

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

In re:

FISKER INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 24-11390 (TMH)

(Joint Administration Requested)

**MOTION OF DEBTORS FOR ENTRY OF INTERIM
AND FINAL ORDERS (I) PROHIBITING UTILITIES FROM
ALTERING, REFUSING, OR DISCONTINUING SERVICE,
(II) DEEMING UTILITIES ADEQUATELY ASSURED OF FUTURE
PERFORMANCE, AND (III) ESTABLISHING PROCEDURES FOR
DETERMINING REQUESTS FOR ADDITIONAL ADEQUATE ASSURANCE**

Fisker Inc. and certain of its affiliates (collectively, the “**Debtors**”),² each of which is a debtor and debtor in possession in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), hereby file this *Motion of Debtors for Entry of Interim and Final Orders (I) Prohibiting Utilities From Altering, Refusing, or Discontinuing Service, (II) Deeming Utilities Adequately Assured of Future Performance, and (III) Establishing Procedures for Determining Requests for Additional Adequate Assurance* (this “**Motion**”). This Motion is supported by the *Declaration of John C. DiDonato as Chief Restructuring Officer of the Debtors in Support of Debtors’ Chapter 11 Proceedings and First Day Pleadings* (the “**DiDonato Declaration**”) filed contemporaneously herewith and incorporated by reference herein. In further support of this Motion, the Debtors respectfully state as follows:

¹ The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective employer identification numbers or Delaware file numbers, are as follows: Fisker Inc. (0340); Fisker Group Inc. (3342); Fisker TN LLC (6212); Blue Current Holding LLC (6668); Platinum IPR LLC (4839); and Terra Energy Inc. (0739). The address of the debtors’ corporate headquarters is 14 Centerpointe Drive, La Palma, CA 90623.

² The Debtors and their direct and indirect non-Debtor subsidiaries are collectively referred to herein as “**Fisker**.”



Relief Requested

1. By this Motion, and pursuant to sections 105 and 366 of title 11 of the United States Code (the “**Bankruptcy Code**”) and rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), the Debtors seek entry of interim and final orders, substantially in the forms attached hereto as **Exhibit B** and **Exhibit C** (the “**Proposed Orders**”), (a) prohibiting the Utilities (as defined below), from altering, refusing, or discontinuing any Utility Services (as defined below) on account of prepetition amounts outstanding or on account of any perceived inadequacy of the Debtors’ proposed adequate assurance, (b) determining that the Debtors’ proposed offer of deposits, as set forth herein, provides the Utilities with adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code, and (c) approving procedures for resolving requests by Utilities for additional or different assurances beyond those set forth in this Motion.

Jurisdiction, Venue, and Authority

2. The United States Bankruptcy Court for the District of Delaware (the “**Court**”) has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012.

3. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b). In addition, the Debtors confirm their consent, pursuant to rule 9013-1(f) of the Local Rules for the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter a final order or judgment in connection herewith consistent with Article III of the United States Constitution.

4. Venue of the Chapter 11 Cases and related proceedings is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

A. General Background

5. On June 17 and 19, 2024 (collectively, the “**Petition Date**”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors remain in possession of their property and continue to operate and manage their business as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner, and no official committee has been appointed in the Chapter 11 Cases.

6. Contemporaneously herewith, the Debtors have filed a motion requesting the joint administration of the Chapter 11 Cases pursuant to Bankruptcy Rule 1015(b) and Local Rule 1015-1.

7. Fisker is an American automotive company that designs, develops, markets, and sells electric vehicles. Passionately driven by a vision of a clean future for all, Fisker created the world’s most sustainable and emotional electric vehicles. Headquartered in California, Fisker operates in several countries (including the United States, Austria, Germany, China, and India) and conducts sales operations in North America and throughout Europe.

8. Additional information about the Debtors’ business and affairs, capital structure, and prepetition indebtedness, and the events leading up to the Petition Date, can be found in the DiDonato Declaration.

B. The Utilities and Services Provided

9. In connection with the operation of their business and management of their properties, the Debtors obtain utility services, including electricity, natural gas, telephone, water

and sewage, telecommunications, waste removal, and other similar services (collectively, “**Utility Services**”) from a number of utilities (as that term is used in section 366 of the Bankruptcy Code) (collectively, the “**Utilities**”). Attached hereto as **Exhibit A** (as may be supplemented from time to time, the “**Utilities List**”) is a nonexclusive list of Utilities that provide Utility Services in the United States to the Debtors as of the Petition Date. The relief requested herein is for all Utilities providing Utility Services to the Debtors and is not limited to those listed on the Utilities List. The Debtors have made an extensive and good faith effort to identify all of the Utilities that provide them Utility Services and to include them on the Utilities List. Nonetheless, the Debtors reserve the right to supplement the Utilities List by filing a notice (a “**Supplemental Notice**”) with the Court at a later date if necessary.³

10. The Debtors have established a good payment history with the Utilities, making payments on a regular and timely basis. In fact, to the best of the Debtors’ knowledge, there are no material defaults or arrearages with respect to the Debtors’ undisputed Utility Services invoices, other than payment interruptions that may be caused by the commencement of the Chapter 11 Cases. During the first five months of 2024, the Debtors paid an average of approximately \$183,502 per month on account of all Utility Services. However, in light of the Debtors’ recent transition from a direct-to-consumer sales model to a dealer partnership sales model (as further described in the DiDonato Declaration), the Debtors no longer require numerous showrooms located across the country, and, as a result, in the months leading up to the Petition Date, the Debtors vacated eleven facilities previously utilized for sales and marketing related purposes.

³ The inclusion of any entity on, as well as any omission of any entity from, the Utilities List is not an admission by the Debtors that such entity is, or is not, a “utility” within the meaning of section 366 of the Bankruptcy Code, and the Debtors reserve all rights with respect thereto.

Accordingly, the Debtors estimate that their monthly Utility spend will be reduced on a going forward basis to approximately \$125,559.47.

The Proposed Adequate Assurance Deposit

11. Contemporaneously herewith, with the consent of the Debtors' secured creditor, the Debtors have filed a motion seeking authority to use cash collateral, and, as of the Petition Date, the Debtors have approximately \$4,002,843 in unrestricted cash, cash equivalents, and short-term investments. Accordingly, the Debtors expect to have ample liquidity to timely pay all post-petition obligations owed to the Utilities.

12. However, to provide adequate assurance to the Utilities as required under section 366(c) of the Bankruptcy Code, the Debtors propose to deposit⁴ into a segregated account (the "**Utility Deposit Account**") for the benefit of the Utilities an amount equal to two weeks of all of the Utility Services in the United States, calculated as a historical average of the Utility Service spend over the last five months (the "**Adequate Assurance Deposit**"). The aggregate amount of the proposed Adequate Assurance Deposit is approximately \$62,779.74. The Adequate Assurance Deposit will be held by the Debtors in the Utility Deposit Account for the benefit of the Utilities on the Utilities List during the pendency of the Chapter 11 Cases.

13. The Debtors will deposit the Adequate Assurance Deposit in the Utility Deposit Account within three business days of entry of the interim Proposed Order. The Utility Deposit Account shall be an interest-bearing, segregated account at a bank that has executed a Uniform Depository Agreement with the Office of the United States Trustee for the District of Delaware.

⁴ Section 366(c)(1)(A) of the Bankruptcy Code defines "assurance of payment" to mean, among other things, a cash deposit.

The amount allocated for, and payable to, each Utility shall be equal to the amount set forth on the Utilities List as to each Utility or as otherwise agreed by the Debtors and applicable Utility.

14. The portion of the Adequate Assurance Deposit attributable to each Utility shall be returned to the Debtors, without further Court order, on the earlier of (a) the reconciliation and payment by the Debtors of the final invoice of such Utility in accordance with applicable non-bankruptcy law following the termination of Utility Services from such Utility, (b) the sale of all or substantially all of the Debtors' assets, (c) the effective date of a chapter 11 plan, or (d) the date upon which the Chapter 11 Cases are dismissed or converted to a case under chapter 7 of the Bankruptcy Code; *provided, however*, that there are no outstanding disputes related to post-petition payments due between the Debtors and the applicable Utility. Additionally, if the Debtors terminate any of the Utility Services provided by a Utility, the Debtors request that they immediately be permitted to reduce the Adequate Assurance Deposit to reflect the termination of such Utility Services.

15. The Debtors propose that each Utility accepting the Adequate Assurance Deposit shall be deemed to have stipulated that the Adequate Assurance Deposit constitutes adequate assurance of payment to such Utility within the meaning of section 366 of the Bankruptcy Code and shall be prohibited from challenging or opting out of the Adequate Assurance Procedures (as defined below), filing a Request (as defined below), or requesting any additional adequate assurance of payment of any kind at any time, notwithstanding any attempt by such Utility to reserve a right to seek any such relief.

16. Given their current cash reserves, the Debtors submit that the Adequate Assurance Deposit, in conjunction with the Debtors' ability to pay for future Utility Services in the ordinary

course of business, constitute sufficient adequate assurance to each of the Utilities (collectively, the “**Proposed Adequate Assurance**”).

Proposed Adequate Assurance Procedures

17. Notwithstanding the Proposed Adequate Assurance, if any Utility believes that additional assurance is required, it may request such additional assurance solely pursuant to the following procedures (the “**Adequate Assurance Procedures**”):

(a) The Debtors or their advisors will provide a copy of this Motion, the interim Proposed Order, and the final Proposed Order to each of the Utilities listed on the Utilities List within three business days after entry of the interim order by the Court.

(b) If a Utility is not satisfied with the Proposed Adequate Assurance, it must serve a written request (a “**Request**”) upon (i) the Debtors, c/o Fisker Inc., 14 Centerpointe Drive, La Palma, CA 90623, Attn: Julia Burge and Jennifer Kaushek and (ii) proposed counsel to the Debtors, (A) Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, NY, 10017, Attn: Brian M. Resnick, Esq., Darren S. Klein, Esq., Steven Z. Szanzer, Esq., and Richard J. Steinberg, Esq.; and (B) Morris Nichols Arsht & Tunnell LLP, 1201 North Market Street, 16th Floor, Wilmington, DE 19801, Attn: Robert J. Dehney, Sr. Esq., Andrew R. Remming, Esq., Brenna A. Dolphin, Esq., Sophie Rogers Churchill, Esq., and Evanthea Hammer, Esq.; and the Request must set forth (i) the location(s) for which Utility Services are provided, (ii) the account number(s) for such location(s), (iii) the outstanding balance for each account, and (iv) an explanation of why the Utility believes that the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.

(c) If the Debtors determine, in their sole discretion, that a Request or any consensual agreement reached in connection therewith is reasonable, the Debtors, without further order of the Court, may enter into agreements granting additional adequate assurance to the Utility serving such Request and, in connection with such agreements, provide the Utility with additional adequate assurance of payment, including payments on prepetition amounts owing, cash deposits, prepayments, or other forms of security, with notice within 15 calendar days following entry into such agreement to the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) and counsel to any official committee appointed in the Chapter 11 Cases.

(d) If the Debtors determine that a Request is unreasonable, then they shall, within 30 calendar days after receipt of such Request, or such longer period as may be agreed to between the Debtors and the Utility, file a motion (a “**Determination Motion**”) pursuant to section 366(c)(3) of the Bankruptcy Code seeking a determination from the Court that the Proposed Adequate Assurance, plus any additional consideration offered by the Debtors, constitutes adequate assurance of payment. Pending notice and a hearing on the Determination Motion, the Utility that is the subject of the unresolved Request may not alter, refuse, or discontinue services to the Debtors.

(e) If an undisputed amount relating to Utility Services provided post-petition by a Utility is unpaid, and remains unpaid beyond any applicable grace period, such Utility may request a disbursement from the Utility Deposit Account in such undisputed unpaid amount by giving notice to (i) the Debtors, c/o Fisker Inc., 14 Centerpointe Drive, La Palma, CA 90623, Attn: Julia Burge and Jennifer Kaushek; (ii) proposed counsel to the Debtors, (A) Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, NY, 10017, Attn: Brian M. Resnick, Esq., Darren S. Klein, Esq., Steven Z. Szanzer, Esq., and Richard J. Steinberg, Esq.; and (B) Morris Nichols Arsht & Tunnell LLP, 1201 North Market Street, 16th Floor, Wilmington, DE 19801, Attn: Robert J. Dehney, Sr. Esq., Andrew R. Remming, Esq., Brenna A. Dolphin, Esq., Sophie Rogers Churchill, Esq., and Evanthea Hammer, Esq.; (iii) the Office of the United States Trustee, 844 N. King Street, Wilmington, DE 19801, Attn: Linda Richenderfer; and (iv) counsel to any official committee of unsecured creditors appointed in the Chapter 11 Cases (collectively, the “**Utility Notice Parties**”). The Debtors shall honor such request within 15 business days after the date the request is received by the Debtors, subject to the ability of the Debtors and any such requesting Utility to resolve any dispute regarding such request without further order of the Court. To the extent a Utility receives a disbursement from the Utility Deposit Account in accordance with this provision, the Debtors shall subsequently replenish the Utility Deposit Account in the amount so disbursed.

(f) Absent compliance with the procedures set forth in this Motion and any order entered by the Court, the Debtors’ Utilities are prohibited from altering, refusing, or discontinuing service on account of any unpaid prepetition charges and are deemed to have received adequate assurance of payment in compliance with section 366 of the Bankruptcy Code.

Proposed Procedures To Supplement the Utility List

18. Although the Debtors have made a good faith effort to identify all of the Utilities that currently provide Utility Services to the Debtors, it is possible that some Utilities may not be listed on the Utilities List. For any additional Utilities that the Debtors identify, the Debtors will file a Supplemental Notice and will (a) serve the Supplemental Notice by first-class mail on all Utilities listed in such Supplemental Notice and (b) post the Supplemental Notice on the Debtors’ case information website located at <https://www.veritaglobal.net/fisker>. The Debtors request that the terms of any Order entered by the Court be binding on all Utilities, regardless of whether or when such Utility was added to the Utilities List by Supplemental Notice.

Basis for Relief

19. Uninterrupted Utility Services are essential to the Debtors' ongoing operations and, therefore, the preservation of the value of the Debtors' estates. The Debtors' business involves designing, developing, marketing, and selling electric vehicles. To operate their business and preserve the value of their estates, the Debtors must, among other things, maintain the ability to run their (a) corporate headquarters and Research and Development Center in La Palma, California, (b) Over the Air Technology Center in San Francisco, California, (c) flagship store in Los Angeles, California, (d) Design Studio in Los Angeles, California, (e) showroom in New York City, New York, and (f) Vehicle Processing/Storage Facilities in (i) Tempe, Arizona, (ii) Vista, California, (iii) Acworth, Georgia, and (iv) Oklahoma City, Oklahoma. The Debtors' former corporate headquarters in Manhattan Beach, California also requires Utility Services to ensure the preservation of the value of the Debtors' estates. The Debtors could not manage or operate their business, or preserve the value of the Debtors' estates, in the absence of continuous Utility Services. Should any Utility alter, refuse, or discontinue service, even for a brief period, the Debtors' operations could be severely disrupted. The impact of this disruption on the Debtors' business operations and revenue would be extremely harmful and could jeopardize the value of the Debtors' estates.

20. The relief requested herein will help ensure that the Debtors' operations will not be disrupted and that the value of the Debtors' estates will not be impaired. Furthermore, the relief requested provides the Utilities with a fair and orderly procedure for addressing requests for additional or different adequate assurance. Without the Adequate Assurance Procedures, the Debtors could be forced to address numerous requests by the Utilities in a disorganized manner at a critical period in the Chapter 11 Cases and during a time when the Debtors' efforts could be more

productively focused on the preservation of the value of the Debtors' estates for the benefit of the Debtors' estates and stakeholders.

21. Section 366 of the Bankruptcy Code protects a debtor against the immediate termination of utility services after commencing its chapter 11 case. Under that section, a utility may not, during the first 20 days of a bankruptcy case, alter, refuse, or discontinue services to, or discriminate against, a debtor solely on the basis of the commencement of the case or the failure of the debtor to pay a prepetition debt. 11 U.S.C. § 366.⁵ A utility may, however, alter, refuse, or discontinue service following such 20-day period, if the debtor has not furnished "adequate assurance of payment" for post-petition utility service obligations within the 20-day period. *Id.* Additionally, following a 30-day period after the commencement of a chapter 11 case, a utility may alter, refuse, or discontinue service if the debtor does not provide "adequate assurance" of payment for post-petition services in a form "satisfactory" to the utility, subject to the Court's review and approval following notice and a hearing. *Id.*

22. Section 366(c)(3)(B) of the Bankruptcy Code restricts the factors a court can consider when determining whether an assurance of payment is adequate. Specifically, courts may

⁵ Section 366 of the Bankruptcy Code applies to entities that are traditionally viewed as utilities, such as those that provide electricity, telephone service, or water, and to any entity that supplies services that cannot be readily obtained or replaced elsewhere, or which constitutes a monopoly with respect to the services that it provides to the debtor. *See In re Sanchez*, 545 B.R. 55, 58 (Bankr. D.N.M. 2016) ("[P]ublic utility companies often hold monopoly or quasi-monopoly power. Utilities that provide gas, electricity, water, and sewer service, for example, typically are the only source of those essential services."); *One Stop Realtour Place, Inc. v. Allegiance Telecom, Inc. (In re One Stop Realtour Place, Inc.)*, 268 B.R. 430, 436–37 (Bankr. E.D. Pa. 2001) (provider of telephone service is a utility regardless of whether telephone service may be available from another provider); *In re Coastal Dry Dock & Repair Corp.*, 62 B.R. 879, 883 (Bankr. E.D.N.Y. 1986) (landlord of the Brooklyn Navy Yard "occupies a special position with respect to the debtor in its role as [the debtor's] utility supplier") (internal quotation marks omitted). Despite the wide latitude afforded in determining those entities that constitute utilities under section 366 of the Bankruptcy Code, some of the companies listed on the Utilities List may also provide goods or services to the Debtors in a capacity other than that of a utility. With respect to any such goods or services, such companies are not entitled to adequate assurance under section 366 of the Bankruptcy Code. Moreover, the Debtors reserve the right to take, and are not foreclosed from taking, the position that any of the entities listed on the Utilities List are not utilities within the meaning of section 366 of the Bankruptcy Code.

not consider (a) the absence of a security deposit before a debtor's petition date, (b) the timeliness of a debtor's payments prior to the commencement of a debtor's chapter 11 case, or (c) the availability of an administrative expense priority when determining the amount of a deposit.

23. While the Bankruptcy Code provides guidance as to the required nature of adequate assurance, a court retains the discretion to determine the amount of adequate assurance necessary or to change the fundamental requirement that assurance of payment must simply be adequate. *Compare* 11 U.S.C. § 366(b) (“On request of a party in interest and after notice and a hearing, the court may order reasonable modification of the amount of the deposit or other security necessary to provide adequate assurance of payment.”), *with* 11 U.S.C. § 366(c)(3)(A) (“On request of a party in interest and after notice and a hearing, the court may order modification of the amount of an assurance of payment under paragraph (2).”); *see also In re Circuit City Stores, Inc.*, No. 08-35653, 2009 WL 484533, at *4 (Bankr. E.D. Va. Jan. 14, 2009) (finding that determination of adequate assurance remains within the court's discretion); *In re Penn. Cent. Transp. Co.*, 467 F.2d 100, 103–04 (3d Cir. 1972) (affirming bankruptcy court's ruling that utility deposits were not necessary where such deposits likely would “jeopardize the continuing operation of the [debtor] merely to give further security to suppliers who already are reasonably protected”).

24. Courts construing section 366(b) of the Bankruptcy Code have long recognized that, in determining adequate assurance, a court is not required to give a utility the equivalent of a guaranty of payment, but must only determine that the utility is not subject to an unreasonable risk of nonpayment for post-petition services. *See In re Santa Clara Circuits W., Inc.*, 27 B.R. 680, 685 (Bankr. D. Utah 1982) (“[A]dequate assurance of payment does not mean guaranty of payment; but the Court must find that the utility is not subject to an unreasonable risk of future loss.” (*quoting In re George C. Frye Co.*, 7 B.R. 856, 858 (Bankr. D. Me. 1980))); *Va. Elec. &*

Power Co. v. Caldor, Inc., 117 F.3d 646, 650 (2d Cir. 1997) (“[A] bankruptcy court’s authority to ‘modify’ the level of the ‘deposit or other security,’ provided for under § 366(b), includes the power to require no ‘deposit or other security’ where none is necessary to provide a utility supplier with ‘adequate assurance of payment.’”); *In re Circuit City Stores, Inc.*, 2009 WL 484533, at *4 (“A debtor need not provide utility companies an absolute guarantee of payment.” (citing *In re Adelpia Bus. Sols, Inc.*, 280 B.R. 63, 80 (Bankr. S.D.N.Y. 2002))); accord *Long Island Lighting Co. v. Great Atl. & Pac. Tea Co. Inc. (In re Great Atl. & Pac. Tea Co., Inc.)*, No. 11-CV-1338 CS, 2011 WL 5546954, at *18 (S.D.N.Y. Nov. 14, 2011); *S. Cal. Edison Co. v. Crystal Cathedral Ministries (In re Crystal Cathedral Ministries)*, 454 B.R. 124, 131 (C.D. Cal. 2011); *In re New Rochelle Tel. Corp.*, 397 B.R. 633, 639 (Bankr. E.D.N.Y. 2008); *Steinebach v. Tucson Elec. Power Co. (In re Steinebach)*, 303 B.R. 634, 641 (Bankr. D. Ariz. 2004). Historically, whether a utility is subject to an unreasonable risk of nonpayment must be determined from the facts and circumstances of each case. See *In re Santa Clara Circuits W.*, 27 B.R. at 685; *In re Adelpia Bus. Sols., Inc.*, 280 B.R. at 80 (citing *Mass. Elec. Co. v. Keydata Corp. (In re Keydata Corp.)*, 12 B.R. 156, 158 (B.A.P. 1st Cir. 1981); *In re Utica Floor Maint., Inc.*, 25 B.R. 1010, 1016 (N.D.N.Y. 1982)); accord *In re Great Atl. & Pac. Tea Co. Inc.*, 2011 WL 5546954, at *18. While section 366(c) of the Bankruptcy Code limits the factors a court may consider, determinations of adequate assurance remain within the Court’s discretion. See *In re Great Atl. & Pac. Tea Co., Inc.*, 2011 WL 5546954, at *21 (“[T]he Bankruptcy Court had the discretion to choose among reasonable proposals.”); *In re Adelpia Bus. Sols., Inc.*, 280 B.R. at 80 (holding that determinations of adequate assurance are within the discretion of the bankruptcy court); cf. *In re Steinebach*, 303 B.R. at 642 (noting that although local regulations do not bind bankruptcy courts when they decide issues under section 366 of the Bankruptcy Code, those regulations “may provide important

guidance in determining when utilities face an unreasonable risk of non-payment”); *Marion Steel Co. v. Ohio Edison Co. (In re Marion Steel Co.)*, 35 B.R. 188, 195 (Bankr. N.D. Ohio 1983); *see also In re Penn. Cent. Transp. Co.*, 467 F.2d 100, 103–04 (3d Cir. 1972) (affirming the bankruptcy court’s ruling that no utility deposits were necessary where such deposits likely would “jeopardize the continuing operation of the [debtor] merely to give further security to suppliers who already [were] reasonably protected”). The Debtors believe that the Proposed Adequate Assurance is sufficient and reasonable and constitutes adequate assurance of payment under section 366(c) of the Bankruptcy Code.

25. Moreover, the Debtors believe that the Utilities have “adequate assurance of payment” even without the Proposed Adequate Assurance. Contemporaneously herewith, the Debtors are seeking authorization to use cash collateral, which, if granted, would enable them to pay their operating costs, including any utility costs, as they come due. The Debtors, thus, anticipate having sufficient resources to pay, and intend to pay, any and all valid post-petition obligations for Utility Services in a timely manner. In addition, the Debtors’ reliance on Utility Services for the operation of their business and the preservation of their estates’ value provides them with a powerful incentive to stay current on their utility obligations. These factors, which the Court may (and should) consider when determining the amount of any adequate assurance payments, justify a finding that no adequate assurance payments are required in the Chapter 11 Cases. Indeed, the Debtors respectfully submit that the Proposed Adequate Assurance is more than sufficient to assure the Utilities of future payment.

26. Notwithstanding the foregoing, the Debtors believe that the Proposed Adequate Assurance and the Adequate Assurance Procedures are reasonable, satisfy the requirements of section 366 of the Bankruptcy Code, and are necessary for the Debtors to carry out their

reorganization efforts. If they are not approved, the Debtors could be forced to address payment requests by any Utility in a disorganized manner, which would distract management from focusing on the Debtors' efforts to preserve value for all stakeholders. Moreover, on the 30th day following the Petition Date, the Debtors could be surprised by a Utility unilaterally (a) deciding that it is not adequately protected, (b) discontinuing service, or (c) making an exorbitant demand for payment to continue service. Such discontinuation of Utility Service could put the Debtors' reorganization efforts in jeopardy.

27. In addition, section 105(a) of the Bankruptcy Code provides that the Court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). The proposed Adequate Assurance Procedures are necessary for the Debtors to carry out their restructuring efforts. If the Court does not approve the proposed Adequate Assurance Procedures, the Debtors could be forced to address requests from the Utilities in a manner that would be detrimental to the value of their estates.

28. Preserving Utility Services on an uninterrupted basis is essential to the Debtors' preservation and maximization of the value of the Debtors' estates. Indeed, any interruption in Utility Services, even for a brief period of time, would immediately and irreparably harm the Debtors' business and the value of the Debtors' estates. It is imperative that the Utilities continue to provide their Utility Services without interruption.

29. Finally, the relief requested in this Motion, including the Adequate Assurance Procedures proposed herein, is similar to the relief granted in this district in recent chapter 11 cases. *See, e.g., In re Am. Physician Partners, LLC*, No. 23-11469 (BLS) (Bankr. D. Del. Oct. 16, 2023) [D.I. 241]; *In re AmeriFirst Fin., Inc.*, No. 23-11240 (TMH) (Bankr. D. Del. Sept. 28, 2023) [D.I. 179]; *In re Yellow Corp.*, No. 23-11069 (CTG) (Bankr. D. Del. Sept. 13, 2023) [D.I. 534]; *In*

re Amyris, Inc., No. 23-11131 (TMH) (Bankr. D. Del. Sept. 11, 2023) [D.I. 229]; *In re DCL Holdings (USA), Inc.*, No. 22-11319 (JKS) (Bankr. D. Del. Feb. 22, 2023) [D.I. 260]; *In re GigaMonster Networks, LLC*, No. 23-10051 (JKS) (Bankr. D. Del. Feb. 9, 2023) [D.I. 121]; *In re Performance Powersports Grp. Inv., LLC*, No. 23-10047 (LSS) (Bankr. D. Del. Feb. 9, 2023) [D.I. 124]; *In re Medly Health Inc.*, No. 22-11257 (KBO) (Bankr. D. Del. Jan. 6, 2023) [D.I. 184]; *In re ExpressJet Airlines LLC*, No. 22-10787 (MFW) (Bankr. D. Del. Sep. 13, 2022) [D.I. 94]; *In re MD Helicopters, Inc.*, No. 22-10263 (KBO) (Bankr. D. Del. Apr. 1, 2022) [D.I. 107]; *In re Salem Harbor Power Dev. LP*, No. 22-10239 (MFW) (Bankr. D. Del. Apr. 19, 2022) [D.I. 113]; *In re BHCosmetics Holdings, LLC*, No. 22-10050 (CSS) (Bankr. D. Del. Feb. 7, 2022) [D.I. 122].

30. Based upon the foregoing, the Debtors submit that the relief requested herein is necessary to avoid immediate and irreparable harm, is in the best interests of the Debtors' estates and stakeholders, keeps with the spirit and intent of section 366 of the Bankruptcy Code, and is not prejudicial to the rights of any Utility.

Debtors' Reservation of Rights

31. Nothing contained herein is intended or should be construed as, or deemed to constitute, an agreement or admission as to the amount, priority, character, or validity of any claim against the Debtors on any grounds, a waiver or impairment of the Debtors' rights to dispute any claim on any grounds, or an assumption or rejection of any agreement, contract, or lease under section 365 of the Bankruptcy Code. The Debtors expressly reserve their rights to contest any claims related to Utility Services under applicable bankruptcy and non-bankruptcy law. Likewise, if the Court grants the relief sought herein, any payment or transfer made pursuant to the Court's order is not intended, and should not be construed, as an admission as to the amount, priority,

character, or validity of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

Emergency Consideration

32. Pursuant to Local Rule 9013-1(m), the Debtors respectfully request emergency consideration of this Motion under Bankruptcy Rule 6003(b). Bankruptcy Rule 6003 provides that, “[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, issue an order granting ... (b) a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition” Fed. R. Bankr. P. 6003. As set forth in this Motion and the DiDonato Declaration, the Debtors believe that an orderly transition into chapter 11 is critical to preserve the value of the Debtors' estates and that any delay in granting the relief requested herein could cause immediate and irreparable harm. The Debtors also believe that they may need to make upcoming payments and provide the Adequate Assurance Deposit to the Utilities. If the Debtors are not permitted to continue paying for Utilities Services as they become due and to provide the Adequate Assurance Deposit to the Utilities, the Debtors could suffer immediate and irreparable harm. Accordingly, the Debtors submit that the relief requested herein satisfies Bankruptcy Rule 6003.

Compliance with Bankruptcy Rule 6004(a) and Waiver of Bankruptcy Rule 6004(h)

33. To implement successfully the relief sought herein, the Debtors request that the Court find that notice of the Motion is adequate under Bankruptcy Rule 6004(a) under the circumstances. The Debtors also request that, to the extent applicable to the relief requested in this Motion, the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr.

P. 6004(h). As described above, the relief that the Debtors seek in this Motion is necessary for the Debtors to operate their business without interruption and to preserve value for their estates and economic stakeholders. Accordingly, the Debtors respectfully submit that ample cause exists to justify the (a) finding that the notice requirements under Bankruptcy Rule 6004(a) have been satisfied and (b) waiving of the 14-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

Notice

34. Notice of this Motion will be provided to the following parties: (a) the U.S. Trustee; (b) those creditors holding the 30 largest unsecured claims against the Debtors' estates (on a consolidated basis); (c) the Securities and Exchange Commission; (d) the Internal Revenue Service; (e) the United States Attorney's Office for the District of Delaware; (f) the state attorneys general for states in which the Debtors conduct business; (g) White & Case LLP, as counsel to CVI Investments, Inc. (c/o Heights Capital Management, Inc.); (h) each Utility; and (i) any party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the "**Notice Parties**").

35. As this Motion is seeking "first-day" relief, the Debtors will serve copies of this Motion and any order entered in respect thereto as required by Local Rule 9013-1(m). A copy of this Motion and any order entered in respect thereto will also be made available on the Debtors' case information website located at <https://www.veritaglobal.net/fisker>. Based on the urgency of the circumstances surrounding this Motion and the nature of the relief requested herein, the Debtors respectfully submit that no other or further notice is required.

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Orders, substantially in the forms attached hereto as **Exhibit B** and **Exhibit C**, granting the relief requested herein and such other and further relief as the Court deems just and proper.

Dated: June 20, 2024
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Brenna A. Dolphin

Robert J. Dehney, Sr. (No. 3578)
Andrew R. Remming (No. 5120)
Brenna A. Dolphin (No. 5604)
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-and-

DAVIS POLK & WARDWELL LLP

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Darren S. Klein (*pro hac vice* pending)
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steven.szanzer@davispolk.com
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Proposed Counsel to the Debtors and Debtors in Possession

Exhibit A

Utilities List

Exhibit A
Utilities List

Utility Company	Utility Service	Service Location	Account Number(s)	Average Monthly Spend	Proposed Adequate Assurance
ACS Billing Service	Water & Waste Management	14 Centerpointe Dr, La Palma, CA 90623	23-L3 024739 23-WS-024718 23-WS-024717 23-FS-024709	\$ 1,628.58	\$ 814.29
AT&T	Telecom	14 Centerpointe Dr, La Palma, CA 90623 398 Treat Ave, San Francisco CA, 94110	287324167302 831-001-1849 541	\$ 7,167.11	\$ 3,583.55
City of Oklahoma City	Water	4701 United Drive, Oklahoma City OK 73179	250102280052	\$ 336.49	\$ 168.25
City of Tempe	Water	1717 East Curry Road, Tempe AZ 85281	2610151417	\$ 74.34	\$ 37.17
City of Vista	Water/Sewer	1715 Hacienda Dr, Vista, CA 92081	Commercial Meter (Account: 9997041402) Irrigation Meter (Account: 9997000902)	\$ 9,508.42	\$ 4,754.21
Cox Business	Telecom	1715 Hacienda Dr, Vista, CA 92081 1717 East Curry Road, Tempe AZ 85281	541 - 139530401 131 - 082509501 131 - 069019802	\$ 2,020.97	\$ 1,010.48
Edco Waste & Recycling Service	Waste Management	1715 Hacienda Dr, Vista, CA 92081	25-1A 164645	\$ 1,139.73	\$ 569.86
LADWP	Electric	189 The Grove Dr., Los Angeles, CA 90036	2991810745 013 442 8106 8289943363	\$ 542.61	\$ 271.31
Oklahoma Gas And Electric Company	Gas & Electric	4701 United Drive, Oklahoma City OK 73179	132-553-068-9	\$ 1,770.41	\$ 885.20
Oklahoma Natural Gas	Gas	4701 United Drive, Oklahoma City OK 73179	213833106 2565188 36	\$ 579.90	\$ 289.95
PG&E	Gas & Electric	398 Treat Ave, San Francisco CA, 94110	9015825339-4	\$ 1,704.59	\$ 852.30
Recology Sunset Scavenger	Waste Management	398 Treat Ave, San Francisco CA, 94110	516382469	\$ 124.34	\$ 62.17
Republic Services #605	Waste Management	4701 United Drive, Oklahoma City OK 73179	3-0605-0035463 3-0060-0105974	\$ 777.02	\$ 388.51
SDG&E	Gas & Electric	1715 Hacienda Dr, Vista, CA 92081	2100010956250	\$ 12,541.08	\$ 6,270.54
SRP Headquarters	Electric	1717 East Curry Road, Tempe AZ 85281	613-419-002	\$ 2,736.52	\$ 1,368.26
SF-Water San Francisco Water Power Sewer	Water	398 Treat Ave, San Francisco CA, 94110	3110003195	\$ 6.57	\$ 3.28
SoCal Gas	Gas	14 Centerpointe Dr, La Palma, CA 90623	11230386374 12490298457 12910298467 11230386374 029 709 6325 8	\$ 3,183.61	\$ 1,591.80
Southern California Edison	Electric	14 Centerpointe Dr, La Palma, CA 90623	(700107269718)	\$ 12,319.97	\$ 6,159.99
Southwest Gas Corporation	Gas	1717 East Curry Road, Tempe AZ 85281	91003825974	\$ 39.44	\$ 19.72
T-Mobile USA, Inc.	Telecom	1888 Rosecrans Ave, Manhattan Beach CA 90266	990650328	\$ 66,214.09	\$ 33,107.04
Vista Irrigation District	Water	1715 Hacienda Dr, Vista, CA 92081	9997041402 9997000902	\$ 1,143.70	\$ 571.85

Exhibit B

Proposed Interim Order

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

In re:

FISKER INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 24-11390 (TMH)

(Jointly Administered)

Re: Docket No. ___

**INTERIM ORDER (I) PROHIBITING UTILITIES FROM ALTERING, REFUSING, OR
DISCONTINUING SERVICE, (II) DEEMING UTILITIES ADEQUATELY ASSURED
OF FUTURE PERFORMANCE, AND (III) ESTABLISHING PROCEDURES FOR
DETERMINING REQUESTS FOR ADDITIONAL ADEQUATE ASSURANCE**

Upon the motion (the “**Motion**”)² of Fisker Inc. and certain of its affiliates (collectively, the “**Debtors**”), each of which is a debtor and debtor in possession in the Chapter 11 Cases, for entry of interim and final orders, pursuant to sections 105 and 366 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, (a) prohibiting the Utilities from altering, refusing, or discontinuing any Utility Service on account of prepetition accounts outstanding or on account of any perceived inadequacy of the Debtors’ proposed adequate assurance, (b) determining that the Debtors’ proposed offer of deposits provides the Utilities with adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code, and (c) approving the Adequate Assurance Procedures, as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware,

¹ The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective employer identification numbers or Delaware file numbers, are as follows: Fisker Inc. (0340); Fisker Group Inc. (3342); Fisker TN LLC (6212); Blue Current Holding LLC (6668); Platinum IPR LLC (4839); and Terra Energy Inc. (0739). The address of the debtors’ corporate headquarters is 14 Centerpointe Drive, La Palma, CA 90623.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

dated February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157; and the Court having found that it may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of the Chapter 11 Cases and related proceedings being proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties, such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and the Court having reviewed and considered the Motion and the DiDonato Declaration; and the Court having held a hearing to consider the relief requested in the Motion on an interim basis (the “**Hearing**”); and the Court having determined that the legal and factual bases set forth in the Motion and the DiDonato Declaration and at the Hearing establish just cause for the relief granted herein; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors, their creditors, their estates, and all other parties in interest; and the Court having determined that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates as contemplated by Bankruptcy Rule 6003; and all objections and reservations of rights filed or asserted in respect of the Motion, if any, having been withdrawn, resolved, or overruled; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted on an interim basis to the extent set forth in this order (this “**Order**”).
2. The Adequate Assurance Deposit, in conjunction with the Debtors’ cash position,
(a) demonstrate the Debtors’ ability to pay for future Utility Services in the ordinary course of

business and (b) constitute adequate assurance to the Utilities (the “**Proposed Adequate Assurance**”).

3. Absent compliance with the procedures set forth in the Motion and this Order, the Debtors’ Utilities are prohibited from altering, refusing, or discontinuing Utility Services on account of prepetition amounts outstanding or on account of any perceived inadequacy of the Proposed Adequate Assurance.

4. The Debtors are authorized, but not directed, to pay on a timely basis, in accordance with their prepetition practices, all undisputed invoices for Utility Services rendered by the Utilities to the Debtors after the Petition Date.

5. The Debtors shall deposit the Adequate Assurance Deposit in the Utility Deposit Account within three business days of entry of this Order. The Utility Deposit Account shall be an interest-bearing, segregated account at a bank that has executed a Uniform Depository Agreement with the Office of the United States Trustee for the District of Delaware. Each Utility shall be entitled to the funds in the Adequate Assurance Deposit attributable to such Utility as indicated in the column labeled “Proposed Adequate Assurance” on the attached Utilities List.

6. The Debtors’ Utilities are prohibited from requiring additional adequate assurance of payment other than in accordance with the following Adequate Assurance Procedures:

(a) The Debtors or their advisors will provide a copy of the Motion and this Order to each of the Utilities listed on the Utilities List within three business days after entry of this Order by the Court.

(b) If a Utility is not satisfied with the Proposed Adequate Assurance, it must serve a written request (a “**Request**”) upon (i) the Debtors, c/o Fisker Inc., 14 Centerpointe Drive, La Palma, CA 90623, Attn: Julia Burge and Jennifer Kaushek; and (ii) proposed counsel to the Debtors, (A) Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, NY 10017, Attn: Brian M. Resnick, Esq., Darren S. Klein, Esq., Steven Z. Szanzer, Esq., and Richard J. Steinberg, Esq., and (B) Morris Nichols Arshat & Tunnell LLP, 1201 North Market Street, 16th Floor, Wilmington, DE 19801, Attn: Robert J. Dehney, Sr. Esq., Andrew R. Remming, Esq., Brenna A. Dolphin, Esq., Sophie Rogers Churchill, Esq., and Evanthea Hammer, Esq.; and the Request must set forth (i) the location(s) for which Utility

Services are provided, (ii) the account number(s) for such location(s), (iii) the outstanding balance for each account, and (iv) an explanation of why the Utility believes that the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.

(c) If the Debtors determine, in their sole discretion, that a Request or any consensual agreement reached in connection therewith is reasonable, the Debtors, without further order of the Court, may enter into agreements granting additional adequate assurance to the Utility serving such Request and, in connection with such agreements, provide the Utility with additional adequate assurance of payment, including payments on prepetition amounts owing, cash deposits, prepayments, or other forms of security, with notice within 15 calendar days following entry into such agreement to the U.S. Trustee and counsel to any official committee appointed in the Chapter 11 Cases.

(d) If the Debtors determine that a Request is unreasonable, then they shall, within 30 calendar days after receipt of such Request, or such longer period as may be agreed to between the Debtors and the Utility, file a motion (a “**Determination Motion**”) pursuant to section 366(c)(3) of the Bankruptcy Code seeking a determination from the Court that the Proposed Adequate Assurance, plus any additional consideration offered by the Debtors, constitutes adequate assurance of payment. Pending notice and a hearing on the Determination Motion, the Utility that is the subject of the unresolved Request may not alter, refuse, or discontinue services to the Debtors.

(e) If an undisputed amount relating to Utility Services provided post-petition by a Utility is unpaid, and remains unpaid beyond any applicable grace period, such Utility may request a disbursement from the Utility Deposit Account in such undisputed unpaid amount by giving notice to (i) the Debtors, c/o Fisker Inc., 14 Centerpointe Drive, La Palma, CA 90623, Attn: Julia Burge and Jennifer Kaushek; (ii) proposed counsel to the Debtors, (A) Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, NY, 10017, Attn: Brian M. Resnick, Esq., Darren S. Klein, Esq., Steven Z. Szanzer, Esq., and Richard J. Steinberg, Esq.; and (B) Morris Nichols Arshat & Tunnell LLP, 1201 North Market Street, 16th Floor, Wilmington, DE 19801, Attn: Robert J. Dehney, Sr. Esq., Andrew R. Remming, Esq., Brenna A. Dolphin, Esq., Sophie Rogers Churchill, Esq., and Evanthea Hammer, Esq.; (iii) the U.S. Trustee, 844 N. King Street, Wilmington, DE 19801, Attn: Linda Richenderfer; and (iv) counsel to any official committee of unsecured creditors appointed in the Chapter 11 Cases (collectively, the “**Utility Notice Parties**”). The Debtors shall honor such request within 15 business days after the date the request is received by the Debtors, subject to the ability of the Debtors and any such requesting Utility to resolve any dispute regarding such request without further order of the Court. To the extent a Utility receives a disbursement from the Utility Deposit Account in accordance with this provision, the Debtors shall subsequently replenish the Utility Deposit Account in the amount so disbursed.

(f) Absent compliance with the Adequate Assurance Procedures set forth in the foregoing provisions (a)–(e), the Debtors’ Utilities are prohibited from altering, refusing, or discontinuing service on account of any unpaid prepetition charges and are deemed to have received adequate assurance of payment in compliance with section 366 of the Bankruptcy Code.

7. The Debtors are authorized to amend the Utilities List, in their sole discretion, to add any subsequently identified Utility. This Order and the Adequate Assurance Procedures shall apply to any such Utility regardless of when such Utility may be added to the Utilities List by Supplemental Notice. The Debtors shall serve a copy of the Motion and this Order (or subsequent final order as applicable) on any Utility that is subsequently added to the Utilities List. Such subsequently added Utility that objects to this Order shall have 20 calendar days from the date of service of this Order to file an objection in accordance with the Bankruptcy Rules, the Local Rules, and the Adequate Assurance Procedures.

8. The Debtors shall increase the amount of the Adequate Assurance Deposit in the event an additional Utility is added to the Utilities List by an amount equal to two weeks of Utility Service provided by such additional Utility, calculated using the historical average for such payments over the five months prior to the Petition Date.

9. Each Utility not objecting the Adequate Assurance Deposit shall be deemed to have stipulated that the Adequate Assurance Deposit constitutes adequate assurance of payment to such Utility within the meaning of section 366 of the Bankruptcy Code, absent further order from the Court, and shall be prohibited from challenging or opting out of the Adequate Assurance Procedures, filing a Request, or requesting any additional adequate assurance of payment of any kind at any time, notwithstanding any attempt by such Utility to reserve a right to seek any such relief.

10. The Utilities have been provided with adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code by virtue of the Proposed Adequate Assurance, and the Adequate Assurance Procedures as proposed are hereby approved. As a result, upon entry of this Order, the Utilities are prohibited from altering, refusing, or discontinuing Utility Services

on account of prepetition amounts outstanding or on account of any perceived inadequacy of the Adequate Assurance Procedures, and the Debtors are not required to provide any additional adequate assurance beyond what is stated in this Order, unless and until (a) the Debtors, in their sole discretion, agree to an alternative assurance of payment with the Utility or (b) the Court enters an order requiring that additional adequate assurance of payment be provided.

11. The portion of the Adequate Assurance Deposit attributable to each Utility shall be returned to the Debtors, without further Court order, on the earlier of (a) the reconciliation and payment by the Debtors of the final invoice of such Utility in accordance with applicable non-bankruptcy law following the termination of Utility Services from such Utility, (b) the sale of all or substantially all of the Debtors' assets, (c) the effective date of a chapter 11 plan, or (d) the date upon which the Chapter 11 Cases are dismissed or converted to a case under chapter 7 of the Bankruptcy Code; *provided, however*, that there are no outstanding disputes related to post-petition payments due between the Debtors and the applicable Utility.

12. The Debtors may amend the Utilities List to delete a Utility only if it has provided two-weeks' advance notice to such Utility and has not received any objection from such Utility. If an objection is received and the Debtors and the Utility are unable to resolve such objection, the Debtors shall request a hearing before the Court at the next omnibus hearing date or such other date that the Debtors and the Utility may agree upon.

13. Nothing herein constitutes a finding that any entity is or is not a Utility hereunder or a utility under section 366 of the Bankruptcy Code, whether or not such entity is included in the Utilities List.

14. The Debtors shall (a) serve a copy of this Order upon each of the Utilities identified on the Utilities List within two business days after entry of this Order, and (b) post this Order on the Debtors' case information website located at <https://www.veritaglobal.net/fisker>.

15. The Debtors shall (a) file a copy of any Supplemental Notice, (b) serve such notice upon each of the Utilities identified therein within two business days after entry of this Order, and (c) post any Supplemental Notice on the Debtors' case information website located at <https://www.veritaglobal.net/fisker>.

16. Any Utility that does not make a Request or otherwise comply with the Adequate Assurance Procedures shall be prohibited from altering, refusing, or discontinuing Utility Services, including as a result of the Debtors' failure to pay charges for prepetition Utility Services or to provide adequate assurance of payment in addition to the Proposed Adequate Assurance.

17. A final hearing to consider the relief requested in the Motion shall be held on _____, 2024 at _____.m (prevailing Eastern Time) and any objections or responses to the Motion shall be filed and served on the Notice Parties so as to be actually received on or prior to _____, 2024 at _____.m (prevailing Eastern Time).

18. Nothing in this Order or any action taken by the Debtors in furtherance of the implementation hereof shall be deemed to constitute an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code, and all of the Debtors' rights with respect to such matters are expressly reserved.

19. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall (a) create, nor is it intended to create, any rights in favor of, or enhance the status of any claim held by, any person or entity or (b) be deemed to convert the priority of any claim from a prepetition claim into an administrative expense claim.

20. Nothing in this Order nor the Debtors' payment of claims pursuant to this Order shall be construed as or deemed to constitute (a) an agreement or admission by the Debtors as to the amount, priority, character, or validity of any claim against the Debtors on any grounds, (b) a grant of third-party beneficiary status or bestowal of any additional rights on any third party, (c) a waiver or impairment of any rights, claims, or defenses of the Debtors' rights to dispute the amount, priority, character, or validity of any claim on any grounds, whether under bankruptcy or non-bankruptcy law, (d) a promise by the Debtors to pay any claim, or (e) an implication or admission by the Debtors that such claim is payable pursuant to this Order.

21. Any Bankruptcy Rule or Local Rule that might otherwise delay the effectiveness of this Order is hereby waived, and the terms and conditions of this Order shall be effective and enforceable immediately upon its entry.

22. The Debtors are authorized to take any action necessary or appropriate to implement and effectuate the terms of, and the relief granted in, this Order without seeking further order of the Court.

23. The Court shall retain jurisdiction over any matter arising from or related to the implementation, interpretation, and enforcement of this Order.

Exhibit C

Proposed Final Order

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

In re:

FISKER INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 24-11390 (TMH)

(Jointly Administered)

Re: Docket No. ___

**FINAL ORDER (I) PROHIBITING UTILITIES FROM ALTERING, REFUSING, OR
DISCONTINUING SERVICE, (II) DEEMING UTILITIES ADEQUATELY ASSURED
OF FUTURE PERFORMANCE, AND (III) ESTABLISHING PROCEDURES FOR
DETERMINING REQUESTS FOR ADDITIONAL ADEQUATE ASSURANCE**

Upon the motion (the “**Motion**”)² of Fisker Inc. and certain of its affiliates (collectively, the “**Debtors**”), each of which is a debtor and debtor in possession in the Chapter 11 Cases, for entry of interim and final orders, pursuant to sections 105 and 366 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, (a) prohibiting the Utilities from altering, refusing, or discontinuing any Utility Service on account of prepetition accounts outstanding or on account of any perceived inadequacy of the Debtors’ proposed adequate assurance, (b) determining that the Debtors’ proposed offer of deposits provides the Utilities with adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code, and (c) approving the Adequate Assurance Procedures, as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware,

¹ The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective employer identification numbers or Delaware file numbers, are as follows: Fisker Inc. (0340); Fisker Group Inc. (3342); Fisker TN LLC (6212); Blue Current Holding LLC (6668); Platinum IPR LLC (4839); and Terra Energy Inc. (0739). The address of the debtors’ corporate headquarters is 14 Centerpointe Drive, La Palma, CA 90623.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

dated February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157; and the Court having found that it may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of the Chapter 11 Cases and related proceedings being proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties, such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and the Court having reviewed and considered the Motion and the DiDonato Declaration; and the Court having held a hearing, if necessary, to consider the relief requested in the Motion on a final basis (the “**Hearing**”); and the Court having determined that the legal and factual bases set forth in the Motion and the DiDonato Declaration and at the Hearing, if any, establish just cause for the relief granted herein; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors, their creditors, their estates, and all other parties in interest; and all objections and reservations of rights filed or asserted in respect of the Motion, if any, having been withdrawn, resolved, or overruled; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted on a final basis to the extent set forth in this order (this “**Order**”).
2. The Adequate Assurance Deposit, in conjunction with the Debtors’ cash position, (a) demonstrate the Debtors’ ability to pay for future Utility Services in the ordinary course of business and (b) constitute adequate assurance to the Utilities (the “**Proposed Adequate Assurance**”).

3. Absent compliance with the procedures set forth in the Motion and this Order, the Debtors' Utilities are prohibited from altering, refusing, or discontinuing Utility Services on account of prepetition amounts outstanding or on account of any perceived inadequacy of the Proposed Adequate Assurance.

4. The Debtors are authorized, but not directed, to pay on a timely basis, in accordance with their prepetition practices, all undisputed invoices for Utility Services rendered by the Utilities to the Debtors after the Petition Date.

5. Each Utility shall be entitled to the funds in the Adequate Assurance Deposit attributable to such Utility as indicated in the column labeled "Proposed Adequate Assurance" on the attached Utilities List.

6. The Debtors' Utilities are prohibited from requiring additional adequate assurance of payment other than in accordance with the following Adequate Assurance Procedures:

(a) The Debtors or their advisors will provide a copy of this Order to each of the Utilities listed on the Utilities List within three business days after entry of this Order by the Court.

(b) If a Utility is not satisfied with the Proposed Adequate Assurance, it must serve a written request (a "**Request**") upon (i) the Debtors, c/o Fisker Inc., 14 Centerpointe Drive, La Palma, CA 90623, Attn: Julia Burge and Jennifer Kaushek and (ii) proposed counsel to the Debtors, (A) Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, NY, 10017, Attn: Brian M. Resnick, Esq., Darren S. Klein, Esq., Steven Z. Szanzer, Esq., and Richard J. Steinberg, Esq.; and (B) Morris Nichols Arsht & Tunnell LLP, 1201 North Market Street, 16th Floor, Wilmington, DE 19801, Attn: Robert J. Dehney, Sr. Esq., Andrew R. Remming, Esq., Brenna A. Dolphin, Esq., Sophie Rogers Churchill, Esq., and Evanthea Hammer, Esq.; and the Request must set forth (i) the location(s) for which Utility Services are provided, (ii) the account number(s) for such location(s), (iii) the outstanding balance for each account, and (iv) an explanation of why the Utility believes that the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.

(c) If the Debtors determine, in their sole discretion, that a Request or any consensual agreement reached in connection therewith is reasonable, the Debtors, without further order of the Court, may enter into agreements granting additional adequate assurance to the Utility serving such Request and, in connection with such agreements, provide the Utility with additional adequate assurance of payment, including payments on prepetition amounts owing, cash deposits, prepayments, or other forms of security, with

notice within 15 calendar days following entry into such agreement to the U.S. Trustee and counsel to any official committee appointed in the Chapter 11 Cases.

(d) If the Debtors determine that a Request is unreasonable, then they shall, within 30 calendar days after receipt of such Request, or such longer period as may be agreed to between the Debtors and the Utility, file a motion (a “**Determination Motion**”) pursuant to section 366(c)(3) of the Bankruptcy Code seeking a determination from the Court that the Proposed Adequate Assurance, plus any additional consideration offered by the Debtors, constitutes adequate assurance of payment. Pending notice and a hearing on the Determination Motion, the Utility that is the subject of the unresolved Request may not alter, refuse, or discontinue services to the Debtors.

(e) If an undisputed amount relating to Utility Services provided post-petition by a Utility is unpaid, and remains unpaid beyond any applicable grace period, such Utility may request a disbursement from the Utility Deposit Account in such undisputed unpaid amount by giving notice to (i) the Debtors, c/o Fisker Inc., 14 Centerpointe Drive, La Palma, CA 90623, Attn: Julia Burge and Jennifer Kaushek; (ii) proposed counsel to the Debtors, (A) Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, NY, 10017, Attn: Brian M. Resnick, Esq., Darren S. Klein, Esq., Steven Z. Szanzer, Esq., and Richard J. Steinberg, Esq.; and (B) Morris Nichols Arshat & Tunnell LLP, 1201 North Market Street, 16th Floor, Wilmington, DE 19801, Attn: Attn: Robert J. Dehney, Sr. Esq., Andrew R. Remming, Esq., Brenna A. Dolphin, Esq., Sophie Rogers Churchill, Esq., and Evanthea Hammer, Esq.; (iii) the U.S. Trustee, 844 N. King Street, Wilmington, DE 19801, Attn: Linda Richenderfer; and (iv) counsel to any official committee of unsecured creditors appointed in the Chapter 11 Cases (collectively, the “**Utility Notice Parties**”). The Debtors shall honor such request within 15 business days after the date the request is received by the Debtors, subject to the ability of the Debtors and any such requesting Utility to resolve any dispute regarding such request without further order of the Court. To the extent a Utility receives a disbursement from the Utility Deposit Account in accordance with this provision, the Debtors shall subsequently replenish the Utility Deposit Account in the amount so disbursed.

(f) Absent compliance with the Adequate Assurance Procedures set forth in the foregoing provisions (a)-(e), the Debtors’ Utilities are prohibited from altering, refusing, or discontinuing service on account of any unpaid prepetition charges and are deemed to have received adequate assurance of payment in compliance with section 366 of the Bankruptcy Code.

7. The Debtors are authorized to amend the Utilities List, in their sole discretion, to add any subsequently identified Utility. This Order and the Adequate Assurance Procedures shall apply to any such Utility regardless of when such Utility may be added to the Utilities List by Supplemental Notice. The Debtors shall serve a copy of the Motion and this Order on any Utility that is subsequently added to the Utilities List. Such subsequently added Utility that objects to this

Order shall have 20 calendar days from the date of service of this Order to file an objection in accordance with the Bankruptcy Rules, the Local Rules, and the Adequate Assurance Procedures.

8. The Debtors shall increase the amount of the Adequate Assurance Deposit in the event an additional Utility is added to the Utilities List by an amount equal to two weeks of Utility Service provided by such additional Utility, calculated using the historical average for such payments over the five months prior to the Petition Date.

9. Each Utility not objecting the Adequate Assurance Deposit shall be deemed to have stipulated that the Adequate Assurance Deposit constitutes adequate assurance of payment to such Utility within the meaning of section 366 of the Bankruptcy Code, absent further order from the Court, and shall be prohibited from challenging or opting out of the Adequate Assurance Procedures, filing a Request, or requesting any additional adequate assurance of payment of any kind at any time, notwithstanding any attempt by such Utility to reserve a right to seek any such relief.

10. The Utilities have been provided with adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code by virtue of the Proposed Adequate Assurance, and the Adequate Assurance Procedures as proposed are hereby approved. As a result, upon entry of this Order, the Utilities are prohibited from altering, refusing, or discontinuing Utility Services on account of prepetition amounts outstanding or on account of any perceived inadequacy of the Adequate Assurance Procedures, and the Debtors are not required to provide any additional adequate assurance beyond what is stated in this Order, unless and until (a) the Debtors, in their sole discretion, agree to an alternative assurance of payment with the Utility or (b) the Court enters an order requiring that additional adequate assurance of payment be provided.

11. The portion of the Adequate Assurance Deposit attributable to each Utility shall be returned to the Debtors, without further Court order, on the earlier of (a) the reconciliation and payment by the Debtors of the final invoice of such Utility in accordance with applicable non-bankruptcy law following the termination of Utility Services from such Utility, (b) the sale of all or substantially all of the Debtors' assets, (c) the effective date of a chapter 11 plan, or (d) the date upon which the Chapter 11 Cases are dismissed or converted to a case under chapter 7 of the Bankruptcy Code; *provided, however*, that there are no outstanding disputes related to post-petition payments due between the Debtors and the applicable Utility.

12. The Debtors may amend the Utilities List to delete a Utility only if it has provided two-weeks' advance notice to such Utility and has not received any objection from such Utility. If an objection is received and the Debtors and the Utility are unable to resolve such objection, the Debtors shall request a hearing before the Court at the next omnibus hearing date or such other date that the Debtors and the Utility may agree upon.

13. Nothing herein constitutes a finding that any entity is or is not a Utility hereunder or a utility under section 366 of the Bankruptcy Code, whether or not such entity is included in the Utilities List.

14. The Debtors shall (a) serve a copy of this Order upon each of the Utilities identified on the Utilities List within two business days after entry of this Order, and (b) post this Order on the Debtors' case information website located at <https://www.veritaglobal.net/fisker>.

15. The Debtors shall (a) file a copy of any Supplemental Notice, (b) serve such notice upon each of the Utilities identified therein within two business days after entry of this Order, and (c) post any Supplemental Notice on the Debtors' case information website located at <https://www.veritaglobal.net/fisker>.

16. Any Utility that does not make a Request or otherwise comply with the Adequate Assurance Procedures shall be prohibited from altering, refusing, or discontinuing Utility Services, including as a result of the Debtors' failure to pay charges for prepetition Utility Services or to provide adequate assurance of payment in addition to the Proposed Adequate Assurance.

17. Nothing in this Order or any action taken by the Debtors in furtherance of the implementation hereof shall be deemed to constitute an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code, and all of the Debtors' rights with respect to such matters are expressly reserved.

18. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall (a) create, nor is it intended to create, any rights in favor of, or enhance the status of any claim held by, any person or entity or (b) be deemed to convert the priority of any claim from a prepetition claim into an administrative expense claim.

19. Nothing in this Order nor the Debtors' payment of claims pursuant to this Order shall be construed as or deemed to constitute (a) an agreement or admission by the Debtors as to the amount, priority, character, or validity of any claim against the Debtors on any grounds, (b) a grant of third-party beneficiary status or bestowal of any additional rights on any third party, (c) a waiver or impairment of any rights, claims, or defenses of the Debtors' rights to dispute the amount, priority, character, or validity of any claim on any grounds, whether under bankruptcy or non-bankruptcy law, (d) a promise by the Debtors to pay any claim, or (e) an implication or admission by the Debtors that such claim is payable pursuant to this Order.

20. Any Bankruptcy Rule or Local Rule that might otherwise delay the effectiveness of this Order is hereby waived, and the terms and conditions of this Order shall be effective and enforceable immediately upon its entry.

21. The Debtors are authorized to take any action necessary or appropriate to implement and effectuate the terms of, and the relief granted in, this Order without seeking further order of the Court.

22. The Court shall retain jurisdiction over any matter arising from or related to the implementation, interpretation, and enforcement of this Order.