

CITY OF CORAL GABLES, FLORIDA

ORDINANCE NO. 2019-29

AN ORDINANCE OF THE CITY COMMISSION APPROVING A THIRD AMENDMENT TO THE PURCHASE AND SALE AGREEMENT RELATED TO A LAND EXCHANGE WITH C/LEJEUNE, LLC, INVOLVING THE CITY'S CURRENT PUBLIC SAFETY BUILDING LOCATED AT 2801 SALZEDO STREET AND THE VACANT PARCEL LOCATED AT 250 MINORCA AVENUE, THAT WILL BE IMPROVED WITH A NEW PUBLIC SAFETY BUILDING AND A PUBLIC MIXED USE PARKING GARAGE STRUCTURE, AND INVOLVING THE PARCELS LOCATED AT 290, 272, 250, AND 244 VALENCIA AVENUE AND AT 297 AND 247 ALMERIA AVENUE, ALLOWING FOR THE CONVEYANCE OF THE SALZEDO PARCEL TO THE OWNERS OF THE VALENCIA/ALMERIA PARCELS

WHEREAS, on March 28, 2017, pursuant to Ordinance No. 2017-08, the City Commission authorized the City Manager and City Attorney to negotiate and enter into a Purchase and Sale Agreement related to a land exchange involving the parcels at 2801 Salzedo Street and 250 Minorca Avenue for the purpose of constructing a new public safety building for the City of Coral Gables; and

WHEREAS, on April 6, 2017, the City and C/LeJeune, LLC ("Developer") (collectively referred to as the "Parties") executed the Purchase and Sale Agreement (the "Agreement"); and

WHEREAS, on October 9, 2017, the Parties executed a First Amendment to the Purchase and Sale Agreement for the purpose of extending the proposed Minorca Possession Date for a period of forty-five (45) days in order to address delays caused by the impacts of Hurricane Irma; and

WHEREAS, on November 22, 2017, the Parties executed a Second Amendment to the Purchase and Sale Agreement for the purpose of further extending the proposed Minorca Possession Date for a period of thirty (30) days; and

WHEREAS, recently, Developer approached the City about the possibility of further amending the Agreement to allow for an additional land exchange relating to certain real properties identified under folio #s 03-4117-005-2330, 2340, 2350, 2370, 2390, 2410, 2680, 2610, and 2600 (the "Valencia/Almeria Parcels"); and

WHEREAS, Developer desires to amend the Agreement to permit Developer, if Developer acquires the Valencia/Almeria Parcels, to convey the Salzedo Parcel to one or more of the current owners of the Valencia/Almeria Parcels ("Mercedes"); and

WHEREAS, the City and Developer have negotiated the terms for a Third Amendment to the Purchase and Sale Agreement, substantially in the form attached hereto as **Exhibit A**; and

WHEREAS, the following are the key terms provided for in the Third Amendment to the Purchase and Sale Agreement:

WHEREAS, the City Commission finds it is in the best interests of the City to waive other requirements of the Procurement Code pursuant to Sections 2-501 and 2-1089, which also requires a 4/5 majority vote; and

WHEREAS, the City Commission finds that it is in the best interests of the City to proceed with the purchase and sale transaction, including the terms set forth in the Third Amendment to the Purchase and Sale Agreement;

NOW, THEREFORE, BE IT ORDAINED BY THE COMMISSION OF THE CITY OF CORAL GABLES, FLORIDA:

SECTION 1. The foregoing “**WHEREAS**” clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

SECTION 2. That the City Commission does hereby authorize the City Manager and City Attorney to execute the Third Amendment to the Purchase and Sale Agreement, in substantially the form attached hereto as **Exhibit A**, with such modifications as approved by the City Manager and City Attorney.

SECTION 3. Any other requirements of the Procurement Code are waived pursuant to Sections 2-501 and 2-1089 of the City Code.

SECTION 4. The City Manager and City Attorney are authorized to make edits or corrections to the Agreement prior to execution in order to effectuate the Commission’s purpose.

SECTION 5. All ordinances or parts of ordinances inconsistent or in conflict with the provisions of this Ordinance are hereby repealed.

SECTION 6. If any section, part of section, paragraph, clause, phrase or word of this Ordinance is declared invalid, the remaining provisions of this Ordinance shall not be affected.

SECTION 7. This Ordinance shall become effective upon the date of its passage and adoption herein.

PASSED AND ADOPTED THIS TENTH DAY OF SEPTEMBER, A.D., 2019.

(Moved: Keon / Seconded: Mena)
(Yeas: Fors, Jr., Keon, Mena, Lago)
(Unanimous: (4-0) Vote)
(Absent: Valdes-Fauli)
(Agenda Item: F-3)

- Right of First Offer – The requirements of Section 20(A) of the Agreement, where any conveyance by Developer of the Salzedo Parcel would be subject to a right of first offer held by the City for a period of one year (the “ROFO Period”), shall not be applicable with respect to Developer’s conveyance of the Salzedo Parcel to Mercedes. In the event that the Salzedo Parcel is conveyed to Mercedes, then for the remainder of the ROFO Period, the provisions of Section 20(A) would apply only to any conveyance of the Valencia/Almeria Parcels by Developer to any unaffiliated entity and not to the Salzedo Parcel.
- Permitted and Restricted Uses – Should the Salzedo Parcel be conveyed to Mercedes, the use restrictions set forth in Section 20(B) of the Agreement shall be applicable to the Valencia/Almeria Parcels and not to the Salzedo Parcel.
- Impact Fee Credit – Should the Salzedo Parcel be conveyed to Mercedes, then the impact fee credit set forth in the Agreement shall not be applicable to the Salzedo Parcel; instead the Developer may use the credit in connection with the development of the Valencia/Almeria Parcels.
- Central Business District (CBD) – Acknowledgement that the Valencia/Almeria Parcels are located in the CBD in the same fashion as the Agreement acknowledged that the Salzedo Parcel is located within the CBD for the purpose of establishing eligibility for receipt of transfer of development rights.
- Development Rights – Should the Salzedo Parcel be conveyed to Mercedes, then the same assurances provided in the Agreement on the Salzedo Parcel are provided on the Valencia/Almeria Parcels and vests Mercedes with its intended use (luxury motor vehicle sales) as of the closing date of the Salzedo Parcel.
- Direct Conveyance – Should Developer acquire the Valencia/Almeria Parcels prior to the Salzedo Closing Date, then upon thirty (30) days prior written notice by Developer, the City shall convey the Salzedo Parcel to Mercedes directly on the Salzedo Closing Date, and Developer would pay the Purchase Price (subject to adjustments, as provided in the Agreement) to the City.
- Closing Date – The Proposed Salzedo Closing Date has been extended by two (2) months from December 23, 2020 to February 23, 2021.

WHEREAS, the City Commission has weighed and balanced the competing interests and finds that, the proposed purchase and sale transaction, with the amendments described herein, serve a public purpose and the best interests of the City; and

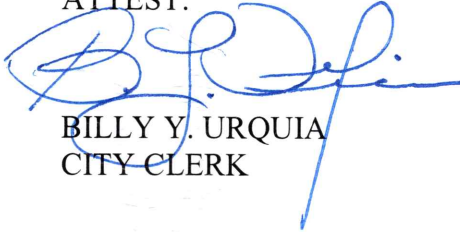
WHEREAS, pursuant to Section 2-1097 of the City Code, and as was required for the adoption of Ordinance No. 2017-08, this Ordinance requires a 4/5 majority vote on first and second reading for passage; and

APPROVED:

A handwritten signature in black ink, consisting of a large, stylized letter 'W' enclosed within a circular loop.

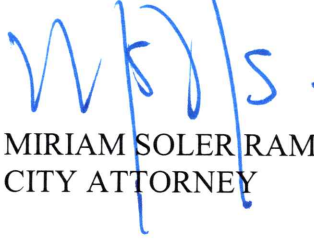
RAUL VALDES-FAULI
MAYOR

ATTEST:

A handwritten signature in blue ink, appearing to read 'B. Y. Urquia' with a long horizontal stroke extending to the right.

BILLY Y. URQUIA
CITY CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

A handwritten signature in blue ink, consisting of stylized initials 'M/S' followed by a period.

MIRIAM SOLER RAMOS
CITY ATTORNEY

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.