

CITY of ALBUQUERQUE
TWENTY-FOURTH COUNCIL

COUNCIL BILL NO. F/S R-21-211 ENACTMENT NO. 3-2021-082

SPONSORED BY: COUNCILOR DAVIS, by request

1 RESOLUTION

2 PROVIDING FOR THE AUTHORIZATION, EXECUTION AND DELIVERY OF THE
3 AMENDMENT OF THAT CERTAIN LEASE BETWEEN THE CITY OF
4 ALBUQUERQUE, NEW MEXICO AND KAIROS POWER LLC IN CONNECTION
5 WITH THE PREVIOUSLY ISSUED CITY OF ALBUQUERQUE, NEW MEXICO
6 TAXABLE INDUSTRIAL REVENUE BONDS (KAIROS POWER PROJECT)
7 SERIES 2020 IN THE AMOUNT OF \$125,000,000 TO REVISE THE DESCRIPTION
8 OF THE PROJECT SITE BASED ON THE TERMINATION OF A CERTAIN
9 CONDOMINIUM; AUTHORIZING THE TERMINATION OF A CERTAIN
10 CONDOMINIUM; AUTHORIZING THE TAKING OF OTHER ACTION IN
11 CONNECTION WITH THE AMENDMENT AND TERMINATION OF A CERTAIN
12 CONDOMINIUM; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND
13 REPEALING ALL ACTIONS INCONSISTENT WITH THIS RESOLUTION.

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 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 Ordinance No. O-2020-004 (the “Bond Ordinance”), the
23 City Council of the City (the “Council”) issued its Taxable Industrial Revenue Bonds
24 (Kairos Power Project) Series 2020 (the “Bonds”) in the aggregate principal amount

1 of \$125,000,000 for Kairos Power, LLC (the "Company") to finance all or part of the
2 costs of the acquisition, improvement and equipping of a facility for an advanced
3 energy technology research and development company (the "Project"); and

4 WHEREAS, the Project Site (as defined in the Agreement) currently includes Unit
5 A of GMI Condominium (the "Condominium") as more specifically set forth in Exhibit
6 A of that certain Lease Agreement dated as of March 1, 2020, as recorded on May
7 19, 2020 as Document No. 2020044119, recorded of the Bernalillo County Clerk,
8 between the City and the Company (the "Agreement"); and

9 WHEREAS, the Company has recently purchased Unit B of the Condominium
10 (the "Additional Parcel"), which comprises the remaining 7.41% of the Condominium;
11 and

12 WHEREAS, the Company has informed the Council that the Company desires to
13 incorporate the Additional Parcel into the Project Site and terminate the
14 Condominium, resulting in the Project Site containing the fee simple interest in all
15 the real estate currently subject to the Condominium; and

16 WHEREAS, the Council and the Company desire to amend the Agreement
17 incorporate the Additional Parcel into the Project Site and terminate the
18 Condominium; and

19 WHEREAS, a form of First Amendment to Lease Agreement (the "Amendment")
20 has been presented to the Council with this Resolution; and

21 WHEREAS, the proposed form of the Amendment has been filed with the City
22 Clerk and presented to the Council; and

23 WHEREAS, the Council desires to approve the execution of the Amendment and
24 termination of the Condominium.

25 BE IT RESOLVED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF
26 ALBUQUERQUE:

27 Section 1. RATIFICATION. All actions not inconsistent with the provisions of
28 this Resolution previously taken by the Council and the officials of the City directed
29 toward approval of the Amendment and termination of the Condominium are ratified,
30 approved and confirmed.

1 Section 2. APPROVAL AND AUTHORIZATION OF THE AMENDMENT AND
2 THE CONDOMINIUM TERMINATION. The Amendment, substantially in the form
3 presented herewith, with such changes, insertions, deletions and modifications as
4 may be approved by the Mayor or the Chief Administrative Officer and as may be
5 recommended by Bond Counsel, is hereby authorized, ratified and approved. All
6 such changes, insertions, deletions and modifications shall be deemed to have been
7 approved and authorized by the City upon execution and delivery of the
8 Amendment, such execution and delivery to be conclusive evidence of such
9 approval. The Mayor or the Chief Administrative Officer of the City are hereby
10 authorized and directed to execute and deliver the Amendment on behalf of the City
11 and the City Clerk or a deputy Clerk acting in his absence is hereby authorized and
12 directed to attest the Amendment. The Mayor of the Chief Administrative Officer of
13 the City are further authorized and directed to take all steps necessary, proper or
14 convenient to terminate the Condominium, and the City Clerk or a deputy Clerk
15 acting in his absence is hereby authorized and directed to attest any documents
16 used to terminate the Condominium.

17 Section 3. GENERAL AUTHORIZATION. The Council hereby authorizes,
18 empowers and directs each of the officers (including the Council officers) and
19 employees of the City, and its counsel, to execute, carry out or cause to be carried
20 out, and to perform, such obligations of the City and such other actions as they, in
21 consultation with Bond Counsel and advisors to the City in connection with the
22 authorization, execution and delivery by the City of the Amendment and termination
23 of the Condominium, shall consider necessary or advisable in connection with this
24 Resolution, including but not limited to the obligations of the City contained in the
25 documents necessary to terminate the Condominium and the Amendment and such
26 other documents and any amendments, from time to time, thereto, deemed
27 necessary, and for the authorization, execution and delivery of the Amendment and
28 such documents necessary to terminate the Condominium.

29 Section 4. SEVERABILITY. If any section, paragraph, clause or provision of
30 this Resolution shall for any reason be held to be invalid or unenforceable, the

1 invalidity or unenforceability of that section, paragraph, clause, or provision shall not
2 affect any of the remaining provisions of this Resolution.

3 Section 5. REPEALER. All by-laws, ordinances, resolutions, and orders, or
4 parts thereof, inconsistent with this Resolution are repealed by this Resolution but
5 only to the extent of that inconsistency. This repealer shall not be construed to
6 revive any by-law, ordinance, resolution, or order, or part thereof, previously
7 repealed.

8 Section 6. RECORDING; AUTHENTICATION; EFFECTIVE DATE. This
9 Resolution, immediately upon its final passage and approval, shall be recorded in
10 the book of the City kept for that purpose and shall be there authenticated by the
11 signature of the Mayor and the presiding officer of the City Council, and by the
12 signature of the City Clerk or any Deputy City Clerk, and shall be in full force and
13 effect five (5) days following such recording.

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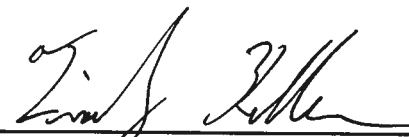
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1 PASSED AND ADOPTED THIS 15th DAY OF November, 2021
2 BY A VOTE OF: 9 FOR 0 AGAINST.

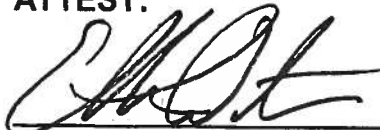
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8 Cynthia D. Borrego, President
9 City Council

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13 APPROVED THIS 22 DAY OF December, 2021

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16 Bill No. F/S R-21-211

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21 Timothy M. Keller, Mayor
22 City of Albuquerque
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28 ATTEST:

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31 Ethan Watson, City Clerk
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