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Attorneys for Landlord LBA Realty Fund III-Company XII, LLC

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

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<b>In re</b>	:	<b>Chapter 11</b>
	:	
<b>GUITAR CENTER, INC. et al.,</b>	:	<b>Case No. 20-34656 (KRH)</b>
	:	
<b>Debtors.<sup>1</sup></b>	:	<b>(Jointly Administered)</b>
	:	
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<sup>1</sup> 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, Inc. (0862); Guitar Center Stores, Inc. (4340); GTRC Services, Inc. (9503); GC Business Solutions, Inc. (3928); Guitar Center Gift Card Company, LLC (3370); Music & Arts Instructor Services, LLC (7811); and AVDG, LLC (4440). The Debtors' service address is 5795 Lindero Canyon Rd., Westlake Village, CA 91362.

**LIMITED OBJECTION OF LBA REALTY FUND III-COMPANY XII,  
LLC TO NOTICE OF REJECTION OF CERTAIN EXECUTORY  
CONTRACTS AND UNEXPIRED LEASES IN CONNECTION WITH  
CONFIRMATION OF THE DEBTORS' JOINT PRE-PACKAGED  
CHAPTER 11 PLAN OF REORGANIZATION**

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Landlord LBA Realty Fund III-Company XII, LLC (“Landlord”), through its undersigned counsel, hereby files its limited objection<sup>2</sup> to the *Notice Of Rejection Of Certain Executory Contracts And Unexpired Leases In Connection With Confirmation Of The Debtors’ Joint Pre-Packaged Chapter 11 Plan Of Reorganization*, filed December 3, 2020 [Docket No. 158] (the “Rejection Notice”) and respectfully represents as follows:

**I. FACTUAL AND PROCEDURAL BACKGROUND**

1. On November 21, 2020, (the “Petition Date”), the Debtors each filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). On November 23, 2020, this Court entered its order authorizing joint administration and procedural consolidation of these Chapter 11 cases. [Docket No. 63]. No trustee or examiner has been appointed and Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.

2. Landlord, as successor-in-interest to LBA Realty Fund III-Company VII, LLC, and debtor Guitar Center, Inc. (“Tenant”), as tenant, are parties to that certain Multi-Tenant Office Lease, dated September 1, 2011 (as subsequently amended, the “Thousand Oaks Lease”), pursuant to which Tenant leases those certain office premises commonly known as Suites 160 and 280, consisting of an aggregate 42,673 rentable square feet (the “Premises”) in the building (the “Building”) located at 112 South Lakeview Canyon Road, Thousand Oaks, California, as more

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<sup>2</sup> This objection is filed to an extension of time to respond to the Rejection Notice kindly granted by Debtors’ counsel.

particularly described in the Lease. The Building is part of a larger development known as the Lakeview Corporate Center.

3. On November 22, 2020, Debtors filed their *Joint Pre-Packaged Chapter 11 Plan of Reorganization of Guitar Center, Inc. et al.* [Docket No. 16] and accompanying *Disclosure Statement For Joint Pre-Packaged Chapter 11 Plan of Reorganization of Guitar Center, Inc. et al.* [Docket No. 15].

4. On November 23, 2020, as part of the “first day” relief granted Debtors, this Court entered its *Order: (I) Scheduling a Combined Hearing To Approve the Disclosure Statement and Confirm The Plan; (II) Establishing Objection Deadlines; (III) Approving the Form and Manner of Combined Notice; (IV) Approving Solicitation Procedures and Ballots; (V) Approving Procedures For Assumption and Rejection Of Executory Contracts and Unexpired Leases; (VI) Granting Certain Extensions; and (VII) Granting Related Relief* [Docket No. 82] (the “Procedures Order”), which, among other things, provides procedures for the rejection of certain unexpired leases of nonresidential real property. (See Procedures Order at ¶¶ 15-18.)

5. On December 3, 2020, Debtors filed and served their Rejection Notice, identifying the Thousand Oaks Lease as one of Debtors’ unexpired leases of nonresidential real property to be rejected effective January 31, 2021.

6. Landlord does not dispute the Debtors’ exercise of business judgment in their decision to reject the Thousand Oaks Lease but objects to several aspects of the Rejection Notice. While Landlord has been negotiating with Debtors regarding portions of a prospective order approving the Rejection Notice in an effort to narrow or limit objections, to date, those negotiations have not concluded and, given the accelerated timeline in these Chapter 11 cases, Landlord files this Limited Objection out of an abundance of caution.

## II. ARGUMENT

7. Both the Procedures Order and Rejection Notice contemplate that the claims arising from the rejection of Debtors' Unexpired Leases will be due "thirty (30) days after (i) entry of the Confirmation Order with respect to the Executory Contracts and Unexpired Leases rejected pursuant to the Plan, or (ii) the date on which the Debtors or Reorganized Debtors, as applicable, inform the applicable counterparty of their determination to reject its Executory Contract or Unexpired Lease ..." (See, e.g., Rejection Notice at pp. 2-3.) Accordingly, Debtors seek to require Landlord to file Claims "arising from the rejection" of the Thousand Oaks Lease by January 4, 2021 (as extended by the New Year's holiday weekend) – twenty-seven (27) *prior to the effective date of rejection* of the Thousand Oaks Lease and before all of Landlord's potential claims (particularly those relating to the condition of the premises upon return of possession) may be ascertained. It is simply inequitable and, under the circumstances of these Chapter 11 cases, unnecessary for Landlord to have to file a protective proof of claim before possession of the Premises is returned to Landlord, only to have to amend such proof of claim shortly thereafter. Any order approving the rejection of the Thousand Oaks Lease should provide that claims arising from the rejection of the Thousand Oaks Lease may be filed within thirty (30) days of the effective date of rejection, consistent with the relief this Court has granted in other recent Chapter 11 cases of national retailers. See, e.g., *Order (I) Setting Bar Dates For Filing Proofs of Claim, Including Requests For Payment Under Section 503(B)(9), (II) Establishing Amended Schedules Bar Date and Rejection Damages Bar Date, etc.*, entered March 13, 2020 [Docket No. 345] in In re Pier 1 Imports, Inc., et al., U.S. Bankruptcy Court (E.D. Va.) Case No. 20-30805 (KRH) at ¶ 6.

8. Further, Debtors propose that the January 31, 2021 effective date of rejection by fixed, in advance, by the Rejection Notice. The effective date of rejection should be based on the later of the date set forth in the Rejection Notice or the date upon which Debtors surrender

possession of the Premises to Landlord by delivery of keys, key codes, or security codes, or alternatively, the delivery of a writing to Landlord relinquishing any further possessory interest in the premises and authorizing Landlord to change locks, key codes and security access codes. See, e.g., Order (I) Authorizing and Approving Procedures To Reject or Assume Executory Contracts and Unexpired Leases and (II) Granting Related Relief, entered March 19, 2020 [Docket No. 402] in In re Pier 1 Imports, Inc., et al., U.S. Bankruptcy Court (E.D. Va.) Case No. 20-30805 (KRH) at ¶ 2(d) (the “Pier 1 Rejection Procedures”); Order Authorizing (I) Rejection of Certain Unexpired Leases of Real Property Effective as of the Rejection Date, and (II) Abandonment of any Personal Property Located at Locations Covered By Such Unexpired Leases, entered August 27, 2020 [Docket No. 451] in In re Ascena Retail Group, Inc., et al., U.S. Bankruptcy Court (E.D. Va.) Case No. 20-33113 (KRH) at ¶ 2.

9. Finally, neither the Procedures Order or Rejection Notice contain any provisions with respect to the disposition of any personal property remaining at the Premises following the return of possession, contrary to procedures routinely approved in other Chapter 11 cases. As this Court approved in Pier 1 and Ascena, any order approving the rejection of the Lease should provide that any furniture, equipment or other personal property remaining at the Premises is abandoned as of the effective date of rejection, free and clear of liens, claims, encumbrances, interest and rights of third parties, permitting Landlord to remove or dispose of any such abandoned personal property in its discretion. See, e.g., Pier 1 Rejection Procedures at ¶ 2(g).

### **III. CONCLUSION**

For the foregoing reasons, any order approving the rejection of the Thousand Oaks Lease should be modified to provide (1) that claims for rejection damages may be filed after the rejection of the lease, not before, (2) that the effective date of rejection be based on later of January 31, 2021, as stated in the Rejection Notice, or the date of the actual turnover of

possession of the Premises, and (3) that any personal property remaining in the Premises on the effective date of rejection be deemed abandoned, consistent with relief granted by this Court in recent Chapter 11 cases of national retailers.

Dated: December 14, 2020      Respectfully submitted,

/s/ Lynn L. Tavenner

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*Attorneys for Landlord LBA Realty Fund III-Company XII,  
LLC*

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 14th day of December, 2020, a copy of the foregoing Limited Objection was electronically served via CM/ECF and/or electronic mail to all parties receiving notice through the Court's ECF system.

/s/ Lynn L. Tavenner