David K. Broadbent
Partner
Phone 801.799.5806
dbroadbent@hollandhart.com
112594.0001

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Community Preservation Association
6440 N. Business Park Loop Road, Unit 4
P.O. Box 682182
Park City, UT 84098

Teri Lynn Hoenstine (thoenstine@seatoski.com)
6440 N. Business Park Loop Road, Unit 4
Park City, UT 84098

Robert Martino
P.O. Box 683331
Park City, UT 84060

Kate McChesney
P.O. Box 682182
Park City, UT 84098

Will Pratt
P.O. Box 682182
Park City, UT 84068

Re: Outlaw Golf Club

Ladies and Gentlemen:

Holland & Hart LLP has been retained to represent Michael Poon with regard to the vote that you have solicited to approve the purchase of the land used as the Outlaw Golf Club by Community Preservation Association from Mustang Development, LLC, for $9,500,000 and CPA's commitment to pay a management fee of $300,000 each year, plus annual increases, until the entire purchase price has been paid. Our client categorically objects to the vote and the proposed transaction and demands that both the vote and the proposed transaction be abandoned. No legitimate vote can occur given the lack of information provided, and the proposed transaction itself is totally flawed and incapable of legitimate consideration by CPA's directors.

Fundamental to any consideration by the directors of this unusual transaction and its proposal to CPA's members is the requirement that all relevant details be obtained and carefully considered. You have the unavoidable duty to fully and fairly evaluate the proposed purchase and cannot abdicate that duty simply by putting the question to CPA's members as you have

done. In addition, you must ensure that all material information is provided to CPA's members if you ask them to vote on or approve the proposal. It is clear that this has not been done.

Utah's Revised Nonprofit Corporation Act requires a director to discharge the director's duties: (a) in good faith; (b) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and (c) in a manner the director or officer reasonably believes to be in the best interests of the nonprofit corporation.

The concept of good faith generally requires that directors act honestly, with faithfulness to their duties and obligations, and not attempt to take advantage of the corporation. Definitions of good faith include some common themes, such as demanding honesty, lack of ill intentions, fairness, and full disclosure. *Black's Law Dictionary* defines "good faith" as: "A state of mind consisting in (1) honesty in belief or purpose, (2) faithfulness to one's duty or obligation, (3) observance of reasonable commercial standards of fair dealing in a given trade or business, or (4) absence of intent to defraud or to seek unconscionable advantage."

The duty of ordinary care is commonly expressed as the duty of "care that an ordinarily prudent person would exercise in a like position and under similar circumstances." This means that a board member owes the duty to exercise reasonable care. In order to fulfill this requirement, you must make informed decisions and insist upon receiving and evaluating all material information. This can include obtaining the assistance of professionals with expertise relevant to the issues, where appropriate. Courts have held that a board's failure to obtain and consider all relevant information in a major transaction was not only negligent — a failure to exercise ordinary care — but constituted gross negligence, even though the transaction was approved by the corporation's shareholders, because the directors failed to exercise informed judgment.

As noted above, directors have a duty to act in a manner that the director reasonably believes to be in the best interests of the corporation. Some call this a duty of loyalty. This transaction should not be used to solve Mustang's problems or Mr. Martino's problems, but should be executed only if it is in CPA's best interest.

The directors' approach to the proposed transaction represents a failure of all three of the directors' duties as outlined above.

Your own solicitation manifests the absence of even the most basic information about the proposed transaction, some of which you have requested and yet has not been provided. We note the following deficiencies and matters to consider:

- No financial information about the golf course and its operations has been provided or evaluated. What are the assets and liabilities of the Golf Club? What is its operating history? Is this a property that operates at a loss each year and has to be subsidized by its owner or by (questionable) transfer fee payments or does the golf course provide a net

profit to its owners, which is of course, highly improbable? No rational purchaser would consider a significant acquisition without a complete opportunity to understand the financial implications of the purchase, and no responsible director would propose a vote without demanding the information, analyzing it with the help of competent professionals, and providing the information and analysis to those whose vote is solicited. These questions are all the more critical when one considers the reports in the popular and financial press about the difficulties golf course communities are regularly facing. See, for example, "Golf-Home Owners Find Themselves in a Hole." WSJ Jan 10, 2019.

- Mustang's proposal states that the offer is to sell the land now being used by the Golf Club. Does the proposal include the land only? No mention is made of any other club improvements or facilities. Are they to be included? If this if for the land only, what benefit does CPA receive through mere ownership of the land, and why should it pay a management fee of any amount?

- Have you determined the magnitude of the financial burden imposed by the purchase, not only in terms of the purchaser price, but also considering the annual $300,000 management fee and other operational and maintenance expenses that will follow? Does CPA have the financial resources to bear the burden? It is not satisfactory to simply offer, "If there is a deficit and the purchase payment cannot be made in any year or years, the payment deficiency will be added to the overall obligation." This simply defers the issue and causes the financial burden to continue and compound.

- What are the conflicts of interest, if any, involved in the proposed transaction?

- Would the proposed purchase be consistent with CPA's stated purpose and mission?

- Could the reinvestment/transfer fees that CPA collects be applied properly to support this purchase? Would such use qualify under UCA 57-1-46? Legitimate questions exist as to the legality of the past and now proposed use of the transfer fees to pay for a course that has not been and will not, as proposed, be available to CPA's members. How have the transfer fees that have been collected and paid to the golf course so far been used?

- What is the experience, competence, character, and track record of the management entity group that would be required to manage the golf course? Do they have the requisite capability to manage the course successfully? How does their experience, both in the course management industry and with this course in particular, evidence this ability? What is their financial strength?

The foregoing is only an example of the issues that a reasonable director, acting in good faith and exercising due care, free of any conflicting loyalties, should analyze in considering this transaction.

In summary, we demand that you terminate the ill-conceived vote and revisit the issue only once, if ever, you have satisfactory answers to the above and other questions and considerations and have fully discharged your duties to CPA and its members. Good faith, loyalty, and due care require nothing less.

Very truly yours,

David K. Broadbent
Partner
of Holland & Hart LLP

DKB:dhp
cc: Michael Poon (m@centerkeep.com)
Melyssa D. Davidson (davidson@rosingdavidson.com)
Robert Rosing (rosing@rosingdavidson.com)
Eric Maxfield

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