

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 section 1112(b) of the Bankruptcy Code and Bankruptcy Rules 1017(f)(1) and 9014.

BACKGROUND

3. On January 7, 2020 (the “Petition Date”), Valley Builders LLC, Trademarc Associates, Inc., and David Watkins Homes Inc. (collectively, the “Petitioning Creditors”) filed involuntary petitions under chapter 11 of the Bankruptcy Code against the Debtors.

4. A more detailed description of the Debtors’ business, corporate structure, prepetition indebtedness, and events leading to the bankruptcy filings is set forth in the *Declaration of Kyle McLaughlin in Support of Chapter 11 Trustee’s Motion for Entry of an Order (I) Approving Entry Into and Performance Under Asset Purchase Agreement by and Among Spartan Race, Inc., and Debtors’ Chapter 11 Trustee, (II) Authorizing the Sale of Substantially All of the Debtors’ Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests, (III) Approving the Assumption and Assignment of Certain Contracts and Related Procedures, (IV) Approving the Bid Protections, and (V) Granting Related Relief* (the “McLaughlin Declaration”).² This Motion incorporates by reference the facts set forth in the McLaughlin Declaration as if fully set forth herein.

² The McLaughlin Declaration is attached as Exhibit C to the *Chapter 11 Trustee’s Motion for Entry of an Order (I) Approving Entry Into and Performance Under Asset Purchase Agreement by and Among Spartan Race, Inc., and Debtors’ Chapter 11 Trustee, (II) Authorizing the Sale of Substantially All of the Debtors’ Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests, (III) Approving the Assumption and Assignment of Certain Contracts and Related Procedures, (IV) Approving the Bid Protections, and (V) Granting Related Relief* [D.I. 30] (the “Sale Motion”).

5. On January 21, 2020, the Court entered the *Order Directing the Appointment of a Chapter 11 Trustee* [D.I. 18]. The Court entered an order approving the appointment of the Trustee on January 30, 2020 (the “Appointment Date”) [D.I. 24], and the Trustee accepted his appointment on January 31, 2020 [D.I. 25]. Since that time, the Trustee has managed the Debtors’ affairs pursuant to section 1106 of the Bankruptcy Code. No official committee has been appointed in the Chapter 11 Cases.

6. On February 7, 2020, the Trustee filed the Sale Motion, seeking, among other relief, approval of a sale of substantially all of the Debtors’ assets free and clear of all liens, claims, encumbrances, and other interests pursuant to section 363(f) of the Bankruptcy Code (the “Sale”).

7. On February 25, 2020, the Court entered the *Order (I) Approving the Asset Purchase Agreement by and Among Spartan Race, Inc., and Debtors’ Chapter 11 Trustee, (II) Authorizing the Private Sale of Substantially All of the Debtors’ Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests, (III) Approving the Assumption and Assignment of Assume Events and Contracts, and (IV) Granting Related Relief* [D.I. 81] (the “Sale Order”). The Sale Order authorized the Sale to Spartan Race, Inc. or its designee, which designee is OCR US Holdings, LLC (the “Buyer”) pursuant to the terms of the asset purchase agreement attached to the Sale Order as Exhibit A (the “Sale Agreement”). The Sale to the Buyer closed that same day. While the Buyer assumed over \$7 million in liabilities under the Sale Agreement, the cash consideration was only \$700,000.

8. The Chapter 11 Cases are at a crossroads. Since the Appointment Date, the Trustee has taken material steps to wind up the Debtors’ estates, including the rejection of unexpired leases and executory contracts, selling certain de minimis assets located at the

Debtors' former headquarters, and managing multiple calls from former employees and vendors on a daily basis. The Trustee has also sold all of the Debtors' operational assets through the Sale, leaving causes of action as the Debtors' only meaningful assets from which the Trustee can derive value, which will take time and money. If the Debtors are to remain in chapter 11, significant costs will need to be incurred in preparing and soliciting a chapter 11 plan – costs that will be avoided if these cases are converted to Chapter 7.

9. Therefore, after thoughtful consideration and balancing the tasks to be completed against the Debtors' liquidity position, the Trustee has made the decision that converting the Chapter 11 Cases to those under chapter 7 of the Bankruptcy Code is in the best interests of their estates and creditors. The Trustee seeks this relief on an expedited basis, to be heard prior to the end of this month, to avoid unnecessary administrative fees that will accrue by remaining in chapter 11.

RELIEF REQUESTED

10. By this Motion, the Trustee seeks entry of the Proposed Order, pursuant to section 1112(b) of the Bankruptcy Code, converting the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code.

BASIS FOR RELIEF REQUESTED

11. Section 1112 of the Bankruptcy Code governs the conversion or dismissal of cases under chapter 11. Specifically, section 1112(b) of the Bankruptcy Code authorizes conversion of a chapter 11 case to one under chapter 7 if a party in interest, including a chapter 11 trustee, demonstrates "cause" in accordance with the statute. *See* 11 U.S.C. § 1112(b)(1) (2018); *see also* Fed. R. Bankr. P. 1017(f)(1) (treating conversion under section 1112(b) as a contested matter under Bankruptcy Rule 9014). "[C]ause" includes "substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation."

11 U.S.C. § 1112(b)(4)(A) (2018). Section 1112(f) provides that “a case may not be converted to a case under another chapter of this title unless the debtor may be a debtor under such chapter.” *Id.* § 1112(f).

12. Courts have held that continuing to incur legal fees and quarterly fees owed to the Office of the United States Trustee (the “U.S. Trustee”) may constitute a “continuing loss” for purposes of establishing cause under section 1112(b)(4)(A). *See In re FRGR Managing Member LLC*, 419 B.R. 576, 581 (Bankr. S.D.N.Y. 2009). Moreover, the examples of cause set forth in section 1112(b)(4) are non-exhaustive, so a court may consider other factors and employ its equitable powers to reach the appropriate result in a particular case. *See In re Congoleum Corp.*, 414 B.R. 44, 61 (D.N.J. 2009); *Camden Ordnance Mfg. Co. of Ark. v. U.S. Tr. (In re Camden Ordnance Mfg. Co. of Ark.)*, 245 B.R. 794, 798 (E.D. Pa. 2000); *In re Ramreddy, Inc.*, 440 B.R. 103, 115 (Bankr. E.D. Pa. 2009).

13. 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) (“[W]hen no or substantially no business is left to reorganize, chapter 11 cases do not serve those purposes [of the Bankruptcy Code], and ‘cause’ exists [to convert the cases.]”); *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, 461–62 (Bankr. E.D. Mich. 1982). The Debtors are eligible to be debtors under chapter 7, *see* 11 U.S.C. § 109(b) (2018), so a conversion of the Chapter 11 Cases to ones under chapter 7 is not prohibited by section 1112(f).

14. Given that, among other things, (i) the Trustee has sold all of the Debtors’ operational assets of any meaningful value, (ii) the Debtors have no continuing business

operations that can generate value, and (iii) the Debtors' estates do not have the resources necessary to solicit and confirm a chapter 11 plan, the Trustee believes that conversion of the Chapter 11 Cases to Chapter 7 is necessary and appropriate. Stated differently, there is no "reasonable likelihood of rehabilitation" for the Debtors. 11 U.S.C. § 1112(b)(4)(A) (2018). Moreover, if the Debtors remain in chapter 11 past the month of March, the Debtors' estates will incur additional administrative expenses, including the incurrence of quarterly fees of the U.S. Trustee, further decreasing the potential distribution to the Debtors' general unsecured creditors.

15. Further, the Trustee has discussed the conversion of the Chapter 11 Cases to cases under chapter 7 with Active Networks, LLC, the Debtors' largest unsecured creditor, and the Petitioning Creditors, and such parties are supportive of the relief requested herein. The Trustee has also discussed the conversion with the U.S. Trustee for the District of Delaware, who the Trustee believes does not oppose the relief requested herein.

16. Thus, the Trustee respectfully submits that the interests of all stakeholders would best be served by converting these cases to Chapter 7 of the Bankruptcy Code.

NOTICE

17. A copy of this Motion will be served via hand delivery, first-class mail, and/or electronic mail, where available and as applicable, upon: (a) the U.S. Trustee for the District of Delaware; (b) the Debtors' 20 largest unsecured creditors on a consolidated basis; and (c) any other party that has requested notice pursuant to Local Rule 2002-1(b). Further, notice of this Motion will be served on all other parties listed on each Debtor's respective creditor matrix. The Trustee submits that, in light of the nature of the relief requested, no other or further notice need be provided.

WHEREFORE, the Trustee respectfully requests that the Court enter the Proposed Order, substantially in the form attached hereto as **Exhibit A**, (i) converting the Chapter 11 Cases to Chapter 7 of the Bankruptcy Code and (ii) granting such other and further relief as this Court deems just and proper.

Dated: March 16, 2020
Wilmington, Delaware

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