

# Holland & Knight

701 Brickell Avenue, Suite 3300 | Miami, FL 33131 | T 305.374.8500 | F 305.789.7799  
Holland & Knight LLP | www.hklaw.com

April 19, 2016

***Via Electronic Mail Only***

*Thomas.Cloud@gray-robinson.com*

Thomas A. Cloud  
Gray Robinson P.A.  
P.O. Box 3068  
Orlando, Florida 32802-3068

Re: Grand Venezia COA, Inc. v. Clearwater Cay CDD, et al.  
April 6, 2016, Letter from Bruce Barnes to District Counsel

Dear Mr. Cloud:

The undersigned is acting as counsel to U.S. Bank National Association, as Trustee for the holder of the Bonds (as defined below). We have received a copy of the enclosed letter from Bruce Barnes, counsel for Grand Venezia COA, Inc. ("COA"), to you as legal counsel for the Clearwater Cay Community Development District ("District") in the above referenced case. Among other things, the letter extends an open-ended enlargement of time for the District to answer the COA's Complaint and suggests that the District should not make any serious effort to defend the case or take into account the interests of the holder of the District's Capital Improvement Revenue Bonds, Series 2006 (the "Bonds"), who is also a defendant in the case. Mr. Barnes' letter further suggests the Board of Supervisors for the District (the "Board") is free to make a choice as to whether to defend or not defend the case. The Board does not have such options.

Instead, the District is legally obligated under the *Master Trust Indenture* ("MTI") and the *Second Supplemental Trust Indenture* (collectively, the "Indenture") to preserve and protect its lien for debt assessments and the Trust Estate. *See, e.g.*, MTI §§ 501, 801, 803, 804, 817, 1301 and 1306. Specifically, Section 804 of the MTI provides "[t]he District shall at all times, to the extent permitted by law, defend, preserve and protect the pledge and lien created by this Master Indenture and all the rights of the Trustee and the Owners hereunder against all claims and demands of all other persons whomsoever." The Board Members, as fiduciaries, are in turn obligated to take all actions "required of them by the Bonds and [the] Master Trust Indenture, for the full, punctual and complete performance of all terms, covenants, provisions and agreements contained in the Bonds and [the] Master Trust Indenture." *Id.* § 1306; see also § 1301. The Trustee fully expects the Board will comply with the terms of the Indenture by vigorously defending the COA lawsuit. By not doing so, the Board would cause the District to breach its obligations under the Indenture.

On a related matter, we remind the District that the Indenture obligates the District to fund the fees and expenses of the Trustee and Trustee's counsel. *See*, MTI § 604. Given the COA's filing of litigation attacking the trust estate, for which the Trustee has a duty to protect, the Trustee has already begun incurring fees and expenses for itself and its counsel. The recent history of discussions involving this matter indicate that this litigation may be prolonged. It strikes us that it is not unreasonable to expect a minimum of \$50,000 for fees and expenses of the Trustee and its counsel for the remainder of Fiscal Year 2015-2016 and a minimum of \$100,000-\$150,000 for fees and expenses of the Trustee and its counsel in Fiscal Year 2016-2017. With that said, the amount to include in the District's general fund budget is up to the Board taking into consideration its understanding of the relevant facts such as this litigation. The amount actually budgeted by the Board does not limit the District's obligation to pay the fees and expenses of the Trustee and its counsel.

The Trustee expects the District will act consistent with the terms of the Indenture and Florida law. Following Mr. Barnes' suggested direction regarding the litigation would be improper and breach the District's obligation under the Indenture. We felt it important for the Board to be aware of our position in determining how to proceed.

Finally, Mr. Barnes' letter contains several additional suggestions for the Board action to which the Trustee objects, but will separately address at the appropriate time if need be.

Sincerely,



Douglas F. Darbut

cc: Michael Roper