

STATE OF NEW MEXICO)
) ss.
COUNTY OF LUNA)

The Board of County Commissioners (the "Board") of Luna County (the "County"), in the State of New Mexico, met in open regular session in full conformity with law and the ordinances and rules of the County, in the Commission Chambers at the Luna County Courthouse, 700 South Silver Street, Deming, New Mexico 88030, in the County, being the regular meeting place of the Board, at 9:30 a.m. on Monday, December 19, 2022, at which time there were present and answering the roll call the following members*:

Chairperson:

Linda Smrkovsky, District 2

Commissioners:

Barbara Reedy, District 1
John Sweetser, District 3

Absent:

None

The County Manager, County Clerk and County Attorney were also present.

Thereupon the following proceedings, among others, were had and taken, to wit:

There was officially filed with the County Clerk, the Chairperson and each Commissioner, a copy of an ordinance in final form, which is as follows:

LUNA COUNTY-NM
BERENDA MCWRIGHT, CLERK
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BY PAULAG



LUNA COUNTY, NEW MEXICO

ORDINANCE NO. 115

LUNA COUNTY-NM
BERENDA MCWRIGHT, CLERK
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BY PAULAG

AUTHORIZING THE ISSUANCE AND SALE OF LUNA COUNTY, NEW MEXICO TAXABLE INDUSTRIAL REVENUE BONDS (CARNE SOLAR PROJECT), SERIES 2022A, IN THE MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF \$200,000,000, TO PROVIDE FUNDS TO FINANCE THE ACQUISITION, CONSTRUCTION, EQUIPPING AND INSTALLATION OF SOLAR ENERGY FACILITIES TO BE CONSTRUCTED FOR THE PURPOSE OF GENERATING ELECTRICITY AND LOCATED WITHIN THE COUNTY BUT OUTSIDE THE BOUNDARIES OF ANY INCORPORATED MUNICIPALITY; AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE, A LEASE AGREEMENT, A BOND PURCHASE AGREEMENT, A SUBLEASE AGREEMENT, THE BONDS, AND OTHER DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE BONDS AND THE PROJECT; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO THE BONDS AND THE PROJECT; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

WHEREAS, Luna County (the "County") of the State of New Mexico (the "State") is a legally and regularly created, established, organized and existing political subdivision of the State; and

WHEREAS, pursuant to the New Mexico County Industrial Revenue Bond Act, NMSA, 1978, Sections 4-59-1 to -16, (1975, as amended through 2021) (the "Act"), the Board of County Commissioners (the "Board") of the County is authorized to issue industrial revenue bonds to

acquire industrial revenue projects to be located within the County, but outside the boundaries of any incorporated municipality, and to use the proceeds of such bonds for the purpose of promoting industry and trade by inducing manufacturing, industrial and commercial enterprises to locate or expand in the State, promoting the use of natural resources of the State and promoting a sound and proper balance in the State between agriculture, commerce and industry; and

WHEREAS, the County desires to promote industry and develop trade or other economic activity to secure and maintain a balanced and stable economy in the County and to promote public health, welfare, safety, convenience and prosperity; and

WHEREAS, Solar PV Development NM 18 II LLC, a New Mexico limited liability company authorized to do business in the State (the "Company") along with its affiliated entities presented to the Board a proposal (the "Proposal") in connection with the adoption of an inducement resolution (Resolution No. 22-84) on November 14, 2022 (the "Inducement Resolution"), pursuant to which the County expressed its intent to proceed with issuance of taxable industrial revenue bonds for projects to be developed by the Company and other affiliated entities identified in the Inducement Resolution; and

WHEREAS, pursuant to the Inducement Resolution and the Proposal, the Company has requested the County to proceed to (a) issue its Taxable Industrial Revenue Bonds (Carne Solar Project), Series 2022A (the "Series 2022A Bonds"); and (b) acquire, construct, equip, and install an industrial revenue project (the "Project"), including, without limitation, certain real property rights, fee title, easements, rights-of-way and leasehold interests, solar generation equipment and other tangible personal property consisting of solar thermal energy collection, concentration and heat transfer and conversion equipment, solar tracking hardware and software, photovoltaic panels and inverters, support structures, turbines and associated electrical generating equipment

used to generate electricity from solar thermal energy, and related equipment, to be located within the County but outside the boundaries of any incorporated municipality, and to be used by the Company and its respective successors, assigns or affiliates for the generation, transportation and delivery of electricity (collectively, the “Project Property”); and

WHEREAS, under the Proposal, the County would enter into an indenture for the Series 2022A Bonds (the “Indenture”), with the Company, one or more affiliates of the Company, as purchaser of the Series 2022A Bonds (the “Purchaser”), and one or more financial institutions organized and existing under and by virtue of the laws of the United States, as depository (the “Depository”) pursuant to which, together with this ordinance (this “Bond Ordinance”), the County would issue the Series 2022A Bonds; and

WHEREAS, under the Proposal, the County would enter into a sublease with the Company for the Series 2022A Bonds (the “Sublease Agreement”), whereby the Company would lease or sublease to the County the site for the Project (the “Project Site”), and would enter into a lease with the Company for the Series 2022A Bonds (the “Lease Agreement”) pursuant to which the Company would lease or sublease from the County the Project Property including the Project Site; and the Company would make payments sufficient to pay the principal of and interest on the Series 2022A Bonds and to pay all other obligations incurred pursuant to the provisions of the Lease Agreement, the Indenture, the Sublease Agreement and this Bond Ordinance; and

WHEREAS, the Series 2022A Bonds shall be special limited obligations of the County, payable solely from the Basic Rent (as defined in the Lease Agreement) paid by the Company to the County as described in the Indenture and shall never constitute a debt or indebtedness of the County and shall not constitute or give rise to a pecuniary liability of the County or a charge against its general credit or taxing power, as further described herein; and

WHEREAS, the County is authorized to enter into, deliver and perform all of its obligations under the Bond Documents (defined below) and to issue, execute and deliver the Series 2022A Bonds pursuant to the Act and this Bond Ordinance; and

WHEREAS, the Series 2022A Bonds in an aggregate principal amount up to \$200,000,000 will be issued, sold and delivered by the County, in a private sale to the Purchaser under the Indenture, pursuant to a bond purchase agreement for the Series 2022A Bonds (the "Bond Purchase Agreement") to be entered into among the County, the Purchaser and the Company; and

WHEREAS, the proceeds of the Series 2022A Bonds will be applied to pay the costs of the Project in whole or in part, including, but not limited to, the reimbursement of any costs incurred by the Company and payment of transaction expenses associated with the transaction; and

WHEREAS, the Board has determined that it is in the best interest of the County to issue the Series 2022A Bonds and to execute and deliver the Bond Documents (defined below), and other documents related thereto; and

WHEREAS, in connection with the issuance of the Series 2022A Bonds, there have been filed with the County Clerk and presented to the Board the forms of documents listed below, which the County will execute substantially in such form in connection with the issuance of the Series 2022A Bonds:

1. the Lease Agreement;
2. the Indenture (with the form of the Series 2022A Bonds attached);
3. the Sublease Agreement; and
4. the Bond Purchase Agreement.

The Lease Agreement, the Indenture, the Sublease Agreement and the Bond Purchase Agreement are herein collectively referred to as the “Bond Documents”; and

WHEREAS, the County is authorized to issue the Series 2022A Bonds under the Act and after having considered the Proposal, the Board has concluded that it is desirable at this time to authorize the issuance of the Series 2022A Bonds to finance the Project and that the County’s issuance of the Series 2022A Bonds will constitute and be a valid public purpose; and

WHEREAS, the Board has been advised that the disclosure provisions of Rule 15c-2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 are not applicable to this transaction inasmuch as the Series 2022A Bonds are being sold in a private sale without participation of an underwriter; and

WHEREAS, pursuant to the Inducement Resolution, there has been published in *The Deming Headlight*, a newspaper of general circulation within the County, public notice of the Board’s intention to adopt this Bond Ordinance, which notice contained certain information concerning the ownership, purpose, location and the amount of the Series 2022A Bonds to be issued to finance the Project, which notice was published at least fourteen (14) days prior to final action upon this Bond Ordinance; and

WHEREAS, the County has given notice to the County Assessor and any entity located in the County authorized to levy taxes on property in the County of its intent to consider this Bond Ordinance authorizing the issuance of the Series 2022A Bonds at least thirty (30) days prior to the date hereof and at which this Bond Ordinance is to be considered for adoption by the Board; and

WHEREAS, the County and the Company have agreed that the Company will pay to the County and Deming Public Schools certain annual in-lieu tax payments (“PILT Payments”) for the period that the County owns and leases the Project Property; and

WHEREAS, pursuant to County Resolution No. 22-89 adopted by the Board on November 14, 2022 (the "Permit Resolution"), the County has issued its final approval of the Permit (as defined in the Permit Resolution) for an approximately 130 megawatt ("MW") solar energy generating system and associated approximately 65 MW battery energy storage system (the "Carne Solar Project"), which Permit shall expire on December 31, 2053.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LUNA COUNTY, NEW MEXICO:

Section 1. RATIFICATION. All actions not inconsistent with the provisions of this Bond Ordinance previously taken by the Board and the officials of the County directed toward approval of the issuance and sale of the Bonds be approved and the same hereby are ratified, approved and confirmed. All capitalized terms in this Bond Ordinance shall have the meanings set forth in the Indenture, which has been filed with the County Clerk, unless otherwise defined herein.

Section 2. FINDINGS.

A. General. The Board hereby declares that it has considered relevant information presented to it relating to the Series 2022A Bonds and the Project and hereby finds and determines that the issuance of the Series 2022A Bonds pursuant to this Bond Ordinance is necessary and advisable and in the interest of, and will promote the use of the natural resources of, the State and promote industry and trade and a sound and proper balance in the State between agriculture, commerce and industry.

B. The Board finds that:

(1) The Series 2022A Bonds will be issued for the purpose of financing the Project;

(2) The face amount of the Series 2022A Bonds to be issued with respect to financing the Project is an aggregate principal amount up to \$200,000,000;

(3) The Company is the developer of the Project and the Company (or its respective successors, assigns or affiliates) will operate the Project;

(4) The Project Property will be located within Luna County, but outside the boundaries of any incorporated municipality.

Section 3. BONDS - APPROVAL, AUTHORIZATION AND DETAIL.

A. Approval and Sale.

The issuance of the Series 2022A Bonds in an aggregate principal amount up to \$200,000,000, and the use of the proceeds of the Series 2022A Bonds to finance the cost of the Project, in whole or in part, including, but not limited to, the reimbursement of any costs incurred by the Company and payment of transaction expenses related thereto are hereby approved and confirmed. The sale of the Series 2022A Bonds at par in an aggregate principal amount up to \$200,000,000 is approved. The Series 2022A Bonds shall be designated as set forth in the recitals of this Bond Ordinance, provided that the County may subsequently designate a different bond title, including, but not limited to, the series designation.

B. Form and Terms.

Subject to the limitations set forth in this Bond Ordinance, the Series 2022A Bonds shall (i) be in the form and denomination and shall be numbered and dated as set forth in the Indenture; (ii) be 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) be issued in the principal amount of up to \$200,000,000, bearing interest at the rate and maturing on the date or dates set forth in the Indenture.

C. Execution. The Series 2022A Bonds shall be executed on behalf of the County with the manual or facsimile signature of the Board Chairperson or Chairperson Pro-Tem and shall be attested by the manual or facsimile signature of the County Clerk or a Deputy County Clerk and shall have impressed or imprinted thereon the official seal of the County. If any of the officers who shall have signed or sealed any of said Series 2022A Bonds shall cease to be such officer of the County before the Series 2022A Bonds so signed and sealed shall have been actually authenticated and delivered by the County, such Series 2022A Bonds nevertheless may be authenticated, issued and delivered with the same force and effect as though the person or persons who signed or sealed such Series 2022A Bonds had not ceased to be such officer or officers of the County; and also any such Series 2022A Bonds may be signed and sealed on behalf of the County by those persons who, on the actual date of the execution of such Series 2022A Bonds, shall be the proper officers of the County, although at the nominal date of such Series 2022A Bonds any such person shall not have been such officer of the County.

D. Interest Rate. The interest rate on the Series 2022A Bonds shall be as specified in the Indenture, but shall not exceed four percent (4.000%) per annum.

Section 4. AUTHORIZATION OF OFFICERS; APPROVAL OF DOCUMENTS; ACTIONS TO BE TAKEN. The form, terms and provisions of the Bond Documents and the Series 2022A Bonds in the form on deposit in the office of the County Clerk are in all respects approved, authorized and confirmed.

The Board Chairperson, Chairperson Pro-Tem or the County Manager, upon consultation with and the advice of the County Attorney, are each individually authorized to approve revisions to the form, terms and provisions of the Bond Documents on behalf of the Board, provided that such revisions to the form, terms and provisions are consistent with this Bond Ordinance, including revisions to the timing and structure of the PILT Payments so long as the

aggregate amount of the PILT Payments to be made by the Company equals at least \$7,553,000.00, and provided that all such changes, insertions, deletions, modifications and other revisions shall be deemed approved by the Board upon execution and delivery of the Bond Documents, such execution and delivery to be conclusive evidence of such approval, and the Board Chairperson or Chairperson Pro-Tem are each individually authorized to execute and deliver in the name and on behalf of the County, and the County Clerk and Deputy County Clerk are hereby authorized to attest, as appropriate, the Bond Documents and the Series 2022A Bonds.

The Board Chairperson, Chairperson Pro-Tem or County Manager are each individually authorized and the County Clerk and Deputy County Clerk are further authorized to execute, authenticate and deliver such certifications, instruments, documents, letters and other agreements, including leases, subleases, security agreements and subordination agreements and instruments as requested from time to time by the Company or any lender or lenders or tax equity participants providing financing for the Project, and to do such other acts and things, either prior to or after the date of delivery of the Bonds, as are necessary or appropriate to consummate the transactions contemplated by the Bond Documents and are consistent with the terms of this Bond Ordinance.

The Board Chairperson, Chairperson Pro-Tem or County Manager shall take such action as is necessary to effectuate the provisions of the Indenture and shall take such action as is necessary in conformity with the Act to finance the costs of the Project and for carrying out other transactions as contemplated by this Bond Ordinance and the Bond Documents, including, without limitation, the execution and delivery of any closing documents to be delivered in connection with the sale and delivery of the Series 2022A Bonds.

Section 5. FINDINGS REGARDING PAYMENT OF PRINCIPAL AND OTHER MATTERS. The following determinations and findings are made:

A. The Series 2022A Bonds will be outstanding for a maximum of thirty (30) years from the date of issuance. No principal will be due for the 1st year to and including the 29th year that the Series 2022A Bonds are outstanding. Assuming issuance of the Series 2022A Bonds on February 1, 2023 in the maximum principal amount of \$200,000,000 bearing an annual interest rate of four percent (4.00%), interest payments will be due in the amount of \$8,000,000 in each of the years 2024 through 2052 and the full principal plus interest thereon shall be due at maturity on February 1, 2053 in the amount of \$208,000,000.

B. The Series 2022A Bonds will bear interest at a rate not to exceed four percent (4.00%) per annum, as specified in the Indenture.

C. The Series 2022A Bonds may be redeemed at any time without premium.

D. It shall not be necessary to deposit any amount in a debt service reserve fund or a repair and replacement reserve fund for the maintenance of the Project Property.

E. The Lease Agreement requires that the Company (or its respective successors, assigns or affiliates) maintain the Project Property in good repair and condition and carry proper insurance with respect to the Project Property as provided in the Lease Agreement.

F. The Lease Agreement requires the Company to make lease payments in an amount sufficient to pay the principal of and interest on the Series 2022A Bonds as principal and interest become due and to pay all related costs.

Section 6. LIMITED OBLIGATIONS. The Series 2022A Bonds shall be special limited obligations of the County, payable solely from the Basic Rent (as defined in the Lease Agreement) paid by the Company to the County as described in the Indenture and any other property or interest of the County specifically pledged under the Indenture or other security

documents, and shall never constitute a debt or indebtedness of the County or the State or any political subdivision thereof within the meaning of any provision or limitation of the State Constitution or statutes, and shall not constitute or give rise to a pecuniary liability of the County or a charge against its general credit or taxing power. Nothing contained in this Bond Ordinance, the Bond Documents or the Series 2022A Bonds or any other instrument shall be construed as obligating the County (except with respect to the Project Property and the application of the revenues therefrom and the proceeds of the Series 2022A Bonds, all as provided in the Bond Documents and the Series 2022A Bonds), nor as incurring a pecuniary liability or a charge upon the general credit of the County or against its taxing powers, nor shall the breach of any agreement contained in this Bond Ordinance, the Bond Documents, the Series 2022A Bonds or any other instrument be construed as obligating the County (except with respect to the Project Property and the application of the revenues therefrom and the proceeds of the Series 2022A Bonds, all as provided in the Bond Documents and the Series 2022A Bonds), nor as incurring a pecuniary liability or a charge upon the general credit of the County or against its taxing power, the County having no power to pay out of its general funds, or otherwise contribute any part of the costs of constructing or equipping the Project Property, nor power to operate the Project Property as a business or in any manner except as lessor of the Project Property.

Section 7. RATIFICATION OF AGENCY. The Company will act as agent for the County with respect to the Project and in the acquisition of the Project Property. The County authorizes the Company to act as agent for the County for the purchase of solar generation equipment used to generate electricity from solar energy and related equipment as defined in NMSA 1978, Section 7-9-54.3 (2010) with respect to the Project. The Company, as agent, will also request and obtain Type 9 Nontaxable Transaction Certificates ("Certificates") from the New Mexico Taxation and Revenue Department, and the County will cooperate with the

Company to so obtain such Certificates and will allow the Company to use the Certificates that have been properly executed for acquisition of tangible personal property relating to the Project and the Project Property under and consistent with the New Mexico Gross Receipts and Compensating Tax Act, NMSA 1978, Sections 7-9-1 to -116 (1966, as amended through 2022) and applicable regulations. The Company shall not use the Certificates other than for the purchase of equipment and other tangible property as permitted by law, nor shall the Company use such Certificates after the completion of the Project. All actions taken by the Company since November 14, 2022, the date of adoption of the Inducement Resolution, that are not inconsistent with this Section 7, are hereby ratified and confirmed.

Section 8. NO RECOURSE AND LIABILITY. No covenant, stipulation, obligation or agreement herein contained or contained in any document hereby approved and authorized for execution shall be deemed to be a covenant, stipulation, obligation or agreement of any official, officer, Board member or employee of the County in his/her individual capacity, and neither the members of the Board nor any officials executing the Series 2022A Bonds shall be liable personally on the Series 2022A Bonds or be subject to personal liability or accountability by reason of the issuance thereof.

Section 9. APPROVAL OF INDEMNIFICATION. The Board specifically requires that the Lease Agreement contain provisions relating to indemnification which provide that the Company will indemnify and hold harmless the County and its Board members, officials, employees and agents from and against liability to the Company and to any third parties that may be asserted against the County or its Board members, officials, officers, employees or agents with respect to the County's legal ownership or leasehold interest in the Project and Project Property or the issuance of the Series 2022A Bonds in one or more series, except to the extent NMSA 1978, Sections 56-7-1 (2005) and 56-7-2 (2003) apply, and except claims for any loss or

damage arising out of or resulting from the gross negligence or willful misconduct of the County or its Board members, officials, employees or agents of the County.

Section 10. BOND ORDINANCE IRREPEALABLE. After the Series 2022A Bonds are issued, this Bond Ordinance shall be and remain irrepealable until all Series 2022A Bonds, including interest, are fully paid, canceled and discharged or there has been defeasance of such Bonds in accordance with the Indenture.

Section 11. CARNE SOLAR PROJECT PERMIT. Pursuant to the Permit Resolution, the County has approved the Permit for the Carne Solar Project. As indicated in the Permit Resolution, the Carne Solar Project shall be “grandfathered,” meaning that the Carne Solar Project will remain approved and permitted, and exempt from any new or different requirements of any final solar policy that is adopted pursuant to County Ordinance 107 or which are adopted to supersede and replace the Pilot Program (as defined in the Permit Resolution) until December 31, 2053 or further extended upon the mutual agreement of the Company and the County. As reflected in the Permit Resolution, the County acknowledges and agrees that any requested extension or modification of the Permit will be reviewed by County Planning Department staff and granted or denied solely pursuant to the County Planning Department’s administrative procedure, and exempt from any new or different requirements of any final solar policy that is adopted pursuant to County Ordinance 107 or which are adopted to supersede and replace the Pilot Program. Any extension or modification of the Permit related to the Carne Solar Project shall not be treated as and shall not require a new permit application.

Section 12. REPEALER. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent with this Bond Ordinance are repealed by this Bond Ordinance but only to the extent of that inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, previously repealed.

Section 13. SEVERABILITY. If any section, paragraph, clause or provision of this Bond Ordinance 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 Bond Ordinance.

Section 14. RECORDING; AUTHENTICATION; EFFECTIVE DATE; TERMINATION DATE; PUBLICATION. This Bond Ordinance, immediately upon its final passage and approval, shall be authenticated by the signature of the Board Chairperson or Chairperson Pro-Tem and attested by the signature of the County Clerk or a Deputy County Clerk, and shall be recorded in the ordinance book of the County, kept for that purpose, and shall be in full force and effect 30 days after such recordation in the book of ordinances. If the Series 2022A Bonds have not been issued by December 31, 2025, this Bond Ordinance shall terminate and the authorization to issue the Series 2022A Bonds shall expire. Notice of adoption of this Bond Ordinance shall be published once in *The Deming Headlight*, a newspaper of general circulation within the County, which publication shall be by title and contain a general summary of the subject matter thereof in substantially the following form:

(Form of Summary of Bond Ordinance for Publication)

LUNA COUNTY-NM
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LUNA COUNTY, NEW MEXICO

Notice of Adoption of Ordinance

NOTICE is hereby given of the title and a general summary of the subject matter contained in Ordinance No. 115, duly adopted and approved by the Board of County Commissioners (the "Board") of Luna County, New Mexico (the "County") on December 19, 2022 (the "Bond Ordinance"), relating to the authorization and issuance by the County of its

Luna County, New Mexico Taxable Industrial Revenue Bonds (Carne Solar Project), Series 2022A (the “Series 2022A Bonds”). Complete copies of the Bond Ordinance are available upon request and payment of a reasonable fee during normal and regular business hours of the County Clerk at 700 S. Silver Ave., Deming, New Mexico 88030.

The title of the Bond Ordinance is:

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BERENDA MCWRIGHT, CLERK
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LUNA COUNTY, NEW MEXICO

ORDINANCE NO. 115

AUTHORIZING THE ISSUANCE AND SALE OF LUNA COUNTY, NEW MEXICO TAXABLE INDUSTRIAL REVENUE BONDS (CARNE SOLAR PROJECT), SERIES 2022A, IN THE MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF \$200,000,000, TO PROVIDE FUNDS TO FINANCE THE ACQUISITION, CONSTRUCTION, EQUIPPING AND INSTALLATION OF SOLAR ENERGY FACILITIES TO BE CONSTRUCTED FOR THE PURPOSE OF GENERATING ELECTRICITY AND LOCATED WITHIN THE COUNTY BUT OUTSIDE THE BOUNDARIES OF ANY INCORPORATED MUNICIPALITY; AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE, A LEASE AGREEMENT, A BOND PURCHASE AGREEMENT, A SUBLEASE AGREEMENT, THE BONDS, AND OTHER DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE BONDS AND THE PROJECT; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO THE BONDS AND THE PROJECT; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

The following is a general summary of the subject matter contained in the Bond Ordinance.

The recitals state that the County is a legally and regularly created, established, organized and existing political subdivision of the State of New Mexico (“State”) and is authorized under the New Mexico County Industrial Revenue Bond Act (the “Act”) to issue industrial revenue bonds to acquire industrial revenue bond projects located in Luna County, but outside the boundaries of any incorporated municipality; that Solar PV Development NM 18 II LLC, a New Mexico limited liability company authorized to do business in the State (the “Company”) along with its affiliated entities presented to the Board a proposal (the “Proposal”) in connection with the adoption of Resolution No. 22-84 on November 14, 2022, whereby the County would acquire a project (the “Project”) including, without limitation, certain real property rights, fee title, easements, rights-of-way and leasehold interests, solar generation equipment and other tangible personal property consisting of solar thermal energy collection, concentration and heat transfer and conversion equipment, solar tracking hardware and software, photovoltaic panels and inverters, support structures, turbines and associated electrical generating equipment to be used by the Company and its successors, assigns and affiliates for the generation, transportation and delivery of electricity (collectively, the “Project Property”) and issue its Series 2022A Bonds to finance the costs of the Project in whole or in part, including, but not limited to, reimbursement of any costs incurred by the Company and payment of transaction expenses related thereto; that the Series 2022A Bonds would be issued pursuant to an Indenture for the Series 2022A Bonds (the “Indenture”) entered into among the County, the Company, one or more affiliates of the Company, as purchaser of the Series 2022A Bonds (the “Purchaser”) and one or more financial institutions organized and existing under and by virtue of the laws of the United States, as depositary (the “Depositary”); the County would enter into a sublease agreement with the Company for the Series 2022A Bonds for lease or sublease of the site for the Project (the “Sublease Agreement”) and would enter into a lease or sublease with the Company for the Series

2022A Bonds (the “Lease Agreement”) under which the Project Property would be leased and sold to the Company and the Company would make payments sufficient to pay the principal of and interest on the Series 2022A Bonds; that the County is authorized to enter, deliver and perform all its obligations under the Bond Documents (defined below) and to issue, execute and deliver the Series 2022A Bonds to be sold to the Purchaser pursuant to the bond purchase agreement for the Series 2022A Bonds (the “Bond Purchase Agreement”) to be entered into among the County, the Purchaser and the Company, and together with the Lease Agreement, the Sublease Agreement and the Indenture, the “Bond Documents”); that the County has concluded it is desirable to authorize the issuance of the Series 2022A Bonds to finance the Project and that the issuance of the Series 2022A Bonds constitute a valid public purpose under the Act; that the County and the Company have agreed that the Company will pay to the County and Deming Public Schools certain annual in-lieu tax payments (“PILT Payments”) for the period that the County owns and leases the Project Property; and that notice of the Board’s intention to consider adoption of the Bond Ordinance was published in conformance with legal requirements.

Sections 1 through 3 ratify previous action taken toward approval of the issuance and sale of the Series 2022A Bonds; provide that the Board has considered relevant information presented to it relating to the Series 2022A Bonds and the Project; provide that the Board has made certain findings including that the purpose for issuance of the Series 2022A Bonds is to finance the Project; provide that the Company is the developer of the Project and that the Company (or its respective successors, assigns or affiliates) will operate the Project; and provide that the issuance of the Series 2022A Bonds upon the terms set forth in the Bond Ordinance and in the principal amount not to exceed \$200,000,000, is approved and confirmed.

Sections 4 through 5 provide for the approval of the form, terms and provisions of the Bond Documents and the form and terms of the Series 2022A Bonds; that the Board Chairperson, Chairperson Pro-Tem or the County Manager, upon consultation with and the advice of the County Attorney, are each individually authorized to approve revisions to the Bond Documents with the approval of such revisions to be evidenced by the execution and delivery of such documents; provide that the Board Chairperson or Chairperson Pro-Tem are each individually authorized to execute and deliver, and the County Clerk or Deputy County Clerk are authorized to attest, as appropriate, the Bond Documents and the Series 2022A Bonds; that the Board Chairperson, Chairperson Pro-Tem or County Manager are each individually authorized, and provide that the County Clerk and Deputy County Clerk are further authorized, to execute and deliver all certifications, instruments, security agreements, subordination agreements and consents and other documents as requested by the Company or any lender or lenders or tax credit participant providing financing for the Project, and to take all actions for the carrying out of the transactions contemplated by the Bond Ordinance, the Bond Documents and the Series 2022A Bonds; and making certain determinations regarding payment of the Series 2022A Bonds for the insuring and maintenance of the Project.

Sections 6 through 8 provide that the Series 2022A Bonds are special limited obligations of the County, payable solely from the Basic Rent (as defined in the Lease Agreement), and that the Series 2022A Bonds shall never constitute a debt or indebtedness of the County or the State within the meaning of any provision or limitation of the State Constitution or statutes, and shall not constitute or give rise to a pecuniary liability of the County or charge against its general credit or taxing power; provide that the Company will act as agent of the County with respect to the Project and acquisition of the Project Property; and provide that no covenant, obligation or

agreement of the County with respect to the Bond Ordinance, the Bond Documents or the Series 2022A Bonds shall constitute a covenant, obligation or agreement of any official, officer, Board member or employee of the County in his/her individual capacity and that neither the members of the Board nor any officials executing the Series 2022A Bonds shall be liable personally on the Series 2022A Bonds or be subject to personal liability by reason of the issuance thereof.

Sections 9 through 14 provide for an indemnification in the Lease Agreement of the County and its Board and other officials from and against liability to the Company and to any third parties; provide that the Bond Ordinance is irrevocable while the Series 2022A Bonds are outstanding; provide for the “grandfathering” of the Project with respect to the permit granted under County Resolution 22-89 adopted by the Board on November 14, 2022; provide severability and repealer provisions and direct the authentication and recording of the Bond Ordinance; provide effective and termination dates; and provide for the publication of notice of adoption of the Bond Ordinance and the form of Summary of the Bond Ordinance for publication.

This notice constitutes compliance with the Public Securities Limitation of Action Act, NMSA 1978, Sections 6-14-4 to-7 (1975).

LUNA COUNTY-NM
BERENDA MCWRIGHT, CLERK
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12/19/2022 03:59:52 PM
BY PAULAG

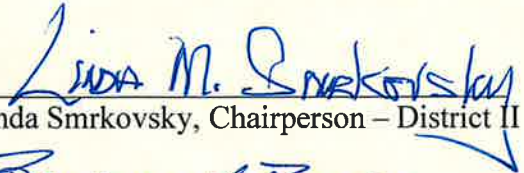
(End of Form of Summary for Publication)

[Signature page follows]

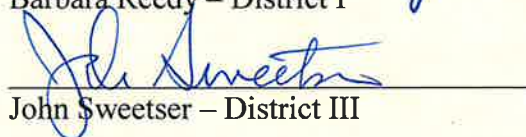
PASSED, ADOPTED, SIGNED AND APPROVED this 19th day of December, 2022.

BOARD OF COUNTY COMMISSIONERS, LUNA
COUNTY, NEW MEXICO

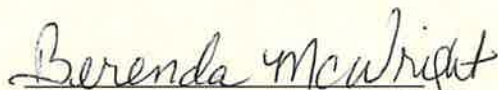
(SEAL)


Linda Smrkovsky, Chairperson – District II

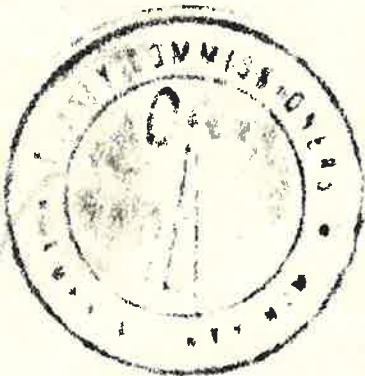

Barbara Reedy – District I


John Sweetser – District III

ATTEST:


Berenda McWright, County Clerk

LUNA COUNTY-NM
BERENDA MCWRIGHT, CLERK
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[Ordinance No. 115 Signature Page]

Commissioner J. Sweetser then moved that the ordinance as filed with the County Clerk be passed and adopted. Commissioner B. Reedy seconded the motion.

The question being upon the passage and adoption of said ordinance, the motion was voted upon with the following result:

Those Voting Yea:

Linda Smrkovsky, District 2, Chairperson
Barbara Reedy, District 1
John Sweetser, District 3

Those Voting Nay:

None

Those Absent:

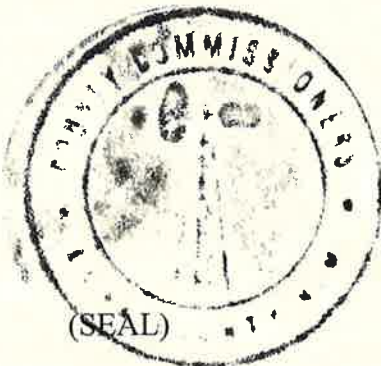
None

LUNA COUNTY-NM
BERENDA MCWRIGHT, CLERK
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The Chairperson thereupon declared that at least a majority of all the members of that Board having voted in favor thereof, the motion was carried and the ordinance duly passed and adopted. After consideration of matters not relating to the ordinance, the meeting on motion duly made, seconded and unanimously carried, was adjourned.

BOARD OF COUNTY COMMISSIONERS
LUNA COUNTY, NEW MEXICO

By Linda Smrkovsky
Linda Smrkovsky,
Chairperson



Attest:

By Berenda McWright
Berenda McWright,
County Clerk

STATE OF NEW MEXICO)
) ss.
COUNTY OF LUNA)

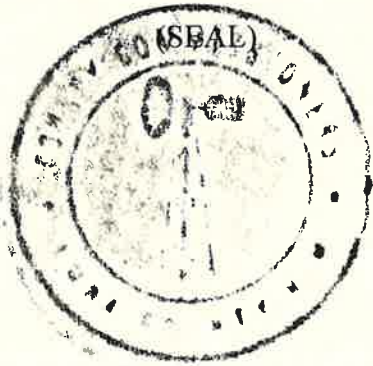
LUNA COUNTY-NM
BERENDA MCWRIGHT, CLERK
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12/19/2022 03:59:52 PM
BY PAULAG

I, Berenda McWright, County Clerk of Luna County, New Mexico (the "County"), do hereby certify:

1. The foregoing pages are a true, correct and complete copy of the record of the proceedings of the Board of County Commissioners (the "Board") of the County, constituting the governing body of the County, taken at a duly called regular, open meeting of the Board held in the Commission Chambers at the Luna County Courthouse, 700 South Silver Street, Deming, New Mexico 88030, in the County, being the regular meeting place of the Board, at 9:30 a.m. on Monday, December 19, 2022, insofar as the same relate to the proposed ordinance, a copy of which is set forth in the official records of the proceedings of the County kept in my office. None of the action taken has been rescinded, repealed, or modified.

2. Notice of such meeting was given in compliance with the permitted methods of giving notice of meetings of the Board as required by the open meetings standards then in effect.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of Luna County, New Mexico, this 19th day of December, 2022.



Berenda McWright
(Berenda McWright, County Clerk)