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**TENTH AMENDMENT TO BANYAN BAY
PLANNED UNIT DEVELOPMENT ZONING AGREEMENT**

THIS 10TH AMENDMENT TO BANYAN BAY PLANNED UNIT DEVELOPMENT ZONING AGREEMENT (“10th PUD Amendment”) made and entered into this ____ day of _____, 2022, by and between **BANYAN BAY MACKS, LLC**, a Delaware limited liability company, hereinafter referred to as **OWNER**, and **MARTIN COUNTY**, a political subdivision of the State of Florida, hereinafter referred to as **COUNTY**.

WITNESSETH:

WHEREAS, after appropriate notice, public hearing and approval, Banyan Bay Development Corporation, a Florida corporation, and COUNTY on or about the 9th day of November 2004, entered into a Planned Unit Development Zoning Agreement for the development of a project in Martin County, Florida, known as “Banyan Bay” (“Project”), which Planned Unit Development Zoning Agreement (“Original Agreement”) is recorded in Official Records Book 1979, beginning at Page 2199 of the Public Records of Martin County, Florida (“Public Records”) which has been amended through and including that certain Ninth Amendment to Banyan Bay Planned Unit Development Zoning Agreement, dated September 29, 2020, and recorded in Official Records Book 3172, beginning at page 2600 of the Public Records, and collectively with the Original Agreement and all amendments thereto being referred to in this Amendment as the (“PUD Agreement”); and

WHEREAS, OWNER, acquired all right, title and interest to the property subject to the PUD Agreement, as reflected in the Special Warranty Deed between Banyan Bay Venture I, LLC, Banyan Bay Venture II, LLC and OWNER, as recorded in Official Records Book 2898, Page 2065 of the Public Records; and

WHEREAS, OWNER desires to amend the PUD Agreement for purposes of revising (1) **Section 4**, Common Areas, Covenants, Conditions and Restrictions; (2) **Revised Exhibit “D”**, Revised Master Plan; (3) **Revised Exhibit “E-1”**, Revised Phasing Plan; (4) **Revised Exhibit “F”**, Banyan Bay – Special Conditions, Section 8, Hauling of Fill, Section 9, Irrigation, and Section 11, Preserve Areas, and (5) **Exhibit “G”**, Preserve Area Management Plan.

NOW, THEREFORE, the parties do hereby agree as follows:

1. The above recitations are true and correct and incorporated herein by reference.
2. Paragraph 4.2, Common Areas, Covenants, Conditions And Restrictions, is hereby revised as follows:

4.2 Except for conveyances to governmental entities and the conveyance of Phase 3, a multi-family residential project, it shall be deemed a breach of this Agreement for any land to be conveyed by the OWNER by an instrument which does not contain the Covenants and Restrictions or incorporated them reference.

3. The previously approved Revised Master Site Plan, and the previously approved Revised Phasing Plan, are hereby replaced by **Revised Exhibit “D”**, Revised Master Plan, and **Revised Exhibit “E-1”**, Revised Phasing Plan, which are attached hereto and made a part hereof.
4. Revised Exhibit F, Banyan Bay – Special Conditions, Paragraph 8, Hauling of Fill, is deleted in its entirety and replaced with the following:

Hauling of fill from the site is allowed for Phase 3. The routes and timing of any fill to be hauled from the site shall be coordinated with the County Engineer. The OWNER shall also comply with all COUNTY excavation and fill regulations. Lake littoral zones and upland buffers shall be maintained in accordance with the approved Preserve Area Management Plan.

5. Revised Exhibit F, Banyan Bay – Special Conditions, Paragraph 9, Irrigation, is hereby amended to add paragraph D as follows:

D. Phase 3 shall not be required to accept IQ water for irrigation but shall utilize an irrigation source acceptable to COUNTY.

6. Revised Exhibit F, Banyan Bay – Special Conditions, Paragraph 11.A, Preserve Areas, is deleted in its entirety and replaced with the following:

A. The Project shall be subject to the Preserve Area Management Plan (PAMP) prepared by EW Consultants in two parts: (1) the first specific to Phases 1 and 2 dated May 2022, and (2) the second specific to Phase 3 dated May 2022, both attached to the 10th PUD Amendment as Exhibit G and made a part hereof.

7. The previously approved Exhibit “F”, Banyan Bay – Special Conditions, is hereby replaced by **Revised Exhibit “F”**, attached hereto and made a part hereof, reflecting the revisions contained in paragraphs 4, 5 and 6 above.

8. The previously approved Exhibit “G”, Preserve Area Management Plan, is hereby replaced by **Revised Exhibit “G”**, attached hereto and made a part hereof.

9. All of the terms and conditions of the PUD Agreement which are not specifically amended or revised by this 10th PUD Amendment shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this 10th PUD Amendment to be made and entered into the day and year first written. The date of this 10th PUD Amendment shall be the date on which this 10th PUD Amendment was approved by the Board of County Commissioners.

WITNESSES:

BANYAN BAY MACKS, LLC,
a Delaware limited liability company

Name: _____

By: _____
Jonathan C. Mayers, Manager

Name: _____

STATE OF _____

COUNTY OF _____

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, by means of ☒ physical presence or ☐ online notarization on _____, 2022, appeared Jonathan C. Mayers, Manager of Banyan Bay Macks, LLC, a Delaware limited liability company, on behalf of the company, who ☐ is personally known to me or ☐ has proved to me on the basis of a driver's license or other satisfactory evidence consisting of _____, to be the person whose name is subscribed to the foregoing instrument, and acknowledged before me that he executed same.

WITNESS my hand and official seal in the County and State last aforesaid this _____ day of _____, 2022.

(NOTARIAL STAMP)

Notary Public

Print Name: _____

My commission expires: _____

Affix official seal below:

ATTEST:

BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY, FLORIDA

CAROLYN TIMMANN
CLERK OF THE CIRCUIT COURT AND
COMPTROLLER

By:_____
DOUG SMITH, CHAIRMAN

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

(COMMISSION SEAL)

ELYSSE A. ELDER
SENIOR ASSISTANT COUNTY ATTORNEY

Pursuant to Sec. 695.26, F.S.
Prepared by:
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800 SE Monterey Commons Blvd., Suite 200
Stuart, Florida 34996

REVISED EXHIBIT “D”
BANYAN BAY – REVISED MASTER PLAN

REVISED EXHIBIT "E-1"
BANYAN BAY – REVISED PHASING PLAN

REVISED EXHIBIT "F"
BANYAN BAY - SPECIAL CONDITIONS

1. **ADDITIONAL REQUIREMENTS:**

The Banyan Bay PUD shall comply with all requirements of the Martin County Comprehensive Growth Management Plan. Unless specifically provided for within this Agreement or set forth on the master site plan, the Banyan Bay PUD shall comply with all requirements of the Martin County Land Development Regulations and General Ordinances.

2. **COMMUNITY SWIMMING POOL:**

OWNER will pay \$25,000.00 to the COUNTY towards the cost for a new community swimming pool within sixty (60) days after the first final site plan approval. (Completed)

3. **DISCLOSURE OF ADJACENT AGRICULTURAL USES:**

The OWNER agrees that in the master site plan, plat and declaration of covenants, conditions and restrictions for Banyan Bay, and all other property owner documents, and all contracts for the sale of property in Banyan Bay, there shall be a prominent disclosure that the property adjoining Banyan Bay on the south is used for agricultural purposes, including but not limited to beekeeping, farm animals and cultivation of fruits and vegetables, that may impact the Banyan Bay PUD now or in the future.

4. **DRAINAGE/STORMWATER MANAGEMENT:**

- A. It shall be the OWNER's sole responsibility to obtain the necessary drainage/stormwater management permits from the South Florida Water Management District (SFWMD). In no event shall Martin County bear the responsibility for aiding the OWNER in obtaining permits from the South Florida Water Management District or in funding the improvements necessary to develop this project.
- B. In order to ensure that the PUD's stormwater management system functions as designed and permitted in perpetuity, OWNER shall maintain the PUD's stormwater management system according to the Stormwater Management System Maintenance Plan submitted with the application for the first final site plan. Neither Martin County nor the SFWMD shall have any responsibility in maintaining the system.

5. **EMERGENCY ACCESS/CONSTRUCTION AND DELIVERY ACCESS:**

Any emergency/construction/delivery access indicated on the master site plan, final site plans and subdivision plats shall be primarily for emergency, construction and delivery vehicles, but may also be used by residential unit owners. The OWNER shall secure the

emergency/construction/delivery access in a manner acceptable to the COUNTY. If gates are featured, a locking arrangement approved by the Emergency Services Department is required.

6. ENDANGERED SPECIES:

In the event that it is determined that any representative of a plant or animal species of regional concern is resident on or otherwise is significantly dependent upon the Banyan Bay property, the OWNER shall cease all activities which might negatively affect that individual or population and immediately notify Martin County, the Florida Fish and Wildlife Conservation Commission and the U.S. Fish and Wildlife Service. Construction may resume when proper protection, to the satisfaction of all agencies, is provided by the OWNER.

7. FIRE PROTECTION:

- A. All structures, other than detached one and two family residences, which are in excess of 5,000 square feet or two stories or greater in height shall be provided with a sprinkler system installed in accordance with NFPA 13, Standards for Automatic Sprinkler Protection, and NFPA 14, Standards for Standpipes. Compliance with all other provisions of the National Fire Protection Association is required. Specifically, stabilized roads and hydrant installations shall be completed before issuance of building permits pursuant to NFPA 241. Hydrants shall be located within 500 feet of each residential building.
- B. To offset the impact of the project, within sixty (60) days after the first final site plan approval, OWNER will pay \$100,000.00 to the COUNTY towards the cost for a new fire station to provide service to the S.R. 76 area. (Completed)

8. HAULING OF FILL:

Hauling of fill from the site is allowed in Phase 3. The routes and timing of any fill to be hauled from the site shall be coordinated with the County Engineer. The OWNER shall also comply with all COUNTY excavation and fill regulations. Lake littoral zones and upland buffers shall be maintained in accordance with the approved Preserve Area Management Plan.

9. IRRIGATION:

- A. The OWNER agrees to accept Irrigation Quality (IQ) water for irrigation, when available in sufficient quality and quantity in accordance with the South Florida Water Management District and Florida Department of Environmental Protection rules, at such rates and charges as may then be charged by the utility. It shall be the OWNER's sole responsibility to obtain the necessary permits and extend the IQ water main to the Banyan Bay PUD for connection of the irrigation system. The OWNER shall design the irrigation system to accommodate spray irrigation with IQ water and provide adequate area for storage of such IQ water. OWNER shall execute a Reclaimed Water Agreement with Martin County within 60 days of final site plan approval of Phase 2A.

- B. An isolated lake or alternative storage facility or facilities will be designed and constructed, in full compliance with the specifications and requirements of Martin County Utilities, to receive a minimum of one (1) days storage of IQ water for irrigation of the PUD. The OWNER shall install a dual distribution IQ water system for the entire project. The IQ water main, storage area(s) and distribution system will be completed for each subphase prior to issuance of certificates of occupancy for residential units, excluding models, within that subphase.
- C. OWNER shall provide an on-site well(s), the number of which to be determined by the OWNER and Martin County Utilities, for supplemental irrigation use. In the event IQ water is not immediately available, OWNER shall use the on-site well(s) for irrigation. Once IQ irrigation is available to the project, the on-site well(s) will be used as a supplemental irrigation source. OWNER shall provide a South Florida Water Management District water use permit for the well(s) prior to final site plan approval of any phase of development, excluding models and the temporary sales trailer. If OWNER is unable to secure a water use permit, as outlined herein, it will necessitate OWNER's use of potable water for irrigation on an interim basis; provided, however, OWNER agrees that such interim use shall not extend more than five (5) years from the date of the PUD Agreement. If the IQ water line extensions are not completed within the specified time frame, the COUNTY may, at its sole discretion, require that OWNER pay the capital facility charges (CFCs) for such potable water use.
- D. Phase 3 shall not be required to accept IQ water for irrigation but shall utilize an irrigation source acceptable to COUNTY.

10. MODELS:

Model units with interim septic tanks, necessary access road, parking and utilities will be allowed on-site for purposes of sales presentation. Model units must be consistent with the approved master site plan and may be approved prior to final site plan approval for the parcel/phase upon which the units are located. The location and number, not to exceed eight (8) units, of models must be mutually agreed upon by the OWNER and the Growth Management Department Director. The OWNER agrees that the septic tanks will be removed at the time of completion of the sewer system and a bond satisfactory to the COUNTY will be provided to ensure said removal. Models may be used for the sale of residential units within the PUD until such time as ninety percent (90%) of the residential units have been issued certificates of occupancy.

11. PRESERVE AREAS:

- A. The Project shall be subject to the Preserve Area Management Plan (PAMP) prepared by EW Consultants in two parts: (1) the first specific to Phases 1 and 2 dated May 2022, and (2) the second specific to Phase 3 dated May 2022, both attached to the 10th PUD Amendment as Exhibit G and made a part hereof.

- B. No construction or alteration shall be permitted within any of the preserve areas except in compliance with a Preserve Area Management Plan approved by Martin County. The precise location of all the preserve areas shall be staked and surveyed prior to final site plan approval of the applicable phase and shall be fenced prior to and during construction of that phase.

12. RETENTION OF NATIVE VEGETATION:

Clearing of native vegetation shall be limited to that which is shown on the approved clearing plans for Banyan Bay. In order to reduce, or eliminate impacts on adjacent properties and neighborhoods, the OWNER agrees to complete the following as part of Phase 1 of the development of Banyan Bay: (a) all earthwork and clearing; (b) all lake bank sodding; and (c) the approved landscape buffer identified on the master plan.

13. SCHOOL IMPACT:

The OWNER shall obtain a letter of “No Objection” from the Martin County School Board prior to any final site plan approval and/or plat recordation for any residential units within the Banyan Bay project.

14. SOIL EROSION AND SEDIMENTATION:

Site clearing and vegetation removal shall be phased in accordance with the approved final site plans. Construction practices such as seeding, wetting, and mulching which minimize airborne dust and particulate emission generated by construction activity shall be undertaken within thirty (30) days of completion of clearing work. The slopes of constructed lakes from the top of the bank to the control water elevation (landward edge of littoral zone) shall be immediately stabilized and/or sodded to the satisfaction of the Engineering Department upon completion of the lake construction.

15. SUSTAINABLE DESIGN STANDARDS:

The following sustainable standards have been incorporated into the design of the master site plan for Banyan Bay development. Further refinements of these standards and the specific implementation thereof shall be incorporated into the final design of the development and compliance with such standards shall be demonstrated with each application for final site plan approval.

- A. Pedestrian walkways and bicycle paths shall link neighborhood pods and shall provide linkage to natural and manmade open spaces and recreation areas, wherever possible.
- B. Every effort shall be made to provide monuments, focal points and places for gathering within the community.
- C. “Streetscaping”, including shade trees along walkways and the access roads, shall

be added whenever possible to avoid the “sea of asphalt” and “line of cars” affect and to provide a more meaningful balance between green spaces and dwellings.

The addition of sustainable design features beyond what is indicated on the master site plan shall be considered consistent with the master site plan and shall not require an amendment to the PUD Agreement.

16. TEMPORARY CONSTRUCTION OFFICE:

The OWNER may establish and maintain on the property a temporary construction office in a location approved by the Growth Management Department Director during the period that the property is being developed and until three (3) months following the issuance of the last certificate of occupancy for a unit. A bond for the removal of the construction office shall be supplied to the COUNTY.

17. TEMPORARY SALES OFFICE:

The OWNER may establish and maintain on the property a temporary sales office in a location approved by the Growth Management Department Director during the period that the property is being developed and until three (3) months following the issuance of the last certificate of occupancy for a unit. A bond for the removal of the sales office shall be supplied to the COUNTY.

18. TIME SHARING OR INTERVAL OWNERSHIP PROHIBITED:

The units to be constructed within the Banyan Bay project shall not be sold nor shall title be conveyed or transferred on the basis of time-sharing or interval ownership.

19. TRAFFIC IMPACT:

- A. Prior to the issuance of the first certificate of occupancy for Phase 1, OWNER shall, at its expense, design, permit and construct one through lane and left and right turn lanes and modify the traffic signal, to include a turn signal, at the entrance of the project that is being constructed by Martin’s Crossing identified on the master site plan. The improvements shall be constructed in full compliance with the specifications and requirements of the COUNTY and Florida Department of Transportation and when complete, OWNER’s engineer must furnish a certificate of satisfactory completion to the County Engineer/Florida Department of Transportation for approval. OWNER shall supply the COUNTY with security in the amount of one hundred percent (100%) of the estimated cost of the improvements as certified by the OWNER’s engineer and approved by the County Engineer. Prior to final release of the security provided for herein, OWNER shall enter into a separate agreement for maintenance of the required improvements for a period of twelve (12) months. OWNER shall provide security for its performance under the maintenance agreement in an amount not less than ten percent (10%) of the estimated total cost of the improvements. OWNER shall not receive impact fee credits for the design, permitting and construction of the improvements as required

by this condition. (Completed)

- B. Prior to the issuance of the first certificate of occupancy for Phase 2A, OWNER shall, at its expense, design the proposed traffic signal at the intersection of Willoughby Boulevard and Pomeroy Street and donate \$30,000.00 towards the construction of the signal. OWNER shall not receive impact fee credits for the design of the improvements or the donation as required by this condition. (Completed)

20. USES AND DEVELOPMENT STANDARDS:

Except as provided for within this Agreement or as set forth on the master site plan, the requirements of Article 3, Land Development Regulations, Martin County Code, and specifically the RM-5 zoning district shall apply to the development of the Banyan Bay PUD.

21. WATERFRONT USES:

The waterfront uses reflected on the master plan are for illustrative purposes only and are subject to permits from the appropriate state and federal agencies and final site plan approval by Martin County. The final design may vary at the time of final site plan application.

22. WATER/WASTEWATER:

- A. Water and wastewater services for this project shall be provided by Martin County Utilities and Solid Waste Department. OWNER shall provide an executed copy of an agreement for each phase for such service within sixty (60) days of final site plan approval of that phase for the Banyan Bay PUD. As a water conservation measure, OWNER shall individually meter each unit and/or supporting structure.
- B. The Martin County Master Plan for water and wastewater lines includes an 8" force main and a 16" water main along the Kanner Highway (State Road 76) corridor. Currently, these extensions are planned in the Martin's Crossing PUD Agreement. If these extensions are not completed in time for Phase 2A of the Banyan Bay PUD, then OWNER shall extend the 8" force main and the 16" water main along Kanner Highway (State Road 76) to the southernmost property boundary. COUNTY agrees that the OWNER shall receive credit toward capital facility charges for the Banyan Bay PUD for the cost of any oversizing and/or extension of wastewater and/or water transmission lines beyond that which would be otherwise required by Martin County in accordance with its Minimum Design Standards to provide service to the Banyan Bay PUD. OWNER shall request such credit in writing and prior to the execution of the water and wastewater service agreement. Total credits as provided in this condition shall not exceed the capital facility charges for the Banyan Bay PUD. Final design drawings for construction of the improvements in this condition shall be submitted and approved as a part of the final site plan for

Phase 2A and all construction completed prior to the issuance of any certificate of occupancy within Phase 2A.

23. ENCROACHMENT INTO SIDE BUILDING SETBACK:

A maximum encroachment of 3 feet into the side setback area for one side of a single family lot is permitted for heating, ventilation, air conditioning, electrical generator, pool, and spa equipment and their associated concrete pads, provided that they are screened from view of abutting residential lots by a fence, hedge, or wall or by enclosing the equipment with material (such as lattice) with is at least 50 percent opaque.

REVISED EXHIBIT “G”
PRESERVE AREA MANAGEMENT PLAN