

1 J. Henk Taylor – State Bar No. 016321
2 **WARNER ANGLE HALLAM**
3 **JACKSON & FORMANEK PLC**
4 2555 East Camelback Road, Suite 800
5 Phoenix, Arizona 85016
6 Telephone: (602) 264-7101
7 Facsimile: (602) 234-0419
8 E-mail: htaylor@warnerangle.com

9 *Counsel for Debtor*

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

12 **In Re:**

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

13 **LEGACY CARES, INC.,**

Chapter 11

14 **Debtor.**

15
16 **DEBTOR’S MOTION FOR AN ORDER (I) APPROVING (A) BIDDING**
17 **PROCEDURES FOR THE SALE OF SUBSTANTIALLY ALL OF DEBTOR’S**
18 **ASSETS, (B) PROCEDURES FOR DEBTOR’S ASSUMPTION AND**
19 **ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED**
20 **LEASES, (C) THE FORM AND MANNER OF NOTICE OF THE SALE**
21 **HEARING, ASSUMPTION PROCEDURES, AND AUCTION RESULTS, (D)**
22 **DATES FOR AN AUCTION AND SALE HEARING, (E) THE SALE OF**
23 **SUBSTANTIALLY ALL OF DEBTOR’S ASSETS FREE AND CLEAR OF ALL**
24 **CLAIMS, LIENS, LIABILITIES, RIGHTS, INTERESTS AND**
25 **ENCUMBRANCES, AND (F) DEBTOR’S ASSUMPTION AND ASSIGNMENT**
26 **OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (II)**
27 **AUTHORIZING DEBTOR TO PROVIDE BID PROTECTIONS, AND (III)**
28 **GRANTING RELATED RELIEF**

Legacy Cares, Inc. (“Debtor”) states:¹

¹ Debtor reserves the right to submit a declaration in support of the entry of the Bidding Procedures Order (as defined herein) in advance of the hearing on this Motion.

**DISCLOSURES UNDER BANKRUPTCY RULES, LOCAL RULES, AND
GUIDELINES**

Pursuant to Local Rule 6004-1(B), Debtor submits the following summary of the material terms of the proposed sale.

<u>Material Provisions</u>	<u>Summary Description²</u>
Purchaser/Purchase Price	The ultimate purchaser of Debtor's Assets is unknown at this time, and Debtor has not entered into any Stalking Horse Agreement. Debtor and its advisors have been conducting and will continue to conduct a marketing process for a sale of Debtor's Assets, in connection with which Debtor will seek the submission of Qualified Bids. Debtor reserves the right to enter into a Stalking Horse Agreement as discussed below, and any such agreement will be subject to Court approval as set forth herein and in the Bidding Procedures Order.
Competitive Bidding	The proposed sale of Debtor's Assets is subject to competitive bidding and, if necessary, an Auction.
Deadline to file the Stalking Horse Selection Notice	September 11, 2023 at 11:59 p.m. ³

²Capitalized terms used in this chart have the meanings ascribed to such terms in this Motion or the Bidding Procedures (as defined herein), as applicable.

³ All times refer to prevailing Arizona time.

<u>Material Provisions</u>	<u>Summary Description²</u>
Deadline to object to (a) designation of Stalking Horse Bidder; (b) Contract Objection Deadline (other than any objections based on adequate assurance of future performance, or objections subject to a later deadline pursuant to the Assumption and Assignment Procedures) (c) Sale Objection Deadline (other than any objection based on the manner in which the Auction was conducted or the designation of the Successful Bid or Backup Bid)	September 15, 2023 at 4:00 p.m.
Bid Deadline	September 18, 2023 at 12:00 p.m.
Selection of Starting Bid for Auction	September 22, 2023 at 4:00 p.m.
Auction (if necessary)	September 27, 2023 at 10:00 a.m.
Minimum Bid	In the event a Stalking Horse Bidder is designated, each Bid must exceed (a) the Stalking Horse Bid (as determined by Debtor following consultation with the Consultation Parties and upon the prior written consent of the Bond Trustee), <i>plus</i> (b) the amount of the Stalking Horse Bid Protections payable to such Stalking Horse Bidder, <i>plus</i> (c) the minimum bid increment of \$500,000 (or such other amount as Debtor may determine following consultation with the Consultation Parties and upon the prior written consent of the Bond Trustee, which amount may be higher or lower than \$500,000).
Overbid Amount	Subsequent Bids at the Auction, including any Bids by any Stalking Horse Bidder, will be binding and irrevocable and must (a) be made in minimum increments of \$250,000 (or such other amount as Debtor may

<u>Material Provisions</u>	<u>Summary Description</u> ²
	determine following consultation with the Consultation Parties and upon the prior written consent of the Bond Trustee, which amount may be higher or lower than \$250,000) of additional value, if applicable and (b) otherwise satisfy the requirements for a Qualified Bid set forth in the Bidding Procedures (provided that the Bid Deadline will not apply).
Deadline to object to (i) conduct of the Auction, (ii) the identity of the Successful Bidder or Back-Up Bidder, and (iii) adequate assurance of future performance by the Successful Bidder or Back-Up	4:00 p.m. on the date that is three business days prior to the commencement of the Sale Hearing.
Proposed Sale Hearing	October 3, 2023.
Stalking Horse Selection	Debtor reserves the right, in the exercise of its business judgment following consultation with the Consultation Parties and upon the prior written consent of the Bond Trustee, and subject to the conditions herein, including subject to entry of an order of this Court approving same, all as set forth in the Bidding Procedures Order to: (a) select one or more Bidders to act as stalking horse bidder(s) in connection with a Sale and enter into an asset purchase agreement with respect to a Sale with such stalking horse bidder (which shall be binding, non-contingent, and accompanied by a Good Faith Deposit), (b) provide a breakup fee, and/or (c) expense reimbursement, all as reasonably acceptable to Debtor (“Stalking Horse Bid Protections”)
Good Faith Deposit	Each Bid must be accompanied by a cash deposit (made by wire transfer or certified or cashier’s check) equal to 10% of the Purchase Price, defined below, or other such amounts to be agreed.

<u>Material Provisions</u>	<u>Summary Description</u> ²
Transfer of Personally Identifiable Information	Debtor maintains certain personally identifiable information with respect to its customers and will take all appropriate measures to insure and maintain the confidentiality of such information in connection with the sale hereunder.
Potential Lienholders	UMB Bank, N.A., (as Bond Trustee), Eastern Funding LLC, Stonebriar Commercial Finance, LLC, Insight Investments, LLC, National Sports Opportunity Partners LLC, Full Swing Golf, Inc., and various mechanic's lien claimants ¹ .

RELIEF REQUESTED

1. By this Motion, Debtor seeks entry of an order, substantially in the form attached hereto as **Exhibit A** (the "Bidding Procedures Order"):

- i. approving the proposed bidding procedures attached as **Exhibit 1** to the Bidding Procedures Order (the "Bidding Procedures") by which Debtor will solicit and select, in consultation with the Consultation Parties and consent of the Bond Trustee, as the case may be, the highest or otherwise best offer for the sale of Debtor's assets (the "Assets")⁴ through either (a) a sale or sales under section 363(b) of the Bankruptcy Code (each, a "363 Sale") or (ii) a sale through a plan

¹ Aero Automatic Sprinkler, B&F Contracting, Inc., D.H. Pace Company, Inc., E&K of Phoenix, Inc., Elite Sports Builders LLC, Haydon Companies LLC, Image Building Systems LLC, Insight Investments, LLC, JFK Electrical Contracting Enterprises, Johnson Statewide Caulking L.P., Kearney Electric, Inc., Okland Construction Company, Inc., R.H. Dupper Landscaping, Inc., RKS Plumbing & Mechanical, Inc., Siteworks Landscape Development LLC, Spectrum Mechanical & Service Contractors LLC, Sprayfoam Southwest, Inc., Sun Valley Masonry, Inc., Walters & Wolf Construction Specialties, and Wholesale Floors, LLC.

⁴ The Bidding Procedures also provide that a bid may contemplate the acquisition of assets owned by certain non- Debtors.

of a reorganization (a “Plan Sale”) (each of a 363 Sale and a Plan Sale, a “Sale”);

ii. subject to the conditions herein, authorizing Debtor to provide the Stalking Horse Bid Protections (as defined herein) to potential stalking horse bidder(s) in connection with the Sale (each, a “Stalking Horse Bidder”);

iii. establishing the procedures (the “Assumption and Assignment Procedures”) related to the potential assumption and assignment of certain of Debtor’s executory contracts and unexpired leases (the “Assigned Contracts”), including, but not limited to, determining the cure costs that Debtor believes must be paid to cure all prepetition defaults under each Assigned Contract (the “Cure Amount”);

iv. approving the form and manner of (i) notice of the Auction (as defined herein) and Sale Hearing (as defined herein) (the “Sale Notice”), substantially in the form attached as **Exhibit 2** to the Bidding Procedures Order, (ii) notice of the Assumption and Assignment Procedures (the “Assumption Notice”), substantially in the form attached as **Exhibit 3** to the Bidding Procedures Order, and (iii) the Post-Auction Notice (as defined herein), substantially in the form attached as **Exhibit 4** to the Bidding Procedures Order;

v. scheduling dates for an auction if Debtor receives more than one Qualified Bid (as defined herein) (the “Auction”) and a hearing to consider the approval of the Sale (the “Sale Hearing”); and

vi. granting related relief.

2. Debtor requests that the Bidding Procedures Order establish certain dates and deadlines, subject to extension and other modifications by Debtor in its reasonable

discretion and in consultation with the Consultation Parties.⁵ Such proposed dates and deadlines are set forth on **Exhibit B** attached hereto.⁶

3. By this Motion, in the event of a 363 Sale, Debtor seeks entry of an order (the “Sale Order”), the form of which will be filed no later than September 7, 2023 (and as amended based on the results of any auction): (i) authorizing (a) the sale of the Assets to the Successful Bidder (and, if necessary, the Back-Up Bidder) free and clear of liens, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code, and (b) the assumption and assignment of certain Assigned Contracts; and (ii) granting related relief.

JURISDICTION

4. This Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Debtor consents to this Court’s entry of final orders and judgments.

5. Venue is proper under 28 U.S.C. §§ 1408 and 1409.

6. The statutory bases for the relief sought in this Motion are (i) sections 105, 363, 365, 503, and 507 of title 11 of the United States Code (the “Bankruptcy Code”) and (ii) rule 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

BACKGROUND

⁵ Each “Consultation Party,” and collectively, the “Consultation Parties” means: (i) UMB Bank, N.A., in its capacity as trustee for certain bondholders (the “Bond Trustee”), and the Bond Trustee’s counsel and financial advisor; and (ii) counsel and any financial advisor to the Committee (as defined herein); *provided*, that no person or entity that constitutes a Potential Bidder (as defined in the Bidding Procedures), an Acceptable Bidder (as defined in the Bidding Procedures), a Qualified Bidder (as defined herein), a Stalking Horse Bidder (as defined herein), a Successful Bidder (as defined herein), or a Back-Up Bidder (as defined in the Bidding Procedures) (as determined by Debtor, in their reasonable discretion and in consultation with the Committee) shall be deemed a Consultation Party for so long as such person constitutes a Potential Bidder, an Acceptable Bidder, a Qualified Bidder, a Stalking Horse Bidder, a Successful Bidder, or a Back-Up Bidder.

⁶ Debtor will promptly notify all known interested parties of any such extensions or modifications.

1 7. On May 1, 2023 (the “Petition Date”), Debtor filed a voluntary petition for
2 relief under chapter 11 of the Bankruptcy Code.

3 8. Debtor is operating its business and managing its affairs as debtor-in-
4 possession under sections 1107(a) and 1108 of the Bankruptcy Code.

5 9. For a detailed description of Debtor and its operations, Debtor respectfully
6 refers the Court and parties in interest to the *Omnibus Declaration of Douglas Moss in*
7 *Support of First Day Motions* [ECF No. 9](the “First Day Declaration”) filed on the
8 Petition Date.

9 10. On May 15, 2023, the Office of the United States Trustee (the “U.S.
10 Trustee”) appointed an Official Committee of Unsecured Creditors (the “Committee”) in
11 this chapter 11 case [ECF No. 91].

12 11. While this Motion seeks entry of an order formally establishing procedures
13 for a competitive sale and auction process, Debtor’s marketing process is already well
14 underway, and is robust. As part of that process, Debtor has solicited proposals from
15 financial and strategic investors/acquirers for a sale that will maximize the value of
16 Debtor’s assets. Specifically, at the direction of Debtor’s board of directors, Debtor’s
17 investment banker, Miller Buckfire & Co. (“Miller Buckfire”), has contacted 115 potential
18 counterparties, 42 of whom entered into non-disclosure agreements to obtain access to
19 diligence. Following execution of such non-disclosure agreements, Debtor and its advisors
20 have engaged in dialogue with every interested party, responded to numerous diligence
21 requests, and conducted tours of Legacy Park to assist potential bidders in their evaluation
22 of a Sale. In May and June, Debtor received non-binding indications of interest from certain
23 potential bidders, with whom Debtor continues to negotiate while it continues its efforts to
24 create the most competitive and dynamic sale possible and bring additional bidders to the
25 table.

26 12. Debtor submits that the proposed Bidding Procedures are reasonably
27 designed to promote a competitive sale and auction process and yield top dollar for
28 Debtor’s assets. The Bidding Procedures afford potential bidders sufficient time for

diligence and documentation (particularly in light of Debtor's marketing process having been underway). The Bidding Procedures will also facilitate Debtor's efforts to secure a stalking horse bid – which Debtor believes would maximize value by setting a “floor” for competitive bidding – by permitting Debtor to grant the Stalking Horse Bid Protections as an inducement. And at the same time, the Bidding Procedures ensure that all parties in interest (including parties asserting interests in Debtor's assets and contract and lease counterparties) will be afforded sufficient notice of the relief Debtor seeks as part of the marketing process, and opportunities to object thereto. Finally, the Bidding Procedures were developed with input from the Bond Trustee, who supports the relief requested herein.

13. For all of these reasons and those set forth below, Debtor submits that the Bidding Procedures should be approved.

THE PROPOSED BIDDING PROCEDURES

14. The pertinent terms of the Bidding Procedures summarized below:⁷

- i. On or prior to **September 18, 2023 at 12:00 p.m.** (Prevailing Arizona Time) (the “Bid Deadline”), bidders shall be required to submit written irrevocable bids (each, a “Bid”) satisfying the qualification requirements in the Bidding Procedures (other than any requirements that are waived in accordance with the Bidding Procedures) (“Qualified Bids”).
- ii. Debtor may, following consultation with the Consultation Parties and upon the prior written consent of the Bond Trustee, (a) select one or more bidders to act as stalking horse bidder(s) in connection with a Sale (each, a “Stalking Horse Bidder,” and the bid of a Stalking Horse Bidder a “Stalking Horse Bid”), (b) enter into a Stalking Horse

⁷ This summary is qualified in its entirety by the Bidding Procedures attached as **Exhibit 1** to the Bidding Procedures Order and incorporated herein by reference. To the extent there are any conflicts between this summary and the Bidding Procedures, the terms of the Bidding Procedures shall govern. Capitalized terms used but not otherwise defined in this summary shall have the meanings set forth in the Bidding Procedures.

1 Agreement with such Stalking Horse Bidder, and (c) granting the
2 Stalking Horse Bid Protections in connection with such Stalking
3 Horse Bid, in accordance with the following procedures:

4 a) No later than **September 11, 2023 at 11:59 p.m.** (Prevailing
5 Arizona Time), following consultation with the Consultation
6 Parties and upon the prior written consent of the Bond
7 Trustee, Debtor may file with this Court a notice of Debtor's
8 selection of the Stalking Horse Bidder and the Stalking Horse
9 Bid (the "Stalking Horse Selection Notice"), which Stalking
10 Horse Selection Notice shall describe any Stalking Horse Bid
11 Protections granted in connection with the Stalking Horse
12 Bid and attach (i) a copy of a Stalking Horse Agreement that
13 has been executed by, and is binding upon, the Stalking
14 Horse Bidder and (ii) a proposed form of order authorizing
15 and approving Debtor's entry into and performance under the
16 Stalking Horse Agreement (subject to the submission of
17 higher or otherwise better offers for the Assets) (the
18 "Stalking Horse Order").

19 b) Parties in interest shall file objections (a "Stalking Horse
20 Objection") to the designation of the Stalking Horse Bidder
21 or to any Stalking Horse Bid Protections (as defined below),
22 no later than **September 15, 2023 at 4:00 p.m.** (Prevailing
23 Arizona Time) (the "Stalking Horse Objection Deadline").

24 c) If one or more Stalking Horse Objections are timely filed, a
25 hearing shall be held before this Court on or around
26 September 13, 2023, to consider the relief requested in the
27 proposed Stalking Horse Order.
28

d) If no Stalking Horse Objections are received, or if all such Stalking Horse Objections are resolved consensually, the proposed Stalking Horse Order may be entered without a hearing, unless otherwise required by the Stalking Horse Bidder.

iii. Debtor seeks this Court's approval for the following bid protections for a Stalking Horse Bidder: Subject to the terms of the Bidding Procedures Order and the Stalking Horse Bidder executing a definitive asset purchase agreement ("Stalking Horse Agreement"), as a component of the Stalking Horse Agreement, the Debtor, following consultation with the Consultation Parties and upon the prior written consent of the Bond Trustee, without further order of the Court, may agree to a (i) a break-up fee of not more than 3% of the cash purchase price of the Stalking Horse Bidder's initial bid; and (ii) expense reimbursement for all reasonable and documented out-of-pocket fees and expenses of the Stalking Horse Bidder incurred for due diligence, which shall not exceed 2% the cash purchase price of the Stalking Horse Bidder's initial bid, (collectively, "Stalking Horse Bid Protections").

iv. To be considered a "Qualified Bid", any bidder (other than any Stalking Horse Bidder designated by Debtor or the Bond Trustee in making a credit bid) must satisfy each of the bid requirements set forth in further detail in the Bidding Procedures (the "Bid Requirements"), as determined by Debtor, in its reasonable judgment and in consultation with the Consultation Parties. The Bid Requirements include, but are not limited to, the following:

a) Purpose. Each bidder must state that the Bid includes an offer by such bidder to purchase substantially all of the Assets, and

1 identify the Assets with reasonable specificity and the
2 particular liabilities, if any, such bidder seeks to assume.

3 b) Purchase Price. Each Bid must clearly set forth the purchase
4 price to be paid.

5 c) Minimum Bid. In the event a Stalking Horse Bidder is
6 designated, each Bid must exceed (i) the Stalking Horse Bid
7 (as determined by Debtor in consultation with the
8 Consultation Parties), *plus* (ii) the amount of the Stalking
9 Horse Bid Protections payable to such Stalking Horse
10 Bidder, *plus* (iii) the minimum bid increment of \$500,000 (or
11 such other amount as Debtor may determine in consultation
12 with the Consultation Parties, which amount may be higher
13 or lower than \$500,000).

14 d) Bid Deposit. Each Bid must be accompanied by a cash
15 deposit (made by wire transfer or certified or cashier's check)
16 equal to 10% of the Purchase Price, or other such amounts to
17 be agreed by Debtor following consultation with the
18 Consultation Parties and upon the prior written consent of the
19 Bond Trustee (the "Good Faith Deposit").

20 1. No Contingencies. Each Bid must contain a clear
21 statement that it is not conditioned on any contingency,
22 including, among others, on obtaining any of the
23 following (i) financing, (ii) shareholder, board of
24 directors, or other approvals, and/or (iii) the outcome or
25 completion of a due diligence review by the bidder.

26 2. Adequate Assurance Information. Each Bid must be
27 accompanied by sufficient and adequate financial and
28 other information (the "Adequate Assurance

1 Information”) to demonstrate, to Debtor’s reasonable
2 satisfaction, in consultation with the Consultation
3 Parties, that such bidder has the financial wherewithal
4 and ability to consummate the Transaction covered by
5 the Bid (the “Closing”), and

- 6 3. can provide adequate assurance of future performance
7 in satisfaction of the requirements under section
8 365(f)(2)(B) of the Bankruptcy Code, and such bidder’s
9 willingness to perform, under any contracts that are
10 proposed to be assumed and assigned to such party.
11 Debtor may file the Adequate Assurance Information
12 with this Court.

- 13 e) Executed Agreement. Each Bid must be based on the APA
14 (in the absence of a Stalking Horse Agreement), or the
15 Stalking Horse Agreement if one exists. Bids proposing a
16 purchase of the Assets pursuant to an APA, must include a
17 form of asset purchase agreement indicating (by redline) any
18 modifications proposed by such bidder to the form APA
19 prepared by Debtor or the Stalking Horse Agreement if one
20 exists (the “Modified APA”), including those changes related
21 to the purchase price. Each Bid must also identify any non-
22 Debtor assets to be acquired by such bidder in connection
23 with or as contemplated by such Bid and the process to
24 acquire such assets and accompanying timeline.

- 25 v. The bondholders (the “DIP/Prepetition Lenders”) under Debtor’s
26 prepetition secured credit documents and debtor-in-possession credit
27 facility (“Bondholder Credit”) through the Bond Trustee, shall have
28 the right to credit bid all or any portion of their allowed secured claims

1 in any Sale constituting the collateral of such lenders under the
2 Bondholder Credit at the Auction to the extent provided in section
3 363(k) of the Bankruptcy Code or other applicable law, in accordance
4 with the applicable provisions of the documents governing such debt
5 obligations.² In order to be deemed a “Qualified Bid”, any such credit
6 bid by the Bond Trustee must: (a) bid first, before any credit bid of
7 pre-petition debt, the outstanding balance due under the DIP credit
8 facility, (b) contain a cash component sufficient to pay the aggregate
9 amount of Debtor’s accrued, unpaid administrative expenses and any
10 other claims requiring payment in full in cash; (c) contain a cash
11 component or make other provision sufficient to pay or otherwise
12 satisfy any applicable cure costs for any executory contracts or
13 unexpired leases to be assumed and assigned to the Bond Trustee
14 under the credit bid; and (d) contain a cash component sufficient to (i)
15 pay the amount of any Court-approved Stalking Horse Protections and
16 (ii) pay for any Assets that are unencumbered by first priority
17 perfected liens in favor of the Bond Trustee. Further, if the Bond
18 Trustee submits a Credit Bid, it shall immediately no longer have any
19 consultation or related information rights otherwise set forth herein
20 and shall no longer be a “Consultation Party” as defined herein.

- 21 vi. If more than one Qualified Bid is received by the Bid Deadline,
22 Debtor will conduct the Auction with respect to Debtor’s Assets
23 pursuant to the terms and conditions set forth in the Bidding
24 Procedures. The Auction will commence on **September 27, 2023, at**
25 **10:00 a.m.** (Prevailing Arizona Time), or such later time Debtor
26

27 ² The right of all parties who are presently asserting, or who may still assert, a
28 “Challenge” to the amount, validity, extent, priority, or perfection of the Bond Trustee’s pre-
petition liens and security interests as allowed in the final order approving the DIP Facility [ECF
No. 216] to object to the amount and validity of any credit bid by the Bond Trustee is reserved.

1 reasonably determines, following consultation with the Consultation
2 Parties and upon the prior written consent of the Bond Trustee, at: (a)
3 the offices of Lewis Roca Rothgerber Christie LLP, 201 East
4 Washington Street, Suite 1200, Phoenix, AZ 85004; (b)
5 telephonically; or (c) by video via Zoom, or other place (or by such
6 other electronic means) as Debtor reasonably determines; *provided*,
7 that Debtor timely notifies all Qualified Bidders and other invitees of
8 the time and place of the Auction in accordance with the Bidding
9 Procedures.

- 10 vii. Upon the conclusion of the Auction (if such Auction is conducted),
11 Debtor, in the exercise of its reasonable business judgment and
12 following consultation with the Consultation Parties and upon the
13 prior written consent of the Bond Trustee, will identify the Successful
14 Bid, which will be determined by considering, among other things: (a)
15 the type and amount of Assets sought to be acquired in the Bid or Bids
16 and whether such Assets should or can be severed from other Assets
17 (whether subject to competing Bids or otherwise), (b) the total
18 expected consideration to be received by Debtor and the expected net
19 benefit to the estates, in each case, taking into account any Stalking
20 Horse Bidder's rights to any Stalking Horse Bid Protections, (c) the
21 Qualified Bidder's or Qualified Bidders' ability to close a transaction
22 and the timing thereof (including any anticipated delays to Closing
23 and the cost to Debtor of such delays), and other matters affecting the
24 execution risk associated with a particular Bid or Bids, (d) the impact
25 on customers, vendors, and employees, and (e) any other criteria,
26 including the Evaluation Criteria.

27 15. Debtor believes that the Bidding Procedures will maximize value by
28 promoting flexibility in structuring bids, offering the Stalking Horse Bid Protections, and

1 with respect to modifying the Bidding Procedures themselves as may be necessary or
2 appropriate (following consultation with the Consultation Parties and upon the prior written
3 consent of the Bond Trustee), to ensure that the process yields the best result. The Bidding
4 Procedures also make clear that the process will at all times be conducted in accordance
5 with Debtor's (and its officers' and directors') fiduciary duties.

6 **THE SALE NOTICE**

7 16. Debtor requests that this Court approve the form of Sale Notice attached as
8 **Exhibit 2** to the Bidding Procedures Order. The Sale Notice provides parties in interest
9 with notice of, among other things: (a) the Bid Deadline, (b) the time and place of the
10 Auction, (c) the date and time of the Sale Hearing, and (d) the Sale Objection Deadline,
11 Contract Objection Deadline, and Post-Auction Sale Objection Deadline (each as defined
12 below). Debtor submits that service of the Sale Notice as set forth below is proper and
13 sufficient to provide notice of, among other things, the Auction, the Sale Objection
14 Deadline, and the Sale Hearing to all parties in interest.

- 15 i. Within three business days following the entry of the Bidding
16 Procedures Order, Debtor will serve by ECF notification and first
17 class mail, copies of: (i) the Bidding Procedures Order, (ii) the
18 Bidding Procedures, and (iii) the Sale Notice upon the following
19 entities: (a) to the best knowledge of Debtor's management, all
20 entities that have expressed written interest in a Sale with respect to
21 all or substantially all of Debtor's Assets within the past six months;
22 (b) all entities known to have asserted any lien, claim, interest, or
23 encumbrance in or upon any of the Assets; (c) counsel to the
24 Committee; (d) the Bond Trustee; (e) counsel to the Bond Trustee; (f)
25 the Office of the United States Trustee for the District of Arizona (the
26 "U.S. Trustee"); (g) all federal, state, and local regulatory or taxing
27 authorities or recording offices which have a reasonably known
28 interest in the relief granted herein; (h) the United States Attorney's

office for the District of Arizona (i) the Internal Revenue Service; (j) all parties entitled to notice pursuant to Bankruptcy Rule 2002; and (k) all known creditors of Debtor, including their contract counterparties; *provided, however*, that to the extent email addresses are available for any of the foregoing parties, such parties may be served by email.⁸

17. Furthermore, Debtor shall publish the Sale Notice, as modified for publication, in the either *The Wall Street Journal* or *USA Today* within eight business days after the entry of the Bidding Procedures Order. In addition, Debtor may (i) publish the Sale Notice in additional publications as Debtor deems appropriate, and (ii) cause the Sale Notice to be posted on their case information website at <https://dm.epiq11.com/LegacyCares> (the “Case Website”).

- i. Debtor further requests, pursuant to Bankruptcy Rule 9014, that objections, if any, to the proposed Sale: (i) be in writing; (ii) state the basis of such objection with specificity; (iii) comply with the Bankruptcy Rules and the Local Bankruptcy Rules for the District of Arizona (the “Local Rules”); (iv) be filed with this Court on or before **4:00 p.m. (Prevailing Arizona Time) on September 15, 2023** (the “Sale Objection Deadline”); and (v) be served, so as to be received the same day as the objection is filed, upon: (a) Debtor, c/o Legacy Cares, Inc., 6321 South Ellsworth Road, Suite 146, Mesa, Arizona 85212 (Attn: Douglas Moss (douglasm@legacycaresinc.com); (b) bankruptcy counsel for Debtor, Warner Angle Hallam Jackson & Formanek, PLC, 2555 E. Camelback Road, Suite 800, Phoenix,

⁸ With respect to serving all potential bidders previously identified or otherwise known to Debtor, given Debtor’s confidentiality obligations to such bidders, and their interest in promoting a competitive process, Debtor seeks authority to file under seal that part of the service list providing the names and mailing addresses for potential bidders previously identified or otherwise known to Debtor that are served with the Sale Notice and the Bidding Procedures Order.

1 Arizona 85016 (Attn: Henk Taylor (htaylor@warnerangle.com)); (c)
2 the Bond Trustee, UMB Bank, N.A., 120 South Sixth Street, Suite
3 1400, Minneapolis, Minnesota 55402 (Attn: Michael Slade
4 (Michael.Slade@umb.com)); (d) counsel to the Bond Trustee,
5 Spencer Fane LLP, 2415 E. Camelback Road, Suite 600, Phoenix,
6 Arizona 85016 (Attn: Peter Riggs (priggs@spencerfane.com); Jessica
7 Gale (jgale@spencerfane.com); and Zachary Fairlie
8 (zfairlie@spencerfane.com); (e) the Office of the United States
9 Trustee, 230 N. 1st Avenue, Suite 204, Phoenix, Arizona 85003 (Attn:
10 Jennifer Giaimo (Jennifer.a.giaimo@usdoj.gov); and (f) counsel to
11 the Committee, Pachulski Stang Ziehl & Jones LLP, 780 Third
12 Avenue, 34th Floor, New York, New York 10017 (Attn: Bradford
13 Sandler (bsandler@pszjlaw.com); Jordan Kroop
14 (jkroop@pszjlaw.com); and Cia Mackle (cmackle@pszjlaw.com))
15 (collectively, the “Objection Recipients”).

16 **ASSUMPTION AND ASSIGNMENT PROCEDURES**

17 18. To facilitate the Transaction, Debtor seeks authority to assume and assign
18 certain Assigned Contracts to the Successful Bidder in accordance with the Assumption
19 and Assignment Procedures set forth below (the “Assumption and Assignment
20 Procedures”). The Assumption and Assignment Procedures are as follows:

- 21 i. On or prior to **the day that is three business days after entry of the**
22 **Bidding Procedures Order** (the “Assumption Notice Deadline”),
23 Debtor shall file with this Court, post on the Case Website, and serve
24 on each counterparty (each, a “Counterparty,” and collectively, the
25 “Counterparties”) to an Assigned Contract, the Assumption Notice.
26 ii. The Assumption Notice shall include, without limitation, a list of
27 Assigned Contracts (the “Assigned Contract List”) that may be
28 assumed and assigned in connection with a Sale, and the Cure

Amount, if any, that Debtor believes is required to be paid to the applicable Counterparty under sections 365(b)(1)(A) and (B) of the Bankruptcy Code for each Assigned Contract. If no Cure Amount is listed on the Assigned Contracts List for a particular Assigned Contract, Debtor's asserted Cure Amount for such Assigned Contract shall be deemed to be \$0.00. If a Counterparty objects to the Cure Amount or the assumption of its Assigned Contract on any basis other than the ability of the Successful Bidder to provide adequate assurance of future performance (an "Adequate Assurance Objection"), the Counterparty must file with this Court and serve on the Objection Recipients a written objection (a "Contract Objection") on or before **September 15, 2023 at 4:00 p.m. (Prevailing Arizona Time)** (the "Contract Objection Deadline").

- iii. Any Contract Objection shall: (i) be in writing; (ii) comply with the Bankruptcy Rules and Local Rules; (iii) be filed with the Clerk of the Court on or before the Contract Objection Deadline, except as otherwise set forth below with respect to Assigned Contracts added to the Assigned Contracts List (or for which the proposed Cure Amount is modified) after the Assumption Notice Deadline; (iv) state with specificity the grounds for such objection, including, without limitation, the fully liquidated cure amount and the legal and factual bases for any unliquidated cure amount that the Counterparty believes is required to be paid under sections 365(b)(1)(A) and (B) of the Bankruptcy Code for the applicable Assigned Contract, along with the specific nature and dates of any alleged defaults, the pecuniary losses, if any, resulting therefrom, and the conditions giving rise thereto; and (v) be served upon the Objection Recipients.

- iv. Debtor reserves the right, and is authorized but not directed, to (i) add previously omitted Assigned Contracts to the Assigned Contracts List as executory contracts or unexpired leases that may be assumed and assigned to a Successful Bidder in accordance with the definitive agreement for a Sale, (ii) remove an Assigned Contract from the Assigned Contract List, or (iii) modify the previously stated Cure Amount associated with any Assigned Contract; *provided*, that up until the closing of the Sale, Debtor may seek to reject any Assigned Contract included on the Assigned Contracts List if such Assigned Contract is not ultimately assigned to the Successful Bidder.
- v. If, after the Assumption Notice Deadline (i) additional executory contracts or unexpired leases of Debtor are determined to be Assigned Contracts in connection with such Sale, or (ii) any Cure Amounts associated with Assigned Contracts are modified, as soon as practicable thereafter, Debtor shall file with this Court and serve, by overnight delivery, on the applicable Counterparties a supplemental or revised Assumption Notice, and such Counterparties shall file any Contract Objections not later than (a) the Contract Objection Deadline if such Assumption Notice was filed and served at least ten days prior to the Contract Objection Deadline, and (b) seven days from the date such supplemental or revised Assumption Notice was filed and served in accordance with the above, if such supplemental or revised Assumption Notice was filed and served less than ten days prior to the Contract Objection Deadline. If a supplemental or revised Assumption Notice was filed and served less than seven days prior to the commencement of the Sale Hearing and an objection is filed that is not otherwise consensually resolved, then such objection will not

1 be adjudicated at the Sale Hearing and will be set for a subsequent
2 hearing.

- 3 vi. As soon as practicable after the Auction and in any event no later than
4 24 hours following the closing of the Auction, Debtor shall file with
5 this Court and serve, by overnight delivery, on the Counterparties the
6 Post-Auction Notice substantially in the form attached as **Exhibit 4**
7 here to, identifying any Successful Bidder and Backup Bidder, and the
8 Counterparties shall file any Adequate Assurance Objections not later
9 than 4:00 p.m. (Prevailing Arizona Time) on the date that is three
10 business days prior to the commencement of the Sale Hearing (such
11 deadline, the “Post-Auction Sale Objection Deadline”), or, if
12 applicable, any later deadline established pursuant to subparagraph
13 20(e) above.

- 14 a) At the Sale Hearing, Debtor will seek Court approval of the
15 assumption and assignment to the Successful Bidder of only
16 those Assigned Contracts that have been selected by the
17 Successful Bidder to be assumed and assigned (collectively,
18 the “Selected Assigned Contracts”). The inclusion of an
19 Assigned Contract on an Assumption Notice or the
20 identification of such Assigned Contract as a Selected
21 Assigned Contract will not (i) obligate Debtor to assume any
22 Assigned Contract listed thereon nor the Successful Bidder
23 to take assignment of such Assigned Contract, or (ii)
24 constitute any admission or agreement of Debtor that such
25 Assigned Contract is an executory contract or unexpired
26 lease. Debtor reserves any and all rights with respect to any
27 Assigned Contracts that are not ultimately designated as
28 Selected Assigned Contracts, and reserves the right to reject

1 any Assigned Contract identified as a Selected Assigned
2 Contract if such Assigned Contract is not ultimately assigned
3 to the Successful Bidder.

4 vii. If no Contract Objection or Adequate Assurance Objection, as
5 applicable, is timely received with respect to a Selected Assigned
6 Contract: (i) the Counterparty to such Selected Assigned Contract
7 shall be deemed to have consented to the assumption by Debtor and
8 assignment to Successful Bidder of the Selected Assigned Contract,
9 and be forever barred from asserting any objection with regard to such
10 assumption or assumption and assignment (including, without
11 limitation, with respect to adequate assurance of future performance
12 by the Successful Bidder); (ii) any and all defaults under the Selected
13 Assigned Contract and any and all pecuniary losses related thereto
14 shall be deemed cured and compensated pursuant to sections
15 365(b)(1)(A) and (B) of the Bankruptcy Code upon payment of the
16 Cure Amount set forth in the most recent Assumption Notice for such
17 Selected Assigned Contract; and (iii) the Cure Amount set forth in the
18 most recent Assumption Notice for such Selected Assigned Contract
19 shall be controlling, notwithstanding anything to the contrary in such
20 Selected Assigned Contract, or any other related document, and the
21 Counterparty shall be deemed to have consented to the Cure Amount
22 and shall be forever barred from asserting any other claims related to
23 such Selected Assigned Contract against Debtor and its estate, the
24 Successful Bidder, or the property of any of them, that existed prior
25 to the entry of the order resolving the Contract Objections and the Sale
26 Order.

27 viii. To the extent that the parties are unable to consensually resolve any
28 Contract Objection prior to the commencement of the Sale Hearing,

1 including, without limitation, any dispute with respect to the Cure
2 Amount required to be paid to the applicable Counterparty under
3 sections 365(b)(1)(A) and (B) of the Bankruptcy Code (any such
4 dispute, a “Cure Dispute”), such Contract Objection will be
5 adjudicated at the Sale Hearing or at such other date and time as may
6 be fixed by the Court; *provided, however*, that if the Contract
7 Objection relates solely to a Cure Dispute, the Selected Assigned
8 Contract may be assumed by Debtor and assigned to the Successful
9 Bidder so long as the cure amount the Counterparty asserts is required
10 to be paid under sections 365(b)(1)(A) and (B) of the Bankruptcy
11 Code (or such lower amount as may be agreed to by the Counterparty)
12 is deposited in a segregated account by Debtor pending this Court’s
13 adjudication of the Cure Dispute or the parties’ consensual resolution
14 of the Cure Dispute. Debtor and the Successful Bidder reserve their
15 rights to remove an Assigned Contract from the Assigned Contract
16 List or from any list of Selected Assigned Contracts based on the
17 outcome of a Cure Dispute held at a hearing after the Sale Hearing or
18 for any other reason.

19 19. Any party failing to timely file a Contract Objection with respect to the
20 assumption and assignment of any Assigned Contract or related Cure Amount specified on
21 an Assumption Notice will be barred from objecting thereto, including asserting any
22 additional cure or other default amounts against Debtor or Debtor’s estate, or the
23 Successful Bidder with respect to such Assigned Contract, and shall be deemed to consent
24 to the Sale and the assumption and assignment of such Assigned Contract assumed and
25 assigned in connection therewith.
26
27
28

BASIS FOR RELIEF REQUESTED**A. The Bidding Procedures Constitute a Valid and Reasonable Exercise of Debtor's Business Judgment.**

20. Maximization of proceeds received by a debtor's estate is one of the dominant goals of any proposed sale of estate property. *See In re Mushroom Transp. Co.*, 382 F.3d 325, 339 (3d Cir. 2004) (debtor-in-possession "had a fiduciary duty to protect and maximize the estate's assets"). In the hope of maximizing the value received by the estate, courts typically establish procedures that are intended to enhance competitive bidding by, among other things, setting forth the rules that will govern the auction process. *See, e.g., In re Fin. News Network, Inc.*, 126 B.R. 152, 156 (Bankr. S.D.N.Y. 1991) ("court-imposed rules for the disposition of assets... [should] provide an adequate basis for comparison of offers, and [should] provide for a fair and efficient resolution of bankrupt estates"); *In re Edwards*, 228 B.R. 552, 561 (Bankr. E.D. Pa. 1998) (bid procedures should allow for "an open and fair public sale designed to maximize value for the estate").

21. Debtor believes that the Bidding Procedures represent a valid and reasonable exercise of its business judgment because they are designed to maximize the value received for the Assets by establishing a transparent, competitive, and fair bidding process. Courts have consistently held that a debtor's business judgment is entitled to substantial deference with respect to the procedures to be used in selling an estate's assets. *See, e.g., In re Innkeepers USA Trust*, 448 B.R. 131, 146 (Bankr. S.D.N.Y. 2011) ("Debtors have appropriately exercised their business judgment in determining to... propose the revised Bidding Procedures"); *In re Integrated Resources, Inc.*, 147 B.R. 650, 656-7 (S.D.N.Y. 1992) (noting that bidding procedures that have been negotiated by a trustee are to be reviewed according to the deferential "business judgment" standard, under which such procedures and arrangements are "presumptively valid"); *see also In re Ashley Consulting, LLC*, 2015 WL 6848113, at *3 (Bankr. S.D.N.Y. Nov. 6, 2015) (noting, *in dicta*, that proposed bidding procedures are evaluated using the business judgment standard).

22. To that end, courts uniformly recognize that procedures intended to enhance competitive bidding are consistent with the goal of maximizing value and therefore are appropriate in the context of bankruptcy transactions. *See, e.g., Integrated Resources*, 147 B.R. at 659 (bidding procedures “are important tools to encourage bidding and to maximize the value of Debtor’s assets”); *In re Dunhill Entities, L.P.*, 2010 WL 6982623, at *1 (Bankr. S.D. Ala. Apr. 13, 2010) (approving bidding procedures that are “designed to maximize Debtors’ recovery on the Assets”); *In re Robb & Stucky Ltd. LLLP*, 2001 WL 36371214, at *1 (Bankr. M.D. Fla. Feb 18, 2001) (same); *In re Fin. News Network, Inc.*, 126 B.R. 152, 156 (Bankr. S.D.N.Y. 1991) (“court-imposed rules for the disposition of assets... [should] provide an adequate basis for comparison of offers, and [should] provide for a fair and efficient resolution of bankrupt estates”).

23. Debtor developed the Bidding Procedures in consultation with its advisors, as well as the Committee and the Bond Trustee, and believes that the Bidding Procedures will promote active bidding from seriously interested parties and will maximize value for the benefit of Debtor’s estate and giving Debtor the ability to offer the Stalking Horse Bid Protections to incentivize prospective stalking horse bidders, so that they can generate competition among the parties who have submitted indications of interest already (and any other interested parties who may emerge) to improve their bids well in advance of the Bid Deadline and Auction in the hope of becoming the Stalking Horse Bidder.

24. The Bidding Procedures and the Bid Requirements set forth therein also allow Debtor to conduct the Auction (if necessary) in a controlled, fair, and transparent fashion. Auction participants must be deemed financially capable bidders who can demonstrate the ability to close a Sale, thus providing Debtor a degree of certainty and credibility with respect to the Auction process. The Bidding Procedures and Auction are also designed to ensure that the Assets will be sold for the highest or otherwise best possible consideration by subjecting the value of Debtor and its Assets to market testing. Debtor proposes to hold the Auction on September 27, 2023, a timeline that Debtor believes is more than sufficient given the marketing efforts Debtor has already undertaken to date and

1 will continue to undertake, as described herein. Significantly, maximizing the value of
2 Debtor's estate requires that Debtor proceed as swiftly as possible to consummate the Sale,
3 thereby minimizing the incremental costs associated with this chapter 11 case and
4 preserving the value of Debtor's businesses. The Bidding Procedures are designed to
5 maximize the likelihood of a competitive bidding process with respect to a Sale.

6 25. Accordingly, Debtor respectfully submits that this Court should approve the
7 Bidding Procedures as a valid and reasonable exercise of Debtor's business judgment.

8 **B. Credit Bidding Should Be Authorized.**

9 26. A secured creditor is allowed to "credit bid" the amount of its allowed claim
10 in a sale under section 363 of the Bankruptcy Code. Section 363(k) of the Bankruptcy Code
11 provides, in relevant part, that, unless the court for cause orders otherwise, the holder of an
12 allowed claim secured by property that is the subject of the sale "may bid at such sale, and,
13 if the holder of such claim purchases such property, such holder may offset such claim
14 against the purchase price of such property." 11 U.S.C. § 363(k). Even if a secured creditor
15 is undersecured, as determined in accordance with section 506(a) of the Bankruptcy Code,
16 section 363(k) allows such creditor to bid the full face value of its claim for its collateral
17 and does not limit the credit bid to the claim's secured portion. *See Cohen v. KB Mezzanine*
18 *Fund II, LP (In re SubMicron Sys. Corp.)*, 432 F.3d 448, 459 (3d Cir. 2006) (explaining
19 that "[i]t is well settled among district and bankruptcy courts that creditors can bid the full
20 face value of their secured claims under § 363(k)."); *In re Suncruz Casinos, LLC*, 298 B.R.
21 833, 839 (Bankr. S.D. Fla. 2003).

22 27. Pursuant to the Bidding Procedures, the Bond Trustee is entitled to credit bid
23 the DIP/Prepetition Lenders claims for their respective collateral pursuant to section 363(k)
24 of the Bankruptcy Code; *provided*, that any such credit bid shall not impair or waive any
25 challenge rights preserved pursuant to this Court's order approving the DIP Facility (the
26 "DIP Order"), if any, or any parties' right to object to selection or approval of such credit
27 bid based on such challenge rights.
28

28. Because the DIP/Prepetition Lenders through the Bond Trustee hold claims that are secured by substantially all of the Assets, such creditors should be allowed to credit bid up to the full face amount of their secured claims, in order to purchase such assets and to have such credit bids be deemed to have the same value as the equivalent amount of cash.

C. The Overbid Protections Are Appropriate Under the Circumstances.

29. The Bid Requirement that each Bid must exceed (i) the Stalking Horse Bid (as determined by Debtor following consultation with the Consultation Parties and upon the prior written consent of the Bond Trustee), *plus* (ii) the amount of the Stalking Horse Bid Protections payable to such Stalking Horse Bidder, *plus* (iii) the minimum bid increment of \$500,000 (or such other amount as Debtor may determine following consultation with the Consultation Parties and upon the prior written consent of the Bond Trustee, which amount may be higher or lower than \$500,000), is appropriate under the circumstances and will promote, rather than discourage, competitive overbidding at the Auction.

30. The provision of bid protections in a bidding process is appropriate under section 363(b) of the Bankruptcy Code so long as such payment is a valid exercise of a debtor's business judgment by providing a benefit to a debtor's estate. *See In re Antaramian Properties*, 564 B.R. 762, 766 (M.D. Fla. 2016). Under section 363(b), debtors may use, sell, or lease estate property outside of the ordinary court of business so long as they articulate a sound business reason for doing so. *See, e.g., In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989); *Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 398 (Bankr. S.D.N.Y. 1983). Furthermore, bid protections encourage a potential buyer to invest the time, money, and effort required to negotiate with a debtor's representatives, and to perform the necessary due diligence attendant to the acquisition of a debtor or a debtor's assets, despite the inherent risks and uncertainties of the chapter 11 process.

1 31. To induce Stalking Horse Bidders to enter into Stalking Horse Agreements,
2 and thus set a floor price for the Assets that may be tested in the marketplace, Debtor may
3 be required to provide the Stalking Horse Bid Protections. In light of the benefit to
4 Debtor's estate that will be realized by having a signed Stalking Horse Agreement,
5 enabling Debtor to preserve the value of its estate and promote more competitive bidding,
6 ample support exists for granting Debtor authority to provide the Stalking Horse Bid
7 Protections, if required by a Stalking Horse Bidder. To the extent Debtor determines to
8 offer any Stalking Horse Bid Protections as described herein, Debtor requests that the order
9 approving such Stalking Horse Bid Protections provide that such payments will be (i) an
10 actual and necessary cost and expense of preserving the Debtor's estate, within the
11 meaning of sections 503(b) and 507 of the Bankruptcy Code, (ii) of substantial benefit to
12 Debtor's estate, and (iii) reasonable and appropriate in light of the efforts and the
13 significant due diligence costs and expenses that will be expended by a Stalking Horse
14 Bidder.

15 32. Although the amount or extent of the Stalking Horse Bid Protections is not
16 known at this time, Debtor does not intend to provide (and is not seeking authority to
17 provide) Stalking Horse Bid Protections for any bidder with an aggregate value (inclusive
18 of any break-up fees and/or expense reimbursements) in excess of 5% of the proposed cash
19 purchase price offered by such bidders. Accordingly, any Stalking Horse Bid Protections
20 for which Debtor seeks approval will be consistent with the quantum of bid protections
21 typically approved by other courts. *See, e.g., In re Liberty Power Holdings, LLC*, Case No.
22 21-13797-SMG (Bankr. S.D. Fla. Aug. 26, 2021) (approving 2.75% breakup fee plus
23 expense reimbursement); *In re Protective Products of America, Inc., et al.*, No. 10-10711-
24 JKO (Bankr. S.D. Fla. Jan. 19, 2010) (approving 4% break-up fee and expense
25 reimbursement); *In re Touse, Inc.*, Case No. 08-10928-JKO (Bankr. S.D. Fla. Dec. 21,
26 2009) (approving 3% break-up fee); *In re Antaramian Properties*, 564 B.R. at 768 (citing
27 *In re Sea Island Co.* 2010 WL 4393269, at *3 (Bankr. S.D. Ga. Sept. 15, 2010), for the
28 proposition that a 3% breakup fee "constituted a fair and reasonable percentage of the

1 proposed purchase price”); *In re RM Holdco LLC*, Case No. 18-11795 (MFW) (Bankr. D.
2 Del. Sept. 6, 2018) (authorizing break-up fee of 3% of the purchase price in the chapter 11
3 bankruptcy case involving one of the largest full service Mexican casual dining restaurant
4 chains with 80 restaurants located throughout the United States); *In re Bertucci’s Holdings,*
5 *Inc.*, Case No. 18-10894 (MFW) (Bankr. D. Del. May 7, 2018) (authorizing break-up fee
6 and expense reimbursement of approximately 5.0% of purchase price).

7 33. Thus, Debtor requests that this Court authorize Debtor to provide Stalking
8 Horse Bid Protections to any designated Stalking Horse Bidder subject to the terms and
9 conditions set forth in the Bidding Procedures.

10 **D. The Form and Manner of the Notice and Related Sale Deadlines Should Be**
11 **Approved.**

12 34. Debtor submits that the Sale Objection Deadline is reasonable and
13 appropriate under the circumstances. Pursuant to Bankruptcy Rule 2002(a), Debtor is
14 required to provide creditors with 21 days’ notice of the proposed sale. Pursuant to
15 Bankruptcy Rule 2002(c), such notice must include the time and place of the Auction and
16 the deadline for filing any objections to the relief requested herein. As noted above, the
17 proposed Sale Hearing on or around October 3, 2023 (subject to this Court’s availability)
18 is more than 21 days from notice of this Motion (and service of the Sale Notice), and the
19 proposed September 15, 2023 Sale Objection Deadline has been scheduled more than seven
20 days in advance of the Sale Hearing. Parties in interest will receive notice of the Sale
21 Objection Deadline and time and place of the Auction when the Sale Notice is served after
22 entry of the Bidding Procedures Order. As such, Debtor submits that the proposed Sale
23 Objection Deadline meets the requirements of the Bankruptcy Rules and the Local Rules.

24 35. Debtor further submits that the notice to be provided through the Sale Notice
25 and the method of service proposed herein constitute good and adequate notice of the
26 Bidding Procedures and the subsequent proceedings related thereto, including the proposed
27 dates for (i) the Bid Deadline; (ii) the Sale Objection Deadline; (iii) the Contract Objection
28

1 Deadline; and (iv) the Sale Hearing. Therefore, Debtor respectfully requests the Court
2 approve the proposed notice procedures.

3 **E. The Assumption and Assignment Procedures Provide Contract Counterparties**
4 **with Adequate Notice and Opportunity to Object and Should be Approved.**

5 36. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a
6 debtor-in-possession “subject to the court’s approval, may assume or reject any executory
7 contract or [unexpired] lease of Debtor.” 11 U.S.C. § 365(a). Debtor submits that the
8 proposed Assumption and Assignment Procedures are consistent with those approved in
9 other cases and, in this case, appropriate and reasonably tailored to provide each
10 Counterparty with adequate notice of the proposed assumption and assignment of the
11 applicable Assigned Contract, as well as proposed Cure Amounts, if applicable. Each
12 Counterparty will then be given an opportunity to object to such notice. The Assumption
13 and Assignment Procedures further provide that, in the event an objection is not resolved,
14 this Court will determine related disputed issues (including any adequate assurance of
15 future performance issues).

16 37. In addition, the terms of the Bidding Procedures (including the requirement
17 to demonstrate financial wherewithal at the bid qualification stage) ensure that any
18 Successful Bidder will have financial resources that are more than sufficient to perform
19 under any Assigned Contracts it seeks to have assumed and assigned by Debtor. Moreover,
20 if necessary, Debtor will adduce evidence at the Sale Hearing on any objection
21 demonstrating the financial wherewithal of the Successful Bidder, and their willingness
22 and ability to perform under the Assigned Contracts to be assigned to them. The Sale
23 Hearing therefore will provide this Court and other interested parties ample opportunity to
24 evaluate and, if necessary, challenge, the ability of the Successful Bidder to provide
25 adequate assurance of future performance with respect to the Assigned Contracts to be
26 assumed and assigned.

27 38. For the reasons discussed herein, the Assumption and Assignment
28 Procedures comport with the requirements of section 365 of the Bankruptcy Code and

Bankruptcy Rule 6006, and the Counterparties' rights to adequate assurance are unaffected and fully preserved. Debtor respectfully submits that the notices required by the Assumption and Assignment Procedures are sufficient to assume and assign the Assigned Contracts because they are reasonably tailored to provide notice and an opportunity to object to the proposed assumption and assignment. Thus, Debtor submits that the Assumption and Assignment Procedures should be approved.

F. A Sale Is in the Best Interests of Debtor's Estate.

39. Section 363(b) of the Bankruptcy Code provides that a debtor may sell property of the estate outside the ordinary course of business after notice and a hearing. Courts have consistently held that a debtor's sale or use of its assets outside the ordinary course of business should be approved if Debtor can demonstrate "some articulated business justification." *See In re Martin*, 91 F.3d 389, 395 (3d Cir. 1996); *In re Delaware & Hudson Railway Co.*, 124 B.R. 169, 176 (D. Del. 1991); *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143 (3rd Cir. 1986); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983).

40. Debtor has a sound business justification for running a competitive bidding process for a Sale consistent with the Bidding Procedures. Such competitive bidding process will ensure that Debtor obtains the best possible value for its assets, which in turn, will benefit Debtor's estates and their stakeholders. As such, Debtor's determination to run a competitive bidding process for a Sale as provided for in the Bidding Procedures is a valid and sound exercise of Debtor's business judgment.

G. The Sale Has Been Proposed in Good Faith and Without Collusion, and Debtor's Evidence Will Demonstrate that the Successful Bidder Will Be a "Good Faith Buyer".

41. Pursuant to the Bidding Procedures, the Successful Bidder will be the bidder that Debtor determines, in its reasonable business judgment and following consultation with the Consultation Parties and upon the prior written consent of the Bond Trustee, provides the best or otherwise highest offer for Debtor's Assets after the conclusion of a Court-approved, competitive, fair, and transparent process. In advance of the Sale Hearing,

Debtor will provide evidence of the Successful Bidder's good faith to demonstrate that (a) the Successful Bidder is a "good faith" purchaser within the meaning of section 363(m) of the Bankruptcy Code and (b) the terms of the ultimate purchase agreement with such Successful Bidder was negotiated at arms'-length and in good faith without any collusion or fraud.

42. Accordingly, Debtor intends to show at the Sale Hearing that the Successful Bidder is entitled to the full protections of section 363(m) of the Bankruptcy Code.

H. The Sale Should Be Approved "Free and Clear" Under Section 363(f) of the Bankruptcy Code.

43. Thus, Debtor requests that this Court authorize Debtor to provide Stalking Horse Bid Protections to any designated Stalking Horse Bidder subject to the terms and conditions set forth in the Bidding Procedures.

44. Section 363(f) of the Bankruptcy Code permits Debtor to sell assets free and clear of all liens, claims, interests, charges, and encumbrances (with any such liens, claims, interests, charges, and encumbrances attaching to the net proceeds of the sale with the same rights and priorities therein as in the sold assets). As section 363(f) is stated in the disjunctive, when proceeding pursuant to section 363(f), it is only necessary to meet one of the five conditions of section 363(f). *See In re Kellstrom Indus., Inc.*, 282 B.R. 787, 793 (Bankr. D. Del. 2002) ("Section 363(f) is written in the disjunctive, not the conjunctive, and if any of the five conditions are met, Debtor has the authority to conduct the sale free and clear of all liens."); *Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (same).

45. Debtor intends to demonstrate at the Sale Hearing that it has satisfied section 363(f) of the Bankruptcy Code with respect to the sale free and clear of any interests in Debtor's property.

I. Assumption and Assignment of Assigned Contracts Should Be Approved.

46. Section 365(a) of the Bankruptcy Code provides that a debtor in possession "subject to the court's approval, may assume or reject any executory contract or unexpired

1 lease of debtor.” 11 U.S.C. § 365(a). Courts employ the business judgment standard in
2 determining whether to approve a debtor’s decision to assume or reject an executory
3 contract or unexpired lease. *See, e.g., In re Market Square Inn, Inc.*, 978 F.2d 116, 121 (3d
4 Cir. 1992) (assumption or rejection of a lease “will be a matter of business judgment by
5 the bankruptcy court”); *In re HQ Global Holdings, Inc.*, 290 B.R. 507, 511 (Bankr. D. Del.
6 2003) (finding that a debtor’s decision to assume or reject executory contract is governed
7 by business judgment standard and may only be overturned if decision is product of bad
8 faith, whim, or caprice). The “business judgment” test in this context only requires that a
9 debtor demonstrate that assumption or rejection of an executory contract or unexpired lease
10 benefits the estate. *See Sharon Steel Corp. v. Nat’l Fuel Gas Distrib. Corp.*, 872 F.2d 36,
11 40 (3d Cir. 1989).

12 47. Here, the Court should approve the decision to assume and assign the
13 executory contracts and unexpired leases in connection with a Sale as a sound exercise of
14 Debtor’s business judgment. The potential Assigned Contracts include those executory
15 contracts and unexpired leases that are necessary to run the Park, and for which the
16 Successful Bidder will be providing value. It is unlikely that any buyer would want to
17 acquire any of Debtor’s Assets on a going-concern basis unless the Assigned Contracts
18 needed to conduct the business and manage the day-to-day operations were included in the
19 proposed transaction. As such, making the potential Assigned Contracts available for
20 assignment is essential to inducing the best offer for the Assets. Accordingly, Debtor
21 submits that the assumption and assignment of the Assigned Contracts by way of the
22 Assumption and Assignment Procedures described herein should be approved as an
23 exercise of its business judgment.

24 48. Upon finding that a debtor has exercised its business judgment in
25 determining that assuming an executory contract or unexpired lease is in the best interest
26 of its estate, courts must then evaluate whether the assumption meets the requirements of
27 section 365(b) of the Bankruptcy Code that a debtor (i) cure, or provide adequate assurance
28 of prompt cure of, prepetition defaults in the executory contract, (ii) compensate parties for

1 pecuniary losses arising therefrom, and provide adequate assurance of future performance
2 thereunder. 11 U.S.C. § 365. Section 365 “attempts to strike a balance between two
3 sometimes competing interests, the right of the contracting non-debtor to get the
4 performance it bargained for and the right of Debtor’s creditors to get the benefit of
5 Debtor’s bargain.” *Matter of Luce Indus., Inc.*, 8 B.R. 100, 107 (Bankr. S.D.N.Y. 1980).

6 49. Debtor submits that the statutory requirements of section 365(b)(1)(A) of the
7 Bankruptcy Code will be promptly satisfied. The proposed Bidding Procedures Order and
8 Assumption and Assignment Procedures provide a clear process by which parties will be
9 able to resolve disputes over cure amounts or other defaults, which will afford
10 counterparties a meaningful opportunity to challenge Debtor’s proposed cure amounts.
11 Once established, the cure amounts will be paid (either by the Successful Bidder or
12 Debtor). Thus, the Bidding Procedures and Assumption and Assignment Procedures ensure
13 that all defaults will be cured in connection with the assignment of the Assigned Contracts,
14 as required by section 365(b)(1)(A). Similarly, Debtor submits that Counterparties will
15 receive adequate assurance of future performance under the Assigned Contracts, as
16 required by section 365(b)(1)(C) of the Bankruptcy Code. “The phrase ‘adequate assurance
17 of future performance’ adopted from section 2-609(1) of the Uniform Commercial Code,
18 is to be given a practical, pragmatic construction based upon the facts and circumstances
19 of each case.” *Matter of U.L. Radio Corp.*, 19 B.R. 537, 542 (Bankr. S.D.N.Y. 1982).
20 Although no single solution will satisfy every case, the required assurance does not require
21 an absolute guarantee of performance. Among other things, adequate assurance may be
22 given by demonstrating the assignee’s financial health and experience in managing the type
23 of enterprise or property assigned. *Luce Indus.*, 8 B.R. at 107; *see also In re Great Atl. &*
24 *Pac. Tea Co., Inc.*, 472 B.R. 666, 674 (S.D.N.Y. 2012) (“A debtor need not provide ‘an
25 absolute guarantee of performance.’”).

26 50. Debtor intends to demonstrate at the Sale Hearing that the requirements for
27 assumption and assignment of certain Assigned Contracts to the Successful Bidder will be
28 satisfied. As required by the Bidding Procedures, Debtor will evaluate the financial

1 wherewithal of potential bidders before designating such party a Qualified Bidder (*e.g.*,
2 financial credibility, willingness and ability of the interested party to perform under the
3 Assigned Contracts). Further, all counterparties will be provided with notice of the
4 proposed assumption and assignment and will have adequate time and opportunity to object
5 to the assumption or proposed cure amount or otherwise be heard with respect thereto.

6 **RESERVATION OF RIGHTS**

7 51. Nothing contained herein is intended or shall be construed as: (i) an
8 admission as to the amount of, basis for, or validity of any claim against Debtor under the
9 Bankruptcy Code or other applicable non-bankruptcy law; (ii) an impairment or waiver of
10 Debtor's or any other party in interest's right to dispute any claim against, or interest in,
11 Debtor, its property, or its estate on any grounds; (iii) a promise or requirement to pay any
12 claim; (iv) an assumption, adoption, or rejection of any agreement, contract, or lease under
13 section 365 of the Bankruptcy Code; (v) an implication or admission that any particular
14 claim is of a type specified or defined in the Motion, or any order granting the relief
15 requested by the Motion; (vi) an implication, admission, or finding as to the validity,
16 enforceability, or perfection of any interest or encumbrance on the property of Debtor or
17 its estate; (vii) an impairment or waiver of any claims or causes of action which may exist
18 against any entity; or (viii) a waiver of Debtor's or any other party in interest's rights under
19 the Bankruptcy Code or any other applicable law.

20 **NOTICE**

21 52. Debtor has provided notice of this Motion to (i) the U.S. Trustee; (ii) counsel
22 to the Bond Trustee; (iii) counsel to the Committee, (iv) the Internal Revenue Service; (v)
23 the United States Securities and Exchange Commission; (vi) all parties that have requested
24 or that are required to receive notice pursuant to Bankruptcy Rule 2002; and (vii) all known
25 creditors of Debtor, including its contract counterparties. Debtor submits that, under the
26 circumstances, no other or further notice is required.

1 **WHEREFORE**, Debtor respectfully requests that the Court enter the Bidding
2 Procedures Order granting the relief requested in this Motion and such other and further
3 relief as may be just and proper.

4
5 RESPECTFULLY SUBMITTED this 4th day of August, 2023.

6 WARNER ANGLE HALLAM JACKSON &
7 FORMANEK, P.L.C.

8
9 By */s/ Henk Taylor (016321)* _____
10 Henk Taylor

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Exhibit A

Proposed Bidding Procedures Order

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA**

In Re:

LEGACY CARES, INC.,

Debtor.

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

Chapter 11

**ORDER (I) APPROVING BIDDING
PROCEDURES, (II) AUTHORIZING
DEBTOR TO PROVIDE BID
PROTECTIONS, AND (III) GRANTING
RELATED RELIEF**

THIS MATTER came before the Court on ____, 2023 at ____ a.m./p.m. (the “Hearing”), in Phoenix, Arizona, upon the motion [ECF No. __] (the “Motion”)¹ filed by the above-captioned debtor and debtor-in-possession (“Debtor”), requesting the entry of an order: (i) approving the Bidding Procedures; (ii) establishing the Assumption and Assignment Procedures; (iii) approving the form and manner of the Sale Notice, the Assumption Notice, and the Post-Auction Notice; (iv) scheduling dates for the Auction and the Sale Hearing; (v) authorizing Debtor to provide Bid Protections (as defined herein); and (vi) granting related relief, all as more fully set forth in the Motion; and this Court having found that the relief requested in the Motion is in the best interests of Debtor’s estate, its creditors, and other parties in interest; and this Court having found that Debtor’s notice of the Motion and opportunity for a hearing on the Motion were appropriate and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a Hearing before this Court; and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing established just cause for the relief granted herein; and upon all of the

¹ Capitalized terms used but not defined herein have the meanings given to them in the Motion or the Bidding Procedures, as applicable.

1 proceedings had before this Court and at the Hearing; and after due deliberation and
2 sufficient cause appearing therefor,

3 **IT IS HEREBY FOUND AND DETERMINED THAT:**

4 A. The findings and conclusions set forth herein constitute this Court's findings
5 of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy
6 Procedure (the "Bankruptcy Rules"), made applicable to this proceeding pursuant to
7 Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute
8 conclusions of law, they are adopted as such. To the extent any of the following conclusions
9 of law constitute findings of fact, they are adopted as such.

10 B. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and
11 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper
12 in this district and in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

13 C. The statutory bases for the relief sought in the Motion are: (i) sections 105,
14 363, 365, 503, and 507 of title 11 of the United States Code (the "Bankruptcy Code") and
15 (ii) Bankruptcy Rule 6006.

16 D. The legal and factual bases set forth in the Motion establish just cause for the
17 relief granted herein. Entry of this Bidding Procedures Order is in the best interests of
18 Debtor and its estate, creditors, and all other parties-in-interest.

19 E. Debtor's notice of the Motion, the Hearing, and the proposed entry of this
20 Bidding Procedures Order was adequate and sufficient under the circumstances of this
21 chapter 11 case, and such notice complied with all applicable requirements of the
22 Bankruptcy Code, the Bankruptcy Rules, and the Local Rules. Accordingly, no further
23 notice of the Motion, the Hearing, or this Bidding Procedures Order is necessary or
24 required.

25 F. Debtor has demonstrated a sound business justification for this Court to grant
26 the relief requested in the Motion, including, without limitation, to (i) approve the Bidding
27 Procedures; (ii) establish the Assumption and Assignment Procedures; (iii) approve the
28 form and manner of notice of all procedures and protections attached hereto; (iv) schedule

1 dates for the Auction and Sale Hearing; (v) authorize Debtor to provide the Stalking Horse
2 Bid Protections in accordance with the terms of this Bidding Procedures Order; and (vi)
3 grant related relief as set forth herein. Such sound business justification, which was set
4 forth in the Motion and on the record at the Hearing, among other things, forms the basis
5 for the findings of fact and conclusions of law set forth herein.

6 G. Under the circumstances, the Bidding Procedures, substantially in the form
7 attached as Exhibit 1 hereto, are fair, reasonable, and appropriate and designed to
8 maximize the value of Debtor's assets and estate for the benefit of all stakeholders.

9 H. The Sale Notice, substantially in the form attached as Exhibit 2 hereto, is
10 appropriate and reasonably calculated to provide all interested parties with timely and
11 proper notice of, among other things, (i) the proposed sale of the Assets, (ii) the Bidding
12 Procedures, (iii) the date, time, and place of the Auction (if one is held), (iv) the Sale
13 Objection Deadline, (v) and the Sale Hearing, and no other or further notice is required.

14 I. The Assumption Notice, substantially in the form attached as Exhibit 3
15 hereto, is appropriate and reasonably calculated to provide all interested parties with timely
16 and proper notice of (i) the potential assumption and assignment of the Assigned Contracts
17 in connection with a sale of the Assets and the related Cure Amounts, and (ii) the relevant
18 deadlines and other requirements for objecting thereto, and no other or further notice is
19 required.

20 J. The Post-Auction Notice, substantially in the form attached as Exhibit 4
21 hereto, is appropriate and reasonably calculated to provide all interested parties with timely
22 and proper notice of any Successful Bid and Back-Up Bid, and no other or further notice
23 is required.

24 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

25 1. The Motion is **GRANTED** to the extent set forth herein.

26 2. Except as explicitly provided herein to the contrary, all objections to the
27 Motion or the relief requested therein that have not been withdrawn, waived, or settled, and
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all reservations of rights included therein, are overruled and denied on the merits with prejudice.

Sale Process Timeline

3. Debtor is authorized to take any and all actions reasonably necessary or appropriate to implement the Bidding Procedures in accordance with the timeline set forth in the Bidding Procedures attached as **Exhibit 1** hereto; *provided*, that Debtor may extend such dates in its reasonable discretion, and in consultation with the Consultation Parties.²

4. The failure by a party to timely file an objection in accordance with this Bidding Procedures Order shall forever bar such party from asserting any objection to the Motion, entry of an order approving a Sale, consummation of a Sale, and the assumption and assignment of contracts and leases to the Successful Bidder in connection with the Sale, and shall be deemed to constitute any such party's consent to entry of the applicable order, assumption, assignment, consummation of the Transaction and all other transactions related thereto; *provided*, that notwithstanding the anything to the contrary herein, any deadline to object to any chapter 11 plan proposed in this case (including any plan incorporating a Sale) shall be established by separate order.

The Bidding Procedures

5. The Bidding Procedures, substantially in the form attached hereto as **Exhibit 1**, are incorporated herein and approved in their entirety. The Bidding Procedures shall govern all Bids relating to any proposed Sale. Debtor is authorized to take any and all

²Each "Consultation Party," and collectively, the "Consultation Parties" means: (i) UMB Bank, N.A., in its capacity as trustee for certain bondholders (the "Bond Trustee"), and the Bond Trustee's counsel and financial advisor; and (ii) counsel and any financial advisor to the Committee (as defined herein); *provided*, that no person or entity that constitutes a Potential Bidder (as defined in the Bidding Procedures), an Acceptable Bidder (as defined in the Bidding Procedures), a Qualified Bidder (as defined herein), a Stalking Horse Bidder (as defined herein), a Successful Bidder (as defined herein), or a Back-Up Bidder (as defined in the Bidding Procedures) (as determined by Debtor, in their reasonable discretion and in consultation with the Committee) shall be deemed a Consultation Party for so long as such person constitutes a Potential Bidder, an Acceptable Bidder, a Qualified Bidder, a Stalking Horse Bidder, a Successful Bidder, or a Back-Up Bidder.

1 actions reasonably necessary or appropriate to implement the Bidding Procedures in
2 accordance therewith. The failure to specifically include or reference a particular provision
3 of the Bidding Procedures in this Bidding Procedures Order shall not diminish or impair
4 the effectiveness of any such provision. Debtor reserves the right, and is authorized
5 (following consultation with the Consultation Parties and upon the prior written consent of
6 the Bond Trustee), to modify the Bidding Procedures in accordance with the Bidding
7 Procedures and this Bidding Procedures Order.

8 6. Except as otherwise provided in the Bidding Procedures with respect to a
9 Stalking Horse Bidder, no person or entity shall receive any break-up fee, expense
10 reimbursement or other similar fees or payment, and by submitting a Bid, each Bidder is
11 deemed to have waived its right to request or to file with this Court any request for expense
12 reimbursement or any fee of any nature solely in connection with such Bid, whether by
13 virtue of section 503(b) of the Bankruptcy Code or otherwise.

14 7. Any deposit provided by a Qualified Bidder shall be held in a segregated
15 account by Debtor or their agent in accordance with the Bidding Procedures, and shall not
16 become property of Debtor's bankruptcy estate unless and until released to Debtor pursuant
17 to the terms of the Stalking Horse Agreement or order of this Court.

18 8. Debtor may, following consultation with the Consultation Parties and upon
19 the prior written consent of the Bond Trustee: (i) determine which Qualified Bid is the
20 highest or otherwise best Bid in accordance with the Bidding Procedures; (ii) at any time
21 prior to entry of an order of this Court approving the Successful Bid, reject any Bid (other
22 than a Stalking Horse Bid or the Bond Trustee's credit bid that is a Qualified Bid) that
23 Debtor determines is (a) inadequate or insufficient, (b) not in conformity with the
24 requirements of the Bankruptcy Code or the Bidding Procedures, or (c) contrary to the best
25 interests of Debtor's estate and its creditors; and (iii) prior to conclusion of any Auction,
26 impose such other terms and conditions upon Qualified Bidders as Debtor determines to
27 be in the best interests of Debtor's estate in this chapter 11 case.
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1 9. To the extent any Bid contemplates the acquisition of assets owned by a non-
2 debtor, which are not encumbered by the Bond Trustee's liens and/or security interests, the
3 Committee and the Bond Trustee reserve their rights to contest the allocation of the
4 proceeds of any such resulting sale.

5 **Stalking Horse Bidder and Bid Protections**

6 10. Debtor, following consultation with the Consultation Parties and upon the
7 prior written consent of the Bond Trustee, is authorized, but not directed, to: (a) select a
8 potential bidder to act as Stalking Horse Bidder(s), and enter into a Stalking Horse
9 Agreement with each such Stalking Horse Bidder; and (b) provide (i) a break-up fee of not
10 more than 3% of the cash purchase price of the Stalking Horse Bidder's initial bid; and (ii)
11 expense reimbursement for all reasonable and documented out-of-pocket expenses of the
12 Stalking Horse Bidder incurred for due diligence, which shall not exceed 2% the cash
13 purchase price of the Stalking Horse Bidder's initial bid (collectively, "Stalking Horse Bid
14 Protections").

15 11. No later than **September 11, 2023 at 11:59 p.m.** (Prevailing Arizona Time),
16 Debtor shall file with this Court a notice of Debtor's selection of the Stalking Horse Bidder
17 and the Stalking Horse Bid (the "Stalking Horse Selection Notice"), which Stalking Horse
18 Selection Notice shall describe any Stalking Horse Bid Protections granted in connection
19 with the Stalking Horse Bid and attach (i) a copy of a Stalking Horse Agreement that has
20 been executed by, and is binding upon, the Stalking Horse Bidder and (ii) a proposed form
21 of order authorizing and approving Debtor's entry into and performance under the Stalking
22 Horse Agreement (subject to the submission of higher or otherwise better offers for the
23 Assets) and any Bid Protections being granted to the Stalking Horse Bidder (the "Stalking
24 Horse Order").

25 12. Parties in interest shall file objections (a "Stalking Horse Objection") to the
26 designation of the Stalking Horse Bidder or approval of the proposed Bid Protections, no
27 later than **September 15, 2023 at 4:00 p.m.** (Prevailing Arizona Time) (the "Stalking Horse
28 Objection Deadline"). If one or more Stalking Horse Objections are timely filed, a hearing

1 shall be held before this Court on or around September 13, 2023 to consider the relief
2 requested in the proposed Stalking Horse Order. If no Stalking Horse Objections are
3 received, or if all such Stalking Horse Objections are resolved consensually, the proposed
4 Stalking Horse Order may be entered without a hearing, unless otherwise required by the
5 Stalking Horse Bidder.

6 13. The bondholders under Debtor's prepetition secured credit documents and
7 debtor-in-possession credit facility ("Bondholder Credit"), through the Bond Trustee, shall
8 have the right to credit bid all or any portion of their allowed secured claims in any Sale
9 constituting the collateral of such lenders under the Bondholder Credit at the Auction to
10 the extent provided in section 363(k) of the Bankruptcy Code or other applicable law, in
11 accordance with the applicable provisions of the documents governing such debt
12 obligations.¹ In order to be deemed a "Qualified Bid", any such credit bid by the Bond
13 Trustee must: (a) bid first, before any credit bid of pre-petition debt, the outstanding
14 balance due under the DIP credit facility, (b) contain a cash component sufficient to pay
15 the aggregate amount of Debtor's accrued, unpaid administrative expenses and any other
16 claims requiring payment in full in cash; (c) contain a cash component or make other
17 provision sufficient to pay or otherwise satisfy any applicable cure costs for any executory
18 contracts or unexpired leases to be assumed and assigned to the Bond Trustee under the
19 credit bid; and (d) contain a cash component sufficient to (i) pay the amount of the Stalking
20 Horse Protections and (ii) pay for any Assets that are unencumbered by first priority
21 perfected liens in favor of the Bond Trustee. Further, if the Bond Trustee submits a Credit
22 Bid, it shall immediately no longer have any consultation or related information rights
23 otherwise set forth herein and shall no longer be a "Consultation Party" as defined in the
24 Motion.

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26
27 ¹ The right of all parties who are presently asserting, or who may still assert, a
28 "Challenge" to the amount, validity, extent, priority, or perfection of the Bond Trustee's pre-
petition liens and security interests as allowed in the final order approving the DIP Facility [ECF
No. 216] to object to the amount and validity of any credit bid by the Bond Trustee is reserved.

Notice Procedures

A. Sale Notice

14. The form of Sale Notice, substantially in the form attached as **Exhibit 2** hereto, is approved. Debtor is authorized to make non-substantive or immaterial changes to the Sale Notice or to fill in missing information, in each case to the extent not inconsistent with this Bidding Procedures Order, prior to service or publication of the Sale Notice.

15. On or before three business days after the entry of this Bidding Procedures Order, Debtor will file the Sale Notice with this Court and shall serve the Sale Notice by first-class mail, postage prepaid, or, for those parties who have consented to receive notice by the ECF system, by ECF, upon: (i) to the best knowledge of Debtor's management, all entities that have expressed written interest in a Sale with respect to all or substantially all of the Assets within the past six months; (ii) all entities known to have asserted any lien, claim, interest, or encumbrance in or upon any of the Assets; (iii) counsel to the Committee; (iv) the Bond Trustee; (v) counsel to the Bond Trustee; (vi) the U.S. Trustee; (vii) all federal, state, and local regulatory or taxing authorities or recording offices which have a reasonably known interest in the relief granted herein; (viii) the Internal Revenue Service; (ix) all parties entitled to notice pursuant to Bankruptcy Rule 2002; and (x) all known creditors of Debtor, including its contract counterparties; *provided, however*, that to the extent email addresses are available for any of the foregoing parties, such parties may be served by email.

16. Debtor is authorized to file under seal that part of the service list providing the names and mailing addresses for potential bidders previously identified or otherwise known to Debtor that are served with the Sale Notice and this Bidding Procedures Order.

17. Service of the Sale Notice as described herein shall be deemed good and sufficient notice of the Sale with respect to known interested parties.

18. Debtor is authorized and directed to publish the Sale Notice, as modified for publication, in either *The Wall Street Journal* or *USA Today* within eight business days after the entry of this Bidding Procedures Order. In addition, Debtor is authorized, but not directed, to (i) publish the Sale Notice in additional publications as Debtor deems appropriate, and (ii) cause the Sale Notice to be posted on the Case Website.

19. Publication of the Sale Notice as described herein shall be good and sufficient notice of the Transaction with respect to all unknown creditors or other parties.

B. Assumption Notice

20. The Assumption Notice, substantially in the form attached as **Exhibit 3** hereto, is approved, and Debtor is authorized to make non-substantive or immaterial changes to the Assumption Notice or to fill in missing information, in each case to the extent not inconsistent with this Bidding Procedures Order, prior to service of the Assumption Notice.

21. Service of the Assumption Notice as provided herein shall be deemed good and sufficient notice of, among other things, the proposed assumption and assignment of the Assigned Contracts, the applicable Cure Amounts related thereto, and the procedures for objecting thereto, and no other or further notice is necessary.

C. Post-Auction Notice

22. The form of Post-Auction Notice, substantially in the form attached as **Exhibit 4** hereto, is approved, and Debtor is authorized to make non-substantive or immaterial changes to the Post-Auction Notice or to fill in missing information, in each case to the extent not inconsistent with this Bidding Procedures Order, prior to service of the Post-Auction Notice.

23. As soon as practicable after the Auction (if any) and in any event no later than 24 hours following the closing of the Auction, Debtor shall file on the Court's docket and serve, by overnight delivery, on the Counterparties (as defined below) the Post-Auction Notice identifying any Successful Bidder and Back-Up Bidder.

24. The filing and service of the Post-Auction Notice as described herein shall be deemed good and sufficient notice of Debtor's selection of the Successful Bid and Back-Up Bid, and the deadlines and other requirements for objecting to the same, the conduct of the Auction, and to the potential assumption and assignment of the Assigned Contracts to the Successful Bidder and/or Back-Up Bidder, and no other or further notice is required.

The Auction

25. If Debtor receives more than one Qualified Bid by the Bid Deadline, an Auction shall take place on **September 27, 2023 at 10:00 a.m. (Prevailing Arizona Time)**, or such later time Debtor reasonably determines, following consultation with the Consultation Parties and upon the prior written consent of the Bond Trustee, at: (i) the offices of Lewis Roca Rothgerber Christie LLP, 201 East Washington Street, Suite 1200, Phoenix, Arizona 85004; (ii) telephonically; or (iii) by video via Zoom, or other place (or by such other electronic means) as Debtor reasonably determines; *provided*, that Debtor timely notify all Qualified Bidders and other invitees of the time and place of the Auction in accordance with the Bidding Procedures, and for the avoidance of any doubt, the Auction is subject to the right of Debtor, in the reasonable exercise of its business judgment, in consultation with the Consultation Parties, to adjourn the Auction to a later date. The Auction shall be conducted in accordance with the Bidding Procedures.

26. In the event no Auction is to be held, Debtor shall file a notice with this Court not later than **September 24, 2023 at 4:00 p.m. (Prevailing Arizona Time)** stating that there will be no Auction.

Assumption and Assignment Procedures

27. The proposed Assumption and Assignment Procedures, and the payment by Debtor or the Successful Bidder, as applicable, of any related Cure Amounts, as set forth in the Motion and in this Bidding Procedures Order, are approved.

28. The Assumption and Assignment Procedures are as follows:

- i. On or prior to **September 5, 2023** (the "Assumption Notice Deadline"), Debtor shall file with this Court, post on the Case Website

and serve on each counterparty (each, a “Counterparty,” and collectively, the “Counterparties”) to an Assigned Contract, the Assumption Notice.

- ii. The Assumption Notice shall include, without limitation, a list of Assigned Contracts (the “Assigned Contract List”) that may be assumed and assigned in connection with a Transaction and the Cure Amount, if any, that Debtor believes is required to be paid to the applicable Counterparty under sections 365(b)(1)(A) and (B) of the Bankruptcy Code for each of the Assigned Contracts. If no Cure Amount is listed on the Assigned Contracts List for a particular Assigned Contract, Debtor’s asserted Cure Amount for such Assigned Contract shall be deemed to be \$0.00. If a Counterparty objects to the Cure Amount or the assumption of its Assigned Contract on any basis *other than* the ability of the Successful Bidder to provide adequate assurance of future performance (an “Adequate Assurance Objection”), the Counterparty must file with this Court and serve on the Objection Recipients (as defined herein) a written objection (a “Contract Objection”) on or before **September 15, 2023 at 4:00 p.m. (Prevailing Arizona Time)** (the “Contract Objection Deadline”).
- iii. Any Contract Objection shall: (i) be in writing; (ii) comply with the Bankruptcy Rules and Local Rules; (iii) be filed with the Clerk of the Court on or before the Contract Objection Deadline, except as otherwise set forth below with respect to Assigned Contracts added to the Assigned Contracts List (or for which the proposed Cure Amount is modified) after the Assumption Notice Deadline; (iv) state with specificity the grounds for such objection, including, without limitation, the fully liquidated cure amount and the legal and factual bases for any unliquidated cure amount that the Counterparty believes

1 is required to be paid under sections 365(b)(1)(A) and (B) of the
2 Bankruptcy Code for the applicable Assigned Contract, along with the
3 specific nature and dates of any alleged defaults, the pecuniary losses,
4 if any, resulting therefrom, and the conditions giving rise thereto; and
5 (v) be served upon the Objection Recipients.

6 iv. Debtor reserves the right, and is authorized to (i) add previously
7 omitted Assigned Contracts to the Assigned Contracts List as
8 executory contracts or unexpired leases that may be assumed and
9 assigned to a Successful Bidder in accordance with the definitive
10 agreement for a Sale Transaction, (ii) remove Assigned Contracts
11 from the Assigned Contract List, or (iii) modify the previously stated
12 Cure Amount associated with any Assigned Contract; *provided*, that
13 up until the closing of the Sale Transaction, Debtor may seek to reject
14 any Assigned Contract included on the Assigned Contracts List if
15 such Assigned Contract is not ultimately assigned to the Successful
16 Bidder.

17 v. If, after the Assumption Notice Deadline (i) additional executory
18 contracts or unexpired leases of Debtor are determined to be Assigned
19 Contracts in connection with such Sale Transaction, or (ii) any Cure
20 Amounts associated with Assigned Contracts are modified, as soon as
21 practicable thereafter, Debtor shall file with this Court and serve, by
22 overnight delivery, on the applicable Counterparties a supplemental
23 or revised Assumption Notice, and such Counterparties shall file any
24 Contract Objections not later than (a) the Contract Objection Deadline
25 if such Assumption Notice was filed and served at least ten days prior
26 to the Contract Objection Deadline, and (b) seven days from the date
27 such supplemental or revised Assumption Notice was filed and served
28 in accordance with the above, if such supplemental or revised

1 Assumption Notice was filed and served less than ten days prior to the
2 Contract Objection Deadline. If a supplemental or revised
3 Assumption Notice was filed and served less than seven days prior to
4 the commencement of the Sale Hearing and an objection is filed that
5 is not otherwise consensually resolved, then such objection will not
6 be adjudicated at the Sale Hearing and will be set for a subsequent
7 hearing.

8 vi. As soon as practicable after the Auction and in any event no later than
9 24 hours following the closing of the Auction, Debtor shall file with
10 this Court and serve, by overnight delivery, on the Counterparties the
11 Post-Auction Notice substantially in the form attached as **Exhibit 4**
12 here to, identifying any Successful Bidder and Backup Bidder, and the
13 Counterparties shall file any Adequate Assurance Objections not later
14 than 4:00 p.m. (Prevailing Arizona Time) on the date that is three
15 business days prior to the commencement of the Sale Hearing (such
16 deadline, the “Post-Auction Sale Objection Deadline”), or, if
17 applicable, any later deadline established pursuant to subparagraph
18 28(e) above.

19 vii. At the Sale Hearing, Debtor will seek Court approval of the
20 assumption and assignment to the Successful Bidder of only those
21 Assigned Contracts that have been selected by the Successful Bidder
22 to be assumed and assigned (collectively, the “Selected Assigned
23 Contracts”). The inclusion of an Assigned Contract on an Assumption
24 Notice or the identification of such Assigned Contract as a Selected
25 Assigned Contract will not (i) obligate Debtor to assume any
26 Assigned Contract listed thereon nor the Successful Bidder to take
27 assignment of such Assigned Contract, or (ii) constitute any
28 admission or agreement of Debtor that such Assigned Contract is an

1 executory contract or unexpired lease. Debtor reserves any and all
2 rights with respect to any Assigned Contracts that are not ultimately
3 designated as Selected Assigned Contracts, and reserve the right to
4 reject any Assigned Contract identified as a Selected Assigned
5 Contract if such Assigned Contract is not ultimately assigned to the
6 Successful Bidder.

- 7 viii. If no Contract Objection or Adequate Assurance Objection, as
8 applicable, is timely received with respect to a Selected Assigned
9 Contract: (i) the Counterparty to such Selected Assigned Contract
10 shall be deemed to have consented to the assumption by Debtor and
11 assignment to Successful Bidder of the Selected Assigned Contract,
12 and be forever barred from asserting any objection with regard to such
13 assumption or assumption and assignment (including, without
14 limitation, with respect to adequate assurance of future performance
15 by the Successful Bidder); (ii) any and all defaults under the Selected
16 Assigned Contract and any and all pecuniary losses related thereto
17 shall be deemed cured and compensated pursuant to sections
18 365(b)(1)(A) and (B) of the Bankruptcy Code upon payment of the
19 Cure Amount set forth in the most recent Assumption Notice for such
20 Selected Assigned Contract; and (iii) the Cure Amount set forth in the
21 most recent Assumption Notice for such Selected Assigned Contract
22 shall be controlling, notwithstanding anything to the contrary in such
23 Selected Assigned Contract, or any other related document, and the
24 Counterparty shall be deemed to have consented to the Cure Amount
25 and shall be forever barred from asserting any other claims related to
26 such Selected Assigned Contract against Debtor and its estate, the
27 Successful Bidder, or the property of any of them, that existed prior
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1 to the entry of the order resolving the Contract Objections and the Sale
2 Order.

3 29. To the extent that the parties are unable to consensually resolve any Contract
4 Objection prior to the commencement of the Sale Hearing, including, without limitation,
5 any dispute with respect to the Cure Amount required to be paid to the applicable
6 Counterparty under sections 365(b)(1)(A) and (B) of the Bankruptcy Code (any such
7 dispute, a "Cure Dispute"), such Contract Objection will be adjudicated at the Sale Hearing
8 or at such other date and time as may be fixed by the Court; *provided, however*, that if the
9 Contract Objection relates solely to a Cure Dispute, the Selected Assigned Contract may
10 be assumed by Debtor and assigned to the Successful Bidder so long as the cure amount
11 the Counterparty asserts is required to be paid under sections 365(b)(1)(A) and (B) of the
12 Bankruptcy Code (or such lower amount as may be agreed to by the Counterparty) is
13 deposited in a segregated account by Debtor pending the Court's adjudication of the Cure
14 Dispute or the parties' consensual resolution of the Cure Dispute. Debtor and the
15 Successful Bidder reserve their rights to remove an Assigned Contract from the Assigned
16 Contract List or from any list of Selected Assigned Contracts based on the outcome of a
17 Cure Dispute held at a hearing after the Sale Hearing or for any other reason.

18 **Sale Hearing**

19 30. A Sale Hearing to approve any Sale Transaction shall be held on or around
20 **October 3, 2023 at 1:30 p.m. (Prevailing Arizona Time)**, and may be adjourned or
21 rescheduled by Debtor from time to time in accordance with the Bidding Procedures.

22 31. Except as otherwise provided herein, any objection to any Transaction (a
23 "Sale Objection") must be filed no later than the Sale Objection Deadline. Any and all such
24 objections must be served on the Objection Recipients and counsel to any Successful
25 Bidder, if known on the Sale Objection Deadline; *provided*, that, any or objections to the
26 outcome and conduct of the Auction, the designation or Court-approval of the Successful
27 Bid or Back-Up Bid, or Adequate Assurance Objections must be filed no later than 4:00
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1 p.m. (Prevailing Arizona Time) on the date that is three business days prior to the
2 commencement of the Sale Hearing.

3 32. All replies to any objections must be filed by 4:30 p.m. on the date that is
4 two business days prior to the commencement of the Sale Hearing (the “Reply Deadline”).

5 **Other Relief**

6 Except as otherwise provided herein, any objection provided hereunder must (i) be
7 in writing, (ii) comply with the applicable provisions of the Bankruptcy Rules and Local
8 Rules, (iii) state with particularity the legal and factual basis for the objection and the
9 specific grounds therefor, and (iv) be filed with this Court and served so actually received
10 no later than the applicable objection deadline by the following parties (collectively, the
11 “Objection Recipients”):

- 12 i. Debtor, c/o Legacy Cares, Inc., 6321 South Ellsworth Road, Suite
13 146, Mesa, Arizona 85212 (Attn: Douglas Moss
14 (douglasm@legacycaresinc.com);
- 15 ii. counsel for Debtor: Warner Angle Hallam Jackson & Formanek,
16 PLC, 2555 E. Camelback Road, Suite 800, Phoenix, Arizona
17 85016 (Attn: Henk Taylor (htaylor@warnerangle.com);
- 18 iii. the Bond Trustee, UMB Bank, N.A., 120 South Sixth Street, Suite
19 1400, Minneapolis, Minnesota 55402 (Attn: Michael Slade
20 (Michael.Slade@umb.com));
- 21 iv. counsel to the Bond Trustee, Spencer Fane LLP, 2415 E.
22 Camelback Road, Suite 600, Phoenix, Arizona 85016 (Attn: Peter
23 Riggs (priggs@spencerfane.com); Jessica Gale
24 (jgale@spencerfane.com); and Zachary Fairlie
25 (zfairlie@spencerfane.com));
- 26 v. the Office of the United States Trustee, 230 N. 1st Avenue, Suite
27 204, Phoenix, Arizona 85003 (Attn: Jennifer Giaimo
28 (Jennifer.a.giaimo@usdoj.gov); and

vi. counsel to the Committee: Pachulski Stang Ziehl & Jones LLP, 780 Third Avenue, 34th Floor, New York, New York 10017 (Attn: Bradford Sandler (bsandler@pszjlaw.com); Jordan Kroop (jkroop@pszjlaw.com); and Cia Mackle (cmackle@pszjlaw.com)).

33. All persons and entities that participate in the bidding process or the Auction shall be deemed to have knowingly and voluntarily submitted to the exclusive jurisdiction of this Court with respect to all matters related to the terms and conditions of the transfer of Assets, the Auction, and any transaction contemplated herein.

34. Notwithstanding any provision of the Bankruptcy Rules or the Local Rules stating to the contrary, the terms and conditions of this Bidding Procedures Order shall be immediately effective and enforceable upon its entry and no automatic stay shall apply to this Bidding Procedures Order.

35. All time periods set forth in this Bidding Procedures Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

36. Debtor is authorized to take all actions necessary to effectuate the relief granted pursuant to this Bidding Procedures Order in accordance with the Motion.

37. In the event there is any inconsistency between the Motion or the Bidding Procedures, on the one hand, and this Bidding Procedures Order, on the other, the terms of this Bidding Procedures Order shall govern. In the event of any inconsistency between the Motion and the Bidding Procedures, the Bidding Procedures shall govern.

38. This Court shall retain jurisdiction over any matters related to or arising from the implementation of this Bidding Procedures Order. All matters arising from or related to the implementation of this Bidding Procedures Order may be brought before this Court as a contested matter, without the necessity of commencing an adversary proceeding.

DATED AND SIGNED ABOVE.

EXHIBIT 1

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In Re:

LEGACY CARES, INC.,

Debtor.

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

Chapter 11

BIDDING PROCEDURES

On May 1, 2023 (the “Petition Date”), the above-captioned debtor and debtor in possession (“Debtor”) filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), in the United States Bankruptcy Court for the District of Arizona (the “Bankruptcy Court”).

On____, 2023, the Bankruptcy Court entered an order [ECF No. [____]] (the “Bidding Procedures Order”)¹ approving, among other things, these bidding procedures (the “Bidding Procedures”).

These Bidding Procedures set forth the process by which Debtor is authorized to solicit and select the highest or otherwise best bid or bids (each, a “Bid”) for Debtor’s assets (including, for the avoidance of doubt, rights under leases or other contracts, certain causes of action, intellectual property rights and other intangible assets) (the “Assets”),² culminating in an auction (the “Auction”) if more than one Qualified Bid (as defined

¹ Capitalized terms used but not defined herein have the meanings given to them in Debtor’s Motion for an Order (I) Approving (A) Bidding Procedures for the Sale of Substantially All of Debtor’s Assets, (B) Procedures for Debtor’s Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (C) the Form and Manner of Notice of the Sale Hearing, Assumption Procedures, and Auction Results, (D) Dates for an Auction and Sale Hearing, (E) the Sale of Substantially All of Debtor’s Assets Free and Clear of All Claims, Liens, Liabilities, Rights, Interests and Encumbrances, and (F) Debtor’s Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (II) Authorizing Debtor to Provide Bid Protections, and (III) Granting Related Relief.

² A Bid may also contemplate the acquisition of assets owned by non-Debtors.

herein) is received. The sale is contemplated to be implemented through a sale or sales under section 363(b) of the Bankruptcy Code pursuant to the terms and conditions of an asset purchase agreement (a “Sale”).

Summary of Key Dates

The key dates for Debtor’s sale process are as follows. Such dates may be extended by Debtor, in its reasonable discretion following consultation with the Consultation Parties and upon the prior written consent of the Bond Trustee.³

<u>Event</u>	<u>Date</u> <u>4</u>
Deadline to serve the Bidding Procedures Order	Within three business days after entry of the Bidding Procedures Order
Deadline to file and serve initial Assumption Notice Deadline to file proposed Sale Order	[-----], 2023
Deadline to file the Stalking Horse Selection Notice	September 11, 2023 at 11:59 p.m.

³Each “Consultation Party,” and collectively, the “Consultation Parties” means: (i) UMB Bank, N.A., in its capacity as trustee for certain bondholders (the “Bond Trustee”), and the Bond Trustee’s counsel and financial advisor; and (ii) counsel and any financial advisor to the Committee (as defined herein); *provided*, that no person or entity that constitutes a Potential Bidder (as defined in the Bidding Procedures), an Acceptable Bidder (as defined in the Bidding Procedures), a Qualified Bidder (as defined herein), a Stalking Horse Bidder (as defined herein), a Successful Bidder (as defined herein), or a Back-Up Bidder (as defined in the Bidding Procedures) (as determined by Debtor, in their reasonable discretion and in consultation with the Committee) shall be deemed a Consultation Party for so long as such person constitutes a Potential Bidder, an Acceptable Bidder, a Qualified Bidder, a Stalking Horse Bidder, a Successful Bidder, or a Back-Up Bidder.

⁴ All times are listed in Prevailing Arizona Time.

<u>Event</u>	<u>Date</u> <u>4</u>
Deadline to object to (i) designation of Stalking Horse Bidder; (ii) Contract Objection Deadline (other than any objections based on adequate assurance of future performance, or objections subject to a later deadline pursuant to the Assumption and Assignment Procedures); and (iii) Sale Objection Deadline (other than any objection based on the manner in which the Auction was conducted or the designation of the Successful Bid or Back-Up Bid)	September 15, 2023 at 4:00 p.m.
Bid Deadline	September 18, 2023 at 12:00 p.m.
Auction (if necessary)	September 27, 2023 at 10:00 a.m.
Deadline to file Post-Auction Notice	Promptly following the conclusion of the Auction, but in no event later than 24 hours following the conclusion of the Auction
Deadline to object to (i) conduct of the Auction, (ii) the identity of the Successful Bidder or Back-Up Bidder, and (iii) adequate assurance of future performance by the Successful Bidder or Back-Up Bidder (such deadline, the “ <u>Post-Auction Sale Objection Deadline</u> ”)	4:00 p.m. on the date that is three business days prior to the Sale Hearing
Deadline for Debtor to file a reply to objections to sale/assumption objections (and any other filings by parties in interest in support of the proposed Transaction)	4:30 p.m. on the date that is two business days prior to the Sale Hearing
Sale Hearing	October 3, 2023

A. Purchase Agreement

Debtor is soliciting and shall select the highest or otherwise best Bid for Debtor's Assets.

Debtor has prepared a form of Asset Purchase Agreement (together with all ancillary documents and agreements, the “APA”). Debtor intends to provide copies of the form APA to Acceptable Bidders and will also make such form APA available in the Data Room (as defined herein).

B. Due Diligence

(i) Acceptable Bidder Designation

For purposes of these Bidding Procedures, a “Potential Bidder” shall refer to any person or entity interested in submitting a Bid.

A Potential Bidder that (i) executes a confidentiality agreement on customary terms that are reasonably acceptable to Debtor (a “Confidentiality Agreement”),⁵ (ii) provides sufficient evidence, as reasonably determined by Debtor, in consultation with the Consultation Parties, that the Potential Bidder intends to obtain due diligence and participate in the sale process for a bona fide purpose consistent with these Bidding Procedures and not for any other purpose, and (iii) provides evidence acceptable to Debtor of such Potential Bidder’s financial capability to consummate the Transaction, the adequacy of which will be assessed by Debtor (with the assistance of its advisors) in consultation with the Consultation Parties (any such Potential Bidder being referred to as an “Acceptable Bidder”), will be eligible to receive due diligence materials and access to certain non-public information regarding the Assets. **Neither Debtor nor its representatives will be obligated to furnish information of any kind whatsoever to any person that is not determined to be an Acceptable Bidder.**

Each Acceptable Bidder shall comply with all reasonable requests for additional information and due diligence access requested by Debtor or its advisors regarding such bidder’s (i) qualification as an Acceptable Bidder, (ii) the terms of the Potential Bidder’s Bid, or (iii) the ability of the Potential Bidder to consummate the Sale. Failure by a

⁵ Potential Bidders may obtain a form of Confidentiality Agreement by contacting Debtor’s advisors listed below.

Potential Bidder to comply with reasonable requests for additional information and due diligence access may be a basis for Debtor, in consultation with the Consultation Parties, to determine that such bidder does not qualify as an Acceptable Bidder, or that any Bid made by such bidder is not a Qualified Bid.

(ii) Access to Due Diligence

Debtor will provide each Acceptable Bidder with such information as is reasonably contemplated to enable such Acceptable Bidder to make a Bid for the Assets. Debtor will also provide each Acceptable Bidder with reasonable due diligence information as requested by such Acceptable Bidder in writing, as soon as reasonably practicable after such request. Debtor will post substantially all written due diligence provided to any Acceptable Bidder to Debtor's electronic data room (the "Data Room"). Debtor reserves the right, in consultation with the Consultation Parties, to restrict or limit access of any Acceptable Bidder to the Data Room if Debtor determines, based on its reasonable business judgment, that certain information in the Data Room is sensitive, proprietary, or otherwise not appropriate for disclosure to any Acceptable Bidder.

In connection with the provision of due diligence information to Acceptable Bidders, Debtor will not furnish any confidential information relating to Debtor, Debtor's Assets or liabilities, or the Sale to any person except an Acceptable Bidder or such Acceptable Bidder's duly-authorized representatives, in each case, to the extent provided in and subject to the terms of the applicable Confidentiality Agreement.

Debtor and its advisors will coordinate all reasonable requests for additional information and due diligence access from Acceptable Bidders; *provided*, that Debtor may, after consultation with the Consultation Parties, decline to provide such additional information and diligence access to Acceptable Bidders who, in Debtor's reasonable business judgment have not established that such Acceptable Bidders intend in good faith to, or have the capacity to, consummate their Bid.

No conditions relating to the completion of due diligence will be permitted to exist after the Bid Deadline (as defined herein). Following the Bid Deadline, Debtor

1 may, in its reasonable discretion and in consultation with the Consultation Parties,
2 furnish additional non- public information to any Qualified Bidder that submits a
3 Qualified Bid, but shall have no obligation to do so.

4 Each Acceptable Bidder will be deemed to acknowledge and represent that it: (i)
5 either directly or through its advisors has had an opportunity to conduct any and all due
6 diligence regarding Debtor's Assets and liabilities prior to making any Qualified Bid; (ii)
7 has relied solely upon its own or its advisors' independent review, investigation, and/or
8 inspection of any documents and/or the Assets and liabilities in making any Qualified Bid;
9 and (iii) did not rely upon any written or oral statements, representations, promises,
10 warranties, or guaranties whatsoever, whether express, implied, by operation of law, or
11 otherwise regarding Debtor's Assets or liabilities, or the completeness of any information
12 provided in connection therewith, except as expressly stated in these Bidding Procedures
13 or the Acceptable Bidder's proposed asset purchase agreement (including, in the case of
14 any Stalking Horse Bidder, its Stalking Horse Agreement (as defined herein)). Neither
15 Debtor, the Consultation Parties, nor any of their respective employees, officers, directors,
16 affiliates, subsidiaries, representatives, agents, advisors, or professionals are responsible
17 for, and will bear no liability with respect to, any information obtained by Acceptable
18 Bidders in connection with the Transaction.

19 **Debtor has designated Miller Buckfire & Co., LLC to coordinate all reasonable**
20 **requests for additional information and due diligence access.**

21 **Miller Buckfire & Co.**
22 **787 7th Avenue, 5th Floor**
23 **New York, NY 10019**

24 **Email:**

25 **james.doak@millerbuckfire.com**
26 **christine.song@millerbuckfire.com**
27 **IB-ProjectLynx-MB@stifel.com**
28

(iii) **No Communications Among Bidders**

There shall be no communications regarding the Sale between or among any bidders, including any Acceptable Bidder, Qualified Bidder, or Stalking Horse Bidder, unless Debtor, in consultation with the Consultation Parties, has previously authorized such communication in writing. Debtor reserves the right, in its reasonable business judgment, in consultation with the Consultation Parties, to disqualify any bidder that Debtor believes in its reasonable judgement has communicated with another bidder in violation of these Bidding Procedures.

C. Stalking Horse Bidder and Bid Protections

Until September 11, 2023, Debtor shall be authorized in the exercise of its business judgment and following consultation with the Consultation Parties and upon the prior written consent of the Bond Trustee, to: (i) select one or more bidders to act as stalking horse bidder(s) in connection with a Sale Transaction (each, a “Stalking Horse Bidder,” and the bid of a Stalking Horse Bidder a “Stalking Horse Bid”) and enter into an asset purchase agreement with respect to a Sale Transaction with such Stalking Horse Bidder (each, a “Stalking Horse Agreement”) (which shall be binding, non-contingent, and accompanied by a Good Faith Deposit (as defined herein)), and (ii) provide (a) a break-up fee of not more than 3% of the cash purchase price of the Stalking Horse Bidder’s initial bid; and (b) expense reimbursement for all reasonable and documented out-of-pocket expenses of the Stalking Horse Bidder incurred for due diligence, which shall not exceed 2% the cash purchase price of the Stalking Horse Bidder’s initial bid, provided however, that such due diligence materials subject to the expense reimbursement must be made available in the Data Room (as defined in the Bidding Procedures) for access and use by access and use by Acceptable Bidders (collectively, “Stalking Horse Bid Protections”).

No later than September 11, 2023 at 11:59 p.m. (Prevailing Arizona Time), Debtor shall file with the Bankruptcy Court a notice of Debtor’s selection of the Stalking Horse Bidder and the Stalking Horse Bid (the “Stalking Horse Selection Notice”), which

1 Stalking Horse Selection Notice shall describe any Bid Protections granted in connection
2 with the Stalking Horse Bid and attach (i) a copy of a Stalking Horse Agreement that has
3 been executed by, and is binding upon, the Stalking Horse Bidder and (ii) a proposed
4 form of order authorizing and approving Debtor's entry into and performance under the
5 Stalking Horse Agreement (subject to the submission of higher or otherwise better offers
6 for the Assets) and any Bid Protections being granted to the Stalking Horse Bidder (the
7 "Stalking Horse Order").

8 Parties in interest may file objections (a "Stalking Horse Objection") to the
9 designation of the Stalking Horse Bidder or any of the terms of the Stalking Horse
10 Agreement, including to any of the proposed Stalking Horse Bid Protections, no later than
11 September 15, 2023 at 4:00 p.m. (Prevailing Arizona Time) (the "Stalking Horse Objection
12 Deadline"). If one or more Stalking Horse Objections are timely filed, a hearing shall be
13 held before the Bankruptcy Court on September 16, 2023, to consider the relief requested
14 in the proposed Stalking Horse Order. If no Stalking Horse Objections are received, or if
15 all such Stalking Horse Objections are resolved consensually, the proposed Stalking Horse
16 Order may be entered without a hearing, unless otherwise required by the Stalking Horse
17 Bidder.

18 **D. Submission of Bids**

19 Unless otherwise agreed to in writing by Debtor, in consultation with the
20 Consultation Parties, only Acceptable Bidders shall be permitted to submit a Bid.

21 **E. Bid Requirements**

22 To be eligible to participate in the Auction, any bidder (other than any Stalking
23 Horse Bidder designated by Debtor following consultation with the Consultation Parties
24 and upon the prior written consent of the Bond Trustee, or the Bond Trustee pursuant to
25 a credit bid) must deliver to Debtor and its advisors, a written, irrevocable offer that must
26 be determined by Debtor, in their reasonable business judgment and in consultation with
27 the Consultation Parties, to satisfy each of the conditions set forth below (collectively,
28 the "Bid Requirements").

1 A Bid will not be considered qualified for the Auction if such Bid does not satisfy
2 each of the following conditions:

- 3 (i) **Purpose.** Each bidder must state that the Bid includes an offer by such
4 bidder to purchase some or all of the Assets, and identify the Assets
5 with reasonable specificity and the particular liabilities, if any, such
6 bidder seeks to assume.
- 7 (ii) **Purchase Price.** Each Bid must clearly set forth the purchase price to
8 be paid.
- 9 (iii) **Minimum Bid.** In the event a Stalking Horse Bidder is designated,
10 each Bid must exceed (a) the Stalking Horse Bid (as determined by
11 Debtor in consultation with the Consultation Parties), *plus* (b) the
12 amount of the Bid Protections payable to such Stalking Horse Bidder,
13 *plus* (c) the minimum bid increment of \$500,000 (or such other
14 amount as Debtor may determine in consultation with the
15 Consultation Parties, which amount may be higher or lower than
16 \$500,000).
- 17 (iv) **Bid Deposit.** Each Bid must be accompanied by a cash deposit (made
18 by wire transfer or certified or cashier's check) equal to 10% of the
19 Purchase Price, or other such amounts to be agreed (the "Good Faith
20 Deposit"). The Good Faith Deposit will be held in a segregated
21 account established by Debtor.
- 22 (v) **Committed Financing.** If a Bid is not accompanied by evidence of
23 the bidder's capacity to consummate the Sale set forth in its Bid with
24 cash on hand, each Bid must include committed financing
25 documented to Debtor's satisfaction, in consultation with the
26 Consultation Parties, that demonstrates that such bidder has received
27 sufficient debt and/or equity funding commitments to satisfy such
28 bidder's purchase price and other obligations (including any assumed

liabilities) under its Bid. Such funding commitments or other financing must not be subject to any internal approvals, syndication requirements, diligence, or credit committee approvals, and shall have covenants, conditions and term and termination provisions acceptable to Debtor, in consultation with the Consultation Parties.

- (vi) **Pro Forma Capital Structure.** Each Bid must include a description of the bidder's pro forma capital structure, if applicable.
- (vii) **Good Faith Offer.** Each Bid must constitute, in Debtor's reasonable judgment in consultation with the Consultation Parties, a good faith, bona fide offer to consummate the proposed Transaction set forth in such Bid.
- (viii) **Executed Agreement.** Each Bid must be based on the APA (in the absence of a Stalking Horse Agreement), or the Stalking Horse Agreement if one exists. Bids must include a form of asset purchase agreement indicating any modifications (by redline) proposed by such bidder to the form APA prepared by Debtor or the Stalking Horse Agreement if one exists (the "Modified APA"), including those changes related to the purchase price. The Modified APA must be accompanied by a certification signed by an authorized representative of such bidder, pursuant to which such bidder proposes to effectuate the Sale agreeing to proceed to negotiate, document, and close such Sale if such Bid is determined by Debtor, after consultation with the Consultation Parties, to be the highest or otherwise best Bid as provided herein. Each Bid must also identify any non-Debtor assets to be acquired by such bidder in connection with or as contemplated by such Bid and the process to acquire such assets and accompanying timeline.

- 1 (ix) **Contracts and Leases.** Each Bid must identify an initial schedule of
2 each executory contract and unexpired lease to be assumed and
3 assigned to the bidder in connection with the Sale. Each Bid must
4 identify with specificity the party responsible for satisfying cure
5 amounts and other amounts that have accrued under assumed and
6 assigned contracts and leases after the Petition Date and prior to
7 Closing (as defined herein), including amounts that have accrued but
8 have not yet become due prior to the Closing.
- 9 (x) **No Contingencies.** Each Bid must contain a clear statement that it is
10 not conditioned on any contingency, including, among others, on
11 obtaining any of the following (a) financing, (b) shareholder, board of
12 directors, or other approvals, and/or (c) the outcome or completion of
13 a due diligence review by the bidder.
- 14 (xi) **Binding and Irrevocable.** Each Bid must be irrevocable unless and
15 until Debtor accepts a higher or otherwise better Bid and such bidder
16 is not selected as the Back-Up Bidder. The APA documenting such
17 Bid must provide that, in the event the Bid is chosen as the Back-Up
18 Bid, the Bid will remain irrevocable until Debtor and the Successful
19 Bidder consummate the Transaction.
- 20 (xii) **Joint Bids.** Debtor will be authorized (but is not required) to accept
21 joint Bids in its reasonable discretion, in consultation with the
22 Consultation Parties, on a case-by-case basis.
- 23 (xiii) **Adequate Assurance Information.** Each Bid must be accompanied
24 by sufficient and adequate financial and other information (the
25 “Adequate Assurance Information”) to demonstrate, to the reasonable
26 satisfaction of Debtor, in consultation with the Consultation Parties,
27 that such bidder (a) has the financial wherewithal and ability to
28 consummate the Sale covered by the Bid (the “Closing”), and (b)

1 can provide adequate assurance of future performance in satisfaction
2 of the requirements under section 365(f)(2)(B) of the Bankruptcy
3 Code, and such bidder's willingness to perform, under any contracts
4 that are proposed to be assumed and assigned to such party. The Bid
5 must also identify a contact person that parties may contact to obtain
6 additional Adequate Assurance Information. Adequate Assurance
7 Information may include, without limitation, bank and/or financial
8 statements, evidence of board authorization, and financial
9 capacity/commitment letters. The Adequate Assurance Information
10 may be filed with the Bankruptcy Court by Debtor.

11 (xiv) **Identity.** Each Bid must fully disclose the identity of each entity that
12 will be participating in such Bid (including any equity owners or
13 sponsors, if the purchaser is an entity formed for the purpose of
14 consummating the proposed Sale), and the complete terms of any such
15 participation, along with sufficient evidence that the bidder is legally
16 empowered, by power of attorney or otherwise, to complete the
17 transactions on the terms contemplated by the parties. A Bid must
18 also fully disclose any connections or agreements with Debtor, any
19 known, potential, prospective bidder, or Qualified Bidder, or any
20 officer, director, Insider (as such term is defined by the Bankruptcy
21 Code) of Debtor, or equity security holder of Debtor.

22 (xv) **Authorization.** Each Bid must contain evidence that the bidder has
23 obtained authorization or approval from its board of directors and, if
24 required, its shareholders (or a comparable governing body
25 reasonably acceptable to Debtor in consultation with the Consultation
26 Parties) with respect to the submission of its Bid and the
27 consummation of the transactions contemplated in such Bid.
28

- 1 (xvi) **Costs and Expenses; No Fees.** (a) Each bidder presenting a Bid or
2 Bids will bear its own costs and expenses (including legal fees) in
3 connection with the proposed Sale; (b) by submitting its Bid, each
4 bidder agrees to waive its right to request or receive fees or
5 reimbursement of expenses on any basis, including under section
6 503(b) of the Bankruptcy Code; and (c) each Bid must expressly state
7 that the Bid does not entitle the bidder to any break-up fee, termination
8 fee, expense reimbursement, or similar type of payment or
9 reimbursement; *provided*, that, subject to the terms of the Bidding
10 Procedures Order, Debtor is authorized in its discretion in
11 consultation with the Consultation Parties to provide the Bid
12 Protections to one or more Stalking Horse Bidders in accordance with
13 these Bidding Procedures.
- 14 (xvii) **Adherence to Bidding Procedures.** By submitting its Bid, each
15 bidder is agreeing to (a) abide by and honor the terms of these Bidding
16 Procedures and agrees not to submit a Bid or seek to reopen the
17 Auction after conclusion of the Auction and (b) serve as Back-Up
18 Bidder, if its Bid is selected as the next-highest or otherwise second-
19 best Bid after the Successful Bid with respect to the applicable Assets.
- 20 (xviii) **Regulatory Approvals and Covenants.** A Bid must, if applicable,
21 set forth the regulatory and third-party approvals, including any
22 filings or disclosures necessary under the Hart-Scott-Rodino Act,
23 required for the bidder to consummate the Sale and the time period
24 within which such bidder expects to receive such approvals (and in
25 the case that receipt of any such approval is expected to take more
26 than 30 days following execution and delivery of the asset purchase
27 agreement, those actions such bidder will take to ensure receipt of
28 such approvals as promptly as possible).

- (xix) **As-Is, Where-Is.** Each Bid must include a written acknowledgement and representation that the bidder (a) has had an opportunity to conduct any and all due diligence regarding Debtor's Assets and liabilities prior to making its Bid, (b) has relied solely upon its own or its advisors' independent review, investigation, and/or inspection of any documents and/or the Assets and liabilities in making its Bid, and (c) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law, or otherwise, regarding the Assets, liabilities, or the completeness of any information provided in connection therewith or with the Auction, except as expressly stated in such bidder's proposed asset purchase agreement.
- (xx) **Conditions to Closing.** Each Bid must identify with particularity each condition to Closing.
- (xxi) **Time Frame for Closing.** A Bid must be reasonably likely (based on antitrust or other regulatory issues, experience, and other considerations) to be consummated, if selected as the Successful Bid, within a time frame reasonably acceptable to Debtor following consultation with the Consultation Parties and upon the prior written consent of the Bond Trustee.
- (xxii) **Consent to Jurisdiction.** All bidders must submit to the jurisdiction of the Bankruptcy Court and waive any right to a jury trial in connection with any disputes relating to Debtor's qualification of Bids, the Auction, the construction and enforcement of these Bidding Procedures, any chapter 11 plan in Debtor's chapter 11 case, the Sale documents, and the Closing.
- (xxiii) **Bid Deadline.** Each Bid must be received by each of the following parties, in writing or electronically, so as to be **actually received** no

later than **September 18, 2023 at 12:00 p.m.**, Prevailing Arizona Time (the "**Bid Deadline**"):

- a) Legacy Cares, Inc., 6321 South Ellsworth Road, Suite 146, Mesa, Arizona 85212 (Attn: Douglas Moss (douglasm@legacycaresinc.com));
- b) Warner Angle Hallam Jackson & Formanek, PLC, 2555 E. Camelback Road, Suite 800, Phoenix, Arizona 85016 (Attn: Henk Taylor (htaylor@warnerangle.com));
- c) MCA Financial Group, Ltd., 4909 N. 44th Street, Phoenix, Arizona 85018 (Attn: Keith Bierman (kbierman@mca-financial.com); Holly Daetwyler (hdaetwyler@mca-financial.com); Evan Dosch (edosch@mca-financial.com); and Karrilyn Thomas (kthomas@mca-financial.com));
- d) Miller Buckfire & Co. LLC, 787 7th Ave 5th floor, New York, NY 10019, (Attn: James Doak (james.doak@millerbuckfire.com); Christine Song (christine.song@millerbuckfire.com); Perry Zhang (perry.zhang@millerbuckfire.com); Robert Manning (Robert.manning@millerbuckfire.com); and Jacob Kramer (jacob.kramer@millerbuckfire.com);
- e) UMB Bank, N.A., 120 South Sixth Street, Suite 1400, Minneapolis, Minnesota 55402 (Attn: Michael Slade (Michael.Slade@umb.com));
- f) Spencer Fane LLP, 2415 E. Camelback Road, Suite 600, Phoenix, Arizona 85016 (Attn: Peter Riggs (priggs@spencerfane.com); Jessica Gale (jgale@spencerfane.com); and Zachary Fairlie

(zfairlie@spencerfane.com));

g) FTI Consulting, 1166 Avenue of the Americas, 15th Floor, New York, NY 10036 (Attn: Chad J. Shandler (chad.shandler@fticonsulting.com); Dewey Imhoff (dewey.imhoff@fticonsulting.com); and Kevin DeLuise (kevin.deluise@fticonsulting.com))

h) Pachulski Stang Ziehl & Jones LLP, 780 Third Avenue, 34th Floor, New York, New York 10017 (Attn: Bradford Sandler (bsandler@pszjlaw.com); Jordan Kroop (jkroop@pszjlaw.com); and Cia Mackle (cmackle@pszjlaw.com)); and

i) AlixPartners, 909 Third Avenue, New York, NY 10022 (Attn: David MacGreevey (dmacgreevey@alixpartners.com); and Thomas Prince (tprince@alixpartners.com));

Bids fulfilling all of the preceding requirements, as determined by Debtor and its advisors, in its reasonable business judgment and in consultation with the Consultation Parties, will be deemed to be “Qualified Bids,” and those parties submitting Qualified Bids will be deemed to be “Qualified Bidders.” For the avoidance of doubt, and notwithstanding anything herein, any Stalking Horse Bidder (who complies with the Bid Requirements) and the Bond Trustee submitting a credit bid will be deemed to be a Qualified Bidder and any Stalking Horse Agreement will be deemed a Qualified Bid, which qualify such Stalking Horse Bidder to participate in the Auction (if any). If a Stalking Horse Bid is chosen as the Successful Bid, the rights and obligations of the Stalking Horse Bidder shall be as set forth in the Stalking Horse Agreement (as the same may be modified in connection with the Auction).

All information disclosed by any bidder in connection with all of the preceding requirements will be made available by Debtor to the Consultation Parties promptly upon

Debtor's receipt thereof but in any event no later than the earlier of one business day or two calendar days following the Bid Deadline or Debtor's receipt of such information (whichever is later); *provided*, that any confidential financing and/or equity commitment documents received from a bidder shall only be shared with the Consultation Parties on a professional-eyes'-only basis. Debtor reserves the right, in consultation with the Consultation Parties, to work with any bidder in advance of the Auction to cure any deficiencies in a Bid that is not initially deemed to be a Qualified Bid.

In addition, Debtor, in consultation with the Consultation Parties, reserves the right to waive any of the Bid Requirements set forth above and deem a Bid to be a Qualified Bid notwithstanding any non-compliance with such requirements. Within three business days after the Bid Deadline, Debtor and its advisors, in consultation with the Consultation Parties, will determine which bidders are Qualified Bidders and will notify such bidders whether Bids submitted constitute, alone or together with other Bids, Qualified Bids so as to enable such Qualified Bidders to bid at the Auction. Any Bid that is not deemed a Qualified Bid will not be considered by Debtor.

F. Evaluation of Qualified Bids and Designation of the Starting Bid

Prior to the Auction, Debtor and its advisors will evaluate Qualified Bids and identify the Qualified Bid that is, in Debtor's reasonable business judgment, following consultation with the Consultation Parties and upon the prior written consent of the Bond Trustee, the highest or otherwise best Bid (the "Starting Bid"). In determining the Starting Bid, Debtor will take into account, among other things: (i) the amount and nature of consideration offered in each Qualified Bid, (ii) the impact on customers, vendors, and employees, (iii) the certainty of a Qualified Bid leading to a consummated Sale, (iv) the execution risk attendant to any submitted Bids, (v) the number, type, and nature of any changes to (as applicable) the APA or the Stalking Horse Agreement, if any, requested by the Qualified Bidder, including the type and amount of Assets sought to be purchased and obligations to be assumed in the Qualified Bid, (vi) the net economic effect of any changes to the value to be received by Debtor's estate from the sale

1 contemplated by the Qualified Bid, taking into account any Stalking Horse Bidder's
2 rights to any Bid Protections, (vii) the tax consequences of such Qualified Bid, (viii) the
3 assumption of liabilities, including obligations under contracts and leases, and (ix) the
4 cure amounts to be paid (collectively, the "Evaluation Criteria").

5 Not later than one business day prior to the date of the Auction, Debtor will (i) notify
6 the Consultation Parties as to which Qualified Bid is the Starting Bid, and (ii) distribute
7 copies of the Starting Bid to each Qualified Bidder who has submitted a Qualified Bid and
8 to the Consultation Parties.

9 For the avoidance of doubt, whenever these Bidding Procedures refer to the highest
10 or otherwise best Bid, such determination shall take into account the Evaluation Criteria
11 and any other factors that Debtor, in consultation with the Consultation Parties, reasonably
12 deems relevant to the value of the applicable Bid to Debtor's estate.

13 **G. Only One Qualified Bid**

14 If only one Qualified Bid is received by the Bid Deadline and such Bid is acceptable
15 to Debtor following consultation with the Consultation Parties and upon the prior written
16 consent of the Bond Trustee, then the Auction will not occur, the sole Qualified Bidder
17 will be deemed the Successful Bidder, and Debtor will pursue entry of an order by the
18 Bankruptcy Court approving and authorizing the Sale to the sole Bidder at the Sale Hearing
19 (as defined herein).

20 **H. Credit Bidding**

21 Notwithstanding anything else contained in these Bidding Procedures, the lenders
22 under Debtor's prepetition secured credit facility and debtor-in-possession credit facility
23 ("Bondholder Credit") through the Bond Trustee, shall have the right, subject in all respects
24 to the Bankruptcy Code and other applicable law, to credit bid all or any portion of their
25 allowed secured claims in any Sale Transaction of the Assets constituting their collateral
26 under the Bondholder Credit at the Auction to the extent provided in section 363(k) of the
27 Bankruptcy Code or other applicable law, in accordance with the applicable provisions of
28 the documents governing such debt obligations; *provided*, that for the avoidance of doubt,

the foregoing shall not impair or waive any challenge rights preserved pursuant to the DIP Order or any parties' right to object to selection or approval of such credit bid based on such challenge rights. In order to be deemed a "Qualified Bid", any such credit bid by the Bond Trustee must: (a) bid first, before any credit bid of pre-petition debt, the outstanding balance due under the DIP credit facility, (b) contain a cash component sufficient to pay the aggregate amount of Debtor's accrued, unpaid administrative expenses and any other claims requiring payment in full in cash; (c) contain a cash component or make other provision sufficient to pay or otherwise satisfy any applicable cure costs for any executory contracts or unexpired leases to be assumed and assigned to the Bond Trustee under the credit bid; and (d) contain a cash component sufficient to (i) pay the amount of the Stalking Horse Protections and (ii) pay for any Assets that are unencumbered by first priority perfected liens in favor of the Bond Trustee. Further, if the Bond Trustee submits a Credit Bid, it shall immediately no longer have any consultation or related information rights otherwise set forth herein and shall no longer be a "Consultation Party" as defined herein.

I. Auction

If more than one Qualified Bid is received by the Bid Deadline, Debtor will conduct the Auction with respect to Debtor's Assets. For the avoidance of doubt, Debtor may also conduct more than one Auction with respect to non-overlapping material portions of Debtor's Assets. The Auction will commence on **September 27, 2023, at 10:00 a.m., Prevailing Arizona Time**, or such later time Debtor reasonably determines, following consultation with the Consultation Parties and upon the prior written consent of the Bond Trustee, at: (i) the offices of Lewis Roca Rothgerber Christie LLP, 201 East Washington Street, Suite 1200, Phoenix, Arizona 85004; (ii) telephonically; or (iii) by video via Zoom, or other place (or by such other electronic means) as Debtor reasonably determines; *provided*, that Debtor timely notifies all Qualified Bidders and other invitees of the time and place of the Auction, and for the avoidance of any doubt, the Auction is subject to the right of Debtor, in the reasonable exercise of its business judgment, to adjourn the Auction to a later date.

1 **i. The Auction Procedures**

2 The Auction will be conducted in accordance with the following procedures (the
3 “Auction Procedures”):

- 4 a) the Auction will be conducted openly;
- 5 b) only the Qualified Bidders, including any Stalking Horse Bidder and if
6 the Bond Trustee submitted a credit bid that is a Qualified Bid, will be
7 entitled to bid at the Auction;
- 8 c) the Qualified Bidders, including any Stalking Horse Bidder, must
9 appear in person, telephonically, or by video via Zoom, or through
10 duly-authorized representatives at the Auction;
- 11 d) only the duly-authorized representatives of each of the Qualified
12 Bidders (including any Stalking Horse Bidder) and the Consultation
13 Parties will be permitted to attend the Auction; *provided*, that, in
14 addition, any party in interest that requests permission and is granted
15 permission from Debtor, in consultation with the Consultation Parties,
16 to attend the Auction shall also be permitted to attend;
- 17 e) bidding at the Auction will begin at the Starting Bid;
- 18 f) subsequent Bids at the Auction, including any Bids by any Stalking
19 Horse Bidder, will be binding and irrevocable and must (i) be made in
20 minimum increments of \$250,000 (or such other amount as Debtor may
21 determine in consultation with the Consultation Parties, which amount
22 may be higher or lower than \$250,000) of additional value, if
23 applicable, and (ii) otherwise satisfy the requirements for a Qualified
24 Bid set forth above (provided that the Bid Deadline will not apply);
- 25 g) each Qualified Bidder will be informed of the terms of the previous
26 Bids and Debtor shall, during the course of the Auction, promptly
27 inform each Qualified Bidder of which subsequent Bids reflect, in
28 Debtor’s reasonable business judgment, following consultation with

- 1 the Consultation Parties and upon the prior written consent of the Bond
2 Trustee, the highest or otherwise best Bid for the applicable Assets;
- 3 h) the Auction will be transcribed to ensure an accurate recording of the
4 bidding at the Auction and the transcript will be filed with the
5 Bankruptcy Court;
- 6 i) each Qualified Bidder will be required to confirm on the record of the
7 Auction that it has not engaged in any collusion with respect to the
8 bidding or the Sale;
- 9 j) the Auction will not close unless and until all Qualified Bidders have
10 been given a reasonable opportunity to submit an overbid at the
11 Auction to the then prevailing highest or otherwise best Bid, subject to
12 Debtor's right to require, in consultation with the Consultation Parties,
13 last and final Bids to be submitted on a "blind" basis;
- 14 k) Debtor reserves the right, in its reasonable business judgment and in
15 consultation with the Consultation Parties, to adjourn the Auction one
16 or more times to, among other things, (i) facilitate discussions between
17 Debtor and Qualified Bidders, (ii) allow Qualified Bidders to consider
18 how they wish to proceed, and (iii) provide Qualified Bidders the
19 opportunity to provide Debtor with such additional evidence as Debtor,
20 in its reasonable business judgment and in consultation with the
21 Consultation Parties, may require to establish that the Qualified Bidder
22 has sufficient internal resources or has received sufficient non-
23 contingent debt and/or equity funding commitments to consummate the
24 proposed Sale at the prevailing amount; and
- 25 l) the Auction will be governed by such other Auction Procedures as may
26 be announced by Debtor and its advisors, after consultation with the
27 Consultation Parties, from time to time on the record at the Auction;
28 *provided*, that such other Auction Procedures are (i) not inconsistent with

1 the Bidding Procedures Order, the Bankruptcy Code, or any other order
2 of the Bankruptcy Court, (ii) disclosed orally or in writing to all Qualified
3 Bidders and other attendees at the Auction and recorded on the record,
4 and (iii) determined by Debtor, in good faith and in consultation with the
5 Consultation Parties, to further the goal of attaining the highest or
6 otherwise best offer for the Assets.

7 For the avoidance of doubt, nothing in the Auction Procedures will prevent Debtor
8 from exercising its fiduciary duties under applicable law (as reasonably determined in good
9 faith by Debtor in consultation with its outside legal counsel).

10 **J. Acceptance of the Successful Bid or the Successful Bids**

11 Upon the conclusion of the Auction (if such Auction is conducted), Debtor, in the
12 exercise of its reasonable business judgment and following consultation with the
13 Consultation Parties and upon the prior written consent of the Bond Trustee, will identify
14 the highest or otherwise best Qualified Bid or Qualified Bids for the Assets (each, a
15 “Successful Bid,” and each person or entity submitting a Successful Bid, a “Successful
16 Bidder”), which will be determined by considering, among other things, (i) the type and
17 amount of Assets sought to be acquired in the Bid or Bids and whether such Assets
18 should or can be severed from other Assets (whether subject to competing Bids or
19 otherwise), (ii) the total expected consideration to be received by Debtor and the
20 expected net benefit to the estate, in each case, taking into account any Stalking Horse
21 Bidder’s rights to any Bid Protections, (iii) the Qualified Bidder’s or Qualified Bidders’
22 ability to close a transaction and the timing thereof (including any anticipated delays to
23 Closing and the cost to Debtor of such delays), and other matters affecting the execution
24 risk associated with a particular Bid or Bids, (iv) the impact on customers, vendors, and
25 employees, (v) the certainty of Debtor being able to consummate a successful Sale, and
26 (vi) any other criteria, including the Evaluation Criteria.
27
28

1 If a Stalking Horse Bid is chosen as the Successful Bid, the rights and obligations
2 of the Stalking Horse Bidder shall be as set forth in the Stalking Horse Agreement (as
3 the same may be modified in connection with the Auction).

4 The Successful Bidder and Debtor shall, as soon as commercially reasonably
5 practicable after the conclusion of the Auction, complete and sign all agreements,
6 contracts, instruments, or other documents evidencing and containing the terms upon
7 which such Successful Bid were made. In addition, Debtor reserves the right to require
8 the Successful Bidder (or Back-Up Bidder, if applicable) to increase its Good Faith
9 Deposit, *provided* that, in no event shall the Good Faith Deposit be, once increased, more
10 than 10% of the cash purchase price.

11 Debtor shall file a notice substantially in the form annexed to the Bidding
12 Procedures Order as **Exhibit 4** (the “Post-Auction Notice”) identifying the Successful
13 Bidder, together with financial and other information sufficient to demonstrate adequate
14 assurance of future performance of Assigned Contracts (including the name of the
15 Successful Bidder and a description of its business) and the proposed asset purchase
16 agreement with the Successful Bidder, no later than twenty four (24) hours after the
17 conclusion of the Auction. Such Post-Auction Notice shall also identify the Back-Up
18 Bidder (if any) and contain either (i) a summary of the material terms of the Back-Up
19 Bid or (ii) proposed asset purchase agreement with the Back-Up Bidder.

20 Debtor will present the results of the Auction to the Bankruptcy Court at the Sale
21 Hearing, at which certain findings will be sought from the Bankruptcy Court regarding
22 the Auction, including, among other things, that (i) the Auction was conducted, and the
23 Successful Bidder was selected, in accordance with these Bidding Procedures, (ii) the
24 Auction was fair in substance and procedure, and (iii) consummation of the Successful
25 Bid will provide the highest or otherwise best value for Debtor’s Assets and is in the best
26 interests of Debtor’s estate.

27 If an Auction is held, Debtor will be deemed to have accepted a Qualified Bid only
28 when (i) such Qualified Bid is declared a Successful Bid at the Auction, and (ii) definitive

1 documentation has been executed in respect thereof. Such acceptance is conditioned upon
2 approval by the Bankruptcy Court of the Successful Bid and entry of an order approving
3 such Successful Bid (the “Sale Order”), which Sale Order may be (but is not required to
4 be) the order confirming a chapter 11 plan.

5 **K. Sale Hearing**

6 A hearing before the Bankruptcy Court to consider approval of the Successful Bid
7 (the “Sale Hearing”), pursuant to which Debtor and the Successful Bidder will
8 consummate the Sale, will be held on **October 3, 2023, at 1:30 p.m.**, Prevailing Arizona
9 Time, before the Bankruptcy Court.

10 **The Sale Hearing may be continued to a later date convenient to the Court by**
11 **Debtor, in consultation with the Consultation Parties, by sending notice prior to, or**
12 **making an announcement at, the Sale Hearing. No further notice of any such**
13 **continuance will be required to be provided to any party.**

14 At the Sale Hearing, Debtor will present the Successful Bid to the Bankruptcy Court
15 for approval.

16 **L. Designation of Back-Up Bidder**

17 The Qualified Bid that Debtor determine in their reasonable business judgment (in
18 consultation with the Consultation Parties), is the next-highest or otherwise second-best
19 Bid will be designated the “Back-Up Bid” and the bidder submitting such Back-Up Bid,
20 the “Back-Up Bidder.” The Back-Up Bidder shall be required to keep the Back-Up Bid
21 open and irrevocable until the closing of the transaction with the Successful Bidder.
22 Following entry of the Sale Order, if the Successful Bidder fails to consummate the
23 Successful Bid, Debtor will be authorized, but not required, in consultation with the
24 Consultation Parties, to designate the Back-Up Bid to be the new Successful Bid and
25 consummate the transaction pursuant to the Back-Up Bid as soon as commercially
26 reasonably practicable without further Bankruptcy Court order; *provided* that the Back-Up
27 Bid shall be subject to Bankruptcy Court approval in connection with the Bankruptcy
28 Court’s approval of the Successful Bid.

M. Return of Good Faith Deposit to Qualified Bidders that Submit Qualified Bids

The Good Faith Deposit of the Successful Bidder will, upon consummation of the Successful Bid, become property of Debtor's estate and be credited against any cash consideration payable by the Successful Bidder in connection with the Successful Bid. If the Successful Bidder (or Back-Up Bidder, if applicable) fails to consummate the Successful Bid (or Back-Up Bid, if applicable), then the Good Faith Deposit of such Successful Bidder (or Back-Up Bidder, if applicable) will be irrevocably forfeited to Debtor and may be retained by Debtor as damages, in addition to any and all rights, remedies, or causes of action that may be available to Debtor, in each case, subject to the terms and conditions of the asset purchase agreement with the Successful Bidder (or Back-Up Bidder, as applicable).

The Good Faith Deposit (including interest (if any)) of any unsuccessful Qualified Bidders (except for the Successful Bidder and the Back-Up Bidder) will be returned within the earlier of five business days after the conclusion of the Auction or upon the permanent withdrawal of the proposed Sale of Debtor's Assets by Debtor. The Good Faith Deposit (including any interest (if any)) of the Back-Up Bidder, if any, will be returned to such Back-Up Bidder no later than five business days after the Closing with the Successful Bidder for the Assets bid upon by such Back-Up Bidder.

Except as set forth in the first paragraph of this Section M, all deposits shall be held in a segregated account maintained by Debtor and at no time shall be deemed property of Debtor's estate absent further order of the Bankruptcy Court.

N. Consent to Jurisdiction

All Qualified Bidders at the Auction will be deemed to have (i) consented to the jurisdiction of the Bankruptcy Court, (ii) waived any right to a jury trial in connection with any disputes relating to the Sale, the Auction, the construction and enforcement of these Bidding Procedures, as applicable, and (iii) consented to the entry of a final order or judgment in any way related to these Bidding Procedures, the sale or bid process, the Auction, the Sale Hearing, or the construction and enforcement of any agreement or any

1 other document relating to a Sale if it is determined that the Bankruptcy Court would lack
2 Article III jurisdiction to enter such a final order or judgment absent the consent of the
3 parties.

4 Any parties raising a dispute relating to these Bidding Procedures must request that
5 such dispute be heard by the Bankruptcy Court on an expedited basis.

6 **O. Fiduciary Out**

7 Nothing in these Bidding Procedures will require any director, manager or officer
8 of Debtor to take any action, or to refrain from taking any action, with respect to these
9 Bidding Procedures, that would violate his or her fiduciary duties to Debtor.

10 **P. Sale Is As Is/Where Is**

11 The Assets sold pursuant to these Bidding Procedures will be conveyed at the
12 Closing in their then present condition, “as is, with all faults, and without any warranty
13 whatsoever, express or implied,” except as otherwise expressly provided in the asset
14 purchase agreement with the Successful Bidder.

15 **Q. Reservation of Rights**

16 Debtor reserves its right, in consultation with the Consultation Parties, to modify
17 these Bidding Procedures in good faith, including by setting additional procedures for
18 an Auction, to further the goal of attaining the highest or otherwise best offer for the
19 Assets, or impose, at or prior to the Auction, additional customary terms and conditions
20 on the Transaction for the Assets. Debtor shall provide notice of any such modification
21 to any Qualified Bidder, including any Stalking Horse Bidder.

22 All parties expressly reserve all of their rights (and do not waive any such rights)
23 to seek Bankruptcy Court relief with regard to the Auction, the Bidding Procedures, the
24 Sale, and any related items (including, if necessary, to seek an extension of the Bid
25 Deadline).

26 For the avoidance of doubt and notwithstanding anything herein to the contrary,
27 nothing in these Bidding Procedures shall, or shall be construed to, in any way amend,
28 impair, prejudice, alter, or otherwise modify the terms of Debtor’s postpetition financing

1 facility, or the rights of any party thereunder or under the interim and final orders approving
2 such loan.
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EXHIBIT 2

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In Re:

LEGACY CARES, INC.,

Debtor.

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

Chapter 11

**NOTICE OF PROPOSED SALE
BIDDING PROCEDURES, AUCTION, AND SALE HEARING**

PLEASE TAKE NOTICE that, on May 1, 2023, Debtor and debtor in possession in the above-captioned chapter 11 case (“Debtor”) filed a voluntary petition commencing this case under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”).

PLEASE TAKE FURTHER NOTICE that, on August __, 2023, the United States Bankruptcy Court for the District of Arizona (the “Bankruptcy Court”) entered an order [ECF _____] (the “Bidding Procedures Order”)¹:

- i. approving proposed bidding procedures (the “Bidding Procedures”), attached as **Exhibit 1** to the Bidding Procedures Order, by which Debtor will solicit and select the highest or otherwise best offer for the sale of substantially all of its assets (the “Assets”);
- ii. approving the Bid Protections, as defined and described in the Bidding Procedures;
- iii. establishing procedures for the assumption and assignment of executory contracts and unexpired leases, including notice of proposed cure amounts (the “Assumption and Assignment Procedures”);
- iv. approving the form and manner of the Sale Notice, attached as **Exhibit 2** to the Bidding Procedures Order;
- v. approving the form and manner of the Assumption Notice, attached as **Exhibit 3** to the Bidding Procedures Order;
- vi. approving the form and manner of the Post-Auction Notice, attached as **Exhibit 4** to the Bidding Procedures Order;
- vii. scheduling a date for an auction if Debtor receives one or more Qualified

¹ Capitalized terms used but not defined herein have the meanings given to them in the Bidding Procedures Order or the Bidding Procedures, as applicable.

Bids (the "Auction");

- viii. scheduling a hearing to approve one or more Sales, as necessary (the "Sale Hearing"); and
- ix. granting related relief.

ALL INTERESTED OR POTENTIALLY AFFECTED PARTIES SHOULD CAREFULLY READ THE BIDDING PROCEDURES AND THE BIDDING PROCEDURES ORDER.

PLEASE TAKE FURTHER NOTICE that any party that wishes to take part in the sale process contemplated by the Bidding Procedures must submit a Bid for the Assets in accordance with the terms and conditions of the Bidding Procedures by **September 18, 2023 at 4:00 p.m. (Prevailing Arizona Time)** (the "Bid Deadline").²

PLEASE TAKE FURTHER NOTICE that pursuant to the Bidding Procedures Order and the Bidding Procedures, if Debtor receives more than one Qualified Bid for the Assets, Debtor will conduct the Auction on **September 27, 2023 at 10:00 a.m. (Prevailing Arizona Time)**, or such later time Debtor reasonably determines at: (a) the offices of Lewis Roca Rothgerber Christie LLP, 201 East Washington Street, Suite 1200, Phoenix, Arizona 85004; (b) telephonically; or (c) by video via Zoom, or other place (or by such other electronic means) as Debtor reasonably determine; *provided*, that Debtor shall timely notify all Qualified Bidders, the Consultation Parties, and all other parties entitled to attend the Auction of such later time or other place. Debtor has the right to adjourn or cancel the Auction at or prior to the Auction.

PLEASE TAKE FURTHER NOTICE that only Debtor, the Consultation Parties, Qualified Bidders, the U.S. Trustee, and/or other parties in interest that request permission and are granted permission from Debtor to attend the Auction, in each case, along with their duly-authorized representatives, shall be entitled to attend the Auction, and only Qualified Bidders shall be entitled to bid at the Auction.

PLEASE TAKE FURTHER NOTICE that the Sale Hearing to consider approval of a Sale and the transfer of the Assets free and clear of all liens, claims, interests, and encumbrances in accordance with section 363(f) of the Bankruptcy Code will be held before the Honorable Daniel P. Collins, United States Bankruptcy Judge for the District of Arizona, at the Bankruptcy Court, 230 N. 1st Avenue, Phoenix, Arizona, Courtroom 603 on or about **October 3, 2023 at 1:30 p.m. (Prevailing Pacific Time)**. The Sale Hearing may be adjourned from time to time without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court or by notice filed on the docket in this chapter 11 case.

PLEASE TAKE FURTHER NOTICE that any objections to the Sale (each a "Sale Objection") must be filed no later than **September 15, 2023 at 4:00 p.m. (Prevailing Arizona Time)** (the "Objection Deadline"); *provided* that, notwithstanding the foregoing, any objections to the outcome of the Sale, the conduct of the Auction or designation or court-approval of the Successful Bid or Back-Up Bid, or Adequate Assurance Objections must be filed no later than 4:00 p.m. (Prevailing Arizona Time) on the date that is three business days prior to the commencement of the Sale Hearing.

² Pursuant to the Bidding Procedures, a Bid may contemplate the acquisition of assets of non-Debtors.

CONSEQUENCES OF FAILING TO TIMELY ASSERT A SALE OBJECTION

ANY PARTY OR ENTITY WHO FAILS TO TIMELY FILE A SALE OBJECTION ON OR BEFORE THE APPLICABLE DEADLINE IN ACCORDANCE WITH THE ENTERED BIDDING PROCEDURES ORDER MAY BE FOREVER BARRED FROM ASSERTING ANY SALE OBJECTION TO THE SALE, INCLUDING WITH RESPECT TO THE TRANSFER OF THE TRANSFERRED ASSETS OF DEBTOR'S ESTATE FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS EFFECTED THEREUNDER.

PLEASE TAKE FURTHER NOTICE that this Sale Notice is subject to the terms and conditions of the Bidding Procedures Order, with the Bidding Procedures Order controlling in the event of any conflict. Debtor encourages parties in interest to review such document in its entirety. Parties interested in receiving more information regarding the sale of the Assets and/or copies of any related document, including the Bidding Procedures Order, should visit the case website, <https://dm.epiq11.com/LegacyCares>, where copies of these documents are posted. Parties may also obtain copies of these documents by making a written request to counsel to Debtor, Warner Angle Hallam Jackson & Formanek, PLC, 2555 E. Camelback Road, Suite 800, Phoenix, Arizona 85016 (Attn: Henk Taylor (htaylor@warnerangle.com)).

Copies of the Bidding Procedures, the Bidding Procedures Order, and this Sale Notice may be examined by interested parties free of charge at the website established for this chapter 11 case by Debtor's court-approved noticing, claims, and solicitation agent, Epiq Corporate Restructuring, LLC, at <https://dm.epiq11.com/LegacyCares>.

Dated: August [---], 2023
Phoenix, Arizona

Respectfully submitted,

/s/ Henk Taylor

Counsel for Debtor and Debtor in
Possession

EXHIBIT 3

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In Re:

LEGACY CARES, INC.,

Debtor.

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

Chapter 11

**NOTICE OF (I) EXECUTORY CONTRACTS AND UNEXPIRED LEASES THAT
MAY BE ASSUMED AND ASSIGNED IN CONNECTION WITH A SALE OF
DEBTOR'S ASSETS AND (II) THE PROPOSED CURE AMOUNTS WITH RESPECT
THERE TO**

**YOU ARE RECEIVING THIS NOTICE OF (I) EXECUTORY CONTRACTS AND
UNEXPIRED LEASES THAT MAY BE ASSUMED AND ASSIGNED IN
CONNECTION WITH A SALE OF DEBTOR'S ASSETS AND (II) THE PROPOSED
CURE AMOUNTS WITH RESPECT THERETO (THIS "ASSUMPTION NOTICE")
BECAUSE YOU MAY BE A COUNTERPARTY TO AN EXECUTORY CONTRACT
OR UNEXPIRED LEASE WITH DEBTOR. PLEASE READ THIS NOTICE
CAREFULLY AS YOUR RIGHTS MAY BE AFFECTED BY THE TRANSACTIONS
DESCRIBED HEREIN.**

PLEASE TAKE NOTICE that, on _____, 2023, the United States
Bankruptcy Court for the District of Arizona (the "Bankruptcy Court") entered an order [ECF
(the "Bidding Procedures Order")¹:

- i. approving proposed bidding procedures (the "Bidding Procedures"), attached as **Exhibit 1** to the Bidding Procedures Order, by which Debtor will solicit and select the highest or otherwise best offer for the sale of substantially all of its assets (the "Assets");
- ii. approving the Bid Protections, as defined and described in the Bidding Procedures;
- iii. establishing procedures for the assumption and assignment of executory contracts and unexpired leases, including notice of proposed cure amounts (the "Assumption and Assignment Procedures");
- iv. approving the form and manner of the Sale Notice, attached as **Exhibit 2** to the Bidding Procedures Order;
- v. approving the form and manner of the Assumption Notice, attached as

¹ Capitalized terms used but not defined herein have the meanings given to them in the Bidding Procedures Order or the Bidding Procedures, as applicable.

Exhibit 3 to the Bidding Procedures Order;

- vi. approving the form and manner of the Post-Auction Notice, attached as **Exhibit 4** to the Bidding Procedures Order;
- vii. scheduling a date for an auction if Debtor receives one or more Qualified Bids (the "Auction");
- viii. scheduling a hearing to approve one or more Sales, as necessary (the "Sale Hearing"); and
- ix. granting related relief.

PLEASE TAKE FURTHER NOTICE that the Bidding Procedures Order approves procedures for (i) the assumption of certain executory contracts and unexpired leases that Debtor may seek to assume and assign to a Successful Bidder in connection with a Sale, if one occurs (collectively, the "Assigned Contracts") and (ii) the determination of related Cure Amounts (as defined below).

PLEASE TAKE FURTHER NOTICE that Debtor is party to numerous executory contracts and unexpired leases and hereby files this notice identifying (i) the Assigned Contracts, and (ii) the proposed amounts, if any, Debtor believes are owed to the counterparties to the Assigned Contracts to cure any defaults or arrears existing under the Assigned Contract (the "Cure Amounts"), both as set forth on **Exhibit 1** attached hereto. Other than the Cure Amounts listed on **Exhibit 1**, Debtor is not aware of any amounts due and owing under the Assigned Contracts listed therein.

PLEASE TAKE FURTHER NOTICE that the Sale Hearing is expected to be held before the Honorable Judge Daniel P. Collins, United States Bankruptcy Judge for the District of Arizona, at the Bankruptcy Court, 230 N. 1st Avenue, Phoenix, Arizona, Courtroom 603 on or about **October 3, 2023 at 1:30 p.m. (Prevailing Arizona Time)**. The Sale Hearing may be adjourned from time to time without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court or by notice filed on the docket in this chapter 11 case.

PLEASE TAKE FURTHER NOTICE that the listing of an Assigned Contract on **Exhibit 1** does not constitute an admission that such Assigned Contract is an executory contract or unexpired lease as contemplated by section 365(a) of the Bankruptcy Code or that Debtor has any liability thereunder, and Debtor expressly reserves all of its rights, claims, causes of action, and defenses with respect to the Assigned Contracts listed on **Exhibit 1**.

PLEASE TAKE FURTHER NOTICE that to the extent a counterparty to an Assigned Contract listed on this Assumption Notice objects to the proposed assumption and assignment of the applicable Assigned Contract (other than an Adequate Assurance Objection (as defined below)) or the proposed Cure Amounts, if any, such counterparty must file an objection (a "Contract Objection") in accordance with the procedures described herein and in the Bidding Procedures Order.

PLEASE TAKE FURTHER NOTICE that all Contract Objections must (i) state, with specificity, the legal and factual basis for the objection as well as what Cure Amounts are required, if any, (ii) include appropriate documentation in support thereof, and (iii) be filed no later than **September 15, 2023 at 4:00 p.m. (Prevailing Arizona Time)** (the "Contract Objection Deadline"), except as set forth below.

1 PLEASE TAKE FURTHER NOTICE THAT IF A COUNTERPARTY TO AN
2 ASSIGNED CONTRACT FILES A CONTRACT OBJECTION IN A MANNER THAT IS
3 CONSISTENT WITH THE REQUIREMENTS SET FORTH HEREIN, AND THE
4 PARTIES ARE UNABLE TO CONSENSUALLY RESOLVE THE DISPUTE PRIOR TO
5 THE SALE HEARING, THE AMOUNT TO BE PAID OR RESERVED WITH RESPECT
6 TO SUCH OBJECTION WILL BE DETERMINED AT THE SALE HEARING, SUCH
7 LATER HEARING DATE THAT DEBTOR DETERMINE IN ITS DISCRETION, OR
8 SUCH OTHER DATE DETERMINED BY THE BANKRUPTCY COURT. ALL OTHER
9 OBJECTIONS TO THE PROPOSED ASSUMPTION OR PROPOSED ASSUMPTION
10 AND ASSIGNMENT OF DEBTOR'S RIGHT, TITLE, AND INTEREST IN, TO, AND
11 UNDER THE ASSIGNED CONTRACTS WILL BE HEARD AT THE SALE HEARING.

12 Any objections to the ability of the Successful Bidder or Back-Up Bidder (as
13 applicable) to provide adequate assurance of future performance (each, an "Adequate Assurance
14 Objection") must be filed with the Bankruptcy Court no later than 4:00 p.m. (Prevailing Arizona
15 Time) on the date that is three business days prior to the commencement of the Sale Hearing
16 (the "Adequate Assurance Objection Deadline"), or, if applicable, any later deadline established
17 pursuant to the Bidding Procedures Order and the procedures described below. The identity of
18 the Successful Bidder and Back-Up Bidder (if any) shall be disclosed in a subsequent notice to
19 be delivered to counterparties to the applicable Assigned Contracts following the Auction.

20 PLEASE TAKE FURTHER NOTICE that if the counterparty to an Assigned
21 Contract does not timely file a Contract Objection that is consistent with the requirements set
22 forth above by the Contract Objection Deadline (with respect to all objections other than
23 Adequate Assurance Objections) or the Adequate Assurance Objection Deadline (with respect
24 to Adequate Assurance Objections only), such counterparty will be deemed to have consented
25 to the assumption and assignment of the Assigned Contract to a Successful Bidder,
26 notwithstanding any provision or restriction on assumption or assignment in the Assigned
27 Contract, and shall be forever barred from asserting any objection with regard to such
28 assumption and assignment and/or Cure Amounts set forth in Exhibit 1.

PLEASE TAKE FURTHER NOTICE that although Debtor has made a good-faith
effort to identify all Assigned Contracts that might be assumed and assigned in connection with
a Sale, Debtor or the Successful Bidder may identify certain other executory contracts that
should be assumed and assigned in connection with a Sale. Accordingly, Debtor has reserved
the right, at any time before the closing of a Sale, to (i) supplement the list of Assigned Contracts
on this Assumption Notice with previously omitted Assigned Contracts in accordance with the
definitive agreement for a Sale, (ii) remove an Assigned Contract from the list of contracts
ultimately selected as an Assigned Contract that may be assumed and assigned in connection
with a Sale, and/or (iii) modify the previously stated Cure Amounts associated with any
Assigned Contract; *provided*, that up until the closing of the Sale Transaction, Debtor may seek
to reject any Assigned Contract if such Assigned Contract is not ultimately assigned to the
Successful Bidder.

PLEASE TAKE FURTHER NOTICE that if Debtor supplements the list of
Assigned Contracts or modify the previously stated Cure Amounts for a particular Assigned
Contract, Debtor will promptly file and serve a revised Assumption Notice on each counterparty
affected. Such counterparties shall file any Contract Objections with respect to the revised
Assumption Notice not later than (a) the Contract Objection Deadline if such Assumption Notice
was filed and served at least ten days prior to the Contract Objection Deadline, and (b) seven
days from the date such supplemental or revised Assumption Notice was filed and served in
accordance with the above, if such supplemental or revised Assumption Notice was filed and

1 served less than ten days prior to the Contract Objection Deadline. If a supplemental or revised
2 Assumption Notice was filed and served less than seven days prior to the commencement of the
3 Sale Hearing and an objection is filed that is not otherwise consensually resolved, then such
4 objection will not be adjudicated at the Sale Hearing and will be set for a subsequent hearing.

5 **PLEASE TAKE FURTHER NOTICE** that this Assumption Notice is subject to the
6 terms and conditions of the Bidding Procedures Order, with such Bidding Procedures Order
7 controlling in the event of any conflict, and Debtor encourages parties in interest to review such
8 document in its entirety. Parties with questions regarding the Assumption and Assignment
9 Procedures contained herein should contact Debtor's counsel, Warner Angle Hallam Jackson &
10 Formanek, PLC, 2555 E. Camelback Road, Suite 800, Phoenix, Arizona 85016 (Attn: Henk
11 Taylor (htaylor@warnerangle.com)).

12 **PLEASE TAKE FURTHER NOTICE** that the inclusion of an Assigned Contract on
13 this Assumption Notice (or a revised Assumption Notice) will not obligate Debtor to assume
14 any Assigned Contract listed thereon or the Successful Bidder to take assignment of such
15 Assigned Contract and, as set forth above, Debtor reserves the right to modify the list of
16 Assigned Contracts in accordance with the Bidding Procedures Order, including to remove
17 executory contracts or unexpired leases from such list. Only those Assigned Contracts that are
18 included on a schedule of assumed and assigned executory contracts and unexpired leases
19 attached to the final Sale Transaction documentation with the Successful Bidder will be assumed
20 and assigned to the Successful Bidder.

21 Dated: August [---], 2023
22 Phoenix, Arizona

Respectfully submitted,

/s/ Henk Taylor

Counsel for Debtor and Debtor in
Possession

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Exhibit 1

EXHIBIT 4

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In Re:

LEGACY CARES, INC.,

Debtor.

Case No. 2:23-bk-02832-DPC
Chapter 11

**NOTICE OF SUCCESSFUL AND BACK-UP BIDDERS WITH RESPECT TO THE
AUCTION OF DEBTOR'S ASSETS**

PLEASE TAKE NOTICE that, on _____, 2023, the United States Bankruptcy Court for the District of Arizona (the "Bankruptcy Court") entered an order [ECF_] (the "Bidding Procedures Order")¹:

- i. approving proposed bidding procedures (the "Bidding Procedures"), attached as **Exhibit 1** to the Bidding Procedures Order, by which Debtor will solicit and select the highest or otherwise best offer for the sale of substantially all of its assets (the "Assets");
- ii. approving the Bid Protections, as defined and described in the Bidding Procedures;
- iii. establishing procedures for the assumption and assignment of executory contracts and unexpired leases, including notice of proposed cure amounts (the "Assumption and Assignment Procedures");
- iv. approving the form and manner of the Sale Notice, attached as **Exhibit 2** to the Bidding Procedures Order;
- v. approving the form and manner of the Assumption Notice, attached as **Exhibit 3** to the Bidding Procedures Order;
- vi. approving the form and manner of the Post-Auction Notice, attached as **Exhibit 4** to the Bidding Procedures Order;
- vii. scheduling a date for an auction if Debtor receives one or more Qualified Bids (the "Auction");
- viii. scheduling a hearing to approve one or more Sales, as necessary (the "Sale Hearing"); and
- ix. granting related relief.

PLEASE TAKE FURTHER NOTICE that on [-----], 2023, pursuant to the Bidding Procedures Order, Debtor conducted the Auction with respect to the Assets.

¹ Capitalized terms used but not defined herein have the meanings given to them in the Bidding Procedures Order or the Bidding Procedures, as applicable.

PLEASE TAKE FURTHER NOTICE that, at the conclusion of the Auction, Debtor, in consultation with their professionals and Consultation Parties, selected the following Successful Bidder and Back-Up Bidder with respect to the Assets:

Assets	Successful Bidder	Back-Up Bidder
Substantially all assets of Debtor as further described in the APA (as defined below) filed contemporaneously herewith and as made available at no cost at: https://dm.epiq11.com/LegacyCares	[●]	[●]

PLEASE TAKE FURTHER NOTICE that Debtor entered into an Asset Purchase Agreement (the “APA”), by and between Debtor and [●] (the “Successful Bidder”), a copy of which is attached hereto as **Exhibit 1**, pursuant to which Debtor shall sell substantially all of its assets to the Successful Bidder.

[PLEASE TAKE FURTHER NOTICE THAT THE APA CONTEMPLATES CONSENSUAL, MUTUAL RELEASES BY DEBTOR, ITS ESTATE, AND CERTAIN AFFILIATED PARTIES, ON THE ONE HAND, AND THE SUCCESSFUL BIDDER AND CERTAIN AFFILIATED PARTIES, ON THE OTHER HAND. DEBTOR HAS REQUESTED THAT THE BANKRUPTCY COURT APPROVE SUCH RELEASES IN CONNECTION WITH APPROVAL OF THE APA AND, UPON APPROVAL OF THE APA AND CONSUMMATION OF THE SALE TRANSACTION(S) CONTEMPLATED THEREBY, SUCH RELEASES SHALL BE BINDING AND EFFECTIVE IN ALL RESPECTS.]

PLEASE TAKE FURTHER NOTICE that the Sale Hearing to consider approval of (i) the Sale Transaction, (ii) the transfer of the Assets **free and clear of all liens, claims, interests, and encumbrances** in accordance with section 363(f) of the Bankruptcy Code[, and (iii) approval of the releases contemplated by the APA], will be held before the Honorable Judge Daniel P. Collins, United States Bankruptcy Judge for the District of Arizona, at the Bankruptcy Court, 230 N. 1st Avenue, Courtroom 603, Phoenix, Arizona 85003 on **October 3, 2023 at 1:30 p.m. (Prevailing Arizona Time)**. The Sale Hearing may be adjourned from time to time without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court or by notice filed on the docket in this chapter 11 case.

PLEASE TAKE FURTHER NOTICE that the deadline for any objections to the sale of the Assets [(including the releases to be effectuated in connection therewith)], except for those described in the following paragraph, was **September 15, 2023 at 4:00 pm (Prevailing Arizona Time)** and has already passed.

PLEASE TAKE FURTHER NOTICE that any objections (i) to the outcome of the Sale, (ii) to the manner in which the Auction was conducted, (iii) to the designation or court-approval of the Successful Bidder or Back-Up Bidder, and/or (iv) based on the ability of the Successful Bidder to provide adequate assurance of future performance to counterparties to executory contracts and unexpired leases contemplated to be assumed and assigned to the Successful Bidder (“Adequate Assurance Objection”) must be filed with the Bankruptcy Court no later than **4:00 p.m. (Prevailing Arizona Time) on the date that is three business days prior to the Sale Hearing unless otherwise provided by the Bidding Procedures Order**.

1 **PLEASE TAKE FURTHER NOTICE** that, at the Sale Hearing, Debtor will seek
2 Bankruptcy Court approval of the Successful Bid and the assumption and assignment of the
3 Selected Assigned Contracts to the Successful Bidder. Unless the Bankruptcy Court orders
4 otherwise, the Sale Hearing shall be an evidentiary hearing on matters relating to the sale of
5 Debtor's Assets and there will be no further bidding at the Sale Hearing.

6 **PLEASE TAKE FURTHER NOTICE** that if the Successful Bidder fails to
7 consummate the Successful Bid, Debtor may, in consultation with the Consultation Parties,
8 designate the Back-Up Bid to be the new Successful Bid and the Back-Up Bidder to be the new
9 Successful Bidder, and Debtor will be authorized, but not required, to consummate the
10 transaction with the Back-Up Bidder without further order of the Bankruptcy Court, so long as
11 such Back-Up Bid shall have been approved in connection with the Bankruptcy Court's
12 approval of the Successful Bid, or subject to Bankruptcy Court approval if not. In such case of
13 a breach or failure to perform on the part of the Successful Bidder and in such other
14 circumstances as may be specified in the definitive documentation governing the Successful
15 Bid, the defaulting Successful Bidder's deposit shall be forfeited to Debtor. Debtor specifically
16 reserves the right to seek all available damages, including specific performance, from any
17 defaulting Successful Bidder (including any Back-Up Bidder designated as a Successful Bidder)
18 in accordance with the terms of the Bidding Procedures.

19 **PLEASE TAKE FURTHER NOTICE** that this Post-Auction Notice is subject to the
20 terms and conditions of the Bidding Procedures Order, with the Bidding Procedures Order
21 controlling in the event of any conflict. Debtor encourages parties in interest to review such
22 document in its entirety. Parties with questions regarding this Post-Auction Notice may make
23 a written request to proposed counsel to Debtor, Warner Angle Hallam Jackson & Formanek,
24 PLC, 2555 E. Camelback Road, Suite 800, Phoenix, Arizona 85016 (Attn: Henk Taylor
25 (htaylor@warnerangle.com)).

26 **PLEASE TAKE FURTHER NOTICE** that parties interested in receiving more
27 information regarding the contemplated Sale and/or copies of any related documents may visit
28 the website maintained by Epiq Corporate Restructuring, LLC, Debtor's court-approved
noticing, claims, and solicitation agent at <https://dm.epiq11.com/LegacyCares>.

Dated: [---], 2023
Phoenix, Arizona

Respectfully submitted,

/s/ Henk Taylor
Counsel for Debtor and Debtor in
Possession

Exhibit 1

APA

(To come)

Exhibit B

Proposed Sale Timeline

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Event	Date/Deadline²
Hearing on Bidding Procedures / Sale Motion	On or about August 31, 2023
Deadline to serve the Bidding Procedures Order and Sale Notice	Within three business days after entry of the Bidding Procedures Order
Deadline to serve Assumption Notice Deadline to file proposed Sale Order	September 5, 2023
Deadline to file the Stalking Horse Selection Notice	September 1, 2023 at 11:59 p.m.
Deadline to object to designation of Stalking Horse Bidder	September 15, 2023 at 4:00 p.m.
Contract Objection Deadline (other than any objections based on adequate assurance of future performance, or objections subject to a later deadline pursuant to the Assumption and Assignment Procedures)	
Sale Objection Deadline (other than any objection based on the manner in which the Auction was conducted or the designation of the Successful Bid or Back-Up Bid)	
Bid Deadline	September 18, 2023 at 12:00 p.m.
Deadline to file the Notice of No Auction, or submit notification of Starting Bid	September 24, 2023 at 4:00 p.m.
Auction (if necessary)	September 27, 2023 at 10:00 a.m.
Deadline to file Post-Auction Notice	Promptly following the conclusion of the Auction, but in no event later than 24 hours following the conclusion of the Auction
Deadline to object to (i) conduct of the Auction, (ii) the identity of the Successful Bidder or Back-Up Bidder, and (iii) adequate assurance of future performance by the Successful Bidder or Back-Up Bidder (such deadline, the "Post-Auction Sale Objection Deadline")	4:00 p.m. on the date that is three business days prior to the commencement of the Sale Hearing

² All times are listed in Prevailing Arizona Time.

<u>Event</u>	<u>Date/Deadline²</u>
Deadline for Debtor to file a reply to objections to sale/assumption objections (and any other filings by parties in interest in support of the proposed Transaction)	4:30 p.m. on the date that is two business days prior to the commencement of the Sale Hearing