MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON JUNE 11, 1998
REGARDING NEIMAN MARCUS DECLARATION OF USE AGREEMENT

I. CALL TO ORDER AND ROLL CALL

President Lesly Smith called the Special Town Council Meeting, regarding the Neiman Marcus Declaration of Use Agreement, to order at 10:00 A.M. on Thursday, June 11, 1998 in the Town Council Chambers. On roll all, the following Elected Officials were found to be present: Mayor Paul Ilyinsky, President Lesly Smith, President Pro-Tem Sam McLendon, Councilmen Jack McDonald, Leslie Shaw, and Allen Wyett. Also present for all or part of the meeting were: Acting Town Manager Peter Elwell, Assistant to the Town Manager David Jakubiak, Facility Maintenance Division Manager Joe Ugi, Finance Director James Demming, Fire-Rescue Chief Ken Elmore, Information Systems Manager Spencer Wilson, Personnel Director William Crouse, Personnel Analyst Pam Russell, Planning, Zoning, & Building Director Robert Moore, Zoning Administrator Paul Castro, Police Chief Frank Croft, Assistant Police Chief Michael Reiter, Police Planner Lisa Gorman, Recreation Director Russell Bitzer, Public Works Director Al Dusey, Purchasing Agent Charles Boggs, Town Attorney John Randolph, and Town Clerk Mary Pollitt.

II. APPROVAL OF AGENDA

The Agenda was unanimously approved through motion of Councilman Wyett, seconded by President Pro-Tem McLendon.

III. CONTINUATION OF CONSIDERATION OF THE DECLARATION OF USE AGREEMENT FOR SITE PLAN REVIEW NO. 3-98 WITH SPECIAL EXCEPTIONS AND VARIANCES; 137, 139-151, 155 WORTH AVENUE, MURRAY H. GOODMAN, EVELYN N. HARARY & WORTH AVENUE ASSOCIATES, LTD.

Attorney James Brindell, on behalf of Murray H. Goodman, addressed the Town Council, stating that certain changes had been made in the Declaration of Use Agreement as follows:

(Please note: Language eliminated will be delineated with ~~stricken symbol~~; language added with be ***bold italicized***.)

Page 3: Article IV. Conditions. 1. Inclusion of language "if required by Town" – "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..."

Page 4: Article IV. Conditions. 2.: Revised to read as follows:
"Owner shall be responsible for ~~the actual out of pocket expense of providing a mobile on - or~~ ***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 ~~15~~ ***1*** through April 30 of each year. ~~Provided, however, this requirement shall cease if the Town reduces the number of the one-street parking spaces available to customers on Worth Avenue by thirty (30) percent or adds parking meters to the Avenue. The current number of parking spaces on the Avenue is 119."~~

Page 4: Article IV. Conditions. 3, and 7: Dates changed from November 15 to November 1, as follows:
3. "...normal customer store hours from November ~~15~~ ***1*** through April 30..."

7. "...and the Esplanade garage from November ~~15~~ ***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..."

Page 5: Article IV. Conditions. 9.: Times changed as follows:
"...restricted to the hours of ~~9:00~~ ***8:30*** A.M. to ~~11:00~~ ***10:30*** A.M.,..."

Page 5: Article IV. Conditions. 11: Entire provision 11 was stricken, and substituted with language submitted by Town Attorney Randolph as follows: ***"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."

Page 5: Article IV. Conditions. 12: language modified as follows:
"a. an ~~on- or~~ off-duty police officer shall be provided..."

Page 6: Article IV. Conditions. 13: language modified as follows:
"...the Peruvian Lot shall be landscaped with grass, ***trees***, and a hedge...Said grass, ***trees***, and hedge shall be to the satisfaction of the Town."

Page 6. Article IV. Conditions. 14: language modified as follows:
"...but not limited to, an increase in the number of valet personnel or the ~~temporary~~ relocation of the valet station to the first level..."

Page 6. Article IV. Conditions. 16: language modified as follows:
"~~Owner shall~~ ***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 or Ordinances, in need of financial assistance with some of the costs of their college education. Said fund..."

Page 7. Article IV. Conditions. 17: newly added, as requested by Town staff:
"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."

Page 7. Article VI. Arcade Easements: language modified as follows:
"The Town shall convey to Owner within thirty (30) days of the ~~execution~~ ***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."

Page 8. Article VII. Indemnification: language modified as follows:
"...Notwithstanding anything to the contrary herein contained, the Town agrees that ~~neither~~ ***the partners of*** Owner, and Murray H. Goodman,, ~~or The Goodman Company~~ ***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..."

"...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 policies evidencing that the Town is an additional named insured.***

Mr. Brindell explained that they were trying to achieve the idea that the corporation would be liable, however, the individuals would not have their personal banks accounts attached. In addition the Town would be named as an additional insured, with certificate of the policy provided to the Town.

Page 9. Article X. Release of Unity of Title: language modified as follows:
"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."

Page 10: Article XIII. Provisions To Run With Land/Recording: language added as follows:
"This agreement shall be superior to any mortgages on the Land and shall be recorded prior to the recording of any such mortgages."

On the signatory pages, the name of Peter B. Elwell, as Acting Town Manager was substituted for the signature of Robert J. Doney, Town Manager.

Councilman Wyett referred to Item 17 of Article IV, commenting that he would like to see the twenty (20) foot high hedge installed as soon as possible after the basic structure was up.

Director of Planning, Zoning & Building Robert Moore noted that the Architectural Commission approval process would address the installation of the hedge, as all construction would have to be finished beforehand.

Councilman McDonald referred to Item 15 of Article IV, commenting that he would like to know what the plans were for the park area at 400 South County in the interim period of construction completion.

Attorney Brindell responded that the current short term leases would be kept in place.

Councilman McDonald asked if Mr. Goodman would consider demolition of the structures, creating an open area, without conveying the property immediately, since the Town was giving up its park on Worth Avenue, but would not be receiving the property at County Road for three years.

Mr. Moore responded that the Declaration of Use Agreement designated the uses for a park or Town uses in combination with park, and the Town would like the opportunity to survey the space in the building for consideration of its final use.

Attorney Brindell responded that the area was offered "as is" and the Town would need to consider the space and determine its use.

Councilman McDonald replied that after the Town considered the space, and perhaps determined that it was not needed as office space, that perhaps the buildings could be demolished prior to the three year conveyance period.

Attorney Brindell responded that he would then consider it the responsibility of the Town to pay for any demolition, as that was not part of the offer.

Councilman McDonald asked if that would be possible before the conveyance, if the Town chose to do that?

Attorney Brindell responded that he would have to speak with Mr. Goodman in that regard.

Mr. Moore commented that the Town could reconsider the matter if there was some interest by the Town in the property.

President Pro-Tem McLendon commented that he did not believe Item 16 of Article IV (concerning the college scholarship) belonged in the Declaration of Use Agreement.

Town Attorney Randolph referred to Article VII, Indemnification, and noted that the individuals who were partners of the Owner, as described in the document, did not wish to have any personal liability, nor did Mr. Goodman want to have any personal liability in regard to the property. He explained that they had been exempted, and the shell partnership, or the Owner, would be covered by insurance and would have its personal liability policy in existence as long as the store was in existence. He suggested that some consideration be given to making sure that the Certificate of Insurance was in the maximum amount, or not less than a specific amount.

Acting Town Manager Elwell commented that a specific limit should be established, and also expressed concern regarding the issue of whether Neiman Marcus, as the operator of the property, ought to also be indemnified for the purposes of the Indemnification paragraph, or whether it was sufficient that the Owner indemnify the Town.

Town Attorney Randolph responded that he had raised that issue with Mr. Brindell, and believed that as long as the policy of insurance was in effect, and the Town was a named insured, that it would be covered. He suggested a minimum amount be stated, as well as a statement that it shall not be revoked, and would remain in effect during the life of the Agreement.

Acting Town Manager Elwell suggested the amounts of $1 million per occurrence, and $2 million in the aggregate.

Town Attorney Randolph responded that he would like the last sentence in Article VII to reference that the Town would be insured to the full extent that the property owner is insured, but in no event in an amount less than "x", and that said insurance policy shall remain in effect, and not be revoked.

Councilman McDonald questioned any kind of a claim on the property at 400 South County Road, that could cloud the title of property that would ultimately be conveyed to the Town.

Attorney Brindell suggested that the adequate insurance issue be made a condition of the escrow agreement, when the title was escrowed.

After discussion, it was determined that the language in Article VII would read "The Town will be insured to the full extent to which owner is insured, but not less than $10 million primary and umbrella coverage, and said coverage shall be maintained in perpetuity."

Councilman Wyett moved approval of the Declaration of Use Agreement by The Town of Palm Beach and Worth Avenue Associates, Ltd., dated June 11, 1998. The motion was seconded by Councilman Shaw. On roll call the motion carried 4/1, with President Smith casting a negative vote.

Attorney Brindell advised that the Declaration of Use Agreement would be re-typed, reviewed by Town Attorney Randolph, and ascertained that it could then be executed by all parties.

IV. ANY OTHER MATTERS

There were none.

V. ADJOURNMENT

The meeting was adjourned at 10:35 A.M.

Mary A. Pollitt
Town Clerk

Prepared by:
Susan Eichhorn
Deputy Town Clerk
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