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**COLLATERAL ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT RIGHTS
RELATING TO BANYAN CAY COMMUNITY DEVELOPMENT DISTRICT (PHASE
ONE ASSESSMENT AREA PROJECT)**

This **COLLATERAL ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT RIGHTS RELATING TO BANYAN CAY COMMUNITY DEVELOPMENT DISTRICT (PHASE ONE ASSESSMENT AREA PROJECT)** (herein, the "Assignment") is made this 17th 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"), 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 and its successors, successors in title, and assigns (collectively, the "Developer" or "Assignor"), in favor of the **BANYAN CAY COMMUNITY DEVELOPMENT DISTRICT**, a local unit of special purpose government organized and created under the laws of the State of Florida, located in West Palm Beach, Palm Beach County, Florida, whose address is 2501A Burns Road, Palm Beach Gardens, Florida 33410 (together with its successors, successors in title, and assigns, the "District" or "Assignee").

RECITALS

WHEREAS, the District proposes to issue its \$6,895,000 Special Assessment Bonds, Series 2020 (Phase One Assessment Area) (the "Bonds" or the "Series 2020 Bonds"), to finance that certain public infrastructure project described below, which will provide special benefit to the residential and commercial lots and parcels (collectively, the "Lots" and individually, a "Lot") contained within certain lands owned by Assignor and described in **Exhibit "A"** attached hereto ("Phase One Assessment Area" or the "Subject Property"); and

WHEREAS, the public infrastructure project to be financed with the Bonds includes, but is not limited to, stormwater management and control facilities, including, but not limited to, related earthwork and related land acquisition; water and wastewater systems, including payment of connection fees and a pump station; public roadway improvements, including related land acquisition; landscaping and irrigation in public rights-of-way, including entrance features; and related soft and incidental costs (the "Phase One Assessment Area Project"), which Phase One Assessment Area Project is more specifically described in the District's Report of the Engineer dated June 20, 2019, prepared for the Banyan Cay Community Development District by Engenuity Group, Inc., as such may be further amended or supplemented from time to time (collectively, the "Engineer's Report") and in the plans and specifications on file at the office of

the District, which Engineer's Report and plans and specifications for the Phase One Assessment Area Project are hereby incorporated into and made a part of this Agreement by reference; and

WHEREAS, the Lots and the Subject Property are intended to be developed as a mixed use project (the "Project"), located within the geographical boundaries of the Phase One Assessment Area within the District; and

WHEREAS, the security for the repayment of the Bonds are the special assessments levied, pursuant to Resolution Nos. 2019-26, 2019-27 and 2019-28 adopted by the District Board of Supervisors on May 21, 2019, May 21, 2019 and July 9, 2019, respectively, by the District against the benefitted parcels within the Phase One Assessment Area within the District (the "2020 Special Assessments"); and

WHEREAS, in the event of default in the payment of the 2020 Special Assessments securing the Series 2020 Bonds, the District has certain remedies with respect to the lien of the 2020 Special Assessments as more particularly set forth herein; and

WHEREAS, if the 2020 Special Assessments are direct billed, the sole remedy available to the District would be an action in foreclosure, and if the 2020 Special Assessments are collected pursuant to Florida's uniform method of collection the sole remedy for non-payment of the 2020 Special Assessments is the sale of tax-certificates (collectively, the "Remedial Rights"); and

WHEREAS, in the event the District exercises its Remedial Rights, the District will require the assignment of certain Development Rights, as hereinafter defined, to complete the Project to the extent that such Development Rights have not been previously assigned, transferred or otherwise conveyed (i) as fully-developed or partially developed Lots or parcels conveyed to homebuilders or end-users (all such homebuilders or end-users who acquire Lots or parcels from Developer are hereinafter referred to as "Landowner Transferees"), (ii) as collateral to secure the repayment of any loans secured by mortgages on the Phase One Assessment Area, or (iii) with respect to any property which has been conveyed, or is in the future to be conveyed to the City of West Palm Beach, Florida (the "City"), Palm Beach County, Florida (the "County"), the State of Florida, the District, any utility provider, any governmental or quasi-governmental entity, any applicable homeowners' or property owners' association or other governing entity or association, as may be required by applicable permits, plats, entitlements, or regulations affecting the District, if any, for the benefit of the capital infrastructure improvements constituting the public infrastructure project, referred to as the Phase One Assessment Area Project, to be financed in part with the Bonds (any such transfer described in the foregoing items (i), (ii) or (iii) shall be referred to herein as a "Prior Transfer"); and

WHEREAS, this Assignment is not intended to impair or interfere with the development of the Project and shall only be inchoate and shall become an effective and absolute assignment and assumption of the Development Rights, as described below, upon failure of the Assignor to pay the 2020 Special Assessments levied against the Subject Property owned by the Developer; provided, however, that such assignment shall only be effective and absolute to the extent that this Assignment has not been terminated earlier pursuant to the term of this Assignment or to the

extent that a Prior Transfer has not already occurred with respect to all or a portion of the Development Rights; and

WHEREAS, the rights assigned to the District hereunder shall be exercised in a manner which will not materially affect the intended development of the Project; and

WHEREAS, in the event of a transfer, conveyance or sale of any portion of the Subject Property that is not a Prior Transfer, the successors-in-interest to the real property so conveyed by the Landowner shall be subject to this Assignment, which shall be recorded in the Official Records of Palm Beach County, Florida.

NOW, THEREFORE, in consideration of the above recitals which the parties hereby agree are true and correct and are hereby incorporated by reference and other good and valuable consideration, the sufficiency of which is acknowledged, Assignor and Assignee agree as follows:

1. **Recitals**. The foregoing recitals are true and correct and are incorporated herein by reference.

2. **Collateral Assignment**.

(A) Assignor hereby collaterally assigns to Assignee, to the extent assignable and to the extent that they are solely owned or controlled by Assignor, all of its development rights relating to the Phase One Assessment Area Project (herein the "Development Rights") as security for Assignor's payment and performance and discharge of the obligation to pay the 2020 Special Assessments levied against the Subject Property. The Development Rights shall include the following as they pertain to the Phase One Assessment Area Project, but shall specifically exclude any such portion of the Development Rights which relate solely to or are specifically allocated to the Lots or any property which has been conveyed or by contract agreed to be conveyed to any Landowner Transferee or to the City, the County, the District, any utility provider, any other homebuilder, any governmental or quasi-governmental entity, any applicable homeowner's association or other governing entity or association as may be required by applicable contract with such Landowner Transferee, or by applicable permits, approvals, plats, entitlements or regulations affecting the Project, if any, or to end user residents (the "Excluded Parcels"):

(a) Zoning approvals, density approvals and entitlements, concurrency and capacity certificates, development agreements and homeowners' or property owners' association covenants and documents.

(b) Engineering and construction plans and specifications for grading, roadways, site drainage, stormwater drainage, signage, water distribution, waste water collection, and other improvements.

(c) Preliminary and final site plans.

(d) Architectural plans and specifications for buildings and other improvements to the assessable property within the District and the Subject Property (other than residential dwelling unit or commercial building plans).

(e) Permits, approvals, resolutions, variances, licenses, and franchises granted by governmental authorities, or any of their respective agencies, for or affecting the Project and construction of improvements thereon and off-site to the extent improvements are necessary or required to complete the development of the Subject Property.

(f) Contracts with engineers, architects, land planners, landscape architects, consultants, contractors, and suppliers for or relating to the construction of the Project or the construction of improvements on the Subject Property.

(g) Contracts and agreements with private utility providers to provide utility services to the Subject Property.

(h) All prepaid impact fees, impact fee credits, mobility fee credits, and mitigation credits.

(i) Developer's or Landowner's rights as declarant under any recorded Covenants, Conditions and Restrictions of any property owner or homeowners association with respect to the Subject Property.

(j) All future creations, changes, extensions, revisions, modifications, substitutions, and replacements of any of the foregoing.

(B) This Assignment is not intended to and shall not impair or interfere with the development of the Subject Property, and shall only be inchoate and shall become an effective and absolute assignment and assumption of the Development Rights, from time to time, only upon the District's exercise of its rights hereunder upon a failure of the Assignor to pay the 2020 Special Assessments levied against the portion of Subject Property owned by Developer, a default or failure to perform under any of the bond documents relating to the Series 2020 Bonds or Event of Default hereunder, which default or failure remains uncured after passage of any applicable cure period. The District shall not be deemed to have assumed any obligations associated with the Development Rights unless and until the District exercises its rights under this Assignment, and then only to the extent of such exercise.

(C) If this Assignment has not become absolute, it shall automatically terminate upon the earliest to occur of the following events: (i) payment of the Bonds in full; (ii) Development Completion which shall mean the issuance of certificates of occupancy for all residential units and non-residential space; (iii) transfer of any Development Rights to the City, the County, the State of Florida, the District, any utility provider, any governmental or quasi-governmental entity; any homeowners' or property owners' association, but only to the extent of such transfer; or (iv) transfer of fully-developed parcels which have been conveyed to the Landowner Transferees but only as to such Lots or parcels transferred, from time to time.

3. **Warranties by Assignor.** Assignor represents and warrants to Assignee that:

(a) Other than in connection with the sale or conveyance of Lots (completed or otherwise) or property (including, without limitation, as provided in Assignor's agreements with Landowner Transferees) or in connection with securing an acquisition loan from an institutional lender to finance the development of the Phase One Assessment Area Project on the Subject Property, Assignor has made no assignment of the Development Rights to any person other than Assignee, except for assignments that are subordinate to this Assignment.

(b) Assignor is not prohibited under any agreement with any other person or under any judgment or decree from the execution and delivery of this Assignment.

(c) No action has been brought or, to Assignor's knowledge, threatened which would in any way interfere with the right of Assignor to execute this Assignment and perform all of Assignor's obligations herein contained.

(d) Any transfer, conveyance or sale of Lots shall subject any and all affiliated entities or successors-in-interest or successors in title of the Assignor to this Assignment, except to the extent of a Prior Transfer or a conveyance described in Section 2 relating to Excluded Parcels.

4. **Covenants**. Assignor covenants with Assignee that during the Term (as defined herein):

(a) Assignor will use reasonable, good faith efforts to: (i) fulfill, perform, and observe each and every material condition and covenant of Assignor relating to the Development Rights and (ii) give notice to Assignee of any claim of default relating to the Development Rights given to or by Assignor, together with a complete copy of any such claim.

(b) The Development Rights include all of Assignor's right to modify the Development Rights, and to waive or release the performance or observance of any obligation or condition of the Development Rights.

(c) Assignor agrees not to take any action that would decrease the development entitlements to a level below the amount necessary to support the then outstanding Bonds.

(d) Assignor and Landowner shall pay the 2020 Special Assessments levied against the portions of the Subject Property owned by Landowner when due.

5. **Events of Default**. Any breach of the warranties contained in Section 3 hereof or breach of covenants contained in Section 4 hereof will, after the giving of written notice and an opportunity to cure (which cure period shall not be less than thirty (30) days unless Assignee, in its sole discretion, agrees to a longer cure period) shall constitute an Event of Default under this Assignment.

6. **Remedies Upon Default**. Upon an Event of Default, or the transfer of title to Lots owned by Assignor pursuant to a judgment of foreclosure entered by a court of competent jurisdiction in favor of Assignee (or its designee) or a deed in lieu of foreclosure to Assignee (or its designee) (herein a "Non-Permitted Transfer"), Assignee may, as Assignee's sole and

exclusive remedies under this Assignment, take any or all of the following actions, at Assignee's option:

(a) Perform any and all obligations of Assignor relating to the Development Rights and exercise any and all rights of Assignor therein as fully as Assignor could.

(b) Initiate, appear in, or defend any action arising out of or affecting the Development Rights.

(c) Further assign any and all of the Development Rights to a third-party acquiring title to the Property so acquired or any portion thereof on the District's or the Bondholders' behalf.

7. **Authorization.** In the Event of Default or Non-Permitted Transfer, Assignor does hereby authorize and shall direct any party to any agreement relating to the Development Rights to tender performance thereunder to Assignee upon written notice and request from Assignee. Any such performance in favor of Assignee shall constitute a full release and discharge to the extent of such performance as fully as though made directly to Assignor, but not a release of Assignor from any remaining obligations under this Agreement.

8. **Term and Termination.** In the event this Assignment does not become an effective and absolute assignment and assumption of the Development Rights, this Assignment shall automatically terminate upon the earliest to occur of the following (the "Term"): (i) payment of the Bonds, plus accrued interest in full; (ii) completion of the construction and sale of all Lots within the Subject Property to end-users; or (iii) upon occurrence of a Prior Transfer, but only to the extent that such Development Rights are subject to the Prior Transfer. Assignee shall, from time to time, within ten (10) days following written request by Assignor, execute, acknowledge and deliver to Assignor a partial release in recordable form (a "Partial Release") releasing this Assignment from a portion of the Subject Property in conjunction with the scheduled closing of a Prior Transfer. Additionally, after the end of the term, within ten (10) days of a written request of Assignor, Assignee shall execute, acknowledge and deliver to Assignor a termination in recordable form (a "Termination") terminating this Assignment of record. Nothing herein shall prohibit the Assignee from executing a Termination any time after the end of the Term.

9. **Third Party Beneficiaries and Direction of Remedies Upon Default.** This Assignment shall inure to the benefit of U.S. Bank National Association, a national banking association, as trustee for the Bonds (the "Trustee"), and the holders of the Bonds and such parties are hereby deemed direct third-party beneficiaries of this Assignment. In the event of an Event of Default, the Trustee, acting at the direction of the holders owning a majority of the aggregate principal amount of the Bonds then outstanding, shall have the right to select the remedies in this Assignment and enforce this Assignment directly. The District hereby agrees that it shall not take any action under this Assignment without the prior written consent of the Trustee, fail to take any action under this Assignment after direction from the Trustee, or take any action under this Assignment inconsistent with any direction of the Trustee. The Trustee shall not be deemed to have assumed any obligations hereunder.

10. **Amendment.** Except with respect to a Partial Release or a Termination (each of which may be executed solely by Assignee), this Assignment may not be amended, modified, altered, or changed in any respect whatsoever except by a further agreement in writing duly executed by the parties hereto. Notwithstanding anything herein to the contrary, this assignment may not be materially amended in a manner that has the effect of reducing the total annual debt service revenue collected or to be collected for the Bonds without the written consent of the Trustee for the Bonds, acting at the direction of the Bondholders (as defined in the Indenture related to the Series 2020 Bonds) owning a majority of the aggregate principal amount of the Bonds then outstanding.

11. **Miscellaneous.** Unless the context requires otherwise, whenever used herein, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders. The terms "person" and "party" shall include individuals, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups and combinations. Titles of paragraphs contained herein are inserted only as a matter of convenience and for reference and in no way define, limit, extend, or describe the scope of this Assignment or the intent of any provisions hereunder. This Assignment shall be construed under Florida law.


IN WITNESS WHEREOF, Assignor and Assignee have caused this Assignment to be executed and delivered on the day and year first written above.


WITNESSES:

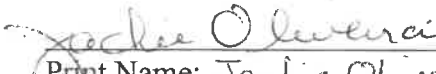
ASSIGNORS:

BANYAN CAY DEV. LLC, a Delaware limited liability company

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


Print Name: Richard G. Cherry

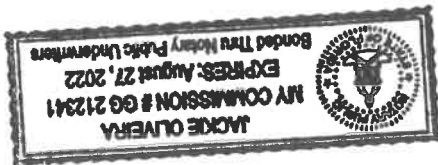

By: Domenic J. Gatto, Jr.,
its sole member and manager


Print Name: Jackie Oliveira

STATE OF FLORIDA)
)SS
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 10th day of December, 2020, by Domenic J. Gatto, Jr., the sole member and manager of DJG Dev. LLC, a Florida limited liability company, the manager of Banyan Cay Dev. LLC, a Delaware limited liability company, on behalf of the company, who is personally known to me or has produced _____ as identification.

[Notary Seal]



Jackie Olivera
Notary Public, State of Florida
JACKIE OLIVERA
Name typed, printed or stamped
My Commission Expires:

WITNESSES:

BANYAN CAY VILLAS, LLC, a Delaware limited liability company

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

Richard G. Cherry
Print Name: Richard G. Cherry

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

Jackie Oliveira
Print Name: Jackie Oliveira

STATE OF FLORIDA)
)SS
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 10th day of December, 2020, by Domenic J. Gatto, Jr., the sole member and manager of DJG Dev. LLC, a Florida limited liability company, the manager of Banyan Cay Villas, LLC, a Delaware limited liability company, on behalf of the company, who is personally known to me or has produced _____ as identification.

[Notary Seal]



Jackie Oliveira
Notary Public, State of Florida
JACKIE OLIVEIRA
Name typed, printed or stamped
My Commission Expires:

EXHIBIT "A"

PHASE ONE ASSESSMENT AREA

All of the Banyan Cay Resort Plat (the "**Plat**"), as recorded in Plat Book 125, Page 114, but specifically excluding Tracts MF, R, LK1 and LK2 of the Plat and specifically including Tract L1 of the Plat, which Tract was replatted in the Banyan Cay Resort Replat of Tract L1, recorded in Plat Book 127, Page 18 of the Public Records of Palm Beach County, FL.



STATE OF FLORIDA • PALM BEACH COUNTY

I hereby certify that the foregoing is a true copy of the record in my office with redactions, if any as required by law.

THIS 21 DAY OF December, 2020

SHARON R BOCK
CLERK & COMPTROLLER

By *[Signature]*
DEPUTY CLERK