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2 **BERNALILLO COUNTY, NEW MEXICO**
3

4 **ORDINANCE No. 2011-**
5

6 AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF
7 INDUSTRIAL REVENUE BONDS FOR THE BENEFIT OF VITALITY WORKS,
8 INC. (THE "CORPORATION"), TO BE ENTITLED BERNALILLO COUNTY,
9 NEW MEXICO TAXABLE INDUSTRIAL REVENUE BONDS (VITALITY
10 WORKS, INC. PROJECT), IN ONE OR MORE SERIES (THE "BONDS"), IN A
11 PRINCIPAL AMOUNT NOT TO EXCEED SEVEN MILLION DOLLARS
12 (\$7,000,000); PROVIDING THAT THE BONDS WILL BE ISSUED FOR THE
13 PURPOSE OF ACQUIRING, RENOVATING AND EQUIPPING A DIETARY
14 SUPPLEMENTS MANUFACTURING FACILITY AND FOR DEFRAYING PART
15 OR ALL OF THE COST OF ACQUIRING ASSETS, INCLUDING WITHOUT
16 LIMITATION, REIMBURSING THE CORPORATION FOR ANY COSTS
17 INCURRED BY THE CORPORATION FOR THE PROJECT, ALL WITHIN THE
18 COUNTY; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND
19 INTEREST ON THE BONDS FROM LEASE PAYMENTS TO BE PAID BY THE
20 CORPORATION TO THE COUNTY; PROVIDING FOR THE EXECUTION AND
21 DELIVERY OF AN INDENTURE OF TRUST AND A LEASE AGREEMENT.
22

23 **WHEREAS**, Bernalillo County, New Mexico (the "County") is a legally and regularly created,
24 established, organized and existing county under the general laws of the State of New Mexico; and

25 **WHEREAS**, the County is authorized by Sections 4-59-1 to 4-59-16, inclusive, NMSA 1978,
26 as amended (the "Act"), to acquire industrial revenue projects to be located within the County; and,
27 is authorized to adopt ordinances to provide for the safety, preserve the health, promote the
28 prosperity and improve the morals, order, comfort and convenience of the County and its inhabitants
29 (collectively, the "Act"); and

30 **WHEREAS**, the County has determined that it is in the best interests of the County and its
31 inhabitants to issue its Taxable Industrial Revenue Bonds (Vitality Works, Inc. Project), in one or
32 more series, in the aggregate principal amount not to exceed \$7,000,000 (the "Bonds") for the
33 purpose of leasing the Project to the Corporation, to provide funds necessary to acquire, renovate
34 and equip a dietary supplements manufacturing facility and to defray part or all of the cost of
35 acquiring assets, including without limitation, reimbursing the Corporation for any costs incurred by
36 the Corporation (the "Project") and to pay the costs of issuance of the Bonds; and

1 **WHEREAS**, the County has determined that it is in the best interest of the County to provide
2 for the reimbursement to the Corporation from Bond proceeds of certain costs incurred prior to the
3 adoption of this Ordinance; and

4 **WHEREAS**, the Bonds will be issued by the County pursuant to the Act and in accordance
5 with the terms of an Indenture dated as of April 15, 2011 (the “Indenture”) by and among the
6 County, the Corporation and Depository to be appointed in the Indenture; and

7 **WHEREAS**, the Purchaser, as defined in the Bond Purchase Agreement (“BPA”), will
8 purchase all of the Bonds at the purchase price set forth in the BPA; and

9 **WHEREAS**, the County is not pledging its faith and credit to the payment of the principal of
10 or the interest on the Bonds; and

11 **WHEREAS**, all required authorizations, consents or approvals of any state, governmental
12 body, agency or authority in connection with the authorization, execution and delivery of the Bonds
13 which are required to have been obtained by the date hereof, have been obtained, and which will be
14 required to be obtained prior to the date of the issuance of the Bonds, will have been obtained by
15 such date; and

16 **WHEREAS**, the following documents have been prepared in connection with the issuance of
17 the Bonds and have been reviewed by the County’s Bond Counsel and are on file with the County
18 Clerk:

19 (a) the Indenture;

20 (b) Lease Agreement by and between the County and the Corporation dated as of
21 April 15, 2011 (the “Lease Agreement”);

22 (c) Bond Purchase Agreement among the County, the Corporation and the
23 Purchaser dated as of April 15, 2011; and

24 (d) Notice of Intent to Adopt an Industrial Revenue Bond Ordinance authorized
25 by the County on March 1, 2011, published on March 5, 2011 in the Albuquerque Journal.

26 **WHEREAS**, there is on deposit with the County Clerk the proposed form of Bond Ordinance;

1 **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF**
2 **BERNALILLO COUNTY, NEW MEXICO:**

3 **SECTION 1.** *Approval of Indenture; Appointment of Depositary, Bond Registrar and*
4 *Paying Agent.* The Indenture, substantially in the form presented herewith, with such changes,
5 insertions, deletions and modifications as may be approved by the Chair of the Board and as may be
6 recommended by Bond Counsel is hereby ratified and approved. All such changes, insertions,
7 deletions and modifications shall be deemed to have been approved by the County upon execution
8 and delivery of the Indenture, such execution and delivery to be conclusive evidence of such
9 approval. The Depositary, Registrar and Paying Agent for the Bonds shall be the entity or entities so
10 designated in the Indenture.

11 **SECTION 2.** *Execution and Delivery of the Indenture.* The Chair or the Vice-Chair of the
12 Board is hereby authorized and directed to execute and deliver the Indenture on behalf of the County
13 in substantially the form presented herewith, with such changes, insertions, deletions and
14 modifications as may be approved by the Chair or Vice-Chair of the Board and as may be
15 recommended by Bond Counsel. All such changes, insertions, deletions and modifications shall be
16 deemed to have been approved by the County upon execution and delivery of the Indenture, such
17 execution and delivery to be conclusive evidence of such approval. All capitalized terms in this
18 Ordinance shall have the meanings set forth in the Indenture unless otherwise defined herein.

19 **SECTION 3.** *Authorization of the Bonds.* The Board hereby authorizes and approves the
20 issuance of the Bonds for the purposes of acquiring land, improvements, renovating and equipping a
21 dietary supplements manufacturing facility and for defraying part or all of the cost of acquiring
22 assets, including without limitation, reimbursing the Corporation for any costs incurred by the
23 Corporation for the Project, and paying the costs of issuance of the Bonds including, but not limited
24 to, the reimbursement of certain costs incurred by the Corporation prior to the adoption of this
25 Ordinance. The Bonds shall be issued under the terms and conditions of the Indenture, including
26 provisions for the payment of principal of and interest on the Bonds, and shall be signed by the Chair
27 of the Board, or the Vice Chair acting in her absence, and the County Clerk, or a deputy County
28 Clerk acting in her absence.

1 **SECTION 4.** *Approval of Lease Agreement.* The Chair of the Board is hereby authorized
2 and directed to execute and deliver the Lease Agreement on behalf of the County in substantially the
3 form presented herewith, with such changes, insertions, deletions and modifications as may be
4 approved by the Chair of the Board and as may be recommended by Bond Counsel. All such
5 changes, insertions, deletions and modifications shall be deemed to have been approved by the
6 County upon execution and delivery of the Lease Agreement, such execution and delivery to be
7 conclusive evidence of such approval. The Lease Agreement requires the Corporation to maintain
8 the Project in good repair and condition (excepting reasonable wear and tear) and carry proper
9 insurance with respect to the Project. The Lease Agreement requires the Corporation to make
10 payments sufficient to pay the principal of, redemption premium, if any, and interest on the Bonds as
11 principal, redemption premium and interest become due.

12 **SECTION 5.** *Approval of Bond Purchase Agreement.* The Chair of the Board is hereby
13 authorized and directed to execute and deliver the Bond Purchase Agreement on behalf of the
14 County in substantially the form presented herewith, with such changes, insertions, deletions and
15 modifications as may be approved by the Chair of the Board and as may be recommended by Bond
16 Counsel. All such changes, insertions, deletions and modifications shall be deemed to have been
17 approved by the County upon execution and delivery of the Bond Purchase Agreement, such
18 execution and delivery to be conclusive evidence of such approval.

19 **SECTION 6.** *General Authorization.* The Board hereby authorizes, empowers and directs
20 each of the officers (including the Board officers and the Vice Chair acting on behalf of the Chair
21 and the Deputy County Clerk acting on behalf of the County Clerk) and employees of the County,
22 and its counsel, to carry out or cause to be carried out, and to perform, such obligations of the
23 County and such other actions as they, in consultation with Bond Counsel and advisors to the
24 County in connection with the issuance, sale and delivery by the County of its Bonds, shall consider
25 necessary or advisable in connection with this Ordinance, including but not limited to the Indenture,
26 the Lease Agreement, and such other documents deemed necessary, and the issuance, sale and
27 delivery of the Bonds.

1 **SECTION 7. Severability.** If any one or more provisions of this Ordinance should be
 2 determined by a court of competent jurisdiction to be contrary to law, any such provision shall be
 3 deemed separable from the remaining provisions hereby and the invalidity or unenforceability
 4 thereof shall in no way affect the validity or the enforceability of the other provisions of this
 5 Ordinance.

6 **SECTION 8. No Recourse and Liability.** All covenants, stipulations, obligations and
 7 agreements of the County contained in this Ordinance, and in the documents hereby approved and
 8 authorized for execution, shall be deemed to be the covenants, stipulations, obligations and
 9 agreements of the County, and all such covenants, stipulations, obligations and agreements shall be
 10 binding upon the County, and, except as otherwise provided in this Ordinance and such documents,
 11 all rights, powers and privileges conferred, and duties and liabilities imposed, upon the County by
 12 the provisions of this Ordinance, and in the documents hereby approved and authorized for
 13 execution, shall be exercised or performed by the Board; provided that no covenant, stipulation,
 14 obligation or agreement herein contained or contained in any document hereby approved and
 15 authorized for execution shall be deemed to be a covenant, stipulation, obligation or agreement of
 16 any officer, director, member, or employee of the County in his individual capacity, and neither the
 17 members of the Board nor any officials executing the Bonds shall be liable personally on the Bonds
 18 or be subject to any personal liability or accountability by reason of the issuance thereof.

19 **SECTION 9. Ordinance Irrepealable.** After the Bonds are issued, this Ordinance shall be
 20 and remain irrepealable until the Bonds and the interest thereon shall be fully paid, canceled and
 21 discharged, as provided in the Indenture, or there has been a defeasance as provided in the Indenture.

22 **SECTION 10. Repealer Clause.** All bylaws, orders, resolutions and ordinances, or parts
 23 thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This
 24 repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof,
 25 heretofore repealed.

26 **SECTION 11. Declaration of Emergency and Effective Date.** An emergency is hereby
 27 declared in order to preserve the health, welfare and economy of the County, and it is therefore
 28 necessary that this Ordinance become effective immediately upon filing with the County Clerk.

1 the purpose of leasing the project to Vitality Works, Inc., a New Mexico corporation (the
2 “Corporation”) to provide funds for the purposes of acquiring, renovating and equipping a dietary
3 supplements manufacturing facility and for defraying part or all of the cost of acquiring assets,
4 including without limitation, reimbursing the Corporation for any costs incurred by the Corporation
5 (the “Project”), and to pay the costs of issuance of the Bonds; to be sold to the Purchaser and at the
6 price to be set in the Bond Purchase Agreement; recites that the County is not pledging its faith and
7 credit to the payment of the principal of or interest on the Bonds; recites that all required
8 governmental authorizations or approvals have been obtained or will be obtained by the date of
9 issuance of the Bonds; recites that project documents have been reviewed by Bond Counsel; recites
10 that the form of Bond Ordinance is on deposit with the County Clerk.

11 **SECTION 1** approves the Indenture and provides for the appointment of the Depository,
12 Registrar and Paying Agent.

13 **SECTION 2** authorizes the Chair of the Board to execute the Indenture.

14 **SECTION 3** authorizes the issuance of the Bonds.

15 **SECTION 4** approves the Lease Agreement.

16 **SECTION 5** approves the Bond Purchase Agreement.

17 **SECTION 6** is the General Authorization provision which directs the officers of the Board and
18 employees of the County to execute all required documents.

19 **SECTION 7** is the severability clause.

20 **SECTION 8** provides that no individual member of the Board or employee of the County shall
21 be personally liable on the Bonds.

22 **SECTION 9** provides that the Ordinance is not repealable by the County so long as there are
23 Bonds outstanding.

24 **SECTION 10** provides that all inconsistent resolutions and ordinances are repealed.

1 SECTION 11 provides that the Ordinance shall be in full force and effect thirty days after
2 recordation and publication.

3 SECTION 12 provides for a summary of the Ordinance to be published.

4 COMPLETE COPIES OF THE ORDINANCE ARE ON FILE IN THE OFFICE OF THE COUNTY CLERK,
5 ONE CIVIC PLAZA, 6TH FLOOR, ALBUQUERQUE, NEW MEXICO, 87102, AND ARE AVAILABLE FOR
6 INSPECTION OR PURCHASE DURING REGULAR OFFICE HOURS. THIS NOTICE ALSO CONSTITUTES
7 COMPLIANCE WITH SECTIONS 6-14-4 THROUGH 6-14-7, NMSA 1978.

8 WITNESS my hand and seal of the County this 22nd day of March, 2011.

9 (SEAL)

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11

/s/ Maggie Toulouse Oliver
County Clerk

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(End of Form of Ordinance for Publication)

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Passed and Adopted this 22nd day of March, 2011.

**BOARD OF COUNTY COMMISSIONERS
BERNALILLO COUNTY, NEW MEXICO**

Maggie Hart Stebbins, Chair

Art De La Cruz, Vice Chairman

Michelle Lujan Grisham, Member

Michael C. Wiener, Member

Wayne A. Johnson, Member

[SEAL]

Attest:

Maggie Toulouse Oliver, County Clerk

Approved as to Form:

By: _____
Tommy D. Hughes, Bond Counsel