,927.95	\$246,347.65	\$1,384,275.60
12/31/34	\$1,172,539.12	\$211,736.48	\$1,384,275.60
12/31/35	\$1,208,203.02	\$176,072.58	\$1,384,275.60
12/31/36	\$1,244,951.67	\$139,323.93	\$1,384,275.60
12/31/37	\$1,282,818.07	\$101,457.54	\$1,384,275.60
12/31/38	\$1,321,836.21	\$62,439.40	\$1,384,275.60
12/31/39	\$1,362,041.12	\$22,234.48	\$1,384,275.60

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

(C) The lease rentals payable under the Lease shall be at least sufficient to pay the principal and interest payments on the Bond set forth in Paragraph (A) of this Section 9 when due and otherwise render the financing of the acquisition

1 of the Project Property entirely self-liquidating. There shall be no payments to  
2 any reserve fund or sinking fund installment payments.

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

9 Section 11. LIMITED OBLIGATIONS. The Bond shall be a special limited  
10 obligation of the City payable solely from the revenues derived from the Lease and  
11 payable by the Company as described in the Indenture, and shall never constitute a  
12 debt or indebtedness of the City or the State or any political subdivision thereof  
13 within the meaning of any provision or limitation of the State Constitution, statutes, or  
14 home-rule charter of the City, and shall not constitute or give rise to a pecuniary  
15 liability of the City or a charge against its general credit or taxing power. Nothing  
16 contained in the Bond Ordinance or the Bond Documents, or any other instrument,  
17 shall be construed as obligating the City (except with respect to the Project Property  
18 and the application of the revenues therefrom and the proceeds of the Bond, all as  
19 provided in the Bond Documents), nor as incurring a pecuniary liability or charge  
20 upon the general credit of the City or against its taxing power, nor shall the breach of  
21 any agreement contained in the Bond Ordinance, the Bond Documents, the Bonds,  
22 or any other instrument be construed as obligating the City (except with respect to  
23 the Project Property and the application of revenues therefrom and the proceeds of  
24 the Bond all as provided in the Bond Documents) nor as incurring a pecuniary  
25 liability or a charge upon the general credit of the City or against its taxing power, the  
26 City having no power to pay out of its general funds, or otherwise contribute any part  
27 of the costs of acquiring the Project Property, nor power to operate the Project as a  
28 business or in any manner except as lessor and seller of the Project Property.

29 Section 12. APPROVAL OF INDEMNIFICATION. The Council specifically  
30 approves the provisions of the Lease relating to indemnification which provide that  
31 the Company shall indemnify and hold harmless the City and its City Councilors,  
32 officials, members, officers, employees, and agents against liability to the Company  
33 or to any third parties that may be asserted against the City, its City Councilors,



1 officials, members, officers, employees, and agents with respect to the City's  
2 ownership of the Project Property or the issuance of the Bond and arising from the  
3 condition of the Project Property or the acquisition or operation of the Project  
4 Property by the Company, except to the extent that Section 56-7-1, New Mexico  
5 Statutes Annotated, 1978 Compilation, as amended, applies, and except claims for  
6 any loss or damage arising out of or resulting from the gross negligence or willful  
7 misconduct of the City or any official, member, officer, employee, or agent of the  
8 City.

9 Section 13. BOND ORDINANCE IRREPEALABLE. After the Bond is issued,  
10 this Bond Ordinance shall be and remain irrepealable until the Bond, including all  
11 interest thereon, is fully paid, cancelled, and discharged, or until there has been  
12 defeasance of the Bond in accordance with the Indenture.

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

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

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

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

33 CITY OF ALBUQUERQUE, NEW MEXICO

1 NOTICE OF ADOPTION OF ORDINANCE

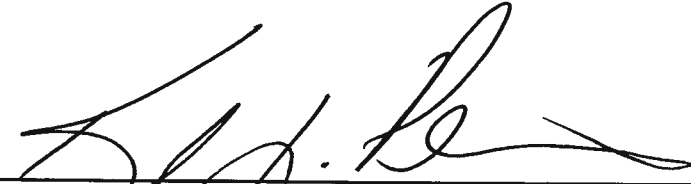
2 Notice is hereby given of the title and of a general summary of the subject matter  
3 contained in City Ordinance F/S O-19-80 (the "Ordinance"), duly adopted and approved by  
4 the City Council of the City of Albuquerque, New Mexico, on October 21, 2019. Complete  
5 copies of the Ordinance are available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

8 The title of the Ordinance is:

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

21 The title sets forth a general summary of the subject matter contained in the  
22 Ordinance.  
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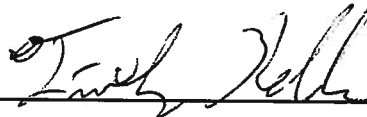
1 PASSED AND ADOPTED THIS 21st DAY OF October, 2019  
2 BY A VOTE OF: 9 FOR 0 AGAINST.  
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9 Klarissa J. Peña, President  
10 City Council  
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12  
13 APPROVED THIS 7 DAY OF November, 2019  
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16 Bill No. F/S O-19-80  
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20 Timothy M. Keller, Mayor  
21 City of Albuquerque  
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25 ATTEST:

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28 Katy Duhigg, City Clerk  
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