

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF ALABAMA, SOUTHERN DIVISION**

<b>In Re:</b>	)	<b>Case No: 11-12254-WRS-11</b>
	)	
<b>SMALL LOANS, INC., et al.</b>	)	<b>Chapter 11</b>
	)	
<b>Debtors.</b>	)	<b>Jointly Administered</b>

**EXPEDITED MOTION OF THE TRUSTEE, S. GREGORY HAYS  
PURSUANT TO §365(d)(4)(B)(ii) TO FURTHER EXTEND THE PERIOD TO ASSUME  
OR REJECT LEASES THROUGH AND INCLUDING SEPTEMBER 23, 2012**

The Trustee, S. Gregory Hays, (“Trustee”) hereby moves the Court (“Motion”), pursuant to 11 U.S.C. §365 under Rule 9013 of the Federal Rules of Bankruptcy Procedure, for entry of an order authorizing the Trustee to extend the period during which the Trustee may assume or reject leases of non-residential real estate, through and including September 23, 2012. In support of the Motion, the Trustee states as follows:

**JURISDICTION and NOTICE**

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. §§157(b)(2)(A), (M), and (O).
2. Venue of this Chapter 11 case in this District is proper under 28 U.S.C. §§1408 and 1409.
3. The statutory predicates for relief requested herein are §105(a) and §365 of Title 11 of The United States Code (the “Bankruptcy Code”) and the Federal Rules of Bankruptcy Procedure, Rule 9013.

**BACKGROUND**

4. On December 16, 2011, (the “Petition Date”), the Debtors filed for relief under Chapter 11 of the Bankruptcy Code. The Debtors continued to operate their businesses and manage their properties as Debtors-in-Possession, pursuant to §§1107 and 1108 of the Bankruptcy Code, until April 30, 2012, when S. Gregory Hays was appointed Trustee.

5. On the Petition Date, the Debtors requested that the Court enter an Order directing the Debtors’ Chapter 11 cases to be jointly administrated and consolidated for procedural purposes only. The Court has heretofore granted that motion, and administratively consolidated the cases.

6. Prior to filing its Chapter 11 Petition this Court on the Petition Date, the Debtors entered into certain unexpired leases of nonresidential real property (the “Leases”), under which

the Debtors are lessees, as reflected in the attached Exhibit A, which the Debtors have, as of the date of filing of this Motion, neither assumed nor rejected under §365 of the Bankruptcy Code.

7. Under the aforesaid Leases, the Debtors lease certain nonresidential real property (the “Leased Premises”) from the lessors (“Lessors”). The Trustee is continuing to evaluate whether it is in the best interest of the bankruptcy estate and the creditors to assume or reject some or all of the Leases.

8. The Trustee requires additional time to continue his examination and evaluation of the Leases, and will continue to negotiate with potential going-concern purchasers of the Debtors’ business enterprises. It is elementary that any such purchaser may want to retain one or all of the operating entities stores, and may condition a going-concern purchase on the ability to be an assignee of some or all of the Leases.

### **RELIEF REQUESTED**

9. By this Motion, the Trustee respectfully requests entry of an Order pursuant to §365(d)(4)(B)(ii) of the Bankruptcy Code for an extension of the deadline within which the Trustee may assume or reject the leases, through and including September 23, 2012 (the “Extended Deadline”).

### **BASIS FOR RELIEF**

10. Under Bankruptcy Code §365(d)(4)(A)(i) an unexpired lease of nonresidential real property is automatically deemed rejected 120 days after the Order for Relief, unless, “the Court [extends] the period determined under sub-paragraph (A), prior to the expiration of the 120 day period, for 90 days upon the motion of the trustee or lessor for cause.” 11 U.S.C. §364(d)(4)(B)(i).

11. On April 4, 2012, the consolidated Debtors filed an Expedited Motion of the Debtors and Debtors-in-Possession pursuant to Bankruptcy Code §365(d)(4)(B)(i) to Extend the Period to Assume or Reject Leases Through and Including June 25, 2012 [Doc. #257].

12. On April 10, 2012, this Honorable Court Granted the Debtors’ Expedited Motion by virtue of its Order Authorizing the Expedited Motion of the Debtors and Debtors-in-Possession pursuant to Bankruptcy Code §365(d)(4)(B)(i) to Extend the Period to Assume or Reject Leases Through and Including June 25, 2012 [Doc. # 268].

13. Accordingly, the current deadline for the Trustee to assume or reject the Leases is June 25, 2012.

14. Under Bankruptcy Code §365(d)(4)(A)(ii), “If the Court grants an extension under Clause (i) the Court may grant a subsequent extension only upon prior written consent of the Lessor in each instance.”

15. The Trustee intends to seek the written consent of all of the Lessors as identified on Exhibit A hereto. However, time prohibited the Trustee from getting all such written consents filed and recorded prior to the filing of this Motion. The Trustee is contacting each and

every Lessor and seeking the appropriate written consents. The proposed Written Consent of Lessor Form is attached hereto as Exhibit B.

16. Cause exists to approve this Extended Deadline Request by the Trustee, as follows:

(a) The Leases are the primary assets central to the reorganization and/or going-concern sale of the Debtors' enterprises.

(b) The Trustee needs additional time to act intelligently in making the judgment to assume or reject, and to present a coherent package to any prospective purchaser.

(c) The Trustee is in compliance with his post-petition obligations under the Leases pursuant to §§365(d)(3) and

(d) The Leases in question are one of a number of business properties whose respective acceptances or rejections require additional time for study and determination. *In re Columbus One Parcel Serv., Inc.*, 138 BR 194, 195 (Bankr. S.D. Ohio 1992).

17. The Trustee filed an Application to Employ Renova Partners, LLC as Trustee's broker for the purpose of selling the business [Doc. 340] and received an Order approving employment of Renova Partners, LLC [Doc. 378]. Without an extension of the deadline, or if the leases are not assignable, the Trustee will be unable to effectively market a going-concern sale of the Debtors' businesses.

18. Further, the Trustee intends to file a plan shortly which will include a going-concern sale, and thus will address the assumption or rejection of all of the Leases. Accordingly, the extension request puts fewer burdens on the Lessors. The Trustee's ability to assume certain Leases and reject others, and/or assume all such Leases, if that is in the best interest of the estate, will be critical to the success of the Plan and any potential sale.

19. The Trustee believes that Exhibit A contains a complete and accurate list of all of the Debtors' unexpired leases of nonresidential real property. To the extent that a Lease has been inadvertently omitted from Exhibit A, the Trustee requests that the Court grant the relief requested herein as to all such other unlisted leases.

20. The Trustee seeks an Order granting this Motion and allowing the Trustee to solicit and file of record the written consents of each of the Lessors, in the form of Exhibit B hereto, and further, for an Order that upon the filing of such written consent at any time prior to September 23, 2012, each such consenting Lessor will be deemed to be subject to the extension deadline of September 23, 2012.

DATED this 15<sup>th</sup> day of June, 2012.

/s/ Daniel D. Sparks  
Daniel D. Sparks  
Bradley R. Hightower  
Attorneys for Trustee

Of Counsel:

Christian & Small LLP  
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505 North 20<sup>th</sup> Street  
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**CERTIFICATE OF SERVICE**

I hereby certify that I have this date served a copy of the foregoing pleading upon the following via the ECF system or by placing a copy of same in the United States mail, postage prepaid, addressed as follows on this the 15<sup>th</sup> day of June, 2012:

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Those lessors who have requested notice pursuant to Fed. R. Bankr. P. 2002

/s/ Daniel D. Sparks  
OF COUNSEL