

The City of Aventura



City Commission
Susan Gottlieb, Mayor

Enbar Cohen
Teri Holzberg
Billy Joel
Michael Stern
Howard Weinberg
Luz Urbáez Weinberg

City Manager
Eric M. Soroka, ICMA-CM

City Clerk
Teresa M. Soroka, MMC

City Attorney
Weiss Serota Helfman
Pastoriza Cole & Boniske

CITY COMMISSION MEETING AGENDA JULY 15, 2014 - 9 AM

Aventura Government Center
19200 West Country Club Drive
Aventura, Florida 33180

1. CALL TO ORDER\ROLL CALL
2. MOTION AND ACTION CONCERNING BUILDING PERMIT COVENANT MATTER
(City Attorney)
3. ADJOURNMENT.

This meeting is open to the public. In accordance with the Americans with Disabilities Act of 1990, all persons who are disabled and who need special accommodations to participate in this meeting because of that disability should contact the Office of the City Clerk, 305-466-8901, not later than two days prior to such proceeding. One or more members of the City of Aventura Advisory Boards may be in attendance and may participate at the meeting. Anyone wishing to appeal any decision made by the Aventura City Commission with respect to any matter considered at such meeting or hearing will need a record of the proceedings and, for such purpose, may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. Agenda items may be viewed at the Office of the City Clerk, City of Aventura Government Center, 19200 W. Country Club Drive, Aventura, Florida, 33180. Anyone wishing to obtain a copy of any agenda item should contact the City Clerk at 305-466-8901.

Covenant of Indemnification

This Covenant of Indemnification (the "Covenant") is made and executed the ___ day of July, 2014, by Last Lot Corp., a Florida corporation, NI Holdings, LLC, a Florida limited liability company, and Two Islands Development Corp., a Florida corporation (jointly and severally referred to as the "Applicant") to and for the benefit of the City of Aventura, Florida, a Florida Municipal Corporation (the "City").

WITNESSETH: In connection with (i) the City's consideration of the issuance of an approval to Applicant on Applicant's Sidewalk Permit Application #14-561 (the "Application") for the installation of a sidewalk (the "Sidewalk") upon the dedicated ten (10) foot utility easement area of the South Island, as described in the Application set forth in Exhibit "A", a copy of which is attached hereto and incorporated herein, and which is supported by Opinions of Title and Supplemental Opinions of Title furnished to the City on behalf of Applicant and approved by the City Attorney, and (ii) the City's consideration of the issuance of further approvals and building permits for the proposed multi-family development on the North Island, Applicant hereby covenants and agrees as follows:

1. The City accepts and agrees to the terms of this Covenant in furtherance of compliance with the condition for a covenant under City Resolution No. 98-77.

2. Except as otherwise expressly provided herein, Applicant agrees to defend, indemnify and hold the City harmless from any claim, demand, suit, loss, cost, expense or damage which may be asserted, claimed, or recovered against or from City (and its officers, agents, servants and employees) solely by reason of any property damage or bodily injury, including death, sustained by any person whomsoever, which said claim, demand, suit, loss, cost, expense or damage for property damage or bodily injury arises out of or is related to the construction or maintenance of the Sidewalk or construction of the proposed multi-family development of the North Island, and regardless of whether such claim, demand, suit, loss, damage, cost or expense is caused in whole or in part by City's negligence or by the negligence of the City's officers, agents, servants or employees, except that such covenant to defend, indemnify and hold harmless excludes and does not apply to or otherwise cover any claim, demand, suit, loss, cost, expense or damage to the extent that the City (and/or the City's officers, agents, servants or employees) engage in willful misconduct and/or are grossly negligent.

Except as otherwise expressly provided herein, Applicant's covenant to defend, indemnify and hold harmless City, shall likewise apply to any reasonable attorneys' fees and taxable costs (or other reasonably necessary costs) incurred by the City in defending any claim, suit, action or other proceeding brought by any person or entity (other than Applicant or Applicant's successors and/or assigns) against the City concerning any decision by the City to issue City approvals and building permits for the Sidewalk and/or for the proposed multi-family development of the North Island.

This agreement to defend, indemnify or hold the City harmless excludes and does not apply to or otherwise cover any claim, demand, suit, loss, cost, expense or damage brought or asserted by Applicant or Applicant's successors and/or assigns against the City, or its officers, agents, servants or employees concerning any breach of this Covenant by City.

Prior to requesting to be defended, indemnified or held harmless under this Covenant, the City shall provide Applicant with written notice, and Applicant shall have ten (10) days in which to respond in writing to the City's request. Any indemnity obligation under this Covenant is subject to the City's obligation to provide Applicant with timely written notice (*i.e.*, within seven (7) days of the City being served with a complaint (or petition), and, if no complaint (or petition) has been served, within twenty (20) days of City's knowledge of an applicable claim) to allow for the proper defense of any claim, demand, suit, loss, cost, expense or damage that may be covered under this Covenant.

The defense of City, as required herein, shall be provided by legal counsel which is approved by the City Manager (and, to the extent applicable when such defense representation is provided by the City Attorney, at the City's currently charged rate), with such approval not to be unreasonably withheld by City.

The City may not settle or offer to settle (unless it elects to do so in its own discretion and at its sole cost) any alleged claim, demand, suit, loss, cost, expense or damage that it maintains is covered under the indemnity obligations under this Covenant without first obtaining Applicant's prior written consent, which consent shall not be unreasonably withheld. Failure to obtain Applicant's prior written consent shall result in the indemnity obligations under this Covenant being terminated and having no further legal or binding effect as to any such settlement amount and the City, not Applicant, shall be liable for payment of any such

settlement amount that City agrees to. This shall not impair any prior liability or responsibility of Applicant.

3. Upon the issuance and release by the City of a building permit for the Sidewalk and the Sidewalk being constructed or is commenced to be constructed, Applicant (or its successors and/or assigns) shall at such time, at Applicant's (or Applicant's successors or assigns) sole cost and expense, provide and continuously maintain (for at least ten (10) years after construction (or commencement of construction, whichever is the longer period of time) of the Sidewalk comprehensive general liability insurance coverage which shall further support Applicant's covenant to defend, indemnify and hold harmless City for property damage or bodily injury as provided herein. The form and sufficiency of said liability insurance policy, provided such policy is commercially reasonable and available, shall be subject to approval of the City Attorney and City Manager and shall provide primary coverage in the amount of \$1,000,000 (or greater in the discretion of Applicant) combined single limit for personal injury and property damage liability, shall support and cover Applicant's covenant to defend, indemnify and hold harmless for any such personal injury and property damage, and shall name the City (and, if commercially reasonable and available, City's officers, agents and employees) as an additional insured. A certificate of insurance reflecting compliance with this Section shall be continuously maintained on file with the City Clerk by Applicant.

4. As further security for Applicant's performance of its covenant to defend, indemnify and hold City harmless, Applicant hereby agrees to deposit, within 10 days after execution of this Covenant (and expressly conditioned upon the issuance and release by the City of a building permit for the Sidewalk), the sum of \$50,000 in an account to be held in escrow pursuant to an escrow arrangement (the "Escrow Account") which is approved by the City Manager, and in which the City Attorney, Weiss Serota Helfman, et. al., acts as escrow agent. Thereafter, no later than 60 days after execution of the Covenant (and expressly conditioned upon the issuance and release by the City of a building permit for the Sidewalk), Applicant shall deposit an additional \$200,000 in the Escrow Account. The funds in the Escrow Account shall be held in escrow as security to cover all of the Applicant's indemnity obligations under this Covenant. The Applicant shall either promptly reimburse the City for any reasonable attorneys' fees and taxable costs (or other reasonably necessary costs) incurred by the City that are covered under all of the indemnity obligations under this Covenant, or the City shall be authorized to obtain reimbursement of such fees and costs directly from the Escrow Account. In the event the City obtains reimbursement of reasonable

attorneys' fees and taxable costs (or other reasonably necessary costs) from the Escrow Account, the Applicant agrees to replenish the Escrow Account so that at least \$250,000 is maintained in the Escrow Account at all times. The Escrow Account shall be maintained for at least four (4) years after execution of this Covenant. After such four-year period (or at any earlier period of time that may be agreed to in writing by Applicant and the City), all remaining funds in the Escrow Account shall be released and refunded to Applicant. The Escrow Account and process required by this Section 4 shall also apply to and cover any damage liability of City in the event that the insurance coverage required in Section 3 fails or is not available or is insufficient to fully protect City.

5. Nothing in this Covenant of Indemnification is intended to waive, limit or otherwise restrict any defenses or immunities available to the City as a result of its executive decision in connection with the issuance of any City approvals and building permits for the Sidewalk and/or for the proposed multi-family development of the North Island.

6. The City and Applicant agree to fully cooperate with each other pursuant to this Covenant and they further recognize that time is of the essence in all aspects of this Covenant.

It is expressly recognized by the City and Applicant that the issuance of any building permit for the Sidewalk (and/or any challenge to the issuance of such building permit or any other challenge in connection with the Sidewalk, brought or filed by any other person) shall not in any way delay, hinder, or otherwise affect the ongoing review and processing of approvals and building permits for the proposed multi-family development on the North Island (including, but not limited to, administrative site plan review approvals and other reviews, approvals and permits in connection with such development). Accordingly, the issuance of the building permit for the Sidewalk and/or the construction of the Sidewalk (and/or any challenge to the issuance of such building permit or any other challenge in connection with the Sidewalk, brought or filed by any other person) shall not in any way delay, hinder, or otherwise affect the City's review, processing and issuance of approvals and buildings permits for the proposed multi-family development on the North Island pursuant to the City's standard protocol, procedures and timing. However, notwithstanding any other provision of this Covenant, it is recognized that the City shall require as a condition subsequent of the final site plan approval for the multifamily development of the North Island, that the Applicant shall be required to install the Sidewalk at the South Island (in accordance with the time limits authorized by the Final Site Plan approval), unless

the Sidewalk requirement is otherwise released or waived by the City Commission of the City or by court order. Likewise, notwithstanding any provision of this Covenant, it is recognized that the City currently maintains (as it is well within its rights to do so) that it shall not issue a building permit for the multifamily development of the North Island, unless the Sidewalk is first installed at the South Island (unless the Sidewalk requirement is otherwise released or waived by the City Commission of the City or by court order). City shall, to the extent practicable, expedite any hearing before the City Commission as it relates to any request for the Sidewalk requirement to be released or waived (or other relief sought by Applicant with respect to the Sidewalk requirement). Applicant (including its successors and assigns) fully reserves the right to petition the City (including the City Commission) to request that the Sidewalk requirement be released or waived, or to seek other relief from the City Commission with respect to the Sidewalk requirement pursuant to the City Code and applicable law.

Moreover, so long as not directly adverse to each of their respective interests, the City and Applicant agree to fully cooperate with one another to diligently defend any claim, suit, action or other proceeding covered under this Covenant, including, but not limited to, any claim, suit, action or other proceeding against the City in connection with the issuance of any City approvals and building permits for the Sidewalk and/or for the proposed multi-family development of the North Island, and any appeal in connection with any such claim, suit, action or other proceeding.

In connection with such cooperation, the City shall have the City attorney (*i.e.*, a partner or senior attorney from the law firm that serves as City attorney) attend dispositive hearings and, to the best extent possible, argue in full support of the defense of any claim, suit, action or other proceeding concerning any challenge to the issuance of any building permit for the Sidewalk or any other challenge in connection with the Sidewalk. In addition, the City shall cooperate with any and all efforts to seek to recover an award of attorneys' fees and costs against any person or entity bringing any claim, suit, action or other proceeding covered under this Covenant to the extent such claim, suit, action or other proceedings is without any basis or is otherwise frivolous.

7. Nothing in this Covenant is intended to limit or restrict the executive powers of the City (provided such powers are exercised in accordance with the City Code and applicable law) in deciding whether to issue any approvals and building permits for the Sidewalk and/or for the proposed multi-family development of the North Island. The City retains sole discretion under its police

powers (provided such powers are exercised in accordance with the City Code and applicable law) as to whether to grant or deny approvals and building permits for the Sidewalk and/or for the proposed multi-family development on the North Island.

8. While nothing in this Covenant of Indemnification shall prohibit the City from exercising its judgment to defend any claim, suit, action or other proceeding covered under this Covenant, any material breach by the City under this Covenant shall automatically suspend Applicant's further indemnity and related obligations under this Covenant, pending City's opportunity to cure said breach.

9. Notwithstanding anything contained herein, Applicant (including its successors and assigns) fully reserves all of its rights and remedies, including, but not limited to, all vested development rights to proceed with the proposed multi-family development on the North Island. Accordingly, nothing in this Covenant is intended to waive, limit, or otherwise restrict such rights and remedies, including all vested development rights and claims that Applicant (including any of its successors and/or assigns) may have against any person or entity. Nonetheless, provided that the City issues and releases to Applicant the building permit for the Sidewalk, this Covenant is intended to release the City from any claims that Applicant (including any of its successors and/or assigns) may have against the City with respect to the Sidewalk, except for any claim concerning any future breach of this Covenant by City or any other future claim against the City. Further, upon the City's issuance and release of the building permit for the Sidewalk, Applicant recognizes that it presently has no cause of action against City with respect to the Sidewalk, and has to date been treated fairly by City.

10. Applicant agrees that this Covenant shall be binding upon the parties hereto and their respective successors and assigns excluding condominium unit owners under the proposed multi-family development on the North Island (other than signatories herein) and such unit owners' mortgagees/lenders, and also excluding mortgagees/construction lenders for this proposed development on the North Island. Applicant may assign its obligations under this Covenant to any person or entity, including, but not limited, to a master association or other community association, subject to the prior written approval of the City Manager.

11. Any notices required or permitted to be given under this Covenant shall be in writing and shall be deemed to have been given if delivered by hand, sent by recognized overnight courier (such as Federal Express), or mailed by certified or registered mail, return receipt requested, in a postage prepaid envelope and addressed as follows:

If to the City at: City of Aventura
Attention: City Manager
19200 West Country Club Drive
Aventura, Florida 33180
Telephone: (305) 466-8910

With a copy to: David M. Wolpin, Esq., City Attorney
Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.
2525 Ponce de Leon Blvd., Suite 700
Coral Gables, Florida 33134
Telephone: (305) 854-0800

If to Applicant: Last Lot Corp.
NI Holdings, LLC
Two Islands Development Corp.
c/o Gary Cohen, Authorized Representative
2750 N.E. 185th Street, Suite 301
Aventura, Florida 33180

With a copy to: John K. Shubin, Esq.
Shubin & Bass, P.A.
46 S.W. 1st Street, 3rd Floor
Miami, Florida 33130
Telephone: (305) 381-6060

Notices personally delivered or sent by overnight courier shall be deemed given on the business date of delivery and notices mailed in accordance with the foregoing shall be deemed given three (3) days after deposit in the U.S. Mail.

12. Enforcement shall be by action against any parties or person violating, or attempting to violate, any covenants herein. The prevailing party in any action or suit pertaining to or arising out of this instrument shall be entitled to recover, in addition to costs and disbursements allowed by law, such sum as the Court may adjudge to be reasonable for the services of its attorney at trial and appellate

proceedings. This enforcement provision shall be in addition to any other remedies available at law, in equity or both. The parties voluntarily waive any right to trial by jury concerning any litigation between Applicant and the City, which arises under this Covenant.

13. Invalidation of any one of these covenants, by judgment of Court, shall not affect any of the other provisions which shall remain in full force and effect.

14. This instrument shall be filed of record in the public records of Miami-Dade County, Florida at the cost of Applicant.

15. Except as otherwise provided above with respect to the Comprehensive General Liability Policy and the Escrow Account, this Covenant shall be effective for a term which commences upon execution hereof and continues for a term of ten (10) years.

16. This Covenant shall be construed and governed in accordance with the laws of the State of Florida.

17. This Covenant shall be of no force or effect if City determines not to timely process or grant approvals and building permits for the Sidewalk.

In witness whereof, Applicant has executed this Covenant under seal on the day and year herein first above written, and City has accepted this Covenant.

[SIGNATURE PAGES TO FOLLOW]

JOINDER BY OWNER OF NORTH ISLAND

Gary Cohen, Trustee for Trust 75-LT-21 (the "Trust"), as the current owner of the North Island, hereby joins in this Covenant of Indemnification to the same extent as any Applicant hereunder, and shall be entitled to the rights and benefits and bound to the obligations which are applicable to each Applicant under this Covenant of Indemnification. Upon conveyance of the North Island, the successors and assigns of the Trust (excluding condominium unit owners under the proposed multi-family development on the North Island (other than signatories under this Covenant) and such unit owners' mortgagees/lenders, and also excluding mortgagees/construction lenders for this proposed development on the North Island) shall be entitled to the rights and benefits and bound to the obligations which are applicable to each Applicant under this Covenant of Indemnification, and the Trust shall be released of such obligations upon the assumption by operation of law or otherwise of such rights, benefits, and obligations by the successors and assigns of the Trust (excluding condominium unit owners under the proposed multi-family development on the North Island (other than signatories under this Covenant) and such unit owners' mortgagees/lenders, and also excluding mortgagees/construction lenders for this proposed development on the North Island).

GARY COHEN, AS TRUSTEE FOR TRUST 75-LT-21

BY: _____

Gary Cohen, Trustee

Print Name: _____

Gary Cohen

Signed, sealed and delivered in the presence of:

Witness

Witness

Print Name

Print Name

Stanley B. Price

Charles Shelton

Stanley B. PRICE

Charles Shelton

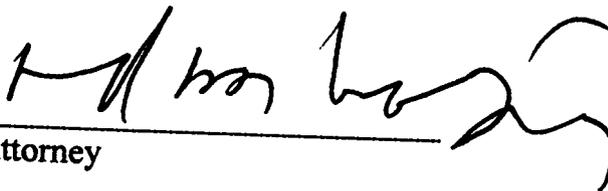
Accepted by the City of Aventura, Florida, this ____ day of July, 2014.

BY: _____
Eric M. Soroka, City Manager

ATTEST:

City Clerk

Approved as to form and legal sufficiency for reliance of the City only:



City Attorney

ACKNOWLEDGMENT

STATE OF FLORIDA)
) ss
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this ____ day of July, 2014, by Eric M. Soroka, as City Manager, City of Aventura, a Florida Municipal Corporation. He is personally known to me or presented his _____ as identification.

Notary Public
NOTARY SEAL/STAMP



CITY OF AVENTURA PERMIT APPLICATION

19200 W County Club Drive 4th Floor - Aventura, FL 33180
Tel (305) 466-8937 - Fax (305) 466-8949

EXHIBIT "A"

Permit #: 014-501 Job Address: Island Estates Drive, Aventura Unit #:

Name <u>Two Islands Development, Inc.</u> Address <u>2750 NE 185th St. Suite 301</u> City <u>Aventura</u> State <u>FL</u> Zip <u>33160</u> Phone <u>305-935-9206</u>	Name <u>All County Paving</u> Address <u>1302 So. J. St</u> City <u>Lake Worth</u> State <u>FL</u> Zip <u>33460</u> Phone <u>407-610-8069</u> License # <u>U-19887</u>
<input type="checkbox"/> BUILDING <input type="checkbox"/> ELECTRICAL <input type="checkbox"/> MECHANICAL <input type="checkbox"/> PLUMBING/GAS <input type="checkbox"/> PAVING/DRAINAGE <input type="checkbox"/> ROOFING	<input type="checkbox"/> CHANGE CONTRACTOR <input type="checkbox"/> EXTENSION <input type="checkbox"/> RENEWAL <input type="checkbox"/> SHOP DRAWING <input type="checkbox"/> SIGN <input checked="" type="checkbox"/> OTHER
Name <u>Thomas Checca, PE</u> Address <u>11568 NW 73rd Manor</u> City <u>Parkland</u> State <u>FL</u> Zip <u>33076</u> Phone <u>954-344-6664</u> License _____	Current Use of Property <u>Single family home</u> Folio # <u>various on tract A. Plat Book 141 pgs 4</u> Work Classification: Residential <input checked="" type="checkbox"/> Commercial _____
Name <u>Gary Lohen</u> Name _____	<u>install 4ft. pave sidewalk and curb</u> <u>within dedicated 10ft utility easement</u>

\$45,000.00

24,000 SF

Application is hereby made to obtain a permit to do work and installation as indicated. I certify that all work will be performed to meet the standards of all laws regulating construction in Aventura. I understand that a separate permit must be obtained for ELECTRICAL, MECHANICAL, PLUMBING, SIGNS, WELLS, POOLS, ROOFING, SHUTTERS, WINDOWS, FURNACES, BOILERS, HEATERS, TANKS, and AIR CONDITIONERS, etc. I understand that in signing this application I am responsible for the supervision and completion of the construction including obtaining all inspections in accordance with the plans and specifications.

NOTICE TO OWNER: This Permit does not grant any property rights or exclusive privileges. This Permit does not authorize any damage or injury to the property or rights of others. In addition to the requirements of this permit, there may be additional deed restrictions applicable to this property that may be found in the public records of this county, and there may be additional permits required from other governmental entities such as Water Management Districts, state agencies or federal agencies. The City recommends, although does not require, that the owner secure any required approvals from his/hers/their Condominium or Homeowners' Association prior to submitting this building permit application. The owner acknowledges that issuance of a building permit by the City is based solely upon the Florida Building Code and applicable local, county, state and federal laws and does not independently satisfy any applicable Homeowner/Condominium Association approval requirements that may exist between the Owner and the Association; and that the City does not enforce any non-governmental deed restrictions or Homeowner/Condominium restrictions upon this property.

WARNING TO OWNER: YOUR FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOU PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED & POSTED ON THE JOB SITE BEFORE YOUR FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR ATTORNEY OR LENDER BEFORE RECORDING YOUR NOTICE OF COMMENCEMENT.

OWNER/CONTRACTOR AFFIDAVIT: I certify that all the foregoing information is accurate and that all work will be done in compliance with all applicable laws regulating construction and zoning.

Signature of Owner or Agent [Signature] Date 12/9/13
 Print Name (Owner or Agent) Gary Lohen, President

Signature of Qualifier _____ Date _____
 Print Name (Qualifier) _____

STATE OF FLORIDA, COUNTY OF Dade
 Sworn to and subscribed before me this _____ day of _____, 2013
 My Comm. Expires Aug 14, 2015
 Commissioner # EE-121443

NOTARY FOR OWNER OR AGENT
 Personally Known _____ OR Produced Identification _____

NOTARY FOR QUALIFIER
 Personally Known _____ OR Produced Identification _____

This permit does not become valid until signed by an authorized representative of the City of Aventura and all fees are paid and acknowledged in the space provided.

For Office Use Only	DISCIPLINE	AP	DAP	DISCIPLINE	AP	DAP	FEES \$		
	Zoning				Electrical			Base Permit	
Building				Mechanical			State DCA		Fines
Structural				Plumbing			State DBPR		Double fee
P/Works				Roofing			BCCO		Other(s)
Flood				Building Official			Zoning		Total