

IN THE CIRCUIT COURT OF THE 11th
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. **2022-13880 CA 01**

PEDRO J. GARCIA, as Property Appraiser
of Miami-Dade County, Florida,

Plaintiff,

vs.

COMPLAINT

WEST AVENTURA DEVELOPERS, LLC;
WEST AVENTURA TIC 1E, LLC; WEST
AVENTURA TIC 2E, LLC; and JIM
ZINGALE, as Executive Director of the
State of Florida Department of Revenue,

Defendants.

Plaintiff, PEDRO J. GARCIA, as Property Appraiser of Miami-Dade County, Florida, files
this Complaint against the above-named Defendants and alleges:

VENUE, PARTIES, AND JURISDICTION

1. This is an action equitable in nature brought by Plaintiff in his official capacity as Property Appraiser of Miami-Dade County, Florida, to contest certain changes which the Miami-Dade County Value Adjustment Board (VAB) made in the assessment of certain real property for purposes of ad valorem taxation for the year 2021.

2. This Court has jurisdiction of this equitable action pursuant to Sections 194.036(1)(a) and (b), and 194.171, Florida Statutes. This action is timely filed and all conditions precedent to bringing this action have been met.

3. Defendant JIM ZINGALE, Executive Director of the State of Florida Department of Revenue ("ZINGALE"), is the official of the state government responsible for overall

supervision of the assessment and collection of ad valorem taxes. ZINGALE is joined herein pursuant to Section 194.181(5), Florida Statutes, because the tax assessment, as reduced by the VAB, is being contested on the grounds that it is contrary to the laws and Constitution of the State of Florida.

4. As of January 1, 2021, Defendants WEST AVENTURA DEVELOPERS, LLC and WEST AVENTURA TIC 1E, LLC were the legal titleholders of record of the real property described by Tax Folio Nos. 30-2204-002-0010, 30-2204-002-0040, 30-2204-002-0050, 30-2204-002-0060, 30-2204-002-0070, 30-2204-002-0080, 30-2204-002-0090 and 30-2204-002-0100, hereinafter referred to as the "Subject Property."

5. Defendants WEST AVENTURA DEVELOPERS, LLC and WEST AVENTURA TIC 1E, LLC were the taxpayers to whom the Subject Property was assessed for 2021.

6. Defendants WEST AVENTURA TIC 1E, LLC and WEST AVENTURA TIC 2E, LLC were the taxpayers responsible for the payment of all ad valorem taxes levied on the Subject Property for 2021.

OWNERSHIP AND ASSESSMENT HISTORY OF SUBJECT PROPERTY

7. On or about April 25, 2017, WEST AVENTURA DEVELOPERS, LLC acquired the Subject Property from OJUS 55 LLC via a warranty deed recorded at Official Records Book 30523, pages 4685-86 of the public records of Miami-Dade County, Florida. *See Exhibit A*, attached hereto.

8. On or about December 29, 2020, WEST AVENTURA DEVELOPERS, LLC transferred 50% of the Subject Property to WEST AVENTURA TIC 1E, LLC, via a special warranty deed recorded at Official Records Book 32371, pages 3816-19 of the public records of Miami-Dade County, Florida. *See Exhibit B*, attached hereto. The deed indicates that the Subject

Property is to be held as tenants in common pursuant to the terms of a “Tenant In Common Agreement” (“TIC Agreement”).

9. The TIC Agreement referenced in the December 29, 2020, deed is recorded at Official Records Book 32284, pages 955-68 of the public records of Miami-Dade County, Florida. *See Exhibit C, attached hereto.*

10. On February 22, 2021, WEST AVENTURA DEVELOPERS, LLC transferred the remaining 50% of the Subject Property to WEST AVENTURA TIC 2E, LLC, via a special warranty deed recorded at Official Records Book 32374, pages 3143-46 of the public records of Miami-Dade County, Florida. *See Exhibit D, attached hereto.* The deed indicates that the Subject Property is to be held as tenants in common by WEST AVENTURA TIC 1E, LLC and WEST AVENTURA TIC 2E, LLC pursuant to the terms of the TIC Agreement (Exhibit C).

11. Pursuant to the Florida Constitution and section 193.1555 of the Florida Statutes, certain types of residential and nonresidential real property in Florida are entitled to a 10% assessment increase limitation (“10% Assessment Limitation”). The 10% Assessment Limitation limits increases in a property’s assessed value to 10% by stating that: “[b]eginning in the year following the year the property becomes eligible for assessment pursuant to this section, the property shall be reassessed annually on January 1. Any change resulting from such reassessment may not exceed 10 percent of the assessed value of the property for the prior year.” § 193.1555(3), Fla. Stat.

12. Thus, through tax year 2020, WEST AVENTURA DEVELOPERS, LLC was entitled to the 10% Assessment Limitation as to the assessed value of the Subject Property.

13. Following the Subject Property’s change of ownership in 2020, the Subject Property lost the benefit of the 10% Assessment Limitation pursuant to section 193.1555(5), which

provides in pertinent part that “property assessed under this section shall be assessed at just value as of January 1 of the year following a ... change of ownership or control.”

14. Pursuant to section 193.1555(5)(b), a change of ownership or control is defined to include “any sale, foreclosure, transfer of legal title or beneficial title in equity to any person...” This definition captures the 2020 transfer of legal title from WEST AVENTURA DEVELOPERS, LLC to WEST AVENTURA TIC 1E, LLC.

15. Therefore, for tax year 2021, Plaintiff properly removed the 10% Assessment Limitation benefit from the Subject Property and reassessed the Subject Property at just value.

PROCEEDINGS BEFORE THE VAB

16. WEST AVENTURA TIC 2E, LLC filed petitions with the VAB, contesting Plaintiff's removal of the 10% Assessment Limitation for tax year 2021.

17. On or about March 10, 2022, the petitions were heard under VAB Agenda Nos. 21-14592, 21-14593, 21-14594, 21-14595, 21-14596, 21-14815, 21-14816, and 21-14817, and the VAB Special Magistrate recommended that the 10% Assessment Limitation be restored on the Subject Property for tax year 2021.

18. The VAB adopted the recommendations of the Special Magistrate. Consequently, Plaintiff's assessed value for the Subject Property was reduced as follows:

Folio	Agenda Number	Plaintiff's Assessed Value Without 10% Cap	VAB Assessed Value With 10% Cap
30-2204-002-0010	2021-14592	\$679,500	\$560,587
30-2204-002-0040	2021-14593	\$756,000	\$623,700
30-2204-002-0050	2021-14594	\$679,500	\$560,587
30-2204-002-0060	2021-14595	\$679,500	\$560,587
30-2204-002-0070	2021-14596	\$668,040	\$551,133
30-2204-002-0080	2021-14815	\$603,000	\$497,475
30-2204-002-0090	2021-14816	\$603,000	\$497,475
30-2204-002-0100	2021-14817	\$756,000	\$623,700

GROUND FOR PLAINTIFF'S LAWSUIT

19. The reduction in the Subject Property's assessment caused by the VAB's application of the 10% Assessment Limitation (described above) exceeds the thresholds provided within Section 194.036(1)(b) of the Florida Statutes.

20. Additionally, pursuant to Section 194.036(1)(a) of the Florida Statutes, Plaintiff has determined and affirmatively asserts that the value approved by the VAB following the grant of the 10% Assessment Limitation is below just value, violates Florida Statutes, including Section 193.011, and violates Article VII, Section 4 of the Florida Constitution of 1968, and the implementing statutes, including Section 193.1555 of the Florida Statutes.

21. Finally, the VAB reduction will incorrectly impact subsequent years' determination of assessed values pursuant to the application of Article VII, Section 4 of the Florida Constitution of 1968, and the implementing statutes, including Sections 193.1555 of the Florida Statutes.

WHEREFORE, Plaintiff prays that this Court:

- A. Inquire into and determine the illegality of the assessed value of the Subject Property as reduced by the VAB for 2021.
- B. Inquire into and determine the illegality of the grant of the 10% Assessment Limitation by the VAB for 2021.
- C. Find the Defendants did not meet the statutory criteria to obtain the 10% Assessment Limitation for tax year 2021; and therefore, are not entitled to receive the 10% Assessment Limitation on the Subject Property for tax year 2021.
- D. Order that Plaintiff's assessment upon the Subject Property be reinstated and certified to the Miami-Dade County Tax Collector for the issuance of a revised tax bill for the deficiency in taxes and interest, including all appropriate adjustments to subsequent years' market and/or assessed value, in accordance with Article VII, Section 4 of the Florida Constitution of 1968.
- E. Order ZINGALE to approve Plaintiff's assessment of the Subject Property as reinstated by the Court.
- F. Award Plaintiff his costs under § 194.192, Fla. Stat. and such other relief as is just and proper.

DESIGNATION OF E-MAIL ADDRESSES

Pursuant to Florida Rule of Judicial Administration 2.516, undersigned counsel hereby designates her primary and secondary e-mail addresses for purposes of e-mail service as follows:

Primary e-mail address: daija@miamidade.gov
Secondary e-mail address: Yohana.ramos@miamidade.gov

Respectfully submitted,

GERALDINE BONZON-KEENAN
Miami-Dade County Attorney
Stephen P. Clark Center, Suite 2810
111 Northwest First Street
Miami, Florida 33128-1993

By: /s/ Daija Page Lifshitz
Daija Page Lifshitz
Assistant County Attorney
Florida Bar No. 98053
E-mail: daija@miamidade.gov
Telephone: (305) 375-5151
Facsimile: (305) 375-5611

EXHIBIT A

Prepared by and return to:
Joanna Plessis, Esquire
Serber & Associates, P.A.
The Turnberry Plaza – Suite 801
2875 N.E. 191st Street
Aventura, Florida, 33180

Property Appraisers Parcel
Tax ID # 30-2204-002-0010

Warranty Deed

(Wherever used herein the terms "first party" and "second party" shall include singular and plural, heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, and all pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural wherever the context so admits or requires.)

THIS INDENTURE, made this 25 day of April, 2017 between **OJUS 55 LLC, a Florida limited liability company** whose post office address is 18800 NE 21 Ave., North Miami Beach, FL 33179 (party of the first part), and **West Aventura Developers, LLC, a Florida limited liability company** whose post office address is 19370 Collins Ave, Suite CU1, Sunny Isles Beach, FL 33160 (party of the second part).

WITNESSETH, That the said party of the first part, in consideration of the sum of Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, and sold to the said party of the second part, its heirs, successors, and assigns forever, the following described land, situate, and being in the County of Miami-Dade, State of Florida, to-wit:

**Lot 1, Block G, REVISED PLAT OF OJUS MANOR, a Subdivision,
as per plat thereof, recorded in Plat Book 42, Page 58, of the Public
Records of Miami-Dade County, Florida.**

SUBJECT TO:

1. Taxes for the year 2017 and subsequent years, not yet due and payable.
2. Zoning, restrictions, prohibitions, and other requirements imposed by governmental authority without intent to reimpose same.
3. Restrictions and matters appearing on the Plat or otherwise common to the subdivision.
4. Public utility easements of record.

And the said party of the first part hereby covenants with said party of the second part that the party of the first part is lawfully seized of said land in fee simple; that the party of the first part has good right and lawful authority to sell and convey said land; and that the party of the first part does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever.

Together with all tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

IN WITNESS WHEREOF, The said party of the first part has hereunto set its hand and seal the day and year first above written.

Signed, sealed and delivered in the presence of:

OJUS 55 LLC, a Florida limited liability company.

Witness 1:

Print Name: JOANNA PLESSIS

By: Martin Djmal, Manager

Witness 2:

Print Name: Dianelis Ramirez

**STATE OF FLORIDA
COUNTY OF MIAMI-DADE**

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgements, personally appeared, Martin Djmal, as Manager of OJUS 55 LLC [who is personally known to me] or [who produced _____ as identification].

WITNESS my hand and official seal in the County and State last aforesaid this 25 day of April, 2017.



NOTARY PUBLIC, State of Florida

My Commission Expires: _____

EXHIBIT B

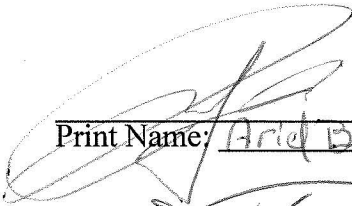
IN WITNESS WHEREOF, Grantor has executed this Special Warranty Deed as of the day and year first above written.

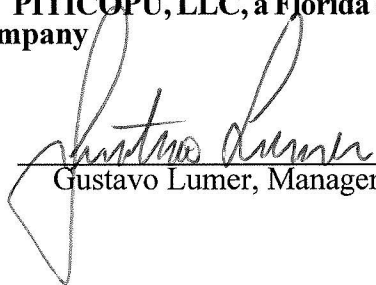
WITNESSES:


West Aventura Developers, LLC, a Florida limited liability company

By: West Aventura Managers, LLC, a Florida limited liability company, its Manager

By: PITICOPU, LLC, a Florida limited liability Company

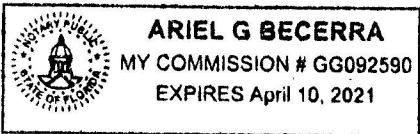

Print Name: Ariel Becerra

By: 
Gustavo Lumer, Manager


Print Name: MARINA KESSLER

STATE OF FLORIDA)
) ss:
COUNTY OF Miami-Dade)

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization this 24th day of December, 2020 by **Gustavo Lumer, as Manager of PITICOPU, LLC, a Florida limited liability company, as Manager of West Aventura Managers, LLC, a Florida limited liability company, as Manager of West Aventura Developers, LLC, a Florida limited liability company** who personally appeared before me and is personally known to me or produced _____ as identification.



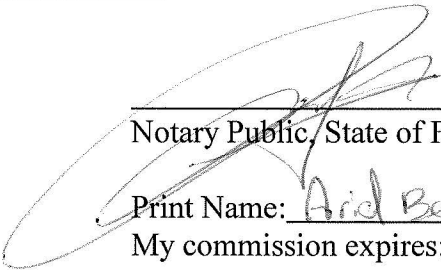

Notary Public, State of Florida at Large
Print Name: Ariel Becerra
My commission expires: _____

EXHIBIT "A"

The Property

PARCEL 1:

Lot 1, Block G, Revised Plat of Ojus Manor, according to the plat thereof, as recorded in Plat Book 42, Page 58, of the Public Records of Miami-Dade County, Florida.

PARCEL 2:

Lots 2 and 3, Block G, Revised Plat of Ojus Manor, according to the plat thereof, as recorded in Plat Book 42, Page 58, of the Public Records of Miami-Dade County, Florida.

PARCEL 3:

Lot 4, Block G, Revised Plat of Ojus Manor, according to the plat thereof, as recorded in Plat Book 42, Page 58, of the Public Records of Miami-Dade County, Florida.

PARCEL 4:

Lot 5, Block G, Revised Plat of Ojus Manor, according to the plat thereof, as recorded in Plat Book 42, Page 58, of the Public Records of Miami-Dade County, Florida.

PARCEL 5:

Lot 6, Block G, Revised Plat of Ojus Manor, according to the plat thereof, as recorded in Plat Book 42, Page 58, of the Public Records of Miami-Dade County, Florida.

PARCEL 6:

Lot 1, Block H, Revised Plat of Ojus Manor, according to the plat thereof, as recorded in Plat Book 42, Page 58, of the Public Records of Miami-Dade County, Florida.

PARCEL 7:

Lot 2, Block H, Revised Plat of Ojus Manor, according to the plat thereof, as recorded in Plat Book 42, Page 58, of the Public Records of Miami-Dade County, Florida.

PARCEL 8:

Lot 3, Block H, Revised Plat of Ojus Manor, according to the plat thereof, as recorded in Plat Book 42, Page 58, of the Public Records of Miami-Dade County, Florida.

PARCEL 9:

Lot 4, Block H, Revised Plat of Ojus Manor, according to the plat thereof, as recorded in Plat Book 42, Page 58, of the Public Records of Miami-Dade County, Florida.

EXHIBIT C

CFN: 20210021542 BOOK 32284 PAGE 955
 DATE: 01/11/2021 03:58:07 PM
 HARVEY RUVIN, CLERK OF COURT, MIA-DADE CTY

RECORDING REQUESTED BY)
 WHEN RECORDED MAIL TO:)
)
 Peter C. Nintcheff, Esq.)
 Goldberg Companies, Inc.)
 25101 Chagrin Blvd.)
 Beachwood, Ohio 44122)

Above Space for Recorder's Use

TENANCY-IN-COMMON AGREEMENT

THIS TENANCY-IN-COMMON AGREEMENT (this "Agreement") is entered into as of the 29 day of December, 2020 by and between **WEST AVENTURA TIC 1E LLC**, a Florida limited liability company ("TIC I"); **WEST AVENTURA DEVELOPERS, LLC**, a Florida limited liability company ("TIC II"), (each sometimes referred to as a "Tenant in Common" or collectively as the "Tenants in Common"), with reference to the facts set forth below.

RECITALS:

A. TIC I is the owner of an undivided 50.00% tenancy-in-common interest, and TIC II is the owner of an undivided 50.00% tenancy-in-common interest, in certain real property located in Miami-Dade County, Florida as more particularly described in Exhibit A attached hereto and incorporated herein (the "Property").

B. The Tenants in Common desire to enter into this Agreement to provide for the orderly administration of the Property and to delegate authority and responsibility for the operation and management of the Property.

D. The Tenants in Common intend that the terms of this Agreement shall comply in all material respects with the requirements for an advance ruling set forth in Revenue Procedure 2002-22, 2002-1 C.B. 733.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as set forth below.

1. NATURE OF RELATIONSHIP BETWEEN TENANTS IN COMMON.

1.1 Tenants in Common Relationship, No Partnership. The Tenants in Common shall each own their respective interests in the Property (the "Interests") as tenants in common pursuant to the laws of the State of Florida and in accordance with the terms of this Agreement. As used in this Agreement, each Tenant in Common's "Interest" shall mean such Tenant in Common's undivided ownership interest in the Property in fee. The Tenants in Common do not intend by this Agreement to create a partnership or joint venture among themselves, but merely to set forth the terms and conditions upon which each of them shall hold their respective Interests. In addition, the Tenants in Common do not intend to create a partnership or joint venture with the Property Managers (as defined below) or Developer (as defined below). Therefore, each Tenant in Common hereby elects to be excluded from the provisions of Subchapter K of Chapter 1 of

the Internal Revenue Code of 1986, as amended (the "Code"), with respect to its Interest in the Property. The exclusion elected by the Tenants in Common hereunder shall commence with the execution of this Agreement.

1.2 Reporting as Direct Owners and Not a Partnership. Each Tenant in Common hereby covenants and agrees to report on its federal and state income tax returns all items of income, deduction and credits which result from its Interests. All such reporting shall be consistent with the exclusion of the Tenants in Common from Subchapter K of Chapter 1 of the Code, commencing with the first taxable year following the execution of this Agreement. Further, each Tenant in Common covenants and agrees not to notify the Commissioner of Internal Revenue that it desires that Subchapter K of Chapter 1 of the Code apply to the Tenants in Common. Each Tenant in Common hereby agrees to indemnify, protect, defend and hold the other Tenants in Common free and harmless from all costs, liabilities, tax consequences and expenses (for example, taxes, interest and penalties), including, without limitation, attorneys' fees and costs, which may result from any Tenant in Common so notifying the Commissioner in violation of this Agreement or otherwise taking a contrary position on any tax return, report or other document.

1.3 Voting – General. The Tenants in Common must unanimously approve the following: (i) the Developer, any substitute developer, the Development Agreement (as defined in Section 2), and all amendments and renewals thereof, (ii) Property Managers, any substitute property managers, the Management Agreements (as defined in Section 2), all amendments and renewals thereof, and any other management agreements; (iii) all financings and refinancings of the Property; and (iv) any sale or ground lease of all or any portion of the Property.

1.4 No Agency. No Tenant in Common is authorized to act as agent for, to act on behalf of, or to do any act that will bind, any other Tenant in Common, or to incur any obligations with respect to the Property.

2. **DEVELOPMENT AND MANAGEMENT.**

2.1 The Tenants in Common hereby unanimously consent to this Agreement and the Development Agreement ("Development Agreement") by and between the Tenants in Common, and each of GCI Residential, LLC, an Ohio limited liability company, and West Aventura Developer Manager West, LLC (collectively, the "Developer"). Pursuant to and as set forth in the Development Agreement, the Developer shall be the sole and exclusive developer of the Property to act on behalf of the Tenants in Common with respect to the development of the Property, subject to the right on the part of the Tenants in Common to approve the development plans in the manner provided in the Development Agreement, and further subject to the right of the Tenants in Common to terminate the Development Agreement as set forth in the Development Agreement. All of the terms, covenants and conditions of the Development Agreement are hereby incorporated as if set forth in full herein. Neither (a) the removal, withdrawal, termination or resignation of the Developer, (b) any assignment for the benefit of creditors by or the adjudication of bankruptcy or incompetency of the Developer, nor (c) the termination of the Development Agreement, shall cause the termination of this Agreement and this Agreement shall remain in full force and effect notwithstanding any such events.

2.2 The Tenants in Common hereby unanimously consent to this Agreement and the Apartment Management Agreement ("Apartment Management Agreement") with GCI Residential, LLC, an Ohio limited liability company (the "Apartment Property Manager"), for the management of the multi-family portion of the Property. The term of any Apartment Management Agreement shall not exceed one (1) year. Pursuant to and as set forth in the Apartment Management Agreement, the Apartment Property Manager shall be the sole and exclusive manager of the multi-family portion of the Property to act on behalf of the Tenants in Common with respect to the management, operation, maintenance and leasing of the multi-family

portion of the Property, subject to the right on the part of the Tenants in Common to approve all leases in the manner provided in the Apartment Management Agreement, and further subject to the right of the Tenants in Common to terminate the Apartment Management Agreement on an annual basis as set forth in the Apartment Management Agreement. All of the terms, covenants and conditions of the Apartment Management Agreement are hereby incorporated as if set forth in full herein. Neither (a) the removal, withdrawal, termination or resignation of the Apartment Property Manager, (b) any assignment for the benefit of creditors by or the adjudication of bankruptcy or incompetency of the Apartment Property Manager, nor (c) the termination of the Apartment Management Agreement, shall cause the termination of this Agreement and this Agreement shall remain in full force and effect notwithstanding any such events.

2.3 The Tenants in Common hereby unanimously consent to this Agreement and the Retail Property Management Agreement ("Retail Management Agreement", and together with the Apartment Management Agreement, the "Management Agreements") with West Aventura Retail Management West, LLC, a Florida limited liability company ("Retail Property Manager", together with the Apartment Property Manager, the "Property Managers"). The term of any Retail Management Agreement shall not exceed one year. Pursuant to and as set forth in the Retail Management Agreement, the Retail Property Manager shall be the sole and exclusive manager of the retail portions of the Property to act on behalf of the Tenants in Common with respect to the management, operation, maintenance and leasing of the retail portions of the Property, subject to the right on the part of the Tenants in Common to approve all leases in the manner provided in the Retail Management Agreement, and further subject to the right of the Tenants in Common to terminate the Retail Management Agreement on an annual basis as set forth in the Retail Management Agreement. All of the terms, covenants and conditions of the Retail Management Agreement are hereby incorporated as if set forth in full herein. Neither (a) the removal, withdrawal, termination or resignation of the Retail Property Manager, (b) any assignment for the benefit of creditors by or the adjudication of bankruptcy or incompetency of the Retail Property Manager, nor (c) the termination of the Retail Management Agreement, shall cause the termination of this Agreement and this Agreement shall remain in full force and effect notwithstanding any such events.

3. INCOME, EXPENSES AND LIABILITIES.

3.1 Except as otherwise provided herein and in the Management Agreements, each of the Tenants in Common shall be entitled to all benefits of ownership of the Property in accordance with their respective Interests. Accordingly, each of the Tenants in Common shall be entitled to all benefits of ownership of the Property, on a gross and not a net basis, including, without limitation, all items of income and proceeds from sale or refinance or condemnation, in proportion to their respective Interests. The Property Managers shall disburse to each of the Tenants in Common its pro rata share of the revenue from the Property (the Apartments Property Manager from the multi-family portion of the Property and the Retail Property Manager from the retail portion of the Property), after payment of all operating expenses, debt service and such amounts as may be retained for reserves or improvements, within one (1) month from the date of receipt by the Property Managers, all subject to the terms and conditions of the Management Agreements.

3.2 Except as otherwise expressly provided in this Agreement, the Tenants in Common shall apportion all debts and expenses that they incur in connection with the Property ("Property Expenses") in proportion to their respective Interests. Without limitation of the foregoing, Property Expenses shall include all debt service with respect to any loan secured by the Property and any refinancing thereof.

3.3 If a Tenant in Common does not pay its share of Property Expenses within thirty (30) days of receiving notice that Property Expenses are due, the other Tenants in Common (the "Non-Delinquent Tenants in Common") may send the delinquent Tenant in Common ("Delinquent Tenant in Common") written notice of delinquency, giving the Delinquent Tenant in Common an additional two

business days from the date such notice is given to pay in full its proportionate share of the Property Expenses. If the Delinquent Tenant in Common does not timely pay the full amount of its proportionate share of the Property Expenses, together with any and all late fees, additional interest and other charges actually resulting from the delinquency, the Delinquent Tenant in Common shall thereupon become a "Defaulting Tenant in Common."

Subject to the provisions of any loan agreement and related documents covering any loans secured by the Property, a Delinquent Tenant in Common or Defaulting Tenant in Common shall pay any and all late fees, additional interest or other charges that the Tenants in Common actually incur as a result of such Delinquent Tenant in Common's or Defaulting Tenant in Common's failure to timely pay its share of the Property Expenses, and shall otherwise indemnify the Tenants in Common from any and all loss, cost, liability or expense suffered on account of such Delinquent Tenant in Common's or Defaulting Tenant in Common's failure.

4. TENANTS IN COMMON OBLIGATIONS. The Tenants in Common each agree to perform such acts as may be reasonably necessary to carry out the terms and conditions of this Agreement, including, without limitation:

4.1 Documents. Executing documents required in connection with a sale or refinancing of the Property in accordance with Section 5 below and such additional documents as may be required under this Agreement or may be reasonably required to effect the intent of the Tenants in Common with respect to the Property or any loans encumbering the Property, provided that such actions have been properly approved by the Tenants in Common in accordance with Section 1.3.

4.2 Additional Funds. Each Tenant in Common will be responsible for a pro rata share (based on each Tenant in Common's respective Interests) of any future cash needed in connection with the ownership, operation, management and maintenance of the Property as reasonably determined by the Property Managers pursuant to the Management Agreements. To the extent any Tenant in Common makes an advance of an expense associated with the Property or to another Tenant in Common, such advance shall be fully recourse and if a Tenant in Common is a disregarded entity, the owner of such disregarded entity shall guaranty its share of such advance.

4.3 Loan Responsibilities. During the term of this Agreement, each Tenant in Common shall cause the Property to be maintained and shall otherwise conduct itself in relation to the Property in accordance with any loan documents or related agreements covering loans secured by the Property. So long as any loan secured by the Property remains outstanding, and unless otherwise expressly permitted under the loan documents for such loan, (i) this Agreement may not be amended, modified or terminated without such lender's prior written consent, (ii) no more than two tenants in common may be admitted to the ownership of the Property under this Agreement, (iii) neither Tenant in Common may materially amend or modify its organizational documents without such lender's prior written consent, (iv) this Agreement shall be subordinate to the liens created by the loan documents for such loan, (v) transfers of interests in each Tenant in Common will be limited as set forth in the loan documents for such loan, and (vi) all claims and rights each Tenant in Common may have against the other are subordinate and subject to a standstill in favor of such lender as set forth in the loan documents for such loan.

4.4 Records; Returns. Each Tenant in Common is separately responsible to determine its income, gain, loss, deduction and credit, if any, with respect to its undivided interest in the Property. No partnership, corporate or other entity-like records or returns shall be maintained or filed by or on behalf of the Tenants in Common.

5. SALE OR ENCUMBRANCE OF PROPERTY.

5.1 Distribution of Loan or Sales Proceeds. Notwithstanding any other provisions of this Agreement, net proceeds of a loan (not reinvested in the Property or subject to any reserves), or sale shall be distributed at the closing of the loan or the sale as follows:

5.1.1 To the extent necessary, the proceeds shall first be used to pay in full any loans encumbering title to the Property.

5.1.2 To the extent necessary, the proceeds shall next be used to pay in full any unsecured loans made by the Tenants in Common with respect to the Property.

5.1.3 The proceeds shall next be used to pay all outstanding costs and expenses incurred in connection with the holding, marketing, refinancing and sale of the Property.

5.1.4 The proceeds shall next be used to pay all outstanding fees and costs as set forth in the Management Agreement.

5.1.5 Any net proceeds remaining which are not reinvested in the Property or reserved shall be paid to each Tenant in Common in accordance with their respective Interests as provided in Section 3 above.

6. **POSSESSION.** The Tenants in Common intend to lease the Property at all times. Accordingly, no Tenant in Common shall have the right to occupy or use the Property at any time during the term of this Agreement.

7. TRANSFER OR ENCUMBRANCE.

7.1 Rights of Tenants in Common. Subject to compliance with the specific terms of this Agreement, applicable securities laws, compliance with the terms of any loan (and associated loan agreement and documents) secured by the Property and the further provisions of this Article 7, a Tenant in Common shall have the right to sell, transfer, convey, pledge, encumber or hypothecate its Interests in whole or in part without the written consent of the other Tenants in Common.

7.2 Transferees as Tenants in Common. Subject to the consent, if required by the terms of any loan (and associated loan agreement and documents) secured by the Property and the written consent of the other Tenants in Common, any person who acquires an Interest from a Tenant in Common shall satisfy each of the following conditions:

(a) The transferee shall execute a written agreement whereby such transferee agrees to be bound by all of the terms, conditions, restrictions and limitations set forth in this Agreement and the Management Agreement.

(b) The transferee shall reimburse the other Tenant(s) in Common for all reasonable legal and accounting fees and other costs which the other Tenant(s) in Common actually incurs as a result of the transaction.

(c) The transferee shall satisfy all requirements and conditions of any loan agreement and related documents covering any loan secured by the Property pertaining to its acquisition of an Interest.

7.3 Waiver of Partition. Each Tenant in Common agrees that it will not seek or be entitled to seek or obtain a partition of all or any part of the Property. Accordingly, each Tenant in Common expressly waives any right it may have to partition the Property or any part thereof, whether such rights arise under statute, common law or otherwise.

7.4 Transfers Subject to Right of First Offer.

(a) A Tenant in Common may sell, assign or transfer all or any part of its Interests to any Affiliate (as hereinafter defined), to the other Tenant in Common or to an Affiliate of the other Tenant in Common, subject to the terms of this Agreement, and any other written agreement pertaining to the Interests. As used herein, "Affiliate" means, with respect to a Tenant in Common, (i) any person or entity directly or indirectly controlling, controlled by, or under common control with such Tenant in Common, (ii) any person or entity owning or controlling fifty percent (50%) or more of the outstanding voting interests of such Tenant in Common, or (iii) any family member of the principal of such Tenant in Common. For purposes of this definition, the term "controls," "is controlled by," or "is under common control with" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities, by contract or otherwise. The parties hereby acknowledge that TIC II intends to contribute all of its Interests to West Aventura TIC 2E LLC, a Florida limited liability company, in exchange for an interest in TIC I and the Tenants in Common hereby consent to the same.

(b) If a Tenant in Common (referred to as a "Selling Tenant in Common"), desires to sell, assign or transfer all or any part of its Interests (the "Offered Interest"), to a person not described in Section 7.4(a), as a condition precedent to consummating such sale or transfer, the Selling Tenant in Common shall give written notice (the "Offer Notice") to the other Tenant in Common (the "Non-Selling Tenant in Common") advising them of its desire to complete such sale or transfer, the proposed buyer of the Offered Interest, the proposed contract (the "Proposed Contract") to sell Offered Interest thereof, which Proposed Contract shall be duly executed by the proposed buyer and shall provide that the Seller's obligations are subject to this right of first offer. The Offer Notice shall also indicate the principals of the proposed buyer.

(c) For a period ending sixty (60) days after the Offer Notice is given (the "Offer Period"), the Non-Selling Tenant in Common may advise the Selling Tenant in Common in writing of the price (which price shall include the assumption of the Selling Tenant in Common's share of any indebtedness on the Property) at which the Non-Selling Tenant in Common (a "Non-Selling Tenant in Common Offeror") would be willing to purchase all, but not less than all, of the Offered Interest.

(d) Within fifteen (15) days after the end of the Offer Period, the Selling Tenant in Common shall accept or reject, by written notice given to the Non-Selling Tenant in Common Offeror, the offer for the Offered Interest timely given to the Selling Tenant in Common. If the Selling Tenant in Common fails to give a notice of acceptance or rejection to the Non-Selling Tenant in Common Offeror within such fifteen (15) business day period, the offer shall be deemed rejected. If the Selling Tenant in Common timely accepts, in writing, the offer, then the Selling Tenant in Common and the Non-Selling Tenant in Common Offeror shall close the sale of the Offered Interest at a time, place and date mutually agreeable to the selling and purchasing parties, but not more than ninety (90) days after the end of the Offer Period. Notwithstanding anything herein to the contrary, the Selling Tenant in Common shall not have the right to reject an offer of the Non-Selling Owner if the purchase price and terms of payment are substantially equivalent to or equal to the purchase price set forth in the Proposed Contract. If the Selling Tenant in Common rejects or is deemed to have rejected the offer, then the Selling Tenant in Common shall be entitled to sell the Offered Interest to the third party identified in the Offer Notice for a purchase price that is greater than the Non-Selling Tenant in Common's offer in an all-cash transaction (or

on terms that are at least as favorable as those offered by the Non-Selling Tenant in Common), which transaction shall be completed, if at all, within ninety (90) days after the end of the Offer Period.

(e) If the Non-Selling Tenant in Common does not respond to the Selling Tenant in Common's Offer Notice within the Offer Period, then the Selling Tenant in Common shall be entitled to sell the Offered Interest to the third party identified in the Offer Notice for a purchase price set forth in the Offer Notice, which transaction shall be completed, if at all, within ninety (90) days after the end of the Offer Period.

(f) If any proposed transfer of the Offered Interest is not consummated within the time period set forth herein through no fault of the Non-Selling Tenant in Common, then the Selling Tenant in Common must once again comply with the terms and conditions of this Section 7.4 before selling all or any part of its Interests. If the proposed transfer of the Offered Interest is not consummated within the time period set forth herein as a result of the fault of the Non-Selling Tenant in Common, the Selling Tenant in Common shall be entitled to sell the Offered Interest to the proposed buyer (provided that the principals of the proposed buyer are the same as previously identified) for a purchase price set forth in the Offer Notice, which transaction shall be completed at any time within one hundred eighty (180) days after the end of the Offer Period.

8. **BANKRUPTCY.** The Tenants in Common agree that the following shall constitute an Event of Bankruptcy with respect to any Tenant in Common and its Successors (as defined in Section 9.1): (a) if a receiver, liquidator or trustee is appointed for any Tenant in Common; (b) if any Tenant in Common becomes insolvent, makes an assignment for the benefit of creditors or admits in writing its inability to pay its debts generally as they become due; (c) if any petition for bankruptcy, reorganization, liquidation or arrangement pursuant to federal bankruptcy law, or similar federal or state law shall be filed by or against, consented to, or acquiesced in by, any Tenant in Common; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by such Tenant in Common then, upon the same not being discharged, stayed or dismissed within thirty (30) days thereof.

9. **GENERAL PROVISIONS.**

9.1 **Mutuality; Reciprocity; Runs with the Land.** All provisions, conditions, covenants, restrictions, obligations and agreements contained herein or in the Development Agreement and Management Agreements are made for the direct, mutual and reciprocal benefit of each and every part of the Property; shall be binding upon and shall inure to the benefit of each of the Tenants in Common and their respective heirs, executors, administrators, successors, assigns, devisees, representatives, lessees and all other persons acquiring any undivided interest in the Property or any portion thereof whether by operation of law or any manner whatsoever (collectively, "Successors"); shall create mutual, equitable servitudes and burdens upon the undivided interest in the Property of each Tenant in Common in favor of the interest of every other Tenant in Common; shall create reciprocal rights and obligations between the respective Tenants in Common, their interests in the Property, and their Successors; and shall, as to each of the Tenants in Common and their Successors operate as covenants running with the land, for the benefit of the other Tenants in Common pursuant to applicable law, including, but not limited to, the laws of the State where the Property is located. It is expressly agreed that each covenant contained herein or in the Development Agreement and Management Agreements: (a) is for the benefit of and is a burden upon the undivided interests in the Property of each of the Tenants in Common, (b) runs with the undivided interest in the Property of each Tenant in Common, and (c) benefits and is binding upon each Successor owner during its ownership of any undivided interest in the Property, and each owner having any interest therein derived in any manner through any Tenant in Common or Successor. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every restriction, provision, covenant, right and limitation contained herein or in the

Development Agreement and Management Agreements, whether or not such person or entity expressly assumes such obligations or whether or not any reference to this Agreement, the Development Agreement or the Management Agreements is contained in the instrument conveying such interest in the Property to such person or entity. The Tenants in Common agree that, subject to the restrictions on transfer contained herein, any Successor shall become a party to this Agreement, the Development Agreement and the Management Agreements upon acquisition of an undivided interest in the Property as if such person was a Tenant in Common initially executing this Agreement.

9.2 Attorneys' Fees. If any arbitration, action or proceeding is instituted between all or any of the Tenants in Common arising from or related to or with this Agreement, the Tenant in Common or Tenants in Common prevailing in such action or arbitration shall be entitled to recover from the other Tenant in Common or Tenants in Common all of its or their costs of action, proceeding or arbitration, including, without limitation, reasonable attorneys' fees and costs as fixed by the court or arbitrator therein.

9.3 Entire Agreement. This Agreement, together with the Development Agreement, and Management Agreements, constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein.

9.4 Governing Law; Venue. This Agreement shall be governed by and construed under the laws of the State of Florida without regard to choice of law rules. Venue shall be proper in the courts located in Miami-Dade County, Florida.

9.5 Modification. No modification, waiver, amendment, discharge or change of this Agreement shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment, discharge or change is or may be sought.

9.6 Notice and Payments. Any notice to be given or other document or payment to be delivered by any party to any other party hereunder may be delivered in person, or may be deposited in the United States mail, duly certified or registered, return receipt requested, with postage prepaid, or by Federal Express or other similar overnight delivery service, and addressed to the Tenants in Common in the signature blocks below. Any party hereto may from time to time, by written notice to the others, designate a different address which shall be substituted for the one above specified. Unless otherwise specifically provided for herein, all notices, payments, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given and received (a) upon personal delivery, or (b) as of the third business day after mailing by United States registered or certified mail, return receipt requested, postage prepaid, addressed as set forth above, or (c) the immediately succeeding business day after deposit with Federal Express or other similar overnight delivery system.

9.7 Successors and Assigns. All provisions of this Agreement shall inure to the benefit of and shall be binding upon the Successors of the parties hereto.

9.8 Term. This Agreement shall commence as of the date of recordation and shall terminate at such time as the earlier to occur of (i) the Tenants in Common or their successors-in-interest have entered a written agreement providing for such termination; or (ii) no longer own the Property as tenants-in-common. The bankruptcy, death, dissolution, liquidation, termination, incapacity or incompetence of a Tenant in Common shall not cause the termination of, or have any other effect on, this Agreement.

9.9 Waivers. No act of any Tenant in Common shall be construed to be a waiver of any provision of this Agreement, unless such waiver is in writing and signed by the Tenant in Common

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affected. Any Tenant in Common hereto may specifically waive any breach of this Agreement by any other Tenant in Common, but no such waiver shall constitute a continuing waiver of similar or other breaches.

9.10 Counterparts. This Agreement may be executed in counterparts, each of which, when taken together, shall be deemed one fully executed original.

9.11 Severability. If any portion of this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permissible by law.

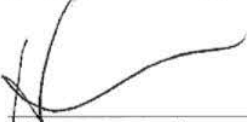
9.12 Securities Laws. THE UNDIVIDED INTERESTS IN THE PROPERTY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, NOR APPROVED OR DISAPPROVED BY THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION, OR BY THE SECURITIES REGULATORY AUTHORITY OF ANY STATE, NOR HAS ANY COMMISSION OR AUTHORITY PASSED UPON OR ENDORSED THE MERITS OF THE OFFERING OR THE ACCURACY OR ADEQUACY OF ANY DISCLOSURE MADE IN CONNECTION THEREWITH. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

9.13 Time is of the Essence. Time is of the essence of each provision of this Agreement.

[Signatures on next page]

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IN WITNESS WHEREOF, the parties have signed this Agreement as of the date set forth in the first paragraph of this Agreement.



(Witness as to signature)

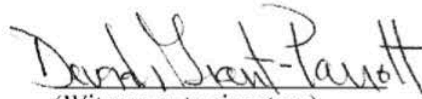
WEST AVENTURA TIC 1E LLC,

a Florida limited liability company

By: ExStra LLC, a Delaware limited liability company, sole Member

By: Exchange Strategies Corporation, a California corporation, sole Member

By: 
Stan Freeman, President


(Witness as to signature)

WEST AVENTURA DEVELOPERS, LLC,

a Florida limited liability company

(Witness as to signature)

By: _____
Printed Name: Gustavo Lumer
Title: Authorized Signatory

(Witness as to signature)

[Signature Page East TIC Agreement]

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IN WITNESS WHEREOF, the parties have signed this Agreement as of the date set forth in the first paragraph of this Agreement.

(Witness as to signature)

WEST AVENTURA TIC 1E LLC,

a Florida limited liability company

By: ExStra LLC, a Delaware limited liability
company, sole MemberBy: Exchange Strategies Corporation, a California
corporation, sole MemberBy: _____
Stan Freeman, President

(Witness as to signature)


WEST AVENTURA DEVELOPERS, LLC,

a Florida limited liability company


By:  _____

Printed Name: Gustavo Lumer

Title: Authorized Signatory



(Witness as to signature)



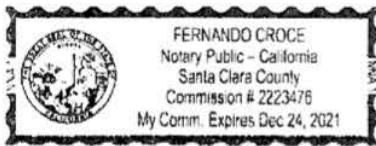
(Witness as to signature)

[Signature Page East TIC Agreement]

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STATE OF CALIFORNIA)
) S.S.
 COUNTY OF SANTA CLARA)

This is an acknowledgment clause. No oath or affirmation was administered to the signer. The foregoing instrument was acknowledged before me this DEC 29, 2020 by Stan Freeman, President of Exchange Strategies Corporation, a California corporation, the sole member of ExStra LLC, a Delaware limited liability company, the sole member of West Aventura TIC 1E LLC, a Florida limited liability company.



[Signature]
 Notary Public

STATE OF FLORIDA)
) S.S.
 COUNTY OF BROWARD)

BEFORE ME, a Notary Public in and for said County, personally appeared Gustavo Lumer, Authorized Signatory of West Aventura Developers, LLC, a Florida limited liability company, who acknowledged that he did sign said instrument on behalf of said limited liability company and has authority to do so; and that said instrument is the voluntary act and deed of the said limited liability company for the uses and purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal this ____ day of _____, 2020.

 Notary Public

[Notary Page East TIC Agreement]

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STATE OF _____)
) S.S.
 COUNTY OF _____)

This is an acknowledgment clause. No oath or affirmation was administered to the signer. The foregoing instrument was acknowledged before me this _____, 2020 by Stan Freeman, President of Exchange Strategies Corporation, a California corporation, the sole member of ExStra LLC, a Delaware limited liability company, the sole member of West Aventura TIC 1E LLC, a Florida limited liability company.

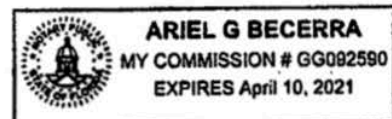
 Notary Public

STATE OF FLORIDA)
) S.S.
 COUNTY OF BROWARD)

BEFORE ME, a Notary Public in and for said County, personally appeared Gustavo Lumer, Authorized Signatory of West Aventura Developers, LLC, a Florida limited liability company, who acknowledged that he did sign said instrument on behalf of said limited liability company and has authority to do so; and that said instrument is the voluntary act and deed of the said limited liability company for the uses and purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal this
 29 day of December, 2020.

 Notary Public



[Notary Page East TIC Agreement]

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EXHIBIT A**Description of Real Property**

Lots 1, 2, 3, 4, Block H, Revised Plat of OJUS MANOR, according to the Plat thereof, as recorded in Plat Book 42, Page 58 of the Public Records of Miami-Dade County, Florida.

Lots 1, 2, 3, 4, 5, 6 Block G Revised Plat of OJUS MANOR, according to the Plat thereof, as recorded in Plat Book 42, Page 58 of the Public Records of Miami-Dade County, Florida.

EXHIBIT D

PARCEL 9:

Lot 4, Block H, Revised Plat of Ojus Manor, according to the plat thereof, as recorded in Plat Book 42, Page 58, of the Public Records of Miami-Dade County, Florida.