

1 J. Henk Taylor – State Bar No. 016321
2 **WARNER ANGLE HALLAM**
3 **JACKSON & FORMANEK PLC**
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5 Phoenix, Arizona 85016
6 Telephone: (602) 264-7101
7 Facsimile: (602) 234-0419
8 E-mail: htaylor@warnerangle.com

9 *Counsel for the Debtor*

10 **UNITED STATES BANKRUPTCY COURT**
11 **DISTRICT OF ARIZONA**

12 **In Re:**

13 **LEGACY CARES, INC.,**

14 **Debtor.**

Case No. 2:23-bk-02832-DPC

Chapter 11

15 **NOTICE OF FILING MEMORANDUM OF**
16 **UNDERSTANDING**

17 **Hearing Date: November 22, 2023**

18 **Hearing Time: 1:30pm**

Location: Phoenix, Ct. Rm. 603

19 Debtor Legacy Cares, Inc. hereby gives notice of the filing of the “Memorandum
20 of Understanding” referenced in the *Notice Re Terms and Conditions of Proposed Sale*
21 [ECF No. 562]. A fully-executed copy of the Memorandum of Understanding is attached
22 as **Exhibit A**.

23 DATED this 21st day of November, 2023.

24 **WARNER ANGLE HALLAM JACKSON &**
25 **FORMANEK, PLC**

26
27 By /s/ Henk Taylor (# 016321)

28 Henk Taylor

Counsel for Debtor Legacy Cares, Inc.

EXHIBIT A

Legacy Cares, Inc. (Debtor)
AZ Athletic Associates LLC Sale
Confidential Settlement Communication
FRE 408 & Other Applicable Rules
11/20/2023

Legacy Cares, Inc. Memorandum of Understanding

Legacy Cares, Inc. memorandum of understanding ("MoU"), dated as of November 20, 2023, by and among (a) Legacy Cares, Inc. (the "Debtor"), (b) AZ Athletic Associates LLC ("Buyer"), (c) Pacific Proving, LLC (the "Landlord"), (d) Mechanic's Lien Holders¹, and (e) UMB Bank, N.A., solely in its capacity as the indenture trustee under that certain Indenture of Trust Agreement dated August 1, 2020 ("Bond Trustee"). The signatories hereto are referred to hereafter collectively as the "Parties" or individually as a "Party".

The MoU sets forth the Parties' understanding of the key terms of the sale of Legacy Park to Buyer pursuant to Section 363 of the Bankruptcy Code and the compromise and settlement of asserted claims and liens against the Debtor and Landlord.

This Agreement is intended to and shall be effective and binding upon the execution and delivery of this Agreement by the Parties listed on the signature pages hereto. This Agreement is intended to, and shall be deemed to, bind and inure to the benefit of the Parties and their respective successors, assigns, administrators, constituents and representatives.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date set forth above.

LEGACY CARES, INC.

By: 

Name: Iqbal Berman
Title: Chief Restructuring Officer

PACIFIC PROVING, LLC

By: _____

Name: _____

Title: _____

OKLAND CONSTRUCTION COMPANY, INC.

By: _____

Name: _____

Title: _____

AZ ATHLETIC ASSOCIATES LLC

By: _____

Name: _____

Title: _____

UMB BANK, N.A., SOLELY IN ITS CAPACITY AS
THE INDENTURE TRUSTEE UNDER THAT
CERTAIN INDENTURE OF TRUST AGREEMENT
DATED AUGUST 1, 2020

By: _____

Name: _____

Title: _____

¹ Mechanic's Lien Holders include Okland Construction Company, Inc. ("Okland") for itself and the Okland Subs, and other lien holders as reflected in Table 3.

Legacy Cares, Inc. (Debtor)
Burke Operating Partners Sale
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LEGACY CARES, INC.

By: _____

Name: _____

Title: _____

PACIFIC PROVING, LLC

By: _____

Name: _____

Title: _____

OKLAND CONSTRUCTION COMPANY, INC.

By: _____

Name: _____

Title: _____

AZ ATHLETIC ASSOCIATES LLC

By: _____

Michael Burke

Name: Michael Burke

Title: Authorized Signatory

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PACIFIC PROVING, LLC

By:

Name:

Title:

OKLAND CONSTRUCTION COMPANY, INC.

By:

Name:

Title:

AZ ATHLETIC ASSOCIATES LLC

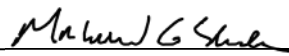
By:

Name:

Title:

UMB BANK, N.A., SOLELY IN ITS CAPACITY AS
THE INDENTURE TRUSTEE UNDER THAT CERTAIN
INDENTURE OF TRUST AGREEMENT DATED
AUGUST 1, 2020

By:

_____

Name: Michael G. Slade

Title: Senior Vice President

JFK ELECTRICAL CONTRACTING ENTERPRISES,
INC.

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LEGACY CARES, INC.

By: _____

Name: _____

Title: _____

PACIFIC PROVING, LLC

By:  _____

Name: _____

Title: Andrew M. Cohn
Authorized Rep.

OKLAND CONSTRUCTION COMPANY, INC.

By: _____

Name: _____

Title: _____

AZ ATHLETIC ASSOCIATES LLC

By: _____

Name: _____

Title: _____

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By: _____

Name: _____

Title: _____

PACIFIC PROVING, LLC

By: _____

Name: _____

Title: _____

OKLAND CONSTRUCTION COMPANY, INC.

By:  _____

Name: **Rob Fisher**

Title: **Director of Finance**

AZ ATHLETIC ASSOCIATES LLC

By: _____

Name: _____

Title: _____

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JFK ELECTRICAL CONTRACTING ENTERPRISES,
INC.

By: _____

Name:

Title:

RKS PLUMBING & MECHANICAL, INC.

By: _____

Name:

Title:

SPECTRUM MECHANICAL & PLUMBING
CONTRACTORS LLC

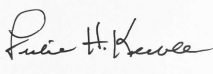
By: _____

Name:

Title:

HAYDON COMPANIES LLC

By: _____

 Digitally signed by Les
Keeble
Date: 2023.11.20
18:44:59-07'00'

Name:

Title:

KEARNEY ELECTRIC, INC.

By: _____

Name:

Title:

SITEWORKS LANDSCAPE DEVELOPMENT LLC

By: _____

Name:

Title:

Legacy Cares, Inc. (Debtor)
AZ Athletic Associates LLC Sale
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JFK ELECTRICAL CONTRACTING ENTERPRISES,
INC.

By: _____

Name: _____

Title: _____

RKS PLUMBING & MECHANICAL, INC.

By: 

Name: JOE R. STACHEL

Title: PRESIDENT

SPECTRUM MECHANICAL & PLUMBING
CONTRACTORS LLC

By: _____

Name: _____

Title: _____

HAYDON COMPANIES LLC

By: _____

Name: _____

Title: _____

KEARNEY ELECTRIC, INC.

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Title: _____

SITWORKS LANDSCAPE DEVELOPMENT LLC

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Title: _____

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Name:

Title:

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CONTRACTORS LLC

By:

Name:

Title:

HAYDON COMPANIES LLC

By:

Name:

Title:

KEARNEY ELECTRIC, INC.

By:



Name: Philip Giles

Title: Attorney

SITEWORKS LANDSCAPE DEVELOPMENT LLC

By:

Name:

Title:

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CONTRACTORS LLC

By:

Name:

Title:

HAYDON COMPANIES LLC

By:

Name:

Title:

KEARNEY ELECTRIC, INC.

By:

Name:

Title:

SITEWORKS LANDSCAPE DEVELOPMENT LLC

By: *Sarah Sladick*

Name: Sarah Sladick

Title: Attorney for Siteworks Landscape
Development LLC

Legacy Cares, Inc. (Debtor)
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JFK ELECTRICAL CONTRACTING ENTERPRISES,
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By: _____

Name: _____

Title: _____

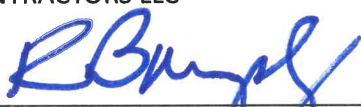
RKS PLUMBING & MECHANICAL, INC.

By: _____

Name: _____

Title: _____

SPECTRUM MECHANICAL & PLUMBING
CONTRACTORS LLC

By: 

Name: *Richard B. Murphy*

Title: *Attorney for Spectrum*

HAYDON COMPANIES LLC

By: _____

Name: _____

Title: _____

KEARNEY ELECTRIC, INC.

By: _____

Name: _____

Title: _____

SITWORKS LANDSCAPE DEVELOPMENT LLC

By: _____

Name: _____

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JFK ELECTRICAL CONTRACTING ENTERPRISES,
INC.

By:

Cody Krecek

Digitally signed by Cody Krecek
DN: cn=Cody Krecek, o=JFK
Electrical, cn=Cody Krecek
Date: 2023.11.21 13:21:08-0700

Name:

Title:

RKS PLUMBING & MECHANICAL, INC.

By:

Name:

Title:

SPECTRUM MECHANICAL & PLUMBING
CONTRACTORS LLC

By:

Name:

Title:

HAYDON COMPANIES LLC

By:

Name:

Title:

KEARNEY ELECTRIC, INC.

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Name:

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SITEWORKS LANDSCAPE DEVELOPMENT LLC

By:

Name:

Title:

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TRANSACTION	
Transaction Structure	• Sale pursuant to Section 363 • Buyer is not purchasing any causes of action, including any that exist under Chapter 5 of the Bankruptcy Code
Buyer	• AZ Athletic Associates LLC • Principal: Mike Burke
Buyer Affiliates / Supporting Entity	• Rocky Mountain Resources (“RMR”) • Principal: Chad Brownstein
Closing Date	• No later than December 8, 2023 (“Close”)
Acquiring Entity	• AZ Athletic Associates LLC
Consideration	• \$25,767,023 cash – \$19,725,023 provided by Buyer - \$500,000 to be placed into hard escrow within three business days of entry of the Sale Order. - Escrow to secure payment of estate professional fees in the event Transaction does not close. – \$6,042,000 provided by Pacific Proving, LLC (“Landlord”) • Bondholders will receive preferred equity in AZ Athletic Holdings, LLC, a Delaware limited liability company (HoldCo), the direct parent of Buyer. The terms and conditions for the preferred equity interest are as set forth in the Limited Liability Company Agreement circulated by Paul Hastings to Spencer Fane on November 20, 2023 at 6:44 pm pt, subject to any updates to the common equity required to be funded at closing (the “Agreed LLC Agreement”; and the preferred equity interest described therein and above, the “Preferred Equity Interest”). • All consideration provided by Buyer, Landlord, or Debtor, shall be fully disclosed to all Parties, including all agreements (whether subject to Court approval or not) contemplated by the Transaction, including without limitation the Revised Lease and any pre-or post-closing agreements contemplated by and between Buyer, Landlord, or any affiliates or insiders of Landlord.
Proof of Funds	• Debtor believes that Buyer has provided adequate proof of funds.
Exclusivity	• The terms of the exclusivity are set forth in the Court’s order dated 10/25/23 at Docket 552 which are incorporated herein by reference; provided that parties to this MOU hereby consent to the extension of the exclusivity period set forth therein through the closing of the Transaction as contemplated in this MOU.

Legacy Cares, Inc. (Debtor)
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Documentation	The effectiveness of the Transaction is subject to a Sale Order that memorializes and confirms the terms and conditions of this MOU and the asset purchase agreement. The foregoing to the contrary notwithstanding, Bond Trustee hereby acknowledges and agrees that (x) the Agreed LLC Agreement has been approved by the Bond Trustee and (y) the Bond Trustee or a special purpose vehicle formed by the Bond Trustee will execute and deliver the Agreed LLC Agreement in connection with the closing of the Transactions.
Representations/Warranties	- Buyer represents and warrants that the funds allocated for the Transaction belong to Buyer, are available for use in connection with the Transaction. - Buyer, Debtor, and Landlord represent and warrant that there are no other economic deals or arrangements among the Buyer, the Debtor or the Debtor's creditors as part of this Transaction that, prior to the closing date with respect to the Transaction, have not been previously disclosed. - Buyer represents and warrants that Chad and Randy Miller or business entities affiliated therewith are not involved in any way with the Transaction or the Park moving forward. This representation and warranty does not encompass any agreement between Buyer and Elite Sports Group to manage the Park during a transitional period.
ALLOCATION OF SALE PROCEEDS	
Mechanics Liens	\$19,142,000 cash - Claimants that have deposited their liens into escrow to be paid directly out of escrow at closing - Distribution to Mechanic's Lien Holders per Table 3
Bond Trustee / DIP Lender(s)	\$2,400,000 cash to be paid directly out of escrow - The Preferred Equity Interests
Administrative Claims	\$3,900,000 cash - Buyer to place \$500,000 into hard escrow within three business days of entry of the Sale Order - Miller Buckfire Transaction Fee to be paid directly out of escrow
Shamrock Claim	\$325,023 cash to be paid directly out of escrow
INCREMENTAL FUNDING	
Use of Ground Lease Rent Deposit	- Landlord to provide Debtor use of Debtor's \$750,000 deposit to fund Park operations only \$750,000 deposit will be funded by Buyer at Close

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Deferral of November and December Rent	• Landlord to waive its claim against the Debtor and its estate for the November and December rent payments, each of ~\$310K/month due under the Ground Lease • November and December Rent will be paid at Close by Buyer
Other Required Funding	• Extension of DIP Loan maturity through December 8, 2023 • Continued use of cash collateral for the DIP Loan and/or the pre-petition indebtedness held by Bond Trustee, in each case, through December 8, 2023 • Buyer to fund \$150,000 to the estate no later than December 1, 2023

GROUND LEASE AND EQUIPMENT LESSORS	
Revised Lease	• Agreed separately between Buyer and Landlord but shall be disclosed to the Parties on the Closing Date • Includes key provisions on extension of term, return of specific land (and subsequent property taxes), collaboration on certain infrastructure improvements and certain expanded allowable Buyer activities, access, subletting and development
Operating Lessors / Other	• Buyer to lead negotiations with equipment lessors through Close • IFS: ongoing negotiations; Buyer to negotiate settlement, including administrative rent claim, or reject "lease" • Macrolease / Eastern Funding: ongoing negotiations; Buyer to negotiate settlement or reject lease and allow lessor to take back equipment post-Close • NSOP/ Kuntz: ongoing negotiations; Buyer to negotiate settlement or reject lease and allow lessor to take back equipment post-Close • Buyer may assume liabilities for certain equipment leases • Buyer to negotiate a transition services agreement with Elite Sports Group

KEY DATES	
October 23, 2023	• \$750,000 funded to Debtors account
October 25, 2023	• Court entered Order setting hearing on Sale and Approving Buyer exclusivity
November 3, 2023	• Qualified Bid Accepted by Debtor and on file
November 15, 2023	• Deadline to file any Sale Objection
November 20 and 21, 2023	• Hearing on Motion to Approve the Sale and settlements
November 22, 2023	• Final Date for Court Approval of Sale
December 8, 2023	• Final date for Closing

Legacy Cares, Inc. (Debtor)
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TREATMENT OF PARTIES	
Administrative Claims	• \$3,900,000 cash Buyer to pay \$500,000 into a hard escrow within three business days of entry of the Sale Order.
Landlord	• Amended and restated lease acceptable to Landlord and Buyer to be executed at Close
Shamrock Claim	• \$325,023 cash
Bond Trustee / DIP Lender / Bondholders	• \$2,400,000 in cash as partial repayment of their indebtedness owed, which shall be applied in the Bond Trustee's sole discretion, and the Preferred Equity Interest • Bond Trustee releases all liens on Debtor's assets that Buyer is purchasing • Bond Trustee retains all claims and causes of action, which it owns and retains all liens which it may have on Debtor's causes of action • Effective upon final approval of the Court of the transaction contemplated herein (the "Sale Order"), Debtor, Landlord, Buyer, Mechanic's Lien Holders² and the Bond Trustee mutually release each other and their respective officers, directors, affiliates, representatives and funding sources (including without limitation Burke Operating Partners, RMR, Michael Burke, Jonathan Ma and Chad Brownstein) from any and all claims, causes of action and liabilities of every name and nature, known or unknown, suspected or unsuspected, both in law or in equity that they may have or claim to have against each other, which arises based on events that have occurred or are claimed to occur at any time on or before the date hereof, provided however that this mutual release will not release the following: (1) any claims Bond Trustee may have against Debtor, including without limitation any pre-petition indebtedness or obligations related to the DIP loan; (2) any rights or claims the Bond Trustee may have under that Indenture of Trust Agreement dated August 1, 2020 (the "Indenture") and/or that First Supplemental Indenture of Trust dated as of June 1, 2021 (the "Supplemental Indenture" and, together with the Indenture, the "Indentures") to the extent such rights or claims are not compromised by the sale of the Purchased Assets (as that term is defined in Section 2.1 of the APA) free and clear of any liens, claims encumbrances and interests pursuant to the Sale Order to which this MOU is attached; (3) any claims arising out of any obligations contemplated by this MOU; (4) any claims between Kearney Electric, Inc., and Okland Construction Company in connection with the "Dispute" as defined in the <i>Joint</i>

² This release does not encompass any claims by Earthscapes, Inc.'s (a wholly owned subsidiary of Haydon), including, but not limited to, its unsecured claim at proof of claim no. 15.

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	<i>Conditional Non-Opposition et al.</i> filed at Docket No. 590 in the Debtor's bankruptcy case; and (5) any claims that individual bondholders may have, including without limitation, any and all claims or potential claims arising out of or in connection with the offering and sale of all those Bonds to which the Indentures relate (including, without limitation, those claims asserted in <i>Legacy Cares Acquisition of AZ, LLC v. B.S. Ziegler Company, Inc., et al.</i>, Case No. CV2023-017231, pending in the Arizona Superior Court, Maricopa County and additional lawsuits that have not yet been filed regarding the Bonds); and any rights and causes of action arising under Bankruptcy Code §§ 544, 545, 547, 548, 549 and 550. Neither the sale of the Purchased Assets, nor the giving of the releases set forth above, nor any other action taken or not taken by the Bond Trustee or the bondholders in relation thereto, shall be deemed to be, or deemed to result in, the modification, surrender, transfer, redemption, retirement, waiver, settlement or resolution of any of the Bonds to which the Indentures relate (the "Bonds"). The Bonds, and all claims related thereto, shall be preserved in all respects. Debtor, Landlord, Buyer, RMR, Mechanic's Lien Holders and the Bond Trustee each hereby agree that no fact, event, circumstance, evidence or transaction which now exists or which may hereafter be discovered shall affect in any manner the final, absolute and unconditional nature of the release set forth above.
Mechanics Liens	\$19,142,000 cash - Distribution to Mechanic's Lien Holders per Table 3 (Recovery to Mechanic's Lien column) - Okland delivers release of all mechanic liens and lien claims against fee and leasehold and will bond mechanic liens necessary to deliver release(s) and will provide to Debtor a proposed schedule of amounts to pay Okland Subs (as mutually agreed between Okland and its subs) out of escrow at closing and payment instructions. Okland to indemnify the Landlord for claims arising from the liens and related payment of claims - Okland to deliver release by Okland and Okland Subs of all claims against Debtor and Landlord - Debtor and Landlord provide releases to Okland and other Mechanic's Lien Holders (other than the indemnity or other obligations listed above) - All other Mechanic's Lien Holders to deliver release of mechanic liens against fee and leasehold and a release of all claims against Debtor and Landlord

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Table 1: Sources and Uses

Illustrative Sources		Illustrative Uses	
Burke Capital / Rocky Mountain Resources	\$19,725,023	Administrative Expenses (Excl. IFS Admin Rent Claim)	\$3,900,000
Pacific Proving, LLC	6,042,000	Shamrock UCC Lien	325,023
Total Sources	\$25,767,023	Bondholder Claims	2,400,000
Plus: Post-Close Capital Contribution from NewCo	1,059,685	Mechanic's Lien Claims	19,142,000
Total Sources After Deposit & Rent	\$26,826,708	Total Uses Before Deposit & Rent	\$25,767,023
		Ground Lease Security Deposit After Close	750,000
		November Deferred Rent Payment After Close	309,685
		Total Uses After Deposit & Rent	\$26,826,708

Table 2: Administrative Expenses

Administrative Expenses	
Professional Fees (Including MB Transaction Fee)	1,992,500
Unpaid Property Taxes	1,078,203
City of Mesa Speculative Builder's Tax	511,340
Macrolase November Equipment	60,000
U.S. Trustee Quarterly Fees	50,000
U.S. Trustee Sale Fee	204,536
Total Administrative Claims Before IFS	\$3,896,580
IFS Admin Rent Claim	1,883,742
Total Administrative Claims After IFS	\$5,780,322

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Confidential Settlement Communication
FRE 408 & Other Applicable Rules
11/20/2023

Table 3: Mechanic's Lien Claims⁽¹⁾

Contract and Sub-Contract	Grand Total (Principal Claim Amounts)	Recovery to Mechanic's Liens (\$ Actuals)
OKLAND PARENT & SUBS⁽²⁾	\$19,768,412	\$15,129,271
OKLAND CONSTRUCTION COMPANY, INC.	\$10,294,437	
OKLAND SUBS⁽¹⁾	\$9,473,975	
AERO AUTOMATIC SPRINKLER	226,447	
B&F CONTRACTING, INC.	64,000	
D H PACE COMPANY INC.	367,877	
E&K OF PHOENIX INC.	1,750,743	
ELITE SPORTS BUILDERS LLC	213,938	
IMAGE BUILDING SYSTEMS LLC	909,000	
JOHNSON STATEWIDE CAULKING L.P.	162,920	
KEARNEY ELECTRIC, INC.	3,169,965	
R.H. DUPPER LANDSCAPING, INC.	382,022	
RKS PLUMBING & MECHANICAL, INC.	652,625	
SPECTRUM MECHANICAL & PLUMBING CONTRACTORS LLC	660,000	
SPRAYFOAM SOUTHWEST, INC.	38,000	
SUN VALLEY MASONRY, INC.	276,439	
WALTERS & WOLF CONSTRUCTION SPECIALITIES	265,000	
WHOLESALE FLOORS	335,000	
NSOP or US Development	\$489,968	\$368,175
JFK ELECTRICAL CONTRACTING ENTERPRISES, INC.	126,623	95,148
RKS PLUMBING & MECHANICAL, INC.	68,345	51,356
SPECTRUM MECHANICAL & PLUMBING CONTRACTORS LLC	295,000	221,671
LEGACY CARES	\$5,060,643	\$3,644,553
HAYDON COMPANIES LLC	2,078,078	1,403,369
KEARNEY ELECTRIC, INC.	2,155,990	1,620,071
SITWORKS LANDSCAPE DEVELOPMENT LLC	826,576	621,112
Grand Total (Principal Amounts)	\$25,319,023	\$19,142,000

(1) Okland to provide release or bond over and to indemnify Pacific Proving from claims arising from the liens and related payment claims.

(2) Pursuant to the Joint-Conditional Non-Opposition to the Proposed § 363 Sale filed by Okland Construction Company and Kearney Electric, Inc. (Docket #590), upon closing, and subject to mutually agreeable instructions provided by Kearney and Okland, \$500,000 (the "Holdback") of the sale proceeds that are earmarked for Okland and Kearney on account of their respective lien claims shall be (1) distributed pursuant to Kearney's and Okland's joint instructions and if no joint instructions are received, (2) held in escrow pending resolution of the dispute. The Holdback shall be funded from Okland's portion of the \$15,129,271 distribution scheduled to be made on account of Okland's and its subcontractor's liens.