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 Palm Beach County, Florida
 Sharon R. Bock, CLERK & COMPTROLLER
 Pgs 1385 - 1409; (25pgs)

Prepared by and return to:

William G. Capko, Esquire
 Lewis, Longman & Walker, P.A.
 515 North Flagler Drive
 Suite 1500
 West Palm Beach, Florida 33401

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY

TRUE-UP AGREEMENT

This Agreement (this "**Agreement**") is made and entered into as of 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 (collectively, the "**Developer**"), landowners and developers of certain lands within the District.

Recitals

WHEREAS, the District was established by ordinance of the City of West Palm Beach, Florida for the purpose of planning, financing, constructing, acquiring, operating and/or maintaining certain infrastructure, including surface water management systems, roadways and utilities; and

WHEREAS, the Developer is currently the owner and developer of certain lands within the District; and

WHEREAS, the District, pursuant to Chapter 190, Florida Statutes, is authorized to levy such taxes, special assessments, fees and other charges as may be necessary in furtherance of the District's activities and services; and

WHEREAS, a Final Judgment was issued on September 26, 2019, validating the authority of the District to issue up to \$11,000,000 in bonded indebtedness to finance certain improvements and facilities within the District (the "**Validation Judgment**"); and

WHEREAS, under the Validation Judgment the District is presently in the process of issuing its Special Assessment Bonds, Series 2020 (Phase One Assessment Area) (the "**Series 2020 Bonds**") to finance the design, construction or acquisition of certain improvements necessitated by development within a designated assessment area within the District referred to as the "**Phase One Assessment Area**"; and

WHEREAS, the improvements to be financed by the Series 2020 Bonds (the “**Phase One Assessment Area Project**”) are more specifically described and identified in the Engineer’s Report dated June 20, 2019, as revised and approved by the District (the “**Engineer’s Report**”); and

WHEREAS, the District has taken certain steps necessary to impose special assessments upon the benefited lands within the Phase One Assessment Area within the District pursuant to Chapters 170 and 190, Florida Statutes as security for the Series 2020 Bonds; and

WHEREAS, the District’s special assessments securing the Series 2020 Bonds were imposed on those benefited lands within the Phase One Assessment Area within the District as more specifically described in Resolution Nos. 2019-26, 2019-27 and 2019-28, respectively (the “Series 2020 Assessments”), such resolutions being attached hereto as **Exhibit A**, incorporated herein by reference and collectively referred to herein as the “Assessment Proceedings”; and

WHEREAS, as of the date of this Agreement, Developer owns and is developing a majority of the real property within the District which benefits or will benefit from the Phase One Assessment Area Project to be financed by the Series 2020 Bonds (the “**Property**”); and

WHEREAS, Developer agrees that the Property, more particularly described in the legal description attached hereto as Exhibit B, benefits from the timely design, construction or acquisition of the Phase One Assessment Area Project; and

WHEREAS, Developer agrees that the Series 2020 Assessments have been validly imposed and constitute valid, legal and binding liens upon the Property; and

WHEREAS, Developer waives any rights it may have under Section 170.09, Florida Statutes, to prepay the Series 2020 Assessments within 30 days after completion of the Phase One Assessment Area Project; and

WHEREAS, Developer waives any defect in notice or publication or in the Assessment Proceedings to levy, impose and collect the Series 2020 Assessments on the Property; and

WHEREAS, the Master Special Assessment Methodology Report Special Assessment Bonds (Phase One Assessment Area) dated May 21, 2019, as revised on September 9, 2019, as supplemented by the Final First Supplemental Assessment Methodology Report, dated December 2, 2020 (collectively, the “**District’s Series 2020 Assessment Report**”), provides that as the Property is developed, the allocation of the amounts assessed to and constituting a lien upon the Property would be calculated based upon certain density assumptions relating to the number of each type of residential unit or commercial use to be constructed on the developable acres within specific parcels, which assumptions were provided by Developer; and

WHEREAS, although the Developer has informed the District that it intends to develop a specific number and type of residential dwelling units and commercial uses within specific parcels on the Property, Developer intends to develop the Property based on then-existing market conditions, and the actual densities developed may be at some density less than the densities assumed in the District’s Series 2020 Assessment Report; and

WHEREAS, the District's Series 2020 Assessment Report anticipates a mechanism by which the Developer shall make certain payments to the District in order to satisfy, in whole or in part, the assessments allocated and the liens imposed pursuant to the Assessment Proceedings, the amount of such payments being determined generally by a comparison of the units actually developed and the units the Developer had initially intended to develop as described in the District's Series 2020 Assessment Report (which payments shall collectively be referenced as the "**True-Up Payment**"); and

WHEREAS, Developer and the District desire to enter into an agreement to confirm Developer's intentions and obligations to make the True-Up Payment and payment of all Series 2020 Assessments attributable to the Property when due pursuant to the Assessment Proceedings.

NOW, THEREFORE, based upon good and valuable consideration and the mutual covenants of the parties, the receipt of which and sufficiency of which is hereby acknowledged, the parties agree as follows:

SECTION 1. RECITALS. The recitals so stated are true and correct and by this reference are incorporated into and form a material part of this Agreement.

SECTION 2. VALIDITY OF ASSESSMENTS. Developer agrees that the Assessment Proceedings have been duly adopted by the District. Developer further agrees that the Series 2020 Assessments imposed as a lien by the District are legal, valid and binding liens. Developer hereby waives and relinquishes any rights it may have to challenge, object to or otherwise fail to pay such Series 2020 Assessments.

SECTION 3. COVENANT TO PAY. For as long as the Developer is a landowner within the Phase One Assessment Area, Developer agrees and covenants to timely pay all such Series 2020 Assessments levied and imposed by the District on lands owned by the Developer pursuant to the Assessment Proceedings, whether the Series 2020 Assessments are collected by the Tax Collector pursuant to Section 197.3632, Florida Statutes, by the District, or by any other method allowable by law. Developer further waives any rights it may have under Section 170.09, Florida Statutes, to prepay the Series 2020 Assessments without interest within 30 days of completion of the Phase One Assessment Area Project.

SECTION 4. SPECIAL ASSESSMENT REALLOCATION.

A. Assumptions as to Series 2020 Assessments. As of the date of the execution of this Agreement, Developer has informed the District that Developer plans to construct or provide for the construction of the following land uses, number of units and Equivalent Residential Units ("**ERUs**"):

<u>Land Use</u>	<u>No. of Units</u>	<u>ERUs per Unit*</u>	<u>Total ERUs*</u>
Estate Home Unit	52	1.00	52.00
Hotel Unit/Room	150	1.00	150.00
Resort Villa Unit	22	0.80	17.60
<u>Clubhouse Component Unit</u>	<u>18,243 sq.ft.</u>	<u>0.001</u>	<u>18.24</u>
Total Units	N/A	N/A	237.84

* Rounded

B. Process for Reallocation of Assessments. In connection with the development of acreage within each specific parcel identified above, it is anticipated that the Developer will submit the residential dwelling units for each particular parcel in one plat/site plan or declaration of condominium. In furtherance thereof, at such time such acreage is to be initially conveyed or developed, Developer covenants that each proposed conveyance or plat/site plan or declaration of condominium shall be presented to the District. The District shall allocate the Series 2020 Special Assessments in accordance with the District's Series 2020 Assessment Report and cause such reallocation to be recorded in the District's Improvement Lien Book.

(i). The Developer is responsible for developing the minimum number of units within each specific parcel of the Property as identified in Section 4A herein and described in the District's Series 2020 Assessment Report. If the Developer fails to develop, or cause others to develop, the number and type of units within each specific parcel of the Property described herein and in the District's Series 2020 Assessment Report, a payment equal to the par debt assessment on said unit(s) that Developer failed to develop or cause others to develop, minus any principal payments, minus any moneys transferred from the Series 2020 Debt Service Reserve Account to the Series 2020 Redemption Account as a result of the anticipated redemption of Series 2020 Bonds caused by such prepayment, plus any applicable interest that may be due (the "True-Up Payment") shall become due and payable that tax year in accordance with the District's Series 2020 Assessment Report, in addition to the regular assessment installment payable for lands owned by the Developer. The District will ensure collection of such amounts in a timely manner in order to meet its debt service obligations, and in all cases, Developer agrees that such payments shall be made in order to ensure the District's timely payment of the debt service obligations on the Series 2020 Bonds. It is an express condition of the District's assessment lien that any and all conveyances, plats, site plans and declarations of condominium containing any portion of the lands within the Property shall be presented to the District for review, approval and calculation of the number of planned, yet undeveloped, units. Developer covenants to comply, or cause others to comply, with this requirement. The District agrees that no further action by the Board of Supervisors shall be required. The District's review shall be limited solely to the above described function and the enforcement of the liens established by the Assessment Proceedings. Nothing herein shall in any way operate to or be construed as providing any other conveyance or plat/site plan approval or declaration of condominium or disapproval powers to the District.

(ii). The foregoing is based on the District's understanding with Developer that Developer will develop, or cause others to develop, the number and type of units identified in Section 4A herein on the identified parcels within the Property and is intended to provide a formula to ensure the appropriate allocation of the 2020 Special Assessments is maintained if

less than the anticipated residential dwelling units and other uses are developed. However, the District agrees that nothing herein prohibits more than the number of residential dwelling units and other uses identified in Section 4A from being developed within the Property. In no event shall the District collect Series 2020 Assessments pursuant to the Assessment Proceedings in excess of the total debt service related to the Series 2020 Bonds. If the strict application of the True-Up methodology to any assessment reallocation for any conveyance or plat/site plan or declaration of condominium pursuant to this paragraph would result in assessments collected in excess of the District's total debt service obligation for the Series 2020 Bonds, the District agrees to take appropriate action by resolution to equitably reallocate the assessments. Further, upon the District's approval of the final conveyance or plat/site plan or declaration of condominium for the Property, any unallocated Series 2020 Assessments shall become due and payable as a True-Up Payment and must be paid prior to the District's approval of that conveyance or plat/site plan or any release of lien.

SECTION 5. ENFORCEMENT. This Agreement is intended to be an additional method of enforcement of Developer's obligation to pay the Series 2020 Assessments and to abide by the requirements of the reallocation of Special Assessments, including the making of the True-Up Payments, as set forth in the Assessment Proceedings. A default by Developer under this Agreement shall entitle the District to all remedies available at law or in equity, which shall include, but not be limited to, the right of damages, injunctive relief and specific performance.

SECTION 6. RECOVERY OF COSTS AND FEES. In the event either party is required to enforce this Agreement by court proceedings or otherwise, then each prevailing party, as determined by the applicable court or other dispute resolution provider, shall be entitled to recover from the non-prevailing party all fees and costs incurred, including reasonable attorneys' fees and costs incurred prior to or during any litigation or other dispute resolution and including all fees and costs incurred in appellate proceedings.

SECTION 7. NOTICE. 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: anyan 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.

SECTION 8. ASSIGNMENT. No party may assign their rights, duties, or obligations under this Agreement or any monies to become due hereunder without the prior written consent of each other party.

SECTION 9. AMENDMENT. This Agreement shall constitute the entire agreement between the parties and may be modified in writing only by the mutual agreement of all parties. Any amendment that has the effect of materially impacting the payment of debt service of the Series 2020 Bonds will require the consent of the owners of a majority of the Series 2020 Bonds.

SECTION 10. TERMINATION. This Agreement shall continue in effect until it is rescinded in writing by the mutual assent of each party.

SECTION 11. NEGOTIATION AT ARM'S LENGTH. This Agreement has been negotiated fully between the parties as an arms length transaction. All parties participated fully in the preparation of this Agreement and received the advice of counsel. In the case of a dispute concerning the interpretation of any provision of this Agreement, all parties are deemed to have drafted, chosen and selected the language, and the doubtful language will not be interpreted or construed against either party.

SECTION 12. BENEFICIARIES. Except as provided in Section 9 hereof, this Agreement is solely for the benefit of the formal parties herein and no right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party not a formal party hereto. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person or corporation other than the parties hereto any right, remedy or claim under or by reason of this Agreement or any provisions or conditions hereof; and all of the

provisions, representations, covenants and conditions herein contained shall inure to the sole benefit of and shall be binding upon the parties hereto and their respective representatives, successors and assigns.

SECTION 13. LIMITATIONS ON GOVERNMENTAL LIABILITY. Nothing in this Agreement shall be deemed as a waiver of immunity or limits of liability of the District beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature in Section 768.28, Florida Statutes or other statute, and nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law.

SECTION 14. APPLICABLE LAW AND VENUE. This Agreement shall be governed by the laws of the State of Florida. The parties hereto acknowledge and agree that, in the event legal action is instituted to enforce this True-Up 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.

SECTION 15. EXECUTION IN COUNTERPARTS. This instrument may be executed in any number of counterparts, each of which, when executed and delivered, shall constitute an original, and such counterparts together shall constitute one and the same instrument. Signature and acknowledgment pages, if any, may be detached from the counterparts and attached to a single copy of this document to physically form one document.

SECTION 16. EFFECTIVE DATE. This Agreement shall become effective after execution by the parties hereto on the date reflected above.

(Execution Pages Follow)

IN WITNESS WHEREOF, the parties execute this Agreement the day and year first written above.

WITNESSES:

BANYAN CAY COMMUNITY DEVELOPMENT DISTRICT, a local unit of special-purpose government created and existing pursuant to Chapter 190, Florida Statutes, being situated entirely within the City of West Palm Beach, Florida

[Signature]
Printed name: SP. M. A. G. GIBSON
[Signature]
Print Name: SARAH DOSCH

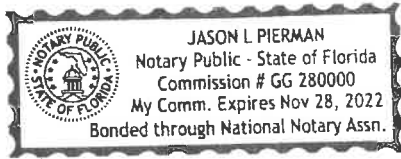
[Signature]
By: Alicia Lewis,
Chairperson, Board of Supervisors

Dated: December 17, 2020

STATE OF FLORIDA)
)SS:
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 17 day of December, 2020, by Alicia Lewis, as Chairperson of the Board of Supervisors of BANYAN CAY COMMUNITY DEVELOPMENT DISTRICT, on behalf of the District, who is personally known to me or has produced _____ as identification.

[Notary Seal]



[Signature]
NOTARY PUBLIC
Name typed, printed or stamped
My Commission Expire

WITNESSES:

BANYAN CAY DEV. 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

[Signature]
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 12th 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 Oliveira
Notary Public, State of Florida
Jackie Oliveira
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

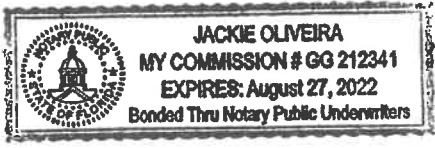
[Signature]
By: Domenic J. Gatto, Jr.,
its sole member and manager

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:

WITNESSES:

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

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

Richard B. Cherry
Print Name: Richard B. Cherry

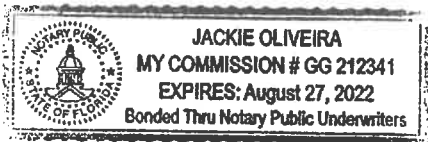
[Signature]
By: Domenic J. Gatto, Jr.,
its sole member and manager

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 Resort & Golf, 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

RESOLUTIONS 2019-26, 2019-27 AND 2019-28

RESOLUTION 2019-26

A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE BANYAN CAY COMMUNITY DEVELOPMENT DISTRICT DECLARING SPECIAL ASSESSMENTS; INDICATING THE LOCATION, NATURE AND ESTIMATED COST OF THOSE INFRASTRUCTURE IMPROVEMENTS WHOSE COST IS TO BE DEFRAYED BY THE SPECIAL ASSESSMENTS; PROVIDING THE PORTION OF THE ESTIMATED COST OF THE IMPROVEMENTS TO BE DEFRAYED BY THE SPECIAL ASSESSMENTS; PROVIDING THE MANNER IN WHICH SUCH SPECIAL ASSESSMENTS SHALL BE MADE; PROVIDING WHEN SUCH SPECIAL ASSESSMENTS SHALL BE PAID; DESIGNATING LANDS UPON WHICH THE SPECIAL ASSESSMENTS SHALL BE LEVIED; PROVIDING FOR AN ASSESSMENT PLAT; ADOPTING A PRELIMINARY ASSESSMENT ROLL; PROVIDING FOR PUBLICATION OF THIS RESOLUTION.

WHEREAS, the Board of Supervisors (the “Board”) of the Banyan Cay Community Development District (the “District”) hereby determines to undertake, install, plan, establish, construct or reconstruct, enlarge or extend, equip, acquire, operate, and/or maintain the infrastructure improvements (the “Improvements”) described in the District’s Engineer’s Report, dated May 18, 2017, attached hereto as **Exhibit A** and incorporated herein by reference; and

WHEREAS, it is in the best interest of the District to pay the cost of the Improvements by special assessments pursuant to Chapter 190, Florida Statutes, (the “Assessments”); and

WHEREAS, the District is empowered by Chapter 190, the Uniform Community Development District Act, Chapter 170, Supplemental and Alternative Method of Making Local Municipal Improvements, and Chapter 197, the Uniform Method for the Levy, Collection and Enforcement of Non-Ad Valorem Assessments, Florida Statutes, to finance, fund, plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain the Improvements and to impose, levy and collect the Assessments; and

WHEREAS, the District hereby determines that benefits will accrue to the property improved, the amount of those benefits, and that special assessments will be made in proportion to the benefits received as set forth in the Master Assessment Methodology Report, dated May 21, 2019, attached hereto as **Exhibit B** and incorporated herein by reference and on file at 2501A Burns Road, Palm Beach Gardens, Florida 33410 (the “District Records Office”) and Sales

Office located at 2501A Burns Road, Palm Beach Gardens, Florida 33410 (“District Local Records Office”); and

WHEREAS, the District hereby determines that the Assessments to be levied will not exceed the benefit to the property improved.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF THE BANYAN CAY COMMUNITY DEVELOPMENT DISTRICT:

1. Assessments shall be levied to defray the cost of the Improvements.
2. The nature and general location of, and plans and specifications for, the Improvements are described in Exhibit A, which is on file at the District Records Office. Exhibit B is also on file and available for public inspection at the same location.
3. The total estimated cost of the Improvements is \$7,462,830 (the “Estimated Cost”).
4. The Assessments will defray approximately \$9,575,000, which includes a portion of the Estimated Cost, plus financing-related costs, capitalized interest, debt service reserve and contingency.
5. The manner in which the Assessments shall be apportioned and paid is set forth in Exhibit B, including provisions for supplemental assessment resolutions.
6. The Assessments shall be levied, within the District, on all lots and lands adjoining and contiguous or bounding and abutting upon such improvements or specially benefitted thereby and further designated by the assessment plat hereinafter provided for.
7. There is on file, at the District Records Office, an assessment plat showing the area to be assessed, with certain plans and specifications describing the Improvements and the estimated cost of the Improvements, all of which shall be open to inspection by the public.
8. Commencing with the year in which the Assessments are confirmed, the Assessments shall be paid in not more than (30) thirty annual installments. The Assessments may be payable at the same time and in the same manner as are ad-valorem taxes and collected pursuant to Chapter 197, Florida Statutes; provided, however, that in the event the uniform non ad-valorem assessment method of collecting the Assessments is not available to the District in any year, or if determined by the District to be in its best interest, the Assessments may be collected as is otherwise permitted by law.

9. The District Manager has caused to be made a preliminary assessment roll, in accordance with the method of assessment described in Exhibit B hereto, which shows the lots and lands assessed, the amount of benefit to and the assessment against each lot or parcel of land and the number of annual installments into which the assessment may be divided, which assessment roll is hereby adopted and approved as the District's preliminary assessment roll.

10. The Board shall adopt a subsequent resolution to fix a time and place at which the owners of property to be assessed or any other persons interested therein may appear before the Board and be heard as to the propriety and advisability of the assessments or the making of the Improvements, the cost thereof, the manner of payment therefore, or the amount thereof to be assessed against each property as improved.

11. The District Manager is hereby directed to cause this Resolution to be published twice (once a week for two (2) weeks) in a newspaper of general circulation within Palm Beach County and to provide such other notice as may be required by law or desired in the best interests of the District.

12. This Resolution shall become effective upon its passage.

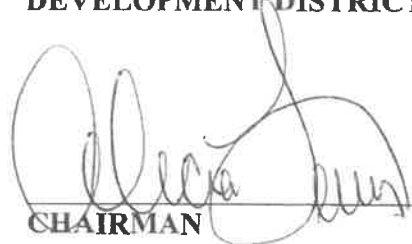
PASSED AND ADOPTED this 21st day of May, 2019.

ATTEST:

**BANYAN CAY COMMUNITY
DEVELOPMENT DISTRICT**



ASSISTANT SECRETARY



CHAIRMAN

Exhibit A: Engineer's Report, dated May 21, 2019

Exhibit B: Master Assessment Methodology Report, dated May 21, 2019

RESOLUTION 2019-27

A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE BANYAN CAY COMMUNITY DEVELOPMENT DISTRICT SETTING A PUBLIC HEARING TO BE HELD ON JULY 9, 2019, AT 2:00 P.M. AT THE OFFICES OF SPECIAL DISTRICT SERVICES, INC. 2501A BURNS ROAD, PALM BEACH GARDENS, FLORIDA 34410, FOR THE PURPOSE OF HEARING PUBLIC COMMENT ON IMPOSING SPECIAL ASSESSMENTS ON CERTAIN PROPERTY WITHIN THE DISTRICT GENERALLY DESCRIBED AS THE BANYAN CAY COMMUNITY DEVELOPMENT DISTRICT IN ACCORDANCE WITH CHAPTERS 170, 190 AND 197, FLORIDA STATUTES.

WHEREAS, the Board of Supervisors of the Banyan Cay Community Development District, (the "Board") has previously adopted Resolution 2019-26 entitled

A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE BANYAN CAY COMMUNITY DEVELOPMENT DISTRICT DECLARING SPECIAL ASSESSMENTS; INDICATING THE LOCATION, NATURE AND ESTIMATED COST OF THOSE IMPROVEMENTS WHOSE COST IS TO BE DEFRAYED BY THE SPECIAL ASSESSMENTS; PROVIDING THE PORTION OF THE ESTIMATED COST OF THE IMPROVEMENTS TO BE DEFRAYED BY THE SPECIAL ASSESSMENTS; PROVIDING THE MANNER IN WHICH SUCH SPECIAL ASSESSMENTS SHALL BE MADE; PROVIDING WHEN SUCH SPECIAL ASSESSMENTS SHALL BE PAID; DESIGNATING LANDS UPON WHICH THE SPECIAL ASSESSMENTS SHALL BE LEVIED; PROVIDING FOR AN ASSESSMENT PLAT; ADOPTING A PRELIMINARY ASSESSMENT ROLL; PROVIDING FOR PUBLICATION OF THIS RESOLUTION.

WHEREAS, in accordance with Resolution 2019-26, a Preliminary Special Assessment Roll has been prepared and all other conditions precedent set forth in Chapters 170, 190 and 197, Florida Statutes, to the holding of the aforementioned public hearing have been satisfied, and the roll and related documents are available for public inspection at the offices of Special District Services, Inc. at 2501A Burns Road, Palm Beach Gardens, Florida 33410 (the "District Records Office") and at the 2501A Burns Road, Palm Beach Gardens, Florida 33410 ("District Local Records Office").

**NOW THEREFORE BE IT RESOLVED BY THE BOARD
OF SUPERVISORS OF THE BANYAN CAY COMMUNITY
DEVELOPMENT DISTRICT:**

1. There is hereby declared a public hearing to be held at 2:00 p.m. on July
9, 2019, at the offices of Special District Services, Inc. 2501A Burns Road, Palm
Beach Gardens, Florida 34410, for the purpose of hearing comment and objections to the
proposed special assessment program for District improvements as identified in the Preliminary
Special Assessment Roll, a copy of which is on file. Affected parties may appear at that hearing
or submit their comments in writing prior to the hearing to the office of the District Manager at
2501A Burns Rd., Palm Beach Gardens, FL 33410; (561) 630-4922.

2. Notice of said hearing shall be advertised in accordance with Chapters 170, 190
and 197, Florida Statutes, and the District Manager is hereby authorized and directed to place
said notice in a newspaper(s) of general circulation within Palm Beach County (by two
publications one week apart with the first publication at least twenty (20) days prior to the date
of the hearing established herein). The District Manager shall file a publisher's affidavit with the
District Secretary verifying such publication of notice. The District Manager is further
authorized and directed to give thirty (30) days written notice by mail of the time and place of
this hearing to the owners of all property to be assessed and include in such notice the amount of
the assessment for each such property owner, a description of the areas to be improved and
notice that information concerning all assessments may be ascertained at the District Records
Offices. The District Manager shall file proof of such mailing by affidavit with the District
Secretary.

3. This Resolution shall become effective upon its passage.

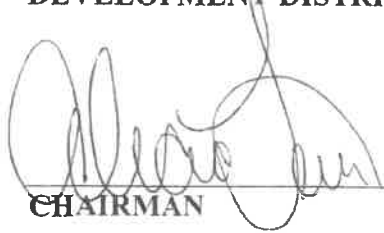
PASSED AND ADOPTED this 21st day of May, 2019.

ATTEST:

**BANYAN CAY COMMUNITY
DEVELOPMENT DISTRICT**



ASSISTANT SECRETARY



CHAIRMAN

RESOLUTION 2019-28

A RESOLUTION OF THE BANYAN CAY COMMUNITY DEVELOPMENT DISTRICT AUTHORIZING DISTRICT PROJECTS FOR CONSTRUCTION AND/OR ACQUISITION OF INFRASTRUCTURE IMPROVEMENTS; EQUALIZING, APPROVING, CONFIRMING, AND LEVYING SPECIAL ASSESSMENTS ON PROPERTY SPECIALLY BENEFITED BY SUCH PROJECTS TO PAY THE COST THEREOF; PROVIDING FOR THE PAYMENT AND THE COLLECTION OF SUCH SPECIAL ASSESSMENTS BY THE METHODS PROVIDED FOR BY CHAPTERS 170, 190 AND 197, FLORIDA STATUTES; CONFIRMING THE DISTRICT'S INTENTION TO ISSUE SPECIAL ASSESSMENT BONDS; MAKING PROVISIONS FOR TRANSFERS OF REAL PROPERTY TO GOVERNMENTAL BODIES; PROVIDING FOR THE RECORDING OF AN ASSESSMENT NOTICE; PROVIDING FOR SEVERABILITY, CONFLICTS AND AN EFFECTIVE DATE.

RECITALS

WHEREAS, Banyan Cay Community Development District (“District”) previously indicated its intention to construct certain types of infrastructure improvements and to finance such infrastructure improvements through the issuance of bonds, which bonds would be repaid by the imposition of special assessments on benefited property within the District; and

WHEREAS, the District Board of Supervisors (“Board”) noticed and conducted a public hearing pursuant to Chapters 170, 190 and 197, *Florida Statutes*, relating to the imposition, levy, collection and enforcement of such assessments.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF THE BANYAN CAY COMMUNITY DEVELOPMENT DISTRICT AS FOLLOWS:

SECTION 1. AUTHORITY FOR THIS RESOLUTION. This Resolution is adopted pursuant to Chapters 170, 190 and 197, *Florida Statutes*, including without limitation, Section 170.08, *Florida Statutes*.

SECTION 2. FINDINGS. The Board hereby finds and determines as follows:

(a) The District is a local unit of special-purpose government organized and existing under and pursuant to Chapter 190, *Florida Statutes*, as amended.

(b) The District is authorized by Chapter 190, *Florida Statutes*, to finance, fund, plan,

establish, acquire, install, equip, operate, extend, construct, or reconstruct such infrastructure improvements consisting of, but not limited to: lake excavation, surface water management system, concrete curbing and guttering, water distribution system, sanitary sewer collection and transmission system, sound barrier wall, and other infrastructure projects and services necessitated by the development of and serving lands within the District.

(c) The District is authorized by Chapter 190, *Florida Statutes*, to levy and impose special assessments to pay all, or any part of, the cost of such infrastructure projects and services and to issue special assessment bonds payable from such special assessments as provided in Chapters 170, 190 and 197, *Florida Statutes*.

(d) It is necessary to the public health, safety and welfare and in the best interests of the District that (i) the District provide the Project (the "Project"), the nature and location of which was initially described in Resolution 2017-03, and is shown in the *Banyan Cay Community Development District Report of the Engineer*, dated May 20, 2019 (the "Engineer's Report"), and which Project's plans and specifications are on file in the offices of the District Manager and the local records office, both located at 2501A Burns Road, Palm Beach Gardens, Florida 33410; and (ii) the cost of such Project be assessed against the lands specially benefited by such Project; and (iii) the District issue bonds to provide funds for such purposes pending the receipt of such special assessments.

(e) The provision of said Project, the levying of such Special Assessments (hereinafter defined) and the sale and issuance of such bonds serves a proper, essential, and valid public purpose and is in the best interests of the District, its landowners and residents.

(f) In order to provide funds with which to pay the costs of the Project which are to be assessed against the benefitted properties, pending the collection of such Special Assessments, it is necessary for the District from time to time to sell and issue its special assessment bonds, in one or more series (the "Bonds").

(g) By Resolution 2019-26, the Board determined to provide the Project and to defray the costs thereof by making Special Assessments on benefitted property and expressed an intention to issue Bonds, notes or other specific financing mechanisms to provide funds needed for the Project prior to the collection of such Special Assessments. Resolution 2017-28 was adopted in compliance with the requirements of Section 170.03, *Florida Statutes*, and prior to the time it was adopted, the requirements of Section 170.04, *Florida Statutes*, had been met.

(h) As directed by Resolution 2019-26, said Resolution 2019-26 was published as required by Section 170.05, *Florida Statutes*, and a copy of the publisher's affidavit of publication is on file with the Secretary of the Board.

(i) As directed by Resolution 2019-26, a preliminary assessment roll was adopted and filed with the Board as required by Section 170.06, *Florida Statutes*.

(j) As required by Section 170.07, *Florida Statutes*, upon completion of the preliminary assessment roll, the Board adopted Resolution 2019-27, fixing the time and place of a public

hearing at which owners of the property to be assessed and other persons interested therein may appear before the Board and be heard as to (1) the propriety and advisability of making the infrastructure improvements constituting the Project, (2) the cost thereof, (3) the manner of payment therefore, and (4) the amount thereof to be assessed against each specially benefited property or parcel and provided for publication of notice of such public hearing and individual mailed notice in accordance with Chapters 170, 190 and 197, *Florida Statutes*.

(k) Notice of such public hearing was given by publication and also by mail as required by Section 170.07, *Florida Statutes*. Affidavits as to such publications and mailings are on file in the office of the Secretary of the Board.

(l) On May 21, 2019, at the time and place specified in Resolution 2019-27, and notice referred to in paragraph (k) above, the Board met as an Equalization Board and heard and considered all complaints and testimony as to the matters described in paragraph (j) above. The Board has made such modifications in the preliminary assessment roll as it deems necessary, just and right in the making of the final assessment roll.

(m) Having considered the estimated costs of the Project, estimates of financing costs and all complaints and evidence presented at such public hearing, the Board of Supervisors of the District further finds and determines:

(i) that the estimated costs of the Project is as specified in the Engineer's Report (attached as **Exhibit A** hereto and incorporated herein by this reference), which Engineer's Report is hereby adopted and approved, and that the amount of such costs is reasonable and proper; and

(ii) it is reasonable, proper, just and right to assess the cost of such Project against the properties within the District specially benefited thereby using the method determined by the Board set forth in the *Master Special Assessment Methodology Report for Special Assessment Bonds (Phase One Assessment Area)*, dated May 21, 2019 (Revised June 7, 2019) (the "Assessment Report"), attached hereto as **Exhibit B** and incorporated herein by this reference, which results in the Special Assessments set forth on the final assessment roll; and

(iii) it is hereby declared that the Project will constitute a special benefit to all parcels of real property listed on said final assessment roll and that the benefit, in the case of each such parcel, will be equal to or in excess of the Special Assessments thereon when allocated as set forth in Exhibit B; and

(iv) it is in the best interests of the District that the Special Assessments be paid and collected as herein provided.

SECTION 3. AUTHORIZATION OF DISTRICT PROJECT. That certain Project for construction of infrastructure improvements initially described in Resolution 2019-26, and more

specifically identified and described in Exhibit A attached hereto, is hereby authorized and approved and the proper officers, employees and/or agents of the District are hereby authorized and directed to take such further action as may be necessary or desirable to cause the same to be made.

SECTION 4. ESTIMATED COST OF IMPROVEMENTS. The total estimated costs of the Project and the costs to be paid by Special Assessments on all specially benefited property are set forth in Exhibit A and Exhibit B, respectively, hereto.

SECTION 5. EQUALIZATION, APPROVAL, CONFIRMATION AND LEVY OF SPECIAL ASSESSMENTS. The Special Assessments on parcels specially benefited by the Project, all as specified in the final assessment roll set forth in Exhibit B, attached hereto, are hereby equalized, approved, confirmed and levied. Immediately following the adoption of this Resolution these Special Assessments, as reflected in Exhibit B, attached hereto, shall be recorded by the Secretary of the Board of the District in a special book, to be known as the "Improvement Lien Book." The Special Assessment or assessments against each respective parcel shown on such final assessment roll and interest, costs and penalties thereon, as hereafter provided, shall be and shall remain a legal, valid and binding first lien on such parcel until paid and such lien shall be coequal with the lien of all state, county, district, municipal or other governmental taxes and superior in dignity to all other liens, titles, and claims. Prior to the issuance of any bonds, including refunding bonds, the District may, by subsequent resolution, adjust the acreage assigned to particular parcel identification numbers listed on the final assessment roll to reflect accurate apportionment of acreage within the District amongst individual parcel identification numbers. The District may make any other such acreage and boundary adjustments to parcels listed on the final assessment roll as may be necessary in the best interests of the District as determined by the Board by subsequent resolution. Any such adjustment in the assessment roll shall be consistent with the requirements of law. In the event the issuance of bonds, including refunding bonds, by the District would result in a decrease of the Special Assessments, then the District shall by subsequent resolution, adopted within sixty (60) days of the sale of such bonds at a publicly noticed meeting and without the need for further public hearing, evidence such a decrease and amend the final assessment roll as shown in the Improvement Lien Book to reflect such a decrease.

SECTION 6. FINALIZATION OF SPECIAL ASSESSMENTS. When the entire Project has both been constructed or otherwise provided to the satisfaction of the Board, the Board shall adopt a resolution accepting the same and determining the actual costs (including financing costs) thereof, as required by Sections 170.08 and 170.09, *Florida Statutes*. Pursuant to the provisions of Section 170.08, *Florida Statutes*, regarding completion of a project funded by a particular series of bonds, the District shall credit to each Special Assessment the difference, if any, between the Special Assessment as hereby made, approved and confirmed and the actual costs incurred in completing the Project. In making such credits, no credit shall be given for bond financing costs, capitalized interest, funded reserves or bond discounts. Such credits, if any, shall be entered in the Improvement Lien Book. Once the final amount of Special Assessments for the entire Project has been determined, the term "Special Assessment" shall, with respect to each parcel, mean the sum of the costs of the Project.

SECTION 7. PAYMENT OF SPECIAL ASSESSMENTS AND METHOD OF

COLLECTION.

(a) The Special Assessments may be paid in not more than thirty (30) substantially equal consecutive annual installments of principal and interest. The Special Assessments may be paid in full without interest at any time within thirty (30) days after the completion of the Project and the adoption by the Board of a resolution accepting the Project; provided, however, that the Board shall at any time make such adjustments by resolution, at a noticed meeting of the Board, to that payment schedule as may be necessary and in the best interests of the District to account for changes in long and short term debt as actually issued by the District. At any time subsequent to thirty (30) days after the Project has been completed and a resolution accepting the Project has been adopted by the Board, the Special Assessments may be prepaid in full including interest amounts to the next succeeding interest payment date or to the second succeeding interest payment date if such a prepayment is made within forty-five (45) calendar days before an interest payment date. The owner of property subject to Special Assessments may prepay the entire remaining balance of the Special Assessments or a portion of the remaining balance of the Special Assessment at any time if there is also paid, in addition to the prepaid principal balance of the Special Assessment, an amount equal to the interest that would otherwise be due on such prepaid amount on the next succeeding interest payment date, or, if prepaid during the forty-five day period preceding such interest payment date, to the interest payment date following such next succeeding interest payment date. Prepayment of Special Assessments does not entitle the property owner to any discounts for early payment.

(b) The District may elect to use the method of collecting Special Assessments authorized by Sections 197.3632 and 197.3635, *Florida Statutes* (the "Uniform Method"). The District has heretofore taken or will use its best efforts to take as timely required, any necessary actions to comply with the provisions of said Sections 197.3632 and 197.3635, *Florida Statutes*. Such Special Assessments, with the consent of the Trustee, may be subject to all of the collection provisions of Chapter 197, *Florida Statutes*. Notwithstanding the above, in the event the Uniform Method of collecting its special or non-ad valorem assessments is not available to the District in any year, or if determined by the District to be in its best interest, the Special Assessments may be collected as is otherwise permitted by law. The District may, with the consent of the Trustee, collect Special Assessments by directly assessing landowner(s) and enforcing said collection in any manner authorized by law. Such special assessments shall at all times be collected in a manner consistent with applicable trust indenture.

(c) For each year the District uses the Uniform Method, the District shall enter into an agreement with the Tax Collector of Palm Beach County who may notify each owner of a lot or parcel within the District of the amount of the Special Assessment, including interest thereon, in the manner provided in Section 197.3635, *Florida Statutes*.

SECTION 8. APPLICATION OF TRUE-UP PAYMENTS.

(a) There may be required from time to time certain true-up payments as specified in supplemental assessment methodology reports. As parcels of land or lots are platted, the Special Assessments securing the Bonds shall be allocated as set forth in such reports. In furtherance thereof, at such time as parcels or land or lots are platted, it shall be an express condition of the lien established by this Resolution that any and all initial plats of any portion of the lands within the District, as the District's boundaries may be amended from time to time, shall be presented to the District Manager for review, approval and calculation of the percentage of acres and numbers of units which will be, after the plat, considered to be developed. No further action by the Board of Supervisors shall be required. The District's review shall be limited solely to this function and the enforcement of the lien established by this Resolution. The District Manager shall cause the Special Assessments to be reallocated to the units being platted and the remaining property in accordance with such supplemental assessment methodology reports, cause such reallocation to be recorded in the District's Improvement Lien Book, and shall perform the true-up calculations described in supplemental assessment methodology reports, which process is incorporated herein as if fully set forth. Any resulting true-up payment shall become due and payable that tax year by the landowner(s) of record of the remaining property, in addition to the regular assessment installment payable with respect to the remaining developable acres.

(b) The District will take all necessary steps to ensure that true-up payments are made in a timely fashion to ensure its debt service obligations are met. The District shall record all true-up payments in its Improvement Lien Book.

(c) The foregoing is based on the District's understanding with Banyan Cay Dev, LLC that it intends to develop the unit numbers and types shown in Exhibit B, on the net developable acres and is intended to provide a formula to ensure that the appropriate ratio of the Special Assessments to developable acres is maintained if fewer units are developed. However, no action by the District prohibits more than the maximum units shown in Exhibit B from being developed. In no event shall the District collect Special Assessments pursuant to this Resolution in excess of the total debt service related to the Project, including all costs of financing and interest. The District recognizes that such events as regulatory requirements and market conditions may affect the timing and scope of the development in the District. If the strict application of the True-Up Methodology to any assessment reallocation pursuant to this paragraph would result in Special Assessments collected in excess of the District's total debt service obligation for the Project, the Board shall by resolution take appropriate action to equitably reallocate the Special Assessments. Further, upon the District's review of the final plat for the developable acres, any unallocated Special Assessments shall become due and payable and must be paid prior to the District's approval of that plat.

(d) The application of the monies received from true-up payments or assessments to the actual debt service obligations of the District, whether long term or short term, shall be set forth in the supplemental assessment resolution adopted for each series of Bonds actually issued. Such subsequent resolution shall be adopted at a noticed meeting of the District, and shall set forth the actual amounts financed, costs of issuance, expected costs of collection, and the total amount of the

assessments pledged to that issue, which amount shall be consistent with the lien imposed by this Resolution.

SECTION 9. GOVERNMENT PROPERTY; TRANSFERS OF PROPERTY TO UNITS OF LOCAL, STATE, AND FEDERAL GOVERNMENT. Property owned by units of local, state, and federal government shall not be subject to the Special Assessments without specific consent thereto. In addition, property owned by a property owners association or homeowners association that is exempt from special assessments under Florida law shall not be subject to the Special Assessments. If at any time, any real property on which Special Assessments are imposed by this Resolution is sold or otherwise transferred to a unit of local, state, or federal government (without consent of such governmental unit to the imposition of Special Assessments thereon), all future unpaid Special Assessments for such tax parcel shall become due and payable immediately prior to such transfer without any further action of the District.

SECTION 10. ASSESSMENT NOTICE. The District's Secretary is hereby directed to record a general Notice of Assessments in the Official Records of Palm Beach County, Florida, which shall be updated from time to time in a manner consistent with changes in the boundaries of the District.

SECTION 11. SEVERABILITY. If any section or part of a section of this Resolution be declared invalid or unconstitutional, the validity, force and effect of any other section or part of a section of this Resolution shall not thereby be affected or impaired unless it clearly appears that such other section or part of a section of this Resolution is wholly or necessarily dependent upon the section or part of a section so held to be invalid or unconstitutional.


SECTION 12. CONFLICTS. All resolutions or parts thereof in conflict herewith are, to the extent of such conflict, superseded and repealed.

SECTION 13. EFFECTIVE DATE. This Resolution shall become effective upon its adoption.

APPROVED AND ADOPTED THIS 9th DAY OF July, 2019.



Secretary/Assistant Secretary

**BANYAN CAY COMMUNITY
DEVELOPMENT DISTRICT**


Chairman, Board of Supervisors

- Exhibit A:** *Banyan Cay Community Development District Report of the Engineer*, dated May 20, 2019
- Exhibit B:** *Master Special Assessment Methodology Report for Special Assessment Bonds (Phase One Assessment Area)*, dated May 21, 2019 (Revised June 7, 2019)

EXHIBIT B

LEGAL DESCRIPTION OF THE PROPERTY

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, 20 20

SHARON R. BOCK
CLERK & COMPTROLLER

By *Dij McEwen*
DEPUTY CLERK