

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF ALABAMA**

**IN RE:** )  
 )  
**STARLITE HOSPITALITY, LLC,** ) **Case No. 17-31347-DHW-11**  
 )  
**Debtor.** ) **Chapter 11**  
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**EMERGENCY MOTION OF FIRST WESTERN SBLC, INC.  
TO PROHIBIT DEBTOR’S USE OF RENTS AND CASH COLLATERAL**

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**COMES NOW**, First Western SBLC, Inc. (“First Western”), a secured lender in the above styled bankruptcy case, pursuant to 11 U.S.C. § 363, moves the Court to prohibit use of rents and cash collateral by Starlite Hospitality, LLC (“Debtor”). In support thereof, First Western states as follows:

1. On or about August 24, 2011, Debtor and First Western entered into a loan transaction under which Debtor executed a Note in the original principal amount of \$1,150,000.00 in favor of First Western (the “Note”), which is secured by a Mortgage, Assignment of Leases and Rents and Security Agreement (the “Mortgage and Security Agreement”) against Debtor’s real and personal property. A copy of the Note and the Assignment of Rents and Leases is attached hereto as Exhibit “A.” In the Mortgage and Security Agreement, Debtor granted First Western a security interest in:

Personalty: All of the right, title, and interest of Mortgagor in and to (i) furniture, furnishings, equipment, machinery, goods (including, but not limited to, crops, farm products, timber and timber to be cut, and extracted Minerals); (ii) general intangibles (including, but not limited to, all permits licenses and franchises), money, insurance proceeds, accounts (including, but not limited to,

hotel guest receipts and revenues), contract and subcontract rights, trademarks, trade name and inventory; (iii) all refundable, returnable, or reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Mortgagor with any governmental agencies, boards, corporations, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable, or reimbursable tap fees, utility deposits, commitment fees and development costs, any awards, remunerations, reimbursements, settlements, or compensation heretofore made or hereafter to be made by any Governmental Authority pertaining to the Land, Improvements, Fixtures, Contracts, or Personalty, including but not limited to those from any vacation of, or change of grade in, any streets affecting the Land or the Improvements and those for municipal utility district or other utility costs incurred or deposits made in connection with the Land; (iv) all revenues, receipts, income, accounts, accounts receivable and other receivables including, without limitation, revenues, receipts, income receivables and accounts relating to or arising from rentals, rent equivalent income, income and profits from guest rooms, meeting rooms, food and beverage facilities, vending machines, telephone and television systems, guest laundry, off-site catering, the provision or sale of other goods and services and any other items of revenue, receipts or other income as identified in the Uniform System of Accounts for Hotels, 8th Edition, International Association of Hospitality Accountants (1986), as from time to time amended, arising from or related to the Mortgaged Property; and (v) all other personal property of any kind or character as defined and subject to the provisions of the Code (Article 9 - Secured Transactions); any and all of which are now owned or hereafter acquired by Mortgagor, and which are now or hereafter situated in, on or about the Land or the Improvements, or used in or necessary to the complete and proper planning, development, construction, financing, use, occupancy, or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for in or on the Land or the Improvements, together with all accessions, replacements, and substitutions thereto or therefor and the proceeds thereof. . . .

Rents: All of the rents, revenues, income, proceeds, profits, security and other types of deposits (after Mortgagor acquires title thereto), and other benefits paid or payable by parties to the Contracts and/or Leases, other than Mortgagor for using, leasing, licensing, possessing, operating from, residing in, selling or otherwise enjoying all of any portion or the Mortgaged Property.

2. First Western perfected its security interest by filing the Mortgage and Security Agreement with the office of the Judge of Probate of Montgomery County, Montgomery Alabama, at RLPY 04182, Page 0001 and by filing a UCC Financing Statement with the Alabama Secretary of State at 11-0428013 (the "Financing Statement"). A copy of the Financing Statement is attached hereto as Exhibit "B."

3. Pursuant to the Mortgage and Security Agreement, First Western holds a first priority security interest in substantially all of Debtor's assets.

4. On May 11, 2017, Debtor filed a voluntary petition for relief under chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code").

5. Certain of the collateral granted to First Western in the Mortgage and Security Agreement (primarily Debtor's inventory, accounts receivable, cash, and other hotel revenue) constitutes "cash collateral" as that term is defined in Bankruptcy Code Section 363(a).

6. Pursuant to Bankruptcy Code Section 363(c)(2), Debtor is prohibited from using cash collateral unless: (1) each entity who has an interest in the cash collateral consents; or, (2) the Court, after notice and hearing, authorizes the Debtor's use of cash collateral.

7. First Western does not consent to Debtor's use of its cash collateral and the Court has not otherwise authorized such use.

**WHEREFORE**, First Western requests that the Court enter an Order prohibiting Debtor's use of cash collateral unless and until Debtor is granted authorization upon a properly filed motion. First Western further requests such other, further, or different relief as the Court deems just.

Respectfully submitted this the 12<sup>th</sup> day of May, 2017.

/s/ Gary W. Lee \_\_\_\_\_  
Jay H. Clark  
Gary W. Lee  
Attorneys for First Western SBLC, Inc.

**OF COUNSEL:**

Wallace, Jordan, Ratliff & Brandt, LLC  
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been served on the following through this Court's CM/ECF System, or if the party does not participate in this Court's CM/ECF System, via first class United States mail, postage prepaid on this the 12<sup>th</sup> day of May, 2017.

Starlite Hospitality LLC  
5601 Carmichael Road  
Montgomery, AL 36117

Bankruptcy Administrator  
U. S. Bankruptcy Administrator  
One Church Street  
Montgomery, AL 36104

/s/ Gary W. Lee \_\_\_\_\_  
OF COUNSEL