

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

In re:	§	Chapter 11
	§	
RHODIUM ENCORE LLC, <i>et al.</i> , <sup>1</sup>	§	Case No. 24-90448 (ARP)
	§	
Debtors.	§	
	§	(Joint Administration Pending)
	§	

**EMERGENCY MOTION OF DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING DEBTORS TO (A) CONTINUE INSURANCE PROGRAMS, AND (B) PAY CERTAIN OBLIGATIONS WITH RESPECT THERETO; AND (II) GRANTING RELATED RELIEF**

**Emergency relief has been requested. Relief is requested not later than 10:00 a.m. (Central Prevailing Time) on August 30, 2024.**

**If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set, or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.**

**A hearing will be conducted on this matter on Friday, August 30, 2024, at 10:00 a.m. (Central Prevailing Time) in Courtroom 400, 4<sup>th</sup> Floor, 515 Rusk Avenue, Houston, Texas 77002.**

**Participation at the hearing will only be permitted by an audio and video connection.**

**Audio communication will be by use of the Court’s dial-in facility. You may access the facility at 832-917-1510. Once connected, you will be asked to enter the conference room number. Judge Perez’s conference code number is 282694. Video communication will be by use of the GoToMeeting platform. Connect via the free GoToMeeting application or click the link on Judge’s home page. The meeting code is “JudgePerez.” Click the settings icon in the upper right corner**

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their corporate identification numbers are as follows: Rhodium Encore LLC (3974), Jordan HPC LLC (3683), Rhodium JV LLC (5323), Rhodium 2.0 LLC (1013), Rhodium 10MW LLC (4142), Rhodium 30MW LLC (0263), Rhodium Enterprises, Inc. (6290), Rhodium Technologies LLC (3973), Rhodium Renewables LLC (0748), Air HPC LLC (0387), Rhodium Shared Services LLC (5868), Rhodium Ready Ventures LLC (8618), Rhodium Industries LLC (4771), Rhodium Encore Sub LLC (1064), Jordan HPC Sub LLC (0463), Rhodium 2.0 Sub LLC (5319), Rhodium 10MW Sub LLC (3827), Rhodium 30MW Sub LLC (4386), and Rhodium Renewables Sub LLC (9511). The mailing and service address of the Debtors in these chapter 11 cases is 2617 Bissonnet Street, Suite 234, Houston, TX 77005.



**and enter your name under the personal information setting.**

**Hearing appearances must be made electronically in advance of both electronic and in-person hearings. To make your appearance, click the “Electronic Appearance” link on Judge Perez’s home page. Select the case name, complete the required fields and click “Submit” to complete your appearance.**

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) state as follows in support of this motion (this “Motion”):

### **Background**

1. The Debtors and their affiliates (collectively, the “Group”) are a technology company. The Group’s main activity involves utilizing proprietary technology to self-mine Bitcoin, with the goal of increasing sustainability and cost-efficiency.

2. On August 24, 2024 and August 29, 2024 (the “Petition Dates”), the Debtors each commenced with this Court a voluntary case under chapter 11 of title 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their property as debtors and debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no committees have been appointed or designated.

3. Information regarding the circumstances leading to the commencement of these chapter 11 cases and additional information regarding the Debtors’ businesses and capital structure is set forth in the *Declaration of David Dunn in Support of Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), which has been filed contemporaneously with this Motion and incorporated by reference herein.<sup>2</sup>

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<sup>2</sup> Capitalized terms not defined herein shall have the meanings ascribed to such terms in the First Day Declaration.

**Jurisdiction**

4. The United States Bankruptcy Court for the Southern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the entry of a final order by the Court.

5. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

6. The basis for the relief requested herein are sections 105(a), 362(d), 363(b), and 503(b) of title 11 of the United States Code (the “Bankruptcy Code”), Bankruptcy Rules 4001, 6003, and 6004, and rule 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “Local Rules”).

**Relief Requested**

7. By this Motion, the Debtors request entry of interim and final orders (a) authorizing, but not directing them to (i) continue to maintain and renew, amend, supplement, replace, or extend (if necessary) their Insurance Programs (each as defined below) in accordance with their applicable insurance policies and indemnity and reimbursement agreements and to continue to perform their obligations with respect thereto during these chapter 11 cases, and (ii) pay certain prepetition obligations arising under the Insurance Programs; (b) modifying the automatic stay to the limited extent necessary to permit the Debtors’ employees to proceed with any claims they may have under the Workers’ Compensation Program (as defined below); and (c) granting related relief. The Debtors further request that the Court authorize financial institutions to receive, process, honor, and pay all checks presented for payment and to honor all funds transfer requests related to such obligations.

### **Debtors' Insurance Program**

8. In the ordinary course of their Bitcoin mining operations, the Debtors maintain: workers' compensation, third-party liability, property, and various other insurance programs (collectively, the "Insurance Programs"). In connection with the Insurance Programs, the Debtors incur obligations to pay premiums and other obligations, including, but not limited to, taxes, fees, collateral, and deductibles (collectively, the "Insurance Obligations"), in accordance with, or relating to, their respective insurance policies (each, an "Insurance Policy") through several insurance carriers (each, an "Insurance Carrier"). The Debtors' Insurance Programs includes: (a) coverage of workers' compensation and employer's liability (the "Workers' Compensation Program"); (b) coverage of potential third-party liability in connection with the Debtors' business (the "General Liability Program"); (c) coverage for property, cargo, and equipment losses (the "Property Program"); (d) coverage of management and directors' and officers' liability (the "Management Liability Program"); (e) excess coverage for various Insurance Policies coverage for losses outside the scope of the Debtors' other policies, as described below (the "Umbrella and Excess Liabilities Program"); and (f) coverage for claims arising from automobile liability (the "Automobile Insurance Program"). A detailed list of the Insurance Programs is attached as **Exhibit A** hereto. The Debtors also retain the services of various insurance service providers in connection with maintaining the Debtors' Insurance Programs.

9. The Debtors are obligated to make premium payments related to the Insurance Policies based upon a fixed rate established and billed by each Insurance Carrier (collectively, the "Insurance Premiums"). The Debtors pay approximately \$3.407,579.71 million in Insurance Premiums each year, not including applicable taxes and surcharges, deductibles, broker and consulting fees, and commissions. These Insurance Premiums are generally prepaid annually. The

primary exception to the annual prepayment schedule is property insurance that, through First Insurance Funding (“First”), is subject to an insurance financing program requiring monthly payments (as further described below).

10. The following chart summarizes the Debtors’ prepetition obligations related to the Insurance Programs, including amounts coming due in the next thirty (30) days (the “Interim Period”):

<b>Insurance Obligations</b>	<b>Pre-petition Amount Outstanding as of the Petition Date</b>	<b>Due in the Interim Period</b>
Workers’ Compensation Program	\$0	\$0
General Liability Programs	\$0	\$0
Property Programs	\$0	\$193,632.97
Management Liability Program	\$0	\$0
Umbrella and Excess Coverage Programs	\$0	\$0
Automobile Insurance Program	\$0	\$0
<b>TOTAL</b>	\$0	\$193,632.97

11. By this Motion, the Debtors seek authority, but not direction, to maintain their Insurance Policies in the ordinary course of business and to pay their Insurance Obligations, including all premium payments, taxes, and deductibles related to their Insurance Policies, as they come due, whether arising from the prepetition or post-petition period, throughout these chapter 11 cases. Additionally, pursuant to this Motion, the Debtors are requesting authority, but not direction, to renew or amend the Insurance Policies in the ordinary course.

12. In addition, the Debtors seek authority to lift the automatic stay to enable employees with Workers’ Compensation Claims to pursue such claims in the appropriate forum regardless of

whether they arose before or after the Petition Date. Although the Debtors are unaware of any unpaid obligations under the Workers' Compensation Program, they seek this relief out of an abundance of caution.

**A. Workers' Compensation Program**

13. In the ordinary course of business, the Debtors provide their employees with workers' compensation coverage (the "Workers' Compensation Program") for claims arising from or related to an individual's employment with the Debtors (the "Workers' Compensation Claims"). The Debtors maintain coverage for the Workers' Compensation Program through Accident Fund General Insurance Co ("Accident Fund"). The Worker's Compensation Program Covers the period from August 1, 2024 to August 1, 2025 and was paid in full prior to the petition date.

14. Also, as is common with many companies, the Debtors outsource certain responsibilities related to human resources, payroll, and employee benefits to a professional employer organization (the "PEO"). The Debtors utilize People Center, Inc ("People Center") as their PEO.

15. As of the Petition Date, the Debtors do not believe they owe any prepetition amounts on account of premiums under the Workers' Compensation Program, which the Debtors already paid. The Debtors seek authority, but not direction, to renew the policy under the Workers' Compensation Program in the ordinary course and continue to pay Workers' Compensation Payments on a post-petition basis in the course of business and consistent with past practices.

16. Further, although the Debtors are not aware of any pending Workers' Compensation Claims asserted against the Debtors, out of an abundance of caution, the Debtors seek authority to lift the automatic stay to enable the Employees with Workers' Compensation Claims to pursue such claims in the appropriate forum regardless of whether they arose before or

after the Petition Date to the extent such relief from the stay is necessary.

**B. General Liability Program**

17. The Debtors maintain the General Liability Program in the ordinary course of business. For each occurrence, the General Liability Program covers liability up to \$1,000,000. Under this program, the general aggregate limit is equal to \$2,000,000. The General Liability Program covers the period between April 23, 2024 through April, 23, 2025.

18. As of the Petition Date, the Debtors do not believe they owe any prepetition amounts on account of premiums under the General Liability Program. To the extent there are any amounts under the General Liability Program relating to the prepetition period that become due and owing post-petition, including deductibles, the Debtors request authority, but not direction, to pay such amounts in the ordinary course of business. Likewise, the Debtors request authority, but not direction, to renew the policies under the General Liability Program in the ordinary course.

**C. Property Program**

19. The Property Program is broadly designed to protect the Debtors from various risks and hazards, both natural and mechanical, relating to their Bitcoin mining facilities and cryptocurrency-mining machines or “rigs” of the Debtors, as well as equipment and property during transport. The Property Program provides coverage for both the Debtors’ real property and their personal property, including their rigs, and other computing equipment. Risks and hazards of this type can be debilitating to the Debtors’ business operations and, as the potential liabilities tend to be high, the Debtors have obtained a great degree of protection to limit, if not nullify, these economic risks. The Property Program generally covers the areas in connection with such risks and hazards:

- i. Special Form Coverage: This coverage provides protection for physical loss or damages associated with (a) named windstorms, such as hurricanes and other named tropical storms; and (b) all other risks unless explicitly excluded in the policies.
- ii. Business Risk Coverage: This coverage provides protection of physical loss or damages for various operational risks associated with the Debtors' bitcoin mining operations. Among other things, this would include debris removal, defense costs, fire brigade, interruption by civil or military authority, and pollution clean up of land or water.

20. The Property Program is administered through 18 insurance providers. A complete list of the Property Program insurance providers and layers of coverage are provided in **Exhibit A**. Depending on the insurance provider, the coverage periods for the Property Program are (a) November 17, 2023 through November 17, 2024; (b) January 11, 2024 through January 11 2025; and (c) January 12, 2024 through January 12, 2025. In connection with the Property Program, the Debtors are currently party to one or more insurance premium financing agreements with First (the "Premium Financing Agreements"), whereby the property insurance policies were financed by First. Pursuant to the terms of the Premium Financing Agreements, the Debtors made a down payment contemporaneously with the execution of the Premium Financing Agreements and then make monthly installment payments to the premium finance company. Specifically, the Debtors made a down payment of \$482,023.67 in the fourth quarter of 2023, and starting from December 17, 2023, are required to pay ten monthly installments—each equal to \$193,632.97 (the "Installment[s]")—on the 17th day of each relevant month. The Premium Finance Company is granted a security interest in, inter alia, unearned premiums that would otherwise be returned to the Debtors in the event of policy cancellation. In the event of default (such as a late payment), any affected Premium Finance Company would undoubtedly seek relief from the automatic stay in order to exercise its rights under the applicable Premium Finance Agreements and terminate the financed policies.

21. As of the Petition Date, the Debtors have already paid nine of the ten Installments due to First. The tenth and last Installment, equal to \$193,632.97, will become due during the Interim Period. Accordingly, the Debtors seek authority, but not direction, to pay the tenth Installment, which relates to the premiums paid for the Property Program. Further, to the extent there are any other amounts relating to the pre-petition period that become due and owing post-petition, including deductibles, the Debtors request authority, but not direction, to pay such amounts in the ordinary course of business. Likewise, the Debtors request authority, but not direction, to renew the policies under the Property Program in the ordinary course and enter in any new premium financing agreements.

**D. Management Liability Program**

22. The Management Liability Program provides preventative protection against a variety of liability and damages that could be associated with the Debtors' directors and officers. The Debtors have four layers of coverage for the Management Liability Program (see also Exhibit A for further details on the layers of coverage). The Insurance Carriers are as follows: Allied World Insurance Company, AXA XL Insurance, Endurance American Insurance Company, and QBE Insurance Corporation. The Management Liability Program's coverage period is from December 31, 2023 through December 31, 2024.

23. The Debtors do not believe they owe any prepetition premium amounts on account of the Management Liability Program as of the Petition Date. To the extent there are any amounts under the Management Liability Program relating to the pre-petition period that become due and owing post-petition, including deductibles, the Debtors request authority, but not direction, to pay such amounts in the ordinary course of business. Likewise, the Debtors request authority, but not direction, to renew the policies under the Management Liability Program in the ordinary course.

**E. Umbrella and Excess Liabilities Program**

24. The Umbrella and Excess Liabilities Program provides coverage that supplements the coverage provided in the casualty programs above, including the employers' liability insurance under the Workers' Compensation Program, the General Liability Program, and the Automobile Program. Losses that fall outside of the Debtors' other insurance policies are covered by this program. The Umbrella and Excess Liabilities Program policy is provided by Lexington Insurance Company. For each occurrence, the Umbrella and Excess Liabilities Program covers liability up to \$1,000,000. Under this program, the general aggregate limit is equal to \$2,000,000. The coverage period for the Excess Liabilities Program is April 23, 2024 through April 23, 2025. The annual premium for the twelve month period commencing April 23, 2024 was paid in full prior to the Petition Date.

25. Accordingly, the Debtors do not believe they owe any pre-petition premium amounts on account of the Excess Liabilities Program as of the Petition Date. To the extent there are any amounts under the Excess Liabilities Program relating to the prepetition period that become due and owing post-petition, including deductibles, the Debtors request authority, but not direction, to pay such amounts in the ordinary course of business. Likewise, the Debtors request authority, but not direction, to renew the policies under the Umbrella and Excess Liabilities Program in the ordinary course.

**F. Automobile Insurance Program**

26. The Debtors maintain the Automobile Insurance Program in the ordinary course of business. The Automobile Program provides coverage for claims arising from automobile liability. The Automobile Program policy is provided by Progressive County Mutual Insurance Company. The coverage period for the Automobile Program is October 7, 2023 through October

7, 2024. The annual premium for the twelve month period commencing October 7, 2023 was paid in full prior to the Petition Date.

27. The Debtors do not believe they owe any prepetition premium amounts on account of the Automobile Insurance Program as of the Petition Date. To the extent there are any amounts under the Automobile Program relating to the pre-petition period that become due and owing post-petition, including deductibles, the Debtors request authority, but not direction, to pay such amounts in the ordinary course of business. Likewise, the Debtors request authority, but not direction, to renew the policy under the Automobile Insurance Program in the ordinary course.

#### **Insurance Service Providers**

28. The Debtors contract with Assured Partners and Lockton Companies, Inc. to serve as their insurance brokers and consultants for certain of the Insurance Programs (the “Insurance Brokers”). The Insurance Brokers provide access to specific insurance markets and expertise in certain lines and types of coverage. In addition, the Insurance Brokers often act as the intermediary between the Debtors and the Insurance Carriers, transferring insurance premiums and claims asserted for various Insurance Programs to the various Insurance Carriers. Fees payable to the Insurance Brokers are paid at the start of each policy, and the Debtors are unaware of any outstanding amounts owed as of the Petition Date.

29. Accordingly, the Debtors do not believe they owe any pre-petition amounts on account of the Insurance Brokers as of the Petition Date. To the extent there are any amounts owing to the Insurance Brokers relating to the pre-petition period that become due and owing post-petition, the Debtors request authority, but not direction, to pay such amounts in the ordinary course of business.

**Basis for Relief**

**I. Maintaining Certain of the Insurance Programs is Required by the Bankruptcy Code and U.S. Trustee Operating Guidelines**

30. Under section 1112(b)(4)(C) of the Bankruptcy Code, a “failure to maintain appropriate insurance that poses a risk to the estate or to the public” is “cause” for mandatory conversion or dismissal of a chapter 11 case. 11 U.S.C. § 1112(b)(4)(C). In addition, in many instances, the coverage provided under the Insurance Obligations is required by the regulations, laws, and contracts that govern the Debtors’ commercial activities, including the operating guidelines (the “U.S. Trustee Operating Guidelines”) issued by the Office of the United States Trustee for Region 7 (the “U.S. Trustee”), which includes the Southern District of Texas. Given this backdrop, it is essential to the Debtors’ estates, and consistent with the Bankruptcy Code and the U.S. Trustee Operating Guidelines, that the Debtors be permitted to maintain and continue making all payments required under their Insurance Programs. It is similarly critical that the Debtors have the authority to supplement, place, amend, extend, renew, or replace their Insurance Programs as needed, in their business judgment, without further order of the Court.

**II. Payments Made to Maintain Insurance Programs Are Ordinary Course Transactions Authorized Pursuant to Section 363(c)(1) of Bankruptcy Code**

31. The Debtors believe that payments made to maintain the Insurance Programs, as well as the payments of any Insurance Obligations made in connection therewith, fall within the ordinary course of business and are therefore authorized pursuant to section 363(c)(1) of the Bankruptcy Code.

32. Section 363(c)(1) of the Bankruptcy Code authorizes the debtor in possession to “use property of the estate in the ordinary course of business without notice or a hearing.” 11 U.S.C. § 363(c)(1). The purpose of section 363(c)(1) is to provide a debtor in possession with the

flexibility to engage in the ordinary transactions required to operate its business without unneeded oversight by its creditors or the court. *See Med. Malpractice Ins. Ass'n v. Hirsch (In re Lavigne)*, 114 F.3d 379, 384 (2d Cir. 1997); *Chaney v. Off. Comm. of Unsecured Creditors of Crystal Apparel, Inc. (In re Crystal Apparel, Inc.)*, 207 B.R. 406, 409 (S.D.N.Y. 1997).

33. Here, maintaining the Insurance Programs and honoring certain obligations arising thereunder, including undertaking renewals as they expire, or entering into new insurance arrangements through the Insurance Service Providers or surety, indemnity, or reimbursement agreements, are the type of ordinary-course transactions contemplated by section 363(c)(1). Accordingly, section 363(c)(1) of the Bankruptcy Code authorizes continuation of the Insurance Programs without this Bankruptcy Court's approval.

**III. Continuation of Payments for Insurance Programs, and Payment of Any Prepetition Amounts Owed With Respect Thereto Is Necessary to Protect and Preserve Debtors' Estates**

34. The Debtors believe that payments made to maintain the Insurance, as well as the payments of any Insurance Obligations made in connection therewith, fall within the ordinary course of business and are therefore authorized pursuant to section 363(c)(1) of the Bankruptcy Code. To the extent any such actions do not constitute ordinary-course transactions, however, the Debtors request that the Court authorize the Debtors to continue payments for the Insurance Programs, as well as to pay necessary pre-petition amounts owed with respect thereto if any come to light post-petition, pursuant to sections 105(a), 363(b), and 503(b) of the Bankruptcy Code.

35. The Court may grant the relief requested herein pursuant to section 363 of the Bankruptcy Code, which provides, in relevant part, that “[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate[.]” 11 U.S.C. § 363(b)(1). Courts in the Fifth Circuit have granted a debtor's request to use property of

the estate outside of the ordinary course of business pursuant to section 363(b) of the Bankruptcy Code upon a finding that such use is supported by sound business reasons. *See, e.g., Black v. Shor (In re BNP Petroleum Corp.)*, 642 F. App'x 429, 435 (5th Cir. 2016); *Institutional Creditors of Cont'l Air Lines, Inc. v. Cont'l Air Lines, Inc. (In re Cont'l Air Lines, Inc.)*, 780 F.2d 1223, 1226 (5th Cir. 1986) (“[F]or the debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business.”); *see also In re Crutcher Res. Corp.*, 72 B.R. 628, 631 (Bankr. N.D. Tex. 1987) (“A Bankruptcy Judge has considerable discretion in approving a § 363(b) sale of property of the estate other than in the ordinary course of business, but the movant must articulate some business justification for the sale[.]”); *In re Terrace Gardens Park P'ship*, 96 B.R. 707, 714 (Bankr. W.D. Tex. 1989).

36. In addition, under section 1107(a) of the Bankruptcy Code, a debtor has, among other things, the “implied duty of the debtor-in-possession to ‘protect and preserve the estate, including an operating business’ going-concern value.” *In re CEI Roofing, Inc.*, 315 B.R. 50, 59 (Bankr. N.D. Tex. 2004) (quoting *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002)). Under section 105(a) of the Bankruptcy Code, “[t]he 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); *see In re CoServ, L.L.C.*, 273 B.R. at 497 (holding that sections 105 and 1107 of the Bankruptcy Code provide authority for a debtor-in-possession to pay prepetition claims); *see also In re Tusa-Expo Holdings, Inc.*, 2008 WL 4857954, at \*1 (Bankr. N.D. Tex. Nov. 7, 2008); *In re CEI Roofing, Inc.*, 315 B.R. at 56; *In re Mirant Corp.*, 296 B.R. 427 (Bankr. N.D. Tex. 2003). Moreover, Bankruptcy Rule 6003 itself implies that the payment of prepetition obligations may be permissible within the first twenty-one (21) days of a case where doing so is “necessary to avoid

immediate and irreparable harm.” Fed. R. Bankr. P. 6003. Accordingly, the Bankruptcy Code authorizes the post-petition payment of prepetition claims where, as here, such payments are critical to preserving the going-concern value of a debtor’s estate.

37. The Debtors’ use of estate funds to pay obligations arising from the Insurance Programs is justified because such obligations are necessary costs of preserving the Debtors’ estates. The Insurance Programs are essential to the Debtors’ operations, as the Debtors would be exposed to significant liability if the Insurance Programs were allowed to lapse or terminate. Such exposure could be detrimental to the success of these chapter 11 cases. The Debtors’ operations involve significant and expensive facilities and equipment, and the Insurance Programs are both necessary and appropriate. In addition, failure to timely pay outstanding premium amounts, if any, could expose the Debtors to potential penalties or termination of the policy.

38. The Insurance Programs are also essential to the Debtors’ continued operations. The risk that eligible workers’ compensation claimants would not receive timely payments for prepetition employment-related injuries could negatively impact the financial well-being and morale of those claimants and, in turn, the Debtors’ entire employee base. This could result in employee departures, causing a significant disruption in the Debtors’ business with a materially adverse impact on the Debtors’ operations, the value of their estates, and the interests of all parties in these chapter 11 cases.

39. For the foregoing reasons, payment of the obligations in connection with Insurance Programs is necessary, appropriate, and in the best interests of the Debtors, their estates, and all other parties-in-interest in these cases. Courts in this district have permitted chapter 11 debtors to continue their insurance and to pay obligations, including prepetition obligations, related thereto as a routine matter in similar cases. *See, e.g., In re Zachry Holdings, Inc.*, Case No. 24-90377 (MI)

(Bankr. S.D. Tex. May 22, 2024) (Docket No. 58); *In re Robertshaw US Holding Corp.*, Case No. 24-90052 (CML) (Bankr. S.D. Tex. February 15, 2024) (Docket No. 103) ( *In re Talen Energy Supply, LLC*, Case No. 22-90054 (MI) (Bankr. S.D. Tex. Sept. 26, 2022) (Docket No. 461); *In re Basic Energy Servs., Inc.*, Case No. 21-90002 (DRJ) (Bankr. S.D. Tex. Sept. 13, 2021) (Docket No. 341); *In re CBL & Assocs. Props., Inc.*, Case No. 20-35226 (DRJ) (Bankr. S.D. Tex. Nov. 2, 2020) (Docket No. 70); *In re Fieldwood Energy LLC*, Case No. 20-33948 (MI) (Bankr. S.D. Tex. Sept. 14 2020) (Docket No. 340); *In re CEC Ent., Inc.*, No. 20-33163 (MI) (Bankr. S.D. Tex. July 23, 2020) (Docket No. 409); *In re Gavilan Res., LLC*, No. 20-32656 (MI) (Bankr. S.D. Tex. July 6, 2020) (Docket No. 154); *In re Speedcast Int'l Ltd.*, No. 20-32243 (MI) (Bankr. S.D. Tex. May 18, 2020) (Docket No. 0212). The same relief is also appropriate here.

40. Accordingly, based on the foregoing, the Court should authorize the Debtors to maintain all of their Insurance Programs, and to pay all obligations, including any prepetition obligations, related thereto.

#### **IV. Automatic Stay Should Be Modified for Workers' Compensation Claims to the Extent Necessary**

41. Section 362(a)(1) of the Bankruptcy Code operates to stay the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title . . . . 11 U.S.C. § 362(a)(1).

42. Section 362(d), however, permits a debtor or other party-in-interest to request a modification or termination of the automatic stay for "cause." To the extent this stay relief is required, and to the extent the Debtors' employees hold valid Workers' Compensation Claims, the Debtors seek authority under section 362(d) to permit, in the Debtors' sole discretion, those

employees to proceed with their Workers' Compensation Claims, each in the appropriate judicial or administrative forum.

43. There is cause to modify the automatic stay because staying the Workers' Compensation Claims could cause employee departures or otherwise harm employee morale, which could severely disrupt the Debtors' business and prevent a successful reorganization. Accordingly, the Court should (a) modify the automatic stay as it relates to valid Workers' Compensation Claims to allow, in the Debtors' sole discretion, any such claims to proceed to resolution; and (b) waive corresponding notice requirements under Bankruptcy Rule 4001. The Court should also authorize the Debtors, as necessary, and to the extent required by law or under the Workers' Compensation Program, to pay all or part of a claim related thereto directly to an employee, any of his or her medical providers, or any of his or her heirs or legal representatives, as set forth in the applicable law or policy.

44. Courts in this district have granted similar relief in other complex chapter 11 cases. *See, e.g., In re Zachry Holdings, Inc.*, Case No. 24-90377 (MI) (Bankr. S.D. Tex. May 22, 2024) (Docket No. 58); *In re Talen Energy Supply, LLC*, Case No. 22-90054 (MI) (Bankr. S.D. Tex. Sept. 26, 2022) (Docket No. 461); *In re Basic Energy Servs., Inc.*, Case No. 21-90002 (DRJ) (Bankr. S.D. Tex. Sept. 13, 2021) (Docket No. 341); *In re CBL & Assocs. Props., Inc.*, Case No. 20-35226 (DRJ) (Bankr. S.D. Tex. Nov. 2, 2020) (Docket No. 70); *In re Fieldwood Energy LLC*, Case No. 20-33948 (MI) (Bankr. S.D. Tex. Sept. 14 2020) (Docket No. 340); *In re CEC Ent., Inc.*, No. 20-33163 (MI) (Bankr. S.D. Tex. July 23, 2020) (Docket No. 409); *In re Gavilan Res., LLC*, No. 20-32656 (MI) (Bankr. S.D. Tex. July 6, 2020) (Docket No. 154); *In re Speedcast Int'l Ltd.*, No. 20-32243 (MI) (Bankr. S.D. Tex. May 18, 2020) (Docket No. 0212). The same relief is also appropriate here.

**Applicable Financial Institutions Should Be Authorized to Receive, Process, Honor, and Pay Checks Issued and Transfers Requested to Pay Insurance Obligations**

45. The Debtors further request that the Court authorize applicable financial institutions (the “Banks”) to receive, process, honor, and pay any and all checks issued, or to be issued, and electronic funds transfers requested, or to be requested, by the Debtors relating to the Insurance Obligations and Workers’ Compensation Claims, to the extent that sufficient funds are on deposit in available funds in the applicable bank accounts to cover such payment. The Debtors also seek authority, but not direction, to issue new post-petition checks or effect new post-petition electronic funds transfers in replacement of any checks or fund transfer requests on account of pre-petition Insurance Obligations and Workers’ Compensation Claims dishonored or rejected as a result of the commencement of the Debtors’ chapter 11 cases.

**Bankruptcy Rule 6003(b) Has Been Satisfied**

46. Pursuant to Bankruptcy Local Rule 9013-1, the Debtors respectfully request emergency consideration of this Motion under Bankruptcy Rule 6003, which provides that the Court may grant relief within the first twenty-one (21) days after the Petition Date to the extent such relief is necessary to avoid immediate and irreparable harm. As described herein and in the Bros Declaration, the Debtors are under a legal obligation to maintain many of their Insurance Policies, the Workers’ Compensation Program. In addition, the termination, suspension, or nonrenewal of any of the Insurance Policies, the Workers’ Compensation Program as a result of nonpayment could subject the Debtors to substantial administrative liability as well as a potential cessation of operations, to the detriment of all parties in interest. The relief requested is essential to avoid the immediate and irreparable harm that would be caused by the Debtors’ inability to transition smoothly into chapter 11. Accordingly, the Debtors submit that the requirements of Bankruptcy Rule 6003 are satisfied.

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

47. To implement the foregoing successfully, the Debtors request that the Court find that notice of the Motion satisfies Bankruptcy Rule 6004(a) and that the Court waive the 14-day period under Bankruptcy Rule 6004(h).

**Reservation of Rights**

48. Nothing contained herein is intended to be or shall be deemed as (a) an admission as to the validity of any claim against the Debtors; (b) a waiver or limitation of the Debtors' or any party in interest's rights to dispute the amount of, basis for, or validity of any claim; (c) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable non-bankruptcy law; (d) an agreement or obligation to pay any claims; (e) a waiver of any claims or causes of action which may exist against any creditor or interest holder; (f) an admission as to the validity of any liens satisfied pursuant to this Motion; or (g) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy under section 365 of the Bankruptcy Code. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' or any other party in interest's rights to dispute such claim subsequently.

**Notice**

49. Notice of this Motion will be served on any party entitled to notice pursuant to Bankruptcy Rule 2002 and any other party entitled to notice pursuant to Bankruptcy Local Rule 9013-1(d).

**No Previous Request**

50. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

*[Remainder of page intentionally left blank]*

WHEREFORE the Debtors respectfully request entry of the Proposed Order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Respectfully submitted this 29th day of August, 2024.

QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

/s/ Patricia B. Tomasco

Patricia B. Tomasco (SBN 01797600)

Joanna D. Caytas (SBN 24127230)

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- and -

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*Proposed Counsel to the Debtors and  
Debtors-In-Possession*

**Certificate of Accuracy**

I certify that the foregoing statements are true and accurate to the best of my knowledge. This statement is being made pursuant to Bankruptcy Local Rule 9013-1(i).

*/s/ Patricia B. Tomasco* \_\_\_\_\_  
Patricia B. Tomasco

**Certificate of Service**

I, Patricia B. Tomasco, hereby certify that on the 29th day of August, 2024, a copy of the foregoing Motion was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

*/s/ Patricia B. Tomasco* \_\_\_\_\_  
Patricia B. Tomasco

**Exhibit A****List of Insurance Programs**

<b>Type of Coverage</b>	<b>Underwriter Name</b>	<b>Policy No.</b>	<b>Policy Term</b>	<b>Premium</b>
Workers' Compensation	Accident Fund General Insurance Co	AFWCP100096666	August 1, 2024 – August 1, 2025	\$24,501
General Liability	Lexington Insurance Company	019809126-00	April 23, 2024 – April 23, 2025	\$19,766.52
Automobile Liability	Progressive County Mutual Insurance Co	974072331	10/07/2023 – 10/07/2024	\$29,244
<b>Property</b>				
Property (Rockdale/Temple) – Primary (75% – for liability up to \$10m)	Evanston Insurance Company	MKLV2IM0000344	November 17, 2023 – November 17, 2024	\$568,875.02
Property (Rockdale/Temple) – Primary (25% – for liability up to \$10m)	Beazley Insurance Company Inc	W30D23230301	As above	\$253,024.54
Property (Rockdale/Temple) – 1 <sup>st</sup> layer (50% of the Excess – for liability from \$10m to \$20m)	Kinsale Insurance Company	0100170032-2	As above	\$118,343.86
Property (Rockdale/Temple) – 1 <sup>st</sup> layer (25% of the Excess)	Axis Surplus Insurance Co	EAF657816-23	As above	\$82,261.20

Type of Coverage	Underwriter Name	Policy No.	Policy Term	Premium
– for liability from \$10m to \$20m)				
Property (Rockdale/Temple) – 1 <sup>st</sup> layer (25% of the Excess – for liability from \$10m to \$20m)	Aspen Specialty Insurance Company	PX00U9F23	As above	\$95,376.83
Property (Rockdale/Temple) – 2 <sup>nd</sup> layer (50% of the Excess – for liability from \$20m to \$30m)	Lexington Insurance Company	61383804	As above	\$84,494.01
Property (Rockdale/Temple) – 2 <sup>nd</sup> layer (50% of the Excess – for liability from \$20m to \$30m)	Houston Casualty Company	CUL-64146.113	As above	\$66,245.45
Property (Rockdale/Temple) – 3 <sup>rd</sup> layer (25% of the Excess – for liability from \$30m to \$40m)	Ascot Insurance Company	UB231376A0357	As above	\$126,872.16
Property (Rockdale/Temple) – 3 <sup>rd</sup> layer (25% of the Excess – for liability from \$30m to \$40m)	Columbia Casualty Company	PSR7035060629	As above	\$84,494.01

Type of Coverage	Underwriter Name	Policy No.	Policy Term	Premium
Property (Rockdale/Temple) – 3 <sup>rd</sup> layer (25% of the Excess – for liability from \$30m to \$40m)	Evanston Insurance Company	MKLV2IM0000345	As above	\$91,817.77
Property (Rockdale/Temple) – 3 <sup>rd</sup> layer (25% of the Excess – for liability from \$30m to \$40m)	Kinsale Insurance Company	0100170032-2	As above	\$58,035.06
Property (Rockdale/Temple) – 4 <sup>th</sup> layer (48% of the Excess – for liability from \$40m to \$65m)	Scottsdale Insurance Company	SP60998-01	As above	\$243,437.54
Property (Rockdale/Temple) – 4 <sup>th</sup> layer (30% of the Excess – for liability from \$40m to \$65m)	Mt Hawley Insurance Co	MCP0175331	As above	\$138,256.53
Property (Rockdale/Temple) – 4 <sup>th</sup> layer (14% of the Excess – for liability from \$40m to \$65m)	Beazley Insurance Company Inc	W33E8D230201	As above	\$67,489.86
Property (Rockdale/Temple) –	MSIG Specialty Insurance USA Inc	ENS1000639	As above	\$40,965.87

Type of Coverage	Underwriter Name	Policy No.	Policy Term	Premium
4 <sup>th</sup> layer (8% of the Excess – for liability from \$40m to \$65m)				
Property (Rockdale/Temple) – 5 <sup>th</sup> layer (up to \$25m of the Excess – for liability over \$65m)	James River Insurance Co	00129503-2	As above	\$229,218.10
Equipment and Property (Rockdale)	Markel American Insurance Co	MKLM2IM0002260	January 11, 2024 – January 11, 2025	\$27,736.00
Property (Godley)	Accelerant Specialty Insurance Co	S0044PR000052-01	January 12, 2024 – January 12, 2025	\$8,949.29
<b>Management Liability</b>				
D&O – Primary (for liability up to \$5m)	Allied World Insurance Company	0314-1069	December 31, 2023 – December 31, 2024	\$365,000
D&O – 1 <sup>st</sup> layer (100% of the Excess – for liability from \$5m to \$10m)	AXA XL Insurance	ELU194634-23	December 31, 2023 – December 31, 2024	\$255,500
D&O – 2 <sup>nd</sup> layer (100% of the	Endurance American Insurance Company	FIX30050929700	December 31, 2023 –	\$170,000

<b>Type of Coverage</b>	<b>Underwriter Name</b>	<b>Policy No.</b>	<b>Policy Term</b>	<b>Premium</b>
Excess – for liability from \$10m to \$15m)			December 31, 2024	
D&O – 3 <sup>rd</sup> layer (100% of the Excess – for liability from \$15m to \$20m)	QBE Insurance Corporatoin	130006287	December 31, 2023 – December 31, 2024	\$120,000
<b>Umbrella and Excess Liabilities</b>				
Excess Liability (general liability, automobile liability, worker compensation)	Lexington Insurance Company	071732024-00	April 23, 2024 – April 23, 2025	\$37,625.09

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

In re:  RHODIUM ENCORE LLC, <i>et al.</i> , <sup>1</sup>  Debtors.	§ § § § § § §	Chapter 11  Case No. 24-90448 (ARP)  Joint Administration Pending
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**INTERIM ORDER (I) AUTHORIZING DEBTORS TO (A) CONTINUE INSURANCE PROGRAMS, AND (B) PAY CERTAIN OBLIGATIONS WITH RESPECT THERETO; AND (II) GRANTING RELATED RELIEF**

Upon the motion, dated August 29, 2024 (the “Motion”)<sup>2</sup> of Rhodium Encore, LLC and its affiliated debtors in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the “Debtors”), for entry of an order pursuant to sections 105(a), 362(d), 363(b), 363(c), and 503(b) of the Bankruptcy Code and Bankruptcy Rules 4001, 6003 and 6004, for entry of interim and final orders (a) authorizing, but not directing, the Debtors to (i) continue their Insurance Programs in accordance with their applicable insurance policies and indemnity agreements and authority to continue to perform their obligations with respect thereto during these chapter 11 cases, and (ii) pay any Insurance Obligations; (b) modifying the automatic stay to the extent necessary to permit the Debtors’ employees to proceed with any claims they may have under the Workers’ Compensation Program; and (c) granting related relief, all as more fully set forth in

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<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their corporate identification numbers are as follows: Rhodium Encore LLC (3974), Jordan HPC LLC (3683), Rhodium JV LLC (5323), Rhodium 2.0 LLC (1013), Rhodium 10MW LLC (4142), Rhodium 30MW LLC (0263), Rhodium Enterprises, Inc. (6290), Rhodium Technologies LLC (3973), Rhodium Renewables LLC (0748), Air HPC LLC (0387), Rhodium Shared Services LLC (5868), Rhodium Ready Ventures LLC (8618), Rhodium Industries LLC (4771), Rhodium Encore Sub LLC (1064), Jordan HPC Sub LLC (0463), Rhodium 2.0 Sub LLC (5319), Rhodium 10MW Sub LLC (3827), Rhodium 30MW Sub LLC (4386), and Rhodium Renewables Sub LLC (9511). The mailing and service address of the Debtors in these chapter 11 cases is 2617 Bissonnet Street, Suite 234, Houston, TX 77005.

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

the Motion; and upon consideration of the Bros Declaration; and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided; and such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and this Court having reviewed the Motion; and this Court having held a hearing to consider the relief requested in the Motion; and all objections, if any, to the Motion have been withdrawn, resolved, or overruled; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing 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 is in the best interests of the Debtors and their respective estates and creditors; and upon all of the proceedings had before this Court and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. The Debtors are authorized, but not directed, pursuant to sections 105(a), 362(d), 363(b), 363(c), and 503(b) of the Bankruptcy Code and Bankruptcy Rules 4001, 6003, and 6004, to continue their Insurance Programs, and to pay or otherwise satisfy any Insurance Obligations, whether such obligations arose before or after the Petition Date, in the ordinary course of business.

2. The Debtors are authorized, but not directed, to reuse, extend, renew, rollover, replace, or obtain new insurance policies, and to take all appropriate actions in connection therewith, in the ordinary course of business; *provided, however*, the Debtors will notify the U.S. Trustee, and any statutory committee appointed in these chapter 11 cases if outside the ordinary course of business Debtors renew, amend, supplement, extend, terminate, replace, increase, or

decrease existing insurance coverage or change insurance, enter into any new premium financing agreements, or obtain additional insurance in a manner that would be inconsistent with the Debtors' current insurance.

3. The Debtors shall maintain a matrix/schedule of payments made pursuant to this Interim Order, including the following information: (a) the names of the payee; (b) the date, category, nature and amount of the payment; and (c) the Debtor or Debtors that made the category or type of payment as further described and classified in the Motion. Debtors shall provide on a confidential basis a copy of such matrix/schedule to counsel to U.S. Trustee, and any statutory committee appointed in these chapter 11 cases on September 28, 2024 and the last day of every month thereafter.

4. Workers' Compensation Claims may be pursued in the ordinary course business, including to the extent applicable, modifying or lifting the automatic stay without further order of the Bankruptcy Court, to permit (a) claimants with valid Workers' Compensation Claims or direct action claims against an Insurance Carrier or a Third-Party Administrator applicable non-bankruptcy law to proceed with their claims; and (b) an Insurance Carrier or a Third-Party Administrator or a Third-Party Administrator to administer, handle, defend, settle, and/or pay, in the ordinary course of business and without further order of the Bankruptcy Court, (i) all Workers' Compensation Claims and (ii) all claims where a claimant asserts a direct claim against an Insurance Carrier or a Third-Party Administrator or a Third-Party Administrator.

5. The Banks are authorized to receive, process, honor, and pay any and all checks issued, or to be issued, and electronic funds transfers requested, or to be requested, by the Debtors relating to such obligations, to the extent that sufficient funds are on deposit in the applicable bank accounts to cover such payments. The Banks are authorized to accept and rely on all

representations made by the Debtors with respect to which checks, drafts, wires, or automated clearing house transfers should be honored or dishonored in accordance with this or any other order of this Court, whether such checks, drafts, wires, or transfers are dated prior to, on, or subsequent to the Petition Date, without any duty to inquire otherwise.

6. The Debtors are authorized, but not directed, to issue new post-petition checks, or effect new electronic funds transfers, and to replace any prepetition checks or electronic funds transfer requests that may be lost or dishonored or rejected as a result of the commencement of the Debtors' chapter 11 cases with respect to any prepetition amounts that are authorized to be paid pursuant to this Interim Order.

7. Nothing in this Interim Order shall be deemed to authorize the Debtors to accelerate any payments not otherwise due prior to the Bankruptcy Court's ultimate disposition of the Motion on a final basis.

8. Nothing contained in the Motion or this Interim Order or any payment made pursuant to the authority granted by this Interim Order is intended to be or shall be deemed as (a) an admission as to the validity of any claim against the Debtors; (b) a waiver of the Debtors' or any party in interest's rights to dispute the amount of, basis for, or validity of any claim; (c) a waiver of the Debtors' or any party in interest's rights under the Bankruptcy Code or any other applicable non-bankruptcy law; (d) an agreement or obligation to pay any claims; (e) a waiver of any claims or causes of action which may exist against any creditor or interest holder; (f) an admission as to the validity of any liens satisfied pursuant to this Motion; or (g) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy under section 365 of the Bankruptcy Code.

9. Notwithstanding anything contained in the Motion or this Order, any payment to be made, and any relief or authorization granted herein, shall be subject to, and must be in compliance with, the terms and conditions in any interim or final order entered by the Court approving the Debtors' entry into any post-petition debtor in possession financing facility (each such order, a "DIP Order"), including any approved budget in connection therewith (as may be updated and approved from time to time in accordance with the terms of any such DIP Order). To the extent there is any inconsistency between the terms of a DIP Order (including any approved budget) and any approval or action taken or proposed to be taken hereunder, the terms of the DIP Order shall control.

10. Notwithstanding the relief granted herein or any actions taken hereunder, nothing contained in this Order shall create any rights in favor of, or enhance the status of any claim held by, any person to whom any obligations under the Insurance Policies are owed.

11. The requirements of Bankruptcy Rule 6003(b) have been satisfied.

12. Notice of the Motion is adequate under Bankruptcy Rule 6004(a).

13. Notwithstanding the provisions of Bankruptcy Rule 4001(a)(3) and 6004(h), this Interim Order shall be immediately effective and enforceable upon its entry.

14. The Debtors are authorized to take all actions necessary or appropriate to carry out the relief granted in this Interim Order.

15. This Court retains jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Interim Order.

16. A final hearing to consider the relief requested in the Motion shall be held on \_\_\_\_\_, 2024 at \_\_\_\_\_ (Prevailing Central Time) and any objections or responses to the Motion

shall be filed on or prior to \_\_\_\_\_ 2024 at [●]:[●] a.m./p.m. (Prevailing Central Time).

Dated: \_\_\_\_\_, 2024

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ALFREDO R. PEREZ  
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

In re:	§	Chapter 11
	§	
RHODIUM ENCORE LLC, <i>et al.</i> , <sup>1</sup>	§	Case No. 24-90448 (ARP)
	§	
Debtors.	§	Joint Administration Pending
	§	
	§	

**FINAL ORDER (I) AUTHORIZING DEBTORS TO (A) CONTINUE INSURANCE PROGRAMS, AND (B) PAY CERTAIN OBLIGATIONS WITH RESPECT THERETO; AND (II) GRANTING RELATED RELIEF**

Upon the motion, dated August 29, 2024 (the “**Motion**”)<sup>2</sup> of Rhodium Encore, LLC and its affiliated debtors in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the “Debtors”), pursuant to sections 105(a), 362(d), 363(b), 363(c), and 503(b) of the Bankruptcy Code and Bankruptcy Rules 4001, 6003 and 6004, for entry of interim and final orders (a) authorizing, but not directing, the Debtors to (i) continue their Insurance Programs in accordance with their applicable insurance policies and indemnity agreements and authority to continue to perform their obligations with respect thereto during these chapter 11 cases, and (ii) pay any Insurance Obligations; (b) modifying the automatic stay to the extent necessary to permit the Debtors’ employees to proceed with any claims they may have under the Workers’

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<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their corporate identification numbers are as follows: Rhodium Encore LLC (3974), Jordan HPC LLC (3683), Rhodium JV LLC (5323), Rhodium 2.0 LLC (1013), Rhodium 10MW LLC (4142), Rhodium 30MW LLC (0263), Rhodium Enterprises, Inc. (6290), Rhodium Technologies LLC (3973), Rhodium Renewables LLC (0748), Air HPC LLC (0387), Rhodium Shared Services LLC (5868), Rhodium Ready Ventures LLC (8618), Rhodium Industries LLC (4771), Rhodium Encore Sub LLC (1064), Jordan HPC Sub LLC (0463), Rhodium 2.0 Sub LLC (5319), Rhodium 10MW Sub LLC (3827), Rhodium 30MW Sub LLC (4386), and Rhodium Renewables Sub LLC (9511). The mailing and service address of the Debtors in these chapter 11 cases is 2617 Bissonnet Street, Suite 234, Houston, TX 77005.

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

Compensation Program; and (c) granting related relief, all as more fully set forth in the Motion; and upon consideration of the First Day Declaration; and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided; and such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and this Court having reviewed the Motion; and this Court having held a hearing to consider the relief requested in the Motion; and all objections, if any, to the Motion having been withdrawn, resolved, or overruled; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before this Court and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. The Debtors are authorized, but not directed, pursuant to sections 105(a), 362(d), 363(b), 363(c), and 503(b) of the Bankruptcy Code and Bankruptcy Rules 4001, 6003, and 6004, to continue their Insurance Programs, and to pay or otherwise satisfy any Insurance Obligations, whether such obligations arose before or after the Petition Date, in the ordinary course of business.
2. The Debtors are authorized, but not directed, to reuse, extend, renew, rollover, replace, or obtain new insurance policies, and to take all appropriate actions in connection therewith, in the ordinary course of business; *provided, however*, the Debtors will notify the U.S. Trustee, and any statutory committee appointed in these chapter 11 cases if outside the ordinary course of business Debtors renew, amend, supplement, extend, terminate, replace, increase, or decrease existing insurance coverage and or change insurance, enter into any new premium

financing agreements, or obtain additional insurance in a manner that would be inconsistent with the Debtors' current insurance.

3. The Debtors shall maintain a matrix/schedule of payments made pursuant to this Order, including the following information: (a) the names of the payee; (b) the date, category, nature and amount of the payment; and (c) the Debtor or Debtors that made the category or type of payment as further described and classified in the Motion. Debtors shall provide on a confidential basis a copy of such matrix/schedule to counsel to the U.S. Trustee, and any statutory committee appointed in these chapter 11 cases on September 28, 2024 and the last day of every month thereafter.

4. Workers' Compensation Claims may be pursued in the ordinary course business, including to the extent applicable, modifying or lifting the automatic stay without further order of the Bankruptcy Court, to permit (a) claimants with valid Workers' Compensation Claims or direct action claims against an Insurance Carrier or a Third-Party Administrator under applicable non-bankruptcy law to proceed with their claims; and (b) an Insurance Carrier or a Third-Party Administrator to administer, handle, defend, settle, and/or pay, in the ordinary course of business and without further order of the Bankruptcy Court, (i) all Workers' Compensation Claims, and (ii) all claims where a claimant asserts a direct claim against an Insurance Carrier or a Third-Party Administrator.

5. The Banks are authorized to receive, process, honor, and pay any and all checks issued, or to be issued, and electronic funds transfers requested, or to be requested, by the Debtors relating to such obligations, to the extent that sufficient funds are on deposit in available funds in the applicable bank accounts to cover such payments. The Banks are authorized to accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires, or

automated clearing house transfers should be honored or dishonored in accordance with this or any other order of this Court, whether such checks, drafts, wires, or transfers are dated prior to, on, or subsequent to the Petition Date, without any duty to inquire otherwise.

6. The Debtors are authorized, but not directed, to issue new post-petition checks, or effect new electronic funds transfers, and to replace any prepetition checks or electronic funds transfer requests that may be lost or dishonored or rejected as a result of the commencement of the Debtors' chapter 11 cases with respect to any prepetition amounts that are authorized to be paid pursuant to this Final Order.

7. Nothing contained in the Motion or this Final Order or any payment made pursuant to the authority granted by this Final Order is intended to be or shall be deemed as (a) an admission as to the validity of any claim against the Debtors; (b) a waiver of the Debtors' or any party in interest's rights to dispute the amount of, basis for, or validity of any claim; (c) a waiver of the Debtors' or any party in interest's rights under the Bankruptcy Code or any other applicable non-bankruptcy law; (d) an agreement or obligation to pay any claims; (e) a waiver of any claims or causes of action which may exist against any creditor or interest holder; (f) an admission as to the validity of any liens satisfied pursuant to this Motion; or (g) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy under section 365 of the Bankruptcy Code.

8. Notwithstanding anything contained in the Motion or this Order, any payment to be made, and any relief or authorization granted herein, shall be subject to, and must be in compliance with, the terms and conditions in any interim or final order entered by the Court approving the Debtors' entry into any post-petition debtor in possession financing facility (each such order, a "DIP Order"), including any approved budget in connection therewith (as may be

updated and approved from time to time in accordance with the terms of any such DIP Order). To the extent there is any inconsistency between the terms of a DIP Order (including any approved budget) and any approval or action taken or proposed to be taken hereunder, the terms of the DIP Order shall control.

9. Notwithstanding the relief granted herein or any actions taken hereunder, nothing contained in this Order shall create any rights in favor of, or enhance the status of any claim held by, any person to whom any obligations under the Insurance Policies are owed.

10. Notice of the Motion is adequate under Bankruptcy Rule 6004(a).

11. Notwithstanding the provisions of Bankruptcy Rules 4001(a)(3) and 6004(h), this Final Order shall be immediately effective and enforceable upon its entry.

12. The Debtors are authorized to take all actions necessary or appropriate to carry out the relief granted in this Final Order.

13. This Court retains jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Final Order.

Dated: \_\_\_\_\_, 2024  
Houston, Texas

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ALFREDO R. PEREZ  
UNITED STATES BANKRUPTCY JUDGE