

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

In re:	§	Chapter 11
	§	
FOREST PARK MEDICAL CENTER AT FRISCO, LLC, Debtor.	§	Case No. 15-41684
	§	
	§	

OBJECTION OF CITY OF FRISCO TO EMERGENCY MOTION OF DEBTOR FOR ORDERS (1) APPROVING BIDDING PROCEDURES IN ADVANCE OF AUCTION, (2) AUTHORIZING THE ASSUMPTION, ASSIGNMENT AND SALE OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (3) APPROVING SALE OF ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS, (4) SETTING RELATED DEADLINES AND HEARINGS AND, (5) GRANTING RELATED RELIEF

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Comes now the City of Frisco, creditor and party-in-interest, and files this, its objection to the Emergency Motion of Debtor for Orders (1) Approving Bidding Procedures in Advance of Auction, (2) Authorizing the Assumption, Assignment and Sale of Certain Executory Contracts and Unexpired Leases, (3) Approving Sale of Assets Free and Clear of All Liens, Claims, Encumbrances and Other Interests, (4) Setting Related Deadlines and Hearings and, (5) Granting Related Relief (the “Motion”) and would respectfully show the Court as follows:

1. The City of Frisco (“Frisco”), a duly organized governmental unit of the State of Texas, is the holder of a claim for pre-petition ad valorem business personal property taxes for tax year 2015 assessed against the property of the Debtor located within its jurisdiction in the amount of \$121,831.51.

2. As of January 1, 2016, Frisco is the holder of an administrative expense claim for year 2016 ad valorem business personal property taxes.

3. Frisco's claim is secured by unavoidable, perfected, first priority liens on all of the Debtor's business personal property pursuant to Texas Tax Code Sections 32.01 and 32.05.

Texas Tax Code Section 32.01 provides:

- (a) On January 1 of each year, a tax lien attaches to property to secure the payment of all taxes, penalties, and interest ultimately imposed for the year on the property, whether or not the taxes are imposed in the year the lien attaches. The lien exists in favor of each taxing unit having power to tax the property.
- (b) A tax lien on inventory, furniture, equipment, or other personal property is a lien *in solido* and attaches to all inventory, furniture, equipment, and other personal property that the property owner owns on January 1 of the year the lien attaches or that the property owner subsequently acquires.
- ...
- (d) The lien under this section is perfected on attachment and ... perfection requires no further action by the taxing unit.

Texas Tax Code Section 32.05 provides in relevant part:

- (b) ... a tax lien provided by this chapter takes priority over the claim of any creditor of a person whose property is encumbered by the lien and over the claim of any holder of a lien on property encumbered by the tax lien, whether or not the debt or lien existed before attachment of the tax lien.

Frisco's administrative expense claim is also secured by unavoidable, perfected, first priority liens. 11 U.S.C. Section 362(b)(18) permits the post-petition attachment of ad valorem property tax liens. 11 U.S.C. Section 362 (b)(18).

4. Frisco does not object to the sale of the Debtor's assets. However, Frisco objects to any sale that does not result in payment of all amounts owed for tax year 2015 with postpetition interest that has accrued from the petition date through the date of payment at the state statutory rate of 1% per month pursuant to 11 U.S.C. Sections 506(b) and 511 at the sale closing. Frisco also objects to the sale of the Debtor's assets free and clear of the liens that secure year 2016 ad valorem business personal property taxes absent payment in full of the

estimated amount of taxes owed for tax year 2016. If the purchaser is assuming the real property lease and the 2016 ad valorem business personal property tax liability for 2016, Frisco's liens should remain attached to the assets.

5. Frisco objects to the transfer of its collateral free and clear of liens in the event of a credit bid. A credit bid is not a sale. In the event of a credit bid, Frisco should receive payment in full of year 2015 ad valorem property taxes with interest that has accrued pursuant to 11 U.S.C. Sections 506(b) and 511 as well as estimated year 2016 ad valorem business personal property taxes as a condition of the release of the tangible business personal property.

6. Frisco reserves the right to amend or supplement its objection.

WHEREFORE, premises considered, Frisco respectfully requests that the Court enter an order that provides that: (i) Frisco's liens shall attach to the gross sale proceeds with the same validity, priority and extent that they attached to the assets sold; (ii) Frisco shall receive payment in full of its claim for ad valorem business personal property taxes with postpetition interest at the state statutory rate of 1% per month pursuant to 11 U.S.C. Sections 506(b) and 511 as well as payment of estimated year 2016 ad valorem property taxes from the first sale proceeds at the sale closing; and (iii) Frisco shall receive such other and further relief to which it may be justly entitled.

Dated: February 5, 2016.

Respectfully submitted,

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ATTORNEYS FOR THE CITY OF
FRISCO

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served electronically through the Court's electronic case filing system or via electronic mail upon Vickie L. Driver, email: vickie.driver@lewisbrisbois.com, William Medford, email: William.Medford@lewisbrisbois.com; John M. Vardeman, email: John.M.Vardeman@usdoj.gov, the parties listed on page three of the Notice of Proposed Sale of Substantially all of The Debtor's Assets [Doc. No. 303] and electronically through the Court's electronic case filing system upon all parties requesting notice on this 5th day of February 2016.

/s/ Laurie Spindler Huffman
Laurie Spindler Huffman