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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

IN RE: § Chapter 11  
§  
GUITAR CENTER, INC. *et al*,<sup>1</sup> § Case No. 20-34656 (KRH)  
§  
§ Jointly Administered  
Debtors §

**LIMITED OBJECTION OF CERTAIN TEXAS TAXING ENTITIES TO MOTION TO APPROVE USE OF CASH COLLATERAL DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION FINANCING, (II) AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL, (III) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (IV) GRANTING ADEQUATE PROTECTION TO THE PREPETITION LENDERS, (V) MODIFYING THE AUTOMATIC STAY, (VI) SCHEDULING A FINAL HEARING, AND (VII) GRANTING RELATED RELIEF**

COMES NOW Arlington ISD , *et al*.<sup>2</sup>, secured creditors and parties in interest (the “Certain Texas Taxing Entities”), by counsel, file this Limited Objection Motion to Debtors' Motion For Entry Of Interim And Final Orders (I) Authorizing The Debtors To Obtain

<sup>1</sup> A complete list of each of the Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Guitar Center Holdings, Inc. (3262 ; Guitar Center Gift Card Company, Guitar Center, Inc, (3928); Guitar Center Inc., (4340), GTRC Services, Inc., (9503), GC Business Solutions, Inc., Music & Arts Instructor Services, LLC (7811); and AVDG, LLC (4440), The Debtors Service address is 5795 Lindero Canyon Rd., Westlake Village , CA 91362.

<sup>2</sup> The full inclusion of Certain Texas Taxing Entities is still undergoing review but will include all taxing entities represented by Perdue Brandon Fielder Collins and Mott LLP.

Postpetition Financing, (II) Authorizing The Debtors To Use Cash Collateral, (III) Granting Liens And Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection To The Prepetition Lenders, (V) Modifying The Automatic Stay, (VI) Scheduling A Final Hearing, And (VII) Granting Related Relief) (Related to Docket no. 30) (the “DIP Finance Motion”).

### Background

1. The Certain Texas Taxing Entities are political subdivisions of the State of Texas, authorized and required by the Texas Constitution and laws to levy and collect taxes on taxable personal and real property within their boundaries, in order to operate and discharge their public purposes.
2. The Certain Texas Taxing Entities hold secured pre-petition tax claims for *ad valorem* taxes<sup>3</sup> (the “Tax Claims”). The Tax Claims are secured by tax liens on the real and tangible personal property of the Debtors within their taxing jurisdiction boundaries (the “Tax Liens”).
3. The Tax Liens attach on January 1 of each tax year and are superior to any other secured claim on the taxable property as provided by Article VIII, Section 15 of the Texas Constitution, and Sections 32.01 and Section 32.05(b) of the Texas Property Tax Code. The Tax Liens for the tax year 2020 attached pre-petition and are pre-petition liens securing pre-petition debt. *See In the Matter of Midland Industrial Services Corp.*, 35 F.3d 164 (5<sup>th</sup> Cir. 1994) (determining that taxes are incurred on January 1 of each year, even if they are not yet calculated).
4. The Debtors filed the DIP Finance Motion on November 22, 2020 at docket number 30 and a final hearing is set for December 17, 2020 at 10:00 am (EST).

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<sup>3</sup> Due diligence remains ongoing and the estimated amount due to all Certain Texas Taxing Entities is currently unknown.

Limited Objection to DIP Finance Motion

7. The Certain Texas Taxing Entities object to the DIP Finance Motion to the extent that it seeks to prime the valid, enforceable, senior liens held by the Texas Taxing Entities without adequate protection or consent.

8. The Certain Texas Taxing Entities object to the priming of their liens by any entity including any DIP Loan Parties or related entities.

9. The Debtors have failed to provide adequate protection for the Certain Texas Taxing Entities' senior lien as required by 11 U.S.C. § 364(d)(1)(B)<sup>4</sup>. The Certain Texas Taxing Entities are at heightened risk because several stores that they tax are closing, and their collateral is being sold free and clear. Additionally, the auction of the business as a going concern raises questions of who will be paying the ad valorem taxes.

10. The Certain Texas Taxing Entities request that language be added to the final order on the DIP Finance Motion to protect their liens from subordination by any party including and adequately protect them by providing segregated funds to pay the Tax Claims once they become allowed claims.

11. The Certain Texas Taxing Entities request adequate protection in the form of a final order that provides sufficient funds to pay their claims, plus interest at the applicable non-bankruptcy rate, set aside in a segregated account for the sole purpose of paying its claims. The Certain Texas Taxing Entities further requests that the Court enter an order that the segregated funds not be paid to any other party until the Tax Claims have been paid in full.

12. Alternately, the Certain Texas Taxing Entities assert that the order on the Motion should provide that the Debtors shall retain and set aside proceeds from the sale of any non-ordinary

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<sup>4</sup> 11 USC § 364(d)(1)(B) requires that "... there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted."

course sale of collateral securing their tax claims in an amount sufficient to pay the 2020 taxes together with any interest calculated at the applicable non-bankruptcy rate in the event the taxes are not paid prior to delinquency under Texas law, as adequate protection for their claims, and shall not pay or distribute such amounts for any other purpose without the agreement of the Certain Texas Taxing Entities or by order of the Court upon hearing duly noticed.

13. The Certain Texas Taxing Entities further object to the entry of a final order that proposes to provide special treatment to other similarly situated taxing jurisdictions that may have negotiated with the Debtors without providing the same treatment to the Certain Texas Taxing Entities.

14. Counsel for the Certain Texas Taxing Entities have attempted to confer with counsel for the Debtors in an attempt to reach an agreement, but an agreement has not been reached.

WHEREFORE, Arlington ISD, *et al.*, by counsel, respectfully request that a Final Order approving the DIP Finance Motion (1) include language that their liens are not primed nor made subordinate to any other party including the DIP Loan Parties or related entities, (2) provide sufficient funds to pay the Tax Claims plus interest at the applicable non-bankruptcy rate, set aside in a segregated account for the sole purpose of paying its claims, not to be paid to any other party until the Tax Claims have been paid or without further order of this Court and (3) grant them such other and further relief as is just and proper.

Date: December 10, 2020

ARLINGTON ISD, *ET AL*

By: /s/ Eboney Cobb

By: /s/ Paul A. Driscoll

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**CERTIFICATE OF SERVICE**

I certify I filed the foregoing electronically with the Clerk on December 10, 2020 with service via ECF on all necessary parties and by first class mail to:

Guitar Center, Inc.  
5795 Lindero Canyon Road  
Westlake Village, CA 91362

/s/Paul A. Driscoll