

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

---

In re:

FISKER AUTOMOTIVE HOLDINGS, INC., et al.,<sup>1</sup>

Debtors.

---

)  
) Chapter 11  
)  
) Case No. 13-13087 (KG)  
)  
) (Jointly Administered)  
)  
) **Re: Docket Nos. 477, 602**

**NOTICE OF FILING OF ASSET PURCHASE  
AGREEMENT IN CONNECTION WITH SUCCESSFUL BID**

---

**PLEASE TAKE NOTICE** that attached hereto as Exhibit A is that certain Asset Purchase Agreement, dated as of January 27, 2014, submitted by Wanxiang America Corporation in connection with its Successful Bid,<sup>2</sup> including that certain *Amendment No. 1*, dated as of January 27, 2014, and the form of that certain *Amendment No. 2* (as amended, the “Revised APA”).

**PLEASE TAKE FURTHER NOTICE** that attached hereto as Exhibit B is a redline identifying changes between the Revised APA and that certain Asset Purchase Agreement, by and among the Debtors and Wanxiang America Corporation, previously filed with the Court on January 16, 2014 [Docket No. 477].

**PLEASE TAKE FURTHER NOTICE** that the Debtors will seek approval of the Revised APA at a hearing before the Bankruptcy Court scheduled to commence on February 18, 2014 at 9:30 a.m., prevailing Eastern Time.

---

<sup>1</sup> 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.

Dated: February 17, 2014  
Wilmington, Delaware

/s/ Peter J. Keane

---

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

---

<sup>2</sup> Capitalized term used but not otherwise defined in this notice shall have the meanings ascribed to them in the Order (I) Approving Bid Procedures in Connection with the Sale of Certain Assets of the Debtors, (II) Scheduling Hearing to Consider Approval of the Sale of Assets, (III) Approving Form and Manner of Notice Thereof, (IV) Authorizing the Debtors to Enter Into Stalking Horse Purchase Agreements, and (V) Approving Expense Reimbursement, and (VI) Granting Related Relief [Docket No. 508].

**EXHIBIT A**

**Revised APA**

---

---

ASSET PURCHASE AGREEMENT

by and among

FISKER AUTOMOTIVE HOLDINGS, INC.

and

FISKER AUTOMOTIVE, INC.

AS SELLERS

and

WANXIANG AMERICA CORPORATION

AS BUYER

Dated as of January 27, 2014

---

---

## TABLE OF CONTENTS

	<b>Page</b>
<b>ARTICLE 1 PURCHASE AND SALE OF THE ACQUIRED ASSETS .....</b>	<b>2</b>
1.1 Transfer of Acquired Assets .....	2
1.2 Excluded Assets .....	4
1.3 Assumption of Assumed Liabilities.....	6
1.4 Excluded Liabilities .....	7
1.5 Assigned Contracts and Excluded Contracts .....	10
1.6 Delayed Conveyance of Certain Property.....	11
1.7 Deemed Consents and Cures .....	12
1.8 Other Assets .....	13
1.9 Delaware Facility .....	13
1.10 Limited Warranty Program .....	13
1.11 Inaccuracies of Sellers’ Representations and Warranties .....	13
<b>ARTICLE 2 CONSIDERATION; CLOSING AND DELIVERIES.....</b>	<b>14</b>
2.1 Consideration .....	14
2.2 Closing .....	14
2.3 Sellers’ Deliveries.....	14
2.4 Buyer’s Deliveries .....	16
2.5 Deposit .....	16
<b>ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF SELLERS .....</b>	<b>16</b>
3.1 Corporate Organization.....	16
3.2 Authorization and Validity .....	17
3.3 Litigation.....	17
3.4 Environmental Matters.....	17
3.5 Intellectual Property .....	18
3.6 Brokerage.....	19
3.7 Export Controls.....	19
<b>ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF BUYER .....</b>	<b>19</b>
4.1 Corporate Organization.....	19
4.2 Authorization and Validity .....	19
4.3 Litigation.....	19
4.4 No Conflict or Violation .....	19
4.5 Consents, Approvals and Notifications.....	20
4.6 Availability of Funds .....	20
4.7 Adequate Assurances Regarding Assigned Contracts .....	20
4.8 Brokerage.....	20
<b>ARTICLE 5 COVENANTS OF SELLERS.....</b>	<b>20</b>

5.1	Actions Before Closing Date .....	20
5.2	Obligations of Sellers after Entry of Sale Order .....	21
5.3	Access to Properties and Records; Confidentiality .....	21
5.4	Rejection of Assigned Contracts .....	21
5.5	Further Assurances .....	22
<b>ARTICLE 6 COVENANTS OF BUYER.....</b>		<b>22</b>
6.1	Actions Before Closing Date .....	22
6.2	Consents .....	22
6.3	Adequate Assurances Regarding Assigned Contracts .....	23
6.4	Cure of Defaults .....	23
6.5	Availability of Business Records .....	23
6.6	Buyer's Obligation to Perform; Cooperation with Sellers' Enforcement of Rights .....	24
6.7	Further Assurances .....	24
6.8	Employment Matters; Cooperation Regarding Service Providers and Employee Matters .....	24
<b>ARTICLE 7 BANKRUPTCY PROCEDURES .....</b>		<b>25</b>
7.1	Bankruptcy Actions .....	25
7.2	Bidding Procedures .....	26
7.3	Approval .....	26
7.4	Plan Consideration .....	26
<b>ARTICLE 8 TAXES AND FEES .....</b>		<b>26</b>
8.1	Taxes Related to Purchase of Assets .....	26
8.2	Cooperation on Tax Matters .....	27
8.3	Allocation of Purchase Price and Purchase Price Allocation Forms .....	27
8.4	Tax Adjustments .....	27
<b>ARTICLE 9 CONDITIONS PRECEDENT TO PERFORMANCE BY PARTIES.....</b>		<b>28</b>
9.1	Conditions Precedent to Performance by Sellers and Buyer .....	28
9.2	Conditions Precedent to Performance by Sellers .....	29
9.3	Conditions Precedent to Performance by Buyer .....	29
9.4	Waiver of Condition; Frustration of Conditions .....	30
<b>ARTICLE 10 TERMINATION AND EFFECT OF TERMINATION .....</b>		<b>31</b>
10.1	Right of Termination .....	31
10.2	Termination .....	31
10.3	Effect of Termination .....	32
10.4	Expense Reimbursement .....	33
10.5	Release of Deposit Upon Termination .....	34

<b>ARTICLE 11 ADDITIONAL AGREEMENTS.....</b>	<b>34</b>
11.1 Litigation Support .....	34
11.2 Insurance Matters.....	35
11.3 Name Change.....	35
11.4 Access to Books and Records; Confidentiality.....	35
<b>ARTICLE 12 MISCELLANEOUS .....</b>	<b>36</b>
12.1 Successors and Assigns.....	36
12.2 Governing Law; Jurisdiction.....	36
12.3 Warranties Exclusive .....	37
12.4 No Survival of Representations and Warranties .....	38
12.5 No Recourse for Certain Breaches.....	38
12.6 Mutual Drafting .....	38
12.7 Waiver of Bulk Sales Laws.....	39
12.8 Expenses .....	39
12.9 Severability .....	39
12.10 Notices .....	39
12.11 Amendments; Waivers.....	41
12.12 Public Announcements .....	41
12.13 Entire Agreement .....	41
12.14 Parties in Interest.....	42
12.15 DAMAGES.....	42
12.16 WAIVER OF JURY TRIAL.....	42
12.17 Headings .....	43
12.18 Construction.....	43
12.19 Currency.....	43
12.20 Time of Essence.....	43
12.21 Counterparts.....	43
<b>ARTICLE 13 DEFINITIONS.....</b>	<b>43</b>
13.1 Certain Terms Defined.....	43
13.2 All Terms Cross-Referenced.....	51

## EXHIBITS

Exhibit A .....	Equity Consideration Term Sheet
Exhibit B .....	Form of Bill of Sale
Exhibit C .....	Form of Assignment and Assumption Agreement
Exhibit D .....	Form of Sellers Secretary's Certificate
Exhibit E .....	Form of Intellectual Property Assignment Agreement
Exhibit F .....	Form of Non-Foreign Status Certificate
Exhibit G .....	Form of Buyer Secretary's Certificate
Exhibit H .....	Form of Sale Order
Exhibit I .....	Form of Buyer Officer's Certificate
Exhibit J .....	Form of Sellers Officer's Certificate

## SCHEDULES

<u>Schedule 1.1(b)</u> .....	Real Property Leases
<u>Schedule 1.1(i)</u> .....	IP Licenses
<u>Schedule 1.1(k)</u> .....	Certain Assigned Contracts
<u>Schedule 1.2(a)</u> .....	Excluded Real Property Leases
<u>Schedule 1.2(c)</u> .....	Excluded Contracts
<u>Schedule 1.2(r)</u> .....	Certain Excluded Assets
<u>Schedule 1.5(c)</u> .....	Designated Contracts



## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “**Agreement**”), dated as of January 27, 2014, is made by and among Fisker Automotive Holdings, Inc., a Delaware corporation (“**Fisker Holdings**”), and Fisker Automotive, Inc., a Delaware corporation (“**Fisker Automotive**” and, together with Fisker Holdings, “**Sellers**” and each a “**Seller**”), on the one hand, and Wanxiang America Corporation, a Kentucky corporation (“**Buyer**”), on the other hand. Buyer and Sellers are sometimes referred to in this Agreement, individually as a “**Party**” and collectively as the “**Parties**”. Capitalized terms used in this Agreement are defined or cross-referenced in Article 13.

## BACKGROUND INFORMATION

WHEREAS, Sellers filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court on November 22, 2013 (the “**Petition Date**”) which are being jointly administered under the caption *In re Fisker Automotive Holdings, Inc.*, Case No. 13-13087 (the “**Seller Chapter 11 Cases**”);

WHEREAS, Sellers filed a Joint Plan of Liquidation, dated December 10, 2013, with the Bankruptcy Court in connection with the Seller Chapter 11 Cases (the “**Existing Plan**”);

WHEREAS, on the terms and subject to the conditions set forth in this Agreement, Buyer desires to purchase from Sellers, and Sellers desire to sell to Buyer, the Acquired Assets, in a sale authorized by the Bankruptcy Court pursuant to, *inter alia*, Sections 105, 363, and 365 of the Bankruptcy Code;

WHEREAS, on the terms and subject to the conditions set forth in this Agreement, Buyer also desires to assume, and Sellers desire to assign and transfer to Buyer, the Assumed Liabilities;

WHEREAS, Buyer and Sellers desire to enter into this Agreement providing for the purchase by Buyer and sale by Sellers of the Acquired Assets and the assumption by Buyer of the Assumed Liabilities;

WHEREAS, the Parties acknowledge and agree that the purchase by Buyer of the Acquired Assets and the assumption by Buyer of the Assumed Liabilities are being made at arm’s length and in good faith and without intent to hinder, delay or defraud creditors of Sellers or their Affiliates;

WHEREAS, the boards of directors of Sellers have approved this Agreement and the transactions contemplated hereby (including the purchase and sale of the Acquired Assets and the assumption by Buyer of the Assumed Liabilities) upon the terms and conditions set forth in this Agreement and in accordance with the Delaware General Corporation Law; and

WHEREAS, the board of directors of Buyer has approved this Agreement and the transactions contemplated hereby (including the purchase and sale of the Acquired Assets and the assumption by Buyer of the Assumed Liabilities) upon the terms and conditions set forth in this Agreement and in accordance with the Kentucky Business Corporation Act.

NOW, THEREFORE, in consideration of the foregoing and their respective representations, warranties, covenants and undertakings herein contained, and intending to be legally bound, Sellers and Buyer hereby agree as follows.

## ARTICLE 1 PURCHASE AND SALE OF THE ACQUIRED ASSETS

1.1 Transfer of Acquired Assets. At, and effective as of, the Closing, and upon the terms and subject to the conditions set forth in this Agreement and the Sale Order, Sellers shall sell, assign, transfer, convey and deliver to an Affiliate of Buyer designated by Buyer prior to the Closing (the “**Designated Affiliate**”) (or to one or more subsidiaries of the Designated Affiliate), and Buyer or the Designated Affiliate (or one or more subsidiaries of the Designated Affiliate) shall purchase and accept from Sellers, all of Sellers’ right, title and interest in, to and under all the Acquired Assets, free and clear of all Claims and Liens (other than Permitted Liens and Assumed Liabilities) to the extent provided by the Bankruptcy Code (including Sections 105 and 363(f) thereof) or by Order of the Bankruptcy Court (including the Sale Order). Acquired Assets shall be allocated among and conveyed to the Designated Affiliate (or to one or more subsidiaries of the Designated Affiliate) in accordance with Buyer’s written designation. For purposes of this Agreement, “**Acquired Assets**” means all of the properties, assets, interests, goodwill and rights, wherever located, of Sellers, including the following (but specifically excluding in all cases the Excluded Assets):

(a) all of the real property owned by Sellers, together with any Improvements thereon, and all easements, rights of way, servitudes, tenements, appurtenances, privileges and other rights with respect thereto, owned by Sellers, including, subject to Section 1.9, the Delaware Facility (collectively, the “**Owned Real Property**”), other than any Owned Real Property that is an Excluded Asset, if any (the “**Purchased Owned Real Property**”);

(b) all of Sellers’ rights under leases, subleases, licenses or occupancy agreements of real property listed on Schedule 1.1(b) (the “**Real Property Leases**”), other than Excluded Real Property Leases (the “**Assumed Real Property Leases**”);

(c) all notes receivable, accounts receivable and other receivables of Sellers as of the Closing Date;

(d) all credits, prepaid expenses, deferred charges, advance payments, security deposits and prepaid items of Sellers as of the Closing Date;

(e) all inventory of any kind or nature, whether or not prepaid, and wherever located, held or owned by Sellers on the Closing Date, including all (i) semi-finished and finished goods, work-in-process, goods on consignment, raw materials, components, parts, service parts, packaging materials, operating supplies, fuels and other similar materials (the “**Inventory**”) and (ii) rights of Sellers, to the extent transferable, to the warranties received from suppliers with respect to the foregoing;

(f) all of Sellers' (i) machinery, manufacturing equipment, engineering equipment and tooling and (ii) rights, to the extent transferable, to the warranties and licenses received from manufacturers and sellers of the foregoing;

(g) all other tangible personal property and interests therein owned by Sellers (or which they have a legal right to use) as of the Closing Date, including all equipment, furniture and furnishings of Sellers;

(h) to the extent owned by Sellers, any computer hardware, equipment and peripherals of any kind and of any platform, including desktop and laptop personal computers, handheld computerized devices, servers, mid-range and mainframe computers, process control and distributed control systems, but specifically excluding any Computer Software that may be located on the foregoing;

(i) all of Sellers' rights under each license of Intellectual Property by Sellers to a third party and all licenses of Intellectual Property Rights by a third party to Sellers (other than licenses to Open Source Software and any license that constitutes an Excluded Contract) including each such license listed on Schedule 1.1(i) ("**IP Licenses**");

(j) all Intellectual Property Rights owned by Sellers, together with all rights to use, recover and collect for any past, present or future infringements or misappropriations of Intellectual Property Rights (the "**Owned IP**") and all IP Documentation that is owned by or licensed to, and in the possession of Sellers;

(k) all of Sellers' rights under the Contracts other than the Excluded Contracts, including those listed on Schedule 1.1(k) (such Contracts, together with the Assumed Real Property Leases and the IP Licenses, the "**Assigned Contracts**");

(l) subject to obtaining all necessary Consents, all of Sellers' rights under the Permits (the "**Assigned Permits**");

(m) any and all insurance proceeds, condemnation awards or other compensation in respect of loss or damage to any Acquired Asset to the extent occurring after November 22, 2013, and all rights and Claims of the Sellers to any such insurance proceeds, condemnation awards or other compensation that have not been paid by the Closing;

(n) all of Sellers' manufacturer identifier numbers issued by the National Highway Traffic Safety Administration;

(o) copies of all Business Records;

(p) all telephone, telex and telephone facsimile numbers and other directory listings utilized by Sellers primarily in connection with the Business;

(q) all Claims or other rights of, or benefits to, Sellers whether arising out of events occurring prior to, on or after the Closing Date, including any rights under or pursuant to all warranties, representations, indemnities, agreements to hold harmless and guarantees made by

suppliers, manufacturers or contractors but, in each of the foregoing cases of this clause (q), only to the extent related to either Acquired Assets or Assumed Liabilities (including any claims for past infringement or misappropriation);

(r) all Employee Benefit Plans, the assets thereof and any assets of Sellers held under or with respect to any Employee Benefit Plan (including all Claims, refunds, adjustments, proceeds and recoveries, and any other rights and benefits under such Employee Benefit Plans), except, in each case, for any such Employee Benefit Plan that is excluded pursuant to Section 1.8;

(s) all Claims of Sellers or of their respective bankruptcy estates of any nature or description, arising or based in whole or in part upon events, actions or inaction occurring prior to the Closing Date (and whether or not asserted prior to the Closing Date), except for the Designated Causes of Action;

(t) all cash (including restricted cash) and cash equivalents, marketable securities, commercial paper, checks in transit and undeposited checks of Sellers;

(u) all intercompany receivables of any Seller from the other Seller or any subsidiary of any Seller;

(v) all robots, inventory, car parts and back-up servers and related hardware, in each case, located at the Delaware Facility; and

(w) all other properties, assets, goodwill and rights of whatever kind and nature, tangible or intangible, that are owned by Sellers as of the Closing Date that are not Excluded Assets.

Notwithstanding anything in this Agreement to the contrary, this Agreement shall not constitute or be deemed an agreement to, and Sellers shall not be obligated to, assign, transfer, convey or deliver (or cause to be assigned, transferred, conveyed or delivered) to Buyer, any Delayed Acquired Asset or Delayed Assumed Liability until such time as all Legal Impediments are removed or all Consents necessary for the legal transfer or assumption thereof are obtained or delivered in respect of such Delayed Acquired Asset or Delayed Assumed Liability, as applicable. Each of the Parties agrees that the Delayed Acquired Assets shall be assigned, transferred, conveyed and delivered, and any Delayed Acquired Liabilities shall be assumed, in accordance with the provisions of Section 1.6. Following such assignment, transfer, conveyance and delivery of any Delayed Acquired Asset, or the assumption of any Delayed Assumed Liability, the applicable Delayed Acquired Asset or Delayed Assumed Liability shall be treated for all purposes of this Agreement as an "Acquired Asset" or as an "Assumed Liability," as the case may be, and for all purposes hereof, unless otherwise waived in writing by Sellers, "Acquired Assets" shall not include any Delayed Acquired Asset and "Assumed Liabilities" shall not include any "Delayed Assumed Liability" until the Legal Impediments are removed or all Consents necessary for the legal transfer or assumption thereof are obtained or delivered in respect of such Delayed Acquired Asset or Delayed Assumed Liability.

1.2 Excluded Assets. Notwithstanding anything to the contrary in this Agreement (including Section 1.1), the Acquired Assets do not include any right, property, interest or asset

of Sellers listed or described in clause (a) through (s) of this Section 1.2 (all such rights, properties, interests and assets not being acquired by Buyer are herein referred to as the “**Excluded Assets**”):

(a) the Real Property Leases set forth on Schedule 1.2(a), which Schedule 1.2(a) may be amended in accordance with Section 1.5 (the “**Excluded Real Property Leases**”), if any;

(b) all bank accounts of Sellers and their Affiliates;

(c) all Contracts set forth on Schedule 1.2(c), which Schedule 1.2(c) may be amended in accordance with Section 1.5 (such Contracts, together with the Excluded Real Property Leases, the “**Excluded Contracts**”), if any;

(d) all Claims or other rights of, or benefits to, Sellers relating to any litigation, arbitration or other proceeding involving Sellers pending, threatened, adjudicated, settled or instituted prior to or as of the Closing Date in each case, to the extent related to any Excluded Asset or any Excluded Liability;

(e) all Retained Books and Records;

(f) all Claims, refunds, adjustments, proceeds and recoveries, and any other rights of and benefits to, Sellers under or with respect to (i) any Excluded Asset and (ii) any proceeding before any Government relating to the period prior to the Closing to the extent related to any Excluded Asset or Excluded Liability;

(g) all losses, loss carry forwards and rights to receive refunds, credits, Claims, refunds and credits from net operating loss carry backs or other Tax asset, in all cases, with respect to any and all Taxes of Sellers, including interest receivable with respect to any of the foregoing;

(h) all Causes of Action (as defined in the Plan) to the extent related to any Excluded Asset or any Excluded Liability;

(i) all Designated Causes of Action;

(j) all shares of capital stock or other equity interests of Sellers or the Non-Seller Subsidiary;

(k) all rights of, or benefits to, Sellers arising under this Agreement and the Ancillary Agreements;

(l) all Claims or other rights of, or benefits to, Sellers, whether arising out of events occurring prior to, on or after the Closing Date, including any rights under or pursuant to all warranties, representations, indemnities, agreements to hold harmless and guarantees made by suppliers, manufacturers and contractors but, in each of the foregoing cases of this clause (l), only to the extent they relate to either Excluded Liabilities or Excluded Assets;

(m) all Claims or other rights of, or benefits to, Sellers against or with respect to any director, officer, stockholder or other Related Person of, or any former director, officer, stockholder or other Related Person of, Sellers (whether or not asserted prior to the Closing Date), including any Claims or other rights of, or benefits to, Sellers against any such Person or any third party for indemnification, contribution, subrogation or reimbursement for expenses advanced or indemnification provided to any director, officer, stockholder or other Related Person of, or any former director, officer, stockholder or other Related Person of, Sellers, but in each of the foregoing cases of this clause (m), only as to such director, officer, stockholder or other Related Person in his or her capacity as such;

(n) all assets subject to the International Traffic in Arms Regulations of the U.S. Department of State, if any;

(o) any asset that Buyer elects to exclude pursuant to Sections 1.8 or 1.11;

(p) any Contract that Buyer elects to exclude pursuant to Section 1.5;

(q) the Delaware Facility, if Buyer so elects pursuant to Section 1.9;

(r) all assets set forth on Schedule 1.2(r), which Schedule 1.2(r) may be amended in accordance with Section 1.8 or Section 1.9; and

(s) all directors and officers liability insurance policies of Sellers (and any rights, Claims or proceeds thereunder).

1.3 Assumption of Assumed Liabilities. At, and effective as of, the Closing, Sellers shall assign, transfer, convey and deliver to Buyer or the Designated Affiliate (or to one or more subsidiaries of the Designated Affiliate), and Buyer or the Designated Affiliate (or one or more subsidiaries of the Designated Affiliate) shall irrevocably assume and agree to pay, perform, discharge and fulfill, and if applicable, comply with, all of the Assumed Liabilities in accordance with their respective terms. For the purposes of this Agreement, “**Assumed Liabilities**” shall mean only the following obligations, liabilities and commitments of Sellers:

(a) all liabilities and obligations of Sellers under the Assigned Contracts that are first incurred and arise after the Closing Date;

(b) all cure costs required to be paid pursuant to Section 365 of the Bankruptcy Code in connection with the assumption and assignment of the Assigned Contracts (“**Cure Costs**”);

(c) the sponsorship and Liabilities of the Employee Benefit Plans, if any, except for any such Employee Benefit Plan that is excluded pursuant to Section 1.8;

(d) the Designated Contract Obligations;

(e) all liabilities and obligations of Sellers under the Assigned Permits first arising after the Closing Date; and

(f) all liabilities and obligations of Sellers for (i) Transaction Taxes payable in connection with the transactions contemplated by this Agreement, (ii) Taxes and assessments relating to the Delaware Facility for all periods (and portions thereof) through and including the Closing Date or, if the Delaware Facility is an Acquired Asset, then Taxes and assessments relating to the Delaware Facility for all periods, (iii) other Taxes relating to the Acquired Assets for periods (or portions thereof) beginning on the day after the Closing Date, in the case of (i), (ii) and (iii), in accordance with Article 8 and (iv) the obligations of Sellers assumed by Buyer pursuant to Section 1.10.

Subject to Section 12.5, this Section 1.3 shall in no way limit Claims or defenses Buyer may have against any Person other than Sellers. The transactions contemplated by this Agreement shall in no way expand the rights or remedies of any third party against Buyer or Sellers as compared to the rights and remedies which such third party would have had against Sellers absent the Seller Chapter 11 Cases had Buyer not assumed such Assumed Liabilities.

#### 1.4 Excluded Liabilities.

(a) Buyer shall not assume or be obligated to pay, perform, discharge, fulfill or comply with any liability or obligation of any of Sellers, direct or indirect, known or unknown, absolute or contingent, not expressly assumed by Buyer pursuant to Section 1.3 (all such liabilities and obligations not being assumed being herein called the “**Excluded Liabilities**”), and the Excluded Liabilities shall include, to the extent not expressly assumed by Buyer pursuant to Section 1.3, the following:

(i) all obligations and liabilities to the extent arising in connection with or related to the Excluded Assets;

(ii) all obligations and liabilities (A) with respect to Transferred Employees that arise or are incurred prior to the Closing Date or (B) with respect to any current, former and future employees and other Related Persons of Sellers who do not become Transferred Employees that arise or are incurred at any time, (without limiting the generality of the foregoing provisions in any way, such Excluded Liabilities under this Section 1.4(a)(ii) include (x) all obligations and liabilities under any employment, severance, retention, termination or other agreement or arrangement or under any Law (including the WARN Act), (y) all obligations and liabilities arising out of or related to employment, compensation, benefits, other terms and conditions of employment or termination of employment, in each case of or by Sellers, and (z) all obligations and liabilities of Sellers with respect to payroll, vacation, sick leave, workers’ compensation or occupational disease claims or benefits, unemployment benefits, pension benefits, employee stock option or profit sharing plans, health plans or benefits or any other employee plans or benefits or other compensation of any kind to any employee, former employee or other Related Person of Sellers);

(iii) all obligations and liabilities of Sellers under this Agreement or any Ancillary Agreement;

(iv) all obligations and liabilities of Sellers relating to litigation or arbitration or other proceedings with, or to indemnify or advance expenses to, directors, officers, stockholders or other Related Persons of Sellers or former directors, officers, stockholders or other Related Persons of Sellers;

(v) all obligations and liabilities relating to any litigation, arbitration, Claim, action, investigation, suit or other proceeding (A) involving Sellers, or related to the Acquired Assets or Assumed Liabilities, pending, threatened, adjudicated, settled or instituted prior to or as of the Closing Date or (B) to the extent related to facts, actions, omissions, circumstances or conditions existing, occurring or accruing prior to or as of the Closing Date;

(vi) all accounts payable and other obligations and liabilities of Sellers arising prior to the Petition Date, excluding Cure Costs required to be paid pursuant to Section 365 of the Bankruptcy Code in connection with the assumption and assignment of the Assigned Contracts (but, for the avoidance of doubt, expressly excluding any such liabilities referred to in Section 1.3);

(vii) all Taxes of Sellers (other than Taxes assumed pursuant to Section 1.3(f));

(viii) all obligations and liabilities of Sellers with respect to intercompany accounts payable or accrued liabilities to Sellers (or to any of their respective Related Persons);

(ix) all obligations and liabilities of Sellers in respect of indebtedness for borrowed money;

(x) all obligations and liabilities of Sellers with respect to services, products, or service or product warranties provided, designed, manufactured, marketed, sold or distributed prior to the Closing (including all obligations and liabilities of Sellers with respect to design or manufacturing defects or product liability occurrences), in each case, whether discovered prior to, on or after the Closing Date;

(xi) all obligations and liabilities of Sellers (including fines, penalties, damages and any investigatory, corrective or remedial obligation) arising under Environmental Laws and relating to (A) any Excluded Asset, (B) any property, facility or location or (C) any operations, events, conditions or circumstances occurring or existing on or prior to the Closing Date, including any release, threatened release, treatment, storage, disposal, or arrangement for disposal of or any exposure of any Person to Hazardous Materials occurring or existing on or prior to the Closing Date (whether or not constituting a breach of any representation or warranty herein);

(xii) all obligations and liabilities for any legal accounting, investment banking, brokerage or similar fees or expenses incurred by Sellers or any Affiliate



of Sellers in connection with, resulting from or attributable to the transactions contemplated by this Agreement;

(xiii) all obligations and liabilities of Sellers arising out of facts and circumstances in existence prior to the Closing and from or related to any breach, default under, failure to perform, torts related to the performance of, violation of law, infringements or indemnities under, guaranties pursuant to and overcharges, underpayments or penalties on the part of Sellers under any of the Assigned Contracts prior to the Closing except for the applicable Cure Costs;

(xiv) all obligations and liabilities arising from or related to the operation or condition of the Acquired Assets or the Assumed Liabilities prior to the Closing or facts, actions, omissions, circumstances or conditions existing, occurring or accruing with respect to the Acquired Assets or the Assumed Liabilities prior to the Closing;

(xv) all obligations and liabilities resulting from, caused by or arising out of, or which relate to, directly or indirectly, the conduct of Sellers or ownership or lease of any properties or assets or any properties or assets previously used by Sellers or any Affiliate of Sellers, or other actions or omissions of Sellers or any of their Affiliates, including any amounts due or that may become due or owing under the Assumed Contracts with respect to the period prior to the Closing (except for Cure Costs);

(xvi) all accounts payable of Sellers arising prior to the Closing (except for Cure Costs);

(xvii) all obligations and liabilities resulting from, caused by or arising out of, or that relate to the business dealings or relationship between Sellers and any dealers under Contract, Law or otherwise or the termination of any dealer agreement or other arrangement or understanding with any dealer (except for Cure Costs);

(xviii) all obligations and liabilities arising out of or resulting from non-compliance with any Law by Sellers;

(xix) all obligations and liabilities for infringement or misappropriation arising from the development, modification or use of any Intellectual Property Rights prior to the Closing;

(xx) all obligations and liabilities in respect of royalty payments to any third party or other fees or payments relating to the IP Licenses arising prior to the Closing (except for Cure Costs); and

(xxi) all obligations and liabilities arising from state, provincial or bankruptcy law theories of recovery, including fraudulent transfer.

(b) In the event of any conflict between the terms of Section 1.3 and the terms of this Section 1.4, the terms of Section 1.3 will prevail.

(c) The Parties acknowledge and agree that the disclosure of any obligation or liability on any Schedule to this Agreement shall not create an Assumed Liability or other liability of Buyer, except where such disclosed obligation has been expressly assumed by Buyer as an Assumed Liability in accordance with the provisions of Section 1.3.

#### 1.5 Assigned Contracts and Excluded Contracts.

(a) From and after the date hereof until the Business Day immediately preceding the date of the Sale Hearing, Sellers shall not reject or alter (or attempt to alter) the terms of any executory Contract (including IP Licenses) or any executory Real Property Lease to which any Seller is a party (collectively, the “**Business Contracts**”) unless otherwise agreed to in writing by Buyer. Sellers shall provide timely and proper written notice of the motion seeking entry of the Sale Order to all parties to the Business Contracts and take all other actions necessary to cause such Business Contracts to be assumed by Sellers and assigned to Buyer pursuant to Section 365 of the Bankruptcy Code to the extent that such Business Contracts are Assigned Contracts at Closing.

(b) On or prior to the date that is two (2) Business Days before the date of the Auction, Buyer may designate in a writing delivered to Sellers any Assigned Contract otherwise included as an Acquired Asset to be an Excluded Real Estate Lease or Excluded Contract, as applicable, for all purposes of this Agreement or any Business Contract otherwise included as an Excluded Contract to be an Assigned Contract for all purposes of this Agreement and, upon any such designation, Schedule 1.1(b), Schedule 1.1(k), Schedule 1.2(a) and Schedule 1.2(c), as applicable, shall automatically be deemed amended, as applicable, to reflect such designation. To the extent Buyer designates any Assigned Contract as an Excluded Real Property Lease or Excluded Contract, as applicable, Sellers may in their discretion elect to reject such Excluded Contract and the Sale Order shall authorize, but not direct, Sellers to reject such Excluded Contract. Buyer shall pay and be solely responsible for all costs of moving any Acquired Asset from the Leased Real Property designated as Excluded Assets, and for any damages to the Leased Real Property caused by Buyer, its Affiliates or its agents or representatives in connection with such move.

(c) On or prior to the date that is two (2) Business Days before the date of the Auction, Buyer shall deliver to Sellers Schedule 1.5(c), which shall comprise a list of Business Contracts that Buyer wishes to designate as “**Designated Contracts**”. The Designated Contracts shall be automatically deemed removed from Schedule 1.1(b), Schedule 1.1(k), Schedule 1.2(a) and Schedule 1.2(c), as applicable and shall not be Assigned Contracts or Excluded Contracts as of the Closing Date. Except as otherwise provided herein, Sellers shall not seek to reject the Designated Contracts for a period of sixty (60) days following the Closing Date (the “**Retention Period**”). Buyer may, at its sole discretion and at any time during the Retention Period, deliver to Sellers one (1) or more written notices (each, a “**Rejection Notice**”) notifying Sellers of Buyer’s intent not to assume any Designated Contract(s). Upon receipt of such a Rejection Notice,

notwithstanding anything in this Agreement to the contrary, the Designated Contract(s) identified in such Rejection Notice shall automatically be deemed Excluded Contracts for all purposes under this Agreement and Schedule 1.1(b) Schedule 1.1(k), Schedule 1.2(a) and Schedule 1.2(c), as applicable, shall automatically be deemed to have been amended, as applicable, to reflect such designation. To the extent Buyer delivers a Rejection Notice with respect to a Designated Contract, Sellers may in their discretion elect to or elect not to reject such Designated Contract; provided that Buyer shall not be responsible for any liabilities or obligations under such Designated Contract accruing from and after the date on which such Rejection Notice is delivered to Sellers. Buyer may, at its sole discretion and at any time during the Retention Period, deliver to Sellers one (1) or more written notices (each, an “**Assumption Notice**”) requesting assumption and assignment of any Designated Contract(s). Upon receipt of any such Assumption Notice, Sellers shall take all actions reasonably necessary to seek to assume and assign to Buyer, and Buyer shall take all actions reasonably necessary to seek to assume, (at Buyer’s cost and expense) pursuant to Section 365 of the Bankruptcy Code the Designated Contract(s) set forth in the applicable Assumption Notice, and Buyer shall be responsible for satisfying any Cure Costs relating to such Designated Contracts. Notwithstanding anything in this Agreement to the contrary, on the date any Assumption Notice is delivered to Sellers with respect to any Designated Contract pursuant to this Section 1.5(c), such Designated Contract shall automatically be deemed an Assigned Contract for all purposes under this Agreement. With respect to any Designated Contract, Buyer shall perform all of Sellers’ obligations under such Designated Contract and shall compensate Sellers for all costs and expenses, in each case, first arising after the Closing Date and actually incurred by Sellers after the Closing under such Designated Contract until the earliest of the date such Designated Contract is assigned to Buyer, the date Buyer delivers a Rejection Notice relating to such Designated Contract and the last day of the Retention Period (the “**Designated Contract Obligations**”). Immediately following the expiration of the Retention Period, all Designated Contracts for which Sellers have not received either a Rejection Notice or an Assumption Notice shall automatically be deemed Excluded Contracts for all purposes under this Agreement. The covenants set forth in this Section 1.5(c) shall survive the Closing.

#### 1.6 Delayed Conveyance of Certain Property.

(a) To the extent permitted by Law and to the extent otherwise permissible in light of any Legal Impediment or required Consent, following the Closing, Sellers shall hold each Delayed Acquired Asset or Delayed Assumed Liability for the use and benefit, insofar as commercially reasonably practicable and to the extent it may lawfully do so, of Buyer (at the expense of Buyer). In addition, to the extent permitted by Law and to the extent otherwise permissible in light of any Legal Impediment or required Consent, Sellers shall take such other actions (as reasonably requested by, and at the sole expense of, Buyer) in order to place Buyer, insofar as commercially reasonably practicable and to the extent Sellers may lawfully do so, in the same position as if such Delayed Acquired Asset or such Delayed Assumed Liability had been transferred, assigned, conveyed, delivered or assumed as contemplated hereby and so that all the benefits and burdens relating to such Delayed Acquired Asset or such Delayed Assumed Liability, including possession, use, risk of loss, potential for gain, and dominion, control and command over

such asset, are to inure, from and after the Closing Date, to Buyer. To the extent permitted by Law and to the extent otherwise permissible in light of any Legal Impediment or required Consent, Buyer shall be entitled to, and shall be responsible for, the management and the benefits and burdens of any Delayed Acquired Asset or any Delayed Assumed Liability not yet transferred to or assumed by it as a result of the failure to remove any Legal Impediment or obtain any required Consent on or prior to the Closing, and, subject to the other provisions of this Agreement (including Section 6.2), the Parties agree to use commercially reasonable efforts to cooperate and coordinate with respect to obtaining any Consent or removing any Legal Impediment, including by providing any financial information and pro forma financial information of the relevant Party and its Affiliates reasonably required by the party from whom a Consent is sought to be obtained or from whom a Legal Impediment is sought to be removed. Each of the Parties agrees that, until a Delayed Assumed Liability is assumed by Buyer, Buyer shall indemnify and hold harmless Sellers and their Related Persons from such Delayed Assumed Liability. Nothing herein shall require Sellers or their Related Persons to expend any money or commence any litigation to obtain the removal of any Legal Impediment or obtain any required Consent.

(b) If and when the Legal Impediments and the Consents, the failure to remove or the absence of which caused the deferral of the transfer or assumption of any Acquired Asset or Assumed Liability pursuant to Section 1.6(a), are removed or obtained, as the case may be, the transfer and assumption of the applicable Acquired Asset or Assumed Liability shall be promptly effected in accordance with the terms of this Agreement and any applicable Ancillary Agreements, without the payment of additional consideration.

(c) In connection with Sellers' retention of an Acquired Asset or Assumed Liability due to the deferral of the transfer or assumption of such Acquired Asset or Assumed Liability pursuant to this Section 1.6, none of Sellers or their Related Persons shall be obligated to expend any money, unless the necessary funds are advanced by Buyer.

(d) In the event that at any time or from time to time, any Party shall receive or otherwise possess any asset that is acquired by, or retained by, any other Party pursuant to this Agreement, such Party shall promptly transfer, or cause to be transferred, such asset to the Party so entitled thereto. Prior to any such transfer, the Party receiving or possessing such asset shall hold such asset in trust for any such other Party.

**1.7 Deemed Consents and Cures.** For all purposes of this Agreement (including all representations and warranties of Sellers contained herein), Sellers shall be deemed to have obtained all required consents in respect of the assignment of any Assigned Contract if, and to the extent that, pursuant to the Sale Order or other Bankruptcy Court Order or applicable Law, Sellers are authorized to assume and assign such Assigned Contracts to Buyer pursuant to Section 365 of the Bankruptcy Code without any third-party consent and any applicable Cure Costs have been satisfied by Buyer, on behalf of Sellers, as provided in this Agreement.

1.8 Other Assets. On or prior to the date that is two (2) Business Days before the Auction Date, Buyer shall notify Sellers in writing of any Employee Benefit Plan or any other Acquired Asset (other than, in the case of any other Acquired Assets, any Contract) that Buyer desires to designate as Excluded Assets, and upon delivery of such notice to Sellers, all such Acquired Assets shall be automatically deemed to be Excluded Assets and added to Schedule 1.2(r), and none of such assets or properties shall be sold or assigned to Buyer pursuant hereto.

1.9 Delaware Facility. On or prior to the date that is two (2) Business Days before the Auction Date, Buyer shall be able to perform any environmental due diligence on the Delaware Facility it so desires so long as such due diligence does not violate the terms and conditions of the Brownfields Development Agreement, and shall be granted reasonable access to the Delaware Facility in connection therewith. On or prior to the date that is two (2) Business Days before the Auction Date, Buyer may notify Sellers in writing that Buyer elects to designate the Delaware Facility as an Excluded Asset, and upon delivery of such notice to Sellers, the Delaware Facility shall be automatically deemed to be an Excluded Asset and added to Schedule 1.2(r), and shall not be sold or assigned to Buyer pursuant hereto. If Buyer does not elect to designate the Delaware Facility as an Excluded Asset, and Buyer or an Affiliate of Buyer sells the Delaware Facility to a third party purchaser prior to the second anniversary of the Closing Date, then, after Buyer and its Affiliates are reimbursed from the proceeds of such sale for any and all of their costs and expenses incurred after the Closing related to the Delaware Facility, including costs and expenses related to ownership and maintenance of, and improvements to, the Delaware Facility, costs and expenses incurred by Buyer or any of its Affiliates in connection with the marketing and sale of the Delaware Facility, including costs and expenses of advisors, brokers, consultants, attorneys, accountants and other third parties incurred by Buyer or any of its Affiliates in connection with such sale, and Taxes and closing costs payable by Buyer and its Affiliates in connection with such sale, and after the satisfaction of any indebtedness necessary to release any Liens senior to the DoE Liens, the remaining proceeds shall be applied as follows: (a) Buyer shall be entitled to the first \$8,500,000 of such proceeds; (b) Sellers shall be entitled to the next \$1,500,000 of such proceeds, to the extent such proceeds, in the aggregate, exceed \$8,500,000; (c) Buyer shall be entitled to 60% and Sellers shall be entitled to 40% of the next \$5,000,000 of proceeds, to the extent such proceeds, in the aggregate, exceed \$10,000,000 and (d) Buyer shall be entitled to 50% and Sellers shall be entitled to 50% of any additional proceeds, to the extent such proceeds, in the aggregate, exceed \$15,000,000.

1.10 Limited Warranty Program. Buyer hereby assumes and agrees to honor the obligations of Sellers under the Sellers' limited warranties on "Karma" sedans existing as of the date hereof in an amount not to exceed (i) \$2,000 per each vehicle warrantied or (ii) \$400,000 in the aggregate; provided that, at such point in time when Buyer and its Affiliates have restarted commercial production of the "Karma" sedan (or substantially equivalent model under a different name) and upon the production of the 250th such vehicle, the aggregate obligation set forth in clause (ii) will be increased by \$1,000,000.

1.11 Inaccuracies of Sellers' Representations and Warranties. If any of Sellers' representations and warranties is untrue or incorrect in any material respect on and as of the Closing Date (except for representations and warranties made as of a specified date, which shall be true and correct as of that date) and such failure to be true and correct in any material respect

(a) materially increases Buyer's costs of assuming or owning any Acquired Asset or operating the Long-Term Business after the Closing or (b) materially increases the scope or amount of any Assumed Liability, then Buyer shall have the right to designate any such Acquired Asset as an Excluded Asset and to designate any such Assumed Liability as an Excluded Liability, provided that in no event shall Buyer have the right under this Section 1.11 to designate the liabilities set forth in Section 1.3(f)(ii) (Delaware Facility Taxes) as Excluded Liabilities. If Buyer makes any such designation, then (i) such previously considered Acquired Asset shall be automatically deemed removed from the Schedules related to Acquired Assets, automatically deemed added to the Schedules related to Excluded Assets and not sold or assigned to Buyer pursuant to this Agreement and (ii) such previously considered Assumed Liability shall be automatically deemed removed from the Schedules related to Assumed Liabilities, automatically deemed added to the Schedules related to Excluded Liabilities and not assumed by Buyer pursuant to this Agreement, provided that in no event shall the liabilities set forth in Section 1.3(f)(ii) (Delaware Facility Taxes) be automatically deemed Excluded Liabilities as a result of any designation made by Buyer pursuant to this Section 1.11. For the avoidance of doubt, the removal of any Acquired Asset or Assumed Liability from the Schedules relating to the Acquired Assets or Assumed Liabilities shall not modify, amend or waive any other provision of this Agreement or the Ancillary Agreements, including, but not limited to, the provisions of Article II hereof.

## ARTICLE 2 CONSIDERATION; CLOSING AND DELIVERIES

2.1 Consideration. The aggregate consideration for the sale and transfer of the Acquired Assets is (i) Thirty Five Million Two Hundred Fifty Thousand Dollars (\$35,250,000) (the "**Purchase Price**"), plus (ii) the assumption by Buyer at the Closing of the Assumed Liabilities, plus (iii) a 20% equity interest in the Designated Affiliate, as more fully described in the term sheet attached as Exhibit A hereto (the "**Equity Consideration**") plus (iv) an amount in cash (the "**DIP Loan Payment Amount**") equal to the lesser of (x) the outstanding principal balance of the Hybrid DIP Facility at Closing and (y) Nine Million One Hundred Forty Thousand Dollars (\$9,140,000).

2.2 Closing. The sale, transfer, assignment and delivery by Sellers of the Acquired Assets to Buyer and the assumption by Buyer of the Assumed Liabilities, on the terms and subject to the conditions set forth in this Agreement, will be effected on the Closing Date (the "**Closing**") and will take place at the offices of Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654 at 10:00 a.m. Central Standard Time on the second Business Day immediately following the satisfaction or waiver by the appropriate Party of all the conditions contained in Article 9 (other than conditions which by their terms or their nature are to be performed or measured as of the Closing Date (provided such conditions are satisfied at the Closing or waived by the applicable Party)), or on such other date or at such other place and time as may be agreed to by the Parties (the "**Closing Date**"). The Parties shall use all reasonable best efforts to consummate the Closing as promptly as possible and in no event later than 14 days following the date of entry of the Sale Order, subject to the terms and conditions of this Agreement.

2.3 Sellers' Deliveries.

(a) Subject to fulfillment or waiver of the conditions set forth in Section 9.1 and Section 9.2 (other than Section 9.2(d)), at the Closing, Sellers shall deliver to Buyer the following documents consistent with the terms of this Agreement:

(i) a bill of sale with respect to the Acquired Assets (other than the Assigned Contracts), duly executed by Sellers, in the form of Exhibit B hereto;

(ii) an assignment and assumption agreement with respect to the Assigned Contracts and the Assumed Liabilities, duly executed by Sellers, in the form of Exhibit C hereto;

(iii) one or more quit claim deeds (as may be applicable) with regard to each parcel of the Purchased Owned Real Property, duly executed by Sellers and in a form reasonably acceptable to Buyer and Sellers, subject only to Permitted Liens;

(iv) an officer's certificate of Sellers certifying as to the resolutions of the board of directors of each Seller approving and authorizing this Agreement and the transactions contemplated by this Agreement, and in the form of Exhibit D hereto;

(v) an intellectual property assignment agreement with respect to the Owned IP, duly executed by Sellers, in the form of Exhibit E hereto;

(vi) certificates of title, assignments of Contracts and other instruments of transfer, conveyance, delivery and assignment (including customary owner's affidavits and assignments of patents, patent applications, trademark registrations and trademark applications) as and to the extent reasonably necessary to evidence the transfer, conveyance, delivery and assignment to Buyer of Sellers' right, title and interest in and to the Acquired Assets (collectively, the "***Additional Asset Conveyance Documents***");

(vii) such assignments of Contracts and other instruments of assumption as and to the extent reasonably necessary to evidence the valid and effective assumption by Buyer of the Assumed Liabilities (collectively, the "***Additional Liabilities Assumption Documents***"); and

(viii) an affidavit of non-foreign status that complies with Section 1445 of the Code, duly executed by Sellers, in the form of Exhibit F hereto.

(b) Notwithstanding anything in this Agreement or any Ancillary Agreement to the contrary, Sellers' obligation to convey to Buyer all rights of Sellers under the Assigned Permits consists solely of providing: (i) if required by Law, notices of intent to transfer the Assigned Permits to Buyer in accordance with the Government regulations governing such Permit transfer, and (ii) information as required by the Government regulations governing such Permit transfer. Furthermore, in no event shall any Seller, any of its Related Persons, or any of their Related Persons be required to deliver any agreement or instrument (other than customary owner's affidavits in connection with the

Purchased Owned Real Property) that (i) requires any Seller, any of its Related Persons or any of their Related Persons to make any additional representations, warranties or covenants, express or implied, not contained in this Agreement (other than such representations, warranties or covenants in favor of the applicable Government as required by non-U.S. law for registration or recordation of assignment of patents or trademarks) or (ii) otherwise expands the liabilities or obligations of, or requires any payments to be made or expenses to be incurred by, any Seller, any of its Affiliates or any of their respective Related Persons related to the transactions contemplated hereby.

2.4 Buyer's Deliveries. Subject to fulfillment or waiver of the conditions set forth in Section 9.1 and Section 9.3 (other than Section 9.3(f)), at the Closing, Buyer shall:

(a) pay an amount equal to the cash component of the Purchase Price plus the DIP Loan Payment Amount to Sellers, by wire transfer of immediately available funds to an account or accounts designated in writing by Sellers no less than two (2) Business Days prior to the Closing Date;

(b) deliver a secretary's certificate certifying as to the resolutions of the board of directors of Buyer approving and authorizing this Agreement and the transactions contemplated by this Agreement and in the form of Exhibit G hereto;

(c) deliver to Sellers an assignment and assumption agreement with respect to the Assigned Contracts and the Assumed Liabilities, duly executed by Buyer, in the form of Exhibit B hereto;

(d) deliver to Sellers each of the Additional Asset Conveyance Documents and Additional Liabilities Assumption Documents; and

(e) deliver to the Committee evidence of the Equity Consideration, in form and substance reasonably satisfactory to the Committee.

2.5 Deposit. Within five (5) Business Days following the execution of this Agreement, (i) Buyer and Sellers shall execute and deliver the Escrow Agreement and (ii) Buyer shall deposit with the Escrow Agent Five Million Dollars (\$5,000,000) in immediately available funds (the "***Deposit***"). The Deposit, together with any interest thereon, if any, shall be applied against the Purchase Price at Closing in accordance with the Escrow Agreement. If this Agreement shall be terminated pursuant to Section 10.2, the Deposit, together with any interest earned thereon, shall be delivered to Buyer or Sellers, as applicable, in accordance with the Escrow Agreement and Section 10.5.

### ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF SELLERS

Sellers hereby jointly and severally represent and warrant to Buyer as follows:

3.1 Corporate Organization. Each Seller is a corporation duly incorporated, validly existing and in good standing under the Laws of the state of its incorporation, has all requisite corporate power and authority to own its properties and assets and to conduct its business as now



conducted and is in good standing and qualified or licensed to do business in each jurisdiction where the character of its business or the nature of its properties makes such qualification or licensing necessary, except where the failure to be so qualified would have a Material Adverse Effect. Subject to any necessary authority from the Bankruptcy Court, Sellers have all requisite corporate or other power and authority to own their respective properties and assets and to conduct their respective businesses as now conducted. Sellers do not beneficially own any equity interest or other interest convertible into any equity interest in any Person other than their wholly-owned subsidiary Fisker Automotive GmbH (the “*Non-Seller Subsidiary*”). The Non-Seller Subsidiary does not have any right, title or interest in, to or under any property or assets, other than assets that are of de minimis value and immaterial in the aggregate.

3.2 Authorization and Validity. Subject to the Bankruptcy Court’s entry of the Sale Order, each Seller has all requisite corporate power and authority to execute and deliver this Agreement and the Ancillary Agreements to which it is or will be a party, and subject to the Bankruptcy Court’s entry of the Sale Order, each Seller has the requisite corporate power and authority to perform and carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution, delivery and consummation of this Agreement and the Ancillary Agreements by the Sellers party thereto and the performance by Sellers of their respective obligations hereunder and thereunder have been duly authorized and approved by all necessary action by the board of directors of each Seller, and, subject to any necessary authority from the Bankruptcy Court, no other organizational proceedings on the part of any Seller is necessary to authorize such execution, delivery and performance. This Agreement has been duly executed by Sellers, and the Ancillary Agreements when delivered will be, duly executed by the Sellers party thereto and constitute or will constitute its or their, as applicable, valid and binding obligation, enforceable against it or them, as applicable, in accordance with the terms herein and therein, except that such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar Laws affecting or relating to the enforcement of creditors’ rights generally, and is subject to general principles of equity.

3.3 Litigation. As of the date of this Agreement, to Sellers’ Knowledge, there are no Claims, suits, proceedings, arbitrations or investigations pending or threatened before any Government, including with respect to any Environmental Laws or any material Intellectual Property Rights, brought by or against any of Sellers that would reasonably be expected to have a Material Adverse Effect.

3.4 Environmental Matters. Except as posted in Sellers’ electronic dataroom in the folder titled “Environmental Matters” as of the date hereof, to Sellers’ Knowledge:

(a) Sellers are in compliance in all material respects with and, since January 1, 2011, have complied in all material respects with all applicable Environmental Laws and Environmental Permits, except as would not reasonably be expected to have a Material Adverse Effect;

(b) (i) Sellers possess all Environmental Permits required for the operation of the business as presently contemplated to be conducted in the near term, except as would not reasonably be expected to have a Material Adverse Effect; and (ii) as of the date of

this Agreement, each such issued Environmental Permit is valid and in full force and effect, and no such Environmental Permit is subject to any pending or threatened administrative or judicial proceeding to revoke, cancel, suspend, deny or declare such Environmental Permit invalid in any material respect, except, in each case of this clause (ii), as would not reasonably be expected to have a Material Adverse Effect;

(c) Sellers have made available to Buyer copies of all Environmental Reports that are in the possession of Sellers; and

(d) Since June 8, 2011, Sellers have not received a written complaint, Order, directive, Claim, suit or proceeding from any Government or any other Person with respect to (i) any material violation of Environmental Laws or (ii) any release, spill, leak, discharge or emission of any Hazardous Materials that has not been fully resolved to the satisfaction of the issuing party, except, in each case of (i) and (ii), that would reasonably be expected to have a Material Adverse Effect.

### 3.5 Intellectual Property. To Sellers' Knowledge:

(a) all (i) registered Intellectual Property Rights owned by any Seller and (ii) pending applications for registrations of Intellectual Property Rights owned by or filed in the name of any Seller, in each case of (i) and (ii), are in full force and effect, have not been abandoned or passed into the public domain and with respect to such issued or registered Intellectual Property Rights, are valid and enforceable, except, in each case of this Section 3.5(a), as would not reasonably be expected to have a Material Adverse Effect and Sellers have not used the Owned IP in a manner that would reasonably be expected to result in a Material Adverse Effect; and

(b) (i) neither Sellers nor any other party to any of the Material IP Licenses has commenced any action against any of the parties to such Material IP Licenses or given or received any written notice of any material default or violation under any Material IP License that was not withdrawn or dismissed, except for payment defaults and those defaults that will be cured in accordance with the Sale Order (or that need not be cured under the Bankruptcy Code to permit the assumption and assignment of the Material IP Licenses or that are Excluded Contracts) and actions, defaults or violations that would not reasonably be expected to have a Material Adverse Effect; (ii) each of the Material IP Licenses is, or will be at the Closing, valid, binding and in full force and effect against the applicable Seller, except as would not reasonably be expected to have a Material Adverse Effect; (iii) none of the other parties under any of the Material IP Licenses has provided Sellers with any written notice that it currently plans or intends to terminate any such Material IP License, or otherwise cease its performance thereunder related to such Material IP Licenses, except for such notices of termination or cessations that would not reasonably be expected to have a Material Adverse Effect; (iv) except as a result of the Seller Chapter 11 Cases, each Seller has performed all material obligations required to be performed by it to date under the material IP Licenses and is not in material breach or default thereunder, except as would not reasonably be expected to have a Material Adverse Effect; and (v) Sellers have used commercially reasonable efforts to make copies of the Material IP Licenses available to Buyer.

3.6 Brokerage. No Person is entitled to any brokerage commissions, finders' fees, or similar compensation in connection with the transactions contemplated by this Agreement based on any arrangement or agreement made by or on behalf of Sellers or any of their respective Affiliates.

3.7 Export Controls. All of the Acquired Assets are controlled by the Department of Commerce under the Export Administration Regulations and are classified as "EAR99." Neither Seller holds or possesses any export control, strategic or classified goods, services or technology or embargo license, agreement, permit, approval, security clearance or other authorization issued by any U.S. Government or any foreign Government. Except for that certain Loan Agreement and Reimbursement Agreement, dated as of April 22, 2010, by and between Sellers and the United States Department of Energy, and the documents and agreements related thereto, neither Seller is a party to any Contract or sub-contract with any U.S. Government ("**Government Contract**"), nor is any Seller a party to any sub-contract under any Government Contract.

#### ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Sellers as follows:

4.1 Corporate Organization. Buyer is a corporation duly organized, validly existing and in good standing under the Laws of the State of Kentucky and has all requisite organizational power and authority to own its properties and assets and to conduct its business as now conducted.

4.2 Authorization and Validity. Buyer has all requisite organizational power and authority to execute and deliver this Agreement and any Ancillary Agreement to which it is or will be a party and subject to the Bankruptcy Court's entry of the Sale Order, Buyer has the requisite corporate power and authority to perform and carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution, delivery and consummation of this Agreement and the Ancillary Agreements by Buyer and the performance by Buyer of its obligations hereunder and thereunder have been duly authorized and approved by all necessary action by the board of directors of Buyer and no other organizational proceedings on the part of any Buyer is necessary to authorize such execution, delivery and performance. This Agreement has been duly executed by Buyer, and the Ancillary Agreements when delivered will be duly executed by Buyer, and constitute or will constitute Buyer's valid and binding obligation, enforceable against it in accordance with the terms herein and therein, except that such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar Laws affecting or relating to the enforcement of creditors' rights generally, and is subject to general principles of equity.

4.3 Litigation. There are no material actions, suits, proceedings or orders pending or, to Buyer's knowledge, threatened against Buyer at law or in equity, or before or by any Government relating to this Agreement or the transactions contemplated hereby.

4.4 No Conflict or Violation. The execution, delivery and performance by Buyer of this Agreement and the Ancillary Agreements to which it is a party and the consummation of the transactions contemplated hereby and thereby do not and will not (a) violate or conflict with any

provision of the certificate of incorporation or bylaws of Buyer, (b) violate in any material respect any provision of Law, or any Order applicable to Buyer or (c) result in a breach of or constitute (with due notice or lapse of time or both) a default under any material contract to which Buyer is a party, by which it is bound or to which any of its properties or assets is subject.

4.5 Consents, Approvals and Notifications. The execution, delivery and performance by Buyer of this Agreement and the Ancillary Agreements to which Buyer is or will be a party do not require the Consent of, or filing with or notification of, any Government or any other Person except as required for entry of the Sale Order by the Bankruptcy Court or for such Consents and filings, the failure to obtain or make would not reasonably be expected to have a material adverse effect on the ability of Buyer to consummate the transactions contemplated hereby.

4.6 Availability of Funds. Buyer has, and on and after the Closing Date will have, sufficient funds available to make the payments required to be made by it pursuant to this Agreement and to perform its obligations hereunder.

4.7 Adequate Assurances Regarding Assigned Contracts. Buyer is and will be capable of satisfying the conditions contained in Sections 365(b)(1)(C) and 365(f) of the Bankruptcy Code with respect to the Assigned Contracts.

4.8 Brokerage. No Person is entitled to any brokerage commissions, finders fees, expenses or similar compensation in connection with the transactions contemplated by this Agreement based on any arrangement or agreement made by or on behalf of Buyer or any of its Affiliates.

## ARTICLE 5 COVENANTS OF SELLERS

Sellers hereby covenant to Buyer as follows:

5.1 Actions Before Closing Date. Without the prior written consent of Buyer (such consent not to be unreasonably withheld, conditioned or delayed) or the authorization of the Bankruptcy Court after notice and a hearing, between the date hereof through the earlier of the Closing Date or the date this Agreement is terminated in accordance with its terms, and except as required or expressly permitted pursuant to the terms hereof or of any Ancillary Agreement or as set forth on Schedule 5.1, Sellers shall not (a) sell, assign, transfer, lease, sublease, mortgage, pledge or otherwise encumber or dispose of any of the Acquired Assets, IP Licenses, or any other of the properties, assets or equipment (except in all cases for Permitted Liens described in Section (c) of the definition of such term herein that attach prior to the Closing and that are yet not due and payable prior to the Closing), (b) sell, assign, transfer, lease, sublease, mortgage, pledge, otherwise encumber or dispose of or grant any third party any right to any of the Owned IP (except in all cases for Permitted Liens described in Section (c) of the definition of such term herein that attach prior to the Closing and that are yet not due and payable prior to the Closing), (c) acquire by merging or consolidating with, or agreeing to merge or consolidate with, or purchase substantially all the assets of, or otherwise acquire any business or any corporation, partnership, association or other business organization or division thereof, (d) fail to use commercially reasonable efforts to maintain adequate security at locations in California and

Delaware where material Acquired Assets are located or (e) enter into any Contract to take any action prohibited by any of the preceding clauses of this Section 5.1. Promptly after the execution of this Agreement, Sellers shall use commercially reasonable efforts to deliver to Buyer a complete and correct list (x) of all material Permits (including Environmental Permits) and all pending applications therefor obtained by either Seller necessary to the operation of the Long-Term Business, (y) of all Material IP Licenses and (z) each warehouse, port or other location (other than the Real Property) where Inventory is located, as well as any Contract or Real Property Lease relating to Sellers' use of such location. For all purposes of this Agreement, the "reasonable best efforts" and "commercially reasonable efforts" of Sellers, in each case, will be interpreted with due consideration for the circumstances and status of Sellers at the applicable time (including after the Closing), including the assets, employees and other resources (or absence thereof) of Sellers and the status of the Sellers as debtors under the Seller Chapter 11 Cases.

5.2 Obligations of Sellers after Entry of Sale Order. From and after the date that the Sale Order is entered, Sellers shall use reasonable best efforts to cause the Closing to occur as promptly as practicable, and Sellers shall not intentionally take any action that is reasonably likely to prevent or delay the consummation of the transactions contemplated hereby unless otherwise required by the Bankruptcy Court or Law. The "reasonable best efforts" of Sellers shall not require Sellers or any of their Related Persons to expend any money to remedy any breach of any representation or warranty hereunder, to commence any litigation or arbitration proceeding, to offer or grant any accommodation (financial or otherwise) to any third party, to obtain any Consent required for the consummation of the transactions contemplated hereby or to provide financing to Buyer for the consummation of the transactions contemplated hereby; provided that, if Sellers or any of their Affiliates elect to remedy such breach, Sellers shall not be deemed to be in breach of such representation or warranty, or in violation of any covenant, for purposes of determining Buyer's obligations to consummate the transactions contemplated by this Agreement.

5.3 Access to Properties and Records; Confidentiality. Prior to the earlier to occur of the Closing Date or the date on which this Agreement is terminated in accordance with its terms, Sellers shall afford to Buyer and to the accountants, counsel and representatives of Buyer, reasonable access during normal business hours and upon reasonable notice to all books and records and selected personnel of Sellers to the extent Buyer shall reasonably deem necessary and desirable if (a) permitted under Law, (b) such books and records are not subject to confidentiality agreements that would be violated by such access and (c) disclosing such books and records would not reasonably be expected to adversely affect any attorney client privilege, work product or similar privilege. Such access shall be exercised in such a manner as not to interfere unreasonably with the operation of the Sellers. In no event shall any environmental due diligence be conducted by Buyer that would violate the terms and conditions of the Brownfields Development Agreement.

5.4 Rejection of Assigned Contracts. Except as provided in Section 1.5, Sellers shall not reject any Assigned Contracts pursuant to the Seller Chapter 11 Cases without the prior written consent of Buyer.

5.5 Further Assurances. Upon the request and at the sole expense of Buyer at any time after the Closing Date (but without additional consideration), Sellers shall execute and deliver such documents as Buyer or their counsel may reasonably request to effectuate the transactions contemplated by this Agreement. Without limiting the generality of the foregoing, if at any time on or after the Closing, Sellers or any of their respective Affiliates or Related Persons comes into possession or control of any Acquired Assets, Sellers shall promptly but in no event later than ten (10) Business Days after coming into possession or control, deliver (or cause to be delivered) all of Sellers' right, title and interest to such Acquired Assets to Buyer for no additional consideration in accordance with the terms of this Agreement.

## ARTICLE 6 COVENANTS OF BUYER

Buyer hereby covenants to Sellers as follows:

6.1 Actions Before Closing Date. From and after the date the Sale Order is entered, Buyer shall use reasonable best efforts to cause the Closing to occur as promptly as practicable and Buyer shall not, and shall not permit any of their respective Affiliates to, intentionally take any action that is reasonably likely to prevent or delay the consummation of the transactions contemplated hereby. The "reasonable best efforts" of Buyer shall not require Buyer or any of its Affiliates to expend any money to remedy any breach of any representation or warranty hereunder, to commence any litigation or arbitration proceeding or to offer or grant any accommodation (financial or otherwise) to any third party; provided that, if Buyer or any of their Affiliates elect to remedy such breach, Buyer shall not be deemed to be in breach of such representation or warranty, or in violation of any covenant, for purposes of determining Sellers' obligations to consummate the transactions contemplated by this Agreement. The "reasonable best efforts" of Buyer shall require Buyer, beginning on the date of this Agreement until the earlier of the termination of this Agreement or the Closing, to reasonably promptly respond (or instruct Buyer's counsel to reasonably promptly respond) to Sellers' reasonable requests and inquiries with respect to matters relating to this Agreement, including with respect to the closing conditions set forth in Article 9, and to work diligently (and to instruct Buyer's counsel to work diligently) on all pre-Closing actions required by this Agreement and in preparing all items required for the Closing, including the closing deliveries set forth in Sections 2.3 and 2.4.

6.2 Consents. Buyer acknowledges that certain Consents to the transactions contemplated by this Agreement may be required from parties to Contracts to which Sellers or their Affiliates are party and that such Consents have not been obtained and may not be obtained. Buyer agrees that neither Sellers nor any of their Affiliates nor any of their respective Related Persons in their respective capacities as such shall have any liability whatsoever to Buyer (and Buyer shall not be entitled to assert any claims) arising out of or relating to the failure to obtain any Consents that may have been, or may be, required in connection with the transactions contemplated by this Agreement, or because of the default, acceleration or termination of or loss of right under any such Contract as a result of such failure. Buyer further agrees that except as provided in Section 9.3(d), no representation, warranty or covenant of Sellers contained herein shall be breached or deemed breached and no condition of Buyer shall be deemed not to be satisfied as a result of the failure to obtain any Consent, as a result of any default, acceleration or termination or loss of right resulting from such failure, or as a result of any lawsuit, action,

claim, proceeding or investigation commenced or threatened by or on behalf of any Person arising out of or relating to the failure to obtain any Consent or any default, acceleration or termination or loss of right resulting from such failure. Subject to the foregoing, at Buyer's written request prior to the Closing, if such Consent is required notwithstanding the provisions of Section 365 of the Bankruptcy Code, the Parties shall use their commercially reasonable efforts to cooperate and to obtain any such Consents and any Consents with respect to any Real Property Lease or Permit; provided that such efforts shall not include any requirement of any Party or any of their Affiliates to expend money, commence any litigation or arbitration proceeding or offer or grant any accommodation (financial or otherwise) to any Person. The Parties will use their commercially reasonable efforts to cooperate and to either (a) obtain a Consent to assignment, in form and substance reasonably satisfactory to Buyer, to the transactions contemplated hereby with respect to (i) the Amended and Restated Trademark License, Dated as of September 4, 2008, between Fisker Automotive, Inc. and Fisker Coachbuild, LLC and (ii) the Amended and Restated Supply Agreement between Quantum Fuel Systems Technologies and Fisker Automotive, Inc. dated November 8, 2010 and the Powertrain Development Agreement between Quantum Fuel Systems Technologies Worldwide, Inc. and Fisker Automotive, Inc. dated January 25, 2008 (together with (i), the "***Required Agreements***"), or (b) entry of an Order of the Bankruptcy Court (or other court of competent jurisdiction) in form and substance reasonably acceptable to the Buyer authorizing the Sellers' assignment of the Required Agreements to the Buyer and the Buyer's assumption thereof pursuant to Section 365 of the Bankruptcy Code; provided, that Buyer will be responsible for any Cure Costs related to the Required Agreements; provided further that the Parties' efforts shall not include any requirement of any Party or any of their Affiliates to expend money, commence any litigation or arbitration proceeding or offer or grant any accommodation (financial or otherwise) to any Person, except to the extent of filing and arguing a motion seeking the Order contemplated by clause (b) above and except for Cure Costs to be paid by the Buyer.

6.3 Adequate Assurances Regarding Assigned Contracts. With respect to each Assigned Contract, to the extent requested by the Bankruptcy Court or reasonably requested by Sellers or the counterparty to such Contract, Buyer shall provide the Bankruptcy Court, Sellers or such counterparty, as the case may be, adequate assurance of the future performance of such Assigned Contract by Buyer.

6.4 Cure of Defaults. Buyer shall, on or prior to the assumption by Buyer of any Assumed Real Property Lease or Assigned Contract, cure any and all defaults under such Assumed Real Property Lease or Assigned Contract that are required to be cured under the Bankruptcy Code, so that such Assumed Real Property Lease or Assigned Contract may be assumed by Sellers and assigned to Buyer in accordance with the provisions of Section 365 of the Bankruptcy Code.

6.5 Availability of Business Records. After the Closing Date, Buyer shall provide to Sellers and their Affiliates (after reasonable notice and during normal business hours and without charge to Sellers or their Affiliates) access to all Business Records related to the Long-Term Business or the Acquired Assets or Assumed Liabilities for periods prior to the Closing and shall preserve such Business Records until six (6) years after the Closing Date. Such access includes access to any information in electronic or digital form to the extent reasonably available and the right to photocopy or make electronic or digital copies. Buyer acknowledges that Sellers and

their Affiliates have the right to retain copies of Business Records for periods prior to the Closing. Prior to destroying any Business Records for periods prior to the Closing, Buyer shall notify Sellers thirty (30) days in advance of any such proposed destruction of its intent to destroy such Business Records, and Buyer will permit Sellers (or their designee) to retain such Business Records (at Sellers' or such designee's sole cost and expense). With respect to any litigation and Claims that are Excluded Liabilities, Buyer shall (at Sellers' sole cost and expense) render all reasonable assistance that Sellers may request in defending such litigation or claim and shall make available to Sellers, their counsel and their other agents, advisors or representatives, Buyer's personnel most knowledgeable about the matter in question. The Parties acknowledge that all Business Records are Acquired Assets to be acquired by Buyer at the Closing. If, after the Closing, Buyer (or any Affiliate or creditor of Buyer) receives any payment or revenue that belongs to Sellers pursuant to this Agreement or any Ancillary Agreement, Buyer shall promptly remit or cause to be remitted the same to Sellers without set-off or deduction of any kind or nature. If after the Closing, Sellers (or any Affiliate of or successor to Sellers) receive any payment or revenue that belongs to Buyer pursuant to this Agreement or any Ancillary Agreement, Sellers shall promptly remit or cause to be remitted the same to Buyer without set-off or deduction of any kind or nature.

6.6 Buyer's Obligation to Perform; Cooperation with Sellers' Enforcement of Rights. Buyer shall pay, perform and discharge all Assumed Liabilities when due or obligated and will indemnify and hold Sellers, each of their Affiliates and each of their respective Related Persons in their respective capacities as such harmless for any and all damages, fines, judgments, costs or expenses (including reasonable attorneys' fees) suffered by any of them from any breach of the covenants and agreements of Buyer in this Section 6.6.

6.7 Further Assurances. Upon the request and at the sole expense of Sellers at any time after the Closing Date (but without additional consideration), Buyer shall execute and deliver such documents as Sellers or their counsel may reasonably request to effectuate the transactions contemplated by this Agreement. Without limiting the foregoing, if at any time on or after the Closing Buyer, or any of its Affiliates, comes into possession or control of any Excluded Assets, Buyer shall promptly but in no event later than ten Business Days after coming into possession or control, return (or cause to be returned) such Excluded Assets to Sellers for no additional consideration.

6.8 Employment Matters; Cooperation Regarding Service Providers and Employee Matters.

(a) At least two (2) Business Days prior to the anticipated Closing Date, Buyer will notify Sellers of the identity of the employees of Sellers to whom Buyer (or, in Buyer's discretion, one (1) or more Affiliates of Buyer) intends in its sole and absolute discretion to offer employment, if any (each, a "***Specified Employee***" and together, the "***Specified Employees***"), such offers to be made no later than one (1) day prior to the Closing Date and to be effective as of the Closing Date. Each such offer of employment shall be subject to such compensation and other terms and conditions of employment as Buyer shall determine in their sole and absolute discretion. Neither Buyer nor any of its Affiliates has any obligation hereunder or otherwise to offer employment, or any given terms and conditions of employment, to any employee or other Related Person of Sellers.



Each such Specified Employee who timely accepts an offer of employment from Buyer or an Affiliate of Buyer within such time period and in such manner as may be required by Buyer or such applicable Affiliate in their respective discretion, and who is hired by and commences working for Buyer or an Affiliate of Buyer as provided in such offer, is referred to herein as a “***Transferred Employee***”. Nothing in this Section 6.8 shall (a) be treated or construed as an amendment of, or undertaking to amend, any benefit plan or (b) be construed to prohibit Sellers or any of Sellers’ Affiliates from amending or terminating any benefit plan. The provisions of this Section 6.8 are solely for the benefit of the respective parties to this Agreement, and nothing in this Section 6.8, express or implied, shall confer upon any current, former or future employee or other Related Person of Sellers or any of Sellers’ Affiliates, or legal representative or beneficiary thereof or other Person, any rights or remedies, including any right to employment or continued employment with Buyer or any of their Affiliates for any specified period, or compensation or benefits or other terms and conditions of employment of any nature or kind whatsoever under this Agreement, or a right in any employee or beneficiary of such employee or other Person under an Employee Benefit Plan that such employee, beneficiary or other Person would not otherwise have under the terms of such plan.

(b) Subject to applicable Laws, Sellers shall cooperate with Buyer and shall permit Buyer or, as applicable, one or more Affiliates of Buyer a reasonable period during normal business hours prior to the Closing Date, (i) to meet with employees and other service providers at such times as Buyer or any of their respective Affiliates shall reasonably request, (ii) to speak with such employees’ and other service providers’ managers and supervisors (in each case with appropriate authorizations and releases from such service providers) who are being considered for employment by Buyer or any of their respective Affiliates, (iii) to distribute to such employees and other service providers such forms and other documents relating to potential employment by or services to Buyer or any of their respective Affiliates after the Closing and (iv) subject to any restrictions imposed under applicable Law, to permit Buyer, upon request, to review personnel files and other relevant employment information regarding such employees and other service providers.

(c) Following the Closing, Sellers and Buyer shall cooperate reasonably with each other to provide an orderly administrative transition to Buyer or, as applicable, one or more Affiliates of Buyer of the Transferred Employees, including the provision by Sellers to Buyer of all necessary or appropriate documents, records, materials, accounting files and Tax information with respect to each Transferred Employee to the extent available to and under the control of Sellers. To the extent information (including personnel records) about past, present or future employees of Sellers is in Buyer’s possession after the Closing, Buyer will maintain its confidentiality in material compliance with applicable Law.

## ARTICLE 7 BANKRUPTCY PROCEDURES

7.1 Bankruptcy Actions. Upon completion of the Auction and provided Buyer is the Successful Bidder (as defined in the Bidding Procedures) at the Auction, or if no Auction is held

pursuant to the terms of the Bidding Procedures, the Sellers shall seek the entry of an Order of the Bankruptcy Court substantially in the form attached hereto as Exhibit H and otherwise reasonably acceptable to Sellers and Buyer (the “**Sale Order**”). Sellers shall use commercially reasonable efforts to (i) file all pleadings with the Bankruptcy Court as are necessary or appropriate to secure entry of the Bidding Procedures Order and, upon completion of the Auction and provided Buyer is the Successful Bidder, or if no Auction is held pursuant to the terms of the Bidding Procedures, the Sale Order and (ii) cause the Bidding Procedures Motion to be served on the parties entitled to notice thereof pursuant to the Bankruptcy Code and the Rules, and shall diligently pursue the entry of the Bidding Procedures Order and entry of the Sale Order by the Bankruptcy Court. Buyer shall use commercially reasonable efforts to support the Bidding Procedures Motion and to obtain the Bankruptcy Court’s entry of the Bidding Procedures Order and, as applicable, the Sale Order or any other Order reasonably necessary in connection with the transactions contemplated by this Agreement and the Ancillary Agreements. Furthermore, Buyer covenants and agrees to cooperate with Sellers in connection with furnishing information or documents to Sellers to satisfy the requirements of adequate assurance of future performance under Section 365 of the Bankruptcy Code.

7.2 Bidding Procedures. The bidding procedures (the “**Bidding Procedures**”) to be employed with respect to this Agreement and the Auction, if any, are those attached as Exhibit 1 to the Bidding Procedures Order.

7.3 Approval. At the Sale Hearing, if Buyer is the successful bidder at the Auction (or if no Auction is held in accordance with the terms of the Bidding Procedures Order), Sellers shall immediately seek the entry of the Sale Order.

7.4 Plan Consideration. Upon approval of a disclosure statement that is not materially inconsistent with the Plan and confirmation of the Plan by the Bankruptcy Court, Sellers shall (i) contribute the Equity Consideration to the Liquidation Trust on the terms and conditions set forth herein and in the Plan; and (ii) contribute the Designated Causes of Action to the Liquidation Trust on the terms and conditions set forth in the Plan, provided however, that (x) the Designated Affiliate shall be entitled to up to \$5,000,000 from the first proceeds realized from the Designated Causes of Action to reimburse the Designated Affiliate for fifty (50%) percent of any amounts actually paid by the Designated Affiliate or its subsidiaries to satisfy, or reduce the amount of, any indebtedness arising prior to the Closing and secured by a Permitted Lien described in sections (b) through (f) of the definition of such term herein and which Buyer is not otherwise obligated to pay or satisfy under this Agreement and (y) 40% of any remaining proceeds realized from the Designated Causes of Action shall be payable to the Designated Affiliate until the DIP Payment Amount has been repaid in full.

## ARTICLE 8 TAXES AND FEES

8.1 Taxes Related to Purchase of Assets. All state and local sales, use, gross-receipts, transfer, gains, excise, value-added or other similar Taxes incurred in connection with the transfer of the Acquired Assets and the assumption of the Assumed Liabilities, and all recording and filing fees that may be imposed by reason of the sale, transfer, assignment and delivery of the Acquired Assets and the assumption of the Assumed Liabilities (collectively, “**Transaction**”

*Taxes*”), shall be paid by Buyer on or prior to their due date and Buyer shall indemnify, defend and hold harmless Sellers and their Affiliates (and its and their Related Persons) from and against any and all liability for the payment of such Transaction Taxes and the filing of any Tax Returns related thereto. Buyer and Sellers shall cooperate in providing each other Party with transfer tax declarations or any appropriate resale exemption certifications and other similar documentation to qualify for exemption from, or reduction of, any Transaction Taxes. For the avoidance of doubt, Transaction Taxes shall not include any Taxes that are computed on the basis of, or by reference to, Sellers’ gross or net income, overall gross receipts, or capital.

8.2 Cooperation on Tax Matters. Sellers shall, until the earlier of (a) ten (10) years following the Closing and (b) the liquidation of the Sellers (but in no event for less than sixty (60) days following the Closing), and Buyer shall (and shall cause its Affiliates to), use their commercially reasonable efforts to cooperate with each other and make available or cause to be made available to each other for consultation, inspection and copying (at such other Party’s expense), in a timely fashion, such personnel, Tax data, relevant Tax Returns or portions thereof and filings, files, books, records, documents, financial, technical and operating data, computer records and other information as may be reasonably required (x) for the preparation by such other Party or its Affiliates of any Tax Returns or (y) in connection with any Tax audit or proceeding including one Party (or an Affiliate thereof) to the extent such Tax audit or proceeding relates to or arises from the transactions contemplated by this Agreement. Before disposing of any such records or information, Sellers shall give notice to Buyer and Buyer shall be entitled to take delivery of any or all such records and information.

8.3 Allocation of Purchase Price and Purchase Price Allocation Forms. The Purchase Price, the Assumed Liabilities and other relevant items shall be allocated among the Acquired Assets in accordance with Section 1060 of the Code. Buyer shall prepare and deliver to Sellers an allocation schedule setting forth Buyer’s determination of the allocation (the “***Allocation Schedule***”) within ninety (90) days after Closing Date. The Allocation Schedule shall identify the transferor and transferee thereof and shall be prepared in accordance with Treas. Reg. Section 1.1060-1 (or any comparable provision of state or local Tax Law) or any successor provision. The Allocation Schedule delivered by Buyer shall be subject to Sellers’ reasonable comments and to approval of Sellers, which shall not be unreasonably withheld, conditioned or delayed. The Parties on behalf of themselves and their respective Affiliates agree that they will report the federal, state, local and other Tax consequences of the purchase and sale hereunder (including in filings on IRS Form 8594) in a manner consistent with such allocation and that they will not take any position inconsistent therewith in connection with any Tax Return, refund claim, litigation or otherwise, unless and to the extent required to do so pursuant to applicable Law. Notwithstanding any other provision of this Agreement, this Section 8.3 survives any termination or expiration of this Agreement.

8.4 Tax Adjustments. Taxes (other than Transaction Taxes and other than Taxes assumed by Buyer pursuant to Section 1.3(f)(ii)) imposed upon or assessed directly against the Acquired Assets for the Tax period in which the Closing occurs (the “***Proration Period***”) will be apportioned and prorated between Sellers and Buyer as of the Closing Date with Buyer bearing the expense of Buyer’s proportionate share of such Taxes which shall be equal to the product obtained by multiplying (i) a fraction, the numerator being the amount of the Taxes and the denominator being the total number of days in the Proration Period, times (ii) the number of days

in the Proration Period following the Closing Date, and Sellers shall bear the remaining portion of such Taxes. If the precise amount of any such Tax cannot be ascertained on the Closing Date, apportionment and proration shall be computed on the basis of the amount payable for each respective item during the Tax period immediately preceding the Proration Period and any proration shall be adjusted thereafter on the basis of the actual charges for such items in the Proration Period. When the actual amounts become known, such proration shall be recalculated by Buyer and Sellers, and Buyer or Sellers, as the case may be, promptly (but not later than ten (10) days after notice of payment due and delivery of reasonable supporting documentation with respect to such amounts) shall make any additional payment or refund so that the correct prorated amount is paid by each of Buyer and Sellers. For purposes of this Section 8.4, Buyer shall include the Designated Affiliate (and its subsidiaries as applicable).

## ARTICLE 9

### CONDITIONS PRECEDENT TO PERFORMANCE BY PARTIES

9.1 Conditions Precedent to Performance by Sellers and Buyer. The respective obligations of Sellers and Buyer to consummate the transactions contemplated by this Agreement are subject to the satisfaction or waiver by Buyer and Sellers, on or prior to the Closing Date, of the following conditions:

(a) Sale Order. The Bankruptcy Court shall have entered the Sale Order, and such Sale Order shall be in effect on the Closing Date and (i) shall not have been stayed, reversed, stayed pending appeal or vacated and (ii) shall not have been amended, supplemented or otherwise modified without the Parties' consent (such consent not to be unreasonably withheld, conditioned, or delayed).

(b) No Violation of Orders. No preliminary or permanent injunction or other Order that declares this Agreement invalid or unenforceable in any material respect or that prevents the consummation of the transactions contemplated hereby or thereby shall be in effect on the Closing Date.

(c) No Proceeding. No action or proceeding shall be pending before any Government seeking or threatening to restrain or prohibit the consummation of the transactions contemplated by this Agreement or involving a claim that consummation thereof would result in the violation of any Law of any Government having appropriate jurisdiction.

(d) No Termination of Agreement. This Agreement shall not have been terminated in accordance with Article 10.

(e) Equity Consideration. Definitive documentation of the terms of the Equity Consideration shall be substantially on the terms set forth in Exhibit A and otherwise reasonably satisfactory to Buyer and the Committee.

Any condition specified in this Section 9.1 may be waived only by written instrument executed by Buyer and Sellers.

9.2 Conditions Precedent to Performance by Sellers. The obligations of Sellers to consummate the transactions contemplated by this Agreement are subject to the satisfaction, on or before the Closing Date, of the following conditions, any one or more of which may be waived by Sellers in their sole discretion in a written instrument executed and delivered by Sellers:

(a) Representations and Warranties of Buyer. Each of the representations and warranties contained in Article 4 of this Agreement (other than the Buyer Fundamental Representations) shall be true and correct (without taking into account materiality qualifications) as of the Closing Date as if made anew as of such date (except to the extent any such representation and warranty expressly relates to an earlier date, in which case as of such earlier date), except for any failure of such representations and warranties to be true and correct as does not have, individually or in the aggregate, a Buyer Material Adverse Effect, and each of the Buyer Fundamental Representations shall be true and correct as of the Closing Date as if made anew as of such date, and Sellers shall have received on the Closing Date a certificate from Buyer in the applicable form attached hereto as Exhibit I dated as of the Closing Date and signed by a duly authorized signatory of Buyer to that effect.

(b) Performance of the Obligations of Buyer. Buyer shall have performed in all material respects all obligations required under this Agreement to be performed by it on or before the Closing Date (except with respect to the obligation to pay the Purchase Price in accordance with the terms of this Agreement, which obligation shall be performed in all respects as required under this Agreement), and Sellers shall have received on the Closing Date a certificate from Buyer in the applicable form attached hereto as Exhibit I dated the Closing Date and signed by a duly authorized signatory of Buyer to that effect.

(c) Cure of Defaults. Buyer shall have, at or prior to the Closing, cured any and all defaults under the Assigned Contracts that are required to be cured under the Bankruptcy Code or shall have made adequate provision for the payment of such Cure Amounts at the later of (i) the Closing and (ii) the date on which the assignment of such Assigned Contracts becomes effective, and shall have provided all assurances of future performance required to be provided by Buyer hereunder, so that the Assigned Contracts may be assumed by Sellers and assigned to Buyer in accordance with the provisions of Section 365 of the Bankruptcy Code and the terms of the Bidding Procedures Order and the Sale Order.

(d) Buyer's Deliveries. Buyer shall have delivered to Sellers all of the items set forth in Section 2.4.

9.3 Conditions Precedent to Performance by Buyer. The obligations of Buyer to consummate the transactions contemplated by this Agreement are subject to the satisfaction, on or before the Closing Date, of the following conditions, any one or more of which may be waived by Buyer in its sole discretion in a written instrument executed and delivered by Buyer:

(a) Representations and Warranties of Sellers. Each of the representations and warranties contained in Article 3 of this Agreement (other than the Seller Fundamental Representations) shall be true and correct (without taking into account materiality qualifications) as of the Closing Date as if made anew as of such date (except to the extent any such representation and warranty expressly relates to an earlier date, in which case as of such earlier date), except for failure of such representations and warranties to be true and correct as does not have, individually or in the aggregate, a Material Adverse Effect, and each of the Seller Fundamental Representations shall be true and correct as of the Closing Date, and Buyer shall have received on the Closing Date a certificate in the form attached hereto as Exhibit J dated as of the Closing Date and signed by a duly authorized signatory of each of Sellers to that effect.

(b) Performance of the Obligations of Sellers. Sellers shall have performed in all material respects all obligations required under this Agreement to be performed by them on or before the Closing Date, and Buyer shall have received on the Closing Date a certificate in the form attached hereto as Exhibit J dated as of the Closing Date and signed by a duly authorized signatory of each of Sellers to that effect.

(c) CFIUS. CFIUS has not indicated that Buyer or Sellers may not close the transactions contemplated herein or requested that the closing of the transactions contemplated by this Agreement be delayed.

(d) Necessary Consents. Sellers shall have obtained either (i) a Consent to assignment, in form and substance reasonably satisfactory to Buyer, to the transactions contemplated hereby with respect to each of the Required Agreements, or (ii) entry of an Order of the Bankruptcy Court (or other court of competent jurisdiction) in form and substance reasonably acceptable to the Buyer authorizing the Sellers' assignment of the Required Agreements to Buyer and Buyer's assumption thereof pursuant to Section 365 of the Bankruptcy Code; provided, that Buyer will be responsible for any Cure Costs related to the Required Agreements.

(e) Material Adverse Effect. Since November 22, 2013, no Material Adverse Effect shall have occurred and be continuing (as determined on the Closing Date).

(f) Sellers' Deliveries. Sellers shall have delivered to Buyer all of the items set forth in Section 2.3(a) of this Agreement.

(g) Governmental Consents. The Parties shall have received all material approvals and actions of or by all Governments that are necessary to consummate the transactions contemplated hereby to the extent necessary so as not to constitute a Material Adverse Effect.

9.4 Waiver of Condition; Frustration of Conditions. All conditions to the Closing shall be deemed to have been satisfied or waived from and after the Closing. Neither Buyer nor Sellers may rely on the failure of any condition set forth in this Article 9, as applicable, to be satisfied if such failure was caused by such Party's failure to use, as required by this Agreement, its reasonable best efforts to consummate the transactions contemplated hereby.

**ARTICLE 10**  
**TERMINATION AND EFFECT OF TERMINATION**

10.1 Right of Termination. Notwithstanding anything to the contrary contained herein, this Agreement may be terminated only as provided in this Article 10. In the case of any such termination, the terminating Party shall give notice to the other Parties specifying the provision pursuant to which this Agreement is being terminated.

10.2 Termination. This Agreement may be terminated at any time before Closing:

- (a) by mutual written consent of Sellers and Buyer;
- (b) by Buyer, on any date that is more than sixty (60) days after the date hereof (the “**Termination Date**”), if the Closing has not then occurred; provided, however, that Buyer shall have no right to terminate this Agreement under this Section 10.2(b) if Buyer’s failure to fulfill any of its obligations under this Agreement is the reason that the Closing has not occurred on or before said date;
- (c) by Sellers, on or after the Termination Date, if any condition contained in Section 9.1 or Section 9.2 has not been satisfied or waived as of such time; provided, however, that Sellers shall have no right to terminate this Agreement under this Section 10.2(c) if Sellers’ failure to fulfill any of their respective obligations under this Agreement is the reason that the Closing has not occurred on or before said date;
- (d) by Buyer, if Buyer is the Successful Bidder (as such term is defined in the Bidding Procedures Order) at the Auction and the Sale Hearing has not been commenced on or prior to the earlier of the fifth Business Day after the completion of the Auction and the date specified in the Bidding Procedures Order; provided that the failure to commence the Sale Hearing on or prior to such time is not the result of or caused by Buyer’s material breach of this Agreement;
- (e) by Buyer, if the Bankruptcy Court shall fail to enter the Sale Order on or prior to the date that is forty-five (45) days after the date hereof; provided that the failure to obtain the entry of the Sale Order is not the result of or caused by Buyer’s material breach of this Agreement;
- (f) by Buyer, if the Seller Chapter 11 Cases are dismissed or converted to liquidation proceedings under Chapter 7 of the Bankruptcy Code, or if Sellers shall have filed a pleading requesting any such relief;
- (g) by either Sellers or Buyer if (i) the Auction has occurred and Buyer was not the Successful Bidder at the Auction or (ii) the Bankruptcy Court otherwise approves a Competing Transaction;
- (h) by either Buyer or Sellers, immediately upon an Order becoming final and non-appealable that declares this Agreement invalid or unenforceable in any material respect or that prevents the consummation of the transactions contemplated hereby or thereby (a “**Termination Order**”); provided, however, that neither Sellers nor Buyer shall

have the right to terminate this Agreement pursuant to this Section 10.2(h) if such Party or any of its Affiliates has sought entry of, or has failed to use its reasonable best efforts to oppose entry of, such Termination Order;

(i) by Buyer, in the event (i) of any material inaccuracy in any of Sellers' representations or warranties contained in this Agreement or any material breach of any of Sellers' covenants or agreements contained in this Agreement, which, individually or in the aggregate with all other such inaccuracies and breaches, (A) would result in a failure of a condition set forth in Section 9.3, and (B) is either incapable of being cured or, if capable of being cured, is not cured in all material respects within the earlier of (x) ten (10) calendar days after written notice thereof and (y) the Termination Date, or (ii) since the date of this Agreement, a Material Adverse Effect shall have occurred and be continuing (as determined on the date of such termination); provided that the right of termination pursuant to this Section 10.2(i) shall not be available to Buyer at any time that Buyer has violated or is in breach of any covenant, representation or warranty hereunder if such breach has prevented satisfaction of Sellers' conditions to Closing hereunder and has not been waived by Sellers or, if capable of cure, has not been cured by Buyer;

(j) by Sellers, in the event of any material inaccuracy in any of Buyer's representations or warranties contained in this Agreement or any material breach of any of Buyer's covenants or agreements contained in this Agreement, which, individually or in the aggregate with all other such inaccuracies and breaches, (i) would result in a failure of a condition set forth in Section 9.2, and (ii) is either incapable of being cured or, if capable of being cured, is not cured in all material respects within the earlier of (x) ten (10) calendar days after written notice thereof and (y) the Termination Date; provided that the right of termination pursuant to this Section 10.2(j) shall not be available to Sellers at any time that Sellers have violated or are in breach of any covenant, representation or warranty hereunder if such breach has prevented satisfaction of Buyer's conditions to Closing hereunder and has not been waived by Buyer or, if capable of cure, has not been cured by Sellers; or

(k) by Sellers, if the Board of Directors of either Seller determines in good faith that continued performance would be inconsistent with the exercise of its fiduciary duties under applicable Law.

**10.3 Effect of Termination.** In the event of any termination of this Agreement pursuant to Section 10.2, this Agreement (other than the provisions set forth in this Section 10.3, Section 10.4, Section 10.5 and Article 12, which shall survive termination of this Agreement) shall forthwith become null and void and be deemed of no further force and effect and, except as set forth in this Section 10.3 and Section 10.4, none of Sellers, Buyer or any of their respective Related Persons shall have any liability or obligation arising under or in connection with this Agreement.



#### 10.4 Expense Reimbursement.

(a) If this Agreement is terminated for any reason, other than a termination of this Agreement pursuant to Section 10.2(a), Section 10.2(c), Section 10.2(j) or Section 10.2(k), and Sellers consummate a Competing Transaction within twelve (12) months following such termination, then Sellers shall reimburse Buyer for up to Five Hundred Thousand Dollars (\$500,000) of reasonable, documented out-of-pocket fees and expenses of attorneys, accountants and other consultants not previously paid pursuant to Section 12.8 and incurred by Buyer in connection with negotiating and documenting this Agreement and the transactions contemplated hereby, including negotiating and documenting arrangements regarding the formation of the Designated Affiliate and other terms relating to the Equity Consideration and related documentation relating to governance and the rights and obligations of the owners thereof (the “***Expense Reimbursement***”), which Expense Reimbursement shall be paid no later than one (1) Business Day immediately following the consummation by Sellers of a Competing Transaction.

(b) If this Agreement is terminated pursuant to Section 10.2(k), then Sellers shall pay, or cause to be paid, to Buyer in immediately available funds, the Expense Reimbursement within three (3) Business Days of the date of such termination.

(c) In the event of a termination of this Agreement in the circumstances described in Section **Error! Reference source not found.** or Section 10.4(a), the Expense Reimbursement shall be the sole and exclusive remedy of Buyer and its Related Persons against Sellers and its Related Persons under this Agreement, and Buyer (on behalf of itself and its Related Persons) hereby irrevocably waives and releases the Seller Parties, as a condition to receipt of the Expense Reimbursement (but, subject to the receipt thereof by Buyer), from any and all statutory, equitable, legal or common law Claims or remedies that Buyer or any of its Related Persons may have against any of the Seller Parties in respect of any breach of or default under this Agreement. For purposes hereof, “***Seller Parties***” shall mean, collectively, Sellers and any of their respective former, current or future directors, officers, employees, agents, general or limited partners, managers, members, stockholders, Affiliates or assignees or any former, current or future director, officer, employee, agent, general or limited partner, manager, member, stockholder, Affiliate or assignee of any of the foregoing and any other Related Persons of either Seller.

(d) Sellers acknowledge and agree that (i) the payment of the Expense Reimbursement is an integral part of the transactions contemplated by this Agreement, (ii) in the absence of Sellers’ obligations to pay the Expense Reimbursement to Buyer, Buyer would not have entered into this Agreement, (iii) time is of the essence with respect to the payment of the Expense Reimbursement and (iv) the Expense Reimbursement shall constitute an administrative expense of Sellers’ bankruptcy estates under Section 503(b)(1)(A) and 507(a)(2) of the Bankruptcy Code. If Sellers fail to take any action reasonably necessary to cause the delivery of the Expense Reimbursement under circumstances where Buyer is entitled to the Expense Reimbursement and, in order to obtain such Expense Reimbursement, Buyer commences a contested matter or

adversary proceeding in the Seller Chapter 11 Cases which results in a final, non-appealable judgment in favor of Buyer, Sellers shall pay to Buyer, in addition to the Expense Reimbursement, an amount in cash equal to the costs and expenses (including reasonable attorney's fees) incurred by Buyer in connection with such contested matter or adversary proceeding.

(e) The Parties further acknowledge that the damages resulting from termination of this Agreement under circumstances where Buyer is entitled to the Expense Reimbursement are uncertain and incapable of accurate calculation and that the delivery of the Expense Reimbursement to the Buyer is not a penalty but rather shall constitute liquidated damages in a reasonable amount that will compensate Buyer in the circumstances where Buyer is entitled to the Expense Reimbursement for the efforts and resources expended and opportunities foregone while negotiating this Agreement and in reliance on this Agreement and on the expectation of the consummation of the Transactions contemplated hereby, and that, without these agreements, Buyer would not enter into this Agreement.

10.5 Release of Deposit Upon Termination. If this Agreement is terminated pursuant to Section 10.2(j), Sellers shall be entitled to receive the Deposit and any interest thereon in accordance with the Escrow Agreement. If this Agreement is terminated for any reason, other than a termination of this Agreement pursuant to Section 10.2(j), Buyer shall be entitled to receive the Deposit and any interest thereon in accordance with the Escrow Agreement. Upon Termination of this Agreement, Buyer and Sellers shall take all actions reasonably required to cause the Deposit and any interest thereon to be released in accordance with this Section 10.5.

## **ARTICLE 11**

### **ADDITIONAL AGREEMENTS**

11.1 Litigation Support. In the event and for so long as any Party or any of its Affiliates actively is contesting or defending against any action, suit, audit, proceeding, hearing, investigation, charge, complaint, claim, or demand in connection with (a) any transaction contemplated by this Agreement or the Ancillary Agreements or (b) any fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act, or transaction on or prior to the Closing Date involving Sellers or the Long-Term Business, the other Parties will cooperate with the contesting or defending Person and its counsel in the contest or defense, make available its personnel, and provide such testimony and access to its books and records as shall be necessary in connection with the contest or defense, all at the sole cost and expense of the contesting or defending Person; provided that no Party shall be obligated to provide such cooperation to the extent such cooperation would reasonably be expected to (w) be prohibited by Law, (x) violate any existing confidentiality obligations, (y) waive any attorney client, work product or other legal privilege or (z) take a position adverse to such Party or any of its former, current or future directors, officers, employees, agents, general or limited partners, managers, members, stockholders, Affiliates or assignees. The obligations in this Section 11.1 shall not apply if the contesting or defending Person is entitled to indemnification therefor pursuant to this Agreement.

11.2 Insurance Matters. To the extent any of the insurance policies maintained by Sellers or any of their Affiliates related (“***Sellers’ Insurance Policies***”) permit claims to be made thereunder with respect to losses incurred by Buyer or with respect to any of the Acquired Assets or the Assumed Liabilities after the Closing, Buyer shall have the right (but not the obligation) to submit and pursue claims under Sellers’ Insurance Policies with respect to such post-Closing losses.

11.3 Name Change. No later than five Business Days after the Closing Date, each Seller shall file amendments with the appropriate Government changing its name to a name that does not contain the word “Fisker” or any other registered or applied-for trademark or trade name included in the Owned IP transferred by Sellers to Buyer hereunder (the “***Restricted Names***”). No later than thirty days after the Closing Date, Sellers shall change the name of the Non-Seller Subsidiary to a name that does not contain any of the Restricted Names. From and after the Closing, Sellers shall cease the use of the Restricted Names (other than in reference to Sellers’ historic use of the name), and, at Buyer’s written request and Buyer’s expense, shall remove all Restricted Names from the Excluded Assets.

11.4 Access to Books and Records; Confidentiality.

(a) For a period of twenty-four months after the Closing Date (or such shorter period as Sellers maintain their corporate existence), each Party and their representatives shall have reasonable access to, and each shall have the right to photocopy all of the books and records relating to the Long-Term Business or the Acquired Assets, including all employee records or other personnel and medical records required by Law, legal process or subpoena, in the possession of the other Party to the extent that such access may be reasonably required by such Party. Such access shall be afforded by the Party in possession of such books and records upon receipt of reasonable advance notice and during normal business hours; provided, however, that (A) any such investigation shall be conducted in such a manner as not to interfere unreasonably with the operation of the business of any Party or its Affiliates, (B) no Party shall be required to take any action which would constitute a waiver of the attorney-client privilege, work product or similar privilege, and (C) no Party need supply the other Party with any information which such party is under a legal obligation not to supply. The Party exercising this right of access shall be solely responsible for any costs or expenses incurred by it pursuant to this Section 11.4.

(b) After the Closing, each Seller shall maintain as confidential, and shall, to the extent either Seller controls the Non-Seller Subsidiary, cause the Non-Seller Subsidiary to maintain as confidential, and shall not use or disclose, and, to the extent either Seller controls the Non-Seller Subsidiary, shall cause the Non-Seller Subsidiary not to use or disclose, (except as required by Law or as authorized in writing by Buyer) any confidential information with respect to the Acquired Assets, the Assumed Liabilities or the Long-Term Business (“***Confidential Information***”). Each Seller further agrees to take all commercially reasonable steps (and to use commercially reasonable efforts to cause each of its Affiliates to take all commercially reasonable steps) to safeguard such Confidential Information and to protect it against disclosure, misuse, espionage, loss and theft. In the event any Seller is required by Law to disclose any Confidential

Information, to the extent commercially practicable, such Seller shall promptly notify Buyer in writing, which notification shall include the nature of the legal requirement and the extent of the required disclosure, and shall cooperate with Buyer, at Buyer's expense, to preserve the confidentiality of such information consistent with applicable Law.

## ARTICLE 12 MISCELLANEOUS

### 12.1 Successors and Assigns.

(a) Except as otherwise provided in this Agreement (including Section 12.1(b)), no Party may assign this Agreement or any rights or obligations hereunder without the prior written consent of the other Parties and any such attempted assignment without such prior written consent shall be void and of no legal force or effect. This Agreement inures to the benefit of and is binding upon the successors and permitted assigns of the Parties. For all purposes hereof, a transfer, sale or disposition of a majority of the voting capital stock or other voting interests of Buyer (whether by contract or otherwise) shall be deemed not to be an assignment hereunder.

(b) Buyer may assign any or all of its rights, interests, and obligations hereunder, including the right to accept any or all Acquired Assets or assume any or all Assumed Liabilities in accordance with the terms of this Agreement, to the Designated Affiliate (or to one or more subsidiaries of the Designated Affiliate) as contemplated by Sections 1.1 and 1.2. No assignment of any obligations hereunder shall relieve Buyer of any of its obligations under this Agreement, including its obligation to pay the Purchase Price, until, with respect to the Assumed Liabilities, such time as such Affiliate or Affiliates actually assume the Assumed Liabilities, following which assumption Buyer shall have no obligation with respect thereto. Upon any such permitted assignment, Buyer, on the one hand, and its assignees or designees, on the other hand, will be jointly and severally liable for all of Buyer's obligations under this Agreement (except, with respect to the Assumed Liabilities, as set forth in the immediately preceding sentence), and the references in this Agreement to Buyer shall also apply to any such assignee or designee unless the context otherwise requires. To the extent that Buyer assigns its rights, interests and obligations hereunder to one or more of its Affiliates or designees, such Affiliate or designee shall deliver to Sellers certificates similar in form and substance to the certificates required to be delivered by Buyer pursuant to Section 2.4, and the certificate attached as Exhibit G hereto, certifying to such matters with respect to itself.

12.2 Governing Law; Jurisdiction. This Agreement shall be construed, performed and enforced in accordance with, and governed by, the Laws of the State of Delaware (without giving effect to the principles of conflicts of Laws thereof that would cause the application of the Law of another jurisdiction), except to the extent that the Laws of such State are superseded by the Bankruptcy Code; provided that the validity and enforceability of all conveyance documents or instruments executed and delivered pursuant to this Agreement insofar as they affect title to real property shall be governed by and construed in accordance with the Laws of the jurisdiction in which the Real Property is located. For so long as Sellers are subject to the jurisdiction of the Bankruptcy Court, the Parties hereto irrevocably elect as the sole judicial forum for the

adjudication of any matters arising under or in connection with this Agreement, and consent to the exclusive jurisdiction of, the Bankruptcy Court. After Sellers are no longer subject to the jurisdiction of the Bankruptcy Court, any legal action or proceeding with respect to this Agreement or the transactions contemplated hereby may be brought only in the courts of the State of Delaware sitting in Wilmington, Delaware or of the United States for the District of Delaware, and by execution and delivery of this Agreement, each of the Parties consents to the exclusive jurisdiction of those courts. Each of the Parties irrevocably waives any objection, including any objection to the laying of venue or based on the grounds of *forum non conveniens*, which it may now or hereafter have to the bringing of any action or proceeding in any such jurisdiction in respect of this Agreement, the Ancillary Agreements or the transactions contemplated hereby or thereby.

### 12.3 Warranties Exclusive.

(a) The representations, warranties, covenants and agreements contained in this Agreement and the Ancillary Agreements are the only representations, warranties, covenants or agreements given by Sellers and all other express or implied warranties are disclaimed. Buyer acknowledges and agrees that (i) except as provided in Article 3, the Acquired Assets are conveyed “AS IS,” “WHERE IS” and “WITH ALL FAULTS” and that ALL WARRANTIES OF MERCHANTABILITY, QUALITY, CONDITION, USAGE OR SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE DISCLAIMED, (ii) it has not relied on any representation or warranty of Sellers or their Affiliates or their respective Related Persons, other than the express representations and warranties expressly set forth in Article 3 of this Agreement, and it has not relied on any covenant or agreement of Sellers or their Affiliates or their respective Related Persons, other than the express covenants and agreements of Sellers expressly set forth in this Agreement or in any Ancillary Agreements, (iii) Buyer has made its own investigation of the Acquired Assets and Assumed Liabilities and, based on such investigation and its own conclusions derived from such investigation, have elected to proceed with the transactions contemplated hereby and (iv) no material or information provided by or communications made by (or on behalf of) Sellers or their Affiliates or their respective Related Persons will create any representation or warranty of any kind, whether express or implied, with respect to the Acquired Assets and the title thereto, the operation of the Acquired Assets or the Assumed Liabilities or the prospects (financial and otherwise), risks and other incidents of the Acquired Assets or the Assumed Liabilities.

(b) Without limiting the generality of the foregoing, Buyer acknowledges and agrees that none of Sellers or their Affiliates or their respective Related Persons has made any representation or warranty, express or implied, as to the accuracy or completeness of any information regarding the Acquired Assets or the Assumed Liabilities, except as expressly set forth in Article 3 of this Agreement. Buyer further agrees that none of Sellers or their Affiliates or their respective Related Persons will have or be subject to any liability to Buyer or any other Person resulting from the distribution to Buyer, or Buyer’s use of, any such information and any information, document or material made available to Buyer or its Related Persons in that certain management presentation of Sellers, in certain “data rooms” and online “data sites” or any other form in expectation of the transactions contemplated by this Agreement.

(c) Buyer is taking full responsibility for making its own evaluation of the adequacy and accuracy of any estimates, projections and other forecasts and plans (including the reasonableness of the assumptions underlying such estimates, projections and forecasts). Accordingly, Buyer acknowledges and agrees that none of Sellers or their Affiliates or their respective Related Persons makes, and Buyer is not relying upon, any representations or warranties whatsoever with respect to any estimates, projections and other forecasts and plans (including the reasonableness of the assumptions underlying such estimates, projections and forecasts), and Buyer shall have no claim against Sellers or their Affiliates or their respective Related Persons arising from or relating to any estimates, projections and other forecasts and plans.

**12.4 No Survival of Representations and Warranties.** The representations and warranties, covenants and agreements set forth in this Agreement or in any Ancillary Agreement to the extent contemplating or requiring performance prior to the Closing, shall not survive the Closing. Each of the representations and warranties set forth in this Agreement or in any Ancillary Agreement shall terminate effective immediately as of the Closing such that no claim for breach of any such representation or warranty, detrimental reliance or other right or remedy (whether in contract, in tort or at law or equity) may be brought after the Closing. The covenants and agreements of any Party set forth in this Agreement and in any Ancillary Agreement, to the extent contemplating or requiring performance by such Party prior to the Closing, shall terminate effective immediately as of the Closing such that no claim for breach of any such covenant, detrimental reliance or other right or remedy (whether in contract, in tort or at law or equity) may be brought after the Closing. Each covenant and agreement requiring performance at or after the Closing shall expressly survive Closing and nothing in this Section 12.4 shall be deemed to limit any rights or remedies of any Person for breach of any such covenant (with it being understood that nothing herein shall limit or affect Buyer's or any of its Affiliates' liability for the failure to pay the Purchase Price, assume the Assumed Liabilities or pay other amounts as required under this Agreement). Buyer acknowledges and agrees that the representations, warranties, covenants and agreements contained in Section 12.3 and this Section 12.4 are an integral part of the transactions contemplated by this Agreement and that, without these agreements, Sellers would not enter into this Agreement.

**12.5 No Recourse for Certain Breaches.** Buyer agrees that, except for claims or recourse that cannot be waived under applicable Law, from and after the Closing, no claim shall be brought or maintained by or on behalf of Buyer or its Affiliates or Related Persons against any of Sellers or their Affiliates or their respective Related Persons (in their respective capacities as such), and no recourse shall be sought or granted against any of them, by virtue of or based upon any alleged misrepresentation or inaccuracy in or breach of any of the representations, warranties or covenants of Sellers set forth or contained in this Agreement and that, without these agreements, Sellers would not enter into this Agreement.

**12.6 Mutual Drafting.** This Agreement is the result of the joint efforts of Buyer and Sellers, and each of them and their respective counsel have reviewed this Agreement and each provision hereof has been subject to the mutual consultation, negotiation and agreement of the Parties, and the language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent, and therefore there shall be no construction against either Party based on any presumption of that Party's involvement in the drafting thereof.

12.7 Waiver of Bulk Sales Laws. Each of the Parties acknowledges and agrees that neither Seller will comply with, and hereby waives compliance by Sellers with, any “bulk sales”, “bulk transfer” or similar law relating to the transactions contemplated hereby.

12.8 Expenses. Within one (1) Business Day after receipt by the Escrow Agent of the Deposit, Sellers shall reimburse Buyer for \$250,000 of legal fees and expenses incurred by Buyer in connection with this Agreement and the transactions contemplated hereby (or, at Buyer’s direction, pay such amount directly to Buyer’s counsel). Except as otherwise provided herein, each of the Parties hereto shall pay its own expenses in connection with this Agreement and the transactions contemplated hereby, including any legal, accounting, banking, consulting and advisory fees, whether or not the transactions contemplated hereby are consummated. Buyer shall pay the cost of all Transaction Taxes payable upon or in connection with, and all surveys, title insurance policies, title and environmental consultant reports obtained in connection with this Agreement and the Ancillary Agreements and the transactions contemplated hereby and thereby.

12.9 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable Law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Agreement. In the event that any part of this Agreement is declared by any court or other judicial or administrative body to be null, void or unenforceable, said provision survives to the extent it is not so declared, and all of the other provisions of this Agreement remain in full force and effect only if, after excluding the portion deemed to be unenforceable, the remaining terms provide for the consummation of the transactions contemplated hereby in substantially the same manner as originally set forth at the later of the date this Agreement was executed or last amended in accordance with Section 12.11.

12.10 Notices. All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given (a) if personally delivered, on the date of delivery, (b) if delivered by express courier service of national standing (with charges prepaid), on the Business Day following the date of delivery to such courier service, (c) if deposited in the United States mail, first-class postage prepaid, on the fifth Business Day following the date of such deposit, (d) if delivered by facsimile, upon confirmation of successful transmission, (i) on the date of such transmission, if such transmission is completed at or prior to 5:00 p.m., local time of the recipient party on a Business Day, and (ii) on the next Business Day following the date of transmission, if such transmission is completed after 5:00 p.m., local time of the recipient party, on a Business Day or is transmitted on a day that is not a Business Day, or (e) if delivered by Internet mail (with a delivery report); provided that the relevant computer record indicates a full and successful transmission or no failure message is generated (i) on the date of such transmission, if such transmission is completed at or prior to 5:00 p.m., local time of the recipient party on a Business Day, and (ii) on the next Business Day following the date of transmission, if such transmission is completed after 5:00 p.m., local time of the recipient party or is transmitted on a day that is not a Business Day. All notices, demands and other communications hereunder shall be delivered as set forth below, or pursuant to such other instructions as may be designated in writing by the

party to receive such notice. All notices to be delivered by any party hereto shall also be delivered to the Official Committee of Unsecured Creditors as set forth below:

Notices to Sellers:

Fisker Automotive Holdings, Inc. and Fisker Automotive, Inc.  
5515 E. La Palma Ave.  
Anaheim, California 92807  
Attention: Marc Beilinson  
Telephone: (310) 990-2990  
Email: mbeilinson@beilinsonpartners.com

with a copy to (which shall not constitute notice):

Kirkland & Ellis LLP  
300 North LaSalle Street  
Chicago, Illinois 60654  
Attention: Ryan Preston Dahl  
Steve Toth  
Telephone: (312) 862-2000  
Facsimile: (312) 862-2200  
Email: ryan.dahl@kirkland.com  
steve.toth@kirkland.com

Notices to Buyer:

Wanxiang America Corporation  
88 Airport Road  
Elgin, Illinois 60123  
Attention: Paul Cumberland  
Telephone: (847) 628-8623  
Facsimile: (847) 931-4838  
Email: Pcumberland@wanxiang.com

with a copy to (which shall not constitute notice):

Sidley Austin LLP  
One South Dearborn  
Chicago, Illinois 60603  
Attention: Bojan Guzina and John R. Box  
Telephone: (312) 853-7000  
Facsimile: (312) 853-7036  
Email: bguzina@sidley.com and jbox@sidley.com

Notices to Official Committee of Unsecured Creditors:

with a copy to (which shall not constitute notice):



Brown Rudnick LLP  
One Financial Center  
Boston, MA 0211  
Attention: William Baldiga  
Telephone: (617) 856-8586  
Facsimile: (617) 856-8201  
Email: wbaldiga@brownrudnick.com

12.11 Amendments; Waivers. This Agreement may be amended or modified, and any of the terms, covenants, representations, warranties or conditions hereof may be waived, only by a written instrument executed by the Parties, or in the case of a waiver, by the Party waiving compliance. Any waiver by any Party of any condition, or of the breach of any provision, term, covenant, representation or warranty contained in this Agreement, in any one or more instances, is not deemed to be nor construed as a furthering or continuing waiver of any such condition, or of the breach of any other provision, term, covenant, representation or warranty of this Agreement.

12.12 Public Announcements. Prior to the Closing, no Party shall make any press release or public announcement concerning the transactions contemplated by this Agreement without the prior written approval of the other Parties, unless a press release or public announcement is required by Law or Order of the Bankruptcy Court. If any such announcement or other disclosure is required by Law or Order of the Bankruptcy Court, the disclosing Party shall give the non-disclosing Party prior notice of, and an opportunity to comment on, the proposed disclosure. The Parties acknowledge that Sellers will file this Agreement with the Bankruptcy Court in connection with obtaining the Sale Order and Bidding Procedures Order. The Parties shall not be restricted from making any public announcements or issuing any press releases after the Closing.

12.13 Entire Agreement. This Agreement and the Ancillary Agreements contain the entire understanding among the Parties with respect to the transactions contemplated hereby and supersede and replace all prior and contemporaneous agreements and understandings, oral or written, with regard to such transactions. Any documents and instruments delivered pursuant to any provision hereof are expressly made a part of this Agreement as fully as though completely set forth herein.

#### 12.14 Parties in Interest.

(a) Nothing in this Agreement is intended to confer any rights or remedies under or by reason of this Agreement on any Persons other than Sellers and Buyer and their respective successors and permitted assigns; provided that (i) each covenant or agreement of Buyer in this Agreement is expressly for the benefit of Sellers and their Affiliates and shall be enforceable by Sellers and their Affiliates (including the estate(s) of Sellers in the Seller Chapter 11 Cases) and (ii) any Related Person of Sellers or their Affiliates or any Related Person of Buyer or their Affiliates, as applicable, may enforce the terms of any provision of this Agreement in which such Related Person is referenced as a beneficiary of such provision.

(b) Without limiting or amending the obligations of Buyer hereunder, to the extent that any obligation or liability of Buyer hereunder is to be performed or paid by an Affiliate of Buyer, this Agreement shall constitute an obligation of Buyer to cause such Affiliate to perform. Nothing in this Agreement is intended to relieve or discharge the obligations or liability of any third Persons to Sellers or Buyer or their respective Affiliates. No provision of this Agreement gives any third Persons any right of subrogation or action over or against Sellers or Buyer or their respective Affiliates.

(c) Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement, express or implied, shall confer upon any current, former or future employee or other Related Person of Sellers or any of Sellers' Affiliates, or legal representative or beneficiary thereof or other Person, any rights or remedies, including any right to employment or continued employment with Buyer or any of its Affiliates for any specified period, or compensation or benefits or other terms and conditions of employment of any nature or kind whatsoever under this Agreement, or a right in any employee or beneficiary of such employee or other Person under an Employee Benefit Plan that such employee, beneficiary or other Person would not otherwise have under the terms of such plan.

12.15 DAMAGES. NO PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, SPECIAL, INDIRECT OR PUNITIVE DAMAGES (INCLUDING LOST PROFITS, LOSS OF PRODUCTION OR OTHER DAMAGES ATTRIBUTABLE TO BUSINESS INTERRUPTION) ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT. THE EXCLUSION OF CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, SPECIAL, INDIRECT OR PUNITIVE DAMAGES AS SET FORTH IN THE PRECEDING SENTENCE SHALL NOT LIMIT THE RIGHTS OF ANY PERSON ENTITLED TO INDEMNIFICATION UNDER THIS AGREEMENT TO ANY SUCH DAMAGES PAYABLE TO THIRD PERSONS IN CONNECTION WITH A MATTER FOR WHICH A PERSON ENTITLED TO INDEMNIFICATION UNDER THIS AGREEMENT.

12.16 WAIVER OF JURY TRIAL. THE PARTIES TO THIS AGREEMENT EACH HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO TRIAL OF ANY CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION (I) ARISING UNDER THIS AGREEMENT OR (II) IN ANY WAY CONNECTED WITH OR RELATED

OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO IN RESPECT OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY, OR OTHERWISE. THE PARTIES TO THIS AGREEMENT EACH HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT THE PARTIES TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OF A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

12.17 Headings. The Article and Section headings in this Agreement are for reference purposes only and do not affect the meaning or interpretation of this Agreement.

12.18 Construction. Unless the context of this Agreement otherwise requires, (a) words of any gender include the other gender, (b) words using the singular or plural number also include the plural or singular number, respectively, (c) the terms “hereof,” “herein,” “hereby,” and derivative or similar words refer to this entire Agreement as a whole and not to any other particular Article, Section or other subdivision, (d) the words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation,” (e) “shall,” “will,” or “agrees” are mandatory, and “may” is permissive, (f) “or” is not exclusive and (g) “deliver” or “delivery” shall not mean delivery of physical possession.

12.19 Currency. Except where otherwise expressly provided, all amounts in this Agreement are stated and shall be paid in United States currency, and without discount, rebate or reduction and subject to no counterclaim or offset (other than withholding Tax obligations required to be withheld by law), on the dates specified herein.

12.20 Time of Essence. Time is of the essence of this Agreement.

12.21 Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which constitute the same agreement. This Agreement and any signed agreement entered into in connection herewith or contemplated hereby, and any amendments hereto or thereto, to the extent signed and delivered by facsimile (or other electronic transmission), shall be treated in all manner and respects as an original contract and shall be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person.

## ARTICLE 13 DEFINITIONS

13.1 Certain Terms Defined. As used in this Agreement, the following terms have the following meanings:

“*Affiliate*” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under direct or indirect common control with such first Person where “control” means the possession, directly or indirectly, of the power to direct or cause the

direction of the management policies of a Person, through the ownership of voting securities, by contract, as trustee, executor or otherwise.

**“Affiliated Party”** means, any officer, director, governing body member, stockholder, partner or Affiliate, as applicable, of any Seller or any individual related by marriage or adoption to any such individual or any entity in which any such Person owns any beneficial interest.

**“Ancillary Agreement”** means collectively, any agreement to be executed by any of Sellers or any Affiliate thereof, on the one hand, and Buyer or any Affiliate thereof on the other hand, in connection with the transactions contemplated by this Agreement.

**“Auction”** means the auction conducted by Sellers pursuant to the Bidding Procedures Order.

**“Auction Date”** means the scheduled date of the Auction as set forth in the Bidding Procedures Order (or the date to which such Auction may be adjourned).

**“Bankruptcy Code”** means Title 11 of the United States Code.

**“Bankruptcy Court”** means the United States Bankruptcy Court for the District of Delaware or such other court having jurisdiction over the Seller Chapter 11 Cases originally administered in the United States Bankruptcy Court of the District of Delaware.

**“Bidding Procedures Motion”** means that certain Motion of Creditors’ Committee for Entry of Orders (I)(A) Approving Bid Procedures in Connection with the Sale of Certain Assets of the Debtors, (B) Scheduling Hearing to Consider Approval of the Sale of Assets, (C) Approving Form and Manner of Notice Thereof, (D) Authorizing and Directing Debtors to Enter Into Stalking Horse Purchase Agreement, (E) Approving Expense Reimbursement, and (F) Granting Related Relief; and (II) Authorizing Debtors to Obtain Replacement Post-Petition Secured Financing, Utilize Cash Collateral, Grant Adequate Protection, Modify the Automatic Stay and Scheduling a Final Hearing with Respect to Same, filed with the Bankruptcy Court on December 30, 2013.

**“Bidding Procedures Order”** means that certain Order (I) *Approving Bid Procedures in Connection With the Sale of Certain Assets of the Debtors*; (Ii) *Scheduling Hearing to Consider Approval of the Sale of Assets*; (III) *Approving Form and Manner of Notice Thereof*; (IV) *Authorizing the Debtors to Enter Into Stalking Horse Purchase Agreements*; (V) *Approving Expense Reimbursement*; and (VI) *Granting Related Relief* as entered by the Bankruptcy Court at Docket No. 508 on January 23, 2014.

**“Brownfields Development Agreement”** means that certain Brownfields Development Agreement dated May 28, 2010 by and between Fisker Automotive, Inc. and the Delaware Department of Natural Resources and Environmental Control.

**“Business Day”** means any day other than Saturday, Sunday and any day that is a legal holiday or a day on which banking institutions in New York, New York are authorized by Law or other Governmental action to close.

**“Business Records”** means all books, files and records of Sellers, including customer lists, historical customer files, circulation data, research records, subscription lists, information databases, market surveys, reports, plans, data, accounting and Tax records, training manuals, safety reports, Environmental Reports, maintenance schedules, operating and production records, inventory records, business plans, marketing materials and marketing and all other studies, documents and records but excluding any Retained Books and Records.

**“Buyer Fundamental Representations”** means the representations and warranties set forth in Section 4.1 (Corporate Organization), Section 4.2 (Authorization and Validity) and Section 4.8 (Brokerage).

**“Buyer Material Adverse Effect”** means any event, change or circumstance that, individually or in the aggregate, results or would reasonably be expected to result in a material adverse change or effect on the ability of Buyer to consummate the transactions contemplated by this Agreement.

**“CFIUS”** means the Committee on Foreign Investment in the United States.

**“Claims”** means all claims, defenses, cross claims, counter claims, debts, suits, remedies, liabilities, demands, rights, obligations, damages, expenses, rights to refunds, reimbursement, recovery, indemnification or contribution, attorneys’ or other professionals’ fees and causes of action whatsoever, whether based on or sounding in or alleging (in whole or in part) tort, contract, negligence, gross negligence, strict liability, bad faith, contribution, subrogation, respondeat superior, violations of federal or state securities laws, breach of fiduciary duty, any other legal theory or otherwise, whether individual, class, direct or derivative in nature, liquidated or unliquidated, fixed or contingent, whether at law or in equity, whether based on federal, state or foreign law or right of action, foreseen or unforeseen, mature or not mature, known or unknown, disputed or undisputed, accrued or not accrued, contingent or absolute (including all causes of action arising under Sections 510, 544 through 551 and 553 of the Bankruptcy Code or under similar state Laws, including fraudulent conveyance claims, and all other causes of action of a trustee and debtor-in-possession under the Bankruptcy Code) or rights of set-off.

**“Code”** means the Internal Revenue Code of 1986, as amended.

**“Committee”** means the official committee of unsecured creditors appointed in the Seller Chapter 11 Cases pursuant to Section 1102(a) of the Bankruptcy Code pursuant to that certain *Notice of Appointment of Official Creditor Committee*, filed by the U.S. Trustee on December 5, 2013.

**“Competing Transaction”** means any direct or indirect acquisition, sale, divestiture (including by merger, acquisition or other business combination involving any Seller), public offering, recapitalization, business combination or reorganization, whether in one transaction or a series of related transactions, of or involving all or substantially all the assets of any Seller, other than any such transaction or series of related transactions with Buyer or any Affiliates thereof.

**“Computer Software”** means any and all software (including computer programs, applications software and software implementations of algorithms), whether in source code or object code form, and all documentation related to the foregoing.

**“Consent”** means any consent, approval, authorization, qualification, waiver or notification of a Government or any other Person.

**“Contract”** means any written or oral contract, agreement, license, sublicense, lease, sublease, easement, mortgage, instruments, guaranties, commitment, undertaking or other similar arrangement, whether express or implied, to which any Seller is a party, other than the Permits and Real Property Leases.

**“Delaware Facility”** means the manufacturing facility located at 801 Boxwood Road, Wilmington, Delaware and the underlying land and related Improvements.

**“Delayed Acquired Assets”** means any Acquired Assets that this Agreement provides or contemplates are to be transferred to Buyer and that require the removal of a Legal Impediment or the receipt or delivery of a Consent for such transfer, which Legal Impediment is not removed or Consent is not obtained or delivered on or prior to the Closing Date.

**“Delayed Assumed Liabilities”** means any Assumed Liabilities that this Agreement provides or contemplates are to be assumed by Buyer and that require the removal of a Legal Impediment or the receipt or delivery of a Consent for such assumption, which Legal Impediment is not removed or Consent is not obtained or delivered on or prior to the Closing Date.

**“Designated Causes of Action”** (a) all commercial tort causes of action not related to the Acquired Assets or Assumed Liabilities, including all pending and potential causes of action against all present and former directors, officers and all other representatives of the Sellers, and any persons acting in concert with (or aiding and abetting) the same, (b) all causes of action arising under Part V of the Bankruptcy Code, (c) any rights of recovery against BMW Group under prepetition agreements with Sellers (by way of offset against BMW’s claims against the Sellers’ estates or affirmative recovery), and (d) all rights under and to insurance policies that may pertain to any of them.

**“DoE Facility”** means (a) that certain Loan Arrangement and Reimbursement Agreement, dated as of April 22, 2010, by and between the Sellers and the United States Department of Energy, (b) that certain Note Purchase Agreement, dated as of April 22, 2010, by and between Fisker Automotive, the United States Department of Energy and the Federal Financing Bank, a body corporate and instrumentality of the United States (“**FFB**”), (c) that certain Future Advance Promissory Note, dated as of April 22, 2010, in the maximum principal amount of \$169,300,000, issued by Fisker Automotive to FBB, (d) that certain Future Advance Promissory Note, dated as of April 22, 2010, in the maximum principal amount of \$359,360,000, issued by Fisker Automotive to FBB and (e) any collateral, security, agency or other related loan documents, in each case, as amended.

**“DoE Liens”** means Liens on any rights, title, interests or assets (tangible or intangible) of the Sellers pursuant to the DoE Facility.

**“Employee Benefit Plan”** means any “employee benefit plan” (as such term is defined in ERISA § 3(3)) and any other material employee benefit plan, program or arrangement of any kind maintained by Sellers or their ERISA Affiliates for the benefit of their employees or otherwise with respect to which Sellers or any of their ERISA Affiliates has any liability.

**“Environmental Laws”** means all Laws and Orders on or prior to the Closing Date, and all common law relating to pollution or protection of the environment, including the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sec. 9601 *et seq.*, as amended, the federal Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901 *et seq.*, as amended, and similar state statutes.

**“Environmental Permits”** means all environmental permits, authorizations, approvals, registrations, and licenses issued by any Government (and pending applications for the foregoing) pursuant to Environmental Laws.

**“Environmental Reports”** means any environmental report assessing compliance with any Environmental Laws, and any Phase I or II environmental site assessments or comparable environmental investigation reports, in each case which Sellers have received from an unaffiliated third party with respect to the Long-Term Business or the Transferred Real Property; provided, Environmental Reports do not include any safety, health and environmental audit reports, or internal investigation reports, prepared under the direction of Sellers’ legal department and privileged under the attorney-client privilege, attorney work-product privilege, or state or federal environmental self-auditing privilege or policy.

**“ERISA”** means the Employee Retirement Income Security Act of 1974, as amended.

**“ERISA Affiliate”** means any entity treated as a single employer with Sellers pursuant to Section 414 of the Code.

**“Escrow Agent”** means Wells Fargo Bank, National Association, the escrow agent under the Escrow Agreement.

**“Escrow Agreement”** means the escrow agreement by and among Sellers, Buyers and Escrow Agent, dated as of the date hereof.

**“Government”** means any United States federal, state or local, or any supra-national, foreign or non-U.S., government, political subdivision, governmental, regulatory or administrative authority, instrumentality, agency body or commission, self-regulatory organization, court, tribunal or judicial or arbitral body.

**“Hazardous Materials”** means any hazardous or toxic substance or waste or any contaminant or pollutant regulated under or for which liability or standards of care are imposed by Environmental Laws, including “hazardous substances” as currently defined by the Federal Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, and “hazardous wastes” as currently defined by the Resource Conservation and Recovery Act, as amended.

**“Hybrid DIP Facility”** means that certain Binding Commitment and Agreement for DIP Financing and Use of Cash Collateral dated November 22, 2013, by and among Fisker Automotive as the borrower, Fisker Holdings as the guarantor, and Hybrid Technology, LLC in its capacity as a post-petition lender to the Sellers, as amended, supplemented or otherwise modified from time to time.

**“Improvements”** means the buildings, improvements and structures now existing on the Real Property or demised under the Real Estate Leases, but only to the extent such buildings, improvements and structures constitute fixtures under applicable Law.

**“Intellectual Property Rights”** means all rights in and to the following: (i) patents (including all reissues, divisions, continuations, continuations-in-part and extensions thereof), patent applications, patent rights, patent applications, statutory invention registrations and documented unpatented invention disclosures, (ii) trademarks, service marks, trade names, service names, brand names, trade dress and logos and registrations and applications for registration thereof, together with all of the goodwill associated therewith, (iii) copyrightable works and works of authorship, and registrations and applications for registration thereof, (iv) internet domain names, (vi) trade secrets and confidential information, (vii) Computer Software and (viii) any other intellectual property rights.

**“IP Documentation”** means all documentation related to, and all tangible embodiments (including in electronic format) of, Intellectual Property Rights.

**“Law”** means any United States federal, state or local, or any non-U.S., laws, statutes, regulations, rules, codes or ordinances enacted, adopted, issued or promulgated by any Government (including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements) or common law of any Government.

**“Leased Real Property”** means the real property that is the subject of the Real Property Leases.

**“Legal Impediment”** means a legal impediment preventing or restricting the transfer of an Acquired Asset or the assumption of an Assumed Liability, as the case may be, as of the Closing Date.

**“Lien”** means any mortgage, pledge, charge, security interest, encumbrance, lien (statutory or other), hypothecation, restriction, easement, encroachment, security agreement, including any conditional sale or other title retention agreement and any lease having substantially the same effect as the foregoing, and (ii) any leasehold interest, license or other right in favor of a third party to use any portion of the Purchased Assets. For the avoidance of doubt, licenses of Intellectual Property Rights shall not constitute Liens.

**“Long-Term Business”** means the design, research and development, assembly, sourcing, manufacturing, marketing, sale and distribution of plug-in hybrid electric vehicles, in each case as conducted by Sellers during the twenty-four months prior to the date hereof.

**“Material Adverse Effect”** means any event, change or circumstance after December 30, 2013 that, individually or in the aggregate, results or would reasonably be expected to result in a



material adverse change or effect on the Acquired Assets or the value thereof, taken as a whole (in each case, to be interpreted with due consideration for the circumstances, condition and status of the Acquired Assets and Sellers (including the assets, employees and other resources (or absence thereof)) as of December 30, 2013 and the status of the Sellers as debtors under the Seller Chapter 11 Cases) or the ability of Sellers to consummate the transactions contemplated by this Agreement; provided that none of the following changes or effects, either alone or taken together with other changes or effects or whether arising directly or indirectly, shall be taken into account in determining whether there has been a Material Adverse Effect: (i) changes, or effects arising from or relating to changes, of Laws; (ii) changes arising from or relating to, or effects of, layoffs, strikes, work stoppages or other labor disturbances; (iii) changes arising from or relating to, or effects of, increases in costs of commodities or supplies; (iv) changes arising from or relating to, or effects of, the announcement of Buyer as the purchaser of the Acquired Assets and the identity of Buyer and their Affiliates, and their respective shareholders, officers, directors and employees; (v) changes, or effects arising from or relating to changes, affecting the industries in which the Sellers operate or operated, or the Acquired Assets were, are or may be used, generally (including any change, or any effect arising from or relating to any change); (vi) changes, or effects arising from or relating to changes, in economic, regulatory or political conditions generally; (vii) changes, or effects arising from or relating to changes, in financial, banking, or securities markets (including (A) any disruption of any of the foregoing markets, (B) any change in currency exchange rates, (C) any decline in the price of any security or any market index and (D) any increased cost of capital or pricing related to any financing); (viii) any failure, in and of itself, to achieve any projections, forecasts, estimates, performance metrics or operating statistics (whether or not shared with Buyer or its Affiliates); (ix) changes arising from or relating to, or effects of, any act(s) of war or of terrorism; (x) changes arising from or relating to, or effects of, weather or meteorological events; or (xi) changes arising from or relating to, or effects of, any motion, application, pleading or Order filed under or in connection with, or the commencement or existence of continuation of, the Seller Chapter 11 Cases or any motion, application, pleading or Order filed by any Government applicable to the electric vehicle industry generally.

**“Material IP License”** means (a) each license of or grant of material rights to Intellectual Property Rights granted by Sellers to a third party (other than non-exclusive, non-sublicensable licenses to customers, suppliers, vendors, distributors and dealerships granted in the ordinary course of business) and (b) each license of or grant of material rights to Intellectual Property Rights granted by a third party to Sellers (other than licenses to commercially available “off the shelf” software and licenses to Open Source Software), in each case in effect as of the date of this Agreement.

**“Open Source Software”** means any software that is subject to any “open source,” “copyleft,” or other similar types of license terms (including any GNU General Public License, Library General Public License, Lesser General Public License and the like and including any licensed approved by the Open Source Initiative and listed at <http://www.opensource.org/licenses>) or any other license that requires as a condition of use, modification or distribution of such Computer Software that such Computer Software or other Computer Software combined or distributed with it be (a) disclosed or distributed in source code form, (b) licensed for the purpose of making derivative works, (c) redistributable at no charge or (d) licensed subject to a patent non-assert or royalty-free patent license.

**“Order”** means any judgment, order, injunction, decree, writ, permit or license of any Government or any arbitrator.

**“Permits”** means the permits, authorizations, approvals, registrations, and licenses issued by any Government (and pending applications for the foregoing) to either of Sellers or with respect to the Acquired Assets or Assumed Liabilities.

**“Permitted Liens”** means (a) any Lien that is not extinguished by the Sale Order under applicable Law, it being understood that the Sale Order shall extinguish Liens to the maximum extent permissible under applicable Law, (b) any Lien that has priority over the DoE Liens or any other Liens held by Hybrid Tech Holdings, LLC, a Delaware limited liability company, as of November 22, 2013, (c) Liens for Taxes, assessments and Government or other similar charges, (d) purchase money Liens, (e) Liens of lessors, lessees, sublessors, sublessees, licensors, sublicensors, licensees or sublicensees arising under lease arrangements or license arrangements, (f) mechanics liens and similar Liens for labor, materials, or supplies (but, in each instance of clauses (b) through (f), not including Cure Costs), (g) zoning, building codes and other land use laws regulating the use or occupancy of Real Property or the activities conducted thereon that are imposed by any Government having jurisdiction over such Real Property, (h) easements, servitudes, covenants running with the land, conditions, restrictions and other similar matters affecting title to assets which either (x) the title company has agreed to affirmatively insure against loss caused thereby in the applicable title policy, by way of ALTA coverage or other affirmative coverage, reasonably acceptable to Buyer, or (y) do not materially impair the operation or occupancy of the assets in question as currently operated or occupied, (i) any state of facts shown by a current ALTA survey that do not materially and adversely effect the operation of the Real Property in question as currently operated, and (j) the Assumed Liabilities and Liens arising in connection therewith.

**“Person”** means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or Government.

**“Plan”** means a plan of liquidation for the Debtors consistent in all material respects with the terms hereof filed with the Court for confirmation.

**“Real Property”** means the Owned Real Property and the Leased Real Property.

**“Related Person”** means, with respect to any Person, all past, present and future directors, officers, members, managers, stockholders, employees, controlling persons, agents, professionals, financial advisors, restructuring advisors, attorneys, accountants, investment bankers, Affiliates or representatives of (i) any such Person and (ii) of any Affiliate of such Person; provided, however, that notwithstanding the foregoing, Sellers shall be deemed not to be “Related Persons” of each other.

**“Retained Books and Records”** means (i) all corporate seals, minute books, charter documents, corporate stock record books, original Tax and financial records and such other files, books and records to the extent they relate to any of the Excluded Assets or Excluded Liabilities or the organization or capitalization of Sellers or of any Affiliate of Sellers or the sale of all or a portion of the outstanding capital stock of either of Sellers or substantially all of their assets and

(ii) all books, files and records that would otherwise constitute a Business Record but for the fact that disclosure of such books, files or records would violate any legal constraints or obligations regarding confidentiality thereof or waive any attorney-client, work product or other legal privilege.

**“Rule” or “Rules”** means the Federal Rules of Bankruptcy Procedure.

**“Sale Hearing”** means the hearing at which the Bankruptcy Court will consider approving the sale of Acquired Assets and entering the Sale Order.

**“Seller Fundamental Representations”** means the representations and warranties set forth in Section 3.1 (Corporate Organization), Section 3.2 (Authorization and Validity) and Section 3.7 (Export Controls).

**“Sellers’ Knowledge”** or any other similar term or knowledge qualification means the present actual knowledge of Marc Beilinson, Barney Koehler and Samuel Koroglu.

**“Tax Return”** means any report, return, information return, filing or other information, including any schedules, exhibits or attachments thereto, and any amendments to any of the foregoing filed or required to be filed or maintained in connection with the calculation, determination, assessment or collection of any Taxes (including estimated Taxes).

**“Taxes”** means all taxes, however denominated, including any interest, penalties or additions to tax that may become payable in respect thereof, imposed by any Government, which taxes include all income taxes, Transaction Taxes, payroll and employee withholding, unemployment insurance, social security (or similar), sales and use, excise, franchise, gross receipts, occupation, real and personal property, stamp, transfer, workmen’s compensation, customs duties, registration, documentary, value added, alternative or add-on minimum, estimated, environmental (including taxes under Section 59A of the Code) and other obligations of the same or a similar nature, whether arising before, on or after the Closing Date, together with any interest or any penalty, addition to tax or additional amount imposed thereto.

**“Transferred Real Property”** means the Purchased Owned Real Property and the Assumed Real Property Leases.

**“WARN Act”** means the Worker Adjustment and Retraining Notification Act of 1988, as amended, and any similar state, local and other Laws.

13.2 All Terms Cross-Referenced. Each of the following terms is defined in the Section set forth opposite such term:

<u>Term</u>	<u>Section</u>
Acquired Assets	1.1
Additional Asset Conveyance Documents	2.3(a)(vi)
Additional Liabilities Assumption Documents	2.3(a)(vii)
Agreement	Preamble
Allocation Schedule	8.3

<u>Term</u>	<u>Section</u>
Assigned Contracts	1.1(k)
Assigned Permits	1.1(l)
Assumed Liabilities	1.3
Assumed Real Property Leases	1.1(b)
Assumption Notice	1.5(c)
Bidding Procedures	7.2
Business Contracts	1.5(a)
Buyer	Preamble
Closing	2.2
Closing Date	2.2
Confidential Information	11.4(b)
Cure Costs	1.3(b)
Deposit	2.5
Designated Affiliate	1.1
Designated Contract Obligations	1.5(c)
Designated Contracts	1.5(c)
DIP Loan Payment Amount	2.1
Equity Consideration	2.1
Excluded Assets	1.2
Excluded Contracts	1.2(c)
Excluded Liabilities	1.4(a)
Excluded Real Property Leases	1.2(a)
Existing Plan	Recitals
Expense Reimbursement	10.4(a)
Fisker Automotive	Preamble
Fisker Holdings	Preamble
Government Contract	3.7
Inventory	1.1(e)
IP Licenses	1.1(i)
Material IP Licenses	3.5(a)
Non-Seller Subsidiary	3.1
Owned IP	1.1(j)
Owned Real Property	1.1(a)
Party/Parties	Preamble
Petition Date	Recitals
Proration Period	8.4
Purchase Price	2.1
Purchased Owned Real Property	1.1(a)
Real Property Leases	1.1(b)
Rejection Notice	1.5(c)
Required Agreements	6.2
Restricted Names	11.3
Retention Period	1.5(c)
Sale Order	7.1

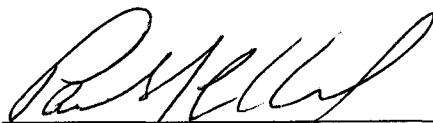
<u>Term</u>	<u>Section</u>
Seller/Sellers	Preamble
Seller Chapter 11 Cases	Recitals
Sellers' Insurance Policies	11.2
Seller Parties	10.4(c)
Specified Employees	6.8
Termination Date	10.2(b)
Termination Order	10.2(h)
Transaction Taxes	8.1
Transferred Employee	6.8

*(Signatures are on the following page.)*

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

**BUYER:**

WANXIANG AMERICA CORPORATION

By:   
Name: *Paul G. Cumberland*  
Title: *Director of Investments*

**SELLERS:**

FISKER AUTOMOTIVE HOLDINGS, INC.

By: \_\_\_\_\_  
Name:  
Title:

FISKER AUTOMOTIVE, INC.

By: \_\_\_\_\_  
Name:  
Title:

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


**BUYER:**

WANXIANG AMERICA CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

**SELLERS:**

FISKER AUTOMOTIVE HOLDINGS, INC.

By:  \_\_\_\_\_  
Name: Marc Berlinson  
Title: CFO

FISKER AUTOMOTIVE, INC.

By:  \_\_\_\_\_  
Name: Marc Berlinson  
Title: CFO

## TERM SHEET FOR EQUITY CONSIDERATION

**Form of Entity:** Delaware corporation or limited liability company (the “Company”).

**Classes of Equity:**

- Preferred Equity with a liquidation preference equal to the total cash equity investment in the Company (which, for the avoidance of doubt, will include any amounts that are paid to satisfy, or reduce the amount of, any indebtedness arising prior to the Closing and secured by a Permitted Lien described in sections (b) through (f) of the definition of such term in the Asset Purchase Agreement) plus cumulative dividends of 12% per annum. Amounts received by the Company from time to time from proceeds realized from Designated Causes of Action will be applied as received to redeem the maximum number of shares of preferred stock that can be redeemed with such proceeds at a redemption price equal to the liquidation preference of such shares at the time of any such redemption.
- Common Equity.

**Equity Consideration:** 20% of Common Equity outstanding on the Closing Date.

**Governance:** Board of Directors to be elected by holders of Preferred Equity and Common Equity. There will be no cumulative voting for directors.

**Drag-Along Rights:** Holders of Equity Consideration will be required to sell their Common Equity or otherwise participate in any sale of all or substantially all of the assets or change of control transaction approved by the holders of a majority of the Preferred Equity and the holders of a majority of the Common Equity.

**Tag-Along Rights:** Holders of Equity Consideration will have tag-along rights on a pro rata basis in connection with any sale or transfer by a holder of Common Equity that results in a change in control of the Common Equity.

**Rights of First Offer/Refusal:** Other holders of Common Equity will have a right of first offer prior to any proposed sale or transfer of the Equity Consideration; provided, however, that if an offer is made, the holder of the Equity Consideration does not accept the offer and the holder of the Equity Consideration does not sell the Equity Consideration for a price greater than the price offered within a reasonable period after the offer, then all subsequent sales or transfers of the Equity Consideration will be subject to a right of first refusal.

**Transfers to Competitors:** Equity Consideration cannot be transferred to competitors of the Company or their affiliates or such competitors without approval of the Board of Directors or holders of a majority of the Common Equity (other than the Equity Consideration).

**Financial Information:** Holders of Equity Consideration will be entitled to receive quarterly and annual financial statements.



**Preemptive Rights:** Holders of Equity Consideration will have pre-emptive rights to purchase their pro rata share (based on percentage ownership of Common Equity) of additional Common Equity that is sold for cash, subject to customary exceptions.

**Piggyback Registration Rights:** Holders of Equity Consideration will have piggyback registration rights, subject to pro rata cutbacks in the underwriters' discretion, in a registered IPO.

**Amendment No. 1 to Asset Purchase Agreement**

This Amendment No. 1 to Asset Purchase Agreement (this "Amendment"), dated as of February 12, 2014, is entered into by and among Fisker Automotive Holdings, Inc., a Delaware corporation ("Fisker Holdings"), and Fisker Automotive, Inc., a Delaware corporation ("Fisker Automotive") and, together with Fisker Holdings, "Sellers" and each a "Seller"), on the one hand, and Wanxiang America Corporation, a Kentucky corporation ("Buyer"), on the other hand, in connection with that certain Asset Purchase Agreement dated as of January 27, 2014 (the "Purchase Agreement") by and among the same parties. Certain terms used in this Amendment and not defined in the body of this Amendment shall have the meanings given to such terms in the Purchase Agreement.

1. **Amendment Provisions.** As of the date hereof, the Purchase Agreement shall be amended as follows.

(a) Section 1.3 of the Purchase Agreement is hereby amended by inserting the following immediately before the period at the end of the first sentence thereof:

“provided; however, that with respect to Assumed Liabilities described in Section 1.3(g), the making of the payment contemplated in Section 2.4(a) shall constitute full and complete satisfaction of the Buyer and the Designated Affiliate’s obligations with respect thereto and the Buyer and such Designated Affiliate shall have no other obligations with respect to such Assumed Liabilities.”

(b) Section 1.3(e) of the Purchase Agreement is hereby amended to delete the word “and” after the semicolon. Section 1.3(f) of the Purchase Agreement is hereby amended to delete the final period and insert in lieu thereof “; and”. A new Section 1.3(g) is hereby inserted in the Purchase Agreement immediately following Section 1.3(f) and reading:

“(g) (i) allowed Claims against the Debtors’ estates, other than Claims arising from the Hybrid DIP Facility, entitled to priority under section 503(b) or 507(a) of the Bankruptcy Code, to the extent allowed at any time (whether prior to or after the Closing Date) and (ii) the fees or expenses incurred by the Sellers or any successor (including a plan trustee or administrator) in connection with the administration, wind down, and dissolution of the Debtors’ estates pursuant to a Plan, in an aggregate amount (for (i) and (ii) combined), not to exceed Eight Million Dollars (\$8,000,000) (the *Assumed Priority Claims Cap*).”

(c) Clause (i) of Section 2.1 of the Purchase Agreement is hereby amended and restated in its entirety to read:

“(i) an amount in cash equal to (A) Twenty-Seven Million Two Hundred Fifty Thousand Dollars (\$27,250,000) (the “*Purchase Price*”), plus (B) the amount, if any, by which the aggregate amount of (x) allowed Claims that are Assumed Liabilities pursuant to Section 1.3(g)(i) and (y) fees and expenses that are Assumed Liabilities pursuant to Section 1.3(g)(ii), as finally determined by the Bankruptcy Court, is less than the Assumed Priority Claims Cap without any further action or obligation on any party, plus”

(d) Clause (a) of Section 2.4 is hereby amended and restated in its entirety to read:

“(a) pay an aggregate amount of cash equal to (i) the cash component of the Purchase Price plus (ii) the DIP Loan Payment Amount plus (iii) in full satisfaction of (x) the Assumed Liabilities pursuant to Section 1.3(g) and (y) the amount required to be paid pursuant to subclause (B) of clause (i) of Section 2.1, an amount equal to the Assumed Priority Claims Cap to Sellers, by wire transfer of immediately available funds to an account or accounts designated in writing by Sellers no less than two (2) Business Days prior to the Closing Date.”

2. **Miscellaneous.**

(a) Except as expressly provided in this Amendment, each of the terms and provisions of the Purchase Agreement and Ancillary Agreements shall remain in full force and effect in accordance with their respective terms. The amendments set forth herein are limited precisely as written and shall not be deemed to be an amendment or waiver to any other term or condition of the Purchase Agreement or any of the documents referred to therein. From and after the date of this Amendment, all references in the Purchase Agreement or in any of the schedules, instruments or agreements executed in connection therewith, to the “Purchase Agreement” or to “this Agreement” shall be deemed to be references to the Purchase Agreement, as amended hereby.

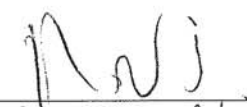
(b) This Amendment shall be governed by, and construed in accordance with, Section 10.2 of the Purchase Agreement. This Amendment may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same instrument. Facsimile or pdf. signatures shall be acceptable and binding.

\* \* \* \* \*

**IN WITNESS WHEREOF**, the parties hereto have executed this Amendment No. 1 to Asset Purchase Agreement on the day and year first above written.

**BUYER:**

**WANXIANG AMERICA  
CORPORATION**

By:   
Name: PW Ni  
Title:

**SELLERS:**

**FISKER AUTOMOTIVE HOLDINGS,  
INC.**

By:   
Name: \_\_\_\_\_  
Title:

**FISKER AUTOMOTIVE, INC.**

By:   
Name: \_\_\_\_\_  
Title:

**Amendment No. 2 to Asset Purchase Agreement**

This Amendment No. 2 to Asset Purchase Agreement (this “Amendment”), dated as of February 17, 2014, is entered into by and among Fisker Automotive Holdings, Inc., a Delaware corporation (“Fisker Holdings”), and Fisker Automotive, Inc., a Delaware corporation (“Fisker Automotive” and, together with Fisker Holdings, “Sellers” and each a “Seller”), on the one hand, and Wanxiang America Corporation, a Kentucky corporation (“Buyer”), on the other hand, in connection with that certain Asset Purchase Agreement dated as of January 27, 2014 (the “Purchase Agreement”), as amended by Amendment No. 1 to Asset Purchase Agreement, dated February 12, 2014, by and among the same parties. Certain terms used in this Amendment and not defined in the body of this Amendment shall have the meanings given to such terms in the Purchase Agreement.

1. **Amendment Provisions.** As of the date hereof, the Purchase Agreement shall be amended as follows.

(a) Section 2.1 of the Purchase Agreement is hereby amended and restated to read as follows:

“2.1 Consideration. The aggregate consideration for the sale and transfer of the Acquired Assets is (i) an amount in cash equal to (A) One Hundred Seventeen Million Sixty Thousand Dollars (\$117,060,000) (the “***Purchase Price***”), plus (B) the amount, if any, by which the aggregate amount of (x) allowed Claims that are Assumed Liabilities pursuant to Section 1.3(g)(i) and (y) fees and expenses that are Assumed Liabilities pursuant to Section 1.3(g)(ii), as finally determined by the Bankruptcy Court, is less than the Assumed Priority Claims Cap, without any further action or obligation on any party, plus (ii) the assumption by Buyer at the Closing of the Assumed Liabilities, plus (iii) a 20% common equity interest in the Designated Affiliate, as more fully described in the term sheet attached as Exhibit A hereto (the “***Equity Consideration***”) plus (iv) an amount in cash (the “***DIP Loan Payment Amount***”) equal to the lesser of (x) the outstanding principal balance of the Hybrid DIP Facility at Closing and (y) Nine Million One Hundred Forty Thousand Dollars (\$9,140,000).”

(b) The last sentence of Section 2.2 of the Purchase Agreement is hereby amended and restated to read as follows:

[“The Parties shall use all reasonable best efforts to consummate the Closing as promptly as possible, subject to the terms and conditions of this Agreement.”]<sup>1</sup>

(c) A new Section 9.1(f) of the Purchase Agreement is hereby inserted to read as follows:

“(f) Any applicable waiting period (and any extension thereof) under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, relating to the transactions

---

<sup>1</sup> [Note: This provision remains subject to ongoing review]

contemplated hereby shall have expired or been earlier terminated and any waiting periods (and any extension thereof) or approvals required under any applicable foreign antitrust Laws, if any, relating to the transactions contemplated hereby shall have expired (or been earlier terminated) or obtained, as applicable.”

(d) The following Section 11.5 is hereby added to the Purchase Agreement:

“11.5 Antitrust Notification.

(a) Sellers and Buyer shall, (i) as promptly as practicable, but in no event later than [ ], 2014, file with the United States Federal Trade Commission (the “**FTC**”) and the United States Department of Justice (“**DOJ**”), the notification form required pursuant to the Hart Scott Rodino Antitrust Improvements Act of 1976, as amended (the “**HSR Act**”) for the transactions contemplated by this Agreement, which form shall specifically request early termination of the waiting period prescribed by the HSR Act, (ii) use their respective commercially reasonable efforts to cooperate with each other in determining as promptly as practicable whether any filings are required to be made with, or consents, permits, authorizations, waivers, clearances, approvals, and expirations or terminations of waiting periods are required to be obtained from, under any applicable foreign anti-trust Laws (collectively “**Required Foreign Anti-Trust Approvals**”) in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and (iii) as promptly as practicable, but in no event later than [ ], 2014, make any filings related to or seeking any Required Foreign Anti-Trust Approvals.

(b) Each of Sellers, and Buyer shall furnish to the other such necessary information and reasonable assistance as the other may request in connection with its preparation of any filing or submission that is necessary under the HSR Act or in connection with obtaining any Required Foreign Anti-Trust Approvals. Each party shall use its commercially reasonable efforts to obtain any clearance required under the HSR Act and Required Foreign Anti-Trust Approvals for the consummation of the transactions contemplated hereby as promptly as practicable; provided that for purposes hereof “commercially reasonable efforts” of Buyer shall not include opposing any motion or action for a temporary, preliminary or permanent injunction against the transactions contemplated hereby and provided further that, notwithstanding anything to the contrary in this Section 11.5 or elsewhere in this Agreement, in no event shall Buyer, or any of their respective Affiliates, be obligated in connection with the receipt of any consent, permit, authorization, ruling or approval from any Governmental or required under applicable Law, to propose or agree to accept any undertaking or condition, to enter into any consent decree, to make any divestiture or accept any operational restriction, or take or commit to make payments or enter into any commercial arrangement, or commit, or commit to take, any action.

(c) Sellers and Buyer shall keep each other apprised of the status of any material communications with, and any inquiries or requests for additional information from, any Government.

(d) The Parties hereto commit to instruct their respective counsel to cooperate with each other to facilitate and expedite the identification and resolution of any issues arising under the HSR Act or in connection with obtaining Required Foreign Anti-Trust Approvals at the earliest practicable dates. Such cooperation shall include instructing counsel (i) to keep each other appropriately informed of material communications from and to personnel of the reviewing Government and (ii) to confer with each other regarding appropriate contacts with and response to personnel of such Government and the content of any such contacts or presentations. Neither Sellers nor Buyer shall participate in any material meeting or discussion with any Government related to filing under the HSR Act or obtaining Required Foreign Anti-Trust Approvals in connection with the transactions contemplated hereby without giving the other party prior notice of the meeting or discussion and, to the extent permitted by the relevant Government, the opportunity to attend and participate in such meeting or discussion (which, at the request of either Sellers or Buyer, shall be limited to outside antitrust counsel only).

2. **Miscellaneous.**

(a) Except as expressly provided in this Amendment, each of the terms and provisions of the Purchase Agreement and Ancillary Agreements shall remain in full force and effect in accordance with their respective terms. The amendments set forth herein are limited precisely as written and shall not be deemed to be an amendment or waiver to any other term or condition of the Purchase Agreement or any of the documents referred to therein. From and after the date of this Amendment, all references in the Purchase Agreement or in any of the schedules, instruments or agreements executed in connection therewith, to the "Purchase Agreement" or to "this Agreement" shall be deemed to be references to the Purchase Agreement, as amended hereby.

(b) This Amendment shall be governed by, and construed in accordance with, Section 10.2 of the Purchase Agreement. This Amendment may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same instrument. Facsimile or pdf. signatures shall be acceptable and binding.

\* \* \* \* \*

**IN WITNESS WHEREOF**, the parties hereto have executed this Amendment No. 2 to Asset Purchase Agreement on the day and year first above written.

**BUYER:**

**WANXIANG AMERICA  
CORPORATION**

By: \_\_\_\_\_

Name:

Title:

**SELLERS:**

**FIKSKER AUTOMOTIVE HOLDINGS,  
INC.**

By: \_\_\_\_\_

Name:

Title:

**FIKSKER AUTOMOTIVE, INC.**

By: \_\_\_\_\_

Name:

Title:



**EXHIBIT B**

**[Redline] Revised APA**

---

---

ASSET PURCHASE AGREEMENT

by and among

FISKER AUTOMOTIVE HOLDINGS, INC.

and

FISKER AUTOMOTIVE, INC.

AS SELLERS

and

WANXIANG AMERICA CORPORATION

AS BUYER

Dated as of January ~~16~~27, 2014

---

## TABLE OF CONTENTS

	Page
<b>ARTICLE 1 PURCHASE AND SALE OF THE ACQUIRED ASSETS .....</b>	<b>2</b>
1.1 ——— Transfer of Acquired Assets .....	2
1.2 ——— Excluded Assets .....	4
1.3 ——— Assumption of Assumed Liabilities .....	6
1.4 ——— Excluded Liabilities .....	7
1.5 ——— Assigned Contracts and Excluded Contracts .....	10
1.6 ——— Delayed Conveyance of Certain Property .....	11
1.7 ——— Deemed Consents and Cures .....	12
1.8 ——— Other Assets .....	13
1.9 ——— Delaware Facility .....	13
1.10 ——— Limited Warranty Program .....	13
1.11 ——— Inaccuracies of Sellers' Representations and Warranties .....	13
<b>ARTICLE 2 CONSIDERATION; CLOSING AND DELIVERIES .....</b>	<b>14</b>
2.1 ——— Consideration .....	14
2.2 ——— Closing .....	14
2.3 ——— Sellers' Deliveries .....	14
2.4 ——— Buyer's Deliveries .....	16
2.5 ——— Deposit .....	16
<b>ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF SELLERS .....</b>	<b>16</b>
3.1 ——— Corporate Organization .....	16
3.2 ——— Authorization and Validity .....	17
3.3 ——— Litigation .....	17
3.4 ——— Environmental Matters .....	17
3.5 ——— Intellectual Property .....	18
3.6 ——— Brokerage .....	19
3.7 ——— Export Controls .....	19
<b>ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF BUYER .....</b>	<b>19</b>
4.1 ——— Corporate Organization .....	19
4.2 ——— Authorization and Validity .....	19
4.3 ——— Litigation .....	19
4.4 ——— No Conflict or Violation .....	19
4.5 ——— Consents, Approvals and Notifications .....	20
4.6 ——— Availability of Funds .....	20
4.7 ——— Adequate Assurances Regarding Assigned Contracts .....	20
4.8 ——— Brokerage .....	20
<b>ARTICLE 5 COVENANTS OF SELLERS .....</b>	<b>20</b>

5.1	Actions Before Closing Date .....	20
5.2	Obligations of Sellers after Entry of Sale Order .....	21
5.3	Access to Properties and Records; Confidentiality .....	21
5.4	Rejection of Assigned Contracts .....	21
5.5	Further Assurances .....	22
<b>ARTICLE 6 COVENANTS OF BUYER.....</b>		<b>22</b>
6.1	Actions Before Closing Date .....	22
6.2	Consents .....	22
6.3	Adequate Assurances Regarding Assigned Contracts .....	23
6.4	Cure of Defaults .....	23
6.5	Availability of Business Records .....	23
6.6	Buyer's Obligation to Perform; Cooperation with Sellers' Enforcement of Rights .....	24
6.7	Further Assurances .....	24
6.8	Employment Matters; Cooperation Regarding Service Providers and Employee Matters .....	24
<b>ARTICLE 7 BANKRUPTCY PROCEDURES.....</b>		<b>25</b>
7.1	Bankruptcy Actions .....	25
7.2	Bidding Procedures .....	26
7.3	Approval .....	26
7.4	Plan Consideration .....	26
<b>ARTICLE 8 TAXES AND FEES .....</b>		<b>26</b>
8.1	Taxes Related to Purchase of Assets .....	26
8.2	Cooperation on Tax Matters .....	27
8.3	Allocation of Purchase Price and Purchase Price Allocation Forms .....	27
8.4	Tax Adjustments .....	27
<b>ARTICLE 9 CONDITIONS PRECEDENT TO PERFORMANCE BY PARTIES.....</b>		<b>28</b>
9.1	Conditions Precedent to Performance by Sellers and Buyer .....	28
9.2	Conditions Precedent to Performance by Sellers .....	29
9.3	Conditions Precedent to Performance by Buyer .....	29
9.4	Waiver of Condition; Frustration of Conditions .....	30
<b>ARTICLE 10 TERMINATION AND EFFECT OF TERMINATION .....</b>		<b>31</b>
10.1	Right of Termination .....	31
10.2	Termination .....	31
10.3	Effect of Termination .....	32
10.4	Expense Reimbursement .....	33
10.5	Release of Deposit Upon Termination .....	34

**ARTICLE 11 ADDITIONAL AGREEMENTS.....34**

11.1	Litigation Support .....	34
11.2	Insurance Matters .....	35
11.3	Name Change .....	35
11.4	Access to Books and Records; Confidentiality .....	35

**ARTICLE 12 MISCELLANEOUS .....36**

12.1	Successors and Assigns .....	36
12.2	Governing Law; Jurisdiction .....	36
12.3	Warranties Exclusive .....	37
12.4	No Survival of Representations and Warranties .....	38
12.5	No Recourse for Certain Breaches .....	38
12.6	Mutual Drafting .....	38
12.7	Waiver of Bulk Sales Laws .....	39
12.8	Expenses .....	39
12.9	Severability .....	39
12.10	Notices .....	39
12.11	Amendments; Waivers .....	41
12.12	Public Announcements .....	41
12.13	Entire Agreement .....	41
12.14	Parties in Interest .....	42
12.15	DAMAGES .....	42
12.16	WAIVER OF JURY TRIAL .....	42
12.17	Headings .....	43
12.18	Construction .....	43
12.19	Currency .....	43
12.20	Time of Essence .....	43
12.21	Counterparts .....	43

**ARTICLE 13 DEFINITIONS.....43**

13.1	Certain Terms Defined .....	43
13.2	All Terms Cross-Referenced .....	51

**ARTICLE 1 PURCHASE AND SALE OF THE ACQUIRED ASSETS .....2**

1.1	Transfer of Acquired Assets .....	2
1.2	Excluded Assets .....	4
1.3	Assumption of Assumed Liabilities .....	6
1.4	Excluded Liabilities .....	7
1.5	Assigned Contracts and Excluded Contracts .....	10
1.6	Delayed Conveyance of Certain Property .....	11
1.7	Deemed Consents and Cures .....	12
1.8	Other Assets .....	13
1.9	Delaware Facility .....	13

1.10	Limited Warranty Program .....	13
1.11	Inaccuracies of Sellers' Representations and Warranties .....	13
<b>ARTICLE 2 CONSIDERATION; CLOSING AND DELIVERIES .....</b>		<b>14</b>
2.1	Consideration .....	14
2.2	Closing .....	14
2.3	Sellers' Deliveries .....	14
2.4	Buyer's Deliveries .....	16
2.5	Deposit .....	16
<b>ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF SELLERS .....</b>		<b>16</b>
3.1	Corporate Organization .....	16
3.2	Authorization and Validity .....	17
3.3	Litigation .....	17
3.4	Environmental Matters .....	17
3.5	Intellectual Property .....	18
3.6	Brokerage .....	19
3.7	Export Controls .....	19
<b>ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF BUYER .....</b>		<b>19</b>
4.1	Corporate Organization .....	19
4.2	Authorization and Validity .....	19
4.3	Litigation .....	19
4.4	No Conflict or Violation .....	19
4.5	Consents, Approvals and Notifications .....	20
4.6	Availability of Funds .....	20
4.7	Adequate Assurances Regarding Assigned Contracts .....	20
4.8	Brokerage .....	20
<b>ARTICLE 5 COVENANTS OF SELLERS .....</b>		<b>20</b>
5.1	Actions Before Closing Date .....	20
5.2	Obligations of Sellers after Entry of Sale Order .....	21
5.3	Access to Properties and Records; Confidentiality .....	21
5.4	Rejection of Assigned Contracts .....	21
5.5	Further Assurances .....	22
<b>ARTICLE 6 COVENANTS OF BUYER .....</b>		<b>22</b>
6.1	Actions Before Closing Date .....	22
6.2	Consents .....	22
6.3	Adequate Assurances Regarding Assigned Contracts .....	23
6.4	Cure of Defaults .....	23
6.5	Availability of Business Records .....	23

6.6	Buyer's Obligation to Perform; Cooperation with Sellers' Enforcement of Rights .....	24
6.7	Further Assurances.....	24
6.8	Employment Matters; Cooperation Regarding Service Providers and Employee Matters .....	24
<b>ARTICLE 7 BANKRUPTCY PROCEDURES.....</b>		<b>25</b>
7.1	Bankruptcy Actions .....	25
7.2	Bidding Procedures .....	26
7.3	Approval .....	26
7.4	Plan Consideration .....	26
<b>ARTICLE 8 TAXES AND FEES .....</b>		<b>26</b>
8.1	Taxes Related to Purchase of Assets .....	26
8.2	Cooperation on Tax Matters .....	27
8.3	Allocation of Purchase Price and Purchase Price Allocation Forms .....	27
8.4	Tax Adjustments .....	27
<b>ARTICLE 9 CONDITIONS PRECEDENT TO PERFORMANCE BY PARTIES.....</b>		<b>28</b>
9.1	Conditions Precedent to Performance by Sellers and Buyer .....	28
9.2	Conditions Precedent to Performance by Sellers.....	29
9.3	Conditions Precedent to Performance by Buyer .....	29
9.4	Waiver of Condition; Frustration of Conditions.....	30
<b>ARTICLE 10 TERMINATION AND EFFECT OF TERMINATION .....</b>		<b>31</b>
10.1	Right of Termination.....	31
10.2	Termination.....	31
10.3	Effect of Termination.....	32
10.4	Expense Reimbursement.....	33
10.5	Release of Deposit Upon Termination.....	34
<b>ARTICLE 11 ADDITIONAL AGREEMENTS.....</b>		<b>34</b>
11.1	Litigation Support.....	34
11.2	Insurance Matters.....	35
11.3	Name Change.....	35
11.4	Access to Books and Records; Confidentiality.....	35
<b>ARTICLE 12 MISCELLANEOUS .....</b>		<b>36</b>
12.1	Successors and Assigns.....	36
12.2	Governing Law; Jurisdiction.....	36
12.3	Warranties Exclusive .....	37
12.4	No Survival of Representations and Warranties .....	38

12.5	No Recourse for Certain Breaches.....	38
12.6	Mutual Drafting .....	38
12.7	Waiver of Bulk Sales Laws.....	39
12.8	Expenses .....	39
12.9	Severability .....	39
12.10	Notices .....	39
12.11	Amendments; Waivers.....	41
12.12	Public Announcements .....	41
12.13	Entire Agreement.....	41
12.14	Parties in Interest.....	42
12.15	DAMAGES.....	42
12.16	WAIVER OF JURY TRIAL.....	42
12.17	Headings .....	43
12.18	Construction.....	43
12.19	Currency.....	43
12.20	Time of Essence .....	43
12.21	Counterparts .....	43
<b>ARTICLE 13 DEFINITIONS.....</b>		<b>43</b>
13.1	Certain Terms Defined.....	43
13.2	All Terms Cross-Referenced.....	51



## EXHIBITS

Exhibit A .....	Equity Consideration Term Sheet
Exhibit B .....	Form of Bill of Sale
Exhibit C .....	Form of Assignment and Assumption Agreement
Exhibit D .....	Form of Sellers Secretary's Certificate
Exhibit E .....	Form of Intellectual Property Assignment Agreement
Exhibit F .....	Form of Non-Foreign Status Certificate
Exhibit G .....	Form of Buyer Secretary's Certificate
Exhibit H .....	Form of Sale Order
Exhibit I .....	Form of Buyer Officer's Certificate
Exhibit J .....	Form of Sellers Officer's Certificate

## SCHEDULES

<u>Schedule 1.1(b)</u> .....	Real Property Leases
<u>Schedule 1.1(i)</u> .....	IP Licenses
<u>Schedule 1.1(k)</u> .....	Certain Assigned Contracts
<u>Schedule 1.2(a)</u> .....	Excluded Real Property Leases
<u>Schedule 1.2(c)</u> .....	Excluded Contracts
<u>Schedule 1.2(r)</u> .....	Certain Excluded Assets
<u>Schedule 1.5(c)</u> .....	Designated Contracts

## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “**Agreement**”), dated as of January ~~16~~ 27, 2014, is made by and among Fisker Automotive Holdings, Inc., a Delaware corporation (“**Fisker Holdings**”), and Fisker Automotive, Inc., a Delaware corporation (“**Fisker Automotive**” and, together with Fisker Holdings, “**Sellers**” and each a “**Seller**”), on the one hand, and Wanxiang America Corporation, a Kentucky corporation (“**Buyer**”), on the other hand. Buyer and Sellers are sometimes referred to in this Agreement, individually as a “**Party**” and collectively as the “**Parties**”. Capitalized terms used in this Agreement are defined or cross-referenced in Article 13.

## BACKGROUND INFORMATION

WHEREAS, Sellers filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court on November 22, 2013 (the “**Petition Date**”) which are being jointly administered under the caption *In re Fisker Automotive Holdings, Inc.*, Case No. 13-13087 (the “**Seller Chapter 11 Cases**”);

WHEREAS, Sellers filed a Joint Plan of Liquidation, dated December 10, 2013, with the Bankruptcy Court in connection with the Seller Chapter 11 Cases (the “**Existing Plan**”);

WHEREAS, on the terms and subject to the conditions set forth in this Agreement, Buyer desires to purchase from Sellers, and Sellers desire to sell to Buyer, the Acquired Assets, in a sale authorized by the Bankruptcy Court pursuant to, *inter alia*, Sections 105, 363, and 365 of the Bankruptcy Code;

WHEREAS, on the terms and subject to the conditions set forth in this Agreement, Buyer also desires to assume, and Sellers desire to assign and transfer to Buyer, the Assumed Liabilities;

WHEREAS, Buyer and Sellers desire to enter into this Agreement providing for the purchase by Buyer and sale by Sellers of the Acquired Assets and the assumption by Buyer of the Assumed Liabilities;

WHEREAS, the Parties acknowledge and agree that the purchase by Buyer of the Acquired Assets and the assumption by Buyer of the Assumed Liabilities are being made at arm’s length and in good faith and without intent to hinder, delay or defraud creditors of Sellers or their Affiliates;

WHEREAS, the boards of directors of Sellers have approved this Agreement and the transactions contemplated hereby (including the purchase and sale of the Acquired Assets and the assumption by Buyer of the Assumed Liabilities) upon the terms and conditions set forth in this Agreement and in accordance with the Delaware General Corporation Law; and

WHEREAS, the board of directors of Buyer has approved this Agreement and the transactions contemplated hereby (including the purchase and sale of the Acquired Assets and the assumption by Buyer of the Assumed Liabilities) upon the terms and conditions set forth in this Agreement and in accordance with the Kentucky Business Corporation Act.

NOW, THEREFORE, in consideration of the foregoing and their respective representations, warranties, covenants and undertakings herein contained, and intending to be legally bound, Sellers and Buyer hereby agree as follows.

## ARTICLE 1 PURCHASE AND SALE OF THE ACQUIRED ASSETS

1.1 Transfer of Acquired Assets. At, and effective as of, the Closing, and upon the terms and subject to the conditions set forth in this Agreement and the Sale Order, Sellers shall sell, assign, transfer, convey and deliver to an Affiliate of Buyer designated by Buyer prior to the Closing (the “**Designated Affiliate**”) (or to one or more subsidiaries of the Designated Affiliate), and Buyer or the Designated Affiliate (or one or more subsidiaries of the Designated Affiliate) shall purchase and accept from Sellers, all of Sellers’ right, title and interest in, to and under all the Acquired Assets, free and clear of all Claims and Liens (other than Permitted Liens and Assumed Liabilities) to the extent provided by the Bankruptcy Code (including Sections 105 and 363(f) thereof) or by Order of the Bankruptcy Court (including the Sale Order). Acquired Assets shall be allocated among and conveyed to the Designated Affiliate (or to one or more subsidiaries of the Designated Affiliate) in accordance with Buyer’s written designation. For purposes of this Agreement, “**Acquired Assets**” means all of the properties, assets, interests, goodwill and rights, wherever located, of Sellers, including the following (but specifically excluding in all cases the Excluded Assets):

(a) all of the real property owned by Sellers, together with any Improvements thereon, and all easements, rights of way, servitudes, tenements, appurtenances, privileges and other rights with respect thereto, owned by Sellers, including, subject to Section 1.9, the Delaware Facility (collectively, the “**Owned Real Property**”), other than any Owned Real Property that is an Excluded Asset, if any (the “**Purchased Owned Real Property**”);

(b) all of Sellers’ rights under leases, subleases, licenses or occupancy agreements of real property listed on Schedule 1.1(b) (the “**Real Property Leases**”), other than Excluded Real Property Leases (the “**Assumed Real Property Leases**”);

(c) all notes receivable, accounts receivable and other receivables of Sellers as of the Closing Date;

(d) all credits, prepaid expenses, deferred charges, advance payments, security deposits and prepaid items of Sellers as of the Closing Date;

(e) all inventory of any kind or nature, whether or not prepaid, and wherever located, held or owned by Sellers on the Closing Date, including all (i) semi-finished and finished goods, work-in-process, goods on consignment, raw materials, components, parts, service parts, packaging materials, operating supplies, fuels and other similar materials (the “**Inventory**”) and (ii) rights of Sellers, to the extent transferable, to the warranties received from suppliers with respect to the foregoing;

(f) all of Sellers' (i) machinery, manufacturing equipment, engineering equipment and tooling and (ii) rights, to the extent transferable, to the warranties and licenses received from manufacturers and sellers of the foregoing;

(g) all other tangible personal property and interests therein owned by Sellers (or which they have a legal right to use) as of the Closing Date, including all equipment, furniture and furnishings of Sellers;

(h) to the extent owned by Sellers, any computer hardware, equipment and peripherals of any kind and of any platform, including desktop and laptop personal computers, handheld computerized devices, servers, mid-range and mainframe computers, process control and distributed control systems, but specifically excluding any Computer Software that may be located on the foregoing;

(i) all of Sellers' rights under each license of Intellectual Property by Sellers to a third party and all licenses of Intellectual Property Rights by a third party to Sellers (other than licenses to Open Source Software and any license that constitutes an Excluded Contract) including each such license listed on Schedule 1.1(i) ("**IP Licenses**");

(j) all Intellectual Property Rights owned by Sellers, together with all rights to use, recover and collect for any past, present or future infringements or misappropriations of Intellectual Property Rights (the "**Owned IP**") and all IP Documentation that is owned by or licensed to, and in the possession of Sellers;

(k) all of Sellers' rights under the Contracts other than the Excluded Contracts, including those listed on Schedule 1.1(k) (such Contracts, together with the Assumed Real Property Leases and the IP Licenses, the "**Assigned Contracts**");

(l) subject to obtaining all necessary Consents, all of Sellers' rights under the Permits (the "**Assigned Permits**");

(m) any and all insurance proceeds, condemnation awards or other compensation in respect of loss or damage to any Acquired Asset to the extent occurring after November 22, 2013, and all rights and Claims of the Sellers to any such insurance proceeds, condemnation awards or other compensation that have not been paid by the Closing;

(n) all of Sellers' manufacturer identifier numbers issued by the National Highway Traffic Safety Administration;

(o) copies of all Business Records;

(p) all telephone, telex and telephone facsimile numbers and other directory listings utilized by Sellers primarily in connection with the Business;

(q) all Claims or other rights of, or benefits to, Sellers whether arising out of events occurring prior to, on or after the Closing Date, including any rights under or pursuant to all warranties, representations, indemnities, agreements to hold harmless and guarantees made by

suppliers, manufacturers or contractors but, in each of the foregoing cases of this clause (q), only to the extent related to either Acquired Assets or Assumed Liabilities (including any claims for past infringement or misappropriation);

(r) all Employee Benefit Plans, the assets thereof and any assets of Sellers held under or with respect to any Employee Benefit Plan (including all Claims, refunds, adjustments, proceeds and recoveries, and any other rights and benefits under such Employee Benefit Plans), except, in each case, for any such Employee Benefit Plan that is excluded pursuant to Section 1.8;

(s) all Claims of Sellers or of their respective bankruptcy estates of any nature or description, arising or based in whole or in part upon events, actions or inaction occurring prior to the Closing Date (and whether or not asserted prior to the Closing Date), except for the Designated Causes of Action;

(t) all cash (including restricted cash) and cash equivalents, marketable securities, commercial paper, checks in transit and undeposited checks of Sellers;

(u) all intercompany receivables of any Seller from the other Seller or any subsidiary of any Seller;

(v) all robots, inventory, car parts and back-up servers and related hardware, in each case, located at the Delaware Facility; and

(w) all other properties, assets, goodwill and rights of whatever kind and nature, tangible or intangible, that are owned by Sellers as of the Closing Date that are not Excluded Assets.

Notwithstanding anything in this Agreement to the contrary, this Agreement shall not constitute or be deemed an agreement to, and Sellers shall not be obligated to, assign, transfer, convey or deliver (or cause to be assigned, transferred, conveyed or delivered) to Buyer, any Delayed Acquired Asset or Delayed Assumed Liability until such time as all Legal Impediments are removed or all Consents necessary for the legal transfer or assumption thereof are obtained or delivered in respect of such Delayed Acquired Asset or Delayed Assumed Liability, as applicable. Each of the Parties agrees that the Delayed Acquired Assets shall be assigned, transferred, conveyed and delivered, and any Delayed Acquired Liabilities shall be assumed, in accordance with the provisions of Section 1.6. Following such assignment, transfer, conveyance and delivery of any Delayed Acquired Asset, or the assumption of any Delayed Assumed Liability, the applicable Delayed Acquired Asset or Delayed Assumed Liability shall be treated for all purposes of this Agreement as an “Acquired Asset” or as an “Assumed Liability,” as the case may be, and for all purposes hereof, unless otherwise waived in writing by Sellers, “Acquired Assets” shall not include any Delayed Acquired Asset and “Assumed Liabilities” shall not include any “Delayed Assumed Liability” until the Legal Impediments are removed or all Consents necessary for the legal transfer or assumption thereof are obtained or delivered in respect of such Delayed Acquired Asset or Delayed Assumed Liability.

1.2 Excluded Assets. Notwithstanding anything to the contrary in this Agreement (including Section 1.1), the Acquired Assets do not include any right, property, interest or asset

of Sellers listed or described in clause (a) through (s) of this Section 1.2 (all such rights, properties, interests and assets not being acquired by Buyer are herein referred to as the “**Excluded Assets**”):

(a) the Real Property Leases set forth on Schedule 1.2(a), which Schedule 1.2(a) may be amended in accordance with Section 1.5 (the “**Excluded Real Property Leases**”), if any;

(b) all bank accounts of Sellers and their Affiliates;

(c) all Contracts set forth on Schedule 1.2(c), which Schedule 1.2(c) may be amended in accordance with Section 1.5 (such Contracts, together with the Excluded Real Property Leases, the “**Excluded Contracts**”), if any;

(d) all Claims or other rights of, or benefits to, Sellers relating to any litigation, arbitration or other proceeding involving Sellers pending, threatened, adjudicated, settled or instituted prior to or as of the Closing Date in each case, to the extent related to any Excluded Asset or any Excluded Liability;

(e) all Retained Books and Records;

(f) all Claims, refunds, adjustments, proceeds and recoveries, and any other rights of and benefits to, Sellers under or with respect to (i) any Excluded Asset and (ii) any proceeding before any Government relating to the period prior to the Closing to the extent related to any Excluded Asset or Excluded Liability;

(g) all losses, loss carry forwards and rights to receive refunds, credits, Claims, refunds and credits from net operating loss carry backs or other Tax asset, in all cases, with respect to any and all Taxes of Sellers, including interest receivable with respect to any of the foregoing;

(h) all Causes of Action (as defined in the Plan) to the extent related to any Excluded Asset or any Excluded Liability;

(i) all Designated Causes of Action;

(j) all shares of capital stock or other equity interests of Sellers or the Non-Seller Subsidiary;

(k) all rights of, or benefits to, Sellers arising under this Agreement and the Ancillary Agreements;

(l) all Claims or other rights of, or benefits to, Sellers, whether arising out of events occurring prior to, on or after the Closing Date, including any rights under or pursuant to all warranties, representations, indemnities, agreements to hold harmless and guarantees made by suppliers, manufacturers and contractors but, in each of the foregoing cases of this clause (l), only to the extent they relate to either Excluded Liabilities or Excluded Assets;

(m) all Claims or other rights of, or benefits to, Sellers against or with respect to any director, officer, stockholder or other Related Person of, or any former director, officer, stockholder or other Related Person of, Sellers (whether or not asserted prior to the Closing Date), including any Claims or other rights of, or benefits to, Sellers against any such Person or any third party for indemnification, contribution, subrogation or reimbursement for expenses advanced or indemnification provided to any director, officer, stockholder or other Related Person of, or any former director, officer, stockholder or other Related Person of, Sellers, but in each of the foregoing cases of this clause (m), only as to such director, officer, stockholder or other Related Person in his or her capacity as such;

(n) all assets subject to the International Traffic in Arms Regulations of the U.S. Department of State, if any;

(o) any asset that Buyer elects to exclude pursuant to Sections 1.8 or 1.11;

(p) any Contract that Buyer elects to exclude pursuant to Section 1.5;

(q) the Delaware Facility, if Buyer so elects pursuant to Section 1.9;

(r) all assets set forth on Schedule 1.2(r), which Schedule 1.2(r) may be amended in accordance with Section 1.8 or Section 1.9; and

(s) all directors and officers liability insurance policies of Sellers (and any rights, Claims or proceeds thereunder).

1.3 Assumption of Assumed Liabilities. At, and effective as of, the Closing, Sellers shall assign, transfer, convey and deliver to Buyer or the Designated Affiliate (or to one or more subsidiaries of the Designated Affiliate), and Buyer or the Designated Affiliate (or one or more subsidiaries of the Designated Affiliate) shall irrevocably assume and agree to pay, perform, discharge and fulfill, and if applicable, comply with, all of the Assumed Liabilities in accordance with their respective terms. For the purposes of this Agreement, “**Assumed Liabilities**” shall mean only the following obligations, liabilities and commitments of Sellers:

(a) all liabilities and obligations of Sellers under the Assigned Contracts that are first incurred and arise after the Closing Date;

(b) all cure costs required to be paid pursuant to Section 365 of the Bankruptcy Code in connection with the assumption and assignment of the Assigned Contracts (“**Cure Costs**”);

(c) the sponsorship and Liabilities of the Employee Benefit Plans, if any, except for any such Employee Benefit Plan that is excluded pursuant to Section 1.8;

(d) the Designated Contract Obligations;

(e) all liabilities and obligations of Sellers under the Assigned Permits first arising after the Closing Date; and

(f) all liabilities and obligations of Sellers for (i) Transaction Taxes payable in connection with the transactions contemplated by this Agreement, (ii) Taxes and assessments relating to the Delaware Facility for all periods (and portions thereof) through and including the Closing Date or, if the Delaware Facility is an Acquired Asset, then Taxes and assessments relating to the Delaware Facility for all periods, (iii) other Taxes relating to the Acquired Assets for periods (or portions thereof) beginning on the day after the Closing Date, in the case of (i), (ii) and (iii), in accordance with Article 8 and (iv) the obligations of Sellers assumed by Buyer pursuant to Section 1.10.

Subject to Section 12.5, this Section 1.3 shall in no way limit Claims or defenses Buyer may have against any Person other than Sellers. The transactions contemplated by this Agreement shall in no way expand the rights or remedies of any third party against Buyer or Sellers as compared to the rights and remedies which such third party would have had against Sellers absent the Seller Chapter 11 Cases had Buyer not assumed such Assumed Liabilities.

#### 1.4 Excluded Liabilities.

(a) Buyer shall not assume or be obligated to pay, perform, discharge, fulfill or comply with any liability or obligation of any of Sellers, direct or indirect, known or unknown, absolute or contingent, not expressly assumed by Buyer pursuant to Section 1.3 (all such liabilities and obligations not being assumed being herein called the “***Excluded Liabilities***”), and the Excluded Liabilities shall include, to the extent not expressly assumed by Buyer pursuant to Section 1.3, the following:

(i) all obligations and liabilities to the extent arising in connection with or related to the Excluded Assets;

(ii) all obligations and liabilities (A) with respect to Transferred Employees that arise or are incurred prior to the Closing Date or (B) with respect to any current, former and future employees and other Related Persons of Sellers who do not become Transferred Employees that arise or are incurred at any time, (without limiting the generality of the foregoing provisions in any way, such Excluded Liabilities under this Section 1.4(a)(ii) include (x) all obligations and liabilities under any employment, severance, retention, termination or other agreement or arrangement or under any Law (including the WARN Act), (y) all obligations and liabilities arising out of or related to employment, compensation, benefits, other terms and conditions of employment or termination of employment, in each case of or by Sellers, and (z) all obligations and liabilities of Sellers with respect to payroll, vacation, sick leave, workers’ compensation or occupational disease claims or benefits, unemployment benefits, pension benefits, employee stock option or profit sharing plans, health plans or benefits or any other employee plans or benefits or other compensation of any kind to any employee, former employee or other Related Person of Sellers);

(iii) all obligations and liabilities of Sellers under this Agreement or any Ancillary Agreement;



(iv) all obligations and liabilities of Sellers relating to litigation or arbitration or other proceedings with, or to indemnify or advance expenses to, directors, officers, stockholders or other Related Persons of Sellers or former directors, officers, stockholders or other Related Persons of Sellers;

(v) all obligations and liabilities relating to any litigation, arbitration, Claim, action, investigation, suit or other proceeding (A) involving Sellers, or related to the Acquired Assets or Assumed Liabilities, pending, threatened, adjudicated, settled or instituted prior to or as of the Closing Date or (B) to the extent related to facts, actions, omissions, circumstances or conditions existing, occurring or accruing prior to or as of the Closing Date;

(vi) all accounts payable and other obligations and liabilities of Sellers arising prior to the Petition Date, excluding Cure Costs required to be paid pursuant to Section 365 of the Bankruptcy Code in connection with the assumption and assignment of the Assigned Contracts (but, for the avoidance of doubt, expressly excluding any such liabilities referred to in Section 1.3);

(vii) all Taxes of Sellers (other than Taxes assumed pursuant to Section 1.3(f));

(viii) all obligations and liabilities of Sellers with respect to intercompany accounts payable or accrued liabilities to Sellers (or to any of their respective Related Persons);

(ix) all obligations and liabilities of Sellers in respect of indebtedness for borrowed money;

(x) all obligations and liabilities of Sellers with respect to services, products, or service or product warranties provided, designed, manufactured, marketed, sold or distributed prior to the Closing (including all obligations and liabilities of Sellers with respect to design or manufacturing defects or product liability occurrences), in each case, whether discovered prior to, on or after the Closing Date;

(xi) all obligations and liabilities of Sellers (including fines, penalties, damages and any investigatory, corrective or remedial obligation) arising under Environmental Laws and relating to (A) any Excluded Asset, (B) any property, facility or location or (C) any operations, events, conditions or circumstances occurring or existing on or prior to the Closing Date, including any release, threatened release, treatment, storage, disposal, or arrangement for disposal of or any exposure of any Person to Hazardous Materials occurring or existing on or prior to the Closing Date (whether or not constituting a breach of any representation or warranty herein);

(xii) all obligations and liabilities for any legal accounting, investment banking, brokerage or similar fees or expenses incurred by Sellers or any Affiliate

of Sellers in connection with, resulting from or attributable to the transactions contemplated by this Agreement;

(xiii) all obligations and liabilities of Sellers arising out of facts and circumstances in existence prior to the Closing and from or related to any breach, default under, failure to perform, torts related to the performance of, violation of law, infringements or indemnities under, guaranties pursuant to and overcharges, underpayments or penalties on the part of Sellers under any of the Assigned Contracts prior to the Closing except for the applicable Cure Costs;

(xiv) all obligations and liabilities arising from or related to the operation or condition of the Acquired Assets or the Assumed Liabilities prior to the Closing or facts, actions, omissions, circumstances or conditions existing, occurring or accruing with respect to the Acquired Assets or the Assumed Liabilities prior to the Closing;

(xv) all obligations and liabilities resulting from, caused by or arising out of, or which relate to, directly or indirectly, the conduct of Sellers or ownership or lease of any properties or assets or any properties or assets previously used by Sellers or any Affiliate of Sellers, or other actions or omissions of Sellers or any of their Affiliates, including any amounts due or that may become due or owing under the Assumed Contracts with respect to the period prior to the Closing (except for Cure Costs);

(xvi) all accounts payable of Sellers arising prior to the Closing (except for Cure Costs);

(xvii) all obligations and liabilities resulting from, caused by or arising out of, or that relate to the business dealings or relationship between Sellers and any dealers under Contract, Law or otherwise or the termination of any dealer agreement or other arrangement or understanding with any dealer (except for Cure Costs);

(xviii) all obligations and liabilities arising out of or resulting from non-compliance with any Law by Sellers;

(xix) all obligations and liabilities for infringement or misappropriation arising from the development, modification or use of any Intellectual Property Rights prior to the Closing;

(xx) all obligations and liabilities in respect of royalty payments to any third party or other fees or payments relating to the IP Licenses arising prior to the Closing (except for Cure Costs); and

(xxi) all obligations and liabilities arising from state, provincial or bankruptcy law theories of recovery, including fraudulent transfer.

(b) In the event of any conflict between the terms of Section 1.3 and the terms of this Section 1.4, the terms of Section 1.3 will prevail.

(c) The Parties acknowledge and agree that the disclosure of any obligation or liability on any Schedule to this Agreement shall not create an Assumed Liability or other liability of Buyer, except where such disclosed obligation has been expressly assumed by Buyer as an Assumed Liability in accordance with the provisions of Section 1.3.

#### 1.5 Assigned Contracts and Excluded Contracts.

(a) From and after the date hereof until the Business Day immediately preceding the date of the Sale Hearing, Sellers shall not reject or alter (or attempt to alter) the terms of any executory Contract (including IP Licenses) or any executory Real Property Lease to which any Seller is a party (collectively, the “**Business Contracts**”) unless otherwise agreed to in writing by Buyer. Sellers shall provide timely and proper written notice of the motion seeking entry of the Sale Order to all parties to the Business Contracts and take all other actions necessary to cause such Business Contracts to be assumed by Sellers and assigned to Buyer pursuant to Section 365 of the Bankruptcy Code to the extent that such Business Contracts are Assigned Contracts at Closing.

(b) On or prior to the date that is two (2) Business Days before the date of the Auction, Buyer may designate in a writing delivered to Sellers any Assigned Contract otherwise included as an Acquired Asset to be an Excluded Real Estate Lease or Excluded Contract, as applicable, for all purposes of this Agreement or any Business Contract otherwise included as an Excluded Contract to be an Assigned Contract for all purposes of this Agreement and, upon any such designation, Schedule 1.1(b), Schedule 1.1(k), Schedule 1.2(a) and Schedule 1.2(c), as applicable, shall automatically be deemed amended, as applicable, to reflect such designation. To the extent Buyer designates any Assigned Contract as an Excluded Real Property Lease or Excluded Contract, as applicable, Sellers may in their discretion elect to reject such Excluded Contract and the Sale Order shall authorize, but not direct, Sellers to reject such Excluded Contract. Buyer shall pay and be solely responsible for all costs of moving any Acquired Asset from the Leased Real Property designated as Excluded Assets, and for any damages to the Leased Real Property caused by Buyer, its Affiliates or its agents or representatives in connection with such move.

(c) On or prior to the date that is two (2) Business Days before the date of the Auction, Buyer shall deliver to Sellers Schedule 1.5(c), which shall comprise a list of Business Contracts that Buyer wishes to designate as “**Designated Contracts**”. The Designated Contracts shall be automatically deemed removed from Schedule 1.1(b), Schedule 1.1(k), Schedule 1.2(a) and Schedule 1.2(c), as applicable and shall not be Assigned Contracts or Excluded Contracts as of the Closing Date. Except as otherwise provided herein, Sellers shall not seek to reject the Designated Contracts for a period of sixty (60) days following the Closing Date (the “**Retention Period**”). Buyer may, at its sole discretion and at any time during the Retention Period, deliver to Sellers one (1) or more written notices (each, a “**Rejection Notice**”) notifying Sellers of Buyer’s intent not to assume any Designated Contract(s). Upon receipt of such a Rejection Notice,

notwithstanding anything in this Agreement to the contrary, the Designated Contract(s) identified in such Rejection Notice shall automatically be deemed Excluded Contracts for all purposes under this Agreement and Schedule 1.1(b) Schedule 1.1(k), Schedule 1.2(a) and Schedule 1.2(c), as applicable, shall automatically be deemed to have been amended, as applicable, to reflect such designation. To the extent Buyer delivers a Rejection Notice with respect to a Designated Contract, Sellers may in their discretion elect to or elect not to reject such Designated Contract; provided that Buyer shall not be responsible for any liabilities or obligations under such Designated Contract accruing from and after the date on which such Rejection Notice is delivered to Sellers. Buyer may, at its sole discretion and at any time during the Retention Period, deliver to Sellers one (1) or more written notices (each, an “**Assumption Notice**”) requesting assumption and assignment of any Designated Contract(s). Upon receipt of any such Assumption Notice, Sellers shall take all actions reasonably necessary to seek to assume and assign to Buyer, and Buyer shall take all actions reasonably necessary to seek to assume, (at Buyer’s cost and expense) pursuant to Section 365 of the Bankruptcy Code the Designated Contract(s) set forth in the applicable Assumption Notice, and Buyer shall be responsible for satisfying any Cure Costs relating to such Designated Contracts. Notwithstanding anything in this Agreement to the contrary, on the date any Assumption Notice is delivered to Sellers with respect to any Designated Contract pursuant to this Section 1.5(c), such Designated Contract shall automatically be deemed an Assigned Contract for all purposes under this Agreement. With respect to any Designated Contract, Buyer shall perform all of Sellers’ obligations under such Designated Contract and shall compensate Sellers for all costs and expenses, in each case, first arising after the Closing Date and actually incurred by Sellers after the Closing under such Designated Contract until the earliest of the date such Designated Contract is assigned to Buyer, the date Buyer delivers a Rejection Notice relating to such Designated Contract and the last day of the Retention Period (the “**Designated Contract Obligations**”). Immediately following the expiration of the Retention Period, all Designated Contracts for which Sellers have not received either a Rejection Notice or an Assumption Notice shall automatically be deemed Excluded Contracts for all purposes under this Agreement. The covenants set forth in this Section 1.5(c) shall survive the Closing.

#### 1.6 Delayed Conveyance of Certain Property.

(a) To the extent permitted by Law and to the extent otherwise permissible in light of any Legal Impediment or required Consent, following the Closing, Sellers shall hold each Delayed Acquired Asset or Delayed Assumed Liability for the use and benefit, insofar as commercially reasonably practicable and to the extent it may lawfully do so, of Buyer (at the expense of Buyer). In addition, to the extent permitted by Law and to the extent otherwise permissible in light of any Legal Impediment or required Consent, Sellers shall take such other actions (as reasonably requested by, and at the sole expense of, Buyer) in order to place Buyer, insofar as commercially reasonably practicable and to the extent Sellers may lawfully do so, in the same position as if such Delayed Acquired Asset or such Delayed Assumed Liability had been transferred, assigned, conveyed, delivered or assumed as contemplated hereby and so that all the benefits and burdens relating to such Delayed Acquired Asset or such Delayed Assumed Liability, including possession, use, risk of loss, potential for gain, and dominion, control and command over

such asset, are to inure, from and after the Closing Date, to Buyer. To the extent permitted by Law and to the extent otherwise permissible in light of any Legal Impediment or required Consent, Buyer shall be entitled to, and shall be responsible for, the management and the benefits and burdens of any Delayed Acquired Asset or any Delayed Assumed Liability not yet transferred to or assumed by it as a result of the failure to remove any Legal Impediment or obtain any required Consent on or prior to the Closing, and, subject to the other provisions of this Agreement (including Section 6.2), the Parties agree to use commercially reasonable efforts to cooperate and coordinate with respect to obtaining any Consent or removing any Legal Impediment, including by providing any financial information and pro forma financial information of the relevant Party and its Affiliates reasonably required by the party from whom a Consent is sought to be obtained or from whom a Legal Impediment is sought to be removed. Each of the Parties agrees that, until a Delayed Assumed Liability is assumed by Buyer, Buyer shall indemnify and hold harmless Sellers and their Related Persons from such Delayed Assumed Liability. Nothing herein shall require Sellers or their Related Persons to expend any money or commence any litigation to obtain the removal of any Legal Impediment or obtain any required Consent.

(b) If and when the Legal Impediments and the Consents, the failure to remove or the absence of which caused the deferral of the transfer or assumption of any Acquired Asset or Assumed Liability pursuant to Section 1.6(a), are removed or obtained, as the case may be, the transfer and assumption of the applicable Acquired Asset or Assumed Liability shall be promptly effected in accordance with the terms of this Agreement and any applicable Ancillary Agreements, without the payment of additional consideration.

(c) In connection with Sellers' retention of an Acquired Asset or Assumed Liability due to the deferral of the transfer or assumption of such Acquired Asset or Assumed Liability pursuant to this Section 1.6, none of Sellers or their Related Persons shall be obligated to expend any money, unless the necessary funds are advanced by Buyer.

(d) In the event that at any time or from time to time, any Party shall receive or otherwise possess any asset that is acquired by, or retained by, any other Party pursuant to this Agreement, such Party shall promptly transfer, or cause to be transferred, such asset to the Party so entitled thereto. Prior to any such transfer, the Party receiving or possessing such asset shall hold such asset in trust for any such other Party.

1.7 Deemed Consents and Cures. For all purposes of this Agreement (including all representations and warranties of Sellers contained herein), Sellers shall be deemed to have obtained all required consents in respect of the assignment of any Assigned Contract if, and to the extent that, pursuant to the Sale Order or other Bankruptcy Court Order or applicable Law, Sellers are authorized to assume and assign such Assigned Contracts to Buyer pursuant to Section 365 of the Bankruptcy Code without any third-party consent and any applicable Cure Costs have been satisfied by Buyer, on behalf of Sellers, as provided in this Agreement.

1.8 Other Assets. On or prior to the date that is two (2) Business Days before the Auction Date, Buyer shall notify Sellers in writing of any Employee Benefit Plan or any other Acquired Asset (other than, in the case of any other Acquired Assets, any Contract) that Buyer desires to designate as Excluded Assets, and upon delivery of such notice to Sellers, all such Acquired Assets shall be automatically deemed to be Excluded Assets and added to Schedule 1.2(r), and none of such assets or properties shall be sold or assigned to Buyer pursuant hereto.

1.9 Delaware Facility. On or prior to the date that is two (2) Business Days before the Auction Date, Buyer shall be able to perform any environmental due diligence on the Delaware Facility it so desires so long as such due diligence does not violate the terms and conditions of the Brownfields Development Agreement, and shall be granted reasonable access to the Delaware Facility in connection therewith. On or prior to the date that is two (2) Business Days before the Auction Date, Buyer may notify Sellers in writing that Buyer elects to designate the Delaware Facility as an Excluded Asset, and upon delivery of such notice to Sellers, the Delaware Facility shall be automatically deemed to be an Excluded Asset and added to Schedule 1.2(r), and shall not be sold or assigned to Buyer pursuant hereto. If Buyer does not elect to designate the Delaware Facility as an Excluded Asset, and Buyer or an Affiliate of Buyer sells the Delaware Facility to a third party purchaser prior to the second anniversary of the Closing Date, then, after Buyer and its Affiliates are reimbursed from the proceeds of such sale for any and all of their costs and expenses incurred after the Closing related to the Delaware Facility, including costs and expenses related to ownership and maintenance of, and improvements to, the Delaware Facility, costs and expenses incurred by Buyer or any of its Affiliates in connection with the marketing and sale of the Delaware Facility, including costs and expenses of advisors, brokers, consultants, attorneys, accountants and other third parties incurred by Buyer or any of its Affiliates in connection with such sale, and Taxes and closing costs payable by Buyer and its Affiliates in connection with such sale, and after the satisfaction of any indebtedness necessary to release any Liens senior to the DoE Liens, the remaining proceeds shall be applied as follows: (a) Buyer shall be entitled to the first \$8,500,000 of such proceeds; (b) Sellers shall be entitled to the next \$1,500,000 of such proceeds, to the extent such proceeds, in the aggregate, exceed \$8,500,000; (c) Buyer shall be entitled to 60% and Sellers shall be entitled to 40% of the next \$5,000,000 of proceeds, to the extent such proceeds, in the aggregate, exceed \$10,000,000 and (d) Buyer shall be entitled to 50% and Sellers shall be entitled to 50% of any additional proceeds, to the extent such proceeds, in the aggregate, exceed \$15,000,000.

1.10 Limited Warranty Program. Buyer hereby assumes and agrees to honor the obligations of Sellers under the Sellers' limited warranties on "Karma" sedans existing as of the date hereof in an amount not to exceed (i) \$2,000 per each vehicle warrantied or (ii) \$400,000 in the aggregate; provided that, at such point in time when Buyer and its Affiliates have restarted commercial production of the "Karma" sedan (or substantially equivalent model under a different name) and upon the production of the 250th such vehicle, the aggregate obligation set forth in clause (ii) will be increased by \$1,000,000.

1.11 Inaccuracies of Sellers' Representations and Warranties. If any of Sellers' representations and warranties is untrue or incorrect in any material respect on and as of the Closing Date (except for representations and warranties made as of a specified date, which shall be true and correct as of that date) and such failure to be true and correct in any material respect

(a) materially increases Buyer's costs of assuming or owning any Acquired Asset or operating the Long-Term Business after the Closing or (b) materially increases the scope or amount of any Assumed Liability, then Buyer shall have the right to designate any such Acquired Asset as an Excluded Asset and to designate any such Assumed Liability as an Excluded Liability, provided that in no event shall Buyer have the right under this Section 1.11 to designate the liabilities set forth in Section 1.3(f)(ii) (Delaware Facility Taxes) as Excluded Liabilities. If Buyer makes any such designation, then (i) such previously considered Acquired Asset shall be automatically deemed removed from the Schedules related to Acquired Assets, automatically deemed added to the Schedules related to Excluded Assets and not sold or assigned to Buyer pursuant to this Agreement and (ii) such previously considered Assumed Liability shall be automatically deemed removed from the Schedules related to Assumed Liabilities, automatically deemed added to the Schedules related to Excluded Liabilities and not assumed by Buyer pursuant to this Agreement, provided that in no event shall the liabilities set forth in Section 1.3(f)(ii) (Delaware Facility Taxes) be automatically deemed Excluded Liabilities as a result of any designation made by Buyer pursuant to this Section 1.11. For the avoidance of doubt, the removal of any Acquired Asset or Assumed Liability from the Schedules relating to the Acquired Assets or Assumed Liabilities shall not modify, amend or waive any other provision of this Agreement or the Ancillary Agreements, including, but not limited to, the provisions of Article II hereof.

## ARTICLE 2 CONSIDERATION; CLOSING AND DELIVERIES

2.1 Consideration. The aggregate consideration for the sale and transfer of the Acquired Assets is (i) Thirty Five Million Two Hundred Fifty Thousand Dollars (\$35,250,000) (the "**Purchase Price**"), plus (ii) the assumption by Buyer at the Closing of the Assumed Liabilities, plus (iii) a 20% equity interest in the Designated Affiliate, as more fully described in the term sheet attached as Exhibit A hereto (the "**Equity Consideration**") plus (iv) an amount in cash (the "**DIP Loan Payment Amount**") equal to the lesser of (x) the outstanding principal balance of the Hybrid DIP Facility at Closing and (y) Nine Million One Hundred Forty Thousand Dollars (\$9,140,000).

2.2 Closing. The sale, transfer, assignment and delivery by Sellers of the Acquired Assets to Buyer and the assumption by Buyer of the Assumed Liabilities, on the terms and subject to the conditions set forth in this Agreement, will be effected on the Closing Date (the "**Closing**") and will take place at the offices of Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654 at 10:00 a.m. Central Standard Time on the second Business Day immediately following the satisfaction or waiver by the appropriate Party of all the conditions contained in Article 9 (other than conditions which by their terms or their nature are to be performed or measured as of the Closing Date (provided such conditions are satisfied at the Closing or waived by the applicable Party)), or on such other date or at such other place and time as may be agreed to by the Parties (the "**Closing Date**"). The Parties shall use all reasonable best efforts to consummate the Closing as promptly as possible and in no event later than 14 days following the date of entry of the Sale Order, subject to the terms and conditions of this Agreement.

2.3 Sellers' Deliveries.

(a) Subject to fulfillment or waiver of the conditions set forth in Section 9.1 and Section 9.2 (other than Section 9.2(d)), at the Closing, Sellers shall deliver to Buyer the following documents consistent with the terms of this Agreement:

(i) a bill of sale with respect to the Acquired Assets (other than the Assigned Contracts), duly executed by Sellers, in the form of Exhibit B hereto;

(ii) an assignment and assumption agreement with respect to the Assigned Contracts and the Assumed Liabilities, duly executed by Sellers, in the form of Exhibit C hereto;

(iii) one or more quit claim deeds (as may be applicable) with regard to each parcel of the Purchased Owned Real Property, duly executed by Sellers and in a form reasonably acceptable to Buyer and Sellers, subject only to Permitted Liens;

(iv) an officer's certificate of Sellers certifying as to the resolutions of the board of directors of each Seller approving and authorizing this Agreement and the transactions contemplated by this Agreement, and in the form of Exhibit D hereto;

(v) an intellectual property assignment agreement with respect to the Owned IP, duly executed by Sellers, in the form of Exhibit E hereto;

(vi) certificates of title, assignments of Contracts and other instruments of transfer, conveyance, delivery and assignment (including customary owner's affidavits and assignments of patents, patent applications, trademark registrations and trademark applications) as and to the extent reasonably necessary to evidence the transfer, conveyance, delivery and assignment to Buyer of Sellers' right, title and interest in and to the Acquired Assets (collectively, the "***Additional Asset Conveyance Documents***");

(vii) such assignments of Contracts and other instruments of assumption as and to the extent reasonably necessary to evidence the valid and effective assumption by Buyer of the Assumed Liabilities (collectively, the "***Additional Liabilities Assumption Documents***"); and

(viii) an affidavit of non-foreign status that complies with Section 1445 of the Code, duly executed by Sellers, in the form of Exhibit F hereto.

(b) Notwithstanding anything in this Agreement or any Ancillary Agreement to the contrary, Sellers' obligation to convey to Buyer all rights of Sellers under the Assigned Permits consists solely of providing: (i) if required by Law, notices of intent to transfer the Assigned Permits to Buyer in accordance with the Government regulations governing such Permit transfer, and (ii) information as required by the Government regulations governing such Permit transfer. Furthermore, in no event shall any Seller, any of its Related Persons, or any of their Related Persons be required to deliver any agreement or instrument (other than customary owner's affidavits in connection with the



Purchased Owned Real Property) that (i) requires any Seller, any of its Related Persons or any of their Related Persons to make any additional representations, warranties or covenants, express or implied, not contained in this Agreement (other than such representations, warranties or covenants in favor of the applicable Government as required by non-U.S. law for registration or recordation of assignment of patents or trademarks) or (ii) otherwise expands the liabilities or obligations of, or requires any payments to be made or expenses to be incurred by, any Seller, any of its Affiliates or any of their respective Related Persons related to the transactions contemplated hereby.

2.4 Buyer's Deliveries. Subject to fulfillment or waiver of the conditions set forth in Section 9.1 and Section 9.3 (other than Section 9.3(f)), at the Closing, Buyer shall:

(a) pay an amount equal to the cash component of the Purchase Price plus the DIP Loan Payment Amount to Sellers, by wire transfer of immediately available funds to an account or accounts designated in writing by Sellers no less than two (2) Business Days prior to the Closing Date;

(b) deliver a secretary's certificate certifying as to the resolutions of the board of directors of Buyer approving and authorizing this Agreement and the transactions contemplated by this Agreement and in the form of Exhibit G hereto;

(c) deliver to Sellers an assignment and assumption agreement with respect to the Assigned Contracts and the Assumed Liabilities, duly executed by Buyer, in the form of Exhibit B hereto;

(d) deliver to Sellers each of the Additional Asset Conveyance Documents and Additional Liabilities Assumption Documents; and

(e) deliver to the Committee evidence of the Equity Consideration, in form and substance reasonably satisfactory to the Committee.

2.5 Deposit. Within five (5) Business Days following the execution of this Agreement, (i) Buyer and Sellers shall execute and deliver the Escrow Agreement and (ii) Buyer shall deposit with the Escrow Agent Five Million Dollars (\$5,000,000) in immediately available funds (the "***Deposit***"). The Deposit, together with any interest thereon, if any, shall be applied against the Purchase Price at Closing in accordance with the Escrow Agreement. If this Agreement shall be terminated pursuant to Section 10.2, the Deposit, together with any interest earned thereon, shall be delivered to Buyer or Sellers, as applicable, in accordance with the Escrow Agreement and Section 10.5.

### ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF SELLERS

Sellers hereby jointly and severally represent and warrant to Buyer as follows:

3.1 Corporate Organization. Each Seller is a corporation duly incorporated, validly existing and in good standing under the Laws of the state of its incorporation, has all requisite corporate power and authority to own its properties and assets and to conduct its business as now

conducted and is in good standing and qualified or licensed to do business in each jurisdiction where the character of its business or the nature of its properties makes such qualification or licensing necessary, except where the failure to be so qualified would have a Material Adverse Effect. Subject to any necessary authority from the Bankruptcy Court, Sellers have all requisite corporate or other power and authority to own their respective properties and assets and to conduct their respective businesses as now conducted. Sellers do not beneficially own any equity interest or other interest convertible into any equity interest in any Person other than their wholly-owned subsidiary Fisker Automotive GmbH (the “*Non-Seller Subsidiary*”). The Non-Seller Subsidiary does not have any right, title or interest in, to or under any property or assets, other than assets that are of de minimis value and immaterial in the aggregate.

3.2 Authorization and Validity. Subject to the Bankruptcy Court’s entry of the Sale Order, each Seller has all requisite corporate power and authority to execute and deliver this Agreement and the Ancillary Agreements to which it is or will be a party, and subject to the Bankruptcy Court’s entry of the Sale Order, each Seller has the requisite corporate power and authority to perform and carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution, delivery and consummation of this Agreement and the Ancillary Agreements by the Sellers party thereto and the performance by Sellers of their respective obligations hereunder and thereunder have been duly authorized and approved by all necessary action by the board of directors of each Seller, and, subject to any necessary authority from the Bankruptcy Court, no other organizational proceedings on the part of any Seller is necessary to authorize such execution, delivery and performance. This Agreement has been duly executed by Sellers, and the Ancillary Agreements when delivered will be, duly executed by the Sellers party thereto and constitute or will constitute its or their, as applicable, valid and binding obligation, enforceable against it or them, as applicable, in accordance with the terms herein and therein, except that such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar Laws affecting or relating to the enforcement of creditors’ rights generally, and is subject to general principles of equity.

3.3 Litigation. As of the date of this Agreement, to Sellers’ Knowledge, there are no Claims, suits, proceedings, arbitrations or investigations pending or threatened before any Government, including with respect to any Environmental Laws or any material Intellectual Property Rights, brought by or against any of Sellers that would reasonably be expected to have a Material Adverse Effect.

3.4 Environmental Matters. Except as posted in Sellers’ electronic dataroom in the folder titled “Environmental Matters” as of the date hereof, to Sellers’ Knowledge:

(a) Sellers are in compliance in all material respects with and, since January 1, 2011, have complied in all material respects with all applicable Environmental Laws and Environmental Permits, except as would not reasonably be expected to have a Material Adverse Effect;

(b) (i) Sellers possess all Environmental Permits required for the operation of the business as presently contemplated to be conducted in the near term, except as would not reasonably be expected to have a Material Adverse Effect; and (ii) as of the date of

this Agreement, each such issued Environmental Permit is valid and in full force and effect, and no such Environmental Permit is subject to any pending or threatened administrative or judicial proceeding to revoke, cancel, suspend, deny or declare such Environmental Permit invalid in any material respect, except, in each case of this clause (ii), as would not reasonably be expected to have a Material Adverse Effect;

(c) Sellers have made available to Buyer copies of all Environmental Reports that are in the possession of Sellers; and

(d) Since June 8, 2011, Sellers have not received a written complaint, Order, directive, Claim, suit or proceeding from any Government or any other Person with respect to (i) any material violation of Environmental Laws or (ii) any release, spill, leak, discharge or emission of any Hazardous Materials that has not been fully resolved to the satisfaction of the issuing party, except, in each case of (i) and (ii), that would reasonably be expected to have a Material Adverse Effect.

### 3.5 Intellectual Property. To Sellers' Knowledge:

(a) all (i) registered Intellectual Property Rights owned by any Seller and (ii) pending applications for registrations of Intellectual Property Rights owned by or filed in the name of any Seller, in each case of (i) and (ii), are in full force and effect, have not been abandoned or passed into the public domain and with respect to such issued or registered Intellectual Property Rights, are valid and enforceable, except, in each case of this Section 3.5(a), as would not reasonably be expected to have a Material Adverse Effect and Sellers have not used the Owned IP in a manner that would reasonably be expected to result in a Material Adverse Effect; and

(b) (i) neither Sellers nor any other party to any of the Material IP Licenses has commenced any action against any of the parties to such Material IP Licenses or given or received any written notice of any material default or violation under any Material IP License that was not withdrawn or dismissed, except for payment defaults and those defaults that will be cured in accordance with the Sale Order (or that need not be cured under the Bankruptcy Code to permit the assumption and assignment of the Material IP Licenses or that are Excluded Contracts) and actions, defaults or violations that would not reasonably be expected to have a Material Adverse Effect; (ii) each of the Material IP Licenses is, or will be at the Closing, valid, binding and in full force and effect against the applicable Seller, except as would not reasonably be expected to have a Material Adverse Effect; (iii) none of the other parties under any of the Material IP Licenses has provided Sellers with any written notice that it currently plans or intends to terminate any such Material IP License, or otherwise cease its performance thereunder related to such Material IP Licenses, except for such notices of termination or cessations that would not reasonably be expected to have a Material Adverse Effect; (iv) except as a result of the Seller Chapter 11 Cases, each Seller has performed all material obligations required to be performed by it to date under the material IP Licenses and is not in material breach or default thereunder, except as would not reasonably be expected to have a Material Adverse Effect; and (v) Sellers have used commercially reasonable efforts to make copies of the Material IP Licenses available to Buyer.

3.6 Brokerage. No Person is entitled to any brokerage commissions, finders' fees, or similar compensation in connection with the transactions contemplated by this Agreement based on any arrangement or agreement made by or on behalf of Sellers or any of their respective Affiliates.

3.7 Export Controls. All of the Acquired Assets are controlled by the Department of Commerce under the Export Administration Regulations and are classified as "EAR99." Neither Seller holds or possesses any export control, strategic or classified goods, services or technology or embargo license, agreement, permit, approval, security clearance or other authorization issued by any U.S. Government or any foreign Government. Except for that certain Loan Agreement and Reimbursement Agreement, dated as of April 22, 2010, by and between Sellers and the United States Department of Energy, and the documents and agreements related thereto, neither Seller is a party to any Contract or sub-contract with any U.S. Government ("**Government Contract**"), nor is any Seller a party to any sub-contract under any Government Contract.

#### ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Sellers as follows:

4.1 Corporate Organization. Buyer is a corporation duly organized, validly existing and in good standing under the Laws of the State of Kentucky and has all requisite organizational power and authority to own its properties and assets and to conduct its business as now conducted.

4.2 Authorization and Validity. Buyer has all requisite organizational power and authority to execute and deliver this Agreement and any Ancillary Agreement to which it is or will be a party and subject to the Bankruptcy Court's entry of the Sale Order, Buyer has the requisite corporate power and authority to perform and carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution, delivery and consummation of this Agreement and the Ancillary Agreements by Buyer and the performance by Buyer of its obligations hereunder and thereunder have been duly authorized and approved by all necessary action by the board of directors of Buyer and no other organizational proceedings on the part of any Buyer is necessary to authorize such execution, delivery and performance. This Agreement has been duly executed by Buyer, and the Ancillary Agreements when delivered will be duly executed by Buyer, and constitute or will constitute Buyer's valid and binding obligation, enforceable against it in accordance with the terms herein and therein, except that such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar Laws affecting or relating to the enforcement of creditors' rights generally, and is subject to general principles of equity.

4.3 Litigation. There are no material actions, suits, proceedings or orders pending or, to Buyer's knowledge, threatened against Buyer at law or in equity, or before or by any Government relating to this Agreement or the transactions contemplated hereby.

4.4 No Conflict or Violation. The execution, delivery and performance by Buyer of this Agreement and the Ancillary Agreements to which it is a party and the consummation of the transactions contemplated hereby and thereby do not and will not (a) violate or conflict with any

provision of the certificate of incorporation or bylaws of Buyer, (b) violate in any material respect any provision of Law, or any Order applicable to Buyer or (c) result in a breach of or constitute (with due notice or lapse of time or both) a default under any material contract to which Buyer is a party, by which it is bound or to which any of its properties or assets is subject.

4.5 Consents, Approvals and Notifications. The execution, delivery and performance by Buyer of this Agreement and the Ancillary Agreements to which Buyer is or will be a party do not require the Consent of, or filing with or notification of, any Government or any other Person except as required for entry of the Sale Order by the Bankruptcy Court or for such Consents and filings, the failure to obtain or make would not reasonably be expected to have a material adverse effect on the ability of Buyer to consummate the transactions contemplated hereby.

4.6 Availability of Funds. Buyer has, and on and after the Closing Date will have, sufficient funds available to make the payments required to be made by it pursuant to this Agreement and to perform its obligations hereunder.

4.7 Adequate Assurances Regarding Assigned Contracts. Buyer is and will be capable of satisfying the conditions contained in Sections 365(b)(1)(C) and 365(f) of the Bankruptcy Code with respect to the Assigned Contracts.

4.8 Brokerage. No Person is entitled to any brokerage commissions, finders fees, expenses or similar compensation in connection with the transactions contemplated by this Agreement based on any arrangement or agreement made by or on behalf of Buyer or any of its Affiliates.

## ARTICLE 5 COVENANTS OF SELLERS

Sellers hereby covenant to Buyer as follows:

5.1 Actions Before Closing Date. Without the prior written consent of Buyer (such consent not to be unreasonably withheld, conditioned or delayed) or the authorization of the Bankruptcy Court after notice and a hearing, between the date hereof through the earlier of the Closing Date or the date this Agreement is terminated in accordance with its terms, and except as required or expressly permitted pursuant to the terms hereof or of any Ancillary Agreement or as set forth on Schedule 5.1, Sellers shall not (a) sell, assign, transfer, lease, sublease, mortgage, pledge or otherwise encumber or dispose of any of the Acquired Assets, IP Licenses, or any other of the properties, assets or equipment (except in all cases for Permitted Liens described in Section (c) of the definition of such term herein that attach prior to the Closing and that are yet not due and payable prior to the Closing), (b) sell, assign, transfer, lease, sublease, mortgage, pledge, otherwise encumber or dispose of or grant any third party any right to any of the Owned IP (except in all cases for Permitted Liens described in Section (c) of the definition of such term herein that attach prior to the Closing and that are yet not due and payable prior to the Closing), (c) acquire by merging or consolidating with, or agreeing to merge or consolidate with, or purchase substantially all the assets of, or otherwise acquire any business or any corporation, partnership, association or other business organization or division thereof, (d) fail to use commercially reasonable efforts to maintain adequate security at locations in California and

Delaware where material Acquired Assets are located or (e) enter into any Contract to take any action prohibited by any of the preceding clauses of this Section 5.1. Promptly after the execution of this Agreement, Sellers shall use commercially reasonable efforts to deliver to Buyer a complete and correct list (x) of all material Permits (including Environmental Permits) and all pending applications therefor obtained by either Seller necessary to the operation of the Long-Term Business, (y) of all Material IP Licenses and (z) each warehouse, port or other location (other than the Real Property) where Inventory is located, as well as any Contract or Real Property Lease relating to Sellers' use of such location. For all purposes of this Agreement, the "reasonable best efforts" and "commercially reasonable efforts" of Sellers, in each case, will be interpreted with due consideration for the circumstances and status of Sellers at the applicable time (including after the Closing), including the assets, employees and other resources (or absence thereof) of Sellers and the status of the Sellers as debtors under the Seller Chapter 11 Cases.

5.2 Obligations of Sellers after Entry of Sale Order. From and after the date that the Sale Order is entered, Sellers shall use reasonable best efforts to cause the Closing to occur as promptly as practicable, and Sellers shall not intentionally take any action that is reasonably likely to prevent or delay the consummation of the transactions contemplated hereby unless otherwise required by the Bankruptcy Court or Law. The "reasonable best efforts" of Sellers shall not require Sellers or any of their Related Persons to expend any money to remedy any breach of any representation or warranty hereunder, to commence any litigation or arbitration proceeding, to offer or grant any accommodation (financial or otherwise) to any third party, to obtain any Consent required for the consummation of the transactions contemplated hereby or to provide financing to Buyer for the consummation of the transactions contemplated hereby; provided that, if Sellers or any of their Affiliates elect to remedy such breach, Sellers shall not be deemed to be in breach of such representation or warranty, or in violation of any covenant, for purposes of determining Buyer's obligations to consummate the transactions contemplated by this Agreement.

5.3 Access to Properties and Records; Confidentiality. Prior to the earlier to occur of the Closing Date or the date on which this Agreement is terminated in accordance with its terms, Sellers shall afford to Buyer and to the accountants, counsel and representatives of Buyer, reasonable access during normal business hours and upon reasonable notice to all books and records and selected personnel of Sellers to the extent Buyer shall reasonably deem necessary and desirable if (a) permitted under Law, (b) such books and records are not subject to confidentiality agreements that would be violated by such access and (c) disclosing such books and records would not reasonably be expected to adversely affect any attorney client privilege, work product or similar privilege. Such access shall be exercised in such a manner as not to interfere unreasonably with the operation of the Sellers. In no event shall any environmental due diligence be conducted by Buyer that would violate the terms and conditions of the Brownfields Development Agreement.

5.4 Rejection of Assigned Contracts. Except as provided in Section 1.5, Sellers shall not reject any Assigned Contracts pursuant to the Seller Chapter 11 Cases without the prior written consent of Buyer.

5.5 Further Assurances. Upon the request and at the sole expense of Buyer at any time after the Closing Date (but without additional consideration), Sellers shall execute and deliver such documents as Buyer or their counsel may reasonably request to effectuate the transactions contemplated by this Agreement. Without limiting the generality of the foregoing, if at any time on or after the Closing, Sellers or any of their respective Affiliates or Related Persons comes into possession or control of any Acquired Assets, Sellers shall promptly but in no event later than ten (10) Business Days after coming into possession or control, deliver (or cause to be delivered) all of Sellers' right, title and interest to such Acquired Assets to Buyer for no additional consideration in accordance with the terms of this Agreement.

## ARTICLE 6 COVENANTS OF BUYER

Buyer hereby covenants to Sellers as follows:

6.1 Actions Before Closing Date. From and after the date the Sale Order is entered, Buyer shall use reasonable best efforts to cause the Closing to occur as promptly as practicable and Buyer shall not, and shall not permit any of their respective Affiliates to, intentionally take any action that is reasonably likely to prevent or delay the consummation of the transactions contemplated hereby. The "reasonable best efforts" of Buyer shall not require Buyer or any of its Affiliates to expend any money to remedy any breach of any representation or warranty hereunder, to commence any litigation or arbitration proceeding or to offer or grant any accommodation (financial or otherwise) to any third party; provided that, if Buyer or any of their Affiliates elect to remedy such breach, Buyer shall not be deemed to be in breach of such representation or warranty, or in violation of any covenant, for purposes of determining Sellers' obligations to consummate the transactions contemplated by this Agreement. The "reasonable best efforts" of Buyer shall require Buyer, beginning on the date of this Agreement until the earlier of the termination of this Agreement or the Closing, to reasonably promptly respond (or instruct Buyer's counsel to reasonably promptly respond) to Sellers' reasonable requests and inquiries with respect to matters relating to this Agreement, including with respect to the closing conditions set forth in Article 9, and to work diligently (and to instruct Buyer's counsel to work diligently) on all pre-Closing actions required by this Agreement and in preparing all items required for the Closing, including the closing deliveries set forth in Sections 2.3 and 2.4.

6.2 Consents. Buyer acknowledges that certain Consents to the transactions contemplated by this Agreement may be required from parties to Contracts to which Sellers or their Affiliates are party and that such Consents have not been obtained and may not be obtained. Buyer agrees that neither Sellers nor any of their Affiliates nor any of their respective Related Persons in their respective capacities as such shall have any liability whatsoever to Buyer (and Buyer shall not be entitled to assert any claims) arising out of or relating to the failure to obtain any Consents that may have been, or may be, required in connection with the transactions contemplated by this Agreement, or because of the default, acceleration or termination of or loss of right under any such Contract as a result of such failure. Buyer further agrees that except as provided in Section 9.3(d), no representation, warranty or covenant of Sellers contained herein shall be breached or deemed breached and no condition of Buyer shall be deemed not to be satisfied as a result of the failure to obtain any Consent, as a result of any default, acceleration or termination or loss of right resulting from such failure, or as a result of any lawsuit, action,

claim, proceeding or investigation commenced or threatened by or on behalf of any Person arising out of or relating to the failure to obtain any Consent or any default, acceleration or termination or loss of right resulting from such failure. Subject to the foregoing, at Buyer's written request prior to the Closing, if such Consent is required notwithstanding the provisions of Section 365 of the Bankruptcy Code, the Parties shall use their commercially reasonable efforts to cooperate and to obtain any such Consents and any Consents with respect to any Real Property Lease or Permit; provided that such efforts shall not include any requirement of any Party or any of their Affiliates to expend money, commence any litigation or arbitration proceeding or offer or grant any accommodation (financial or otherwise) to any Person. The Parties will use their commercially reasonable efforts to cooperate and to either (a) obtain a Consent to assignment, in form and substance reasonably satisfactory to Buyer, to the transactions contemplated hereby with respect to (i) the Amended and Restated Trademark License, Dated as of September 4, 2008, between Fisker Automotive, Inc. and Fisker Coachbuild, LLC and (ii) the Amended and Restated Supply Agreement between Quantum Fuel Systems Technologies and Fisker Automotive, Inc. dated November 8, 2010 and the Powertrain Development Agreement between Quantum Fuel Systems Technologies Worldwide, Inc. and Fisker Automotive, Inc. dated January 25, 2008 (together with (i), the "***Required Agreements***"), or (b) entry of an Order of the Bankruptcy Court (or other court of competent jurisdiction) in form and substance reasonably acceptable to the Buyer authorizing the Sellers' assignment of the Required Agreements to the Buyer and the Buyer's assumption thereof pursuant to Section 365 of the Bankruptcy Code; provided, that Buyer will be responsible for any Cure Costs related to the Required Agreements; provided further that the Parties' efforts shall not include any requirement of any Party or any of their Affiliates to expend money, commence any litigation or arbitration proceeding or offer or grant any accommodation (financial or otherwise) to any Person, except to the extent of filing and arguing a motion seeking the Order contemplated by clause (b) above and except for Cure Costs to be paid by the Buyer.

6.3 Adequate Assurances Regarding Assigned Contracts. With respect to each Assigned Contract, to the extent requested by the Bankruptcy Court or reasonably requested by Sellers or the counterparty to such Contract, Buyer shall provide the Bankruptcy Court, Sellers or such counterparty, as the case may be, adequate assurance of the future performance of such Assigned Contract by Buyer.

6.4 Cure of Defaults. Buyer shall, on or prior to the assumption by Buyer of any Assumed Real Property Lease or Assigned Contract, cure any and all defaults under such Assumed Real Property Lease or Assigned Contract that are required to be cured under the Bankruptcy Code, so that such Assumed Real Property Lease or Assigned Contract may be assumed by Sellers and assigned to Buyer in accordance with the provisions of Section 365 of the Bankruptcy Code.

6.5 Availability of Business Records. After the Closing Date, Buyer shall provide to Sellers and their Affiliates (after reasonable notice and during normal business hours and without charge to Sellers or their Affiliates) access to all Business Records related to the Long-Term Business or the Acquired Assets or Assumed Liabilities for periods prior to the Closing and shall preserve such Business Records until six (6) years after the Closing Date. Such access includes access to any information in electronic or digital form to the extent reasonably available and the right to photocopy or make electronic or digital copies. Buyer acknowledges that Sellers and



their Affiliates have the right to retain copies of Business Records for periods prior to the Closing. Prior to destroying any Business Records for periods prior to the Closing, Buyer shall notify Sellers thirty (30) days in advance of any such proposed destruction of its intent to destroy such Business Records, and Buyer will permit Sellers (or their designee) to retain such Business Records (at Sellers' or such designee's sole cost and expense). With respect to any litigation and Claims that are Excluded Liabilities, Buyer shall (at Sellers' sole cost and expense) render all reasonable assistance that Sellers may request in defending such litigation or claim and shall make available to Sellers, their counsel and their other agents, advisors or representatives, Buyer's personnel most knowledgeable about the matter in question. The Parties acknowledge that all Business Records are Acquired Assets to be acquired by Buyer at the Closing. If, after the Closing, Buyer (or any Affiliate or creditor of Buyer) receives any payment or revenue that belongs to Sellers pursuant to this Agreement or any Ancillary Agreement, Buyer shall promptly remit or cause to be remitted the same to Sellers without set-off or deduction of any kind or nature. If after the Closing, Sellers (or any Affiliate of or successor to Sellers) receive any payment or revenue that belongs to Buyer pursuant to this Agreement or any Ancillary Agreement, Sellers shall promptly remit or cause to be remitted the same to Buyer without set-off or deduction of any kind or nature.

6.6 Buyer's Obligation to Perform; Cooperation with Sellers' Enforcement of Rights. Buyer shall pay, perform and discharge all Assumed Liabilities when due or obligated and will indemnify and hold Sellers, each of their Affiliates and each of their respective Related Persons in their respective capacities as such harmless for any and all damages, fines, judgments, costs or expenses (including reasonable attorneys' fees) suffered by any of them from any breach of the covenants and agreements of Buyer in this Section 6.6.

6.7 Further Assurances. Upon the request and at the sole expense of Sellers at any time after the Closing Date (but without additional consideration), Buyer shall execute and deliver such documents as Sellers or their counsel may reasonably request to effectuate the transactions contemplated by this Agreement. Without limiting the foregoing, if at any time on or after the Closing Buyer, or any of its Affiliates, comes into possession or control of any Excluded Assets, Buyer shall promptly but in no event later than ten Business Days after coming into possession or control, return (or cause to be returned) such Excluded Assets to Sellers for no additional consideration.

6.8 Employment Matters; Cooperation Regarding Service Providers and Employee Matters.

(a) At least two (2) Business Days prior to the anticipated Closing Date, Buyer will notify Sellers of the identity of the employees of Sellers to whom Buyer (or, in Buyer's discretion, one (1) or more Affiliates of Buyer) intends in its sole and absolute discretion to offer employment, if any (each, a "***Specified Employee***" and together, the "***Specified Employees***"), such offers to be made no later than one (1) day prior to the Closing Date and to be effective as of the Closing Date. Each such offer of employment shall be subject to such compensation and other terms and conditions of employment as Buyer shall determine in their sole and absolute discretion. Neither Buyer nor any of its Affiliates has any obligation hereunder or otherwise to offer employment, or any given terms and conditions of employment, to any employee or other Related Person of Sellers.

Each such Specified Employee who timely accepts an offer of employment from Buyer or an Affiliate of Buyer within such time period and in such manner as may be required by Buyer or such applicable Affiliate in their respective discretion, and who is hired by and commences working for Buyer or an Affiliate of Buyer as provided in such offer, is referred to herein as a “*Transferred Employee*”. Nothing in this Section 6.8 shall (a) be treated or construed as an amendment of, or undertaking to amend, any benefit plan or (b) be construed to prohibit Sellers or any of Sellers’ Affiliates from amending or terminating any benefit plan. The provisions of this Section 6.8 are solely for the benefit of the respective parties to this Agreement, and nothing in this Section 6.8, express or implied, shall confer upon any current, former or future employee or other Related Person of Sellers or any of Sellers’ Affiliates, or legal representative or beneficiary thereof or other Person, any rights or remedies, including any right to employment or continued employment with Buyer or any of their Affiliates for any specified period, or compensation or benefits or other terms and conditions of employment of any nature or kind whatsoever under this Agreement, or a right in any employee or beneficiary of such employee or other Person under an Employee Benefit Plan that such employee, beneficiary or other Person would not otherwise have under the terms of such plan.

(b) Subject to applicable Laws, Sellers shall cooperate with Buyer and shall permit Buyer or, as applicable, one or more Affiliates of Buyer a reasonable period during normal business hours prior to the Closing Date, (i) to meet with employees and other service providers at such times as Buyer or any of their respective Affiliates shall reasonably request, (ii) to speak with such employees’ and other service providers’ managers and supervisors (in each case with appropriate authorizations and releases from such service providers) who are being considered for employment by Buyer or any of their respective Affiliates, (iii) to distribute to such employees and other service providers such forms and other documents relating to potential employment by or services to Buyer or any of their respective Affiliates after the Closing and (iv) subject to any restrictions imposed under applicable Law, to permit Buyer, upon request, to review personnel files and other relevant employment information regarding such employees and other service providers.

(c) Following the Closing, Sellers and Buyer shall cooperate reasonably with each other to provide an orderly administrative transition to Buyer or, as applicable, one or more Affiliates of Buyer of the Transferred Employees, including the provision by Sellers to Buyer of all necessary or appropriate documents, records, materials, accounting files and Tax information with respect to each Transferred Employee to the extent available to and under the control of Sellers. To the extent information (including personnel records) about past, present or future employees of Sellers is in Buyer’s possession after the Closing, Buyer will maintain its confidentiality in material compliance with applicable Law.

## ARTICLE 7 BANKRUPTCY PROCEDURES

7.1 Bankruptcy Actions. Upon completion of the Auction and provided Buyer is the Successful Bidder (as defined in the Bidding Procedures) at the Auction, or if no Auction is held

pursuant to the terms of the Bidding Procedures, the Sellers shall seek the entry of an Order of the Bankruptcy Court substantially in the form attached hereto as Exhibit H and otherwise reasonably acceptable to Sellers and Buyer (the “**Sale Order**”). Sellers shall use commercially reasonable efforts to (i) file all pleadings with the Bankruptcy Court as are necessary or appropriate to secure entry of the Bidding Procedures Order and, upon completion of the Auction and provided Buyer is the Successful Bidder, or if no Auction is held pursuant to the terms of the Bidding Procedures, the Sale Order and (ii) cause the Bidding Procedures Motion to be served on the parties entitled to notice thereof pursuant to the Bankruptcy Code and the Rules, and shall diligently pursue the entry of the Bidding Procedures Order and entry of the Sale Order by the Bankruptcy Court. Buyer shall use commercially reasonable efforts to support the Bidding Procedures Motion and to obtain the Bankruptcy Court’s entry of the Bidding Procedures Order and, as applicable, the Sale Order or any other Order reasonably necessary in connection with the transactions contemplated by this Agreement and the Ancillary Agreements. Furthermore, Buyer covenants and agrees to cooperate with Sellers in connection with furnishing information or documents to Sellers to satisfy the requirements of adequate assurance of future performance under Section 365 of the Bankruptcy Code.

7.2 Bidding Procedures. The bidding procedures (the “**Bidding Procedures**”) to be employed with respect to this Agreement and the Auction, if any, are those attached as Exhibit 1 to the Bidding Procedures Order.

7.3 Approval. At the Sale Hearing, if Buyer is the successful bidder at the Auction (or if no Auction is held in accordance with the terms of the Bidding Procedures Order), Sellers shall immediately seek the entry of the Sale Order.

7.4 Plan Consideration. Upon approval of a disclosure statement that is not materially inconsistent with the Plan and confirmation of the Plan by the Bankruptcy Court, Sellers shall (i) contribute the Equity Consideration to the Liquidation Trust on the terms and conditions set forth herein and in the Plan; and (ii) contribute the Designated Causes of Action to the Liquidation Trust on the terms and conditions set forth in the Plan, provided however, that (x) the Designated Affiliate shall be entitled to up to \$5,000,000 from the first proceeds realized from the Designated Causes of Action to reimburse the Designated Affiliate for fifty (50%) percent of any amounts actually paid by the Designated Affiliate or its subsidiaries to satisfy, or reduce the amount of, any indebtedness arising prior to the Closing and secured by a Permitted Lien described in sections (b) through (f) of the definition of such term herein and which Buyer is not otherwise obligated to pay or satisfy under this Agreement and (y) 40% of any remaining proceeds realized from the Designated Causes of Action shall be payable to the Designated Affiliate until the DIP Payment Amount has been repaid in full.

## ARTICLE 8 TAXES AND FEES

8.1 Taxes Related to Purchase of Assets. All state and local sales, use, gross-receipts, transfer, gains, excise, value-added or other similar Taxes incurred in connection with the transfer of the Acquired Assets and the assumption of the Assumed Liabilities, and all recording and filing fees that may be imposed by reason of the sale, transfer, assignment and delivery of the Acquired Assets and the assumption of the Assumed Liabilities (collectively, “**Transaction**”

*Taxes*”), shall be paid by Buyer on or prior to their due date and Buyer shall indemnify, defend and hold harmless Sellers and their Affiliates (and its and their Related Persons) from and against any and all liability for the payment of such Transaction Taxes and the filing of any Tax Returns related thereto. Buyer and Sellers shall cooperate in providing each other Party with transfer tax declarations or any appropriate resale exemption certifications and other similar documentation to qualify for exemption from, or reduction of, any Transaction Taxes. For the avoidance of doubt, Transaction Taxes shall not include any Taxes that are computed on the basis of, or by reference to, Sellers’ gross or net income, overall gross receipts, or capital.

8.2 Cooperation on Tax Matters. Sellers shall, until the earlier of (a) ten (10) years following the Closing and (b) the liquidation of the Sellers (but in no event for less than sixty (60) days following the Closing), and Buyer shall (and shall cause its Affiliates to), use their commercially reasonable efforts to cooperate with each other and make available or cause to be made available to each other for consultation, inspection and copying (at such other Party’s expense), in a timely fashion, such personnel, Tax data, relevant Tax Returns or portions thereof and filings, files, books, records, documents, financial, technical and operating data, computer records and other information as may be reasonably required (x) for the preparation by such other Party or its Affiliates of any Tax Returns or (y) in connection with any Tax audit or proceeding including one Party (or an Affiliate thereof) to the extent such Tax audit or proceeding relates to or arises from the transactions contemplated by this Agreement. Before disposing of any such records or information, Sellers shall give notice to Buyer and Buyer shall be entitled to take delivery of any or all such records and information.

8.3 Allocation of Purchase Price and Purchase Price Allocation Forms. The Purchase Price, the Assumed Liabilities and other relevant items shall be allocated among the Acquired Assets in accordance with Section 1060 of the Code. Buyer shall prepare and deliver to Sellers an allocation schedule setting forth Buyer’s determination of the allocation (the “*Allocation Schedule*”) within ninety (90) days after Closing Date. The Allocation Schedule shall identify the transferor and transferee thereof and shall be prepared in accordance with Treas. Reg. Section 1.1060-1 (or any comparable provision of state or local Tax Law) or any successor provision. The Allocation Schedule delivered by Buyer shall be subject to Sellers’ reasonable comments and to approval of Sellers, which shall not be unreasonably withheld, conditioned or delayed. The Parties on behalf of themselves and their respective Affiliates agree that they will report the federal, state, local and other Tax consequences of the purchase and sale hereunder (including in filings on IRS Form 8594) in a manner consistent with such allocation and that they will not take any position inconsistent therewith in connection with any Tax Return, refund claim, litigation or otherwise, unless and to the extent required to do so pursuant to applicable Law. Notwithstanding any other provision of this Agreement, this Section 8.3 survives any termination or expiration of this Agreement.

8.4 Tax Adjustments. Taxes (other than Transaction Taxes and other than Taxes assumed by Buyer pursuant to Section 1.3(f)(ii)) imposed upon or assessed directly against the Acquired Assets for the Tax period in which the Closing occurs (the “*Proration Period*”) will be apportioned and prorated between Sellers and Buyer as of the Closing Date with Buyer bearing the expense of Buyer’s proportionate share of such Taxes which shall be equal to the product obtained by multiplying (i) a fraction, the numerator being the amount of the Taxes and the denominator being the total number of days in the Proration Period, times (ii) the number of days

in the Proration Period following the Closing Date, and Sellers shall bear the remaining portion of such Taxes. If the precise amount of any such Tax cannot be ascertained on the Closing Date, apportionment and proration shall be computed on the basis of the amount payable for each respective item during the Tax period immediately preceding the Proration Period and any proration shall be adjusted thereafter on the basis of the actual charges for such items in the Proration Period. When the actual amounts become known, such proration shall be recalculated by Buyer and Sellers, and Buyer or Sellers, as the case may be, promptly (but not later than ten (10) days after notice of payment due and delivery of reasonable supporting documentation with respect to such amounts) shall make any additional payment or refund so that the correct prorated amount is paid by each of Buyer and Sellers. For purposes of this Section 8.4, Buyer shall include the Designated Affiliate (and its subsidiaries as applicable).

## ARTICLE 9

### CONDITIONS PRECEDENT TO PERFORMANCE BY PARTIES

9.1 Conditions Precedent to Performance by Sellers and Buyer. The respective obligations of Sellers and Buyer to consummate the transactions contemplated by this Agreement are subject to the satisfaction or waiver by Buyer and Sellers, on or prior to the Closing Date, of the following conditions:

(a) Sale Order. The Bankruptcy Court shall have entered the Sale Order, and such Sale Order shall be in effect on the Closing Date and (i) shall not have been stayed, reversed, stayed pending appeal or vacated and (ii) shall not have been amended, supplemented or otherwise modified without the Parties' consent (such consent not to be unreasonably withheld, conditioned, or delayed).

(b) No Violation of Orders. No preliminary or permanent injunction or other Order that declares this Agreement invalid or unenforceable in any material respect or that prevents the consummation of the transactions contemplated hereby or thereby shall be in effect on the Closing Date.

(c) No Proceeding. No action or proceeding shall be pending before any Government seeking or threatening to restrain or prohibit the consummation of the transactions contemplated by this Agreement or involving a claim that consummation thereof would result in the violation of any Law of any Government having appropriate jurisdiction.

(d) No Termination of Agreement. This Agreement shall not have been terminated in accordance with Article 10.

(e) Equity Consideration. Definitive documentation of the terms of the Equity Consideration shall be substantially on the terms set forth in Exhibit A and otherwise reasonably satisfactory to Buyer and the Committee.

Any condition specified in this Section 9.1 may be waived only by written instrument executed by Buyer and Sellers.

9.2 Conditions Precedent to Performance by Sellers. The obligations of Sellers to consummate the transactions contemplated by this Agreement are subject to the satisfaction, on or before the Closing Date, of the following conditions, any one or more of which may be waived by Sellers in their sole discretion in a written instrument executed and delivered by Sellers:

(a) Representations and Warranties of Buyer. Each of the representations and warranties contained in Article 4 of this Agreement (other than the Buyer Fundamental Representations) shall be true and correct (without taking into account materiality qualifications) as of the Closing Date as if made anew as of such date (except to the extent any such representation and warranty expressly relates to an earlier date, in which case as of such earlier date), except for any failure of such representations and warranties to be true and correct as does not have, individually or in the aggregate, a Buyer Material Adverse Effect, and each of the Buyer Fundamental Representations shall be true and correct as of the Closing Date as if made anew as of such date, and Sellers shall have received on the Closing Date a certificate from Buyer in the applicable form attached hereto as Exhibit I dated as of the Closing Date and signed by a duly authorized signatory of Buyer to that effect.

(b) Performance of the Obligations of Buyer. Buyer shall have performed in all material respects all obligations required under this Agreement to be performed by it on or before the Closing Date (except with respect to the obligation to pay the Purchase Price in accordance with the terms of this Agreement, which obligation shall be performed in all respects as required under this Agreement), and Sellers shall have received on the Closing Date a certificate from Buyer in the applicable form attached hereto as Exhibit I dated the Closing Date and signed by a duly authorized signatory of Buyer to that effect.

(c) Cure of Defaults. Buyer shall have, at or prior to the Closing, cured any and all defaults under the Assigned Contracts that are required to be cured under the Bankruptcy Code or shall have made adequate provision for the payment of such Cure Amounts at the later of (i) the Closing and (ii) the date on which the assignment of such Assigned Contracts becomes effective, and shall have provided all assurances of future performance required to be provided by Buyer hereunder, so that the Assigned Contracts may be assumed by Sellers and assigned to Buyer in accordance with the provisions of Section 365 of the Bankruptcy Code and the terms of the Bidding Procedures Order and the Sale Order.

(d) Buyer's Deliveries. Buyer shall have delivered to Sellers all of the items set forth in Section 2.4.

9.3 Conditions Precedent to Performance by Buyer. The obligations of Buyer to consummate the transactions contemplated by this Agreement are subject to the satisfaction, on or before the Closing Date, of the following conditions, any one or more of which may be waived by Buyer in its sole discretion in a written instrument executed and delivered by Buyer:

(a) Representations and Warranties of Sellers. Each of the representations and warranties contained in Article 3 of this Agreement (other than the Seller Fundamental Representations) shall be true and correct (without taking into account materiality qualifications) as of the Closing Date as if made anew as of such date (except to the extent any such representation and warranty expressly relates to an earlier date, in which case as of such earlier date), except for failure of such representations and warranties to be true and correct as does not have, individually or in the aggregate, a Material Adverse Effect, and each of the Seller Fundamental Representations shall be true and correct as of the Closing Date, and Buyer shall have received on the Closing Date a certificate in the form attached hereto as Exhibit J dated as of the Closing Date and signed by a duly authorized signatory of each of Sellers to that effect.

(b) Performance of the Obligations of Sellers. Sellers shall have performed in all material respects all obligations required under this Agreement to be performed by them on or before the Closing Date, and Buyer shall have received on the Closing Date a certificate in the form attached hereto as Exhibit J dated as of the Closing Date and signed by a duly authorized signatory of each of Sellers to that effect.

(c) CFIUS. CFIUS has not indicated that Buyer or Sellers may not close the transactions contemplated herein or requested that the closing of the transactions contemplated by this Agreement be delayed.

(d) Necessary Consents. Sellers shall have obtained either (i) a Consent to assignment, in form and substance reasonably satisfactory to Buyer, to the transactions contemplated hereby with respect to each of the Required Agreements, or (ii) entry of an Order of the Bankruptcy Court (or other court of competent jurisdiction) in form and substance reasonably acceptable to the Buyer authorizing the Sellers' assignment of the Required Agreements to Buyer and Buyer's assumption thereof pursuant to Section 365 of the Bankruptcy Code; provided, that Buyer will be responsible for any Cure Costs related to the Required Agreements.

(e) Material Adverse Effect. Since November 22, 2013, no Material Adverse Effect shall have occurred and be continuing (as determined on the Closing Date).

(f) Sellers' Deliveries. Sellers shall have delivered to Buyer all of the items set forth in Section 2.3(a) of this Agreement.

(g) Governmental Consents. The Parties shall have received all material approvals and actions of or by all Governments that are necessary to consummate the transactions contemplated hereby to the extent necessary so as not to constitute a Material Adverse Effect.

9.4 Waiver of Condition; Frustration of Conditions. All conditions to the Closing shall be deemed to have been satisfied or waived from and after the Closing. Neither Buyer nor Sellers may rely on the failure of any condition set forth in this Article 9, as applicable, to be satisfied if such failure was caused by such Party's failure to use, as required by this Agreement, its reasonable best efforts to consummate the transactions contemplated hereby.

## ARTICLE 10 TERMINATION AND EFFECT OF TERMINATION

10.1 Right of Termination. Notwithstanding anything to the contrary contained herein, this Agreement may be terminated only as provided in this Article 10. In the case of any such termination, the terminating Party shall give notice to the other Parties specifying the provision pursuant to which this Agreement is being terminated.

10.2 Termination. This Agreement may be terminated at any time before Closing:

- (a) by mutual written consent of Sellers and Buyer;
- (b) by Buyer, on any date that is more than sixty (60) days after the date hereof (the “**Termination Date**”), if the Closing has not then occurred; provided, however, that Buyer shall have no right to terminate this Agreement under this Section 10.2(b) if Buyer’s failure to fulfill any of its obligations under this Agreement is the reason that the Closing has not occurred on or before said date;
- (c) by Sellers, on or after the Termination Date, if any condition contained in Section 9.1 or Section 9.2 has not been satisfied or waived as of such time; provided, however, that Sellers shall have no right to terminate this Agreement under this Section 10.2(c) if Sellers’ failure to fulfill any of their respective obligations under this Agreement is the reason that the Closing has not occurred on or before said date;
- (d) by Buyer, if Buyer is the Successful Bidder (as such term is defined in the Bidding Procedures Order) at the Auction and the Sale Hearing has not been commenced on or prior to the earlier of the fifth Business Day after the completion of the Auction and the date specified in the Bidding Procedures Order; provided that the failure to commence the Sale Hearing on or prior to such time is not the result of or caused by Buyer’s material breach of this Agreement;
- (e) by Buyer, if the Bankruptcy Court shall fail to enter the Sale Order on or prior to the date that is forty-five (45) days after the date hereof; provided that the failure to obtain the entry of the Sale Order is not the result of or caused by Buyer’s material breach of this Agreement;
- (f) by Buyer, if the Seller Chapter 11 Cases are dismissed or converted to liquidation proceedings under Chapter 7 of the Bankruptcy Code, or if Sellers shall have filed a pleading requesting any such relief;
- (g) by either Sellers or Buyer if (i) the Auction has occurred and Buyer was not the Successful Bidder at the Auction or (ii) the Bankruptcy Court otherwise approves a Competing Transaction;
- (h) by either Buyer or Sellers, immediately upon an Order becoming final and non-appealable that declares this Agreement invalid or unenforceable in any material respect or that prevents the consummation of the transactions contemplated hereby or thereby (a “**Termination Order**”); provided, however, that neither Sellers nor Buyer shall



have the right to terminate this Agreement pursuant to this Section 10.2(h) if such Party or any of its Affiliates has sought entry of, or has failed to use its reasonable best efforts to oppose entry of, such Termination Order;

(i) by Buyer, in the event (i) of any material inaccuracy in any of Sellers' representations or warranties contained in this Agreement or any material breach of any of Sellers' covenants or agreements contained in this Agreement, which, individually or in the aggregate with all other such inaccuracies and breaches, (A) would result in a failure of a condition set forth in Section 9.3, and (B) is either incapable of being cured or, if capable of being cured, is not cured in all material respects within the earlier of (x) ten (10) calendar days after written notice thereof and (y) the Termination Date, or (ii) since the date of this Agreement, a Material Adverse Effect shall have occurred and be continuing (as determined on the date of such termination); provided that the right of termination pursuant to this Section 10.2(i) shall not be available to Buyer at any time that Buyer has violated or is in breach of any covenant, representation or warranty hereunder if such breach has prevented satisfaction of Sellers' conditions to Closing hereunder and has not been waived by Sellers or, if capable of cure, has not been cured by Buyer;

(j) by Sellers, in the event of any material inaccuracy in any of Buyer's representations or warranties contained in this Agreement or any material breach of any of Buyer's covenants or agreements contained in this Agreement, which, individually or in the aggregate with all other such inaccuracies and breaches, (i) would result in a failure of a condition set forth in Section 9.2, and (ii) is either incapable of being cured or, if capable of being cured, is not cured in all material respects within the earlier of (x) ten (10) calendar days after written notice thereof and (y) the Termination Date; provided that the right of termination pursuant to this Section 10.2(j) shall not be available to Sellers at any time that Sellers have violated or are in breach of any covenant, representation or warranty hereunder if such breach has prevented satisfaction of Buyer's conditions to Closing hereunder and has not been waived by Buyer or, if capable of cure, has not been cured by Sellers; or

(k) by Sellers, if the Board of Directors of either Seller determines in good faith that continued performance would be inconsistent with the exercise of its fiduciary duties under applicable Law.

**10.3 Effect of Termination.** In the event of any termination of this Agreement pursuant to Section 10.2, this Agreement (other than the provisions set forth in this Section 10.3, Section 10.4, Section 10.5 and Article 12, which shall survive termination of this Agreement) shall forthwith become null and void and be deemed of no further force and effect and, except as set forth in this Section 10.3 and Section 10.4, none of Sellers, Buyer or any of their respective Related Persons shall have any liability or obligation arising under or in connection with this Agreement.

#### 10.4 Expense Reimbursement.

(a) If this Agreement is terminated for any reason, other than a termination of this Agreement pursuant to Section 10.2(a), Section 10.2(c), Section 10.2(j) or Section 10.2(k), and Sellers consummate a Competing Transaction within twelve (12) months following such termination, then Sellers shall reimburse Buyer for up to Five Hundred Thousand Dollars (\$500,000) of reasonable, documented out-of-pocket fees and expenses of attorneys, accountants and other consultants not previously paid pursuant to Section 12.8 and incurred by Buyer in connection with negotiating and documenting this Agreement and the transactions contemplated hereby, including negotiating and documenting arrangements regarding the formation of the Designated Affiliate and other terms relating to the Equity Consideration and related documentation relating to governance and the rights and obligations of the owners thereof (the “***Expense Reimbursement***”), which Expense Reimbursement shall be paid no later than one (1) Business Day immediately following the consummation by Sellers of a Competing Transaction.

(b) If this Agreement is terminated pursuant to Section 10.2(k), then Sellers shall pay, or cause to be paid, to Buyer in immediately available funds, the Expense Reimbursement within three (3) Business Days of the date of such termination.

(c) In the event of a termination of this Agreement in the circumstances described in Section **Error! Reference source not found.** or Section 10.4(a), the Expense Reimbursement shall be the sole and exclusive remedy of Buyer and its Related Persons against Sellers and its Related Persons under this Agreement, and Buyer (on behalf of itself and its Related Persons) hereby irrevocably waives and releases the Seller Parties, as a condition to receipt of the Expense Reimbursement (but, subject to the receipt thereof by Buyer), from any and all statutory, equitable, legal or common law Claims or remedies that Buyer or any of its Related Persons may have against any of the Seller Parties in respect of any breach of or default under this Agreement. For purposes hereof, “***Seller Parties***” shall mean, collectively, Sellers and any of their respective former, current or future directors, officers, employees, agents, general or limited partners, managers, members, stockholders, Affiliates or assignees or any former, current or future director, officer, employee, agent, general or limited partner, manager, member, stockholder, Affiliate or assignee of any of the foregoing and any other Related Persons of either Seller.

(d) Sellers acknowledge and agree that (i) the payment of the Expense Reimbursement is an integral part of the transactions contemplated by this Agreement, (ii) in the absence of Sellers’ obligations to pay the Expense Reimbursement to Buyer, Buyer would not have entered into this Agreement, (iii) time is of the essence with respect to the payment of the Expense Reimbursement and (iv) the Expense Reimbursement shall constitute an administrative expense of Sellers’ bankruptcy estates under Section 503(b)(1)(A) and 507(a)(2) of the Bankruptcy Code. If Sellers fail to take any action reasonably necessary to cause the delivery of the Expense Reimbursement under circumstances where Buyer is entitled to the Expense Reimbursement and, in order to obtain such Expense Reimbursement, Buyer commences a contested matter or

adversary proceeding in the Seller Chapter 11 Cases which results in a final, non-appealable judgment in favor of Buyer, Sellers shall pay to Buyer, in addition to the Expense Reimbursement, an amount in cash equal to the costs and expenses (including reasonable attorney's fees) incurred by Buyer in connection with such contested matter or adversary proceeding.

(e) The Parties further acknowledge that the damages resulting from termination of this Agreement under circumstances where Buyer is entitled to the Expense Reimbursement are uncertain and incapable of accurate calculation and that the delivery of the Expense Reimbursement to the Buyer is not a penalty but rather shall constitute liquidated damages in a reasonable amount that will compensate Buyer in the circumstances where Buyer is entitled to the Expense Reimbursement for the efforts and resources expended and opportunities foregone while negotiating this Agreement and in reliance on this Agreement and on the expectation of the consummation of the Transactions contemplated hereby, and that, without these agreements, Buyer would not enter into this Agreement.

10.5 Release of Deposit Upon Termination. If this Agreement is terminated pursuant to Section 10.2(j), Sellers shall be entitled to receive the Deposit and any interest thereon in accordance with the Escrow Agreement. If this Agreement is terminated for any reason, other than a termination of this Agreement pursuant to Section 10.2(j), Buyer shall be entitled to receive the Deposit and any interest thereon in accordance with the Escrow Agreement. Upon Termination of this Agreement, Buyer and Sellers shall take all actions reasonably required to cause the Deposit and any interest thereon to be released in accordance with this Section 10.5.

## **ARTICLE 11**

### **ADDITIONAL AGREEMENTS**

11.1 Litigation Support. In the event and for so long as any Party or any of its Affiliates actively is contesting or defending against any action, suit, audit, proceeding, hearing, investigation, charge, complaint, claim, or demand in connection with (a) any transaction contemplated by this Agreement or the Ancillary Agreements or (b) any fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act, or transaction on or prior to the Closing Date involving Sellers or the Long-Term Business, the other Parties will cooperate with the contesting or defending Person and its counsel in the contest or defense, make available its personnel, and provide such testimony and access to its books and records as shall be necessary in connection with the contest or defense, all at the sole cost and expense of the contesting or defending Person; provided that no Party shall be obligated to provide such cooperation to the extent such cooperation would reasonably be expected to (w) be prohibited by Law, (x) violate any existing confidentiality obligations, (y) waive any attorney client, work product or other legal privilege or (z) take a position adverse to such Party or any of its former, current or future directors, officers, employees, agents, general or limited partners, managers, members, stockholders, Affiliates or assignees. The obligations in this Section 11.1 shall not apply if the contesting or defending Person is entitled to indemnification therefor pursuant to this Agreement.

11.2 Insurance Matters. To the extent any of the insurance policies maintained by Sellers or any of their Affiliates related (“***Sellers’ Insurance Policies***”) permit claims to be made thereunder with respect to losses incurred by Buyer or with respect to any of the Acquired Assets or the Assumed Liabilities after the Closing, Buyer shall have the right (but not the obligation) to submit and pursue claims under Sellers’ Insurance Policies with respect to such post-Closing losses.

11.3 Name Change. No later than five Business Days after the Closing Date, each Seller shall file amendments with the appropriate Government changing its name to a name that does not contain the word “Fisker” or any other registered or applied-for trademark or trade name included in the Owned IP transferred by Sellers to Buyer hereunder (the “***Restricted Names***”). No later than thirty days after the Closing Date, Sellers shall change the name of the Non-Seller Subsidiary to a name that does not contain any of the Restricted Names. From and after the Closing, Sellers shall cease the use of the Restricted Names (other than in reference to Sellers’ historic use of the name), and, at Buyer’s written request and Buyer’s expense, shall remove all Restricted Names from the Excluded Assets.

11.4 Access to Books and Records; Confidentiality.

(a) For a period of twenty-four months after the Closing Date (or such shorter period as Sellers maintain their corporate existence), each Party and their representatives shall have reasonable access to, and each shall have the right to photocopy all of the books and records relating to the Long-Term Business or the Acquired Assets, including all employee records or other personnel and medical records required by Law, legal process or subpoena, in the possession of the other Party to the extent that such access may be reasonably required by such Party. Such access shall be afforded by the Party in possession of such books and records upon receipt of reasonable advance notice and during normal business hours; provided, however, that (A) any such investigation shall be conducted in such a manner as not to interfere unreasonably with the operation of the business of any Party or its Affiliates, (B) no Party shall be required to take any action which would constitute a waiver of the attorney-client privilege, work product or similar privilege, and (C) no Party need supply the other Party with any information which such party is under a legal obligation not to supply. The Party exercising this right of access shall be solely responsible for any costs or expenses incurred by it pursuant to this Section 11.4.

(b) After the Closing, each Seller shall maintain as confidential, and shall, to the extent either Seller controls the Non-Seller Subsidiary, cause the Non-Seller Subsidiary to maintain as confidential, and shall not use or disclose, and, to the extent either Seller controls the Non-Seller Subsidiary, shall cause the Non-Seller Subsidiary not to use or disclose, (except as required by Law or as authorized in writing by Buyer) any confidential information with respect to the Acquired Assets, the Assumed Liabilities or the Long-Term Business (“***Confidential Information***”). Each Seller further agrees to take all commercially reasonable steps (and to use commercially reasonable efforts to cause each of its Affiliates to take all commercially reasonable steps) to safeguard such Confidential Information and to protect it against disclosure, misuse, espionage, loss and theft. In the event any Seller is required by Law to disclose any Confidential

Information, to the extent commercially practicable, such Seller shall promptly notify Buyer in writing, which notification shall include the nature of the legal requirement and the extent of the required disclosure, and shall cooperate with Buyer, at Buyer's expense, to preserve the confidentiality of such information consistent with applicable Law.

## ARTICLE 12 MISCELLANEOUS

### 12.1 Successors and Assigns.

(a) Except as otherwise provided in this Agreement (including Section 12.1(b)), no Party may assign this Agreement or any rights or obligations hereunder without the prior written consent of the other Parties and any such attempted assignment without such prior written consent shall be void and of no legal force or effect. This Agreement inures to the benefit of and is binding upon the successors and permitted assigns of the Parties. For all purposes hereof, a transfer, sale or disposition of a majority of the voting capital stock or other voting interests of Buyer (whether by contract or otherwise) shall be deemed not to be an assignment hereunder.

(b) Buyer may assign any or all of its rights, interests, and obligations hereunder, including the right to accept any or all Acquired Assets or assume any or all Assumed Liabilities in accordance with the terms of this Agreement, to the Designated Affiliate (or to one or more subsidiaries of the Designated Affiliate) as contemplated by Sections 1.1 and 1.2. No assignment of any obligations hereunder shall relieve Buyer of any of its obligations under this Agreement, including its obligation to pay the Purchase Price, until, with respect to the Assumed Liabilities, such time as such Affiliate or Affiliates actually assume the Assumed Liabilities, following which assumption Buyer shall have no obligation with respect thereto. Upon any such permitted assignment, Buyer, on the one hand, and its assignees or designees, on the other hand, will be jointly and severally liable for all of Buyer's obligations under this Agreement (except, with respect to the Assumed Liabilities, as set forth in the immediately preceding sentence), and the references in this Agreement to Buyer shall also apply to any such assignee or designee unless the context otherwise requires. To the extent that Buyer assigns its rights, interests and obligations hereunder to one or more of its Affiliates or designees, such Affiliate or designee shall deliver to Sellers certificates similar in form and substance to the certificates required to be delivered by Buyer pursuant to Section 2.4, and the certificate attached as Exhibit G hereto, certifying to such matters with respect to itself.

12.2 Governing Law; Jurisdiction. This Agreement shall be construed, performed and enforced in accordance with, and governed by, the Laws of the State of Delaware (without giving effect to the principles of conflicts of Laws thereof that would cause the application of the Law of another jurisdiction), except to the extent that the Laws of such State are superseded by the Bankruptcy Code; provided that the validity and enforceability of all conveyance documents or instruments executed and delivered pursuant to this Agreement insofar as they affect title to real property shall be governed by and construed in accordance with the Laws of the jurisdiction in which the Real Property is located. For so long as Sellers are subject to the jurisdiction of the Bankruptcy Court, the Parties hereto irrevocably elect as the sole judicial forum for the

adjudication of any matters arising under or in connection with this Agreement, and consent to the exclusive jurisdiction of, the Bankruptcy Court. After Sellers are no longer subject to the jurisdiction of the Bankruptcy Court, any legal action or proceeding with respect to this Agreement or the transactions contemplated hereby may be brought only in the courts of the State of Delaware sitting in Wilmington, Delaware or of the United States for the District of Delaware, and by execution and delivery of this Agreement, each of the Parties consents to the exclusive jurisdiction of those courts. Each of the Parties irrevocably waives any objection, including any objection to the laying of venue or based on the grounds of *forum non conveniens*, which it may now or hereafter have to the bringing of any action or proceeding in any such jurisdiction in respect of this Agreement, the Ancillary Agreements or the transactions contemplated hereby or thereby.

### 12.3 Warranties Exclusive.

(a) The representations, warranties, covenants and agreements contained in this Agreement and the Ancillary Agreements are the only representations, warranties, covenants or agreements given by Sellers and all other express or implied warranties are disclaimed. Buyer acknowledges and agrees that (i) except as provided in Article 3, the Acquired Assets are conveyed “AS IS,” “WHERE IS” and “WITH ALL FAULTS” and that ALL WARRANTIES OF MERCHANTABILITY, QUALITY, CONDITION, USAGE OR SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE DISCLAIMED, (ii) it has not relied on any representation or warranty of Sellers or their Affiliates or their respective Related Persons, other than the express representations and warranties expressly set forth in Article 3 of this Agreement, and it has not relied on any covenant or agreement of Sellers or their Affiliates or their respective Related Persons, other than the express covenants and agreements of Sellers expressly set forth in this Agreement or in any Ancillary Agreements, (iii) Buyer has made its own investigation of the Acquired Assets and Assumed Liabilities and, based on such investigation and its own conclusions derived from such investigation, have elected to proceed with the transactions contemplated hereby and (iv) no material or information provided by or communications made by (or on behalf of) Sellers or their Affiliates or their respective Related Persons will create any representation or warranty of any kind, whether express or implied, with respect to the Acquired Assets and the title thereto, the operation of the Acquired Assets or the Assumed Liabilities or the prospects (financial and otherwise), risks and other incidents of the Acquired Assets or the Assumed Liabilities.

(b) Without limiting the generality of the foregoing, Buyer acknowledges and agrees that none of Sellers or their Affiliates or their respective Related Persons has made any representation or warranty, express or implied, as to the accuracy or completeness of any information regarding the Acquired Assets or the Assumed Liabilities, except as expressly set forth in Article 3 of this Agreement. Buyer further agrees that none of Sellers or their Affiliates or their respective Related Persons will have or be subject to any liability to Buyer or any other Person resulting from the distribution to Buyer, or Buyer’s use of, any such information and any information, document or material made available to Buyer or its Related Persons in that certain management presentation of Sellers, in certain “data rooms” and online “data sites” or any other form in expectation of the transactions contemplated by this Agreement.

(c) Buyer is taking full responsibility for making its own evaluation of the adequacy and accuracy of any estimates, projections and other forecasts and plans (including the reasonableness of the assumptions underlying such estimates, projections and forecasts). Accordingly, Buyer acknowledges and agrees that none of Sellers or their Affiliates or their respective Related Persons makes, and Buyer is not relying upon, any representations or warranties whatsoever with respect to any estimates, projections and other forecasts and plans (including the reasonableness of the assumptions underlying such estimates, projections and forecasts), and Buyer shall have no claim against Sellers or their Affiliates or their respective Related Persons arising from or relating to any estimates, projections and other forecasts and plans.

**12.4 No Survival of Representations and Warranties.** The representations and warranties, covenants and agreements set forth in this Agreement or in any Ancillary Agreement to the extent contemplating or requiring performance prior to the Closing, shall not survive the Closing. Each of the representations and warranties set forth in this Agreement or in any Ancillary Agreement shall terminate effective immediately as of the Closing such that no claim for breach of any such representation or warranty, detrimental reliance or other right or remedy (whether in contract, in tort or at law or equity) may be brought after the Closing. The covenants and agreements of any Party set forth in this Agreement and in any Ancillary Agreement, to the extent contemplating or requiring performance by such Party prior to the Closing, shall terminate effective immediately as of the Closing such that no claim for breach of any such covenant, detrimental reliance or other right or remedy (whether in contract, in tort or at law or equity) may be brought after the Closing. Each covenant and agreement requiring performance at or after the Closing shall expressly survive Closing and nothing in this Section 12.4 shall be deemed to limit any rights or remedies of any Person for breach of any such covenant (with it being understood that nothing herein shall limit or affect Buyer's or any of its Affiliates' liability for the failure to pay the Purchase Price, assume the Assumed Liabilities or pay other amounts as required under this Agreement). Buyer acknowledges and agrees that the representations, warranties, covenants and agreements contained in Section 12.3 and this Section 12.4 are an integral part of the transactions contemplated by this Agreement and that, without these agreements, Sellers would not enter into this Agreement.

**12.5 No Recourse for Certain Breaches.** Buyer agrees that, except for claims or recourse that cannot be waived under applicable Law, from and after the Closing, no claim shall be brought or maintained by or on behalf of Buyer or its Affiliates or Related Persons against any of Sellers or their Affiliates or their respective Related Persons (in their respective capacities as such), and no recourse shall be sought or granted against any of them, by virtue of or based upon any alleged misrepresentation or inaccuracy in or breach of any of the representations, warranties or covenants of Sellers set forth or contained in this Agreement and that, without these agreements, Sellers would not enter into this Agreement.

**12.6 Mutual Drafting.** This Agreement is the result of the joint efforts of Buyer and Sellers, and each of them and their respective counsel have reviewed this Agreement and each provision hereof has been subject to the mutual consultation, negotiation and agreement of the Parties, and the language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent, and therefore there shall be no construction against either Party based on any presumption of that Party's involvement in the drafting thereof.

12.7 Waiver of Bulk Sales Laws. Each of the Parties acknowledges and agrees that neither Seller will comply with, and hereby waives compliance by Sellers with, any “bulk sales”, “bulk transfer” or similar law relating to the transactions contemplated hereby.

12.8 Expenses. Within one (1) Business Day after receipt by the Escrow Agent of the Deposit, Sellers shall reimburse Buyer for \$250,000 of legal fees and expenses incurred by Buyer in connection with this Agreement and the transactions contemplated hereby (or, at Buyer’s direction, pay such amount directly to Buyer’s counsel). Except as otherwise provided herein, each of the Parties hereto shall pay its own expenses in connection with this Agreement and the transactions contemplated hereby, including any legal, accounting, banking, consulting and advisory fees, whether or not the transactions contemplated hereby are consummated. Buyer shall pay the cost of all Transaction Taxes payable upon or in connection with, and all surveys, title insurance policies, title and environmental consultant reports obtained in connection with this Agreement and the Ancillary Agreements and the transactions contemplated hereby and thereby.

12.9 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable Law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Agreement. In the event that any part of this Agreement is declared by any court or other judicial or administrative body to be null, void or unenforceable, said provision survives to the extent it is not so declared, and all of the other provisions of this Agreement remain in full force and effect only if, after excluding the portion deemed to be unenforceable, the remaining terms provide for the consummation of the transactions contemplated hereby in substantially the same manner as originally set forth at the later of the date this Agreement was executed or last amended in accordance with Section 12.11.

12.10 Notices. All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given (a) if personally delivered, on the date of delivery, (b) if delivered by express courier service of national standing (with charges prepaid), on the Business Day following the date of delivery to such courier service, (c) if deposited in the United States mail, first-class postage prepaid, on the fifth Business Day following the date of such deposit, (d) if delivered by facsimile, upon confirmation of successful transmission, (i) on the date of such transmission, if such transmission is completed at or prior to 5:00 p.m., local time of the recipient party on a Business Day, and (ii) on the next Business Day following the date of transmission, if such transmission is completed after 5:00 p.m., local time of the recipient party, on a Business Day or is transmitted on a day that is not a Business Day, or (e) if delivered by Internet mail (with a delivery report); provided that the relevant computer record indicates a full and successful transmission or no failure message is generated (i) on the date of such transmission, if such transmission is completed at or prior to 5:00 p.m., local time of the recipient party on a Business Day, and (ii) on the next Business Day following the date of transmission, if such transmission is completed after 5:00 p.m., local time of the recipient party or is transmitted on a day that is not a Business Day. All notices, demands and other communications hereunder shall be delivered as set forth below, or pursuant to such other instructions as may be designated in writing by the



party to receive such notice. All notices to be delivered by any party hereto shall also be delivered to the Official Committee of Unsecured Creditors as set forth below:

Notices to Sellers:

Fisker Automotive Holdings, Inc. and Fisker Automotive, Inc.  
5515 E. La Palma Ave.  
Anaheim, California 92807  
Attention: Marc Beilinson  
Telephone: (310) 990-2990  
Email: mbeilinson@beilinsonpartners.com

with a copy to (which shall not constitute notice):

Kirkland & Ellis LLP  
300 North LaSalle Street  
Chicago, Illinois 60654  
Attention: Ryan Preston Dahl  
Steve Toth  
Telephone: (312) 862-2000  
Facsimile: (312) 862-2200  
Email: ryan.dahl@kirkland.com  
steve.toth@kirkland.com

Notices to Buyer:

Wanxiang America Corporation  
88 Airport Road  
Elgin, Illinois 60123  
Attention: Paul Cumberland  
Telephone: (847) 628-8623  
Facsimile: (847) 931-4838  
Email: Pcumberland@wanxiang.com

with a copy to (which shall not constitute notice):

Sidley Austin LLP  
One South Dearborn  
Chicago, Illinois 60603  
Attention: Bojan Guzina and John R. Box  
Telephone: (312) 853-7000  
Facsimile: (312) 853-7036  
Email: bguzina@sidley.com and jbox@sidley.com

Notices to Official Committee of Unsecured Creditors:

with a copy to (which shall not constitute notice):

Brown Rudnick LLP  
One Financial Center  
Boston, MA 0211  
Attention: William Baldiga  
Telephone: (617) 856-8586  
Facsimile: (617) 856-8201  
Email: [wbaldiga@brownrudnick.com](mailto:wbaldiga@brownrudnick.com)

12.11 Amendments; Waivers. This Agreement may be amended or modified, and any of the terms, covenants, representations, warranties or conditions hereof may be waived, only by a written instrument executed by the Parties, or in the case of a waiver, by the Party waiving compliance. Any waiver by any Party of any condition, or of the breach of any provision, term, covenant, representation or warranty contained in this Agreement, in any one or more instances, is not deemed to be nor construed as a furthering or continuing waiver of any such condition, or of the breach of any other provision, term, covenant, representation or warranty of this Agreement.

12.12 Public Announcements. Prior to the Closing, no Party shall make any press release or public announcement concerning the transactions contemplated by this Agreement without the prior written approval of the other Parties, unless a press release or public announcement is required by Law or Order of the Bankruptcy Court. If any such announcement or other disclosure is required by Law or Order of the Bankruptcy Court, the disclosing Party shall give the non-disclosing Party prior notice of, and an opportunity to comment on, the proposed disclosure. The Parties acknowledge that Sellers will file this Agreement with the Bankruptcy Court in connection with obtaining the Sale Order and Bidding Procedures Order. The Parties shall not be restricted from making any public announcements or issuing any press releases after the Closing.

12.13 Entire Agreement. This Agreement and the Ancillary Agreements contain the entire understanding among the Parties with respect to the transactions contemplated hereby and supersede and replace all prior and contemporaneous agreements and understandings, oral or written, with regard to such transactions. Any documents and instruments delivered pursuant to any provision hereof are expressly made a part of this Agreement as fully as though completely set forth herein.

#### 12.14 Parties in Interest.

(a) Nothing in this Agreement is intended to confer any rights or remedies under or by reason of this Agreement on any Persons other than Sellers and Buyer and their respective successors and permitted assigns; provided that (i) each covenant or agreement of Buyer in this Agreement is expressly for the benefit of Sellers and their Affiliates and shall be enforceable by Sellers and their Affiliates (including the estate(s) of Sellers in the Seller Chapter 11 Cases) and (ii) any Related Person of Sellers or their Affiliates or any Related Person of Buyer or their Affiliates, as applicable, may enforce the terms of any provision of this Agreement in which such Related Person is referenced as a beneficiary of such provision.

(b) Without limiting or amending the obligations of Buyer hereunder, to the extent that any obligation or liability of Buyer hereunder is to be performed or paid by an Affiliate of Buyer, this Agreement shall constitute an obligation of Buyer to cause such Affiliate to perform. Nothing in this Agreement is intended to relieve or discharge the obligations or liability of any third Persons to Sellers or Buyer or their respective Affiliates. No provision of this Agreement gives any third Persons any right of subrogation or action over or against Sellers or Buyer or their respective Affiliates.

(c) Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement, express or implied, shall confer upon any current, former or future employee or other Related Person of Sellers or any of Sellers' Affiliates, or legal representative or beneficiary thereof or other Person, any rights or remedies, including any right to employment or continued employment with Buyer or any of its Affiliates for any specified period, or compensation or benefits or other terms and conditions of employment of any nature or kind whatsoever under this Agreement, or a right in any employee or beneficiary of such employee or other Person under an Employee Benefit Plan that such employee, beneficiary or other Person would not otherwise have under the terms of such plan.

12.15 DAMAGES. NO PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, SPECIAL, INDIRECT OR PUNITIVE DAMAGES (INCLUDING LOST PROFITS, LOSS OF PRODUCTION OR OTHER DAMAGES ATTRIBUTABLE TO BUSINESS INTERRUPTION) ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT. THE EXCLUSION OF CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, SPECIAL, INDIRECT OR PUNITIVE DAMAGES AS SET FORTH IN THE PRECEDING SENTENCE SHALL NOT LIMIT THE RIGHTS OF ANY PERSON ENTITLED TO INDEMNIFICATION UNDER THIS AGREEMENT TO ANY SUCH DAMAGES PAYABLE TO THIRD PERSONS IN CONNECTION WITH A MATTER FOR WHICH A PERSON ENTITLED TO INDEMNIFICATION UNDER THIS AGREEMENT.

12.16 WAIVER OF JURY TRIAL. THE PARTIES TO THIS AGREEMENT EACH HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO TRIAL OF ANY CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION (I) ARISING UNDER THIS AGREEMENT OR (II) IN ANY WAY CONNECTED WITH OR RELATED

OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO IN RESPECT OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY, OR OTHERWISE. THE PARTIES TO THIS AGREEMENT EACH HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT THE PARTIES TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OF A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

12.17 Headings. The Article and Section headings in this Agreement are for reference purposes only and do not affect the meaning or interpretation of this Agreement.

12.18 Construction. Unless the context of this Agreement otherwise requires, (a) words of any gender include the other gender, (b) words using the singular or plural number also include the plural or singular number, respectively, (c) the terms “hereof,” “herein,” “hereby,” and derivative or similar words refer to this entire Agreement as a whole and not to any other particular Article, Section or other subdivision, (d) the words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation,” (e) “shall,” “will,” or “agrees” are mandatory, and “may” is permissive, (f) “or” is not exclusive and (g) “deliver” or “delivery” shall not mean delivery of physical possession.

12.19 Currency. Except where otherwise expressly provided, all amounts in this Agreement are stated and shall be paid in United States currency, and without discount, rebate or reduction and subject to no counterclaim or offset (other than withholding Tax obligations required to be withheld by law), on the dates specified herein.

12.20 Time of Essence. Time is of the essence of this Agreement.

12.21 Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which constitute the same agreement. This Agreement and any signed agreement entered into in connection herewith or contemplated hereby, and any amendments hereto or thereto, to the extent signed and delivered by facsimile (or other electronic transmission), shall be treated in all manner and respects as an original contract and shall be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person.

### **ARTICLE 13 DEFINITIONS**

13.1 Certain Terms Defined. As used in this Agreement, the following terms have the following meanings:

“*Affiliate*” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under direct or indirect common control with such first Person where “control” means the possession, directly or indirectly, of the power to direct or cause the

direction of the management policies of a Person, through the ownership of voting securities, by contract, as trustee, executor or otherwise.

**“Affiliated Party”** means, any officer, director, governing body member, stockholder, partner or Affiliate, as applicable, of any Seller or any individual related by marriage or adoption to any such individual or any entity in which any such Person owns any beneficial interest.

**“Ancillary Agreement”** means collectively, any agreement to be executed by any of Sellers or any Affiliate thereof, on the one hand, and Buyer or any Affiliate thereof on the other hand, in connection with the transactions contemplated by this Agreement.

**“Auction”** means the auction conducted by Sellers pursuant to the Bidding Procedures Order.

**“Auction Date”** means the scheduled date of the Auction as set forth in the Bidding Procedures Order (or the date to which such Auction may be adjourned).

**“Bankruptcy Code”** means Title 11 of the United States Code.

**“Bankruptcy Court”** means the United States Bankruptcy Court for the District of Delaware or such other court having jurisdiction over the Seller Chapter 11 Cases originally administered in the United States Bankruptcy Court of the District of Delaware.

**“Bidding Procedures Motion”** means that certain Motion of Creditors’ Committee for Entry of Orders (I)(A) Approving Bid Procedures in Connection with the Sale of Certain Assets of the Debtors, (B) Scheduling Hearing to Consider Approval of the Sale of Assets, (C) Approving Form and Manner of Notice Thereof, (D) Authorizing and Directing Debtors to Enter Into Stalking Horse Purchase Agreement, (E) Approving Expense Reimbursement, and (F) Granting Related Relief; and (II) Authorizing Debtors to Obtain Replacement Post-Petition Secured Financing, Utilize Cash Collateral, Grant Adequate Protection, Modify the Automatic Stay and Scheduling a Final Hearing with Respect to Same, filed with the Bankruptcy Court on December 30, 2013.

**“Bidding Procedures Order”** means that certain Order (I) *Approving Bid Procedures in Connection With the Sale of Certain Assets of the Debtors*; (Ii) *Scheduling Hearing to Consider Approval of the Sale of Assets*; (III) *Approving Form and Manner of Notice Thereof*; (IV) *Authorizing the Debtors to Enter Into Stalking Horse Purchase Agreements*; (V) *Approving Expense Reimbursement*; and (VI) *Granting Related Relief* as entered by the Bankruptcy Court at [Docket No. ~~7~~508 on January 23, 2014.

**“Brownfields Development Agreement”** means that certain Brownfields Development Agreement dated May 28, 2010 by and between Fisker Automotive, Inc. and the Delaware Department of Natural Resources and Environmental Control.

**“Business Day”** means any day other than Saturday, Sunday and any day that is a legal holiday or a day on which banking institutions in New York, New York are authorized by Law or other Governmental action to close.

**“Business Records”** means all books, files and records of Sellers, including customer lists, historical customer files, circulation data, research records, subscription lists, information databases, market surveys, reports, plans, data, accounting and Tax records, training manuals, safety reports, Environmental Reports, maintenance schedules, operating and production records, inventory records, business plans, marketing materials and marketing and all other studies, documents and records but excluding any Retained Books and Records.

**“Buyer Fundamental Representations”** means the representations and warranties set forth in Section 4.1 (Corporate Organization), Section 4.2 (Authorization and Validity) and Section 4.8 (Brokerage).

**“Buyer Material Adverse Effect”** means any event, change or circumstance that, individually or in the aggregate, results or would reasonably be expected to result in a material adverse change or effect on the ability of Buyer to consummate the transactions contemplated by this Agreement.

**“CFIUS”** means the Committee on Foreign Investment in the United States.

**“Claims”** means all claims, defenses, cross claims, counter claims, debts, suits, remedies, liabilities, demands, rights, obligations, damages, expenses, rights to refunds, reimbursement, recovery, indemnification or contribution, attorneys’ or other professionals’ fees and causes of action whatsoever, whether based on or sounding in or alleging (in whole or in part) tort, contract, negligence, gross negligence, strict liability, bad faith, contribution, subrogation, respondeat superior, violations of federal or state securities laws, breach of fiduciary duty, any other legal theory or otherwise, whether individual, class, direct or derivative in nature, liquidated or unliquidated, fixed or contingent, whether at law or in equity, whether based on federal, state or foreign law or right of action, foreseen or unforeseen, mature or not mature, known or unknown, disputed or undisputed, accrued or not accrued, contingent or absolute (including all causes of action arising under Sections 510, 544 through 551 and 553 of the Bankruptcy Code or under similar state Laws, including fraudulent conveyance claims, and all other causes of action of a trustee and debtor-in-possession under the Bankruptcy Code) or rights of set-off.

**“Code”** means the Internal Revenue Code of 1986, as amended.

**“Committee”** means the official committee of unsecured creditors appointed in the Seller Chapter 11 Cases pursuant to Section 1102(a) of the Bankruptcy Code pursuant to that certain *Notice of Appointment of Official Creditor Committee*, filed by the U.S. Trustee on December 5, 2013.

**“Competing Transaction”** means any direct or indirect acquisition, sale, divestiture (including by merger, acquisition or other business combination involving any Seller), public offering, recapitalization, business combination or reorganization, whether in one transaction or a series of related transactions, of or involving all or substantially all the assets of any Seller, other than any such transaction or series of related transactions with Buyer or any Affiliates thereof.

**“Computer Software”** means any and all software (including computer programs, applications software and software implementations of algorithms), whether in source code or object code form, and all documentation related to the foregoing.

**“Consent”** means any consent, approval, authorization, qualification, waiver or notification of a Government or any other Person.

**“Contract”** means any written or oral contract, agreement, license, sublicense, lease, sublease, easement, mortgage, instruments, guaranties, commitment, undertaking or other similar arrangement, whether express or implied, to which any Seller is a party, other than the Permits and Real Property Leases.

**“Delaware Facility”** means the manufacturing facility located at 801 Boxwood Road, Wilmington, Delaware and the underlying land and related Improvements.

**“Delayed Acquired Assets”** means any Acquired Assets that this Agreement provides or contemplates are to be transferred to Buyer and that require the removal of a Legal Impediment or the receipt or delivery of a Consent for such transfer, which Legal Impediment is not removed or Consent is not obtained or delivered on or prior to the Closing Date.

**“Delayed Assumed Liabilities”** means any Assumed Liabilities that this Agreement provides or contemplates are to be assumed by Buyer and that require the removal of a Legal Impediment or the receipt or delivery of a Consent for such assumption, which Legal Impediment is not removed or Consent is not obtained or delivered on or prior to the Closing Date.

**“Designated Causes of Action”** (a) all commercial tort causes of action not related to the Acquired Assets or Assumed Liabilities, including all pending and potential causes of action against all present and former directors, officers and all other representatives of the Sellers, and any persons acting in concert with (or aiding and abetting) the same, (b) all causes of action arising under Part V of the Bankruptcy Code, (c) any rights of recovery against BMW Group under prepetition agreements with Sellers (by way of offset against BMW’s claims against the Sellers’ estates or affirmative recovery), and (d) all rights under and to insurance policies that may pertain to any of them.

**“DoE Facility”** means (a) that certain Loan Arrangement and Reimbursement Agreement, dated as of April 22, 2010, by and between the Sellers and the United States Department of Energy, (b) that certain Note Purchase Agreement, dated as of April 22, 2010, by and between Fisker Automotive, the United States Department of Energy and the Federal Financing Bank, a body corporate and instrumentality of the United States (“**FFB**”), (c) that certain Future Advance Promissory Note, dated as of April 22, 2010, in the maximum principal amount of \$169,300,000, issued by Fisker Automotive to FBB, (d) that certain Future Advance Promissory Note, dated as of April 22, 2010, in the maximum principal amount of \$359,360,000, issued by Fisker Automotive to FBB and (e) any collateral, security, agency or other related loan documents, in each case, as amended.

**“DoE Liens”** means Liens on any rights, title, interests or assets (tangible or intangible) of the Sellers pursuant to the DoE Facility.

**“Employee Benefit Plan”** means any “employee benefit plan” (as such term is defined in ERISA § 3(3)) and any other material employee benefit plan, program or arrangement of any kind maintained by Sellers or their ERISA Affiliates for the benefit of their employees or otherwise with respect to which Sellers or any of their ERISA Affiliates has any liability.

**“Environmental Laws”** means all Laws and Orders on or prior to the Closing Date, and all common law relating to pollution or protection of the environment, including the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sec. 9601 *et seq.*, as amended, the federal Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901 *et seq.*, as amended, and similar state statutes.

**“Environmental Permits”** means all environmental permits, authorizations, approvals, registrations, and licenses issued by any Government (and pending applications for the foregoing) pursuant to Environmental Laws.

**“Environmental Reports”** means any environmental report assessing compliance with any Environmental Laws, and any Phase I or II environmental site assessments or comparable environmental investigation reports, in each case which Sellers have received from an unaffiliated third party with respect to the Long-Term Business or the Transferred Real Property; provided, Environmental Reports do not include any safety, health and environmental audit reports, or internal investigation reports, prepared under the direction of Sellers’ legal department and privileged under the attorney-client privilege, attorney work-product privilege, or state or federal environmental self-auditing privilege or policy.

**“ERISA”** means the Employee Retirement Income Security Act of 1974, as amended.

**“ERISA Affiliate”** means any entity treated as a single employer with Sellers pursuant to Section 414 of the Code.

**“Escrow Agent”** means Wells Fargo Bank, National Association, the escrow agent under the Escrow Agreement.

**“Escrow Agreement”** means the escrow agreement by and among Sellers, Buyers and Escrow Agent, dated as of the date hereof.

**“Government”** means any United States federal, state or local, or any supra-national, foreign or non-U.S., government, political subdivision, governmental, regulatory or administrative authority, instrumentality, agency body or commission, self-regulatory organization, court, tribunal or judicial or arbitral body.

**“Hazardous Materials”** means any hazardous or toxic substance or waste or any contaminant or pollutant regulated under or for which liability or standards of care are imposed by Environmental Laws, including “hazardous substances” as currently defined by the Federal Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, and “hazardous wastes” as currently defined by the Resource Conservation and Recovery Act, as amended.



**“Hybrid DIP Facility”** means that certain Binding Commitment and Agreement for DIP Financing and Use of Cash Collateral dated November 22, 2013, by and among Fisker Automotive as the borrower, Fisker Holdings as the guarantor, and Hybrid Technology, LLC in its capacity as a post-petition lender to the Sellers, as amended, supplemented or otherwise modified from time to time.

**“Improvements”** means the buildings, improvements and structures now existing on the Real Property or demised under the Real Estate Leases, but only to the extent such buildings, improvements and structures constitute fixtures under applicable Law.

**“Intellectual Property Rights”** means all rights in and to the following: (i) patents (including all reissues, divisions, continuations, continuations-in-part and extensions thereof), patent applications, patent rights, patent applications, statutory invention registrations and documented unpatented invention disclosures, (ii) trademarks, service marks, trade names, service names, brand names, trade dress and logos and registrations and applications for registration thereof, together with all of the goodwill associated therewith, (iii) copyrightable works and works of authorship, and registrations and applications for registration thereof, (iv) internet domain names, (vi) trade secrets and confidential information, (vii) Computer Software and (viii) any other intellectual property rights.

**“IP Documentation”** means all documentation related to, and all tangible embodiments (including in electronic format) of, Intellectual Property Rights.

**“Law”** means any United States federal, state or local, or any non-U.S., laws, statutes, regulations, rules, codes or ordinances enacted, adopted, issued or promulgated by any Government (including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements) or common law of any Government.

**“Leased Real Property”** means the real property that is the subject of the Real Property Leases.

**“Legal Impediment”** means a legal impediment preventing or restricting the transfer of an Acquired Asset or the assumption of an Assumed Liability, as the case may be, as of the Closing Date.

**“Lien”** means any mortgage, pledge, charge, security interest, encumbrance, lien (statutory or other), hypothecation, restriction, easement, encroachment, security agreement, including any conditional sale or other title retention agreement and any lease having substantially the same effect as the foregoing, and (ii) any leasehold interest, license or other right in favor of a third party to use any portion of the Purchased Assets. For the avoidance of doubt, licenses of Intellectual Property Rights shall not constitute Liens.

**“Long-Term Business”** means the design, research and development, assembly, sourcing, manufacturing, marketing, sale and distribution of plug-in hybrid electric vehicles, in each case as conducted by Sellers during the twenty-four months prior to the date hereof.

**“Material Adverse Effect”** means any event, change or circumstance after December 30, 2013 that, individually or in the aggregate, results or would reasonably be expected to result in a

material adverse change or effect on the Acquired Assets or the value thereof, taken as a whole (in each case, to be interpreted with due consideration for the circumstances, condition and status of the Acquired Assets and Sellers (including the assets, employees and other resources (or absence thereof)) as of December 30, 2013 and the status of the Sellers as debtors under the Seller Chapter 11 Cases) or the ability of Sellers to consummate the transactions contemplated by this Agreement; provided that none of the following changes or effects, either alone or taken together with other changes or effects or whether arising directly or indirectly, shall be taken into account in determining whether there has been a Material Adverse Effect: (i) changes, or effects arising from or relating to changes, of Laws; (ii) changes arising from or relating to, or effects of, layoffs, strikes, work stoppages or other labor disturbances; (iii) changes arising from or relating to, or effects of, increases in costs of commodities or supplies; (iv) changes arising from or relating to, or effects of, the announcement of Buyer as the purchaser of the Acquired Assets and the identity of Buyer and their Affiliates, and their respective shareholders, officers, directors and employees; (v) changes, or effects arising from or relating to changes, affecting the industries in which the Sellers operate or operated, or the Acquired Assets were, are or may be used, generally (including any change, or any effect arising from or relating to any change); (vi) changes, or effects arising from or relating to changes, in economic, regulatory or political conditions generally; (vii) changes, or effects arising from or relating to changes, in financial, banking, or securities markets (including (A) any disruption of any of the foregoing markets, (B) any change in currency exchange rates, (C) any decline in the price of any security or any market index and (D) any increased cost of capital or pricing related to any financing); (viii) any failure, in and of itself, to achieve any projections, forecasts, estimates, performance metrics or operating statistics (whether or not shared with Buyer or its Affiliates); (ix) changes arising from or relating to, or effects of, any act(s) of war or of terrorism; (x) changes arising from or relating to, or effects of, weather or meteorological events; or (xi) changes arising from or relating to, or effects of, any motion, application, pleading or Order filed under or in connection with, or the commencement or existence of continuation of, the Seller Chapter 11 Cases or any motion, application, pleading or Order filed by any Government applicable to the electric vehicle industry generally.

**“Material IP License”** means (a) each license of or grant of material rights to Intellectual Property Rights granted by Sellers to a third party (other than non-exclusive, non-sublicensable licenses to customers, suppliers, vendors, distributors and dealerships granted in the ordinary course of business) and (b) each license of or grant of material rights to Intellectual Property Rights granted by a third party to Sellers (other than licenses to commercially available “off the shelf” software and licenses to Open Source Software), in each case in effect as of the date of this Agreement.

**“Open Source Software”** means any software that is subject to any “open source,” “copyleft,” or other similar types of license terms (including any GNU General Public License, Library General Public License, Lesser General Public License and the like and including any licensed approved by the Open Source Initiative and listed at <http://www.opensource.org/licenses>) or any other license that requires as a condition of use, modification or distribution of such Computer Software that such Computer Software or other Computer Software combined or distributed with it be (a) disclosed or distributed in source code form, (b) licensed for the purpose of making derivative works, (c) redistributable at no charge or (d) licensed subject to a patent non-assert or royalty-free patent license.

**“Order”** means any judgment, order, injunction, decree, writ, permit or license of any Government or any arbitrator.

**“Permits”** means the permits, authorizations, approvals, registrations, and licenses issued by any Government (and pending applications for the foregoing) to either of Sellers or with respect to the Acquired Assets or Assumed Liabilities.

**“Permitted Liens”** means (a) any Lien that is not extinguished by the Sale Order under applicable Law, it being understood that the Sale Order shall extinguish Liens to the maximum extent permissible under applicable Law, (b) any Lien that has priority over the DoE Liens or any other Liens held by Hybrid Tech Holdings, LLC, a Delaware limited liability company, as of November 22, 2013, (c) Liens for Taxes, assessments and Government or other similar charges, (d) purchase money Liens, (e) Liens of lessors, lessees, sublessors, sublessees, licensors, sublicensors, licensees or sublicensees arising under lease arrangements or license arrangements, (f) mechanics liens and similar Liens for labor, materials, or supplies (but, in each instance of clauses (b) through (f), not including Cure Costs), (g) zoning, building codes and other land use laws regulating the use or occupancy of Real Property or the activities conducted thereon that are imposed by any Government having jurisdiction over such Real Property, (h) easements, servitudes, covenants running with the land, conditions, restrictions and other similar matters affecting title to assets which either (x) the title company has agreed to affirmatively insure against loss caused thereby in the applicable title policy, by way of ALTA coverage or other affirmative coverage, reasonably acceptable to Buyer, or (y) do not materially impair the operation or occupancy of the assets in question as currently operated or occupied, (i) any state of facts shown by a current ALTA survey that do not materially and adversely effect the operation of the Real Property in question as currently operated, and (j) the Assumed Liabilities and Liens arising in connection therewith.

**“Person”** means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or Government.

**“Plan”** means a plan of liquidation for the Debtors consistent in all material respects with the terms hereof filed with the Court for confirmation.

**“Real Property”** means the Owned Real Property and the Leased Real Property.

**“Related Person”** means, with respect to any Person, all past, present and future directors, officers, members, managers, stockholders, employees, controlling persons, agents, professionals, financial advisors, restructuring advisors, attorneys, accountants, investment bankers, Affiliates or representatives of (i) any such Person and (ii) of any Affiliate of such Person; provided, however, that notwithstanding the foregoing, Sellers shall be deemed not to be “Related Persons” of each other.

**“Retained Books and Records”** means (i) all corporate seals, minute books, charter documents, corporate stock record books, original Tax and financial records and such other files, books and records to the extent they relate to any of the Excluded Assets or Excluded Liabilities or the organization or capitalization of Sellers or of any Affiliate of Sellers or the sale of all or a portion of the outstanding capital stock of either of Sellers or substantially all of their assets and

(ii) all books, files and records that would otherwise constitute a Business Record but for the fact that disclosure of such books, files or records would violate any legal constraints or obligations regarding confidentiality thereof or waive any attorney-client, work product or other legal privilege.

**“Rule” or “Rules”** means the Federal Rules of Bankruptcy Procedure.

**“Sale Hearing”** means the hearing at which the Bankruptcy Court will consider approving the sale of Acquired Assets and entering the Sale Order.

**“Seller Fundamental Representations”** means the representations and warranties set forth in Section 3.1 (Corporate Organization), Section 3.2 (Authorization and Validity) and Section 3.7 (Export Controls).

**“Sellers’ Knowledge”** or any other similar term or knowledge qualification means the present actual knowledge of Marc Beilinson, Barney Koehler and Samuel Koroglu.

**“Tax Return”** means any report, return, information return, filing or other information, including any schedules, exhibits or attachments thereto, and any amendments to any of the foregoing filed or required to be filed or maintained in connection with the calculation, determination, assessment or collection of any Taxes (including estimated Taxes).

**“Taxes”** means all taxes, however denominated, including any interest, penalties or additions to tax that may become payable in respect thereof, imposed by any Government, which taxes include all income taxes, Transaction Taxes, payroll and employee withholding, unemployment insurance, social security (or similar), sales and use, excise, franchise, gross receipts, occupation, real and personal property, stamp, transfer, workmen’s compensation, customs duties, registration, documentary, value added, alternative or add-on minimum, estimated, environmental (including taxes under Section 59A of the Code) and other obligations of the same or a similar nature, whether arising before, on or after the Closing Date, together with any interest or any penalty, addition to tax or additional amount imposed thereto.

**“Transferred Real Property”** means the Purchased Owned Real Property and the Assumed Real Property Leases.

**“WARN Act”** means the Worker Adjustment and Retraining Notification Act of 1988, as amended, and any similar state, local and other Laws.

13.2 All Terms Cross-Referenced. Each of the following terms is defined in the Section set forth opposite such term:

<u>Term</u>	<u>Section</u>
Acquired Assets	1.1
Additional Asset Conveyance Documents	2.3(a)(vi)
Additional Liabilities Assumption Documents	2.3(a)(vii)
Agreement	Preamble
Allocation Schedule	8.3

<u>Term</u>	<u>Section</u>
Assigned Contracts	1.1(k)
Assigned Permits	1.1(l)
Assumed Liabilities	1.3
Assumed Real Property Leases	1.1(b)
Assumption Notice	1.5(c)
Bidding Procedures	7.2
Business Contracts	1.5(a)
Buyer	Preamble
Closing	2.2
Closing Date	2.2
Confidential Information	11.4(b)
Cure Costs	1.3(b)
Deposit	2.5
Designated Affiliate	1.1
Designated Contract Obligations	1.5(c)
Designated Contracts	1.5(c)
DIP Loan Payment Amount	2.1
Equity Consideration	2.1
Excluded Assets	1.2
Excluded Contracts	1.2(c)
Excluded Liabilities	1.4(a)
Excluded Real Property Leases	1.2(a)
Existing Plan	Recitals
Expense Reimbursement	10.4(a)
Fisker Automotive	Preamble
Fisker Holdings	Preamble
Government Contract	3.7
Inventory	1.1(e)
IP Licenses	1.1(i)
Material IP Licenses	3.5(a)
Non-Seller Subsidiary	3.1
Owned IP	1.1(j)
Owned Real Property	1.1(a)
Party/Parties	Preamble
Petition Date	Recitals
Proration Period	8.4
Purchase Price	2.1
Purchased Owned Real Property	1.1(a)
Real Property Leases	1.1(b)
Rejection Notice	1.5(c)
Required Agreements	6.2
Restricted Names	11.3
Retention Period	1.5(c)
Sale Order	7.1

<u>Term</u>	<u>Section</u>
Seller/Sellers	Preamble
Seller Chapter 11 Cases	Recitals
Sellers' Insurance Policies	11.2
Seller Parties	10.4(c)
Specified Employees	6.8
Termination Date	10.2(b)
Termination Order	10.2(h)
Transaction Taxes	8.1
Transferred Employee	6.8

*(Signatures are on the following page.)*

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

**BUYER:**

WANXIANG AMERICA CORPORATION

By: \_\_\_\_\_

Name:

Title:

**SELLERS:**

FISKER AUTOMOTIVE HOLDINGS, INC.

By: \_\_\_\_\_

Name:

Title:

FISKER AUTOMOTIVE, INC.

By: \_\_\_\_\_

Name:

Title: