



TAOS COUNTY, NEW MEXICO
ORDINANCE NO. 2021-2

AUTHORIZING THE EXECUTION AND DELIVERY OF A REAL ESTATE LEASE OPTION TO PURCHASE CONTRACT FROM THE COUNTY TO ROELS CUNNYNGHAM--LUNA AZUL LP ("SELLER"), IN THE PRINCIPAL AMOUNT OF \$1,650,000.00 FOR THE PURPOSE OF FINANCING THE COUNTY'S PURCHASE OF CERTAIN REAL PROPERTY IN TAOS COUNTY, AND EVIDENCING A SPECIAL LIMITED OBLIGATION OF THE COUNTY TO PAY THE PRINCIPAL AMOUNT, TOGETHER WITH INTEREST THEREON; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF, AND INTEREST DUE UNDER THE REAL ESTATE LEASE OPTION TO PURCHASE CONTRACT FROM THE COUNTY'S ONE-EIGHTH OF ONE PERCENT (0.125%) COUNTY GROSS RECEIPTS TAX ("COUNTY GROSS RECEIPTS TAX") WHICH IS IMPOSED ON ALL PERSONS ENGAGING IN BUSINESS WITHIN THE COUNTY PURSUANT TO A COUNTY ORDINANCE ADOPTED ON AUGUST 1, 1983, AND AS AUTHORIZED BY SECTIONS 7-20E-1 THROUGH 7-20E-11, NMSA 1978, AS AMENDED, AND AS OF JULY 1, 2019, SECTION 7-20E-9, NMSA AND THE SURPLUS REVENUES: PLEDGED REVENUES ACCUMULATED OVER AND ABOVE THAT NEEDED TO PAY DEBT SERVICE AND RESERVES FOR ANY OUTSTANDING OBLIGATIONS UNDER THE GROSS RECEIPTS TAX REVENUE BONDS ("BUILD AMERICA BONDS, SERIES 2012) THAT MAY BE APPLIED TO ANY OTHER LAWFUL PURPOSE OR PURPOSES AUTHORIZED BY THE COUNTY, THE CONSTITUTION, AND THE COUNTY LOCAL OPTION GROSS RECEIPTS TAXES ACT, SECTION 7-20E-1 THROUGH SECTION 7-20E-11 NMSA 1978, AS THE COUNTY MAY FROM TIME TO TIME DETERMINE; APPROVING THE FORM AND TERMS OF, AND OTHER DETAILS CONCERNING THE REAL ESTATE LEASE OPTION TO PURCHASE CONTRACT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE REAL ESTATE LEASE OPTION TO PURCHASE CONTRACT

Capitalized terms used in the following recitals have the same meaning as defined in Section 1 of this Ordinance unless the context requires otherwise.

WHEREAS, the County is a legally and regularly created, established, organized and existing county under the general laws of the State; and

WHEREAS, the County and Seller are parties to the Option Agreement, under which the County has the option to purchase, and has exercised the option to purchase, the Property from Sellers; and

WHEREAS, the Governing Body has determined and hereby determines that the Purchase may be financed in part with payments due to Seller under the Lease and that it is in the best interests of the County and its residents that the Lease be executed and delivered and that the financing of the Purchase take place by executing and delivering the Lease; and

WHEREAS, the County may use the Pledged Revenues to finance the Purchase; and

WHEREAS, the Governing Body has determined that it may lawfully pledge the Pledged Revenues for the payment of amounts due under the Lease; and

WHEREAS, the County has enacted a one-eighth of one percent (0.125%) County Gross Receipts Tax ("County Gross Receipts Tax") which is imposed on all persons engaging in business within the County pursuant to a County Ordinance adopted on August 1, 1983, and as authorized by Sections 7-20E-1 through 7-20E-11, NMSA 1978, as amended, and as of July 1, 2019, Section 7-20E-9, NMSA and;

WHEREAS, the County has pledged the Surplus Revenues: Pledged revenues accumulated over and above that needed to pay debt service and reserves for any outstanding obligations under the Gross Receipts Tax Revenue Bonds ("Build America Bonds, Series 2012) that may be applied to any other lawful purpose or purposes authorized by the County, the Constitution, and the County Local Option Gross Receipts Taxes Act, Section 7-20E-1 through Section 7-20E-11 NMSA 1978, as the County may from time to time determine and;

WHEREAS, other than as described in the Term Sheet, the Pledged Revenues have not heretofore been pledged to secure the payment of any obligation which is currently outstanding; and

WHEREAS, the Lease shall be a special, limited obligation of the County, payable solely from the Pledged Revenues and shall not constitute a general obligation of the County, or a debt or pledge of the faith and credit of the County or the State; and

WHEREAS, the Lease shall constitute a subordinate lien on the Pledged Revenues; and

WHEREAS, other than the Pledged Revenues, no revenues collected by the County shall be specifically pledged to payment of the Lease; and

WHEREAS, there have been presented to the Governing Body and there presently are on file with the Clerk this Ordinance and the form of the Lease, which are incorporated by reference and considered to be a part hereof; and

WHEREAS, the Governing Body intends by this Ordinance to authorize the execution and delivery of the Lease in the amount and for the purposes set forth herein; and

WHEREAS, all required authorizations, consents and approvals in connection with (i) the use and pledge of the Pledged Revenues to the Seller for the payment of the amounts due under the Lease, and (ii) the authorization, execution and delivery of the Lease which are required to have been obtained by the date of this Ordinance, have been obtained or are reasonably expected to be obtained.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE COUNTY OF TAOS:

Section 1. Definitions. As used in this Ordinance, the following capitalized terms shall, for all purposes, have the meanings herein specified, unless the context clearly requires otherwise (such meanings to be equally applicable to both the singular and the plural forms of the terms defined):

"Act" means the general laws of the State, including Sections 4-62-1 through 4-62-10, 71-6.16, 7-20E-19 and 7-20E-21 NMSA 1978 as amended, and enactments of the Governing Body relating to the Lease, including this Ordinance.

"Authorized Officers" means the Chairman or Vice-Chairman of the Governing Body, the County Manager and the Clerk of the County.

"County Gross Receipts Tax" means the County's one-eighth of one percent (0.125%) County Gross Receipts Tax which is imposed on all persons engaging in business within the County pursuant to a County Ordinance adopted on August 1, 1983, and as authorized by Sections 7-20E-1 through 7-20E-11, NMSA 1978, as amended, and as of July 1, 2019, Section 7-20E-9, NMSA

"Closing Date" means the date of execution and delivery of the Lease to the Seller.

"Fiscal Year" means the period commencing on July 1 in each calendar year and ending on the last day of June of the next succeeding calendar year, or any other twelve-month period which any appropriate authority may hereafter establish for the County as its fiscal year.

"Governing Body" means the Board of County Commissioners of the County of Taos, or any future successor governing body of the County of Taos.

"Herein," "hereby," "hereunder," "hereof," "hereinabove" and "hereafter" refer to this entire Ordinance and not solely to the particular section or paragraph of this Ordinance in which such word is used.

"Lease" means the Real Estate Lease Option to Purchase Contract executed by the parties on [REDACTED].

"NMSA 1978" means the New Mexico Statutes Annotated, 1978 compilation, as amended and supplemented.

"Option Agreement" means the Real Estate Lease Option to Purchase Contract by and between the County and Seller dated as of [REDACTED], together with all attachments, exhibits, and amendments thereto, pursuant to which the County has exercised its option to purchase the Property.

"Ordinance" means this ordinance adopted by the Governing Body on [REDACTED] approving the Lease, as amended from time to time.

"Pledged Revenues" means collectively: the [REDACTED] the County's one-eighth of one percent (0.125%) County Gross Receipts Tax ("County Gross Receipts Tax") which is imposed on all persons engaging in business within the County pursuant to a County Ordinance adopted on August 1, 1983, and as authorized by Sections 7-20E-1 through 7-20E-11, NMSA 1978, as amended, and as of July 1, 2019, Section 7-20E-9, NMSA and the Surplus Revenues: Pledged revenues accumulated over and above that needed to pay debt service and reserves for any outstanding obligations under the Gross Receipts Tax Revenue Bonds ("Build America Bonds, Series 2012) that may be applied to any other lawful purpose or purposes authorized by the County, the Constitution, and the County Local Option Gross Receipts Taxes Act, Section 7-20E-1 though Section 7-20E-11 NMSA 1978, as the County may from time to time determine.

"Property" means the approximately 8.98 acre parcel of real property generally described as that portion of the Property Adjoining Casitas del Rio to [the] west and Albright to [the] south as shown on the Rgss Survey I1411-B, and Casitas del Rio street as shown on survey 76-766B containing .756 acres, more or less, in Taos County, New Mexico and, more particularly described on Exhibit "A" to the Option Agreement attached hereto and incorporated herein by reference.

"Purchase" means the County's acquisition of the Property pursuant to the Option Agreement, the Lease, and this Ordinance.

"State" means the State of New Mexico.

"Superior Obligations" means obligations, now outstanding payable from or secured by a lien or pledge of the Pledged Revenues and issued with a lien on the Pledged Revenues superior to the Lease, as described on the Term Sheet.

"Surplus Revenues" means Pledged revenues accumulated over and above that needed to pay debt service and reserves for any outstanding obligations under the Gross Receipts Tax Revenue Bonds ("Build America Bonds, Series 2012) that may be applied to any other lawful purpose or purposes authorized by the County, the Constitution, and the County Local Option Gross Receipts Taxes Act, Section 7-20E-1 through Section 7-20E-11 NMSA 1978, as the County may from time to time determine. See: Section 18, Item G of the Transcript of Proceedings for the Gross Receipts Tax Revenue Bonds ("Build America Bonds, Series 2012).

"Term Sheet" means Exhibit "B" to the Lease.

Section 2. Ratification. All action heretofore taken (not inconsistent with the provisions of this Ordinance) by the Governing Body and officers of the County directed toward the Purchase and the execution and delivery of the Lease, be, and the same hereby are, ratified, approved and confirmed.

Section 3. Authorization of the Purchase and the Lease. The Purchase and the method of financing the Purchase through execution and delivery of the Lease are hereby authorized and ordered. The Purchase is for the benefit of the County.

Section 4. Findings. The County hereby declares that it has considered all relevant information and data and hereby makes the following findings:

A. The Purchase is needed to meet the needs of the County and its residents and the issuance, execution and delivery of the Lease is necessary or advisable.

B. Moneys available and on hand for the Purchase from all sources other than the Pledged Revenues are not sufficient to defray the cost of the Purchase.

C. The Pledged Revenues may lawfully be pledged to finance the Purchase and to secure the payment of amounts due under the Lease.

D. It is economically feasible to defray, in whole or in part, the costs of the Purchase by the execution and delivery of the Lease.

E. The Purchase and the execution and delivery of the Lease pursuant to the Act to provide funds for the financing of the Purchase are necessary and in the interest of the public health, safety and welfare of the residents of the County.

F. The County will finance the Purchase with the Pledged Revenues.

G. Other than as described in the Term Sheet, the County does not have any outstanding obligations payable from the Pledged Revenues which it has incurred or will incur prior to the execution and delivery of the Lease.

H. The net effective interest rate under the Lease does not exceed twelve percent (12.0%) per annum, which is the maximum rate permitted by State law.

I. The County receives a dedicated revenue stream from the County Gross Receipts Tax.

J. The County has Surplus Revenues from the proceeds of the County Gross Receipts Tax.

Section 5. Lease - Authorization and Detail.

A. Authorization. This Ordinance has been adopted by the affirmative vote of a majority of all of the members of the Governing Body. For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the residents of the County it is hereby declared necessary that the County, pursuant to the Act, pay \$300,000.00 in presently and legally available funds as the down payment for the Property pursuant to the Option Agreement, and execute and deliver the Lease evidencing a special, limited obligation of the County to pay the remaining principal amount of \$1,350,000.00, and the execution and delivery of the Lease is hereby authorized. The County shall use the Pledged Revenues to make the payments due under the Lease.

B. Detail. The Lease shall be in substantially the form of the Lease presented at the meeting of the Governing Body at which this Ordinance was adopted. The amount due under the Lease shall be in an original aggregate principal amount of \$1,650,000.00, shall be payable in installments of principal and interest at the rate designated in the Lease, with the first payment due sixty (60) days after the parties fully execute this Contract.

Section 6. Approval of Lease. The form of the Lease as presented at the meeting of the Governing Body at which this Ordinance was adopted is hereby approved. Authorized Officers are hereby individually authorized to execute, acknowledge and deliver the Lease with such changes, insertions and omissions as may be approved by such individual Authorized Officers, and the Clerk is hereby authorized to affix the seal of the County on the Lease and attest the same. The execution of the Lease by an Authorized Officer shall be conclusive evidence of such approval.

Section 7. Special Limited Obligation. The Lease shall be secured by the pledge of the Pledged Revenues as set forth in the Lease and shall be payable solely from the Pledged Revenues. The Lease, together with interest thereon and other obligations of the County thereunder, shall be a special, limited obligation of the County, payable solely from the Pledged Revenues as provided in this Ordinance and the Lease and shall not constitute a general obligation of the County or the State, and the holders of the Lease may not look to any general or other fund of the County for payment of the obligations thereunder. Nothing contained in this Ordinance nor in the Lease, nor any other instruments, shall be construed as obligating the County (except with respect to the application of the Pledged Revenues), as incurring a pecuniary liability or a charge upon the general credit of the County or against its taxing power, nor shall a breach of any agreement contained in this Ordinance, the Lease, or

any other instrument impose any pecuniary liability upon the County or any charge upon its general credit or against its taxing power. The Lease shall constitute an indebtedness of the County within the meaning of any State constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the County or a charge against its general credit or taxing power.

Section 8. Lien on Pledged Revenues. The Pledged Revenues are hereby authorized to be pledged to, and are hereby pledged, and the County grants a security interest therein for the payment of the principal, interest, and any other amounts due under the Lease. The Lease constitutes an irrevocable lien on the Pledged Revenues, subordinate only to the lien thereon of the Superior Obligations as set forth herein and therein. No additional obligations having a lien on the Pledged Revenues superior to or on a parity with the Lease shall be issued or incurred by the County until the Lease is paid in full.

Section 9. Authorized Officers. Authorized Officers are hereby individually authorized and directed to execute and deliver any and all papers, instruments, opinions, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Ordinance, the Lease, the Option Agreement, and all other transactions contemplated hereby and thereby to complete the Purchase. Authorized Officers are hereby individually authorized to do all acts and things required of them by this Ordinance, the Lease and the Option Agreement for the full, punctual and complete performance of all the terms, covenants and agreements contained in this Ordinance, the Lease and the Option Agreement, including but not limited to, the execution and delivery of closing documents in connection with the execution and delivery of the Lease, completion of the Purchase and the publication of the summary of this Ordinance set out in Section 15 of this Ordinance (with such changes, additions and deletions as may be necessary).

Section 10. Amendment of Ordinance. This Ordinance may be amended by ordinance of the Governing Body without receipt by the County of any additional consideration, but only with the prior written consent of the Seller.

Section 11. Ordinance Irrepealable. After the Lease has been executed and delivered, this Ordinance shall be and remain irrepealable until all obligations due under the Lease shall be fully paid, canceled and discharged, as therein provided.

Section 12. Severability Clause. If any Section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such Section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Section 13. Repealer Clause. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

Section 14. Effective Date. Upon due adoption of this Ordinance, it shall be recorded in the book of the County kept for that purpose, authenticated by the signatures of the Chairman and Clerk of the County, and the title and general summary of the subject matter contained in this Ordinance (set out in Section 15 below) shall be published in a newspaper which maintains an office and is of general circulation in the County, or posted in accordance with law, and such Ordinance shall be in full force and effect thereafter, in accordance with law.

Section 15. General Summary for Publication. Pursuant to the general laws of the State, the title and a general summary of the subject matter contained in this Ordinance shall be published in substantially the following form:

(Form of Summary of Ordinance for Publication)

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Taos County, New Mexico
Notice of Adoption of Ordinance

Notice is hereby given of the title and of a general summary of the subject matter contained in Ordinance No. [REDACTED] duly adopted and approved by the Governing Body of the Taos County, New Mexico, on [REDACTED]. A complete copy of the Ordinance is available for public inspection during the normal and regular business hours of the County Clerk, 105 Albright Street, Taos, New Mexico.

The title of the Ordinance is:

ORDINANCE NO. [REDACTED]

AUTHORIZING THE EXECUTION AND DELIVERY OF A REAL ESTATE LEASE OPTION TO PURCHASE CONTRACT FROM THE COUNTY TO ROELS CUNNYNGHAM--LUNA AZUL LP ("SELLER"), IN THE PRINCIPAL AMOUNT OF \$1,650,000.00 FOR THE PURPOSE OF FINANCING THE COUNTY'S PURCHASE OF CERTAIN REAL PROPERTY IN TAOS COUNTY, AND EVIDENCING A SPECIAL LIMITED OBLIGATION OF THE COUNTY TO PAY THE PRINCIPAL AMOUNT, TOGETHER WITH INTEREST THEREON; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF, AND INTEREST DUE UNDER THE REAL ESTATE LEASE OPTION TO PURCHASE CONTRACT FROM THE COUNTY'S ONE-EIGHTH OF ONE PERCENT (0.125%) COUNTY GROSS RECEIPTS TAX ("COUNTY GROSS RECEIPTS TAX") WHICH IS IMPOSED ON ALL PERSONS ENGAGING IN BUSINESS WITHIN THE COUNTY PURSUANT TO A COUNTY ORDINANCE ADOPTED ON AUGUST 1, 1983, AND AS AUTHORIZED BY SECTIONS 7-20E-1 THROUGH 7-20E-11, NMSA 1978, AS AMENDED, AND AS OF JULY 1, 2019, SECTION 7-20E-9, NMSA AND THE SURPLUS REVENUES: PLEDGED REVENUES ACCUMULATED OVER AND ABOVE THAT NEEDED TO PAY DEBT SERVICE AND RESERVES FOR ANY OUTSTANDING OBLIGATIONS UNDER THE GROSS RECEIPTS TAX REVENUE BONDS ("BUILD AMERICA BONDS, SERIES 2012) THAT MAY BE APPLIED TO ANY OTHER LAWFUL PURPOSE OR PURPOSES AUTHORIZED BY THE COUNTY, THE CONSTITUTION, AND THE COUNTY LOCAL OPTION GROSS RECEIPTS TAXES ACT, SECTION 7-20E-1 THROUGH SECTION 7-20E-11 NMSA 1978, AS THE COUNTY MAY FROM TIME TO TIME DETERMINE; APPROVING THE FORM AND TERMS OF, AND OTHER DETAILS CONCERNING THE REAL ESTATE LEASE OPTION TO PURCHASE CONTRACT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE REAL ESTATE LEASE OPTION TO PURCHASE CONTRACT

A general summary of the subject matter of the Ordinance is contained in its title.

This notice constitutes compliance with Section 6-14-6, NMSA 1978.

(End of Form of Summary for Publication)

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The motion to adopt said Ordinance, upon being put to a vote, was passed and adopted on the following recorded vote:

Those Voting Aye: _____

Those Voting Nay: _____

Those Abstaining: _____

Those Absent:

_____ (__) members of the Governing Body having voted in favor of said motion, the Chairman declared said motion carried and said Ordinance adopted, whereupon the Chairman and the County Clerk signed the Ordinance upon the records of the minutes of the Governing Body.

After consideration of matters not relating to the Ordinance, the meeting on the motion duly made, seconded and unanimously carried, was adjourned.

TAOS COUNTY BOARD OF COMMISSIONERS

(SEAL)

By _____
, Chairman

ATTEST:

By _____
, County Clerk

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