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DECLARATION OF USE AGREEMENT  
by  
THE TOWN OF PALM BEACH  
and  
WORTH AVENUE ASSOCIATES, LTD.

Dated: June 11, 1998

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## 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;

WHEREAS, the Town Council approved on June 4, 1998 the Site Plan for the Special Exceptions, 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 Site Plan, in compliance with said conditions, will not be adverse to the public interest, and upon a finding by the Town Council that the applicable provisions of the Town Code governing the use of the Land and site plans have been met;

WHEREAS, the Town Council approved on June 4, 1998 certain Variances, 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 necessary hardships exist, and that the approval of the Variances, in compliance with said conditions, will not be adverse to the public interest, and upon a finding by the Town Council that the applicable provisions of the Town Code governing the use of the Land and variances have been met;

WHEREAS, in approving the Special Exceptions, Site Plan, and Variances, the conditions of approval reflected herein are imposed in order to regulate the use, mitigate any adverse impacts of the use, as well as to insure that said use shall not be adverse to the public interest; and

WHEREAS, all of the representations made herein are true and accurate and the granting of the Special Exceptions and Site Plan review are conditioned upon the representations made herein and all of the conditions herein imposed.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed as follows:

#### ARTICLE I

#### RECITALS

The recitals set forth above are true and correct and are incorporated herein and made a part hereof.

#### ARTICLE II

#### REPRESENTATION OF OWNERSHIP

Owner has full right to enter into this Agreement and to bind the Land and 400 South County and itself to the terms hereof. There are no covenants, restrictions or reservations of record that will prevent the use of the Land and 400 South County in accordance with the terms and conditions of this Agreement. No consent to execution,

delivery and performance hereunder is required from any person, partner, limited partner, creditor, investor, judicial or administrative body, governmental authority or other party other than any such consent which already has been unconditionally given or referenced herein. Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will violate any restriction, court order or agreement to which Owner or the Land or 400 South County are subject.

### ARTICLE III

#### RETAIL AND ACCESSORY OFFICE USES

The use of the Land shall be for retail uses with accessory office for Neiman Marcus in compliance with all of the information and exhibits included in the application, not inconsistent with the terms and conditions set forth herein, set forth in the application submitted to the Town for Site Plan Review No. 3-98 with Special Exception and Variances, as amended and approved by Town Council on June 4, 1998 (hereinafter referred to as the "Approval"). Any usages not specifically set forth in the Approval are excluded from the Town's approval of the Plan pursuant to that provision of the Town Code which provides that no subsequent deviation may be made from the application as approved by the Town Council except upon new application to and approval by the Town Council. Any additional uses of the Land shall be subject to approval by the applicable governmental authority including but not limited to the Town Council of the Town, the Architectural Review Commission of the Town, Palm Beach County, the State of Florida, the United States Government, and/or any agencies under any of the foregoing governmental authorities.

### ARTICLE IV

#### CONDITIONS

1. The Land is approved for a building of 48,661 gross square feet with three stories above ground, two levels of underground parking, surface parking on the adjacent Peruvian Lot (if required by Town), and the floor plate square footages and configurations as shown on the plans prepared by The Lawrence Group, architects, dated May 27, 1998 (hereinafter the "Building").
2. Owner shall be responsible for providing, at no cost to the Town, a mobile off-duty police officer to manage traffic flow on all of Worth Avenue at the direction of the Town's Chief of Police from November 1 through April 30 of each year.

3. Neiman's, or its valet operator, shall provide a valet traffic control supervisor in addition to car parking personnel during normal customer store hours from November 1 through April 30 of each year to ensure the proper operation of the valet service at the Building garage.
4. Neiman's shall require that its employees not park on the streets in the Town. In furtherance of this condition, parking for Neiman's employees shall be provided at no expense to the employees. Neiman's employees shall be required to park in either the Building garage on the Land, on the Peruvian Lot (should it be constructed), in any other garage or parking facility on the Island (excluding on-street parking spaces), or off-Island, and shall be allowed to self-park in the Building garage.
5. The Building garage shall be subject to a deed restriction providing for valet parking only except for building employees. Such deed restriction shall be satisfactory to the Town Attorney as to form and content, and shall be recorded in the Public Records of Palm Beach County prior to the issuance of the last certificate of occupancy for the Building.
6. The valet parking tickets of Neiman's customers who park in the Building garage shall be validated by Neiman's at the customer's request.
7. In order to encourage parking garage use, the hourly parking rate at the Building garage and the Esplanade 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.
8. 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.
9. 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.
10. 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.
11. 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.

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



not be released to the Town from escrow until the final certificate of occupancy for the Building has been issued by the Town. Once conveyed, said property shall not be reconveyed or leased to a non-governmental entity.

16. Town accepts the Owner's offer to establish a college scholarship fund to assist the children of "Town Persons," as that term is defined in the Town's Code of Ordinances, in need of financial assistance with some of the costs of their college education. Said fund shall be comprised of a portion of the rent generated by the Building authorized by the Approval. The amount of money placed in the fund shall be at the sole discretion of the Owner as shall be the number and amounts of said scholarships.

17. Owner shall plant a twenty (20) foot high hedge along the north side of the Building to buffer and screen Neiman's from the neighboring residential properties to the north. Owner shall maintain said hedge at a height of twenty (20) feet in perpetuity.

#### ARTICLE V

##### UNITY OF TITLE

The Land, described herein, shall be considered as one (1) parcel and no portion thereof may be sold, transferred, devised or assigned except in its entirety, either voluntarily or involuntarily, by operation of law or otherwise, unless said unity of title is released by the Town or otherwise modified by agreement between the Owner and the Town. This provision shall not preclude the dedication of right-of-way for road improvements required by a governmental authority or utility easements. Said unity of title shall be satisfactory to the Town Attorney as to form and content, and shall be recorded in the Official Records of Palm Beach County, Florida, prior to the issuance of a building permit for the Buildings; provided, however, this shall not preclude the issuance of demolition or site preparation permits in advance of said execution and recording.

#### ARTICLE VI

##### ARCADE EASEMENTS

The Town shall convey to Owner within thirty (30) days of the Effective Date of this Agreement an easement for the portions of the arcades authorized by the Approval and by the Town's approval of the Owner's application for Site Plan Review No. 4-98 with Special Exception and Variance (hereinafter "Esplanade Renovation") which are to be

located on Town property. Said easement shall be recorded by Owner at Owner's expense in the Official Records of Palm Beach County, Florida.

## ARTICLE VII

### INDEMNIFICATION

Owner hereby agrees to indemnify, save, defend, and hold harmless the Town, its representatives, employees, consultants, officers, and assigns at Owner's expense against any damage claims for injury to persons or property arising from the variances granted as part of the Approval for parking stall sizes, parking aisle widths, arcade roof overhangs for the Building and the Esplanade, and from the use of Town property for a portion of the arcade authorized by the Approval and a portion of the arcade approved by the Town for the Esplanade Renovation. Notwithstanding anything to the contrary herein contained, the Town agrees that the partners of Owner and Murray H. Goodman, personally, shall not have any personal liability with respect to the provisions of this Indemnification or any other provisions of this Agreement, and the Town shall look solely to the estate and property of Owner in the Land and Buildings comprising the Property for the satisfaction of the Town's remedies including, without limitation, the collection of any judgment (or other judicial process) requiring the payment of money by Owner with respect to any of the terms and provisions of this Agreement to be observed and/or performed by Owner and no other assets of Owner shall be subject to levy, execution or other judicial process for the satisfaction of the Town's claim, and in the event the Town obtains a judgment against Owner, the judgment docket shall be so noted. Owner shall name Town as an additional named insured under Owner's insurance policy covering the Land and Building, and shall provide the Town with a certificate of such policy evidencing that the Town is an additional named insured to the full extent to which Owner is insured, but not less than ten million dollars (\$10,000,000), primary and umbrella coverage cumulatively, and said coverage shall be maintained in perpetuity (i.e., as long as any of the Variances remains in effect or any portion of the arcades remain on Town property.

## ARTICLE VIII

### APPLICATION TO NEIMAN MARCUS

Owner shall ensure by a legally enforceable document that Neiman Marcus will comply with all of the applicable provisions of this Agreement. A memorandum of said document shall be satisfactory to the Town Attorney as to form and content and shall be fully executed and recorded in the Official Records of Palm Beach County before issuance of a building permit for the Building; provided, however, this shall not preclude the issuance of demolition or site preparation permits in advance of said execution and recording.

ARTICLE IXASSIGNMENT

Owner may assign this Agreement as to its interests in the Land and Building at its sole discretion. Prior to such assignment, Owner shall notify Town in writing of the pending assignment.

ARTICLE XRELEASE OF UNITY OF TITLE

Town shall execute and provide to Owner within ten (10) days of the Effective Date of this Agreement a Release of the Unity of Title on the existing park at 137 Worth Avenue recorded at Official Record Book 4082, Page 827, as amended in Official Record Book 6654, Page 700, Palm Beach County, Florida. Said Release shall be recorded at Owner's expense in the Official Records of Palm Beach County, Florida.

ARTICLE XIVOLUNTARY AGREEMENT

The terms and conditions set forth in the Approval and this Agreement are agreed to voluntarily by Owner, Owner agrees to be bound by them, and Owner waives any legal objection it might otherwise have to said terms and conditions or parts thereof.

ARTICLE XIIREMEDIES FOR VIOLATION

The Town and Owner shall have all remedies available at law and equity in order to enforce the terms of this Agreement including but not limited to: (a) the Town's code enforcement procedures in the Code of Ordinances through the Code Inspector, Code Enforcement Officer, and Code Enforcement Board; (b) the Town may initiate action to revoke the occupational license pursuant to applicable provisions of the Town Code, (c) all remedies otherwise offered in the Town's Code of Ordinances; and (d) injunction, specific performance, and any and all other equitable relief through the civil courts in and for Palm Beach County or the State of Florida. In the event the Town is required to seek injunctive relief, it shall not be required to post bond and it shall not be required to demonstrate irreparable harm or injury to secure an injunction to enforce the terms of this

Agreement. Additionally, in the event of any breach, default or non performance of this Agreement, or any of its covenants, agreements, terms or conditions, the prevailing party shall be entitled to recover its costs, expenses and reasonable attorneys' fees either before or as a result of litigation, including appeals.

#### ARTICLE XIII

#### PROVISIONS TO RUN WITH LAND/RECORDING

This Agreement shall run with the Land and shall be binding upon the Owner and their respective heirs, legal representatives, successors and assigns. This Agreement shall be recorded by Town in the Official Records of Palm Beach County, Florida upon full execution by the parties hereto. This Agreement shall be superior to any mortgages on the Land and shall be recorded prior to the recording of any such mortgages.

#### ARTICLE XIV

#### ENTIRE AGREEMENT

This Agreement represents the entire agreement between the parties as to its subject matter and it may not be amended except by written agreement executed by both parties.

#### ARTICLE XV

#### EFFECTIVE DATE

The Effective Date of this Agreement shall be the day upon which Owner records in the Official Records of Palm Beach County, Florida, title in Owner to all of the Land.

#### ARTICLE XVI

#### MISCELLANEOUS

Wherever the word "laws" appears in this Agreement, it shall be deemed to include all ordinances, rules and regulations as well as laws of the appropriate governmental authorities.

This Agreement may not be amended except by written instrument signed by all parties hereto.

Paragraph headings are inserted for convenience only and shall not be read to enlarge, construe, restrict or modify the provisions hereof. All references to numbered or lettered paragraphs, subparagraphs and exhibits refer (unless the context indicates otherwise) to paragraphs and subparagraphs of this Agreement and to exhibits attached hereto, which exhibits are by this reference made a part hereof.

This Agreement shall be binding upon the parties hereto and upon their successors, assigns, heirs and personal representatives.

In the event of the invalidity of any provision of this Agreement, same shall be deemed stricken herefrom and this Agreement shall continue in full force and effect as if such invalid provision were never a part hereof.

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

IN WITNESS WHEREOF the parties have hereunto set their hands and seals the day and year first above.

Signed, sealed and delivered  
in the presence of:

Susan Eithorn  
Betty B. Cotton

Mary R. Pellett  
Marian Kasserer

Linda George  
Cindy Cousins

TOWN OF PALM BEACH

By:

Paul R. Ilyinsky  
Paul R. Ilyinsky, Mayor

By:

Lesly S. Smith  
Lesly Smith, President  
Town Council

By:

Peter B. Elwell  
Peter B. Elwell  
Acting Town Manager

Deanne McGavin  
Blanca Stull

WORTH AVENUE ASSOCIATES, LTD.

By: Murray H. Goodman  
 Murray H. Goodman  
 General Partner

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of June, 1998, by Paul R. Ilyinsky, the Mayor of The Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation. He is personally known to me and he did not take an oath.



MARION STROHL  
 COMMISSION # CC586483  
 EXPIRES SEPT 18, 2000

Marion Strohl  
 Signature of Notary Public

MARION STROHL  
 Printed Name of Notary Public

Commission No.: CC 586 483

Commission Expires: 9.18.2000

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of June, 1998, by Lesly Smith, the President of the Town of Palm Beach, a Florida

municipal corporation, on behalf of the corporation. She is personally known to me and she did not take an oath.



Marion Strohl  
Signature of Notary Public

MARION STROHL  
Printed Name of Notary Public

Commission No.: CC 586 483

Commission Expires: 9.18.2000

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of June, 1998, by Peter B. Elwell, the Acting Town Manager of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation. He is personally known to me and he did not take an oath.



Marion Strohl  
Signature of Notary Public

MARION STROHL  
Printed Name of Notary Public

Commission No.: CC 586 483

Commission Expires: 9.18.2000

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of June, 1998, by Murray H. Goodman, the General Partner of Worth Avenue

Associates, Ltd., a Pennsylvania limited partnership, on behalf of the partnership. He is personally known to me ~~or has produced his Florida Driver's License Number~~ as identification and he did not take an oath.

Minnie S. Geist

Signature of Notary Public

MINNIE S. GEIST

Printed Name of Notary Public

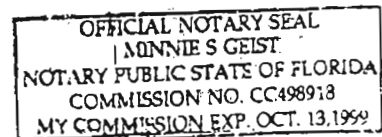
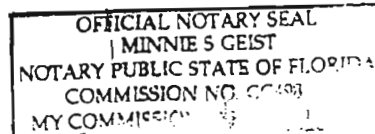
Commission No.: CC 498918

Commission Expires: Oct. 13, 1999

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY FOR THE  
TOWN OF PALM BEACH

By:

[Signature]  
John C. Randolph, Esquire



RECOMMEND APPROVAL.

[Signature], 1998  
[Signature]

Robert L. Moore, Director of  
Planning, Zoning & Building

[Signature], Zoning Administrator 6/18/98



Exhibit "A"

Legal Description of the Land

Parcel 1:

Lots 52 through 55, inclusive, Block 16, Royal Park Addition to the Town of Palm Beach, Florida, according to the Plat thereof recorded in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, Plat Book 4, Page 1.

Parcel 2:

Lots 13, 14 and 15, Block 16, and Lots 56, 57, 58 and 59, Block 16, Royal Park Addition to the Town of Palm Beach, Florida, according to the Plat thereof recorded in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida in Plat Book 4, Page 1.

Parcel 3:

Lots 49, 50 and 51, Block 16, Royal Park Addition to the Town of Palm Beach, Florida, according to the Plat thereof recorded in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, in Plat Book 4, Page 1.

EXHIBIT "B"

400 SOUTH COUNTY ROAD

Lots-22, 23, 24, 25, 26 and 27 of Block 15 of the Royal Park Addition to Palm Beach, Florida, as shown on a revised map now filed with the Clerk of the Circuit Court of Palm Beach County, Florida, in Plat Book 4, Page 1.



I certify this document to be a true copy of the record in my office  
this FIRST day of SEPTEMBER, 2000

DOROTHY H. WILKEN, Clerk of Court, Palm Beach County, FL

By \_\_\_\_\_ Deputy Clerk