CITY of ALBUQUERQUE
TWENTY-FOURTH COUNCIL

COUNCIL BILL NO. F/S R-21-211____ ENACTMENT NO. _____

SPONSORED BY: COUNCILOR DAVIS, by request

RESOLUTION

F/S Providing For The Authorization, Execution And Delivery Of The Amendment Of That Certain Lease Between The City Of Albuquerque, New Mexico And Kairos Power LLC In Connection With The Previously Issued City Of Albuquerque, New Mexico Taxable Industrial Revenue Bonds (Kairos Power Project) Series 2020 In The Amount Of $125,000,000 To Revise The Description Of The Project Site Based On The Termination Of A Certain Condominium; Authorizing The Termination Of A Certain Condominium; Authorizing The Taking Of Other Action In Connection With The Amendment And Termination Of A Certain Condominium; Ratifying Certain Actions Taken Previously; And Repealing All Actions Inconsistent With This Resolution (Davis, by request)

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

WHEREAS, the City of Albuquerque (the “City”) is a legally and regularly created, established,

organized, and existing municipal corporation of the State of New Mexico (the "State"); and

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

WHEREAS, pursuant to Ordinance No. O-2020-004 (the "Bond Ordinance"), the City Council of the City (the "Council") issued its Taxable Industrial Revenue Bonds (Kairos Power Project) Series 2020 (the "Bonds") in the aggregate principal amount of $125,000,000 for Kairos Power, LLC (the "Company") to finance all or part of the costs of the acquisition, improvement and equipping of a facility for an advanced energy technology research and development company (the "Project"); and

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

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

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

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

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

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

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

BE IT RESOLVED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF

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ALBUQUERQUE:

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

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

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

Section 4. SEVERABILITY. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of that section, paragraph, clause, or provision shall not affect any of the remaining provisions of this

Resolution.

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

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

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