

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF ARKANSAS**

RE: RWL INVESTMENTS, LLC

**CASE NO. 4:16-BK-11251
Chapter 11**

**SECURED CREDITOR FIRST SECURITY BANK'S
RENEWED MOTION TO PROHIBIT USE OF CASH COLLATERAL**

Comes now the Secured Creditor, First Security Bank (hereinafter referred to as "First Security"), by and through its attorneys, MILLAR JILES, LLP, and for its Renewed Motion to Prohibit Use of Cash Collateral, states as follows:

1. First Security hereby renews its Motion to Prohibit Cash Collateral filed herein on March 10, 2016 as Doc. 13.

2. First Security is a secured creditor of the Debtor pursuant to a series of two (2) loans secured by, among other things, certain real property located in Pulaski County, Arkansas and the leases and rents therefrom.

3. On April 28, 2015, the Debtor borrowed the sum of One Million Ninety-five Thousand Seven Hundred Fifty-five and 36/100 Dollars (\$1,095,755.36) from First Security. As evidence of the loan, on April 28, 2015, the Debtor made a Commercial Promissory Note payable to First Security in that amount. The maturity date of the Commercial Promissory Note dated April 28, 2015 was subsequently extended pursuant to a Commercial Promissory Note dated July 30, 2015. The Commercial Promissory Notes dated April 28, 2015 and July 30, 2015 shall hereinafter collectively be referred to as the "0206 Note". A true and correct copy of the 0206 Note is attached hereto as Exhibit No. 1 and is incorporated herein by reference as if fully set out word for word. The 0206 Note matured, by its terms, on March 30, 2016.

4. As security for the indebtedness evidenced by the 0206 Note, and as security for all present and future debts owed by the Debtor to First Security, on April 28, 2015 the Debtor executed a Commercial Real Estate Mortgage (hereinafter referred to as the "0206 Mortgage") thereby granting First Security a first mortgage lien security interest in the following real property (hereinafter referred to as the "0206 Real Property") located in Pulaski County, Arkansas:

TRACT 1: 1921 FAIRPARK BOULEVARD, LITTLE ROCK, 72204

LOT 8, BLOCK 31 OF CHERRY & COX ADDITION TO THE CITY OF LITTLE ROCK, PULASKI COUNTY, ARKANSAS, AS SHOWN AND RECORDED IN PLAT BOOK 1, PAGE 66, RECORDS OF PULASKI COUNTY, ARKANSAS.

TRACT 2: 700 EDGEWOOD DRIVE, MAUMELLE, 72113

TRACT 4, WILD ROOT LIQUOR STORE, COOK MOUNTAIN VILLAGE CENTER MAUMELLE, PULASKI COUNTY, ARKANSAS.

TRACT 3: 3306 H STREET, LITTLE ROCK, 72205

THE WEST HALF (W1/2) OF LOTS 5 AND 6, BLOCK 8, EAST PULASKI HEIGHTS ADDITION TO THE CITY OF LITTLE ROCK, PULASKI COUNTY, ARKANSAS.

TRACT 4: 5111 JOHN F KENNEDY BOULEVARD, NORTH LITTLE ROCK, 72116

LOT 6R, BLOCK 201, PARK HILL ADDITION TO THE CITY OF NORTH LITTLE ROCK, PULASKI COUNTY, ARKANSAS.

The 0206 Mortgage was filed and recorded in the Official Records of Pulaski County, Arkansas on May 26, 2015 as Document No. 2015030778. A true and correct copy of the

0206 Mortgage is attached hereto as Exhibit No. 2 and is incorporated herein by reference as if fully set out word for word.

5. As additional security for the indebtedness evidenced by the 0206 Note, and as security for all present and future debts owed by the Debtor to First Security, on April 28, 2015 the Debtor executed an Assignment of Leases and Rents (hereinafter referred to as the "Assignment") whereby the Debtor absolutely assigned to First Security all leases and rents arising from the 0206 Real Property subject to a revocable license to Debtor to collect the rents. The Assignment was filed and recorded in the Official Records of Pulaski County, Arkansas on August 13, 2015 as Document No. 2015049470. A true and correct copy of the Assignment is attached hereto as Exhibit No. 3 and is incorporated herein by reference as if fully set out word for word. The Debtor's license to collect the rents on the 0206 Real Property was revoked by First Security effective February 29, 2016.

6. On July 30, 2015, the Debtor borrowed the sum of Twenty-five Thousand and No/100 Dollars (\$25,000.00) from First Security. As evidence of the loan, on July 30, 2015 the Debtor made a Commercial Promissory Note (hereinafter referred to as the "5111 Note") payable to First Security in that amount. A true and correct copy of the 5111 Note is attached hereto as Exhibit No. 4 and is incorporated herein by reference as if fully set out word for word. The 5111 Note matured, by its terms, on March 30, 2016.

7. As security for the indebtedness evidenced by the 5111 Note, and as security for all present and future debts owed by the Debtor to First Security, on July 30, 2015 the Debtor executed a Commercial Real Estate Mortgage (hereinafter referred to as the "5111 Mortgage") thereby granting First Security a first mortgage lien security interest in the

following real property (hereinafter referred to as the "5111 Real Property") located in Pulaski County, Arkansas:

1721 & 1725 NORTH MAIN STREET, NORTH LITTLE ROCK, ARKANSAS
72114

ALL OF LOTS 11 AND 12, BLOCK 23, NORTH ARGENTA, NOW IN THE
CITY OF NORTH LITTLE ROCK, PULASKI COUNTY, ARKANSAS

The 5111 Mortgage was filed and recorded in the Official Records of Pulaski County, Arkansas on August 14, 2015 as Document No. 2015049718. A true and correct copy of the 5111 Mortgage is attached hereto as Exhibit No. 5 and is incorporated herein by reference as if fully set out word for word.

8. Pursuant to the terms of the 5111 Mortgage, the Debtor absolutely assigned to First Security all leases and rents arising from the 5111 Real Property subject to a revocable license to collect the rents. The Debtor's license to collect the rents on the 5111 Real Property was revoked by First Security effective February 29, 2016.

9. The Debtor is in default under the terms of the 0206 Note and 5111 Note due to, among other things, its failure to make the required monthly payments due and owing on the 0206 Note and 5111 Note when due; its failure to pay the 0206 Note and 5111 Notes in full after First Security's pre-petition acceleration of the 0206 Note and 5111 Note; and its failure to pay-in-full the 0206 Note and 5111 Note upon their March 30, 2016 maturity.

10. First Security objects to the Debtor's use of any portion of the cash collateral which consists of rents or leases from the 0206 Real Property and 5111 Real Property (hereinafter referred to as the "Cash Collateral"), does not consent to the Debtor's use of such Cash Collateral, and requests that this Court enter an Order ordering the Debtor to

turn over such Cash Collateral to First Security. As is evidenced by the Assignment executed by the Debtor, the Cash Collateral was assigned to First Security absolutely and not as an assignment for additional security. As such, the Cash Collateral is not property of the estate pursuant to 11 USC § 363, and should not be retained by the Debtor. See *In re Walton St. Props., LLC*, 2011 Bankr. LEXIS 5330, at *11-12 (U.S. Bankr. W.D. Ark. July 1, 2011); see also *In re S. Pointe Assocs.*, 161 B.R. 224 (Bankr. E.D. Mo. 1993) (where license to collect rents under assignment was revoked pre-petition, rents were not property of the estate and not cash collateral).

11. On April 26, 2016, the Debtor and First Security entered into a Consent Order Allowing Use of First Security Bank's Cash Collateral upon Conditions (hereinafter referred to as the "Order") whereby the Debtor was temporarily permitted to use the Cash Collateral until October 31, 2016 without prejudice to First Security's rights to contest the use of the Cash Collateral through a renewed objection. Because the time period has now expired, First Security renews its objection to the Debtor's use of the Cash Collateral.

12. First Security respectfully requests that this Court enter an Order prohibiting the use by the Debtor of the Cash Collateral as defined herein.

WHEREFORE, based on the foregoing, First Security respectfully requests that this Court enter an Order barring the Debtor's use of the Cash Collateral as is set out more fully

above, and awarding First Security any and all other relief to which it may be entitled.

Respectfully submitted,

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November 7, 2016

By: /s/ Gary D. Jiles
Gary D. Jiles (88-118) and
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Attorneys for Secured Creditor, First
Security Bank

CERTIFICATE OF SERVICE

I, Gary D. Jiles, do hereby certify that on November 7, 2016, a true and correct copy of the foregoing Renewed Motion to Prohibit Use of Cash Collateral has been served electronically via the Court's CM/ECF System on the following:

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