

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

In re:  
  
FISKER INC., *et al.*,  
  
Debtors.<sup>1</sup>

Chapter 11  
  
Case No. 24-11390 (TMH)  
  
(Joint Administration Requested)

**MOTION OF DEBTORS FOR ENTRY OF AN ORDER (I) AUTHORIZING DEBTORS TO REJECT CERTAIN UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY AND (II) AUTHORIZING AND ESTABLISHING PROCEDURES TO REJECT EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Fisker Inc. and certain of its affiliates (collectively, the “**Debtors**”),<sup>2</sup> 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 an Order (I) Authorizing Debtors to Reject Certain Unexpired Leases of Nonresidential Real Property and (II) Authorizing and Establishing Procedures to Reject Executory Contracts and Unexpired Leases* (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 herein by reference. In further support of this Motion, the Debtors respectfully state as follows:

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<sup>1</sup> 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.

<sup>2</sup> 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, 363, 365, and 554 of title 11 of the United States Code (the “**Bankruptcy Code**”) and rules 6004, 6006, and 6007 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “**Proposed Order**”), (a) authorizing the rejection of the Initial Leases (as defined below) effective as of the rejection date for each Initial Lease as set forth on **Exhibit 1** annexed to the Proposed Order (each such date, the “**Initial Lease Rejection Date**”), (b) authorizing and establishing the procedures contained in the Proposed Order (the “**Rejection Procedures**”)<sup>3</sup> for (i) rejecting executory contracts and unexpired leases (each, a “**Contract**” or “**Lease**”) and (ii) abandoning personal property in connection with any rejected Contract or Lease,<sup>4</sup> and (c) authorizing and approving the Rejection Notice (as defined in the Proposed Order) to each relevant non-Debtor counterparty (each, a “**Counterparty**”) to an affected Contract or Lease, substantially in the form attached to the Proposed Order as **Exhibit 2**.<sup>5</sup>

### **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*

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<sup>3</sup> The Rejection Procedures and any exhibits thereto are incorporated herein by reference.

<sup>4</sup> The Debtors may, in the future, seek entry of an order approving procedures for the abandonment of “*de minimis*” assets unrelated to the rejection of any Contract or Lease. The Debtors submit that, if there is any conflict between the provisions in the Rejection Procedures relating to the abandonment of assets and those set forth in any subsequently Court-approved procedures, the latter shall control.

<sup>5</sup> As described below, the Rejection Procedures allow for the simultaneous rejection of multiple Contracts and Leases, such that it is conceivable that a Counterparty may be party to multiple Contracts or Leases on the Rejection Notice. As such, all references in this Motion or the Proposed Order to a Contract or Lease (or terms related thereto) in the singular shall include the plural, and vice versa.

*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 Debtors' Executory Contracts and Unexpired Leases**

9. The Debtors are party to hundreds of agreements, including (a) Contracts for manufacturing, goods and services, licensing agreements, software and information technology agreements, and other agreements related to the Debtors' business and (b) Leases with respect to real and personal property.

**C. The Initial Leases**

10. The Debtors previously operated 18 facilities (the "**Facilities**") in the United States. The Debtors historically exclusively utilized a direct-to-customer sales model and, prior to the Petition Date, began transitioning to incorporate a dealer partnership sales model (as further described in the DiDonato Declaration). In light of this transition, 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 nine Facilities (the "**Vacated Facilities**") previously utilized for sales and marketing related purposes. By this Motion, the Debtors seek authorization to reject the leases associated with the Vacated Facilities (the "**Initial Leases**"), effective as of the applicable Initial Lease Rejection Dates.

**D. Procedures To Reject Contracts and Leases**

11. The Debtors and their advisors are in the process of evaluating the economic value of each of their Contracts and Leases. In doing so, the Debtors already determined that the liabilities associated with the Initial Leases far outweigh the benefit that the Initial Leases provide

to the Debtors' estates. With respect to the Debtors' remaining Contracts and Leases, where appropriate, and in the ordinary course of their business, the Debtors intend to work diligently with their Counterparties to negotiate new or amended agreements that are more compatible with the Debtors' current and projected needs and resources. However, the Debtors may not be able to negotiate a suitable arrangement with certain Counterparties and, in such cases, rejection would be an appropriate exercise of the Debtors' business judgment.

12. The Debtors and their advisors are continuing to assess which Contracts and Leases should be rejected as such Contracts and Leases are no longer required by, or are otherwise unfavorable to, the Debtors. Absent the relief requested herein, the Debtors may be required under applicable law to file a discrete motion each time they seek to reject a Contract or Lease. This would require the Debtors to needlessly expend their limited resources, to the detriment of all stakeholders in the Chapter 11 Cases, and would be burdensome for the Court and its staff as well.

13. Accordingly, the Debtors believe that establishing orderly procedures for the rejection of Contracts and Leases would streamline the administration of the Chapter 11 Cases and otherwise promote efficiency for the Court, the office of the United States Trustee for the District of Delaware (the "**U.S. Trustee**"), and all other parties in interest, thereby (a) maximizing the value of the Debtors' estates for the benefit of all stakeholders and (b) preserving the due process rights of parties in interest (particularly the Counterparties). The Rejection Procedures are designed to, among other things, (x) outline the process by which the Debtors would serve notice to Counterparties regarding the prospective rejection of their Contracts or Leases, which notice would include pertinent information relating thereto (*e.g.*, the effective date thereof (the "**Rejection Date**")), (y) establish objection and other relevant deadlines and the manner for

resolving disputes relating to the Debtor's proposed rejection, and (z) eliminate the necessity for a hearing with respect thereto.

**Basis for Relief**

**A. Rejection of the Initial Leases, and Rejection of Contracts and Leases Pursuant to the Rejection Procedures, is and Would be an Exercise of the Debtors' Sound Business Judgment and Should be Authorized**

14. Section 365(a) of the Bankruptcy Code provides that a debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease." 11 U.S.C. § 365(a). Courts routinely approve motions to reject executory contracts or unexpired leases upon a showing that the debtor's decision to take such action will benefit the debtor's estate and is an exercise of sound business judgment. *See NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984) (stating that the traditional standard applied by courts to authorize the rejection of an executory contract is that of "business judgment"); *In re Trans World Airlines, Inc.*, 261 B.R. 103, 114 (Bankr. D. Del. 2001) ("A debtor's authority to assume or reject an executory contract 'is vital to the basic purpose [of] a Chapter 11 reorganization, because rejection can release the debtor's estate from burdensome obligations that can impede a successful reorganization.'" (quoting *Bildisco*, 465 U.S. at 528)).

15. The standard applied to determine whether the rejection of an unexpired lease should be authorized is the "business judgment" standard. *Sharon Steel Corp. v. Nat'l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 40 (3d Cir. 1989); *accord L.R.S.C. Co. v. Rickel Home Ctrs., Inc. (In re Rickel Home Ctrs., Inc.)*, 209 F.3d 291, 298 (3d Cir. 2000) ("Section 365 enables the trustee to maximize the value of the debtor's estate by assuming executory contracts and unexpired leases that benefit the estate and rejecting those that do not."). The business judgment rule entails "a presumption that, in making a business decision, the directors of a corporation acted on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests

of the company.” *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985) (citation omitted), *overruled on other grounds by Gantler v. Stephens*, 965 A.2d 695 (Del. 2009); *see also In re Sols. Liquidation LLC*, 608 B.R. 384, 402 (Bankr. D. Del. 2019) (citation omitted).

16. Courts emphasize that the business judgment rule is not an onerous standard and, in the context of a debtor’s rejection of the executory contract or unexpired lease, merely requires a showing that the rejection of the executory contract or unexpired lease would benefit the debtor’s estate. *See NLRB v. Bildisco & Bildisco (In re Bildisco)*, 682 F.2d 72, 79 (3d Cir. 1982) (noting that the “usual test for rejection of an executory contract is simply whether rejection would benefit the estate”), *aff’d*, 465 U.S. 513 (1984); *In re AbitibiBowater Inc.*, 418 B.R. 815, 831 (Bankr. D. Del. 2009) (explaining that the business judgment rule is “not a difficult standard to satisfy” (citing *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006))). As such, courts exhibit great judicial deference to a debtor’s exercise of business judgment to reject an unexpired lease or an executory contract. *See In re Comput. Sales Int’l v. Fed. Mogul Glob., Inc. (In re Fed. Mogul Glob., Inc.)*, 293 B.R. 124, 127 (D. Del. 2003) (holding that Debtors have the “fundamental authority to assume or reject an executory contract” and that this authority should not be disturbed “[a]bsent bad faith or gross negligence”); *Glenstone Lodge, Inc. v. Buckhead Am. Corp. (In re Buckhead Am. Corp.)*, 180 B.R. 83, 88 (D. Del. 1995) (“[T]he question whether a[n executory contract] should be rejected and if not on what terms it should be assumed is one of business judgment.” (citation omitted)); *In re HQ Glob. Holdings, Inc.*, 290 B.R. 507, 511 (Bankr. D. Del. 2003) (debtor’s decision to reject an executory contract is governed by the business judgment standard and can only be overturned if the decision was the “product of bad faith, whim, or caprice”); *cf. Stanziale v. Nachtomi (In re Tower Air, Inc.)*, 416 F.3d 229, 238 (3d Cir. 2005)

(“Overcoming the presumptions of the business judgment rule on the merits is a near-Herculean task.”).

*Rejection of the Initial Leases*

17. Here, as a result of the Debtors’ prepetition efforts to expand their sales model to incorporate a dealer partnership sales model, the Debtors no longer require the Vacated Facilities that were previously occupied by the Debtors pursuant to the Initial Leases. In light of such decision, the Debtors vacated the Vacated Facilities prior to the Petition Date and relinquished possession to the applicable Counterparties. The Debtors submit that rejecting the Initial Leases would allow the Debtors to avoid unnecessary and ongoing risks or costs associated with the Initial Leases on a post-petition basis. Accordingly, the Debtors seek authorization to reject the Initial Leases, effective as of the applicable Initial Lease Rejection Dates.

*Approval of the Rejection Procedures*

18. Here, any rejection of a Contract or Lease would constitute an exercise of the Debtors’ sound business judgment because such action would allow the Debtors to keep valuable agreements while shedding onerous or unneeded ones, thereby reshaping the Debtors’ business to reflect their current and projected needs and resources. In sum, the Debtors have determined, in their sound business judgment, that the rejection (including the abandonment of any personal property in connection therewith) of any Contract or Lease in accordance with the Rejection Procedures is and would be in the best interest of the Debtors’ estates.

19. Moreover, as described above, the streamlined Rejection Procedures would greatly maximize efficiency and, by extension, value in the Chapter 11 Cases. Without the Rejection Procedures, the Debtors may be required to file an individual stand-alone motion each time they would want to reject a Contract or Lease, thereby occupying the valuable time of the Debtors, the

Court and its staff, the U.S. Trustee, any official committee appointed in the Chapter 11 Cases, and other parties in interest.

20. In addition, the Rejection Procedures would not violate or prejudice the due process rights of any Counterparty or other party in interest. As a procedural matter, “[a] proceeding to assume, reject, or assign an executory contract or unexpired lease . . . is governed by Rule 9014.” Fed. R. Bankr. P. 6006(a). Bankruptcy Rule 9014 provides that, “[i]n a contested matter not otherwise governed by these rules, relief shall be requested by motion, and reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought.” Fed. R. Bankr. P. 9014(a). The notice and hearing requirements for contested matters in Bankruptcy Rule 9014 are satisfied if appropriate notice and an opportunity for hearing are given in light of the particular circumstances. *See* 11 U.S.C. § 102(1)(A) (defining “after notice and a hearing” or a similar phrase to mean such notice and an opportunity for hearing “as [are] appropriate in the particular circumstances”). Here, pursuant to the Rejection Procedures, affected Counterparties and other parties in interest (including the U.S. Trustee and any official committee appointed in the Chapter 11 Cases) would receive notice of a Debtor’s proposed rejection of any Contract or Lease, which would contain pertinent information in connection therewith (*e.g.*, the proposed Rejection Date). *See, e.g., In re Thane Int’l, Inc.*, 586 B.R. 540, 548 (Bankr. D. Del. 2018) (finding that the requirements of the Bankruptcy Code are meant to protect the interests and due process rights of the non-debtor parties to executory contracts); *In re Carlisle Homes, Inc.*, 103 B.R. 524, 535 (Bankr. D.N.J. 1988) (finding that a debtor may reject an executory contract by clearly communicating its intention to reject).

21. Under Bankruptcy Rule 6006(e), however, a debtor may join requests for authority to reject multiple executory contracts or unexpired leases in one motion, subject to Bankruptcy

Rule 6006(f). A motion to reject multiple executory contracts or unexpired leases that are not between the same parties shall:

(1) state in a conspicuous place that parties receiving the omnibus motion should locate their names and their contracts or leases listed in the motion; (2) list parties alphabetically and identify the corresponding contract or lease; . . . (5) be numbered consecutively with other omnibus motions to . . . reject executory contracts or unexpired leases; and (6) be limited to no more than 100 executory contracts or unexpired leases.

Fed. R. Bankr. P. 6006(f).

22. The proposed Rejection Procedures largely comport with the requirements of Bankruptcy Rule 6006(f). The procedural requirements in Bankruptcy Rule 6006(f) are intended to protect the due process rights of Counterparties to the affected Contracts and Leases. A Counterparty must be able to locate its Contract or Lease and readily determine whether its Contract or Lease is being rejected. Given the substantial number of Contracts and Leases that the Debtors may reject, obtaining Court approval of each rejection would impose unnecessary administrative burdens on the Debtors and the Court and result in costs to the Debtors' estates that may decrease the economic benefits of rejection. Pursuant to the Rejection Procedures, however, the Debtors would provide the affected Counterparty, the U.S. Trustee, and any official committee appointed in the Chapter 11 Cases with the requisite notice and an opportunity to object to any proposed action, thereby preserving the due process rights of the key parties in interest. Moreover, the Court would maintain authority and oversight in the event of an objection to a particular rejection of a Contract or Lease.

23. Furthermore, section 105(a) of the Bankruptcy Code confers the Court with broad equitable powers to "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). Accordingly, the Court has expansive

equitable powers to fashion any order or decree that is in the interest of preserving or protecting the value of the Debtors' assets. *See In re Nixon*, 404 F. App'x 575, 578 (3d Cir. 2010) ("It is well settled that the court's power under § 105(a) is broad." (citation omitted)); *In re Nortel Networks, Inc.*, 532 B.R. 494, 554 (Bankr. D. Del. 2015) ("The Third Circuit has construed [section 105 of the Bankruptcy Code] to give bankruptcy courts 'broad authority' to provide appropriate equitable relief to assure the orderly conduct of reorganization proceedings, and to 'craft flexible remedies that, while not expressly authorized by the Code, effect the result the Code was designed to obtain.'" (citations omitted)); *Patrick v. Dell Fin. Servs. (In re Patrick)*, 344 B.R. 56, 58 (Bankr. M.D. Pa. 2005) ("There is no doubt that § 105(a) is a 'powerful [and] versatile tool' designed to empower bankruptcy courts to fashion orders in furtherance of the Bankruptcy Code." (quoting *Joubert v. ABN AMRO Mortg. Grp., Inc. (In re Joubert)*, 411 F.3d 452, 455 (3d Cir. 2005))).

24. Finally, courts in this jurisdiction routinely grant relief similar to that requested herein. *See, e.g., In re Yellow Corp.*, No. 23-11069 (CTG) (Bankr. D. Del. Sept. 14, 2023) [D.I. 550]; *In re Rockport Co., LLC*, No. 23-10774 (BLS) (Bankr. D. Del. July 12, 2023) [D.I. 189]; *In re Agway Farm & Home Supply, LLC*, No. 22-10602 (JKS) (Bankr. D. Del. Dec. 20, 2022) [D.I. 406]; *In re Clarus Thera. Holdings, Inc.*, No. 22-10845 (MFW) [D.I. 208]; *In re 24 Hour Fitness Worldwide, Inc.*, No. 20-11558 (KBO) (Bankr. D. Del. July 2, 2020) [D.I. 405].

25. Based on the foregoing, the Debtors respectfully submit that the Rejection Procedures are fair, reasonable, and in the best interests of the Debtors and their estates and stakeholders and, therefore, should be approved.

**B. *Nunc Pro Tunc* Relief is Appropriate**

26. The Debtors submit that it is appropriate for the Court to authorize the Debtors to deem the rejection of the Initial Leases effective *nunc pro tunc* to the applicable Initial Lease Rejection Dates, which date is, at the earliest, the filing date of this Motion. Moreover, the Debtors

submit that it is appropriate for the Court to authorize, but not direct nor require, the Debtors, through the Rejection Procedures, to deem the rejection of a Contract or Lease effective *nunc pro tunc* to the filing date of this Motion or a later date established by the Debtors in accordance with the Rejection Procedures or as agreed between the Debtors and the applicable Counterparty.

27. Section 365 of the Bankruptcy Code does not address when the rejection ordered by the Court is deemed effective, nor does the Bankruptcy Code restrict courts from concluding that the effective date of the rejection is the date of the requested relief. *See In re Jamesway Corp.*, 179 B.R. 33, 37 (S.D.N.Y. 1995) (stating that section 365 of the Bankruptcy Code does not include “restrictions as to the manner in which the court can approve rejection”); *see also In re CCI Wireless, LLC*, 297 B.R. 133, 138 (D. Colo. 2003) (noting that section 365 of the Bankruptcy Code “does not prohibit the bankruptcy court from allowing the rejection of [leases] to apply retroactively”). Courts have held that a bankruptcy court may, in its discretion, authorize rejection retroactively to a date prior to the date of the entry of an order authorizing such rejection where the balance of equities favors such relief. *See In re Thinking Machs. Corp. v. Mellon Fin. Servs. Corp. (In re Thinking Machs. Corp.)*, 67 F.3d 1021, 1028–29 (1st Cir. 1995) (stating “rejection under section 365(a) does not take effect until judicial approval is secured, but the approving court has the equitable power, in suitable cases, to order a rejection to operate retroactively”); *In re Chi-Chi’s, Inc.*, 305 B.R. 396, 399 (Bankr. D. Del. 2004) (stating “the court’s power to grant retroactive relief is derived from the bankruptcy court’s equitable powers so long as it promotes the purposes of § 365(a)”); *CCI Wireless*, 297 B.R. at 140 (holding that a “court has authority under section 365(d)(3) to set the effective date of rejection at least as early as the filing date of the motion to reject”); *In re At Home Corp.*, 392 F.3d 1064, 1065–66 (9th Cir. 2004) (holding “that a bankruptcy court may approve retroactively the rejection of an unexpired nonresidential lease”); *BP Energy*

*Co. v. Bethlehem Steel Corp. (In re Bethlehem Steel Corp.)*, No. 02-cv-6419-NRB, 2002 WL 31548723, at \*3 (S.D.N.Y. Nov. 15, 2002) (“We cannot conclude . . . that a bankruptcy court’s assignment of a retroactive rejection date falls outside of its authority when the balance of the equities favors this solution.”).

28. Courts in this jurisdiction routinely grant relief similar to that requested herein. *See, e.g., In re Zymergen Inc.*, No. 23-11661 (KBO) (Bankr. D. Del. Oct. 31, 2023) [D.I. 122] (authorizing rejection *nunc pro tunc* to the petition date); *In re Southcross Energy Partners, L.P.*, No. 19-10702 (MFW) (Bankr. D. Del. Oct. 17, 2019) [D.I. 544] (authorizing rejection *nunc pro tunc* to the date debtors abandoned the subject premises, which preceded the date of filing the motion); *In re Ltd. Stores Co., LLC*, No. 17-10124 (KJC) (Bankr. D. Del. Jan. 30, 2017) (authorizing rejection *nunc pro tunc* to the petition date) [D.I. 158, 159, 160, 161]; *In re UCILLC*, No. 16-11354 (MFW) (Bankr. D. Del. Aug. 25, 2016) (authorizing rejection *nunc pro tunc* to the date of filing the motion) [D.I. 420]; *In re Amyris, Inc.*, No. 23-11131 (TMH) (Bankr. D. Del. Aug. 9, 2023) (authorizing rejection *nunc pro tunc* to the petition date) [D.I. 300]; *In re Alex and Ani, LLC*, No. 21-109181 (CTG) (Bankr. D. Del. June 9, 2021) (same) [D.I. 216]; *In re White Stallion Energy, LLC*, No. 20-13037 (LSS) (Bankr. D. Del. Dec. 2, 2020) (same) [D.I. 174].

29. Accordingly, the Debtors respectfully request the Court’s authorization to reject the Initial Leases effective *nunc pro tunc* to the applicable Initial Lease Rejection Dates.

**C. Abandonment of Certain Personal Property in Connection with the Rejected Contracts and Leases is in the Best Interests of the Debtors, their Estates, and All Parties in Interest**

30. Section 554(a) of the Bankruptcy Code provides that a debtor in possession “[a]fter notice and a hearing . . . may abandon any property of the estate that . . . is of inconsequential value and benefit to the estate.” 11 U.S.C. § 554(a). When rejecting a Contract or Lease, it may be more economically sound for the Debtors to abandon certain personal property (*e.g.*, fixtures, goods,

parts, components, materials, supplies, tools, service equipment) than it would for the Debtors to incur costs relating to retrieving and selling such assets outright, especially when considering the expenses ancillary to such sale efforts (*e.g.*, interim storage, shipping, marketing). Subject to applicable law, the Debtors would not abandon personal property unless, in the Debtors' reasonable business judgment, the sale of the asset would not generate enough net value for the Debtors' estates.

31. Bankruptcy Rule 6007 affords the Court discretion in limiting notice and the time for filing objections in connection with the abandonment of property. The Debtors submit that strict compliance with Bankruptcy Rule 6007(a) in connection with the abandonment of assets located on premises governed by a rejected Contract or Lease (*i.e.*, requiring notice be given to all creditors) would be unnecessarily expensive and time consuming and would not provide any incremental benefit to the Debtors' estates or creditors. Furthermore, the Debtors submit that the proposed deadline to file an objection to the abandonment of assets should be sufficient and should not otherwise prejudice the rights of any party in interest. Accordingly, the Debtors request that the Court limit notice and objection deadlines under Bankruptcy Rule 6007, as set forth in the Proposed Order, and otherwise approve the abandonment provisions set forth in the Rejection Procedures.

#### **Debtors' Reservation of Rights**

32. Nothing contained herein or any actions taken pursuant to such relief requested 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 (whether under bankruptcy law or otherwise), a commitment or requirement to pay any claim, a waiver or impairment of the Debtors' rights to dispute any claim on any grounds, or an admission as to the

amount, priority, enforceability, perfection, or validity of any lien on, security interest in, or other encumbrance on property of the Debtors' estates. The Debtors expressly reserve their rights to contest any claims 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 (including in connection with any action taken by the Debtors in accordance with the Rejection Procedures) 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.

**Compliance with Bankruptcy Rule 6004(a) and Waiver of  
Bankruptcy Rules 4001(a)(3), 6004(h), and 6006(d)**

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 (a) Bankruptcy Rule 4001(a)(3), which provides that “[a]n order granting a motion for relief from an automatic stay . . . is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise,” Fed. R. Bankr. P. 4001(a)(3), and (b) 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 Debtors have already commenced the process of analyzing their Contracts and Leases to maximize and preserve value for their estates and 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 Rules 4001(a)(3) and 6004(h).

**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 Counterparty; and (i) any party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the "**Notice Parties**").

35. 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 circumstances surrounding this Motion and the nature of the relief requested herein, the Debtors respectfully submit that no other or further notice is required.

*[Remainder of page intentionally left blank]*

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Order, substantially in the form attached hereto as **Exhibit A**, 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

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*Proposed Counsel to the Debtors and Debtors in Possession*

**Exhibit A**

**Proposed Order**

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

In re:

FISKER INC., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 24-11390 (TMH)

(Jointly Administered)

**Re: Docket No. \_\_\_\_**

**ORDER (I) AUTHORIZING DEBTORS TO REJECT CERTAIN  
UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY AND  
(II) AUTHORIZING AND ESTABLISHING PROCEDURES TO REJECT  
EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Upon the motion (the “**Motion**”)<sup>2</sup> 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 an order, pursuant to sections 105, 363, 365 and 554 of the Bankruptcy Code and Bankruptcy Rules 6004, 6006, and 6007, (a) authorizing the rejection of the Initial Leases, (b) authorizing and establishing the Rejection Procedures herein for (i) rejecting Contracts and Leases and (ii) abandoning personal property in connection with any rejected Contract or Lease, and (c) authorizing and approving the Rejection Notice to affected Counterparties, substantially in the form attached hereto, 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

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<sup>1</sup> 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.

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

Delaware, 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 the Court having found that the form and manner of the Rejection Notice to be delivered pursuant to the Rejection Procedures are reasonably calculated to provide each Counterparty with proper notice of (a) the prospective rejection of its Contract or Lease, (b) the effective date thereof, and (c) the objection deadline in connection therewith; 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 (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 to the extent set forth in this order (this “**Order**”).
2. Pursuant to sections 365 and 105 of the Bankruptcy Code, the Initial Leases are rejected, effective as of the applicable Initial Lease Rejection Dates as set forth on **Exhibit 1** annexed hereto.

3. The following procedures (the “**Rejection Procedures**”) are hereby approved in connection with rejecting Contracts and Leases:

- (a) **Rejection Notice.** To reject a Contract or Lease in accordance herewith, the Debtors shall file a notice, substantially in the form attached hereto as **Exhibit 2** (the “**Rejection Notice**”), that includes a copy of this Order (without the form Rejection Notice attached hereto) and sets forth, among other things, the following: (i) the Contracts or Leases to be rejected; (ii) the names and addresses of the applicable Counterparties; (iii) the name of the applicable Debtor; (iv) the effective date of the rejection for such Contracts or Leases (the “**Rejection Date**”), which may be the filing date of the Motion or, for a real property Lease, the date upon which the applicable Debtor surrenders in writing (including via email) the premises to the landlord and returns the keys, key codes, or security codes, as applicable; (v) a reasonable description of any personal property to be abandoned in connection with the proposed rejection; and (vi) the deadlines and procedures for filing objections to the Rejection Notice (as set forth below). Each Rejection Notice may list multiple Contracts or Leases and, notwithstanding Bankruptcy Rule 6006(f)(6), may list more than 100 Contracts or Leases; *provided*, that each Rejection Notice shall list all Contracts and Leases alphabetically by Counterparty and a copy of such Rejection Notice shall be served upon the applicable Counterparty in accordance with subparagraph (b) below. For the avoidance of doubt, nothing herein shall prejudice the Debtors’ right to file multiple separate Rejection Notices in their sole discretion.
- (b) **Service of Rejection Notice.** The Debtors shall cause the Rejection Notice to be served via first-class mail, overnight, delivery service, fax, or email upon the Counterparties listed thereon and each of the Objection Service Parties.
- (c) **Objection Procedures.** The deadline to file an objection (“**Rejection Objection**”) to the proposed rejection of a Contract or Lease or any proposed abandonment of personal property in connection therewith shall be 4:00 p.m. (prevailing Eastern Time) on the date that is seven days from the date that the Rejection Notice is filed and served (the “**Rejection Objection Deadline**”). The Rejection Objection Deadline may be extended with respect to a particular Contract or Lease with the written consent of the Debtors (email being sufficient). A Rejection Objection will be considered timely only if, on or prior to the Rejection Objection Deadline, it is filed with the Court and served upon the Objection Service Parties. In addition to the foregoing, a Rejection Objection must (i) be in writing, in English, and in text-searchable format, (ii) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules, and (iii) state, with specificity, the legal and factual bases thereof. For the avoidance of doubt, an objection to the

rejection of any particular Contract or Lease listed on a Rejection Notice shall not constitute an objection to the rejection of any other Contract or Lease listed thereon. For the further avoidance of doubt, if a Rejection Objection only pertains to the abandonment of personal property but not the underlying rejection of the related Contract or Lease, or vice versa, only the component actually objected to shall be considered opposed.

- (d) **No Unresolved Objection.** If there is no outstanding and unresolved timely and properly filed Rejection Objection, each Contract and Lease on the applicable Rejection Notice shall be deemed rejected as of the Rejection Date or such other date as may be agreed to by the Debtors and the applicable Counterparty.
- (e) **Unresolved Objection.** If a timely and properly filed Rejection Objection remains outstanding and unresolved, the Debtors may request that the Court schedule a hearing on such objection. If such Rejection Objection is overruled or withdrawn, such Contract or Lease shall be treated as set forth in the immediately preceding subparagraph (d), unless otherwise ordered by the Court.
- (f) **Modifications of Rejection Notice.** The Debtors reserve the right to remove any Contract or Lease from the schedule to any Rejection Notice at any time prior to the applicable Rejection Objection Deadline.
- (g) **Abandoned Property.** The Debtors are authorized, but not directed, to abandon any of the Debtors' personal property that may be located on the premises subject to the underlying rejected Contract or Lease, and such property shall be deemed abandoned pursuant to section 554 of the Bankruptcy Code at the same time that the underlying Contract or Lease is deemed rejected in accordance with subparagraphs (d)–(e) hereof. Counterparties may, in their sole discretion and without further notice or order of the Court, utilize or dispose of such abandoned property without any liability to the Debtors or third parties and, to the extent applicable, the automatic stay shall be deemed modified to the extent necessary to allow Counterparties to effectuate the foregoing.
- (h) **Rejection Damages.** Any claims arising out of the rejection of a Contract or Lease or the abandonment of any personal property in connection therewith must be filed by the later of (i) the deadline for filing proofs of claim established in the Chapter 11 Cases, (ii) 35 days after the date of filing of the applicable Rejection Notice, or (iii) if a Rejection Objection is timely and properly filed, 30 days after such objection is resolved, overruled, withdrawn, or adjudicated. Any person or entity that fails to timely file such proof of claim, (i) shall be forever barred, estopped, and enjoined from asserting such claim against the Debtors or thereafter filing a proof of claim with respect thereto in the Chapter 11 Cases, (ii) shall not, with respect to

such claim, be treated as a creditor of the Debtors for the purpose of voting on any plan in the Chapter 11 Cases, and (iii) shall not receive or be entitled to receive any payment or distribution of property from the Debtors or their successors or assigns with respect to such claim in the Chapter 11 Cases.

4. The Debtors' rejection of the Contracts and Leases in accordance with the Rejection Procedures is hereby approved and effective pursuant to section 365 of the Bankruptcy Code.

5. Approval of the Rejection Procedures and this Order shall not prevent the Debtors from seeking to reject a Contract or Lease by a separate court filing (*e.g.*, a motion, stipulation, or chapter 11 plan), nor, for the avoidance of doubt, shall the Debtors be precluded from assuming and assigning a Contract or Lease by a separate court filing.

6. Absent order of the Court or written agreement from the Debtors (email being sufficient), all Counterparties are prohibited from setting off, recouping, or otherwise utilizing any monies deposited by the Debtors with such Counterparty as a security deposit or pursuant to another similar arrangement.

7. All rights and defenses of the Debtors are preserved, including all rights and defenses of the Debtors with respect to a claim for damages arising as a result of a rejection of a Contract or Lease. In addition, nothing in this Order or the Motion shall limit the Debtors' ability to subsequently assert that any particular Contract or Lease is terminated and is no longer an executory contract or unexpired lease, respectively.

8. Any period of time prescribed or allowed by the Rejection Procedures shall be computed in accordance with Bankruptcy Rule 9006.

9. Notwithstanding the relief granted herein and any actions taken hereunder (including under the Rejection Procedures), 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.

10. 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, (f) a waiver or impairment of the Debtors' or any other party in interest's rights to dispute any claim on any grounds, or (g) an admission as to the amount, priority, enforceability, perfection, or validity of any lien on, security interest in, or other encumbrance on property of the Debtors' estates.

11. This Order shall be binding on the Debtors, including any chapter 7 or chapter 11 trustee or other fiduciary appointed for the estates of the Debtors.

12. 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.

13. 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.

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

**Exhibit 1**

**Initial Leases**

Exhibit 1  
Initial Leases

Debtor	Real Property Lease Address	Landlord Counterparty and Address	Lease Description	Initial Lease Rejection Date
Fisker Inc.	1888 Rosecrans Ave. Manhattan Beach, CA 90266	Continental Rosecran 2041 Rosecrans Avenue, Suite 200 El Segundo, CA 90245	Lease Commencement dated 02/01/2021	6/18/2024
Fisker Group Inc.	189 The Grove Dr. Los Angeles, CA 90036	The Grove, LLC 101 The Grove Drive Los Angeles, CA 90036	Lease Commencement dated 08/01/2023	6/18/2024
Fisker Inc.	11837-11845 Teale St. Culver City, CA	3Gen Teale, LLC 828 Woodacres Road Santa Monica, CA 90402	Lease Commencement dated 12/15/2020	6/18/2024
Fisker Group Inc.	38-50 21st St. Long Island City, NY 11101	Queens Plaza Ventures, LLC 3366 Farrington St. STE 200 Flushing, NY 11354	Lease Commencement dated 06/01/2023	6/18/2024
Fisker Group Inc.	401 W. 14th St., New York City, NY	401 West 14th Street Fee, LLC 111 Eighth Avenue Floor 9 New York, NY 10003	Lease Commencement dated 10/06/2023	6/18/2024
Fisker Group Inc.	10 Music Fair Rd. Owings Mills, MD, 21117	Diamond Automotive Services, LLC 12400 Owings Mills Blvd suite B Reisterstown, MD 21136	Lease Commencement dated 04/01/2023	6/18/2024
Fisker Group Inc.	14422 Astronautics Dr. Huntington Beach, CA 92647	14422 Astronautics APG, LLC 100 Bayview Circle Ste #310 Newport Beach, CA 92660	Lease Commencement dated 04/01/2023	6/18/2024
Fisker Group Inc.	501 Northpoint Parkway Acworth, GA 30102	501 Northpoint Parkway, LLC 6 Concourse Parkway Atlanta, GA 30328	Lease Commencement dated 11/06/2023	6/18/2024
Fisker Group Inc.	2085 Tamiami Trail Naples, FL 34102	2085 Tamiami Trail East, LLC 1500 Fifth Ave. S. Suite 111 Naples, Florida 34102	Lease Commencement dated 09/19/2023	6/18/2024
Fisker Group Inc.	3131 Irving Dr. Dallas, TX 75247	3131 Irving Boulevard, LP c/o Pennybacker Capital, LLC 3800 N. Lamar Boulevard, Suite 350 Austin, Texas 78756	Lease Commencement dated 10/01/2023	6/18/2024
Fisker Group Inc.	1618 Redwood Hwy Corte Madera, CA 94925	Corte Madera Village, LLC 1618 Redwood Highway Corte Madera, CA 94925-1224	Lease Commencement dated 03/01/2024	6/18/2024
Fisker Group Inc.	950 Charter St. Redwood City, CA 94063	950 Charter Partners, LLC c/o DivcoWest Real Estate Asset Management, Inc. 301 Howard Street, Suite 2100 San Francisco, California 94015	NA	6/18/2024

**Exhibit 2**

**Form of Rejection Notice**

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

In re:

FISKER INC., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 24-11390 (TMH)

(Jointly Administered)

**Re: Docket No.** \_\_\_\_

**[NUMBER] NOTICE OF REJECTION OF CERTAIN EXECUTORY CONTRACTS  
AND/OR UNEXPIRED LEASES (AND THE ABANDONMENT OF PROPERTY)**

**PARTIES RECEIVING THIS NOTICE SHOULD CHECK SCHEDULE 1  
ATTACHED HERETO FOR THEIR NAMES AND THEIR CONTRACTS  
OR LEASES AND READ THE CONTENTS OF THIS NOTICE  
CAREFULLY.**

**PLEASE TAKE NOTICE** that, on June 17 and 19, 2024, the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the “**Court**”). The Debtors’ chapter 11 cases are being jointly administered under case number 24-11390 (TMH).

**PLEASE TAKE FURTHER NOTICE** that, on [•], 2024 the Court entered the order attached hereto (without exhibits) as Schedule 2 [D.I. [•]] (the “**Order**”)² that, among other things, authorized and established procedures for the rejection of Contracts and Leases and the abandonment of certain property in connection therewith (the “**Rejection Procedures**”).

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Order and this written notice (this “**Rejection Notice**”), the Debtors hereby notify you that they have determined, in the exercise of their sound business judgment, that each Contract or Lease set forth on Schedule 1 attached

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<sup>1</sup> 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.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Order or the Motion, as applicable. A copy of the Motion and additional information about the Chapter 11 Cases can be accessed on the Debtors’ case information website located at <https://www.veritaglobal.net/fisker>. If you have any questions, please contact, Kurtzman Carson Consultants, LLC dba Verita Global (together with its affiliates and subcontractors, “**Verita**”), the Debtors’ claims and noticing agent, at (888) 249-2695 (toll-free in the U.S. and Canada), (310) 751-2601 (international). Verita cannot provide legal advice.

hereto shall be deemed rejected effective as of the date (the “**Rejection Date**”) set forth therein or such other date as the Debtors and the applicable Counterparty agree.

**PLEASE TAKE FURTHER NOTICE** that parties seeking to object to the proposed rejection of any of the Contracts or Leases on **Schedule 1** attached hereto, or the proposed abandonment of property in connection therewith, must file and serve a written objection so that such objection is filed with the Court on the docket of the Chapter 11 Cases and that the following parties actually receive such objection no later than 4:00 p.m. (prevailing Eastern Time) on [•] (the “**Rejection Objection Deadline**”): (a) the U.S. Trustee, 44 N. King Street, Wilmington, DE 19801, Attn: Linda Richenderfer; (b) [proposed] counsel to the Debtors, (i) Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn: Brian M. Resnick, Darren S. Klein, Steven Z. Szanzer, and Richard J. Steinberg and (ii) Morris, Nichols, Arsht & Tunnell LLP, Attn: Robert J. Dehney, Sr., Andrew R. Remming, Brenna A. Dolphin, Sophie Rogers Churchill, and Evanthea Hammer; and (c) counsel to any official committee appointed in the Chapter 11 Cases. Please note that the Rejection Objection Deadline may be extended with respect to a particular Contract or Lease with the written consent of the Debtors (email being sufficient).

**PLEASE TAKE FURTHER NOTICE** that each Rejection Objection must (a) be in writing, in English, and in text-searchable format, (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules, and (c) state, with specificity, the legal and factual bases thereof.

**PLEASE TAKE FURTHER NOTICE** that, absent the proper and timely filing and service of a Rejection Objection, the rejection of each Contract and Lease set forth on **Schedule 1** attached hereto shall become effective on the Rejection Date set forth therein or such other date as the Debtors and the applicable Counterparty agree, and any personal property of the Debtors listed on **Schedule 1** attached hereto shall be deemed abandoned as of that same date.

**PLEASE TAKE FURTHER NOTICE** that, if a Rejection Objection is properly and timely filed and served and not withdrawn or resolved, the Debtors shall file with the Court a notice for a hearing to consider the Rejection Objection. If such Rejection Objection is overruled or withdrawn, such Contract or Lease (and any abandonment of personal property in connection therewith) shall be treated as set forth in the immediately preceding paragraph, unless otherwise ordered by the Court.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Order, absent a further order of the Court or written agreement from the Debtors (email being sufficient), all Counterparties are prohibited from setting off, recouping, or otherwise utilizing any monies deposited by the Debtors with such Counterparty as a security deposit or pursuant to another similar arrangement.

**PLEASE TAKE FURTHER NOTICE** that, to the extent you wish to assert a claim with respect to the rejection of your Contract or Lease, you must do so by the later of (a) the deadline for filing proofs of claim established in the Chapter 11 Cases, (b) 35 days after the date of filing of the applicable Rejection Notice, or (c) if a Rejection Objection is timely and properly filed, 30 days after such objection is resolved, overruled, withdrawn, or adjudicated. **IF YOU FAIL TO TIMELY SUBMIT A PROOF OF CLAIM IN THE APPROPRIATE FORM BY THE**

DEADLINE SET FORTH HEREIN, YOU WILL BE FOREVER BARRED, ESTOPPED, AND ENJOINED FROM (X) ASSERTING SUCH CLAIM AGAINST ANY OF THE DEBTORS OR THEREAFTER FILING A PROOF OF CLAIM WITH RESPECT THERETO IN THE CHAPTER 11 CASES, (Y) BEING TREATED AS A CREDITOR OF THE DEBTORS FOR THE PURPOSE OF VOTING ON ANY CHAPTER 11 PLAN IN THE CHAPTER 11 CASES ON ACCOUNT OF SUCH CLAIM, AND (Z) RECEIVING OR BEING ENTITLED TO RECEIVE ANY PAYMENT OR DISTRIBUTION OF PROPERTY FROM THE DEBTORS OR THEIR SUCCESSORS OR ASSIGNS WITH RESPECT TO SUCH CLAIM IN THE CHAPTER 11 CASES.

*[Remainder of page intentionally left blank]*

Dated: [•], 2024  
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/Draft

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Robert J. Dehney, Sr. (No. 3578)  
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-and-

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*Counsel to the Debtors and Debtors in Possession*

**Schedule 1**

**Schedule of Rejected Contracts and Leases (and Abandoned Property)**

**Schedule 2**

**Order (without form Rejection Notice)**