

IMPROVEMENT COMPLETION AND ACQUISITION AGREEMENT

This Improvement Completion and Acquisition Agreement (this “**Agreement**”) is entered into as of this 12th day of December, 2020, by and between the Banyan Cay Community Development District, a local unit of special purpose government established pursuant to Chapter 190, Florida Statutes, and located in West Palm Beach, Florida (the “**District**”), BC Dev. LLC, a Florida limited liability company, and Banyan Cay Dev. LLC, a Delaware limited liability company, Banyan Cay Villas, LLC, a Delaware limited liability company and Banyan Cay Resort & Golf, LLC, a Delaware limited liability company, landowners and developers of certain lands within the District (collectively, the “**Developer**”).

WITNESSETH:

WHEREAS, the District desires to acquire from the Developer, and the Developer desires to convey to the District, on the terms and conditions set forth herein, the Developer’s rights or interest in the improvements (the “**Improvements**”) described in the District’s Report of the Engineer dated June 20, 2019, as supplemented (the “**Engineer’s Report**”); and

WHEREAS, the District also desires to acquire certain real property relating to Improvements at a cost equal to the lesser of the fair market value of such real property or the cost basis (the “**Real Property**”); and

WHEREAS, the District proposes to issue its Special Assessments Bonds, Series 2020 (Phase One Assessment Area) (the “**Bonds**”), to finance the cost of acquisition of the Developer’s rights or interest in the Improvements pursuant to the Master Trust Indenture dated as of December 1, 2020, between the District and U.S. Bank National Association, as Trustee (the “**Master Indenture**”) and the First Supplemental Trust Indenture dated as of December 1, 2020, between the District and U.S. Bank National Association, as Trustee (the “**First Supplemental Indenture**” and collectively with the Master Indenture, the “**Indenture**”); and

WHEREAS, the District Engineer, Engenuity Group, Inc. (the “**Engineer**”), has verified that the cost of the Improvements to be paid by the District by the Developer pursuant to this Agreement shall be the lesser of the Engineer’s estimated cost of such Improvements or the fair market value of such Improvements; and

WHEREAS, in order to ensure that the Improvements are completed and funding is available in a timely manner to provide for their completion, the Developer and the District hereby agree that the District will be obligated to issue no more than \$6,895,000 in Bonds to fund the Improvements and the Developer will make provision for any additional funds that may be needed in the future for the completion of the Improvements over and above the amount from the Bonds available to finance the Improvements including, but not limited to, all administrative, legal, warranty, engineering, permitting or other related soft costs; and

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and for Ten and No/100 (\$10.00) dollars and other good and valuable consideration, receipt of which

is hereby acknowledged, and subject to the terms and conditions hereof, the parties agree as follows:

1. Incorporation of Recitals.

The recitals stated above are true and correct and by this reference are incorporated by reference as a material part of this Agreement.

2. Completion of Improvements.

The Developer and District agree and acknowledge that the District's proposed Bonds will provide only a portion of the funds necessary to purchase the Improvements. In the event that the cost of the Improvements is such that the construction funds available from the Bond proceeds are insufficient to purchase the Improvements and the District decides not to issue additional bonds, which determination shall be in the sole and exclusive discretion of the District, the Developer hereby agrees to, cause to be completed those portions of the Improvements which remain unfunded including, but not limited to, all administrative, legal, warranty, engineering, permitting or other related soft costs (the "**Remaining Improvements**") whether pursuant to existing contracts, including change orders thereto, contracts assigned by the Developer to the District, or future contracts. Nothing herein shall cause or be construed to require the District to issue additional bonds or indebtedness to provide funds for any portion of the Remaining Improvements. The District and Developer hereby acknowledge and agree that the District's execution of this Agreement constitutes the manner and means by which the Developer will complete and provide any and all portions of the Remaining Improvements not funded by District Bonds or other indebtedness.

3. Other Conditions and Acknowledgments.

(a) The District and the Developer agree and acknowledge that the exact location, size, configuration and composition of the Improvements may change from that described in the Engineer's Report, depending upon final design of the development, permitting or other regulatory requirements over time, or other factors. Material changes to the Improvements shall be made by a written amendment to the Engineer's Report, which shall include an estimate of the cost of the changes, and shall be approved by the Developer.

(b) The District and Developer agree and acknowledge that for any and all portions of the Remaining Improvements which are constructed, or caused to be constructed, by the Developer (without the use of proceeds of the Bonds) for the benefit of the District, shall be conveyed to the District or such other appropriate unit of local government as is designated in the Engineer's Report or required by governmental regulation or development approval. All conveyances to another governmental entity shall be in accordance with and in the same manner as provided in any agreement between the District and the appropriate unit of local government.

(c) Notwithstanding anything to the contrary contained in this Agreement, the payment or performance by Developer of its completion obligations hereunder is expressly subject to, dependent and conditioned upon (a) the issuance of \$6,895,000 par amount of Bonds and use of a portion of the proceeds thereof to fund the Improvements, and (b) the scope, configuration, size and/or composition of the Improvements not materially changing without the

consent of the Developer. Such consent is not necessary and the Developer must meet its completion obligations when the scope, configuration, size and/or composition of the Improvements is materially changed in response to a requirement imposed by a regulatory agency.

4. Conveyance of Improvements and Real Property.

The Developer shall convey by dedication, deed, bill of sale or other appropriate form of conveyance, such rights or interest as the District may desire and Developer may have in all or any portion of the(i) Real Property, and (ii) the Improvements as completed and when reasonably requested by the District. At least three (3) days prior to the date of conveyance, the Developer shall provide the District with evidence of title acceptable to the District, describing the nature of Developer's rights or interest in the Improvements and Real Property being conveyed, and stating that said Improvements and Real Property are free and clear of all liens and encumbrances, except as provided herein, and that all governmental approvals necessary to install the Improvements have or will be obtained. The parties acknowledge and agree that certain portions of the Improvements have been constructed in rights-of-way, utility easements, common areas or areas previously dedicated to the District or other units of local government and that, therefore, certain portions of the Improvements and/or Real Property may be subject to certain rights and ownership interests of other governmental bodies, public entities, other quasi-public organizations or the District. Accordingly, the Developer's rights or interest in such portions of the Improvements and/or Real Property may be conveyed by the Developer to the District, subject to such other rights and ownership interests.

5. Condition of Improvements; Warranty.

At the time of conveyance by the Developer of the Developer's rights or interest in the Improvements as provided in Paragraph 4 above, the Improvements being conveyed shall be in good condition, reasonably free from defects, as determined by the Engineer; and Developer shall furnish District with a warranty, in a form acceptable to District, guaranteeing said Improvements against defect in materials, equipment or construction for a period of one (1) year from the date of conveyance.

6. Covenants of Developer.

The Developer covenants to proceed with the completion of the Improvements in an expeditious manner.

7. Specific Performance.

In the event of the Developer's default under this Agreement, the parties agree as to the absence of adequate remedies at law; therefore, the District shall have, in addition to such rights and remedies as provided by general application of law, the right to obtain specific performance of the Developer's obligations hereunder.

8. Notices.

All notices, requests, consents and other communications hereunder (“Notices”) shall be in writing and shall be delivered, mailed by First Class Mail, postage prepaid, or telecopied or hand delivered to the parties, as follows:

If to District: Banyan Cay Community Development District
2501A Burns Road
Palm Beach Gardens, FL 33410
Attn: District Manager

With a copy to: Lewis, Longman & Walker, P.A.
515 North Flagler Drive, Suite 1500
West Palm Beach, FL 33401
Attn: William G. Capko, Esquire

If to Developer: DJG Dev. LLC
2300 Presidential Way
West Palm Beach, FL 33401
Attn: Domenic J. Gatto, Jr.

With a copy to: Cherry, Edgar & Smith, P.A.
8409 N. Military Trail, Suite 123
Palm Beach Gardens, FL 33410
Attn: Richard G. Cherry, Esquire

Except as otherwise provided herein, any Notice shall be deemed received only upon actual delivery at the address or telecopy number set forth herein. If mailed as provided above, Notices shall be deemed delivered on the third business day unless actually received earlier. Notices hand delivered after 5:00 p.m. (at the place of delivery) or on a non-business day, shall be deemed received on the next business day. If any time for giving Notice contained in this Agreement would otherwise expire on a non-business day, the Notice period shall be extended to the next succeeding business day. Saturdays, Sundays and legal holidays recognized by the United States government shall not be regarded as business days. Counsel for the parties may deliver Notice on behalf of the parties. Any party or other person to whom Notices are to be sent or copied may notify the other parties and addressees of any change in name, address or telecopy number to which Notices shall be sent by providing the same on five (5) days written notice to the parties and addressees set forth herein. Notwithstanding the foregoing, to the extent Florida law requires notice to enforce the collection of assessments placed on property by the District, then the provision of such notice shall be in lieu of any additional notice required by this Agreement. In addition, notice may be given by electronic means such as email so long as it can be established that such notice was given and received.

9. Waivers.

Any failure by any party to this Agreement to comply with any of its obligations, agreements or covenants may be waived in writing by either party.

10. Amendment.

This Agreement cannot be amended or terminated orally but can only be amended or terminated by a document executed by both parties. Any material amendment which shall diminish the completion obligations described herein shall require the consent of the owners of a majority of the Bonds.

11. Applicable Law and Venue.

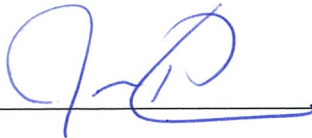
This Agreement is made and shall be construed under the laws of the State of Florida. The parties hereto acknowledge and agree that, in the event legal action is instituted to enforce this Agreement, the Developer consents to and by execution hereof submits to the jurisdiction of any state court sitting in or for Palm Beach County, Florida.

12. Further Assurances.

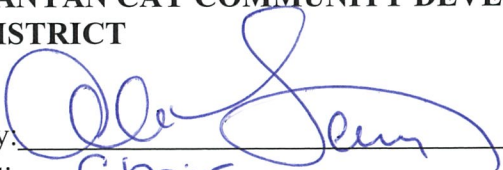
At any and all times, the Developer shall, so far as it may be authorized by law, make, do execute, acknowledge and deliver, all and every other further acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable, as reasonably determined by the District, for the better assuring, conveying, granting, assigning and confirming of any and all rights or interest in the Improvements which are intended or required to be acquired by or conveyed to the District as contemplated by the Indenture and this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

Attest:

By: 

BANYAN CAY COMMUNITY DEVELOPMENT DISTRICT

By: 
Its: Chair

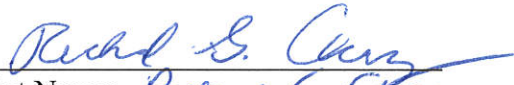
WITNESSES:

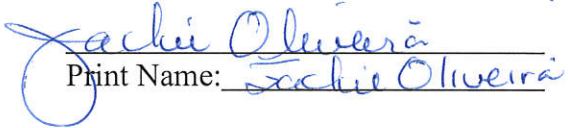
BC DEV. LLC, a Florida limited liability company

By: DJG Dev. LLC, a Florida limited liability company, its manager



By: Domenic J. Gatto, Jr.,
its sole member and manager


Print Name: Richard G. Cherry

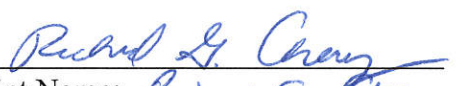

Print Name: Jackie Oliveira

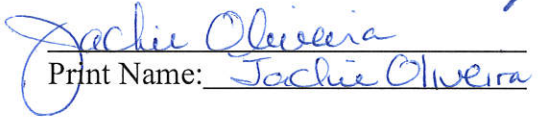
BANYAN CAY DEV. LLC, a Delaware limited liability company

By: DJG Dev. LLC, a Florida limited liability company, its manager



By: Domenic J. Gatto, Jr.,
its sole member and manager


Print Name: Richard G. Cherry

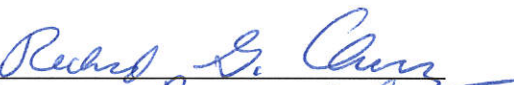

Print Name: Jackie Oliveira

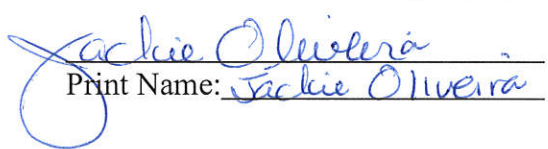
BANYAN CAY VILLAS, LLC, a Delaware limited liability company

By: DJG Dev. LLC, a Florida limited liability company, its manager



By: Domenic J. Gatto, Jr.,
its sole member and manager


Print Name: Richard G. Cherry



Print Name: Jackie Oliveira

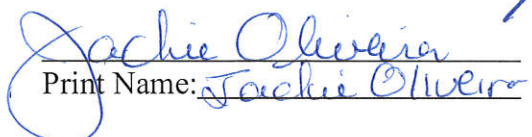
BANYAN CAY RESORT & GOLF, LLC, a Delaware limited liability company

By: DJG Dev. LLC, a Florida limited liability company, its manager



By: Domenic J. Gatto, Jr.,
its sole member and manager


Print Name: Richard G. Cherry


Print Name: Jackie Oliveira