

THIRD AMENDMENT TO AGREEMENT OF PURCHASE AND SALE

THIS THIRD AMENDMENT TO AGREEMENT OF PURCHASE AND SALE (this “**Amendment**”) is made and entered into as of this _____ day of August, 2019, by and between **C/LEJEUNE, LLC**, a Florida limited liability company, hereinafter, the “**Developer**,” and the **CITY OF CORAL GABLES**, a municipal corporation existing under the laws of the State of Florida, hereinafter, the “**City**.”

RECITALS

WHEREAS, Developer and City entered into that certain Agreement of Purchase and Sale dated as of April 6, 2017, as amended pursuant to that certain First Amendment to Agreement of Purchase and Sale dated October 9, 2017, as further amended pursuant to that certain Second Amendment to Agreement of Purchase and Sale dated November 22, 2017 (collectively, the “**Agreement**”), relating to the purchase and sale of certain real properties located in the City of Coral Gables, Miami-Dade County, Florida, identified under folio #03-4108-006-1730 (the “**Minorca Parcel**”) and folio #03-4117-005-5110 (the “**Salzedo Parcel**”), as more particularly set forth therein;

WHEREAS, Developer (or an affiliate thereof) is contemplating the purchase of certain parcels of real property located in the City of Coral Gables, Miami-Dade County, Florida as more particularly described on Exhibit “A” attached hereto (the “**Valencia/Almeria Parcels**”);

WHEREAS, in the event that Developer (or an affiliate thereof) elects, in the exercise of its sole discretion, to acquire the Valencia/Almeria Parcels then Developer (or an affiliate thereof) shall have the right to convey (or cause City to convey) the Salzedo Parcel to one or more of the current owners of the Valencia/Almeria Parcels as referenced on Exhibit “A” attached here (or any affiliate or designee thereof) (as applicable, “**Mercedes**”) in accordance with the terms of this Amendment; and

WHEREAS, this Amendment shall be subject to review and approval by the Coral Gables City Commission (the “**Commission**”) and shall not be binding on the City until such approval is obtained.

AGREEMENT

NOW, THEREFORE, for ten dollars (\$10.00) and other good and valuable consideration each to the other paid, the receipt and sufficiency of which are hereby acknowledged, Developer and City hereby agree as follows:

1. **Recitals and Definitions.** The recitals set forth above are true and correct and they are incorporated herein by this reference. All capitalized terms used but not otherwise defined in this Amendment shall have the meanings assigned to them in the Agreement.
2. **Acquisition of Valencia/Almeria Parcels.** Nothing contained in this Amendment shall create or be deemed to create any obligation on the part of Developer (or any affiliate thereof) to acquire the Valencia/Almeria Parcels and in no event shall the acquisition of the

Valencia/Almeria Parcels by Developer be deemed to be a condition precedent to the Salzedo Parcel Closing. However, Developer shall provide written notice to the City, at least thirty (30) days prior to the Salzedo Parcel Closing, of its intent to acquire either the Valencia/Almeria Parcels or the Salzedo Parcel.

3. **Conveyance of Salzedo Parcel to Mercedes.** In the event that Developer (or any affiliate thereof) acquires the Valencia/Almeria Parcels either prior to, concurrently with, or following the Salzedo Parcel Closing then the following provisions shall apply:

a. **Right of First Offer.** Developer shall have the right (but nothing herein shall obligate Developer) to convey, or at Developer's request cause City to convey, the Salzedo Parcel to Mercedes and the requirements of Section 20(A) shall not be applicable with respect to such conveyance (i.e., such conveyance shall not be subject to the right of first offer provided in such Section 20(A)). In the event that the Salzedo Parcel is conveyed to Mercedes by Developer (or at Developer's request, by City), then for the remainder of the ROFO Period, the provisions of Section 20(A) shall only be applicable to any conveyance of the Valencia/Almeria Parcels by Developer to any unaffiliated entity and not to the Salzedo Parcel.

b. **Permitted and Restricted Uses.** In the event that the Salzedo Parcel is conveyed to Mercedes by Developer (or at Developer's request, by City), then the provisions of Section 20(B) shall be applicable to the Valencia/Almeria Parcels and not the Salzedo Parcel.

c. **Impact Fee Credit.** In the event that the Salzedo Parcel is conveyed to Mercedes by Developer (or at Developer's request, by City), then the Impact Fee Credit in the amount of \$2,000,000.00 shall not be applicable to the Salzedo Parcel and Developer (or any affiliate of Developer) or any successor developer of the Valencia/Almeria Parcels shall have the right to utilize the Impact Fee Credit in connection with the development of the Valencia/Almeria Parcels. To the extent that any portion of the Impact Fee Credit is not utilized by Developer or any successor developer designated by Developer with respect to the Valencia/Almeria Parcels, then Developer or any affiliate of Developer (as designated by Developer) shall have the option to apply the unused balance of the Impact Fee Credit to any other parcels owned by Developer (or its affiliates) within the City's municipal boundaries. To the extent of any challenge with respect to the Impact Fee Credit, the provisions of Section 15(A)(7) of the Agreement shall continue to apply.

d. **CBD (Valencia/Almeria Parcels).** City hereby acknowledges and agrees that the Valencia/Almeria Parcels are located within the Coral Gables Central Business District and as such, the Valencia/Almeria Parcels are eligible to receive transferable development rights. Notwithstanding the foregoing, in the event that all or any portion of the Valencia/Almeria Parcels are not in fact within the Coral Gables Central Business District or if the boundaries of the Coral Gables Central Business District are modified in such a manner as would exclude the Valencia/Almeria Parcels, then City agrees to allow the Valencia/Almeria Parcels to be eligible to receive transferable development rights as if, and to the same extent as, the Valencia/Almeria Parcels are within the Coral Gables Central Business District; provided, however, that in such event Developer acknowledges that such rights would be site specific and shall not be deemed, in any way, to constitute a modification of the boundaries of the Coral Gables Central Business District.

e. **Development Rights.** City hereby represents and warrants that, as of the date of this Amendment, the Valencia/Almeria Parcels may, as a matter of right (pursuant to the codes and regulations for the City of Coral Gables, Florida), be developed in accordance with the parameters set forth on Schedule 3.e. attached hereto and made a part hereof (the “**Existing Valencia/Almeria Permitted Development**”). In the event that the Salzedo Parcel is conveyed to Mercedes by Developer (or at Developer’s request, by City), then (i) City agrees that it shall not amend, alter or modify the Existing Valencia/Almeria Permitted Development with respect to the Valencia/Almeria Parcels until the date being fifteen (15) years after the Salzedo Parcel Closing Date (See Section 15.A.(1), Purchase and Sale Agreement), and (ii) upon the conveyance of the Salzedo Parcel to Mercedes, the provisions of Section 15.A.(1) of the Agreement shall be of no further force or effect; provided, however, that in such event City agrees not to amend, alter or modify the Existing Permitted Development (as defined in the Agreement) with respect to the Salzedo Parcel until the date being the *later* of (x) the Salzedo Parcel Closing Date or (y) February 23, 2021. Additionally, City hereby acknowledges that Mercedes’ stated intent with respect to the Salzedo Parcel is as is typical for a luxury motor Vehicle Sales operation as defined in Article 8 of the City’s Zoning Code (the “**Mercedes Intended Use**”). However, due to the confidential nature of the plans and specifications with respect to the improvements currently existing on the Salzedo Parcel and the somewhat limited ability to inspect such Salzedo Parcel (as pursuant to Sec. 119.071(3)(b)1., F.S., building plans, blueprints, schematic drawings and diagrams of government buildings are exempt from disclosure under the Public Records Act, and the building that currently exists on the Salzedo Parcel is owned by City and used as the City’s Public Safety Building, housing the Police and Fire Departments along with other City offices). Consequently, Mercedes cannot at this time reasonably determine whether any structural improvements or repairs may be required with respect to the Salzedo Parcel in order for Mercedes to utilize the Salzedo Parcel for the Mercedes Intended Use, and if such improvements or repairs are required, Mercedes would not be able to establish the Mercedes Intended Use until such improvements or repairs are completed. Accordingly, due to the unique circumstances resulting from the confidential nature of the plans and specifications with respect to the Salzedo Parcel (and limitations resulting from the limited ability to inspect the Salzedo Parcel), City has agreed that Mercedes’ stated intention to establish the Mercedes Intended Use upon the Salzedo Parcel is sufficient in order vest Mercedes with such Mercedes Intended Use as of the Salzedo Parcel Closing Date.

f. **Direct Conveyance.** Provided that Developer (or an affiliate thereof) has acquired the Valencia/Almeria Parcels (or shall concurrently acquire the Valencia/Almeria Parcels), then to the extent requested by Developer in writing, at the Salzedo Parcel Closing, and in accordance with Sections 10, 11, and 12 of the Agreement, City shall convey the Salzedo Parcel to Mercedes provided that concurrently therewith, Developer pays the Purchase Price (subject to adjustment as provided in the Agreement) to City. For avoidance of doubt, the Salzedo Parcel Closing Date is not contingent upon or otherwise affected by the any applicable closing with respect to the Valencia/Almeria Parcels and Developer may elect, in the exercise of its sole and absolute discretion, not to acquire the Valencia/Almeria Parcels or may elect to acquire the Valencia/Almeria Parcels prior to, concurrently with, or following the Salzedo Parcel Closing Date. Accordingly, the provisions of this Section 3 shall expressly survive the Salzedo Parcel Closing and shall be applicable only in the event that Developer (or any affiliate) acquires the Valencia/Almeria Parcels and the Salzedo Parcel is conveyed to Mercedes (or any affiliate) by Developer (or any affiliate) or City pursuant to the terms and timeline set forth in this Amendment.

4. **Impact Fee Credit.** Notwithstanding anything contained in the Agreement, and regardless of whether the Developer acquires the Valencia/Almeria Parcels, in accordance with Section 2-2192 of the City Code, the Developer or any of its successor affiliates shall have a period of ten (10) years commencing on the date the Developer or any of its successor affiliates applies for a building permit from the City to utilize the Impact Fee Credit. Any unused balance of the Impact Fee Credit shall be forfeited at the end of the foregoing ten (10) year period.

5. **Proposed Salzedo Closing Date.** The Minorca Possession Date occurred on December 23, 2017, and therefore the current Proposed Salzedo Closing Date is December 23, 2020. City has requested that Developer extend the Proposed Salzedo Closing Date by two (2) months such that the Proposed Salzedo Closing Date would be extended to February 23, 2021 and Developer has agreed to such extension. Accordingly, the Proposed Salzedo Closing Date shall be February 23, 2021, and the definition of Proposed Salzedo Closing Date set forth on Exhibit "A" of the Agreement is hereby deleted in its entirety and replaced with the following: **“Proposed Salzedo Closing Date”** shall mean February 23, 2021.”

6. **Ratification; Conflict.** Except as modified hereby, the terms and provisions of the Agreement are deemed ratified and in full force and effect and remain as is. The foregoing provisions supplement and amend the Agreement and in the event of any inconsistency or conflict between the terms and conditions of the Agreement and this Amendment, the terms of this Amendment shall control. All future references to the “Agreement” shall be deemed to refer to the Agreement as amended hereby.

7. **No Defaults.** Each Party hereby represents that, to its knowledge, there are no defaults existing under the Agreement as of the date of this Amendment. Further, Developer hereby discloses to City that Developer may elect to enter into a purchase agreement with Mercedes pursuant to which Developer would obtain the right to acquire the Valencia/Almeria Parcels and Mercedes would acquire the right to acquire the Salzedo Parcel provided that Developer acquires the Salzedo Parcel in accordance with the terms of the Agreement (the **“Developer-Mercedes Agreement”**). The City hereby acknowledges that there is nothing in the Agreement, as amended by this Third Amendment, that prohibits Developer from acquiring and/or transferring the Salzedo Parcel and/or Valencia/Almeria Parcels, as set forth herein. Accordingly, Section 9.B.(4) of the Agreement is hereby deleted in its entirety.

8. **Commission Approval.** The parties hereby acknowledge and agree that this Amendment shall be subject to approval by the Commission and, notwithstanding anything contained herein, shall not be binding on the City until such approval is obtained.

9. **Binding Effect.** This Amendment shall bind and inure to the benefit of not only the parties hereto, but also their successors and assigns.

10. **Counterparts.** This Amendment may be executed in two or more counterparts, a complete set of which shall be deemed an original, constituting one and the same instrument. The parties hereto agree that they will execute such other and further instruments and documents that may be necessary to effectuate this Amendment. The delivery by facsimile or electronic mail of an executed copy of this Amendment shall be deemed valid as if an original signature was delivered.

11. **Governing Law.** This Amendment shall be governed by the laws of the State of Florida.

[Signatures appear on the following page]

[Third Amendment to Agreement of Purchase and Sale - Developer's Signature Page]

The parties have each caused this Amendment to be executed on their behalf as of the date first above written.

DEVELOPER:

C/LEJEUNE LLC,
a Florida limited liability company

By: _____
Name: _____
Title: _____

[Third Amendment to Agreement of Purchase and Sale – City’s Signature Page]

CITY:

CITY OF CORAL GABLES,
a municipal corporation existing
under the laws of the State of Florida

By: _____
Name: Peter Iglesias
Title: City Manager

Approved for Form and Legal Sufficiency:

By: _____
Name: Miriam Soler Ramos
Title: City Attorney

Attestation of Signatures:

By: _____
Name: Walter J. Foeman
Title: City Clerk

EXHIBIT A

Valencia/Almeria Parcels

297 Almeria Parcels (Shown Below)

Address	Folio #	Owner
290 Valencia Avenue	03-4117-005-2330	Brockway Valencia LLC
272 Valencia Avenue	03-4117-005-2340	Brockway Valencia LLC
N/A	03-4117-005-2350	Brockway Ltd., LLLP
N/A	03-4117-005-2370	Brockway Ltd., LLLP
250 Valencia Avenue	03-4117-005-2390	Brockway Ltd., LLLP
244 Valencia Avenue	03-4117-005-2410	Brockway Ltd., LLLP
297 Almeria Avenue	03-4117-005-2680	Brockway Ltd., LLLP
N/A	03-4117-005-2610	Brockway Ltd., LLLP
247 Almeria Avenue	03-4117-005-2600	Brockway Ltd., LLLP

2701 Salzedo Parcel (Shown Below)

Address	Folio #	Owner
2701 Salzedo Street	03-4117-005-4010	Brockway Ltd., LLLP

297 Almeria Parcels



2801 Salzedo Parcel

Note: The parcel shown as 2801 Salzedo Parcel is the Salzedo Parcel under the Agreement. The parcels referenced respectively as 297 Almeria Parcels and 1701 Salzedo Parcel are collectively, the Valencia/Almeria Parcels.