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**FLORIDA PROFIT/NON PROFIT CORPORATION  
BANYAN CAY MASTER ASSOCIATION, INC.**

Certificate of Status	0
Certified Copy	0
Page Count	12
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**ARTICLES OF INCORPORATION  
OF  
BANYAN CAY MASTER ASSOCIATION, INC.**

The undersigned incorporator, by these Articles, forms a corporation not for profit pursuant to Chapter 617 of the laws of the State of Florida, and adopts the following Articles of Incorporation:

**ARTICLE 1  
NAME AND ADDRESS**

The name of the corporation shall be **BANYAN CAY MASTER ASSOCIATION, INC.** For convenience, the corporation shall be referred to in this instrument as the "Association," these Articles of Incorporation as the "Articles" and the By-Laws of the Association as the "By-Laws". As of the date hereof, the principal place of business and mailing address of the Association is 2300 Presidential Way, West Palm Beach, FL 33401.

**ARTICLE 2  
PURPOSE**

The purpose for which the Association is organized is to provide an entity to operate, manage and administer certain real property located in the City of West Palm Beach, Palm Beach County, Florida, and to own certain interests in the Land and Development (collectively, the "Property") as more fully described in a **Declaration of Master Covenants for Banyan Cay Resort** (as hereinafter supplemented and/or amended from time to time, the "Declaration") made by **BANYAN CAY DEV. LLC**, a Florida limited liability company ("Declarant") to be recorded in the Public Records of Palm Beach County, Florida and for such other purposes as are set forth in the Declaration.

The Association is not organized for profit and no part of the net earnings, if any, shall inure to the benefit of any Member or other Person (as said terms are defined in the Declaration).

**ARTICLE 3  
DEFINITIONS**

The capitalized terms used in these Articles shall have the same definitions and meanings as those set forth in the Declaration, unless provided to the contrary in these Articles, or unless the context otherwise requires.

**ARTICLE 4  
POWERS**

The powers of the Association shall include and be governed by the following:

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4.1 **General.** The Association shall have all of the common-law and statutory powers of a corporation not for profit under the laws of the State of Florida that are not in conflict with the provisions of these Articles, the Declaration (including, without limitation, Section 15.5 thereof) or the By-Laws.

4.2 **Enumeration.** In addition to, and not in limitation of, the powers described in Section 4.1, the Association shall have all of the powers and duties reasonably necessary to administer, manage, repair, maintain, improve and operate the Common Areas and to exercise such powers, duties and obligations described in the Declaration as it may be amended from time to time, including, but not limited to, the following as to the Association, the Development.

- (a) To make and collect Assessments and other charges against Owners, and to use the proceeds thereof in the exercise of its powers and duties.
- (b) To acquire, buy, own, operate, lease, sell, trade and mortgage both real and personal property as may be necessary or convenient in the administration of the Common Areas.
- (c) To maintain, repair, replace, reconstruct, add to and operate the Common Areas, and other property acquired or leased by the Association for use by Owners.
- (d) To purchase insurance upon the Common Areas and insurance for the protection of the Association, its officers, directors and the Members of the Association, as Owners in commercially reasonable amounts, with deductibles consistent with the requirements under the Declaration and/or other similarly situated projects in the area where the Land is located.
- (e) To make and amend reasonable rules and regulations for the maintenance, operation, conservation and use of the Development, all as set forth in, or permitted by, the Declaration.
- (f) To enforce by legal means the provisions of the Declaration, these Articles, the By-Laws, and the Rules for the use of the Development.
- (g) To contract for the management of the Common Areas to assist the Association in carrying out the powers and duties of the Association contained in these Articles and/or in the Declaration. In exercising this power, the Association may contract with affiliates of itself and/or Declarant.
- (h) To maintain the Surface Water Management System presently located and to hereafter be located on or around the Development to the extent provided therein.

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- (i) To employ personnel to perform the services required for the proper operation of the Common Areas or to contract or subcontract for same with third parties.
- (j) To execute all documents or consents in furtherance of the Association's duties under the Declaration, on behalf of the Owners (and their mortgagees), required by all governmental and/or quasi-governmental agencies in connection with land use and development matters (including, without limitation, plats, waivers of plat, unities of title, covenants in lieu thereof), and in that regard, each Owner, by acceptance of an interest in such Owner's Parcel and/or a Dwelling Unit, appoints and designates the Board of Directors as such Owner's agent and attorney-in-fact to execute, any and all such documents or consents.
- (k) To perform all obligations imposed on the Development by Government Requirements.
- (l) To levy fines as provided in the By-Laws.

4.3 **Property.** All funds and the titles to all properties acquired by the Association and their proceeds shall be held for the benefit and use of the Members in accordance with the provisions of the Declaration, these Articles and the By-Laws.

4.4 **Distribution of Income.** The Association shall make no distributions of income to its Members, directors or officers and upon dissolution, all assets of the Association shall be transferred only to another non-profit corporation or public agency.

4.5 **Limitation.** The powers of the Association shall be subject to and shall be exercised in accordance with the provisions of these Articles and of the Declaration and the By-Laws.

## **ARTICLE 5** **MEMBERS**

5.1 **Membership.** The members of the Association ("Members") shall consist of Declarant, until the Development Completion Date, and each of the Owners and Parcel Associations, it being understood that the individual owners of Dwelling Units shall not be Members of the Association but shall be represented by the Parcel Association of which they are a member.

5.2 **Classes of Membership.** The Association shall have three (3) classes of Members:

- (a) **Class A.** The Class A Members shall consist of (i) all Owners (including any Parcel Associations, which shall act in the capacity of an Owner on behalf of the Owners of the Dwelling Units who are members of each such

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Parcel Association); and (ii) after the Turnover Date, if applicable (but prior to the Development Completion Date) the Declarant, it being understood that prior to Turnover Date the Declarant shall be a Class B Member. Each Owner shall designate one (1) natural person (a "Representative") to represent each such Owner in connection with all business of the Association.

- (b) **Class B.** The Class B Member shall be the Declarant until the Turnover Date. After the Turnover Date, and prior to the Development Completion Date, the Declarant shall be a Class A Member.
- (c) **Class C.** The Class C Member shall be the Owner of the Golf Club described in Section 5.1, above.
- (d) **Class D.** The Class D Member shall be the Owner of the Hotel.

5.3 **Duration of Class B Membership Interest.** The Declarant's Class B membership interest shall cease from and after the Turnover Date.

5.4 **Voting Interests.** Class A Members shall be each entitled to one (1) membership interest and shall have one (1) vote for each one-tenth (1/10<sup>th</sup>) of an acre or portion thereof constituting such Member's Parcel. Such votes shall be cast by their Representatives as provided in the By-Laws. The Class B Member shall be entitled to such numbers of votes as is equal to two (2) times the number of votes cumulatively held by all Class A Members (when applicable plus one (1) vote. The Class C and D Members shall, after the Turnover Date have the numbers of votes allocated to the Golf Club and Hotel, respectively, by the Supplemental Declaration making same part of the Development, but cumulatively to not exceed the number of votes held by Declarant as of the Turnover Date prior to which time they shall not vote.

5.5 **Meetings of Members.** The By-Laws shall provide for an annual meeting of Members, make provision for regular and special meetings of Members other than the annual meeting and set the quorum requirements for meetings of the Members. The Representatives shall attend all meetings of the Association as and on behalf of their respective Members.

5.6 **No Transfer or Hypothecation.** No Member may assign, hypothecate or transfer in any manner its membership in the Association except that Declarant may transfer its membership to a Person who succeeds to all or a portion of Declarant's interest in all or any portion of in The Properties as provided in the Declaration.

## **ARTICLE 6**

### **TERM OF EXISTENCE**

The Association shall have perpetual existence, but if it nevertheless is ever dissolved the Surface Water Management System responsibilities shall be transferred and assigned as provided in the Declaration.

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**ARTICLE 7**  
**INCORPORATOR**

The name and address of the incorporator of the Association is as follows:

<b><u>NAME</u></b>	<b><u>ADDRESS</u></b>
Charles W. Edgar, III, Esq.	8409 North Military Trail, Suite 123 Palm Beach Gardens, FL 33410

**ARTICLE 8**  
**DIRECTORS**

8.1 **Number and Qualification.** The property, business and affairs of the Association shall be managed by the Board of Directors, which shall consist of not less than three (3) Directors, each of whom, prior to the Turnover Date, shall be appointed by Declarant and, together with their Declarant appointed replacements, shall serve until such Turnover Date, with such actual number, prior to the Turnover Date, to be determined by Declarant in its sole discretion by written notice to the Secretary of the Association. Also, prior to the Turnover Date, all Directors shall be appointed, removed and replaced by Declarant in its sole discretion and also by written notice to the Secretary of the Association. Directors, other than those designated by Declarant, shall be Members or their designees in the case of non-natural Persons. From and after the Turnover Date, the Board of Directors shall consist of the number of natural persons specified in the By-Laws.

8.2 **Duties and Powers.** All of the duties and powers of the Association existing under the Declaration, these Articles and the By-Laws shall be exercised exclusively by the Board of Directors, its agents, contractors or employees, subject only to approval by Members when such approval is specifically required.

8.3 **Election; Removal.** From and after the Turnover Date: (i) Directors of the Association shall be elected at the annual meeting of Members as provided herein and per the By-Laws, it being understood that, prior to the Turnover Date, all Directors shall be appointed and where applicable, replaced, by Declarant, notice of which appointment shall be sent to the Secretary of the Association; and (ii) a Director(s) may be removed and vacancies on the Board of Directors shall be filled only by the party having elected or designated such Director(s).

8.4 **Terms of Declarant's Directors.** During the period Declarant is entitled to appoint one or more Directors, Declarant shall appoint the Directors and their replacements who shall hold office for the periods described above and/or in the By-Laws, provided however, that any Director appointed by Declarant may only be removed by Declarant, which removal can be at any time, with or without cause, in which event Declarant may designate a replacement Director. For purposes of clarification, non-Declarant Directors appointed or elected as a result of a removal shall serve, or be allowed to serve, for the unexpired term of the Director they replace unless otherwise removed pursuant to the terms of the By-Laws.

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8.5 **First Directors.** The names and addresses of the members of the first Board of Directors who shall hold office until their successors are appointed by Declarant or elected on and after the Turnover Date and have qualified, as provided herein and/or in the By-Laws, are as follows:

<u>NAME</u>	<u>ADDRESS</u>
Sam Bauer	2300 Presidential Way West Palm Beach, FL 33401
Domenic J. Gatto	2300 Presidential Way West Palm Beach, FL 33401
Alicia Lewis	2300 Presidential Way West Palm Beach, FL 33401

8.6 **Election of Directors on Behalf of Residential Parcels.** Notwithstanding any of the foregoing, on the date seven (7) years from the date of recording of the Declaration (or earlier, at the sole option of Declarant), the Owners of the Residential Parcels shall elect two (2) members of the Board of Directors on an "at-large" basis; provided, however, that such persons so elected may not be owners or residents of the same Parcel or Neighborhood. At such time, the Hotel shall be entitled to designate three (3) persons to also serve on the Board of Directors for a total of five (5) Directors. No Director so elected or designated may be removed by any party other than the one having elected/designated the Director in the first place.

8.7 **Standards of Conduct.** A Director shall discharge his or her duties as a director, including any duties as a member of a Committee, in good faith, with the care an ordinary prudent person in a like position would exercise under similar circumstances, and in a manner reasonably believed to be in the best interests of the Association. Unless a Director has knowledge concerning a matter in question that makes reliance unwarranted, a Director, in discharging his or her duties, may rely on information, opinions, reports or statements, including financial statements and other data, if prepared or presented by: one or more officers or employees of the Association whom the Director reasonably believes to be reasonable and competent in the matters presented; legal counsel, public accountants or other Persons as to matters the Director reasonably believes are within such Person's professional or expert competence; or a Committee of which the Director is not a member if the Director reasonably believes the Committee merits confidence. A Director is not liable for any action taken as a director, or any failure to take action, if he or she performed the duties of his her office in compliance with the foregoing standards.

## **ARTICLE 9**

### **OFFICERS**

The affairs of the Association shall be administered by the officers holding the offices designated in the By-Laws. The officers shall be elected by the Board of Directors of the

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Association and shall serve at the pleasure of the Board of Directors. The By-Laws may provide for the removal from office of officers, for filling vacancies and for the duties of the officers. The names and addresses of the officers who shall serve until their successors are designated by the Board of Directors are as follows:

Sam Bauer, President

2300 Presidential Way  
West Palm Beach, FL 33401

Angel Guerzon, Vice President

2300 Presidential Way  
West Palm Beach, FL 33401

Alicia Lewis, Secretary/Treasurer

2300 Presidential Way  
West Palm Beach, FL 33401

#### **ARTICLE 10** **INDEMNIFICATION**

10.1 **Indemnity.** The Association shall indemnify any Person who was or is a party or is threatened to be made a party to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative (collectively "Action"), by reason of the fact that he or she is or was a director, employee, officer or agent of the Association ( an "Association Person"), against expenses (including attorneys' fees and appellate attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by any such Association Person in connection with such Action, if an Association Person acted in good faith and in a manner such Association Person reasonably believed to be in, or not opposed to, the best interests of the Association and with respect to any criminal action or proceeding, had no reason to believe such Association Person's conduct was unlawful. The Association shall not, however, indemnify any Association Person as to matters to which such Association Person shall be finally adjudged in any such Action to be liable for gross negligence or gross misconduct in the performance of the Association Person's duty. The termination of any Action by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption of gross negligence or gross misconduct. The foregoing right of indemnification shall be in addition to any other rights to which an Association Person may be entitled as a matter of law or otherwise.

10.2 **Expenses.** To the extent that an Association Person has been successful on the merits or otherwise in defense of any Action, or in defense of any claim, issue or other matter whether or not suit is actually instituted, the Association Person shall be indemnified against expenses (including attorneys' fees and appellate attorneys' fees) actually and reasonably incurred by such Association Person in connection therewith.

10.3 **Approval.** Any indemnification under Section 10.1 (unless ordered by a court of competent jurisdiction) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of an Association Person is proper under the



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circumstances because such Association Person has met the applicable standard of conduct set forth in Section 10.1. Such determination shall be made (a) by the Board of Directors by a majority vote of a quorum consisting of Directors who were not parties to such Action, or (b) if such quorum is not obtainable, or, even if obtainable, if a quorum of disinterested Directors so directs, by independent legal counsel in a written opinion, or by a majority of the Members.

10.4 **Advances.** Expenses incurred in investigating any such claim in connection with the establishment of a defense to such claim or in defending an Action may be paid by the Association in advance of the institution, against any such Association Person, of any such Action, as well as prior to the final disposition of such Action (if such Action is actually instituted), as authorized by the Board of Directors in any specific case upon receipt of an undertaking by or on behalf of such Association Person to repay such amount unless he/she/it shall ultimately be determined that such Association Person is entitled to be indemnified by the Association as authorized in this Article 10.

10.5 **Miscellaneous.** The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any By-law, agreement, vote of Members or otherwise, and shall continue as to a person who has ceased to be an Association Person and shall inure to the benefit of the heirs and personal representatives and successors and assigns of such person.

10.6 **Insurance.** The Association shall have the power to purchase and maintain insurance on behalf of any Person who is or was an Association Person or is or was serving, at the request of the Association, as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him or her and incurred by him, her or it in any such capacity, or arising out of his/her/its status as such, whether or not the Association would have the power to indemnify him/her/it against such liability under the provisions of this Article.

## **ARTICLE 11**

### **BY-LAWS**

11.1 **Adoption.** The first By-Laws of the Association shall be adopted by the Board of Directors and may be altered, amended or rescinded by the Directors, Members or their Representatives and Declarant in the manner provided in the By-Laws and the Declaration.

11.2 **Priority of Documents.** If any irreconcilable conflict should exist, or hereafter arise, with respect to the interpretation of these Articles and the Declaration or the By-Laws, the provision of the Declaration shall prevail, but these Articles shall prevail over the provision of the Bylaws.

## **ARTICLE 12**

### **AMENDMENTS**

Amendments to these Articles shall be proposed and adopted in the following manner:

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12.1 **Notice.** Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which the proposed amendment is to be considered.

12.2 **Adoption.** A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board of Directors or by not less than one-third of the Members of the Association. Directors and Members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, providing the approval is delivered to the Secretary at or prior to the meeting. The approvals must be:

- (a) by not less than a majority of the votes of all of the Members, or their Representatives, represented at a meeting at which a quorum has been attained and by not less than sixty-six and two-thirds percent (66-2/3%) of the Board of Directors; or
- (b) by not less than seventy-five percent (75%) of the votes of all of the Members, or their Representatives, represented at a meeting at which a quorum has been attained; or
- (c) by not less than one hundred percent (100%) of the Board of Directors.

12.3 **Limitation.** No amendment shall make any changes in: (i) the qualifications of membership; (ii) the voting rights or property rights of Members; (iii) Sections 4.3, 4.4 or 4.5 of Article 4, entitled "Powers"; or (iv) this Section 12.3, without, in each case, the approval in writing of all Members and the joinder of all record owners of mortgages upon Parcels. No amendment shall be made that is in conflict with the Declaration or the By-Laws, nor shall any amendment make any changes which would in any way affect any of the rights, privileges, powers or options provided in favor of or reserved to Declarant, unless Declarant shall join in execution of the amendment.

12.4 **Declarant.** Declarant may amend these Articles consistent with the provisions of the Declaration allowing certain amendments to be effected solely by Declarant.

12.5 **Recording.** A copy of each amendment shall be filed with the Secretary of State pursuant to the provisions of applicable Florida law, and a copy certified by the Secretary of State shall be recorded in the public records of the County.

### **ARTICLE 13** **PROVISIONS AFFECTING DIRECTORS AND OFFICERS**

13.1 **Transactions with Affiliates.** No contract or transaction between the Association and one or more of its Directors or Officers, or between the Association and any other corporation, partnership or other organization (including Declarant or its affiliates), or association, in which one or more of its Directors or officers are directors or officers have a financial interest or by what they are employed, shall be invalid, void or voidable solely for this reason, or solely because the Director or officer is present at or participates in the meeting of the Board or committee(s) thereof which authorized the contract or transaction, or solely because

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his, her or their votes being counted for such purpose. No Director or Officer of the Association shall incur liability by reason of the fact that he or she is or may be interested in any such contract or transaction. Interested Directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorized the contract or transaction in question.

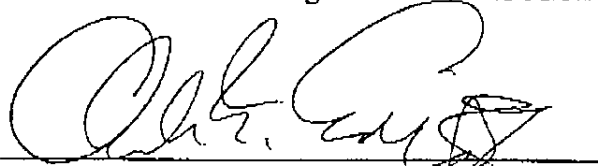
13.2 **Release.** Upon the resignation of a Director who was on the original Board of Directors, or a Director designated by Declarant, or upon the resignation of an officer who was one of the original officers as designated in these Articles, or an officer of the Association elected during the period in which Declarant controlled the Board of Directors, such resignation shall operate to and shall remise, release, acquit, satisfy and forever discharge such officer or Director of and from any and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, and executions which the Association or Members had, now have or may subsequently have or which any personal representative, successor, heir or assign of the Association or Members subsequently can, shall or may have against such officer or Director for, upon or by reason of, any matter, cause or thing whatsoever from the beginning of the world to the day of such resignation, except for such Director's or officer's willful misconduct or gross negligence.

**ARTICLE 14**  
**OFFICE; REGISTERED AGENT**

The initial principal office and mailing address of the Association shall be 2300 Presidential Way, West Palm Beach, FL 33401, with the privilege of having its office and branch offices at other places within or without the State of Florida.

The initial registered agent shall be Charles W. Edgar, III, Esq. having an address of 8409 North Military Trail, Suite 123, Palm Beach Gardens, FL 33410

IN WITNESS WHEREOF, the subscriber has affixed his signature the 9<sup>th</sup> of March, 2017.



Charles W. Edgar, III, Incorporator

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**ACCEPTANCE OF APPOINTMENT  
AS REGISTERED AGENT**

The undersigned, who has been designated in the foregoing Articles of Incorporation as registered agent for the corporation, agrees that (i) the undersigned accepts such appointment as registered agent and will accept service of process for and on behalf of said corporation, and (ii) the undersigned is familiar with and will comply with any and all laws relating to the complete and proper performance of the duties and obligations of a registered agent of a Florida corporation.

Dated: as of March 9, 2017.

**REGISTERED AGENT:**

A handwritten signature in black ink, appearing to read 'Charles W. Edgar, III', written over a horizontal line.

Charles W. Edgar, III, Esq.

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