

De 4-1998 02:40pm 98-471700
URB 10790 Pg 609

ACKNOWLEDGMENT OF DECLARATION OF USE AGREEMENT

WITNESSETH:

WHEREAS, the Land is owned by the Owner;

WHEREAS, the Land is zoned C-WA, Commercial Worth Avenue and retail and office uses are allowable uses within such zoning category;

WHEREAS, in approving the Special Exceptions, Site Plan, and Variances, the conditions of approval reflected in the Declaration were imposed

6. In order to encourage parking garage use, the hourly parking rate at the Building garage from November 1 through April 30 of each year shall be 15% less than that charged as of November 1 of each year at the existing parking lot located at Hibiscus and Peruvian Avenues during the same period of time.

7. Shared parking proposals will be given good faith consideration by Neiman's for the use of the Building garage (but not the Peruvian Lot) after store hours.

8. Deliveries of merchandise to the Building shall be restricted to the hours of 8:30 A.M. to 10:30 A.M., or such other reasonable hours as determined by the Town in consultation with Neiman's.

9. The hours during which Neiman's will be open to customers shall be consistent with the practice of the majority of Worth Avenue merchants, but in no event shall Neiman's be precluded from serving customers between the hours of 10:00 A.M. to 6:00 P.M. Monday through Saturday.

10. Neiman's use of the property and marketing efforts relating to said use shall be conducted in a manner so as to preserve the Town serving nature of the property as defined by the Town's Zoning Code. Annually, Neiman's shall provide a certificate to the Town documenting the Town serving nature of the store, describing therein those facts and activities which qualify the property as Town serving as defined by the terms of the Town's Zoning Code.

11. During construction:

a. a delivery coordinator ("Yard Manager") shall be employed by Neiman's to coordinate all Neiman's deliveries and related matters with the Police Department and other appropriate departments of the Town. This person shall be in addition to a resident building inspector;

b. Neiman's construction workers shall be parked outside of the Town and bused to the site, until the Building garage is completed, at which time they shall park in the garage. Neiman's management personnel shall be parked in the garage for the Esplanade or in the Building garage when that garage is completed.

12. Construction of the twenty (20) surface parking spaces on the Peruvian Lot shall be delayed until such time as the Town determines that such spaces are needed to satisfy the parking demands of the Building. The construction of such parking spaces shall be Owner's responsibility, but in the meantime, the Owner shall landscape the Peruvian Lot with grass, trees, and a hedge along the east, west, and north sides. Said grass, trees, and hedge shall be to the satisfaction of the Town.

DECLARATION OF USE AGREEMENT

THIS DECLARATION OF USE AGREEMENT is made and entered into this 19th day of June, 1998 by and between the TOWN OF PALM BEACH, a Florida municipal corporation, 360 South County Road, Palm Beach, Florida 33480 (hereinafter called the "Town"); and the WORTH AVENUE ASSOCIATES, LTD., a Pennsylvania limited partnership, c/o The Goodman Company, 777 South Flagler Drive, West Palm Beach, Florida 33401 (hereinafter called "Owner"), which terms "Town" and "Owner" will include and bind the successors and assigns of the parties, wherever the context so requires or admits.

WITNESSETH:

WHEREAS, the land described in Exhibit "A" attached hereto and made a part hereof (hereinafter referred to as the "Land") is located within the municipal limits of the Town;

WHEREAS, a portion of the Land is owned by the Owner, a portion by Murray H. Goodman, and the balance is under contract to purchase by Owner. Title to all of the Land will be held by Owner;

WHEREAS, the parcel of property at 400 South County Road as described in Exhibit "B" attached hereto and made a part hereof (hereinafter "400 South County") is located within the municipal limits of the Town and is owned by Owner;

WHEREAS, the Land is zoned C-WA, Commercial Worth Avenue and retail and office uses are allowable uses within such zoning category;

WHEREAS, 400 South County is zoned C-TS, Commercial Town Serving and retail and office uses are allowable uses within such zoning category;

WHEREAS, Owner owns the property at 150 Worth Avenue known as the "Esplanade";

WHEREAS, the Town Council approved on June 4, 1998 Special Exceptions for retail and accessory office uses on the Land by Neiman Marcus ("Neiman's") subject to the conditions set forth herein and the approval of this Agreement, and on the basis of the specific finding of the Town Council that the approval of the Special Exceptions, in compliance with said conditions, will not be adverse to the public interest and upon a finding of the Town Council that the applicable provisions of the Town Code governing the use of the Land and special exceptions have been met;

provide a certificate to the Town documenting the Town serving nature of the store, describing therein those facts and activities which qualify the property as Town serving as defined by the terms of the Town's Zoning Code.

12. During construction:

- a. an off-duty police officer shall be provided by Owner at no cost to the Town to direct traffic during construction activities in the 100 block of Worth Avenue at the direction of the Chief of Police;
- b. a delivery coordinator ("Yard Manager") shall be employed by the Owner to coordinate all deliveries and related matters with the Police Department and other appropriate departments of the Town. This person shall be in addition to a resident building inspector;
- c. construction workers shall be parked outside of the Town and bused to the site, until the Building garage is completed, at which time they shall park in the garage. Management personnel shall be parked in the Esplanade garage or in the Building garage when that garage is completed.

13. Construction of the twenty (20) surface parking spaces on the Peruvian Lot shall be delayed until such time as the Town determines that such spaces are needed to satisfy the parking demands of the Building. In the meantime, the Peruvian Lot shall be landscaped with grass, trees, and a hedge along the east, west, and north sides. Said grass, trees, and hedge shall be to the satisfaction of the Town.

14. In the event, that the line of automobiles queuing at the Building garage entry extends into Worth Avenue blocking pass-by traffic so often that it is more of a regular occurrence than an occasional one, the Council shall have the authority to require that remedial action be taken to prevent such frequent occurrences including, but not limited to, an increase in the number of valet personnel or the relocation of the valet station to the first level of the Building garage. Prior to requiring any such action, the Town shall notify the Owner and Neiman's of its intention to initiate action under this condition, the reasons therefore, and shall give Owner and Neiman's a reasonable time to address the problem asserted by the Town.

15. Owner shall convey title to the Town without cost of the property at 400 South County Road. Town shall use said property for Town park uses or other Town uses. No such uses shall be for the benefit of commercial or residential uses and/or enterprises. Said conveyance shall be placed in escrow within ten (10) days of the issuance of a building permit for the above ground Building and shall