

SAHRISH K. SOLEJA
Texas State Bar No. 24102522
LAYLA D. MILLIGAN
TEXAS STATE BAR NO. 24026015
STEPHANIE EBERHARDT
Texas State Bar No. 24084728
Assistant Attorneys General
Bankruptcy & Collections Division
P. O. Box 12548
Austin, Texas 78711-2548
P: (512) 463-2173/F: (512) 936-1409
sahrish.soleja@oag.texas.gov
layla.milligan@oag.texas.gov
stephanie.eberhardt@oag.texas.gov

ATTORNEYS FOR THE TEXAS DEPARTMENT
OF INSURANCE

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:	§	Chapter 11
	§	
BUCKINGHAM SENIOR LIVING COMMUNITY, INC., ¹	§	Case No. 25-80595 (MVL)
	§	
Debtor.	§	

TEXAS DEPARTMENT OF INSURANCE'S OBJECTION TO THE SALE

[Related to Docket No. 144]

The Texas Department of Insurance (“TDI”), by and through the Office of the Texas Attorney General, files this Objection (the “Objection”) to the Sale and the Stalking Horse Asset Purchase Agreement (the “Stalking Horse APA” or “APA”)² attached to the *Order (I) Approving Bidding Procedures and Bid Protections, (II) Approving the Debtor’s Entry Into the Stalking Horse APA, and (III) Scheduling Certain Dates and Deadlines, (IV) Approving the Form and Manner of Notice Thereof, and (V) Establishing Notice and Procedures for the Assumption and*

¹ The last four digits of the Debtor’s federal tax identification number are 7872. The location of the Debtor’s principal place of business and the service address for the Debtor is 8580 Woodway Drive, Houston, Texas 77063.

² Capitalized terms not defined herein have the meanings ascribed to them in the Stalking Horse APA or Bid Procedures Order.

Assignment of Contracts and Leases (the “Bid Procedures Order”),³ and respectfully states as follows:

I. RELEVANT BACKGROUND

1. On November 17, 2025, the above-captioned Debtor (the “Debtor” or the “Buckingham”) commenced this chapter 11 case by filing a petition for relief under chapter 11 of the United States Code (the “Bankruptcy Code”).⁴ The Debtor is a Texas nonprofit corporation and a charitable organization under section 501(c)(3) of the Internal Revenue Code.

2. The Debtor continues to operate its business and manage its properties as a Continuing Care Retirement Community (“CCRC”), under a certificate of authority issued by the Texas Department of Insurance under Texas Health and Safety Code Chapter 246. The Debtor’s facility consists of 495 independent living, assisted living, memory care, and skilled nursing units. The Debtor provides services exclusively to a vulnerable population.

3. On December 16, 2025, the Court entered the Bid Procedures Order and approved the Stalking Horse APA attached thereto.⁵ TDI has **serious concerns** with the Stalking Horse APA.

4. Pursuant to the APA, the Stalking Horse Bidder has committed to acquire substantially all of the Debtor’s assets in exchange for a purchase price of \$100 million. The APA further contemplates that, following the transaction, the facility will become a community comprised entirely of rental units and will no longer be operated as a licensed CCRC.

5. Critically, the APA does not contemplate recoveries for Former Residents currently owed entrance fee refunds, and it does not propose to pay any entrance fee refunds owed to Current

³ See Dkt. No. 144.

⁴ See Dkt No. 1.

⁵ See Dkt. No. 144.

Residents whose entrance fees are no longer held in escrow. Instead, the APA provides that the Stalking Horse Bidder will pay an aggregate of **\$12 million in Rent Rebate Funds**, amortized and to be paid out over a 12-month period beginning 25 months after the closing of the Transaction, and only to “Eligible Current Residents” whose entrance fees are not being held in escrow and who satisfy additional requirements, including executing a “New Residency Agreement” with the Stalking Horse Bidder, the full terms of which are not disclosed in the APA or subject to Court approval.⁶ On its face, the Rent Rebate Funds appear far insufficient to satisfy the statutory obligations relating to entrance fee refunds, and TDI has significant concerns regarding both the allocation and distribution of these funds.

6. The Debtor acknowledged that as of the Petition Date, it has approximately \$72 million in Entrance Fee Obligations.⁷ In addition, the refundable Entrance Fee Obligations of Current Residents are approximately \$75 million.⁸ The Debtor’s schedules disclose that it is holding only \$573,604.36 for entrance fee refunds due and owing after the effective date of the Debtor’s 2021 bankruptcy filing.⁹

7. Pursuant to Section 5.17 of the APA, the Buyer shall implement the “Current Resident Rent Rebate Payment program to provide partial rebates of rents paid by Eligible Current Residents.”¹⁰ The Resident Rent Rebate Payment Program is funded through the Rent Rebate Funds described herein.

8. To qualify as an “Eligible Current Resident,” a resident must satisfy various conditions, including:

⁶ See Stalking Horse APA, at § 5.17(d)(i) (emphasis added).

⁷ See Dkt. No. 21, at ¶37.

⁸ *Id.*

⁹ See Dkt. No. 175 at 19.

¹⁰ See Stalking Horse APA, at 5.17(b).

(iii) **prior to the Closing, execute a New Residency Agreement** with Buyer for the same unit, level of acuity and the same base service fee or rental rate as such Current Resident is currently paying immediately prior to the Closing Date, with such New Residency Agreement to become effective upon the Closing; (iv) **execute a release** (a “Rent Rebate Payment Program Release”) **of all liabilities** in favor of current members of the Board of Directors and current officers of Seller, Greystone Management Services Company, LLC, any trustee, the Trustee, any bondholder, Buyer and any of Buyer’s affiliates and subsidiaries, and the respective representatives and agents of the foregoing, on a form reasonably acceptable to Buyer.¹¹

9. The APA fails to address the occupancy agreements of current residents, and whether those agreements are executory contracts to be assumed and assigned or rejected. The APA does not include a form of the New Residency Agreement or the Rent Rebate Payment Program Release the Residents are being requested to execute and for which they will be bound. Without those documents, Current Residents cannot meaningfully evaluate the rights they are being asked to waive or obligations they are being asked to assume as part of the proposed sale. It is unclear if current residents of The Buckingham are aware of these provisions or the requirements therein.

II. OBJECTION

A. As a Licensed CCRC, the Debtor Must Provide Reservation Deposit Refunds and Entrance Fee Refunds as Required by Law and Contract.

10. CCRCs provide a combination of housing and health care for older adults and typically offer multiple levels of care: (i) independent living for people who need little help; (ii) assisted living for people who need more medical assistance; and (iii) nursing care for people who need substantial medical care. TDI regulates CCRCs, which require an entrance fee.

11. Debtor’s sale of the CCRCs’ premises which house the residents is inconsistent with its contractual obligations to its residents and its statutory requirements as a licensed CCRC.

¹¹ Stalking Horse APA, at §5.17(b)(iii), (iv).

12. Absent a certificate of authority from TDI, the Debtor could not have entered into continuing care contracts with current and former residents, as was essential to its business. Texas Health and Safety Code Section 246.021 provides:

Sec. 246.021. CERTIFICATE OF AUTHORITY REQUIRED. Unless a provider holds a certificate of authority issued under this subchapter, the provider may not:

- (1) acquire a facility;
- (2) enter into a continuing care contract; or
- (3) enter into a reservation agreement unless the agreement provides for the full refund, for any reason, of a deposit paid in connection with the agreement.¹²

13. As a licensed CCRC, the Debtor is obligated by statute and contract to refund entrance fees under the applicable circumstances. Texas Health and Safety Code section 246.074 provides:

Sec. 246.074. RETURN OF ENTRANCE FEE. The escrow agent **shall** return an entrance fee to the person who paid it if the fee is not released to the provider or placed in the loan reserve fund escrow required under Section 246.077:

- (1) not later than 36 months after the date on which any portion of the entrance fee is received by the provider;
- (2) within the time period specified by the provider in the disclosure statement delivered with the continuing care contract under which the fee was paid, if the specified time period is longer than the time period under Subdivision (1); or
- (3) if any of the following events occur, as soon as practicable after the date the event occurs:
 - (A) occupying a unit;
 - (B) the prospective resident dies before construction on a facility not yet in operation is stopped indefinitely before the facility is completed; or
 - (C) a continuing care contract is rescinded under Section 246.056.¹³

¹² See Tex. Health & Safety Code Ann. § 246.021.

¹³ See Tex. Health & Safety Code Ann. § 246.074 (emphasis added).

The Debtor acknowledged these statutory obligations and sought authority from this Court to provide the refunds due to current and former residents (the “Residents”) as applicable, which this Court authorized:¹⁴

Pursuant to the terms of the Type A and Type C Residency Agreements, the Debtor must reimburse Entrance Fees when a Residency Agreement is terminated under its terms, including in the event of the passing away of the resident (such reimbursement, the “Entrance Fee Refund” and, together with the Reservation Deposit Refund, the “Reservation Deposit and Entrance Fee Refund”) after receipt of sufficient proceeds to fully fund the refund obligation from the next re-sale and occupancy of a residence at the Debtor’s Facility, or (ii) termination of the relevant agreement. The Entrance Fees are held in a long-term escrow account (the “Entrance Fee Escrow Account”). The Debtor’s authority to provide Reservation Deposit Refunds and Entrance Fee Refunds are integral to the Debtor’s business.¹⁵

The Debtor’s authority to provide refunds is integral to its business and to compliance with its statutory obligations. It remains incumbent upon the Debtor, as a licensed CCRC, to comply with its statutory obligations.

B. The Residents’ Claims are Secured by a Statutory Lien.

14. Section 246.111 of the Texas Health and Safety Code creates a lien in favor of the residents to secure a provider’s obligations under continuing care contracts.

Sec. 246.111. LIEN. (a) To secure the obligations of the provider under any continuing care contract, **a lien attaches on the date a resident first occupies a facility or receives services under a continuing care contract. The lien covers the real and personal property of the provider located at the facility.** The provider shall prepare a written notice sworn to by an officer of the provider for each county where the provider has a facility.

...

(e) A lien under this section is effective for 10 years. A lien under this section may be foreclosed on application of the board if the facility is liquidated or the provider is insolvent or bankrupt. **The proceeds from a foreclosed lien shall be used for full or partial satisfaction of the provider’s obligations under continuing care contracts in effect on the date of the foreclosure.**¹⁶

¹⁴ See Dkt. No. 141.

¹⁵ See Dkt. No. 15, at ¶10.

¹⁶ See Tex. Health & Safety Code Ann. § 246.111(a) and (e) (emphasis added).

15. The Debtor has represented an obligation to refund approximately \$75 Million in Entrance Fee Obligations.¹⁷ The Residents' statutory lien attaches to the real and personal property of the Debtor and its bankruptcy estate. Therefore, the entire \$75 Million in Entrance Fee Obligations are secured by a statutory lien.

16. The APA's proposed \$12 Million payment program, delayed and amortized as described above, cannot satisfy, either in full or in meaningful part, the Debtor's obligation under continuing care contracts as contemplated by section 246.111(e) of the Texas Health and Safety Code.

17. The sale as proposed in the APA would undermine the statutory liens that exist for the benefit of the Residents and would violate the terms of the continuing care contracts the Debtor entered into with the Residents.

C. The Stalking Horse and the Debtor Cannot Use Artful Drafting to Circumvent 11 U.S.C. § 365 and Coerce a Vulnerable Population into New Residency Agreements with Extremely Broad Releases.

i. The Stalking Horse APA Seeks to Force Contract Modification Without Assumption or Clear Rejection under Section 365.

18. Section 365 of the Bankruptcy Code prescribes the rights and remedies available to a lessee following a debtor's rejection of an unexpired executory contract or lease, and it protects a lessee's rights in specified circumstances. In such a case, lessees are aware of their rights and likely receive specific notice about the rejection of the executory contract. Section 365 sets forth the lessee's rights in the event of a rejection and provides:

(h)(1)(A) If the trustee rejects an unexpired lease of real property under which the debtor is the lessor and—

...

¹⁷ See Dkt. No. 15, at ¶10.

(ii) if the term of such lease has commenced, **the lessee may retain its rights under such lease (including rights such as those relating to the amount and timing of payment of rent and other amounts payable by the lessee and any right of use, possession, quiet enjoyment, subletting, assignment, or hypothecation) that are in or appurtenant to the real property for the balance of the term of such lease and for any renewal or extension of such rights to the extent that such rights are enforceable under applicable nonbankruptcy law.**¹⁸

19. Bankruptcy law, in other words, recognizes and defers to state law in these provisions. *Cf. Butner v. United States*, 440 U.S. 48, 54-57, 99 S. Ct. 914, 917-19, 59 L.Ed.2d 136 (1979) (holding that, except where it specifically overrides state law, the Bankruptcy Code enforces applicable property rights created by state law). The lessee's interest in a leasehold cannot be modified or changed solely because of a pending bankruptcy. *In re Churchill Properties III, Ltd. Partnership*, 197 B.R. 283, 288 (Bankr. W.D. Ill. 1996) (quoting *In re Wood Comm Fund I, Inc.*, 116 B.R. 817, 818 (Bankr.N.D.Okla.1990) (determining whether a section 363(f) sale overrides the rights and remedies of a lessee under Section 365(h) of the Bankruptcy Code and holding that section 365 control).

20. Section 363, in contrast, permits a debtor-in-possession to sell property "free and clear" of interest only under specified conditions. Section 363(f) specifically provides:

(f) The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if—

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or

¹⁸ See 11 U.S.C. § 365 (h).

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.¹⁹

21. Here, the Debtor has not rejected the Residency Agreements with the Residents which would allow Residents to properly evaluate and exercise their rights under sections 363 and 365. Instead, the APA expressly lists the agreements as “Excluded Assets” and provides that no Residency Agreement will be assigned to the Buyer, and that that the Buyer intends to offer new occupancy agreements rather than assume existing agreements.²⁰

5.17 Residency Agreements; Current Resident Recovery Program.

(a) New Residency Agreements. Prior to the Closing, Buyer shall offer new residency agreements on a rental basis to all existing Residents (including, for the avoidance of doubt, Independent Living, Assisted Living, Memory Care and Skilled Nursing Residents), in each case, at equivalent base rental rates to such Residents’ current monthly service fees under their existing Residency Agreements (the “New Residency Agreements”). The New Residency Agreements shall limit any future increases to existing Residents’ base rental rates to 5% per annum so long as those existing Residents remain in the Facility in their current acuity and unit. A Resident executing a New Residency Agreement who subsequently moves to a different acuity level or a different unit will pay the current market rate for that new unit, and any future increases of the new base rental rate will be limited to 5% per annum. For the avoidance of doubt, all Benevolent Care Residents shall be offered New Residency Agreements that shall terminate no earlier than six (6) months following the Closing Date; *provided however*, that no additional Benevolent Care Residents shall be admitted to the Facility from the Execution Date through the Closing Date.

(iii) prior to the Closing, execute a New Residency Agreement with Buyer for the same unit, level of acuity and the same base service fee or rental rate as such Current Resident is currently paying immediately prior to the Closing Date, with such New Residency Agreement to become effective upon the Closing;

2.2 Excluded Assets. The Parties acknowledge that Seller shall not sell, assign, transfer or convey to Buyer, and Buyer shall not purchase, acquire or accept from Seller, the assets consisting of the following (all such assets, the “Excluded Assets”):

(a) all Residency Agreements, including all Entrance Fee Obligations;

¹⁹ See 11 U.S.C. § 363(f).

²⁰ See APA, at §§ 2.2, 5.17 (a) and (b)(iii).

22. Compounding to the confusion, the proposed sale order appears to contemplate broad injunctive relief that could be construed to restrain counterparties from enforcing rights typically preserved under Section 365. Given the ambiguity and potential lack of meaningful notice, Residents may not appreciate how the proposed sale affects their existing residency agreements or what actions they must take to preserve their contractual rights, including preserving causes of action under tort and negligence claims.

23. The Debtor and Stalking Horse Bidder should not be permitted to condition occupancy on Residents' execution of new agreements and releases while simultaneously disclaiming assumption and avoiding the clarity, notice, and protections that Section 365 provides to affected parties.

24. This transaction appears, strategically, to benefit the Debtor and Stalking Horse Bidder, but leaves the Residents to bear emotional, physical, and financial burden of the loss. The Debtor and the Stalking Horse Bidder are using Section 363(f) to sell free and clear of the Residency Agreements, obtaining protections under Section 365 that benefit the Debtor, while not specifically rejecting the Residency Agreements and otherwise providing adequate notice to the Residents about their rights under Section 365 prior to the sale.

25. Residents are elderly, vulnerable population being pressured on an accelerated timetable to agree to execute a new residency agreement and broad third-party releases, not provided in form and subject to the Stalking Horse Bidder's control, in exchange for little or no consideration and under the threat of losing their housing and critical care. This is improper and should not be sanctioned through a sale order.

ii. The Stalking Horse APA Contains Broad Third-Party Releases.

26. As part of the APA terms related to residency agreements, the Residents are being asked to execute broad third-party releases as part of the sale without adequate notice, and with little to no consideration.²¹

27. Section 363 does not authorize or provide a mechanism to impose sweeping third-party releases through “free and clear” sale relief.²² Yet, the APA requires Residents to execute unreasonably broad third-party releases for all liability as a condition to any payment under the Rent Rebate Payment Program.²³

(iv) execute a release (a “**Rent Rebate Payment Program Release**”) of all liabilities in favor of current members of the Board of Directors and current officers of Seller, Greystone Management Services Company, LLC, any trustee, the Trustee, any bondholder, Buyer and any of Buyer’s affiliates and subsidiaries, and the respective representatives and agents of the foregoing, on a form reasonably acceptable to Buyer; and

28. Third-party releases are typically addressed, if at all, in connection with plan confirmation and require heightened notice and consent procedures. Judge Christopher Lopez in the Southern District of Texas recently held in *In re Tehum Care Services* that notice for third party releases must be sent to non-voting creditors, must conspicuously disclose the releases, and provide a mechanism to allow the non-voting creditor expressly opt-in or opt-out of the third-party releases.²⁴ No such broad third-party releases have been granted in similar bankruptcy cases through an asset purchase agreement through a sale pursuant to Section 363(f). *See In re Genesis*

²¹ See APA, at section 5.17(b)(iv).

²² See 11 U.S.C. § 363.

²³ *Id.* at § 5.17(b)(iv).

²⁴ *In re Tehum Care Services, Inc.*, No. 23-90086, 2025 WL 2256212, at *3 (Bankr. S.D. Tex. Aug. 7, 2025) (holding If a proposed plan seeks consensual pre- or post-petition releases with respect to claims that creditors may hold against non-debtor parties, then a ballot must be sent to creditors entitled to vote on the proposed plan and **notices must be sent to non-voting creditors and parties-in-interest**. The ballot **and the notice** must inform the creditors of such releases and provide a box to check to indicate assent or opposition to such consensual releases together with a method for returning the ballot or notice.) (emphasis added).

Healthcare, Case No. 25-80185 (SGJ) (Bankr. N.D. Tex. Dec. 10, 2025) (denying sale of nursing home chain which included the release from legal liability the debtor's controlling investor and private equity associate); *In re Amsterdam House Continuing Care Retirement Community, Inc.*, Case No. 23-70989 (Bankr. E.D.N.Y. Dec. 27, 2023) (the asset purchase agreement did not include third party releases).

29. TDI is unaware of any notice sent to the Residents that conspicuously highlights the third-party releases, that must be signed to be considered an Eligible Current Resident and receive payment, and provides a meaningful opt in/opt out mechanism. Instead, a general and broad description of the releases are embedded within the APA, and the operative forms have not been provided.

iii. The Stalking Horse APA Contains Provisions that Contemplate the Sale is a Sub Rosa Plan.

30. TDI further objects to the Stalking Horse APA on the basis that the provisions related to residents, both current and former, appear to constitute a sub rosa plan.

31. In the APA, the Debtor and the Stalking Horse provide for an amount to be paid into a Rent Rebate Program that purports to address payments owed to Eligible Current Residents, an amount carved out of the proceeds to be disbursed, and requirements and steps for those residents to get payments on their claims. There is no provision that allows these residents the opportunity to seek a claim related to rejection of their agreements in the bankruptcy case. Further, the APA provides terms that include strong-arm provisions forcing these residents to provide broad third-party releases in order to be paid amounts they are owed. Determination of the use of funds resulting from a liquidation, treatment and allowance of claims and terms related to payments thereof, and releases of liability are more appropriately addressed in a Plan.

32. Debtors in Chapter 11 cannot use Section 363(b) to sidestep the protection creditors have in the confirmation process.²⁵ In the case of *In re Gulf Coast Oil Corp.*, the court provided certain factors that a court can consider in determining whether to approve a Section 363 sale or whether certain safeguards are necessary to protect rights that otherwise could be exercised in Plan confirmation.²⁶

33. One factor to consider is whether special protective measures may be required to protect certain creditors. In the present case, the residents in question are comprised of a vulnerable population, some of which may be subject to powers of attorney or unable to make decisions on their own behalf. Approval of the APA that substantially affects not only where they live, what care they will receive, and how they will be paid funds they are owed, but forces a broad release, which could include tort claims or other claims related to their care, in order to stay in their homes is inappropriate and additional notice and consideration should be required.

III. RESERVATION OF RIGHTS

34. Nothing herein waives TDI's right to further object to the APA or Sale or respective amendments thereto, nor the right to enforce applicable state laws and regulations.

IV. CONCLUSION

WHEREFORE, the Texas Department of Insurance requests the Court sustain this Objection, and grant such other and further relief as the Court deems just and appropriate.

²⁵ *In re Continental Airlines, Inc.*, 780 F.2d 1223 (5th Cir. 1986). *See also In Matter of Cajun Elec. Power Co-op., Inc.*, 119 F.3d 349 (5th Cir. 1997).

²⁶ *In re Gulf Coast Oil Corp.*, 404 B.R. 407 (S.D. Tex. 2009).

Dated: January 14, 2026

Respectfully submitted,

KEN PAXTON
Attorney General

BRENT WEBSTER
First Assistant Attorney General

RALPH MOLINA
Deputy First Assistant Attorney General

AUSTIN KINGHORN
Deputy Attorney General for Civil Litigation

RACHEL R. OBALDO
Chief for Bankruptcy & Collections Division

/s/ Sahrish Soleja

SAHRISH K. SOLEJA
Texas State Bar No. 24102522

LAYLA D. MILLIGAN
Texas State Bar No. 24026015

STEPHANIE EBERHARDT
Texas State Bar No. 24084728

Office of the Attorney General of Texas
Bankruptcy & Collections Division
P. O. Box 12548

Austin, Texas 78711-2548

Telephone: (512) 463-2173

Facsimile: (512) 936-1409

sahrish.soleja@oag.texas.gov

layla.milligan@oag.texas.gov

stephanie.eberhardt@oag.texas.gov

ATTORNEYS FOR THE TEXAS DEPARTMENT OF
INSURANCE

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing has been served via the Court's Electronic Filing System on all parties requesting notice in this proceeding on January 14, 2026.

/s/ Sahrish Soleja _____

SAHRISH K. SOLEJA

Assistant Attorney General