

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE:	§	Chapter 11
	§	
	§	
NEIGHBORS LEGACY HOLDINGS, LLC,	§	Case No. 18-33836
ET AL.,	§	
	§	
<i>Debtors.</i>	§	Jointly Administered
	§	

**OBJECTION OF ANGELINA COUNTY, CAMERON COUNTY, CYPRESS-FAIRBANKS
ISD, CITY OF EL PASO, ECTOR CAD, GALVESTON COUNTY, GREGG COUNTY,
CITY OF HARLINGEN, HARLINGEN CISD, HARRIS COUNTY, HIDALGO COUNTY,
JEFFERSON COUNTY, CITY OF MCALLEN, MONTGOMERY COUNTY, ORANGE
COUNTY, SMITH COUNTY, TEXAS CITY ISD, AND TOM GREEN CAD TO
DEBTORS' (A) EMERGENCY MOTION FOR INTERIM AND FINAL ORDERS
AUTHORIZING THE USE OF CASH COLLATERAL, GRANTING ADEQUATE
PROTECTION TO PREPETITION SECURED PARTIES, AND SCHEDULING A
FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001; AND (B) MOTION
FOR FINAL ORDER₂ AUTHORIZING SECURED POST-PETITION FINANCING
ON A PRIMING AND SUPER PRIORITY BASIS
(Ref. Docket #12, 39)**

**To the Honorable Marvin Isgur,
United States Bankruptcy Judge:**

NOW COME Angelina County, Cameron County, Cypress-Fairbanks ISD, City of El Paso, Ector CAD, Galveston County, Gregg County, City of Harlingen, Harlingen CISD, Harris County, Hidalgo County, Jefferson County, City of McAllen, Montgomery County, Orange County, Smith County, Texas City ISD, and Tom Green CAD (the “Taxing Authorities”), secured creditors in the above-numbered and styled bankruptcy case, and file this objection to *Debtor’s (A) Emergency Motion for Interim and Final Orders Authorizing the Use of Cash Collateral, Granting Adequate Protection to Prepetition Secured Parties, and Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001; and (B) Motion for Final Order Authorizing Secured Post-petition Financing on a Priming and Super Priority Bases* (the “Motion”), and respectfully represent:

Background Information

1. The Taxing Authorities have filed prepetition secured proofs of claim herein for *ad valorem* property taxes assessed against the Debtors' real and personal property in the estimated amount of \$395,000.00 for tax years 2017 and 2018.

2. The Taxing Authorities are fully secured *ad valorem* tax creditors of Debtors, holding prior perfected liens against property of the Estate. The Taxing Authorities' claims are secured by a first priority lien pursuant to the Texas Tax Code § 32.01, *et seq.*

3. 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 and other personal property is a lien in solido and attaches to 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.

TEX TAX CODE § 32.01(a)-(b), (d).

4. Further, pursuant to section 32.05 (b) of the Texas Property Tax Code, The Taxing Authorities' liens are superior to the claims of creditors of the property's owners and to claims of persons holding liens on the property. Section 32.05(b) provides that:

[A] tax lien provided by this chapter **takes priority over the claims 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 the attachment of the tax lien.

TEX. PROP. TAX CODE § 32.05(b)(emphasis added); *See also Central Appraisal District of Taylor County v. Dixie-Rose Jewels, Inc.*, 894 S.W.2d 841 (Tex. App. – Eastland 1995, no writ) (bank's foreclosure of its purchase money lien on personal property did not defeat or destroy the taxing

unit's statutory tax lien). The tax lien is also unavoidable. *See In re: Winns*, 177 B.R. 253 (Bankr. W.D. Tex. 1995).

Objection

5. The Motion and the Interim Order Authorizing Use of Cash Collateral (the "Interim Order") both provide that the Replacement Liens¹ prime the liens of the Taxing Authorities. The Taxing Authorities object to the entry of any final order that purports to prime the superior lien position of the Taxing Authorities.

6. Further, paragraph 25 of the Interim Order provides that upon the closing of any sale of any of the Collateral, the proceeds of such sale shall be paid to the Agent, for immediate application to the outstanding Secured Claim. To the extent that any property securing the Taxing Authorities' claims is sold, such proceeds constitutes the Taxing Authorities' cash collateral and they object to the use of its cash collateral to pay any other creditors of this estate before the tax claims have been paid in full. Absent an established ad valorem tax reserve, the Taxing Authorities object to the application of any sale proceeds to the Secured Claim.

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¹ Any capitalized term not defined herein shall have the meaning originally ascribed to in the Interim Order.

WHEREFORE, PREMISES CONSIDERED, the Taxing Authorities request the Court deny the Motion unless and until all issues raised herein are resolved, and grant the Taxing Authorities such other and further relief, at law or in equity, as is just.

Dated: August 3, 2018

Respectfully submitted,

**LINEBARGER GOGGAN
BLAIR & SAMPSON, LLP**

/s/ John P. Dillman

JOHN P. DILLMAN

Texas State Bar No. 05874400

TARA L. GRUNDEMEIER

Texas State Bar No. 24036691

Post Office Box 3064

Houston, Texas 77253-3064

(713) 844-3478 *Telephone*

(713) 844-3503 *Facsimile*

john.dillman@lgbs.com

tara.grundemeier@lgbs.com

Counsel for the Taxing Authorities

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the foregoing was served upon the entities listed below by either electronic court filing or by placing same, in the United States mail, first class, postage fully prepaid on August 3, 2018:

Debtors

Neighbors Legacy Holdings, Inc.
10800 Richmond Avenue
Houston, TX 77042

Counsel for Debtor

John F. Higgins, IV, Esq.
Porter Hedges LLP
1000 Main Street, Suite 3600
Houston, TX 77002-6336

U.S. Trustee

Hector Duran, Esq.
Stephen Douglas Statham, Esq.
Office of the U.S. Trustee
515 Rusk, Suite 3516
Houston, TX 77002

Counsel to the Official Committee
of Unsecured Creditors

Michael D. Warner, Esq.
Cole Schotz P.C.
301 Commerce Street, Suite 1700
Fort Worth, TX 76102

/s/ Tara L. Grundemeier
Tara L. Grundemeier