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City of Oregon, Ohio, 5330 Seaman Road, Oregon, OH 43616-2633

Ordinance No. 128 -2025

Authorizing The Mayor And Finance Director To Amend The Sales And Purchase Agreement With Capacity, LLC, A Florida Limited Liability Company And Oregon On The Bay Regional Economic Development Foundation, An Ohio Non-Profit Corporation (Foundation) For The Purpose Of Increasing The Purchase Price, Extending The Time Period For Completion Of The Zoning Process, The Pipeline And Emissions Contingency And The Time Period For The Load Study And Declaring An Emergency

Summary And Background

In accordance to Ordinance No. 183-2024, passed by Council on November 4, 2024, the City and the Oregon On The Bay Reginal Economic Development Foundation (the Foundation) and Capacity, LLC (Capacity) entered into a Purchase and Sales agreement for the sale of the approximately 168.452 acres of land described as the Cedar Point Industrial Park.

On March 17, 2025, Capacity and the City entered into its first amendment to the Purchase and Sales agreement (Ordinance No. 056-2025), to extend the time period for completion of the title work and ALTA survey.

Capacity wishes enter into a second amendment the Purchase and Sales agreement to increase the purchase price from Seventeen Million Three Hundred Thousand Dollars and No Cents ($17,300,000.00) to Seventeen Million Four Hundred Thousand Dollars and No Cents ($17,400,00.00).

Capacity also wishes extend the time for the Zoning Contingency from Two Hundred Seventy (270) days to Three Hundred and Thirty (330) days and also extend the Pipeline Contingency and Emissions Contingency from Three Hundred Sixty (360) days to 5:00 p.m. Eastern Daylight Time (EDT), on March 31st 2026.

Lastly, Capacity wishes to extend the time for the Load Study Contingency to 5:00 p.m. Eastern Daylight Time (EDT), on March 31st 2026 to ensure sufficient power can be supplied to the property. The City of Oregon, the Foundation and Capacity have agreed to amend the Purchase and Sales Agreement between the parties.
Now, Therefore,

Be It Ordained By The Council Of The City Of Oregon, Ohio, That:

Section 1. The Mayor and Finance Director are hereby authorized to enter into an agreement with the Oregon on the Bay Regional Economic Development Foundation, an Ohio Non-profit Corporation and Capacity, LLC a Florida Limited Liability Company to

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a second amendment the Purchase and Sales agreement in accordance with Exhibit A, attached hereto and made a part hereof with such revisions and additional terms and conditions as may be required and are approved by the Director of Law.

Section 2. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Revised Code of Ohio and that the reading and adoption of this ordinance complies with the provisions of Article III, Section 9, of the City Charter, as amended.

Section 3. This Ordinance is deemed an emergency measure and shall take effect immediately upon its passage and signature by the Mayor. The reason for the emergency lies in the fact that this Ordinance is necessary to amend the Purchase and Sales agreement to extend the time to complete the zoning process, the Opipeline, emissions and the load study to ensure closing can take place in a timely manner.

Vote on passage as an emergency: Yeas 6 Nays 0 Abs. 1

Passed as an emergency measure on: August 11, 2025

President of Council

Attest:

Clerk of Council

Approved:

Mayor

Ordinance No. 128-2025 Item No. 128-2025

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SECOND AMENDMENT TO PURCHASE AND SALE AGREEMENT

THIS SECOND AMENDMENT TO PURCHASE AND SALE AGREEMENT (this "Second Amendment") is made effective as of this 11th day of August, 2025 (the "Amendment Date"), by and between **CITY OF OREGON, OHIO,** an Ohio municipal corporation duly organized and validly existing under the Constitution, the laws of the State of Ohio and its Charter (the city"), the **OREGON ON THE BAY REGIONAL ECONOMIC DEVELOPMENT FOUNDATION,** an Ohio non-profit corporation (the "Foundation" and, together with the City, the "Seller"), and **CAPACITY, LLC,** a Florida limited liability company (the "Buyer.

RECITALS

WHEREAS, Seller and Buyer are parties (collectively, the "Parties") to that certain Purchase and Sale Agreement relating to certain real property described as Cedar Point Industrial Park dated November 14, 2024, as more fully described in the Agreement (as the same has been amended and is amended hereby and may hereafter be amended or restated from time to time, (the **"Agreement"**).

WHEREAS, the Parties desire to amend the Agreement such that the purchase price for the Property shall be Seventeen Million Three Hundred Thousand Dollars and No Cents ($17,300,000.00).

WHEREAS, the Parties desire to amend the Agreement such that Closing shall be contingent on City and Foundation obtaining from all applicable authorities the necessary variances and zoning approvals for the Property to allow a data center development and corresponding onsite power generation (the "Zoning Contingency") within two hundred seventy (270) days after the Effective Date (the "Zoning Contingency Period").

WHEREAS, the Parties desire to amend the Agreement such that Closing shall be contingent on Buyer being able to obtain from all applicable authorities the necessary infrastructure permitting approvals and the necessary right-of-way for installing a natural gas pipeline to the Property (the "Pipeline Contingency") within two hundred seventy (270) days after the Effective Date (the "Pipeline Contingency Period").

WHEREAS, the Parties desire to amend the Agreement such that Closing shall be contingent on being able to obtain from all applicable authorities the necessary emission permitting and state registration for onsite generation for installing natural gas power modules on the Property to service the Project (the "Emissions Contingency") within three hundred sixty (360) days after the Effective Date (the "Emissions Contingency Period").

WHEREAS, the Parties desire to amend the Agreement such that the Closing shall be contingent on Buyer being able to determine a site for a new natural gas power plant to service the Project, negotiate a Power Purchase Agreement ("PPA") with a power plant developer and operator, and secure behind-the-meter financing for the power plant (the "PPA Contingency") within three hundred sixty (360) days after the Effective Date (the "PPA Contingency Period").

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In the event the PPA Contingency is not satisfied in a manner acceptable to Buyer by the end of the PPA Contingency Period, the Buyer may terminate this Agreement and Buyer shall receive a full refund of the Deposit (other than the Independent Consideration, which shall be disbursed to City).

WHEREAS, City and Foundation intend to obtain from all applicable authorities the necessary variances and zoning approvals for the Property to allow a data center development and corresponding onsite power generation (the "Zoning Contingency") and Buyer intends to obtain all Pipeline and Emissions approvals after all easements and encroachments have been properly identified. Additional time is needed to complete the Zoning Contingency, Pipeline Contingency and Emissions Contingency, and Buyer now requires a Load Study Contingency, therefore, Seller and Buyer desire to amend the Agreement as set forth herein.

NOW, THEREFORE, in consideration of the foregoing recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Seller and Buyer hereby agree as follows:

1. Recitals; Definitions. The recitals set forth above are true and correct and are incorporated herein in their entirety. Capitalized terms used but not defined herein shall have the same meaning as given to them in the Agreement.

2. Amendments to the Agreement. The Agreement shall be amended as follows:

(a) Section 2 of the Agreement is hereby amended to provide that the purchase price for the Property shall be Seventeen Million Four Hundred Thousand Dollars and No Cents ($17,400,000.00).

(b) Section 11(B), of the Agreement is hereby amended to provide that the Zoning Contingency be extended by sixty (60) days from the original Agreement to total three hundred and thirty (330) days from the Effective Date.

(c) Sections 11(C) and 11(D) of the Agreement are hereby amended to provide that the Pipeline Contingency and Emissions Contingency both be extended to 5:00 PM, Eastern Daylight Time (EDT), on March 31st, 2026.

(d) Section 11(E) of the Agreement is hereby deleted in its entirety and the following is substituted in its place:

E. LOAD STUDY CONTINGENCY. Buyer shall have a period commencing on the Effective Date until 5:00 PM, Eastern Daylight Time (EDT), on March 31st, 2026, (the "Load Study Contingency Period") to complete a Detailed Load Study with the local electric utility provider to determine, in Buyer's sole and absolute opinion, that sufficient power can be supplied to the Property to serve the needs of the Project (the "Load Study Contingency"). In the event the Load Study Contingency is not satisfied in a manner acceptable to Buyer by the end of the Load Study

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Contingency Period, the Buyer may terminate this Agreement and Buyer shall receive a full refund of the Deposit (other than the Independent Consideration, which shall be disbursed to City).

3. Ratification. Except as specifically herein amended, all terms, provisions, conditions and exhibits contained in the Agreement are hereby confirmed, ratified and restated and shall remain unmodified and in full force and effect. In the event that any provision of this Second Amendment shall conflict with the terms, provisions, conditions, and exhibits of the Agreement, the terms, provisions, conditions and exhibits of this Second Amendment shall govern and control.

4. Governing Law. This Second Amendment shall be an agreement made under, governed by and construed in accordance with, the terms of the laws of the State of Ohio.

5. Execution of Amendment. This Second Amendment may be executed in any number of counterparts and by each of the undersigned on separate counterparts, and each such counterpart shall be deemed to be an original, but all such counterparts put together shall constitute but one and the same Second Amendment. This Second Amendment may be executed by signatures exchanged between the parties by email, "pdf or DocuSign and such email "pdf or DocuSign signatures shall be deemed to constitute fully effective signatures.

[SIGNATURES FOLLOW]

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IN WITNESS WHEREOF, the parties hereto have caused this Second Amendment to the Purchase and Sales Agreement to be executed under seal by their respective duly authorized representatives, to be effective as of the Amendment Date.

SELLER:

CITY SIGNATURE TO SECOND AMENDMENT

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IN WITNESS WHEREOF, the parties hereto have caused this Second Amendment to the Purchase and Sales Agreement to be executed under seal by their respective duly authorized representatives, to be effective as of the Amendment Date.

BUYER:

Signed by:
3D8654A9A57E493...

GUARANTORS SIGNATURE TO SECOND AMENDMENT

UPTERRA GROUP, LLC

By:

Signed by:
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Print Name:John D. Martin
Title:Managing Director

Signed by:
040430C7E234473...

HIGHGROUND COMMERCIAL INVESTMENTS, LLC

By:

Print Name: H. Gabriel Uhrig
Title: Managing Director

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IN WITNESS WHEREOF, the parties hereto have caused this Second Amendment to the Purchase and Sales Agreement to be executed under seal by their respective duly authorized representatives, to be effective as of the Amendment Date.

FOUNDATION: