

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

In re: ) Chapter 11  
 )  
TWG CAPITAL, INC., ) Case No. 12-11019-BHL-11  
 )  
Debtor. )

**SECOND MOTION UNDER BANKRUPTCY CODE SECTION 365(d)(4)(B)  
FOR AN ORDER EXTENDING THE DEADLINE TO  
ASSUME LEASE OF NONRESIDENTIAL REAL PROPERTY**

TWG Capital, Inc., the debtor and debtor-in-possession (the "Debtor") in the above-captioned case, files this *Second Motion Under Bankruptcy Code Section 365(d)(4)(B) for an Order Extending the Deadline to Assume Lease of Nonresidential Real Property* (the "Motion") and requests that the Court enter an order extending the Debtor's deadline to assume or reject a lease of nonresidential real property through and including July 11, 2013. In support of this Motion, the Debtor states as follows:

**Background and Jurisdiction**

1. On September 14, 2012, the Debtor filed with the United States Bankruptcy Court for the Southern District of Indiana, Indianapolis Division (the "Court") its voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. as amended (the "Bankruptcy Code") commencing this chapter 11 case (the "Chapter 11 Case"). The Debtor continues to operate its business as a debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 Case.

2. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper under 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

3. The statutory basis for the relief requested herein is Section 365 of the Bankruptcy Code.

### **Facts and Circumstances**

4. The Debtor's headquarters are located at 7434 Shadeland Station Way, Indianapolis, Indiana 46256 (the "Premises"). The Debtor leases this office space from LA / Shadeland Station Way, Inc. pursuant to the Office Lease Agreement dated as of March 7, 2012 (the "Lease"). The Lease term does not expire until April 2015.

5. On December 11, 2012, the Debtor filed its *Motion Under Bankruptcy Code Section 365(d)(4)(B) For An Order Extending The Deadline To Assume Lease Of Nonresidential Real Property* (the "First Motion") [Docket No. 170]. The Court granted the First Motion on January 14, 2013 (the "First Order") [Docket No. 180], extending the Debtor's deadline to assume or reject the Lease through and including April 12, 2013.

6. On November 9, 2012, the Court entered an order approving the sale of substantially all of the Debtor's assets to Carmel Funding, LLC ("Purchaser") [Docket No. 142]. Pursuant to Section 1.2 of the Amended and Restated Purchase Agreement by and between the Debtor and Purchaser (as amended by the First Amendment to Amended and Restated Asset Purchase Agreement), the Lease is an "Excluded Asset" and was therefore not assumed and assigned to Purchaser. The sale to Purchaser closed on December 31, 2012, and the Debtor is now winding-down its business.

7. Pursuant to the Agreement for Allocation of Costs and Reimbursement of Expenses approved by the order of this Court entered on February 4, 2013 [Docket No. 199], the Debtor not only continues to occupy the Premises to conduct a wind down of its operations but also makes the Premises available to Purchaser and its successors for the transition and other services Purchaser provides with respect to purchased assets. Accordingly, the Debtor has a continuing, but not permanent, need to occupy the Premises.

**Requested Relief**

8. Pursuant to Section 365(d)(4)(B)(ii) of the Bankruptcy Code, the Debtor seeks an additional 90 days, through and including July 11, 2013, to assume or reject the Lease.

**Basis for Relief**

9. Section 365(d)(4)(A) of the Bankruptcy Code provides that "subject to subparagraph (B), an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of (i) the date that is 120 days after the date of the order for relief; or (ii) the date of the entry of an order confirming the plan."

10. Pursuant to Section 365(d)(4)(B) of the Bankruptcy Code, the Court may, upon a demonstration of cause, grant a 90-day extension of the period provided in subparagraph (A). This Court granted a 90-day extension by its entry of the First Order.

11. The Debtor does not believe that it will be in a position to determine whether assumption or rejection of the Lease is in the best interests of the estate by April 12, 2013.

12. The express terms of Section 365(d)(4)(B) of the Bankruptcy Code support the Debtor's requested extension. The lessor under the Lease has provided written consent to the relief requested in this Motion, as evidenced by Exhibit A attached hereto.

13. The facts and circumstances of the Chapter 11 Case also support the requested extension. A court may weigh various non-exclusive factors in determining whether to grant an extension of time to assume a lease, including (1) whether rent is being paid, (2) whether the debtor's continued use of the property would lead to non-compensable damages, (3) whether the lease is a primary asset of the estate, and (4) whether the debtor-in possession has had a reasonable time to formulate a plan of reorganization. *S. St. Seaport Ltd. P'ship (In re Burger Boys, Inc.)*, 94 F.3d 755, 761 (2d Cir. 1996).

14. The Debtor is making payments and performing all obligations under the Lease. The Debtor has a continuing, but not permanent, need to occupy the Premises. The landlord will suffer no damages from the relief requested herein. The purposes to be served by early assumption – uncertainty of payment – are not present here.

15. Rejection of the Lease at this stage would necessitate relocation of the Debtor's business while the Debtor's principals are focused on winding-down its operations and developing an exit strategy in the Chapter 11 Case, thereby incurring additional administrative costs in securing a temporary office space during the wind-down period. Moreover, it would disrupt transition services being performed by Purchaser (or its successor) relating to purchased assets. Accordingly, the Debtor requests a 90-day extension of the period provided in Section 365(d)(4)(A) to allow the Debtor additional time to wind-down its operations, complete transition services with Purchaser, and to finalize and implement an exit strategy for the Chapter 11 Case.

WHEREFORE, the Debtor requests that (i) the Motion be granted, (ii) the Court enter an order extending the Debtor's time to assume or reject the Lease for an additional 90 days through and including July 11, 2013, and (iii) the Court grant the Debtor all other just and proper relief.

Respectfully submitted,

FAEGRE BAKER DANIELS LLP

By: /s/ Kayla D. Britton

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 8, 2013, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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I further certify that on March 8, 2013, a copy of the foregoing pleading will be mailed by first-class U.S. Mail, postage prepaid and properly addressed, to the following:

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