

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

HOBBICO, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 18-10055 (KG)

Jointly Administered

**Hearing Date: July 11, 2018 at 2:00 p.m.**

**Objections Due: July 5, 2018 at 4:00 p.m. (ET)**

**DEBTORS' MOTION FOR ENTRY OF AN ORDER CONVERTING DEBTORS'  
CHAPTER 11 CASES TO CASES UNDER CHAPTER 7 OF THE BANKRUPTCY CODE**

The debtors and debtors in possession (collectively, the "Debtors") in the above-captioned chapter 11 cases hereby file this motion (the "Motion") for entry of an order, pursuant to section 1112 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (as amended, the "Bankruptcy Code"), converting the Debtors' chapter 11 cases to cases under chapter 7 of the Bankruptcy Code. In support of this Motion, the Debtors respectfully state as follows:

**JURISDICTION**

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested in this Motion are sections 1112(a) and (b) of the Bankruptcy Code.

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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 as follows: Hobbico, Inc. (9545); Arrma Durango Limited; Axial R/C Inc. (0233); Estes-Cox Corp. (2196); Great Planes Model Manufacturing, Inc. (5259); Revell Inc. (8545); Tower Hobbies, Inc. (5185); and United Model, Inc. (5302). The Debtors' headquarters are located at 2904 Research Road, Champaign, Illinois 61822.

### **BACKGROUND**

3. On January 10, 2018 (the “Petition Date”), the Debtors other than Arrma Durango Limited each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. On the Petition Date, the Debtors other than Arrma Durango Limited also jointly filed motions or applications seeking certain typical “first day” relief. Debtor Arrma Durango Limited filed its voluntary petition and similar “first day” relief on January 26, 2018.

4. The Debtor is operating its business and managing its property as a debtor in possession pursuant to section 1107(a) and 1108 of the Bankruptcy Code.

5. No request for the appointment of a trustee or an examiner has been made in these chapter 11 cases. On January 22, 2018, the United States Trustee appointed an official committee of unsecured creditors (the “Committee”) pursuant to section 1102 of the Bankruptcy Code.

6. A full description of the Debtors’ business, corporate structure, prepetition indebtedness, and events leading to these Cases is set forth in the Amended *Declaration of Tom S. O’Donoghue, Jr. in Support of Chapter 11 Petitions and First Day Motions* [Docket No. 34] (the “O’Donoghue Declaration”) and *Supplemental Declaration of Tom S. O’Donoghue, Jr. in Support of Supplemental Joint Administration Motions* [Case No. 18-10158, Docket No. 4].

### **The Debtors’ Secured Indebtedness**

7. On February 14, 2018, the Court entered that certain *Order Authorizing Debtors to: (A) Use Cash Collateral on a Final Basis; (B) Incur Postpetition Debt on a Final Basis; and (C) Grant Adequate Protection and Provide Security and Other Relief to Wells Fargo Bank, National Association, As Agent, and the Other Secured Parties* [Docket No. 162] (as amended or otherwise modified from time to time, including without limitation, on March 20, 2018 at Docket

No. 263) (the “DIP Financing Order”), pursuant to which the Court, among other things, authorized the Debtors to enter into that certain Debtor-in-Possession Credit Agreement dated as of January 12, 2018.

### **The Debtors’ Sale Process**

8. On February 26, 2018, the Debtors filed their sale motion [Docket No. 192] (the “Sale Motion”)<sup>2</sup> seeking, among other things, approval of a sale of substantially all of the Debtors’ assets free and clear of all interests pursuant to section 363(f) of the Bankruptcy Code.

9. On March 14, 2018, the Court entered an order [Docket No. 243] (the “Bidding Procedures Order”)<sup>3</sup> approving certain procedures in connection with the Sale Motion for the marketing of the Debtors’ assets and for providing notice of various related matters to parties in interest in these Chapter 11 Cases (the “Bidding Procedures”).<sup>4</sup> With the assistance of the Debtors’ investment banker, Lincoln Partners Advisors LLC, the Debtors and their other professionals engaged in a robust marketing process pursuant to the Bidding Procedures.

10. In accordance with the Bidding Procedures Order, an auction (the “Auction”) was held on March 28, 2018, and continued and concluded on April 12, 2018. As a result of the Auction, the Debtors sold, and the Court entered orders (Docket Nos. 316, 317, 361, and together with the GPM Sale Order, each as amended or otherwise modified from time to time,

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<sup>2</sup> Debtors’ Motion for (I) an Order (A) Establishing Bidding Procedures for the Sale of All, or Substantially All, of the Debtors’ Assets; (B) Approving Potential Bid Protections; (C) Establishing Procedures Relating to the Assumption and Assignment of Executory Contracts and Unexpired Leases; (D) Approving Form and Manner of the Sale, Cure and Other Notices; and (E) Scheduling an Auction and a Hearing to Consider the Approval of the Sale; (II) an Order (A) Approving the Sale of the Debtors’ Assets Free and Clear of Claims, Liens and Encumbrances; and (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) Certain Related Relief .

<sup>3</sup> Order (A) Establishing Bidding Procedures for the Sale of All, or Substantially All, of the Debtors’ Assets; (B) Approving Bid Protection Procedures; (C) Establishing Procedures Relating to the Assumption and Assignment of Executory Contracts and Unexpired Leases; (D) Approving Form and Manner of the Sale, Cure and Other Notices; and (E) Scheduling an Auction and a Hearing to Consider the Approval of the Sale .

<sup>4</sup> The Bidding Procedures were attached to the Bidding Procedures Order as **Exhibit A**.

collectively, the “Sale Orders”) approving the sale of, the Hobby Business Lot, the Estes-Cox Lot, and the Global Revell Lot (each as defined in the Bidding Procedures Order) .

11. On May 10, 2018, the Debtors filed the *Debtors' Motion for Entry of an Order (I) Authorizing the Sale of Assets, Free and Clear of All Liens, Claims, Liabilities, Encumbrances, and Interests of Any Kind or Nature Whatsoever, to MT Acquisitions, LLC, (II) Approving Assumption and Assignment of Executory Contract(s), (III) Approving Procedures for the Sale or Abandonment of Miscellaneous Assets, and (IV) Granting Related Relief* [Docket No. 414] (the “GPMM Sale Motion”).

12. On May 16, 2018, the Court entered an order [Docket No. 436] (the “GPMM Sale Order”) approving, among other things, the sale of the GPMM Assets and procedures for the sale and/or abandonment of Miscellaneous Assets (as defined in the GPMM Sale Motion).

13. As a result, the Debtors have now sold all of their operational assets of any meaningful value. While the Debtors have taken several steps since closing the Sale to wind-up their estates, at this point the Debtors do not believe that their estates will continue to benefit by remaining in chapter 11. Accordingly, the Debtors submit that these chapter 11 cases should be converted to chapter 7.

14. In addition, the Debtors have insufficient funds to confirm a chapter 11 plan of reorganization. With the cessation of operations and no significant tangible assets left to administer, a successful rehabilitation under the auspices of chapter 11 of the Bankruptcy Code is not possible. Thus, drawing out the chapter 11 process will result in additional administrative expense with little or no benefit to the Debtors’ estates, and the Debtors believe that conversion of these chapter 11 cases to cases under chapter 7 of the Bankruptcy Code will maximize residual value for the benefit of all stakeholders.

**RELIEF REQUESTED**

15. By this Motion, the Debtors seek entry of an order, pursuant to section 1112 of the Bankruptcy Code, converting the Debtors' chapter 11 cases to cases under chapter 7 of the Bankruptcy Code.

**BASIS FOR RELIEF REQUESTED**

16. Section 1112(a) of the Bankruptcy Code entitles a debtor to convert its case from chapter 11 to chapter 7, unless (i) the debtor is not a debtor in possession, (ii) the case was originally commenced as an involuntary case under chapter 11, or (iii) the case was converted to a chapter 11 case at the request of a non-debtor party. *See* 11 U.S.C. § 1112(a).

17. Indeed, section 1112(a) of the Bankruptcy Code “gives the debtor [in possession] the absolute right to convert a voluntarily commenced chapter 11 case . . . to a liquidation case” under chapter 7. *In re Schuler*, 119 B.R. 191, 192 (Bankr. W.D. Mo. 1990) (citing H.R. Rep. No. 595, 95th Cong., 1st Sess. 405 (1977); S. Rep. No. 989, 95th Cong., 2nd Sess. 117 (1978)); *see also In Dieckhaus Stationers of King of Prussia, Inc.*, 73 B.R. 969, 971 (Bankr. E.D. Pa. 1987) (stating that the plain language of section 1112(a) “gives the debtor an absolute right to convert” unless one of the enumerated exceptions applies); 7 Collier on Bankruptcy ¶ 1112.02[1], at 1112-8 (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Courts have explained that, provided the above exceptions do not exist, a debtor has an absolute right to convert its case from chapter 11 to chapter 7 of the Bankruptcy Code. *See In re Tex. Extrusion Corp.*, 844 F.2d 1142, 1161 (5<sup>th</sup> Cir. 1988) (“A debtor has the absolute right to convert his or her Chapter 11 case to a Chapter 7 case” under section 1112(a)); *Results Sys. Corp. v. MQVP, Inc.*, 395 B.R. 1, 5 (E.D. Mich. 2008) (“[§] 1112(a) gives the debtor the right to convert a chapter 11 case to a liquidation case under chapter 7 at any time.”) (internal citation omitted); *see also* Fed. R. Bankr. P. 1017(f)(1) and 1017(f)(2) (conversion under section 1112(a) is requested by motion

under Bankruptcy Rule 9013 but is not to be treated as a contested matter under Bankruptcy Rule 9014).

18. The Debtors respectfully submit that the requirements for conversion set forth in section 1112(a) are satisfied. In particular, the Debtors are debtors in possession under sections 1107 and 1108 of the Bankruptcy Code, they commenced these chapter 11 cases voluntarily, and there have been no prior conversions. Further, as required under section 1112(f), the Debtors are eligible for chapter 7 bankruptcy and could have initiated their cases under that chapter. Accordingly, section 1112(a) of the Bankruptcy Code provides an independent basis and absolute right under the circumstances for the Debtors to convert their chapter 11 cases.

19. Alternatively, Bankruptcy Code section 1112(b) also authorizes the same relief if the Debtors can demonstrate “cause” in accordance with the statute. *See* 11 U.S.C § 1112(b)(1). “Cause” includes “continuing loss or diminution of the estate and absence of a reasonable likelihood of rehabilitation.” *Id.* § 1112(b)(4)(A). Courts have held that continuing to incur quarterly U.S. Trustee fees and legal fees may constitute a continuing loss for purposes of this prong. *See In re FRGR Managing Member LLC*, 419 B.R. 576, 581 (Bankr. S.D.N.Y. 2009). Nonetheless, the list of factors set forth under section 1112(b)(4) are non-exclusive examples of cause and a bankruptcy court may consider other factors and employ its equitable powers to reach the result appropriate in the particular case. *See Camden Ordnance Mfg. Co. of Ark., Inc. v. U.S. Trustee (In re Camden Ordnance Mfg. Co. of Ark., Inc.)*, 245 B.R. 794, 798 (E.D. Pa. 2000); *In re Congoleum Corp.*, 414 B.R. 44, 61 (D. N.J. 2009); *In re Ramreddy, Inc.*, 440 B.R. 103, 115 (Bankr. E.D. Pa. 2009).

20. In addition, Courts have found that where a debtor's business operations have ceased, the best interests of creditors and the estate are served by converting the reorganization proceedings to chapter 7 cases. *See In re Great Am. Pyramid Joint Venture*, 144 B.R. 780, 791 (Bankr. W.D. Tenn. 1992) ("when no or substantially no business is left to reorganized, [the] chapter 11 cases do not serve [the purposes of the Bankruptcy Code] and 'cause' exists" to convert the cases to chapter 7 proceedings); *see also In re Tracey Serv. Co.*, 17 B.R. 405, 410 (Bankr. E.D. Pa. 1982); *In re W.J. Rewolt Co.*, 22 B.R. 459, 461-462 (Bankr. E.D. Mich. 1982).

21. Given that the Debtors (i) have sold all of their assets of any meaningful value, (ii) have no business operations, and (iii) do not have the resources necessary to propose and confirm a chapter 11 plan, the Debtors submit that conversion of these cases to cases under chapter 7 of the Bankruptcy Code is necessary and appropriate in addition to the reasons articulated under section 1112(a). Stated differently, there is no reasonable prospect that the Debtors can successfully rehabilitate. Further, if the Debtors remain in chapter 11, they will incur additional administrative expenses without concomitant benefit to their estates.

22. Under the particular circumstances, the Debtors respectfully submit that the interests of all stakeholders would best be served by converting these cases to cases under chapter 7 of the Bankruptcy Code.

### **NOTICE**

23. Notice of this Motion will be provided to: (i) the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"); (ii) the entities listed on the Consolidated List of Creditors Holding the Twenty Largest Unsecured Claims; (iii) counsel to the Official Committee of Unsecured Creditors; and (iv) all parties who have requested notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002; and (v) all parties listed on the

Debtors' creditor matrix. In light of the relief requested herein, the Debtors respectfully submit that no other or further notice of this Motion need be given.

**CONCLUSION**

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as **Exhibit A** (i) converting the Debtors' chapter 11 cases to cases under chapter 7 of the Bankruptcy Code, and (ii) granting such other and further relief as this Court deems just and proper.

Dated: June 20, 2018  
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Matthew O. Talmo

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

HOBIBICO, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 18-10055 (KG)

Jointly Administered

Hearing Date: July 11, 2018 at 2:00 p.m.

Objections Due: July 5, 2018 at 4:00 p.m. (ET)

**NOTICE OF DEBTORS’ MOTION FOR ENTRY OF AN  
ORDER CONVERTING DEBTORS’ CHAPTER 11 CASES  
TO CASES UNDER CHAPTER 7 OF THE BANKRUPTCY CODE**

**PLEASE TAKE NOTICE** that the above captioned debtors and debtors-in-possession (collectively, the “Debtors”) in the above-captioned cases, have today filed the **Debtors’ Motion For Entry Of An Order Converting Debtors’ Chapter 11 Cases To Cases Under Chapter 7 Of The Bankruptcy Code** (the “Motion”).

**PLEASE TAKE FURTHER NOTICE** that the Motion may be viewed for free at the website of the Debtors’ claims and noticing agent, JND Corporate Restructuring, at <https://www.jndla.com/cases/hobbico>, or will be provided upon reasonable request to the Debtors’ undersigned counsel.

**PLEASE TAKE FURTHER NOTICE** that any party wishing to oppose the entry of an order approving the Motion must file a response or an objection to the Motion (“Objection”) with the Clerk of the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3<sup>rd</sup> Floor, Wilmington, Delaware 19801 on or before **July 5, 2018 at 4:00 p.m. (ET)** (the “Objection Deadline”). At the same time, you must serve such Objection upon the undersigned counsel so as to be received by the Objection Deadline.

**PLEASE TAKE FURTHER NOTICE THAT A HEARING ON THE MOTION WILL BE HELD ON July 11, 2018 AT 2:00 P.M. (ET) BEFORE THE HONORABLE KEVIN GROSS AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 MARKET STREET, 6TH FLOOR, COURTROOM #3, WILMINGTON, DELAWARE 19801. ONLY PARTIES WHO HAVE FILED A TIMELY OBJECTION WILL BE HEARD AT THE HEARING.**

<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 as follows: Hobbico, Inc. (9545); Arrma Durango Limited; Axial R/C Inc. (0233); Estes-Cox Corp. (2196); Great Planes Model Manufacturing, Inc. (5259); Revell Inc. (8545); Tower Hobbies, Inc. (5185); and United Model, Inc. (5302). The Debtors’ headquarters are located at 2904 Research Road, Champaign, Illinois 61822.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: June 20, 2018  
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Matthew O. Talmo

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**EXHIBIT A**

[Proposed Order]

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

HOBIBICO, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 18-10055 (KG)

Jointly Administered

**RE: D.I. \_\_\_\_\_**

**ORDER CONVERTING DEBTORS' CHAPTER 11 CASES TO  
CASES UNDER CHAPTER 7 OF THE BANKRUPTCY CODE**

Upon the motion (the "Motion")<sup>2</sup> of the above-captioned debtors and debtors in possession (the "Debtors") for entry of an order, pursuant to sections 1112(a) and (b) of the Bankruptcy Code, converting the Debtors' chapter 11 cases to cases under chapter 7 of Bankruptcy Code; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 1334 and 157 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue being proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided; and it appearing that no other or further notice need be provided; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtors and their respective estates, creditors, and all parties in interest; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the

<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 as follows: Hobbico, Inc. (9545); Arrma Durango Limited; Axial R/C Inc. (0233); Estes-Cox Corp. (2196); Great Planes Model Manufacturing, Inc. (5259); Revell Inc. (8545); Tower Hobbies, Inc. (5185); and United Model, Inc. (5302). The Debtors' headquarters are located at 2904 Research Road, Champaign, Illinois 61822.

<sup>2</sup> Capitalized terms not defined herein are defined in the Motion.

proceedings had before the Court and after due deliberation and sufficient cause appearing therefor;

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED as set forth herein.
2. The Debtors' chapter 11 cases shall be converted to cases under chapter 7 of the Bankruptcy Code pursuant to section 1112 of the Bankruptcy Code, effective as of July 18, 2018 (the "Effective Date").
3. The U.S. Trustee shall appoint an interim trustee pursuant to section 701 of the Bankruptcy Code to serve in the Debtors' chapter 7 cases pending the qualification of a permanent trustee under sections 702 of the Bankruptcy Code.
4. The Debtors shall:
  - a. Within seven days of the Effective Date, turn over to the interim chapter 7 trustee, once one is appointed, all records and property of the estate under its possession or control as required by Bankruptcy Rule 1019(4);
  - b. Within fourteen days of the Effective Date, file schedules of unpaid debts incurred after the filing of the petition and before conversion of the case, including the name and address of each holder of a claim, as required by Bankruptcy Rule 1019(5); and
  - c. Within thirty days from the Effective Date, file and transmit to the U.S. Trustee a final report and account as required by Bankruptcy Rule 1019(5)(A).

5. To the extent not already done, all professionals employed by the Debtors in the Debtors' chapter 11 cases that are required to file a final fee application shall file, within 15 days of the Effective Date, a final fee application for approval of all fees and expenses incurred through the Effective Date.

6. The terms of the DIP Financing Order and the Sale Orders shall survive the conversion of the Debtors' chapter 11 cases to chapter 7 cases and will not be impaired, altered, or otherwise modified by such conversion or this Order.

7. The Debtors are hereby authorized and empowered to take all actions necessary to implement and effectuate the terms of this Order.

8. This Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

Dated: \_\_\_\_\_, 2018  
Wilmington, Delaware

\_\_\_\_\_  
THE HONORABLE KEVIN GROSS  
UNITED STATES BANKRUPTCY JUDGE