

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

In re:)	
)	Chapter 11
FISKER AUTOMOTIVE HOLDINGS, INC., <u>et al.</u> , ¹)	
)	Case No. 13-13087 (KG)
Debtors.)	
)	(Jointly Administered)
)	
)	Re: Docket Nos. 671 and 685

**NOTICE OF (A) ENTRY OF INTERIM ORDER (I) AUTHORIZING POSTPETITION
FINANCING, (II) GRANTING LIENS AND PROVIDING SUPERPRIORITY
ADMINISTRATIVE EXPENSE PRIORITY, (III) AUTHORIZING USE OF CASH
COLLATERAL, (IV) MODIFYING THE AUTOMATIC STAY, (V) AUTHORIZING
SETOFF OF OBLIGATIONS AGAINST PURCHASE PRICE, AND (VI) SCHEDULING
A FINAL HEARING PURSUANT TO SECTIONS 105, 361, 362, 363, AND 364 OF
THE BANKRUPTCY CODE AND BANKRUPTCY RULES 2002, 4001, AND 9014
AND (B) HEARING TO CONSIDER ENTRY OF FINAL ORDER**

To: (a) the Office of the United States Trustee for the District of Delaware; (b) counsel to the Committee; (c) counsel to the Collateral Agent; (d) the Internal Revenue Service; (e) DOE; (f) SVB; (g) DEDA; (h) counsel to DOE; (i) counsel to the Hybrid Lender; (j) counsel to the Hybrid Purchaser; (k) counsel to Wanxiang; (l) any party that has requested notice pursuant to Bankruptcy Rule 2002; (m) the cash management banks with whom the Debtors maintain their bank accounts; and (n) all parties who are known, after reasonable inquiry, to have affected a lien, encumbrance, or claim in the DIP Collateral.

PLEASE TAKE NOTICE that on February 28, 2014, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the *Motion of the Debtors for Entry of Interim and Final Orders (I) Authorizing Postpetition Financing, (II) Granting Liens and Providing Superpriority Administrative Expense Priority, (III) Authorizing Use of Cash Collateral, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, (VI) Authorizing Setoff of Obligations Against Purchase Price, and (VII) Scheduling a Final Hearing Pursuant to Sections 105, 361, 362, 363 and 364 of the Bankruptcy Code and*

¹ The Debtors, together with the last four digits of each Debtor’s federal tax identification number, are: Fisker Automotive Holdings, Inc. (9678); and Fisker Automotive, Inc. (9075). For the purpose of these chapter 11 cases, the service address for the Debtors is: 3080 Airway Avenue, Costa Mesa, California 92626.

Bankruptcy Rules 2002, 4001 and 9014 [Docket No. 671] (the “Wanxiang DIP Financing Motion”). A copy of the Wanxiang DIP Financing Motion was previously served on you.

PLEASE TAKE FURTHER NOTICE that on March 6, 2014, the Bankruptcy Court entered the *Interim Order (I) Authorizing Postpetition Financing, (II) Granting Liens and Providing Superpriority Administrative Expense Priority, (III) Authorizing Use of Cash Collateral, (IV) Modifying the Automatic Stay, (V) Authorizing Setoff of Obligations Against Purchase Price, and (VI) Scheduling a Final Hearing Pursuant to Sections 105, 361, 362, 363, and 364 of the Bankruptcy Code and Bankruptcy Rules 2002, 4001, and 9014* [Docket No. 685] (the “Interim DIP Order”).²

PLEASE TAKE FURTHER NOTICE that pursuant to the Interim DIP Order, the Final Hearing on the relief requested in the Wanxiang DIP Financing Motion shall be held on **March 21, 2014, at 11:00 a.m. (prevailing Eastern Time)**, before the Honorable Kevin Gross, at the Bankruptcy Court, 824 North Market Street, 6th Floor, Courtroom No. 3, Wilmington, Delaware 19801.

PLEASE TAKE FURTHER NOTICE that the deadline for filing any response or objection to the final relief sought in the Wanxiang DIP Financing Motion must be filed with the Bankruptcy Court on or before **March 14, 2014, at 4:00 p.m., (prevailing Eastern Time)**. At the same time, you must also serve a copy of the response or objection upon: (i) counsel for the Debtors: (a) Kirkland & Ellis LLP, 300 North LaSalle, Chicago, Illinois 60654, Attn.: Anup Sathy, Esquire, Email: anup.sathy@kirkland.com, and Ryan Preston Dahl, Esquire, Email: ryan.dahl@kirkland.com, and (b) Pachulski Stang Ziehl & Jones, LLP, 919 North Market Street, 17th Floor, Wilmington, Delaware 19801, Attn: Laura Davis Jones, Esquire, Email: ljones@pszjlaw.com; (ii) counsel for Wanxiang: (a) Sidley Austin LLP, One South Dearborn

² A copy of the Interim Order is attached hereto as Exhibit A.

Street, Chicago, Illinois 60603, Attn.: Bojan Guzina, Esquire, Email: bguzina@sidley.com, and Andrew F. O'Neill, Esquire, Email: aoneill@sidley.com, and (b) Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Rodney Square, Wilmington, DE 19801, Attn.: Robert S. Brady, Esquire, Email: rbrady@ycst.com, and Edmon L. Morton, Esquire, Email: emorton@ycst.com; (iii) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801 Attn: Mark Kenney, Esquire, Email: Mark.Kenney@usdoj.gov; and (iv) counsel to the Official Committee of Unsecured Creditors: (a) Brown Rudnick LLP, Seven Times Square, New York, NY 10036, Attn: William R. Baldiga, Esquire, Email: wbaldiga@brownrudnick.com, and (b) Saul Ewing LLP, 222 Delaware Avenue, Suite 1200, P.O. Box 1266, Wilmington, Delaware 19899, Attn: Mark Minuti, Esquire, Email: mminuti@saul.com.

PLEASE TAKE FURTHER NOTICE that copies of the Wanxiang DIP Financing Motion and Interim DIP Order can be obtained through the Court's website at www.deb.uscourts.gov, referencing Case No. 13-13087 (KG), by accessing the Debtors' restructuring website at www.omnimgt.com/fiskerautomotive, or by calling the Debtors' restructuring hotline at (866) 989-3043.

PLEASE TAKE FURTHER NOTICE THAT IF NO OBJECTIONS TO THE DIP FINANCING MOTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED IN THE DIP FINANCING MOTION, ON A FINAL BASIS, WITHOUT FURTHER NOTICE OR A HEARING.

Dated: March 6, 2014
Wilmington, Delaware

/s/ James E. O'Neill

Laura Davis Jones (DE Bar No. 2436)
James E. O'Neill (DE Bar No. 4042)
Peter J. Keane (DE Bar No. 5503)
PACHULSKI STANG ZIEHL & JONES LLP
919 North Market Street, 17th Floor
P.O. Box 8705
Wilmington, Delaware 19899-8705 (Courier 19801)
Telephone: (302) 652-4100
Facsimile: (302) 652-4400
Email: ljones@pszjlaw.com
joneill@pszjlaw.com
pkeane@pszjlaw.com

- and -

James H.M. Sprayregen, P.C. (admitted pro hac vice)
Anup Sathy, P.C. (admitted pro hac vice)
Ryan Preston Dahl (admitted pro hac vice)
KIRKLAND & ELLIS LLP
300 North LaSalle Street
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
Email: james.sprayregen@kirkland.com
anup.sathy@kirkland.com
ryan.dahl@kirkland.com

Attorneys for the
Debtors and Debtors in Possession

EXHIBIT A

Wanxiang DIP Financing [Signed] Interim Order

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

In re:

FIKKER AUTOMOTIVE HOLDINGS, INC., et al.,¹

Debtors.

)
) Chapter 11
)
) Case No. 13-13087 (KG)
)
) Jointly Administered)
)
) Re: Docket No. 671

**INTERIM ORDER (I) AUTHORIZING POSTPETITION FINANCING, (II) GRANTING
LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE
PRIORITY, (III) AUTHORIZING USE OF CASH COLLATERAL, (IV) MODIFYING
THE AUTOMATIC STAY, (V) AUTHORIZING SETOFF OF OBLIGATIONS
AGAINST PURCHASE PRICE, AND (VI) SCHEDULING A FINAL HEARING
PURSUANT TO SECTIONS 105, 361, 362, 363, AND 364 OF THE BANKRUPTCY
CODE AND BANKRUPTCY RULES 2002, 4001, AND 9014**

Upon the motion dated February 28, 2014 (the "Motion") of the above-captioned debtors and debtors in possession (collectively, the "Debtors") in the above-captioned cases (the "Cases") for the entry of interim and final orders under Sections 105, 361, 362, 363, 364 and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), Rules 2002, 4001, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rules 2002-1(b) and 4001-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules") seeking:

(I) authorization for the Debtors to obtain up to the principal amount of \$10.50 million of postpetition financing (the "DIP Loans"), on the terms and conditions set forth in this interim order (this "Interim Order") and that certain Binding Commitment and Agreement

¹ The Debtors, together with the last four digits of each Debtor's federal tax identification number, are: Fisker Automotive Holdings, Inc. (9678); and Fisker Automotive, Inc. (9075). For the purpose of these chapter 11 cases, the service address for the Debtors is: 3080 Airway Avenue, Costa Mesa, California 92626.

for DIP Financing and Use of Cash Collateral, dated February 28, 2014 (in substantially the form annexed hereto as Exhibit A, as it may hereafter be amended, supplemented or otherwise modified from time to time, the "DIP Agreement"),² by and among Fisker Automotive, Inc. (the "Borrower") and Fisker Automotive Holdings, Inc. (the "Guarantor"), and Wanxiang America Corporation ("Wanxiang America") in its capacity as post-petition lender to the Debtors (the "DIP Lender");

(II) authorization for the Debtors to execute and deliver the DIP Agreement and to perform such other and further acts as may be necessary or appropriate in connection therewith including performance of the Debtors' obligations thereunder;

(III) authorization for the Debtors to grant liens, mortgages, and security interests to the DIP Lender as more fully set forth in the DIP Agreement and herein;

(IV) authorization for the Debtors to use the Cash Collateral that constitutes proceeds of the DIP Loans;

(V) authorization for the DIP Lender to exercise remedies under the DIP Agreement upon the occurrence and during the continuance of an Event of Default subject to the terms hereof and the DIP Agreement;

(VI) authorization for the DIP Lender to offset all of the DIP Obligations against the cash portion of the Purchase Price (as defined in the APA) that Wanxiang America, in its capacity as the Buyer (as defined in the APA), is required to deliver to the Debtors on the Closing Date (as defined in the APA) in accordance with the terms of the APA;

(VII) pursuant to the Final Order, authorization to grant liens to the DIP Lender on the Debtors' claims and causes of action arising under Sections 544, 545, 547, 548, 549 and 550 of

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion or the DIP Agreement, as applicable.

the Bankruptcy Code (collectively, the "Avoidance Actions");

(VIII) at an interim hearing (the "Interim Hearing") on the Motion before this Court, pursuant to Bankruptcy Rule 4001, entry of this Interim Order (a) authorizing the Borrower to borrow and be jointly and severally obligated under the DIP Agreement in an aggregate principal amount not to exceed \$4.98 million through the date of entry of the Final Order, (b) authorizing the Guarantor to unconditionally guaranty all of the DIP Obligations, (c) authorizing the Debtors to grant liens, mortgages, and security interests to the DIP Lender as more fully set forth in the DIP Agreement, and (d) authorizing the Debtors to use the Cash Collateral that constitutes proceeds from the DIP Loans on the terms set forth herein; and

(IX) to schedule, pursuant to Bankruptcy Rule 4001, a final hearing (the "Final Hearing") for this Court to consider entry of the Final Order.

And the Interim Hearing having been held by this Court on March 6, 2014; and upon the record made by the Debtors at the Interim Hearing; and all objections to the entry of this Interim Order having been overruled, withdrawn or resolved; and after due deliberation and consideration and sufficient cause appearing therefor:

IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED, that:

1. *Jurisdiction.* This Court has jurisdiction over this matter 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 within the meaning of 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. *Notice.* Notice of the Motion and the Interim Hearing was served by the Debtors on (a) the Office of the United States Trustee for the District of Delaware; (b) counsel to PNC Bank, N.A., d/b/a Midland Loan Services, a division of PNC Bank, N.A., as successor by merger to Midland Loan Services, Inc., as collateral agent under that certain Amended and Restated Collateral Agency Agreement dated as of July 30, 2010; (c) the Internal Revenue Service; (d) the United States Department of Energy; (e) Silicon Valley Bank; (f) the Delaware Economic Development Authority; (g) the United States Department of Energy; (h) counsel to Hybrid Technology, LLC and Hybrid Tech Holdings, LLC; (i) any party that has requested notice pursuant to Bankruptcy Rule 2002; (j) the cash management banks with whom the Debtors maintain their bank accounts; (k) counsel to the DIP Lender; (l) counsel to the official committee of unsecured creditors appointed in these chapter 11 cases (the "Committee"); and (m) all parties who are known, after reasonable inquiry, to have asserted a lien, encumbrance, or claim in the DIP Collateral (collectively, the "Notice Parties"). Under the circumstances, the notice of the Motion and the Interim Hearing constitutes the best available notice and that no further notice of the relief sought in this Interim Order is necessary or required.

3. *Existing DIP Facility.* On January 24, 2014, the Court entered a final order [Docket No. 521] approving the terms of the Binding Commitment and Agreement for DIP Financing and Use of Cash Collateral dated November 22, 2013 (as amended, modified, or supplemented, the "Existing DIP Facility"), by and among Fisker Automotive, Inc. as the Borrower, Fisker Automotive Holdings, Inc. as the Guarantor, and Hybrid Technology, LLC (the "Existing DIP Lender") as post-petition lender. On February 21, 2014, the Existing DIP Lender notified the Debtors that the Existing DIP Lender has terminated the Existing DIP Facility and declared that all principal of and accrued interest on the borrowings under the Existing DIP

Facility have become due and payable.

4. *Approval of Motion.* The relief requested in the Motion is granted as described herein. Except as otherwise expressly provided in this Interim Order, any objection to the entry of this Interim Order that has not been withdrawn, waived, resolved or settled, is hereby denied and overruled on the merits.

5. *Findings Regarding the DIP Loans and Use of Cash Collateral.*

(a) Good cause has been shown for the entry of this Interim Order.

(b) The Borrower requires the DIP Loans and the Debtors need to continue to use the Cash Collateral that constitutes proceeds of the DIP Loans, in order to, among other things, preserve estate value and fund these chapter 11 cases through the sale of their assets.

(c) The Debtors are unable to obtain financing on more favorable terms from sources other than the DIP Lender pursuant to, and for the purposes set forth in, the DIP Agreement and are unable to obtain adequate unsecured credit allowable under Section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors are also unable to obtain secured credit allowable under Sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code without granting the Superpriority Claim (as defined herein) on the terms and conditions set forth in this Interim Order and the DIP Agreement.

(d) The terms of the use of the DIP Loans and the Cash Collateral pursuant to this Interim Order and the DIP Agreement are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and constitute reasonably equivalent value and fair consideration.

(e) The DIP Agreement and the Debtors' use of the Cash Collateral have been the subject of good faith negotiations conducted at arm's length among the Debtors and the DIP

Lender and all DIP Obligations shall be deemed to have been extended by the DIP Lender in "good faith" as such term is used in Section 364(e) of the Bankruptcy Code, and in express reliance upon the protections set forth therein, and shall be entitled to the full protection of Section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed or modified on appeal or otherwise.

(f) Absent the relief set forth in this Interim Order, the Debtors and their estates will be immediately and irreparably harmed. In particular, the Debtors require immediate postpetition financing in order to, among other things, maintain the value of their assets, pay payroll and employee benefit expenses, and preserve the value of the Debtors' estates for the benefit of their creditors and stakeholders. The borrowing of the DIP Loans and the use of the Cash Collateral constituting proceeds of the DIP Loans, in accordance with this Interim Order and the DIP Agreement are, therefore, in the best interest of the Debtors.

6. *Authorization of the DIP Loans and the DIP Agreement.*

(a) The Borrower is hereby authorized to borrow and, together with the Guarantor, be jointly and severally obligated under the DIP Agreement in an aggregate principal amount not to exceed \$4.98 million, on an interim basis, and is authorized to use such funding for working capital purposes of the Debtors, payment of interest and fees under the DIP Facility, and payment of the allowed costs and expenses of these Cases, in each case solely in accordance with the Approved Budget (a copy of which is attached as Exhibit B to the DIP Agreement), including all Permitted Variances.

(b) In furtherance of the foregoing and without further approval of this Court, the Debtors are authorized and directed to perform all acts (and to the extent such acts have already occurred, such acts are hereby ratified), including without limitation:

- (i) the execution, delivery and performance of the DIP Agreement; and
- (ii) the performance of all other acts required under or in connection with this Interim Order and the DIP Agreement.

(c) The DIP Agreement and the DIP Obligations constitute valid and binding obligations of the Debtors, enforceable against the Debtors in accordance with the terms of this Interim Order and the DIP Agreement. No obligation, payment, transfer or grant of security by the Debtors under the DIP Agreement or this Interim Order shall be voidable, avoidable or recoverable under the Bankruptcy Code or under any applicable nonbankruptcy law (including without limitation, under Sections 502(d) or 548 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law), or subject to any defense, reduction, setoff, recoupment or counterclaim.

7. *Budget.* Attached as Exhibit B to the DIP Agreement and incorporated by reference herein is a 6-week budget (which has been approved by the DIP Lender) setting forth the Debtors' projected receipts and disbursements for such period (as such budget may be modified in accordance with the DIP Agreement, the "Approved Budget").

(a) The Debtors' incurrence of the DIP Loans and use of Cash Collateral that constitutes proceeds of the DIP Loans shall be consistent with the types of expenses set forth in the Approved Budget, subject to the requirements set forth in the DIP Agreement, and in accordance with the Permitted Variances and other terms contained in this Interim Order and the DIP Agreement. The DIP Lender shall have no obligation with respect to the Debtors' use of the Cash Collateral constituting proceeds of the DIP Loans and shall not be obligated to ensure or monitor the Debtors' compliance with the Approved Budget or to pay (directly or indirectly from such Cash Collateral) any expenses incurred or authorized to be incurred pursuant to the Approved Budget. Any and all Cash Collateral constituting proceeds of the DIP Loans shall be

used by the Debtors in accordance with this Interim Order, the Approved Budget (including Permitted Variances), and the DIP Agreement. Except with respect to the funds held in the Professional Fees Account and the Carve-Out, the DIP Lender's consent to the Approved Budget shall not be construed as consent to the use of any Cash Collateral after the occurrence and during the continuance of an Event of Default, regardless of whether the aggregate funds shown in the Approved Budget have been expended.

(b) Notwithstanding anything to the contrary contained herein, no payment shall be made using DIP Loans or Cash Collateral constituting proceeds of the DIP Loans to any Professional Person to the extent that it would cause the aggregate amount paid to such Professional Person to exceed the aggregate amount of fees and expenses set forth in the Approved Budget with respect to such Professional Person, it being understood that amounts unpaid as a result of the preceding limitation may be accrued and, subject to the terms of this Interim Order, paid (i) to the extent provided by the Carve Out, (ii) in any subsequent period to the extent that actual fees and expenses incurred in such subsequent period are less than the fees and expenses in the Budget for such subsequent period, or (iii) pursuant to the terms of a chapter 11 plan or with cash that is not Cash Collateral; provided, however, that nothing in this Interim Order shall limit any Professional Person's right to request, or the Court's power to authorize, the allowance of fees and expenses pursuant to Sections 330 and 331 of the Bankruptcy Code.

8. *DIP Liens, Superpriority Claims and Setoff Right.* Subject to the Carve-Out in all respects, the DIP Obligations shall be:

- (a) entitled to superpriority claim status under Section 364(c)(1) of the Bankruptcy Code (the "Superpriority Claims") with priority over all administrative expense claims and unsecured claims now existing or hereafter arising under the Bankruptcy Code, other than (i) superpriority claims entitled to priority under Section 364(c)(1) of the Bankruptcy Code that are held by the Existing DIP Lender and (ii) the adequate protection

claims entitled to priority under section 507(b) of the Bankruptcy Code that are held by the Pre-Petition Lenders. The Superpriority Claims may be repaid from any cash of the Debtors, including without limitation, the Cash Collateral;

- (b) secured, pursuant to section 364(c)(2) of the Bankruptcy Code, by valid, enforceable, and fully perfected senior security interests in and liens upon all of the assets of the Debtors' estates that were not encumbered by valid, enforceable and nonavoidable liens as of the Petition Date (including, without limitation, pursuant to the Final Order, estate causes of action under Chapter 5 of the Bankruptcy Code, together with the proceeds thereof and property received thereby (the "Avoidance Actions")), subject to any existing security interests in and liens upon such assets in favor of the Existing DIP Lender or granted as adequate protection for the Pre-Petition Lenders pursuant to the Existing DIP Order, whether now existing or hereafter acquired or arising;
- (c) secured, pursuant to Section 364(c)(3) of the Bankruptcy Code, by valid, enforceable and fully perfected junior security interests in and liens upon all of the Debtors' assets that were subject to (i) valid, perfected, and nonavoidable liens in existence on the Petition Date or (ii) valid liens in existence on the Petition Date that were perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code, which security interests and liens shall in each case also be junior to the existing security interests in and liens upon such assets in favor of the Existing DIP Lender or granted as adequate protection for the Pre-Petition Lenders pursuant to the Existing DIP Order (the liens described in subparagraphs (b) and (c) herein, the "DIP Liens"); and
- (d) secured pursuant to a post-petition right of setoff against the cash portion of the Purchase Price (as defined in Section 2.1(i) of the APA) that Wanxiang America is required to deliver to the Debtors on the Closing Date in accordance with the terms of the APA.

All assets of the Debtors' estates that are encumbered by security interests and liens of the DIP Lender pursuant to this Interim Order and the DIP Agreement are collectively referred to herein as the "DIP Collateral"; provided, that, the DIP Collateral shall exclude and be deemed to exclude 35 percent of the Borrower's equity interest in Fisker Automotive GmbH, the Borrower's wholly-owned subsidiary organized under the laws of Germany. The DIP Collateral shall also include any and all rents, issues, products, offspring, proceeds and profits generated by any item of DIP Collateral, without the necessity of any further action of any kind or nature by

the DIP Lender in order to claim or perfect such rents, issues, products, offspring, proceeds and/or profits.

(e) Liens Senior to Certain Other Liens. From and after the date hereof, subject to the Carve-Out, the DIP Liens shall not be subordinated to or made *pari passu* with any other lien or security interest under Sections 363 or 364 of the Bankruptcy Code or otherwise.

9. *Remedies After an Event of Default.* Notwithstanding anything to the contrary in the DIP Agreement, the automatic stay under Section 362 of the Bankruptcy Code is vacated and modified to the extent necessary to permit the DIP Lender, immediately upon the occurrence and during the continuance of an Event of Default, to accelerate the DIP Obligations and, thereafter, take all or any of the following actions without further order of or application to the Bankruptcy Court, provided that, in the case of the enforcement of liens or other remedies with respect to collateral pursuant to clause (b) below, the DIP Lender shall provide the Debtors (with a copy to counsel to the Committee and the United States Trustee) with five (5) business days' prior written notice during which time any such party may file a pleading seeking an emergency hearing in opposition to the DIP Lender's exercise of its rights and remedies; and provided further, that in any hearing following such notice, the only issue that may be raised in opposition to the actions proposed or available to be taken by the DIP Lender shall be whether, in fact, an Event of Default has occurred and is continuing:

(a) declare the principal of and accrued interest on the outstanding DIP Loans to be immediately due and payable and terminate, as applicable, any further commitments under the DIP Facility and/or terminate the right of the Debtors to use the Cash Collateral that constitutes proceeds of the DIP Loans;

(b) enforce the DIP Lender's liens or pursue other remedies with respect to the DIP

Collateral as the DIP Lender may deem appropriate or necessary; and

(c) charge the default rate of interest under the DIP Facility and take any other action or exercise any other right or remedy (including without limitation, with respect to the liens in favor of the DIP Lender) permitted under applicable law.

10. *Payments Free and Clear.* Any and all payments or proceeds remitted to the DIP Lender pursuant to the provisions of this Interim Order or any subsequent order of this Court shall be received free and clear of any claim, charge, assessment or other liability.

11. *Carve Out.* The claims and liens granted to the DIP Lender hereunder and pursuant to the DIP Agreement shall each be subject to (i) all fees required to be paid to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the Carve-Out Trigger Notice); (ii) fees and expenses up to \$50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the Carve-Out Trigger Notice); (iii) all accrued but unpaid costs, fees, and expenses (the "Professional Fees") incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (the "Debtor Professionals") and the Committee (the "Committee Professionals") appointed in Debtors' Cases pursuant to section 1102 of the Bankruptcy Code (the Debtor Professionals and the Committee Professionals, together, the "Professional Persons") at any time before or on the first business day following delivery by the DIP Lender of a Carve-Out Trigger Notice, whether allowed by the Bankruptcy Court prior to or after delivery of a Carve-Out Trigger Notice in the case of either the Debtors Professionals or the Committee Professionals, to the extent allowed at any time, whether allowed by interim order, procedural order, or otherwise; and (iv) after the first business day following delivery by the DIP Lender of the Carve-Out Trigger Notice, to the

extent allowed at any time, whether by interim order, procedural order, or otherwise, the payment of Professional Fees of Professional Persons in an aggregate amount not to exceed (x) with respect to Professional Persons retained by the Debtors, \$200,000 and (y) with respect to Professional Persons retained by the Committee, \$50,000 (the amounts set forth in the foregoing clauses (x) and (y) are collectively referred to as the "Post-Termination Amount"). For purposes of the foregoing, "Carve-Out Trigger Notice" shall mean a written notice delivered by the DIP Lender to the Debtors and their lead counsel, the United States Trustee for the District of Delaware, and lead counsel to the Committee, providing notice that the Termination Date has occurred.

12. Promptly after receipt of the Carve-Out Trigger Notice, the DIP Lender shall fund to the Debtors and the Debtors shall transfer to the Professional Fee Account cash in an amount equal to (a) the amount of Professional Fees set forth in the Approved Budget that have not already been funded into the Professional Fee Account, plus (b) the Post-Termination Amount; provided that after receipt of a Carve Out Trigger Notice, funds held in the Professional Fee Account shall be earmarked for each professional as applicable pursuant to the Approved Budget.

13. Without limiting the foregoing, following receipt of the Carve Out Trigger Notice, all recoveries on, or proceeds from, the claims and liens granted to the DIP Lender under this Interim Order and the DIP Lenders' interest in the DIP Collateral shall be transferred by the DIP Lenders into the Professional Fees Account until the balance of cash held in the Professional Fees Account is not less than 100% of the Carve-Out.

14. *Perfection of the DIP Liens.* The DIP Liens shall be valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge, dispute or subordination as of the date

of this Interim Order, without the necessity of the DIP Lender filing or recording any financing statements, intellectual property filings, mortgages, notices of lien or similar instruments in any jurisdiction, taking possession of or control over any of the DIP Collateral, or taking any other action in order to validate and perfect the DIP Liens granted to it under this Interim Order.

15. *Preservation of Rights Granted Under this Interim Order.*

(a) From and after the date hereof, no claim or lien having a priority senior to or *pari passu* with those granted by this Interim Order to the DIP Lender shall be granted or allowed while any portion of the DIP Obligations and the DIP Liens remain outstanding.

(b) Unless all DIP Obligations shall have been indefeasibly paid in full in cash or otherwise satisfied, in the case of clause (i) below, the Debtors shall not seek, and in the case clauses (i) and (ii) below, it shall constitute an Event of Default under the DIP Agreement and a termination of the right to use the Cash Collateral if any of the Debtors seeks, or if there is entered, (i) any modification of this Interim Order without the prior written consent of the DIP Lender, as applicable, and no such consent shall be implied by any other action, inaction or acquiescence by the DIP Lender, or (ii) an order converting or dismissing either of the Cases.

(c) If any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated or stayed, such reversal, stay, modification or vacatur shall, to the extent provided in Section 364(e) of the Bankruptcy Code, not affect (i) the validity, priority or enforceability of any DIP Obligations incurred prior to the effective date of such reversal, stay, modification or vacatur or (ii) the validity, priority or enforceability of the DIP Liens. Notwithstanding any such reversal, stay, modification or vacatur, any use of the Cash Collateral or any DIP Obligations incurred by the Debtors to the DIP Lender prior to the effective date of such reversal, stay, modification or vacatur shall, to the extent provided in Section 364(e) of the

Bankruptcy Code, be governed in all respects by the original provisions of this Interim Order, and the DIP Lender shall be entitled to all of the rights, remedies, privileges and benefits granted in Section 364(e) of the Bankruptcy Code, this Interim Order, and the DIP Agreement.

(d) Except as expressly provided in this Interim Order or in the DIP Agreement, the DIP Liens, the Superpriority Claim, and all other rights and remedies of the DIP Lender under this Interim Order and the DIP Agreement shall survive, and shall not be modified, impaired or discharged by (i) the entry of an order converting any of the Cases to cases under Chapter 7 of the Bankruptcy Code or dismissing any of the Cases, or (ii) the entry of an order confirming a plan of reorganization or liquidation in any of the Cases. The terms and provisions of this Interim Order and the DIP Agreement shall continue in the Cases, in any successor cases if the Cases cease to be jointly administered, or in any superseding Chapter 7 cases under the Bankruptcy Code, and the DIP Liens, the DIP Obligations, the Superpriority Claim, the other administrative claims granted pursuant to this Interim Order, and all other rights and remedies of the DIP Lender granted by this Interim Order and the DIP Agreement shall continue in full force and effect until all DIP Obligations are indefeasibly paid in full in cash.

16. *Limitation on Use of the DIP Loans, the DIP Collateral, and Cash Collateral.* The Debtors shall use the DIP Loans, the DIP Collateral, and the Cash Collateral constituting proceeds of the DIP Loans solely as authorized pursuant to this Interim Order, the Approved Budget (including Permitted Variances) and the DIP Agreement. Except as expressly set forth herein, neither the DIP Loans, the DIP Collateral, the Cash Collateral constituting proceeds of the DIP Loans, nor the Carve-Out may be used to (a) object, contest or raise any defense to, the validity, perfection, priority, extent or enforceability of any amount due under the DIP Agreement, or the liens or claims granted under this Interim Order or the DIP Agreement, (b)

assert any claims or causes of action against the DIP Lender or its agents, affiliates, subsidiaries, directors, officers, representatives, attorneys or advisors, (c) prevent, hinder or otherwise delay the DIP Lender's assertion, enforcement or realization on the DIP Collateral in accordance with the DIP Agreement or this Interim Order, or (d) seek to modify any of the rights granted to the DIP Lender hereunder or under the DIP Agreement, or (e) pay any amount on account of any claims arising prior to the Petition Date unless such payments are (i) approved by an order of this Court and (ii) permitted under the DIP Agreement and the Approved Budget (including Permitted Variances).

17. *Repayment of the DIP Obligations.* On the Closing Date (as defined in the APA), the DIP Obligations (including all outstanding principal, interest, reasonable fees and reasonable expenses under the DIP Agreement) shall be irrevocably and indefeasibly repaid in full, at the DIP Lender's election, either (i) with the cash portion of the Purchase Price (as defined in Section 2.1(i) of the APA) delivered by Wanxiang America to the Debtors on the Closing Date in accordance with the terms of the APA or (ii) pursuant to an offset against the cash portion of the Purchase Price (as defined in Section 2.1(i) of the APA) that Wanxiang America is required to deliver to the Debtors on the Closing Date in accordance with the terms of the APA.

18. *Interim Order Governs.* In the event of any inconsistency between the provisions of this Interim Order and the DIP Agreement, the provisions of this Interim Order shall govern.

19. *Binding Effect; Successors and Assigns.* The DIP Agreement and the provisions of this Interim Order, including all findings herein, shall be binding upon all parties-in-interest in the Cases, including without limitation, the Debtors and their respective successors and assigns (including any Chapter 7 or Chapter 11 trustee hereinafter appointed or elected for any of the Debtors, an examiner with expanded powers appointed pursuant to Section 1104 of the

Bankruptcy Code, or any other fiduciary appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors) and shall inure to the benefit of the DIP Lender and the Debtors and their respective successors and assigns; provided that, the DIP Lender shall have no obligation to extend any financing to any Chapter 7 trustee or similar responsible person appointed for the estates of the Debtors.

20. *Effectiveness.* This Interim Order shall constitute findings of fact and conclusions of law and shall take effect immediately upon entry hereof, and there shall be no stay of effectiveness of this Interim Order.

21. *Reservations of Rights.* Notwithstanding anything to the contrary contained herein, this Interim Order is without prejudice to, and does not determine in any respect, (a) the rights or claims of Hybrid Tech Holding LLC and Hybrid Technology LLC (collectively, "Hybrid") to the proceeds of the Wanxiang sale, including without limitation its right (i) to assert that the DIP Loans must be repaid or be deemed to have been repaid first from any unencumbered assets or the proceeds thereof (whether the DIP Loans have been repaid by a cash payment, setoff of Purchase Price, or otherwise), (ii) to assert and receive adequate protection liens and superpriority claims to the extent the DIP Loans have been repaid or deemed to have been repaid from Hybrid's collateral or the proceeds thereof, and to seek that such liens and claims shall be payable first from any assets that are not encumbered by Hybrid's prepetition liens, and then from any encumbered assets, and (iii) to seek further appropriate relief from the Court, including the grant of an additional superpriority claim and replacement liens or (b) any other party's rights to dispute any and all of the rights reserved at clause (a) of this Paragraph; provided that, notwithstanding the foregoing, Hybrid shall not dispute the DIP Lender's right to cause the DIP Loans to be repaid by a setoff against the Purchase Price as otherwise provided

herein, but, without limiting the foregoing proviso or the rights reserved at clause (b) of this Paragraph, Hybrid reserves all of its rights as to the allocation and effect of such setoff and its rights to seek adequate protection.

22. *Final Hearing.* The Final Hearing is scheduled for March 21, 2014 at 11:00 AM (prevailing Eastern time) before this Court. The deadline to object to final approval of the Motion shall be March 14, 2014, at 4:00 p.m. (prevailing Eastern time).

23. *Final Hearing Notice.* The Debtors shall promptly mail copies of this Interim Order (which shall constitute adequate notice of the Final Hearing) to the parties having been given notice of the Interim Hearing and to any other party that has subsequently filed a request for notices with this Court. Any objections to the relief sought at the Final Hearing shall be served upon (a) Kirkland & Ellis LLP, 300 North LaSalle, Chicago, IL 60654, Attn: Anup Sathy, P.C. and Ryan Preston Dahl; (b) Sidley Austin LLP, One South Dearborn, Chicago, IL 60603, Attn: Bojan Guzina and Andrew F. O'Neill; (c) the Office of the U.S. Trustee for the District of Delaware; and (d) counsel to the Committee, and shall be filed with the Clerk of the United States Bankruptcy Court, District of Delaware, in each case to allow actual receipt by the foregoing no later than March 14, 2014, at 4:00 p.m. (Eastern time).

Dated: March 6 2014


The Honorable Brendan L. Shannon
Chief United States Bankruptcy Judge

Exhibit A

DIP Agreement

**BINDING COMMITMENT AND AGREEMENT
FOR DIP FINANCING AND USE OF CASH COLLATERAL**

Fisker Automotive, Inc. and Fisker Automotive Holdings, Inc.,
Debtors and Debtors-in-Possession
February 28, 2014

The terms and conditions contained in this agreement represent a binding commitment among the parties hereto. Any provision of financial accommodations under the debtor-in-possession credit facility contemplated hereby shall be further subject to the terms and conditions and Bankruptcy Court approval as set forth below.

Borrower: Fisker Automotive, Inc., as debtor and debtor-in-possession (the "**Borrower**") under Chapter 11 of the United States Bankruptcy Code (the "**Bankruptcy Code**") in jointly administered cases (Case No. 13-13087) (collectively, the "**Cases**") in the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**").

Guarantor: Fisker Automotive Holdings, Inc., as debtor and debtor in possession (the "**Guarantor**") and, together with the Borrower, the "**Debtors**"), shall unconditionally guarantee the Borrower's obligations under the DIP Facility.

Pre-Petition Lenders: Hybrid Technology, LLC, a Delaware limited liability company ("**Hybrid**"), the lender (via assignment) party to the Loan Arrangement and Reimbursement Agreement, dated as of April 22, 2010 (as thereafter amended), in its capacity as assignee, along with Silicon Valley Bank and the Delaware Economic Development Authority (collectively, the "**Pre-Petition Lenders**"), as lenders under their governing loan, mortgage, and security documents (collectively, the "**Pre-Petition Loan Documents**").

Existing DIP Lender: Hybrid, in its capacity as a post-petition lender to the debtor in possession (together with its successors and assigns, the "**Existing DIP Lender**") under the senior secured DIP facility that was approved by the Bankruptcy Court pursuant to a final order entered on or about January 24, 2014 [Docket No. 521] (the "**Existing DIP Facility**" and the "**Existing DIP Order**", respectively).

DIP Lender: Wanxiang America Corporation ("**Wanxiang America**").

Asset Purchase Agreement: Asset Purchase Agreement dated as of January 27, 2014, by and among each of the Debtors, as Seller, and Wanxiang America and its specified designees, as Buyers, as amended by that certain Amendment No. 1 dated February 12, 2014 and that certain Amendment No. 2 dated February 17, 2014 (as it may be further amended, modified, or supplemented by the Debtors and Wanxiang America in accordance with the terms thereof, the "**APA**").

Petition Date: November 22, 2013.

DIP Facility:

The debtor in possession credit facility to be provided by the DIP Lender (the "**DIP Facility**") shall include loans to be advanced and made available to the Borrowers (the "**DIP Loans**") in the aggregate maximum principal amount of \$10.50 million (the "**DIP Commitment**"), provided that (i) from the date of entry of the Interim Order (as defined below) through and including March 31, 2014, the maximum principal amount of the DIP Commitment shall be limited to \$7.25 million (the "**Initial DIP Commitment**") and (ii) the Debtors shall have the right, subject to the satisfaction or waiver of the conditions precedent specified herein, to increase the maximum principal amount of the DIP Commitment from \$7.25 million to \$10.50 million for the period from March 31, 2014 through and including April 30, 2014 (the "**Additional DIP Commitment**").

The DIP Loans and the Cash Collateral (as defined below) that constitutes proceeds from the DIP Loans may be used only for working capital purposes of the Debtors, payment of interest and fees under the DIP Facility, and the payment of allowed administrative costs and expenses of the Cases in accordance with the Approved Budget (including any Permitted Variances) and the Orders (each as defined below) incorporating the terms hereof.

Subject to approval of the Bankruptcy Court pursuant to the Interim Order, interim advances of up to \$4.25 million (the "**Interim Advances**") shall be made available during the period from the date of entry of the Interim Order through the date of entry of the Final Order (as defined below) in weekly draws in accordance with the Initial Approved Budget (as defined below), and the balance of the DIP Commitment shall be available in weekly draws in accordance with the Approved Budget (unless otherwise agreed by the DIP Lender) only upon and after entry of the Final Order. Pending entry of the Final Order, the DIP Lender shall be afforded all of the protections contained in the Interim Order.

The DIP Facility will be made available if (and only if) the Interim Order or Final Order, as applicable, is in full force and effect and the other conditions precedent specified herein have been satisfied or waived. The DIP Loans under the DIP Facility will be made available following delivery by the Debtors of a loan request which shall include a certification that (i) no default or Event of Default has occurred and is continuing; (ii) all representations and warranties shall be true and correct in all material respects as of the date of the loan request; and (iii) the loans being requested shall be used in accordance with the Approved Budget (including any Permitted Variances¹). The DIP Loans, subject to the foregoing conditions, will be funded weekly (unless otherwise agreed

¹ "**Permitted Variances**" shall mean not more than 15 percent of net cash flow (aggregate receipts minus aggregate disbursements, calculated without regard to Professional Fees (as defined herein)) for the immediately preceding two-week period. At the DIP Lender's prior reasonable request (but not more than weekly), the Debtors shall promptly provide a report describing in reasonable detail the aggregate actual cash disbursements and receipts by the Debtors for the immediately preceding two-week period.

by the DIP Lender) on the third Business Day immediately following the date of such request if requested by 2:00 p.m. New York time, or on the fourth Business Day immediately following the date of such request if requested after 2:00 p.m. New York time.

The DIP Lender shall have the benefit of all deposit account control agreements to which any of the Pre-Petition Lenders or the Existing DIP Lender are a party.

Maturity Date:

Same as the Termination Date (as defined below).

Interest Rate:

10% per annum; provided, however, that (i) if the Closing Date (as defined in the APA) shall have occurred on or before March 31, 2014, no interest on the DIP Loans shall be payable by the Debtors; (ii) if all conditions precedent to the occurrence of the Closing Date that are applicable to the Debtors shall have been satisfied by the Debtors on or before March 31, 2014 but Wanxiang America shall have failed to consummate the transactions contemplated by the APA on or before such date, no interest on the DIP Loans shall be payable by the Debtors except as set forth in clause (iv) below; (iii) subject to clause (ii) above, if the Closing Date shall not have occurred on or before March 31, 2014, the accrued interest on the DIP Loans from the date of the closing of the DIP Facility through and including March 31, 2014 shall be immediately due and payable to the DIP Lender in cash and shall thereafter be payable to the DIP Lender in cash on a monthly basis (in arrears); and (iv) regardless of the reasons for the failure of the Closing Date to occur on or before March 31, 2014, the interest on any DIP Loans incurred by the Debtors after March 31, 2014 shall be payable to the DIP Lender in cash on a monthly basis (in arrears).

Default Interest:

After the occurrence and during the continuance of an Event of Default (as defined below), DIP Loans will bear interest at an additional 2.0% per annum and such interest shall be payable by the Debtors in accordance with the terms of the immediately preceding paragraph.

Initial Commitment Fee:

\$580,000, to be fully earned, non-refundable and payable to the DIP Lender in full in cash upon the closing of the DIP Facility from the proceeds of the initial advance under the DIP Facility.

Additional Commitment Fee:

\$270,000, to be fully-earned, non-refundable and payable to the DIP Lender in full in cash upon the Debtors' election, in accordance with the terms hereof and the Orders (as defined herein), to increase the maximum principal amount of the DIP Commitment from \$7.25 million to \$10.50 million for the period from March 31, 2014 through and including April 30, 2014; provided, however, that such fee shall not be payable by the Debtors if all conditions precedent required to be satisfied by the Debtors prior to the occurrence of the Closing Date shall have been satisfied on or before March 31, 2014 but Wanxiang America shall have failed to consummate the transactions contemplated by the APA.

Priority and Security:

Subject to the Carve-Out (as defined herein), all obligations of the Debtors under the DIP Facility (the "**DIP Obligations**") shall be:

(i) entitled to superpriority claim status under Section 364(c)(1) of the Bankruptcy Code with priority over all administrative expense claims and unsecured claims now existing or hereafter arising under the Bankruptcy Code, other than (a) the superpriority claims under Section 364(c)(1) of the Bankruptcy Code that are held by the Existing DIP Lender and (b) the adequate protection claims entitled to priority under Section 507(b) of the Bankruptcy Code that are held by the Pre-Petition Lenders. The superpriority claims of the DIP Lender may be repaid from any cash of the Debtors, including without limitation, the Cash Collateral;

(ii) secured, pursuant to Section 364(c)(2) of the Bankruptcy Code, by valid, enforceable, and fully perfected senior security interests in and liens upon all of the assets of the Debtors' estates that were not encumbered by valid, enforceable and nonavoidable liens as of the Petition Date (including, without limitation, pursuant to the Final Order, estate causes of action under Chapter 5 of the Bankruptcy Code, together with the proceeds thereof and property received thereby (the "**Avoidance Actions**")), subject to any existing security interests in and liens upon such assets in favor of the Existing DIP Lender or granted as adequate protection for the Pre-Petition Lenders pursuant to the Existing DIP Order, whether now existing or hereafter acquired or arising;

(iii) secured, pursuant to Section 364(c)(3) of the Bankruptcy Code, by valid, enforceable and fully perfected junior security interests in and liens upon all of the Debtors' assets that were subject to (x) valid, perfected, and nonavoidable liens in existence on the Petition Date or (y) valid liens in existence on the Petition Date that were perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code, which security interests and liens shall in each case also be junior to the existing security interests in and liens upon such assets in favor of the Existing DIP Lender or granted as adequate protection for the Pre-Petition Lenders pursuant to the Existing DIP Order; and

(iv) secured pursuant to a post-petition right of setoff against the cash portion of the Purchase Price (as defined in the APA) that Wanxiang America is required to deliver to the Debtors on the Closing Date in accordance with the terms of the APA.

All assets of the Debtors' estates that shall be encumbered by security interests and liens of the DIP Lender are collectively referred to herein as the "**DIP Collateral**"; provided that the DIP Collateral shall exclude and be deemed to exclude 35% of Borrower's equity interest in Fisker Automotive GmbH, the Borrower's wholly-owned subsidiary organized under the laws of Germany. The DIP Collateral shall also include any and all rents, issues, products, offspring, proceeds and profits generated by any item of DIP Collateral, without the necessity of any further action

of any kind or nature by the DIP Lender in order to claim or perfect such rents, issues, products, offspring, proceeds and/or profits.

Use of Cash Collateral:

All cash and cash equivalents of the Debtors, whenever or wherever acquired, and the proceeds of all collateral pledged to the DIP Lender, constitute cash collateral, as contemplated by Section 363 of the Bankruptcy Code ("**Cash Collateral**"). The Debtors may use Cash Collateral that constitutes proceeds from the DIP Loans only for working capital purposes of the Debtors, interest and fees under the DIP Facility, and the allowed costs and expenses of the Cases, in each case, in accordance with the cash forecast attached hereto as **Exhibit B** (the "**Initial Approved Budget**") and, as such forecast may hereafter be modified with the consent of the DIP Lender and approval of the Bankruptcy Court, the "**Approved Budget**") and the Orders incorporating the terms hereof. The Initial Approved Budget is in form, scope and substance acceptable to the DIP Lender.

Conditions Precedent to Initial DIP Commitment:

The closing of the DIP Facility and the Debtors' right to use Cash Collateral pursuant to the terms hereof will be subject to the satisfaction of all the following conditions precedent:

- (i) an interim debtor-in-possession financing order in substantially the form attached hereto as **Exhibit A** (the "**Interim Order**") shall have been entered by the Bankruptcy Court and shall not have been stayed, modified or vacated. Notwithstanding anything to the contrary contained herein, funding of any Interim Advance shall be subject to entry of the Interim Order and funding of the balance of the commitments under the DIP Facility and continued authority to use Cash Collateral shall be subject to entry of a final debtor-in-possession financing/use of cash collateral order, in form and substance consistent with the terms hereof and otherwise reasonably acceptable to the DIP Lender and the Debtors (the "**Final Order**") and, together with the Interim Order, collectively, the "**Orders**"), and such Final Order shall not have been stayed, modified or vacated;
- (ii) the reasonable fees and documented expenses incurred by legal counsel to the DIP Lender in connection with the DIP Facility shall have been paid in full by the Debtors (which condition may be satisfied with the proceeds of the initial advance under the DIP Facility on the date on which the closing of the DIP Facility occurs); and
- (iii) the \$580,000 initial commitment fee shall have been paid in full by the Debtors to the DIP Lender (which condition may be satisfied with the proceeds of the initial advance under the DIP Facility on the date on which the closing of the DIP Facility occurs).

Conditions Precedent to Availability of Additional

DIP Commitment:

The availability of the Additional DIP Commitment to the Debtors will be subject to the satisfaction (or waiver) of all the following conditions precedent:

(i) no later than 5:00 p.m., Chicago time, on March 31, 2014, the Debtors shall have notified the DIP Lender in writing that the Debtors have elected to access the Additional DIP Commitment in accordance with the terms hereof;

(ii) no Event of Default shall have occurred and be continuing at such time;

(iii) to the extent it becomes payable in accordance with the terms hereof, the \$270,000 additional commitment fee shall have been paid in full by the Debtors to the DIP Lender (which condition may be satisfied with the proceeds of the first advance under the DIP Facility after the Additional DIP Commitment has become available to the Debtors);

(iv) to the extent payable in accordance with the terms hereof, the accrued interest on the DIP Loans that are outstanding at such time shall have been paid in full by the Debtors to the DIP Lender (which condition may be satisfied with the proceeds of the first advance under the DIP Facility after the Additional DIP Commitment has become available to the Debtors); and

(v) such other deliverables as the DIP Lender may require that are customary for transactions of this type.

Commitment Termination:

The commitments and agreements of the DIP Lender hereunder shall expire and be null and void at 5:00 p.m., Chicago time, on March 7, 2014, unless, prior to that time, the Bankruptcy Court shall have entered the Interim Order.

Reporting and Information:

The Debtors shall timely provide all customary and reasonably available information and access to the Debtors' books, records, personnel and advisors as the DIP Lender may reasonably request; provided that it is acknowledged and agreed that the Debtors shall not be obliged to provide access to information or materials that the Debtors reasonably determine could result in the loss of attorney-client privilege or the protections afforded by similar statutory or common law doctrines. The Debtors shall promptly provide the advisors to the Creditors' Committee on a "professional eyes only" basis copies of all notices and other documents required to be delivered by the DIP Lender hereunder.

Events of Default:

"Events of Default" shall mean the occurrence of any of the following:

(i) The Interim Order at any time ceases to be in full force and effect, or shall be vacated, reversed or stayed, or modified or amended without the prior written consent of the DIP Lender;

(ii) The Final Order shall not have been entered within thirty (30) calendar days after the entry of the Interim Order or at any time ceases to be in full force and effect, or shall be vacated, reversed or stayed, or modified or amended without the prior written consent of the DIP Lender;

(iii) Either of the Cases shall be dismissed or converted to a case under Chapter 7 of the Bankruptcy Code; a Chapter 11 Trustee or an examiner with enlarged powers relating to the operation of the business of either Debtor (powers beyond those expressly set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) shall be appointed in either of the Cases; or any other superpriority claim (other than the Carve-Out (as defined below)) or grant of any other lien (including any adequate protection lien) which is *pari passu* with or senior to the claims and liens of the DIP Lender shall be granted in either of the Cases;

(iv) The Bankruptcy Court shall enter an order granting relief from the automatic stay to the holder or holders of any lien to permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on or uninsured judgments against any assets of any Debtor which have an aggregate value in excess of \$500,000;

(v) The APA shall have been validly terminated in accordance with the terms thereof;

(vi) The Termination Date (as defined below) shall have occurred;

(vii) Either Debtor petitions the Bankruptcy Court to obtain additional financing *pari passu* or senior to the DIP Facility;

(viii) (A) the Debtors file or materially support the filing of a motion that challenges the validity, perfection, priority, extent or enforceability of the DIP Facility or the liens on or security interest in the assets of the Debtors securing the DIP Obligations; or (B) the Debtors file or materially support a motion that supports any investigation or asserts any claims or causes of action against the DIP Lender; or

(ix) The Existing DIP Lender shall have taken any steps to exercise its rights or remedies under the Existing DIP Facility or the Existing DIP Order against the Debtors, their estates, or any of the DIP Collateral, and the Debtors or any other party in interest shall not have obtained entry of an order of the Bankruptcy Court prohibiting the Existing DIP Lender from exercising rights or remedies under the Existing DIP Facility or the Existing DIP Order against the Debtors, their estates, or any of the DIP Collateral on or within five (5) business days following the Debtors' receipt of notice of the Existing DIP Lender's intent to exercise remedies in accordance with Paragraph 9 of the Existing DIP Order.

Upon the occurrence and during the continuance of any Event of Default set forth above, the DIP Lender may accelerate the DIP Obligations and, thereafter, may take all or any of the following actions without further

order of or application to the Bankruptcy Court, provided that in the case of the enforcement of liens or other remedies with respect to collateral pursuant to clause (2) below, the DIP Lender shall provide the Debtors (with a copy to counsel for the Creditors' Committee and to the United States Trustee) with five (5) business days' prior written notice during which time any such party must file a pleading seeking an emergency hearing in opposition to the DIP Lender's exercise of its rights and remedies; and provided further, that in any hearing following such notice, the only issue that may be raised by any party in opposition to the actions proposed or available to be taken by the DIP Lender shall be whether, in fact, an Event of Default has occurred and is continuing:

- (1) declare the principal of and accrued interest on the outstanding DIP Obligations to be immediately due and payable and terminate, as applicable, any further commitments under the DIP Facility and terminate the right of the Debtors to use Cash Collateral;
- (2) enforce the DIP Lender's liens or pursue other remedies with respect to collateral as the DIP Lender may deem appropriate or necessary; and
- (3) charge the Default Rate under the DIP Facility and take any other action or exercise any other right or remedy (including without limitation, with respect to the liens in favor of the DIP Lender) permitted under applicable law.

Termination Date:

The DIP Facility and the Debtors' right to use Cash Collateral shall automatically terminate without further notice or court proceedings on the earlier of (i) March 31, 2014 (the "Scheduled Maturity Date"), unless the Debtors shall have timely elected to make the Additional DIP Commitment available in accordance with the terms hereof, in which case the Scheduled Maturity Date shall be April 30, 2014; (ii) the date of acceleration of any outstanding borrowings under the DIP Facility following the occurrence of an Event of Default; (iii) the first business day on which the Interim Order expires by its terms or is terminated, unless the Final Order has been entered and becomes effective prior thereto; (iv) conversion of either of the Cases to a case under chapter 7 of the Bankruptcy Code; (v) dismissal of either of the Cases; and (vi) the date on which the Closing Date (as defined in the APA) shall have occurred, provided that to the extent not already funded in full, items designated as "Restructuring Expenses" in the Approved Budget shall be fully funded by the DIP Lender on or prior to the Closing Date (each such date, the "Termination Date").

Professional Fees Account:

The Debtors shall (a) contemporaneously with the Interim Advance, transfer cash proceeds from the DIP Facility in an amount equal to the total budgeted weekly Professional Fees for the first two weekly periods set forth in the Initial Approved Budget and (b) thereafter on a weekly basis transfer cash proceeds from the DIP Facility in an amount equal to the total budgeted weekly Professional Fees for the next unfunded week

set forth in the Initial Approved Budget, in each case into a segregated account not subject to the control of the DIP Lender (the "**Professional Fees Account**"). The DIP Lender shall have no obligation to fund Professional Fees except as set forth in the Approved Budget, unless agreed by the DIP Lender in its sole discretion.

The Debtors shall be authorized to use funds held in the Professional Fees Account to pay Professional Fees as they become allowed and payable pursuant to any interim or final orders of the Bankruptcy Court; provided that when all allowed Professional Fees have been paid in full (regardless of when such Professional Fees are allowed by the Bankruptcy Court), any funds remaining in the Professional Fees Account shall revert to the Debtors for use in a manner not inconsistent with this agreement; provided further that the Debtors' obligations to pay allowed Professional Fees shall not be limited or be deemed limited to funds held in the Professional Fees Account.

Funds transferred to the Professional Fees Account shall be held in trust for the Professional Persons (as defined below), including with respect to obligations arising out of the Carve-Out. Funds transferred to the Professional Fees Account shall not be subject to any liens granted to the DIP Lender herein, shall not constitute DIP Collateral, and shall not constitute Cash Collateral; provided that the DIP Collateral shall include the Debtors' reversionary interest in funds held in the Professional Fees Account, if any, after all allowed Professional Fees have been paid in full (regardless of when such Professional Fees are allowed by the Bankruptcy Court).

Carve-Out:

The claims and liens granted to the DIP Lender shall each be subject to (i) all fees required to be paid to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the Carve-Out Trigger Notice); (ii) fees and expenses up to \$50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the Carve-Out Trigger Notice); (iii) all accrued but unpaid costs, fees, and expenses (the "**Professional Fees**") incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (the "**Debtor Professionals**") and the official committee of unsecured creditors (the "**Creditors' Committee**," and such Creditors' Committee's professionals, the "**Committee Professionals**") appointed in Debtors' Cases pursuant to section 1102 of the Bankruptcy Code (the Debtor Professionals and the Committee Professionals, together, the "**Professional Persons**") at any time before or on the first business day following delivery by the DIP Lender of a Carve-Out Trigger Notice (as defined herein), whether allowed by the Bankruptcy Court prior to or after delivery of a Carve-Out Trigger Notice, to the extent allowed at any time whether allowed by interim order, procedural order, or otherwise; and (iv) after the first business day following delivery by the DIP Lender of the Carve-Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise, the payment of Professional Fees of Professional

Persons in an aggregate amount not to exceed (x) with respect to Professional Persons retained by the Debtors, \$200,000 and (y) with respect to Professional Persons retained by the Committee, \$50,000 (the amounts set forth in the foregoing clauses (x) and (y) are collectively referred to as the "**Post-Termination Amount**"). For purposes of the foregoing, "**Carve-Out Trigger Notice**" shall mean a written notice delivered by the DIP Lender to the Debtors and their lead counsel, the United States Trustee for the District of Delaware, and lead counsel to the Creditors Committee, if any, providing notice that the Termination Date has occurred.

Promptly after receipt of the Carve-Out Trigger Notice, the DIP Lender shall fund to the Debtors and the Debtors shall transfer to the Professional Fee Account cash in an amount equal to (a) the amount of Professional Fees set forth in the Approved Budget that have not already been funded into the Professional Fee Account, plus (b) the Post Termination Amount; provided that after receipt of a Carve Out Trigger Notice, funds held in the Professional Fee Account shall be earmarked for each professional as applicable pursuant to the Approved Budget.

Without limiting the foregoing, following receipt of the Carve Out Trigger Notice, all recoveries on, or proceeds from, the claims and liens granted to the DIP Lender hereunder and DIP Lenders' interest in the DIP Collateral shall be transferred by the DIP Lenders into the Professional Fees Account until the balance of cash held in the Professional Fees Account is not less than 100% of the Carve-Out.

Expenses:

The Debtors shall promptly (but not more than weekly), and in each case within three (3) business days of receipt of an invoice from the DIP Lender, pay all reasonable, out-of-pocket fees, costs and expenses incurred by the DIP Lender (including all reasonable fees and expenses of Sidley Austin LLP and Young Conaway Stargatt & Taylor, LLC, co-counsel to the DIP Lender) in connection with the DIP Facility.

No Priming or Pari Passu Liens:

No order shall be entered authorizing or approving any liens or encumbrances on the DIP Collateral senior to or *pari passu* with the liens of the DIP Lender.

Repayment of the DIP Obligations on the Closing Date:

The DIP Obligations shall be repaid in full on the Closing Date (as defined in the APA), at the DIP Lender's election, either (i) with the cash proceeds of the consideration delivered by Wanxiang America to the Debtors on the Closing Date in accordance with the terms of the APA or (ii) pursuant to an offset against the cash portion of the Purchase Price (as defined in the APA) that Wanxiang America is required to deliver to the Debtors on the Closing Date in accordance with the terms of the APA.

Indemnification:

Debtors agree to indemnify and hold harmless the DIP Lender and each of its respective affiliates and each of its respective officers, directors, employees, agents, advisors, and representatives (each, an "**Indemnified Party**") from and against any and all claims, damages, losses, liabilities, and reasonable fees, costs, and expenses incurred (including, without limitation, fees and disbursements of counsel), that may be incurred by or asserted or awarded against any Indemnified Party (including, without limitation, in connection with any investigation, litigation, or proceeding or the preparation of a defense in connection therewith), arising out of or in connection with or by reason of the transactions contemplated hereby, except to the extent arising from the gross negligence, bad faith, or willful misconduct by such Indemnified Party (or its or its respective affiliates, and each of their respective officers, directors, employees, agents, advisors, attorneys, and representatives), in each case as determined by a final, non-appealable judgment of a court of competent jurisdiction. In the case of an investigation, litigation, or other proceeding to which the indemnity in this paragraph applies, such indemnity shall be effective whether or not such investigation, litigation, or proceeding is brought by any of the Debtors, any of their respective directors, security holders, or creditors, an Indemnified Party, or any other person or an Indemnified Party is otherwise a party thereto, and whether or not the transactions contemplated hereby are consummated.

Governing Law:

The laws of the State of New York (excluding the laws applicable to conflicts or choice of law), except as governed by the Bankruptcy Code.

* * * * *

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the date first above written.

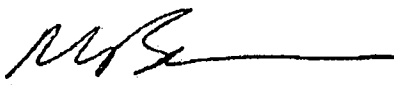
DIP LENDER:

WANXIANG AMERICA CORPORATION

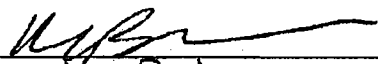
By: _____
Name: _____
Title: _____

DEBTORS:

FIKSKER AUTOMOTIVE, INC.

By:  _____
Name: Marc Beilinson
Title: CFO

FIKSKER AUTOMOTIVE HOLDINGS, INC.

By:  _____
Name: Marc Beilinson
Title: CFO

FEB-28-2014 17:03

WANXIANG AMERICA CORP.

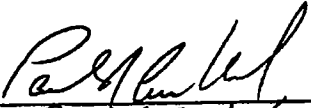
18479314838

P.001/001

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the date first above written.

DIP LENDER:

WANXIANG AMERICA CORPORATION

By: 
Name: Paul J. Cumberland
Title: Director of Investments

DEBTORS:

FISKER AUTOMOTIVE, INC.

By: _____
Name: _____
Title: _____

FISKER AUTOMOTIVE HOLDINGS, INC.

By: _____
Name: _____
Title: _____

Exhibit A

Form of Interim Order

[TO BE PROVIDED]

Exhibit B

Initial Approved Budget

Fisker Automotive

Post-Closing DIP Budget

Week Number:	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Total
Key Dates:							
Week Beginning:	2/24/2014	3/3/2014	3/10/2014	3/17/2014	3/24/2014	3/31/2014	Post-Closing
Actual / Forecast:	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Weeks 1-6
Cash Receipts							
Trade receipts							
Funding request	2,080,000	1,500,000	600,000	800,000	625,000	1,625,000	7,230,000
Total Cash Receipts	\$ 2,080,000	\$ 1,500,000	\$ 600,000	\$ 800,000	\$ 625,000	\$ 1,625,000	\$ 7,230,000
Operating Disbursements:							
Payroll							
FA team	70,000	70,000	70,000	70,000	70,000	70,000	420,000
Benefits	25,000				25,000		50,000
EU consultants	8,500	8,500	8,500	8,500	8,500	8,500	51,000
Outside services	7,000	7,000	7,000	7,000	7,000	7,000	42,000
Total Payroll	110,500	85,500	85,500	85,500	110,500	85,500	553,000
Delaware related							
Utilities	316,600	500,000		253,000	1,500	500,000	1,571,100
Populous	15,500	8,500	8,500	8,500	8,500	8,500	58,000
Environmental reporting & testing	10,800		5,000		2,500	2,500	20,800
Miscellaneous expenses	14,750	5,000	8,500	11,000	5,000	10,250	52,500
Delaware related	357,650	513,500	20,000	272,500	17,500	521,250	1,702,400
Costa Mesa related							
Rent - Sub-lease from Hybrid		90,000				90,000	180,000
Moving expenses/Storage	6,900					4,200	11,100
Utilities	41,600			11,000			52,600
IT services	25,500	85,500	12,500	12,500	12,500	85,500	234,000
Insurance	4,000					40,000	44,000
Foley & Lardner		20,000					20,000
Miscellaneous expenses	203,575	43,500	13,500	13,500	18,500	22,000	314,575
Total Anaheim related	281,575	239,000	26,000	37,000	31,000	241,700	856,275
FAPS (New Jersey)	20,000					20,000	40,000
Tenness (Michigan)	20,000					20,000	40,000
Turku	100,000					100,000	200,000
Wilhelmson (Zeebrugge and Bremerhav)	19,000					19,000	38,000
Total Operating Disbursements	908,725	838,000	131,500	395,000	159,000	1,007,450	3,439,675
Net Cash Flow - Excl. Restructuring	1,171,275	662,000	468,500	405,000	466,000	617,550	3,790,325
Restructuring Expenses							
Professional Fees							
GRO fee		150,000				150,000	300,000
Independent board position						40,000	40,000
Claims agent	35,000	35,000	35,000	35,000	35,000	35,000	210,000
Debtor's counsel	250,000	250,000	250,000	250,000	250,000	250,000	1,500,000
UCC counsel/advisors	150,000	150,000	150,000	150,000	150,000	150,000	900,000
WX DIP Commitment Fee & Legal Fees	605,000						605,000
Public relations		10,000				10,000	20,000
CPAs - 401k Plan Audit & State Filings	20,000				10,000		30,000
Other restructuring exp (incl Trustee)		20,000		20,000		20,000	60,000
Total Restructuring Disbursements	1,060,000	615,000	435,000	455,000	445,000	655,000	3,665,000
Net Cash Flow	\$ 111,275	\$ 47,000	\$ 33,500	\$ (50,000)	\$ 21,000	\$ (37,450)	\$ 125,325
Beginning Cash		111,275	158,275	191,775	141,775	182,775	-
Subtotal: Cash Receipts	2,080,000	1,500,000	600,000	800,000	625,000	1,625,000	7,230,000
Subtotal: Operating Disbursements	(908,725)	(838,000)	(131,500)	(395,000)	(159,000)	(1,007,450)	(3,439,675)
Subtotal: Restructuring Expenses	(1,060,000)	(615,000)	(435,000)	(455,000)	(445,000)	(655,000)	(3,665,000)
Ending Cash	\$ 111,275	\$ 128,275	\$ 191,775	\$ 141,775	\$ 162,775	\$ 125,325	\$ 125,325
Beginning DIP Principal Loan Balance	\$ -	\$ 2,080,000	\$ 3,580,000	\$ 4,180,000	\$ 4,980,000	\$ 5,605,000	\$ -
DIP Borrowings	2,080,000	1,500,000	600,000	800,000	625,000	1,625,000	7,230,000
Ending DIP Principal Loan Balance	\$ 2,080,000	\$ 3,580,000	\$ 4,180,000	\$ 4,980,000	\$ 5,605,000	\$ 7,230,000	\$ 7,230,000