

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

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

FINAL ORDER (I) AUTHORIZING DEBTORS TO USE CASH COLLATERAL; (II) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES; (III) MODIFYING AUTOMATIC STAY; AND (IV) GRANTING RELATED RELIEF

(Relates to ECF Nos. 37 and 83)

Upon the motion (the “*Motion*”)² of the above-referenced debtors, as debtors in possession (collectively, the “*Debtors*”) in the above-captioned cases (the “*Cases*”), pursuant to sections 105, 361, 362, 363, 503, 506, 507, and 552 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “*Bankruptcy Code*”), Rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”), Rules 2002-1, 4001-1, 4002- 1, and 9013-1 of the Bankruptcy Local Rules of the United States Bankruptcy Court for the Southern District of Texas (the “*Local Rules*”), and the Procedures for Complex Chapter 11 Cases in the Southern District of Texas (the “*Complex Case Rules*”), seeking, among other things:

¹ 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.

² To the extent not defined herein, each capitalized term that is not defined herein shall have the meaning ascribed to such term in the Motion, the DIP Motion (as defined below), or the *Final Order (I) Authorizing the Debtors to Obtain Secured Superpriority Postpetition Financing (II) Granting Liens and Providing Claims with Superpriority Administrative Expense Status, (III) Modifying the Automatic Stay, and (IV) Granting Related Relief* (the “*Final DIP Order*”), as applicable.



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- (a) authorization for the Debtors to use “cash collateral” as such term is defined in section 363(a) of the Bankruptcy Code in which the Prepetition Secured Parties (as defined below) have liens or other interests therein (“**Cash Collateral**”), if any, solely in accordance with the terms of this final order (together with all annexes and exhibits hereto, the “**Final Order**”);
- (b) authorization for the Debtors to grant adequate protection to the Prepetition Secured Parties of their Prepetition Notes Liens in the Prepetition Notes Collateral (each as defined below) (including Cash Collateral, if any), in each case solely to the extent of any Diminution in Value of their interests therein, as set forth herein;
- (c) modification of the automatic stay imposed by section 362 of the Bankruptcy Code solely to the extent necessary to implement and effectuate the terms and provisions of this Final Order;
- (d) waiver of any applicable stay with respect to the effectiveness and enforceability of this Final Order (including a waiver pursuant to Bankruptcy Rule 6004(h)); and
- (e) granting related relief;

and the interim hearing having been held by the Court on August 30, 2024 (the “**Interim Hearing**”); and the final hearing having been held by the Court on September 23, 2024 (the “**Final Hearing**”) pursuant to Bankruptcy Rule 4001 and Local Rules 2002-1, 4001-1, and 9013-1, notice of the Motion and the relief sought therein having been given by the Debtors as set forth in this Final Order; and the Court having considered the *Declaration of David M. Dunn in Support of Chapter 11 Petitions and First Day Relief* (the “**First Day Declaration**”), and the *Declaration of Michael Robinson in Support of Debtor-in-Possession Financing* (the “**DIP Declaration**”), the Approved Budget (as defined herein), offers of proof, evidence adduced, and the statements of counsel at the Interim Hearing and Final Hearing; and the Court having considered the relief requested in the Motion, and it appearing to the Court that granting the relief sought in the Motion on the terms and conditions herein contained is necessary and essential to enable the Debtors to preserve the value of the Debtors’ businesses and assets and that such relief is fair and reasonable and that entry of this Final Order is in the best interest of the Debtors and their respective estates

and creditors; and due deliberation and good cause having been shown to grant the relief sought in the Motion,

IT IS HEREBY FOUND AND DETERMINED THAT:³

A. **Petition Date.** On August 24, 2024 (the “*Initial Petition Date*”) and August 29, 2024 (the “*Subsequent Petition Date*”),⁴ each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Southern District of Texas (the “*Court*”).

B. **Debtors in Possession.** Each Debtor has continued with the management and operation of its respective businesses and properties as a debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Cases.

C. **Jurisdiction and Venue.** The Court has jurisdiction over the Motion, these Cases, and the parties and property affected hereby pursuant to 28 U.S.C. § 1334 and the Amended Standing Order of Reference from the United States District Court for the Southern District of Texas, dated May 24, 2012. Venue for these Cases is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The Debtors have confirmed their consent, pursuant to Bankruptcy Rule 7008, to the entry of a final order by the Court in connection with the Motion to the extent that it is later determined that the Court, absent consent of the parties, could not enter final orders or judgments in connection with the Motion consistent with Article III of the United States Constitution. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

³ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Bankruptcy Rule 7052

⁴ As used herein, “*Petition Date*” means the Initial Petition Date; provided that with respect to the Debtors which commenced their Cases subsequent to August 24, 2024, “*Petition Date*” shall refer to the respective dates on which such Cases were commenced.

D. **Committee.** As of the date hereof, no official committee of unsecured creditors has been appointed in these Cases pursuant to section 1102 of the Bankruptcy Code (any such committee, the “*Committee*”).

E. **Bank Accounts.** The Debtors acknowledge and agree that, as of the applicable Petition Date, none of the Debtors has either opened or maintains any bank accounts other than the accounts listed in the exhibit attached to the Cash Management Motion.⁵

F. **Adequate Protection.** Pursuant to sections 105, 361, 362, and 363 of the Bankruptcy Code, the Prepetition Secured Parties are entitled to adequate protection of their respective security interests in and liens on the Prepetition Notes Collateral (collectively, the “*Prepetition Notes Liens*”), including the Cash Collateral, if any,⁶ solely to the extent of any post-petition diminution in value of their respective Prepetition Notes Liens in the Prepetition Notes Collateral resulting from, among other things, the use, sale, or lease of any of the Prepetition Notes Collateral (including the Cash Collateral, if any), the imposition of the automatic stay pursuant to section 362(a) of the Bankruptcy Code, and any other reason for which adequate protection may be granted under the Bankruptcy Code (“*Diminution in Value*”), as set forth in this Final Order. The foregoing shall not, nor shall any provision of this Final Order be construed as, a determination or finding that there has been or will be any Diminution in Value of the Prepetition Notes Collateral (including Cash Collateral, if any) and the rights of all parties as to such issues are hereby preserved. Based on the Motion, the First Day Declaration, and the record presented to the Court

⁵ “**Cash Management Motion**” means the *Emergency Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue Their Existing Cash Management System, (B) Honor Certain Pre-Petition Obligations Related Thereto, and (C) Continue to Perform Intercompany Transactions, (II) Granting Superpriority Administrative Expense Status to Post-Petition Intercompany Balances, and (III) Granting Related Relief.*

⁶ The Debtors have asserted that they believe certain of the Prepetition Secured Parties might have unperfected liens, and have reserved the right to avoid any unperfected liens.

at the Interim Hearing and Final Hearing, the terms of the proposed adequate protection arrangements and of the use of the Prepetition Notes Collateral, including the Cash Collateral, if any, are fair and reasonable and reflect the Debtors' prudent business judgment.

G. **Need to Use Cash Collateral.** The Debtors have requested entry of this Final Order and have a need to obtain use of the Prepetition Notes Collateral, including the Cash Collateral, if any, in compliance with, and subject in all respects to, the Approved Budget (subject in all respects to any Permitted Variances (as defined below)) in order to, among other things, (A) permit the orderly continuation of their businesses, and (B) pay the costs of administration of their estates and satisfy other working capital and general corporate purposes of the Debtors. A need exists for the Debtors to use the Cash Collateral, consistent with the Approved Budget (subject to any Permitted Variances), for working capital purposes, other general corporate purposes of the Debtors, and the satisfaction of costs and expenses of administering the Cases. The ability of the Debtors to obtain liquidity through the use of the Cash Collateral, if any, is vital to the Debtors and their efforts to maximize the value of their estates. Absent entry of this Final Order, the Debtors' estates and reorganization efforts will be immediately and irreparably harmed.

H. **Debtors' Stipulations.** After consulting with their attorneys and financial advisors, and without prejudice to the rights of other parties in interest, including any Official Committee, the Debtors admit, stipulate, acknowledge, and agree to the statements set forth in this paragraph (collectively, the "***Debtors' Stipulations***"): (i) as of the Petition Date, certain of the Debtors issued, and were Borrowers (as defined in the Prepetition Notes) under the Consenting Prepetition Notes, and thus were justly and lawfully indebted and liable to the Consenting Prepetition Secured Parties, without defense, counterclaim, or offset of any kind, in an aggregate principal amount plus accrued and unpaid interest of not less than the amounts set forth in footnote

7, plus fees, expenses (including advisors' and professionals' fees and expenses, in each case, that are chargeable or reimbursable under the applicable agreements), disbursements, charges, claims, indemnities and other costs and obligations of whatever nature incurred in connection therewith which are chargeable or otherwise reimbursable under the applicable agreements or applicable law (collectively, the "***Consenting Prepetition Obligations***");⁷ (ii) the Consenting Prepetition Obligations are secured by legal, valid, perfected, binding, enforceable, and nonavoidable senior liens on and security interests in substantially all assets of Rhodium 2.0 whether now owned or hereafter acquired as set forth in the Rhodium 2.0 Security Agreements (the "***Consenting Prepetition Collateral***") to secure the Consenting Prepetition Obligations (collectively, the "***Consenting Prepetition Liens***"); and (iv) the Debtors acknowledge and agree that as of the Petition Date (a) the Consenting Prepetition Liens on the Consenting Prepetition Collateral were valid, binding, enforceable, non-avoidable, and properly perfected and were granted to, or for the benefit of, the Consenting Prepetition Secured Parties for fair consideration and reasonably equivalent value; (b) the Consenting Prepetition Liens were senior in priority over any and all other liens on the Consenting Prepetition Collateral.

I. **Notice.** In accordance with Bankruptcy Rules 2002, 4001(b) and (c), and 9014, and the Local Rules 2002-1, 4001-1, and 9013-1, notice of the Interim Hearing and Final Hearing and the relief requested in the Motion has been provided by the Debtors. Under the circumstances, the notice given by the Debtors of the Motion, the relief requested herein, and the Final Hearing

⁷ The "***Consenting Prepetition Secured Parties***" and the approximate principal amount of notes issued by Rhodium 2.0 held by each (such holdings being the "***Consenting Prepetition Notes***") are as follows: (i) Private Investor Club Feeder Fund 2020-G LLC, \$10.19 million; (ii) Private Investor Club Feeder Fund 2020-H LLC, \$8.06 million; (iii) Stadlin Group Investments–Series Rockdale LLC, \$735,000, (iv) Shane Blackmon, \$1,052,000; and (v) Elysium Mining, \$1,242,000.

complies with Bankruptcy Rules 2002, 4001(b) and (c), and 9014 and the Local Rules 2002-1, 4001-1, and 9013-1.

J. **Relief Essential; Best Interest.** The Debtors have requested entry of this Final Order pursuant to Bankruptcy Rule 4001(b)(2). The relief requested in the Motion (and as provided in this Final Order) is necessary, essential, and appropriate for the continued operation of the Debtors' businesses and the management and preservation of the Debtors' assets and the property of their estates. It is in the best interest of the Debtors' estates that the Debtors be allowed to use the Cash Collateral, if any, under the terms hereof. The Debtors have demonstrated good and sufficient cause for the relief granted herein.

Now, therefore, upon the record of the proceedings heretofore held before this Court with respect to the Motion, the evidence adduced at the Interim Hearing, and the statements of counsel thereat, and based upon the foregoing findings and conclusions,

IT IS HEREBY ORDERED THAT:

1. **Motion Granted.** The final relief sought in the Motion is granted, and the use of Cash Collateral, if any on a final basis is authorized, subject to the terms of this Final Order.

2. **Objections Overruled.** Any objections to the Motion with respect to the entry of this Final Order that have not been withdrawn, waived, or settled and all reservations of rights included therein, are hereby denied and overruled with prejudice.

3. **Authorization to Use Cash Collateral; Budget.**

(a) Subject to the terms and conditions of this Final Order, the Court hereby authorizes the Debtors' use of Cash Collateral, if any, solely and exclusively in a manner consistent with the "Approved Budget" (as defined in the *Emergency Motion of Debtors for Entry of Interim and Final Orders (i) Authorizing the Debtors to Obtain Secured Superpriority Postpetition*

Financing, (ii) Granting Liens and Providing Claims with Superpriority administrative Expense Status, (iii) Modifying the Automatic Stay, (iv) Scheduling a Final Hearing, and (v) Granting Related Relief (together with the proposed orders and all exhibits annexed thereto, the “**DIP Motion**”)) (the “**Approved Budget**”) (subject to any “Permitted Variances” (as defined in the DIP Motion) (the “**Permitted Variances**”), in accordance with and subject to the terms and conditions of the provisions of the interim and final orders entered by the Court approving the DIP Motion (collectively, the “**DIP Orders**”), and for no other purposes.

(b) Notwithstanding anything to the contrary contained in the Motion or herein, any payment to be made hereunder, and any authorization contained herein, shall be subject to and in accordance with the DIP Orders, and, in particular, the Approved Budget (subject to any Permitted Variances), which shall control. To the extent there is any inconsistency between the terms of the DIP Orders (including any Approved Budget) and any approval or action taken or proposed to be taken hereunder, the terms of the DIP Orders shall control. In addition, nothing in the Motion or herein shall be construed as a waiver or consent that conflicts with any agreement or obligation provided for in the DIP Loan Documents (as defined in the DIP Motion).

(c) For the avoidance of doubt, except as otherwise set forth in the Approved Budget, Cash Collateral, if any, may not be used (i) by any non-Debtor entity or (ii) to pay any fees, costs, expenses, and/or any other amounts of any non-Debtor entity.

4. **Adequate Protection for the Prepetition Secured Parties.** Subject to the terms of this Final Order, the Prepetition Secured Parties are entitled, pursuant to sections 361, 362, and 363 of the Bankruptcy Code, and in consideration of the stipulations and consents set forth herein, to adequate protection of their Prepetition Notes Liens in the Prepetition Notes Collateral

(including Cash Collateral, if any), in each case solely to the extent of any Diminution in Value of their interests therein, as follows:

(a) The Prepetition Secured Parties, are hereby granted, effective and perfected as of the entry of this Final Order, and without the necessity of the execution, recordation or filing by the Debtors or any of the Prepetition Secured Parties of any pledge, collateral or security documents, mortgages, deeds of trust, financing statements, notations of certificates of title for titled goods, or any similar document or instrument, or the taking of any other action (including, without limitation, entering into any control agreements or taking possession or control of any Prepetition Notes Collateral), of the Prepetition Notes Liens in the Prepetition Notes Collateral (including Cash Collateral, if any) from and after the applicable Petition Date, valid, binding, enforceable and automatically perfected post-petition liens on and security interests in (the “**Adequate Protection Liens**”) all property of the Debtors, whether existing on the applicable Petition Date or thereafter acquired that is not subject to valid, perfected, and non-avoidable liens or perfected after the applicable Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code except for (i) Rhodium Renewables LLC and (ii) all claims and causes of action (and the proceeds thereof) under sections 502(d), 506(c), 544, 545, 547, 548, 549, 550, or 724(a) of the Bankruptcy Code or under any applicable state law (the “**Adequate Protection Collateral**”, and together with the Prepetition Notes Collateral, the “**Collateral**”). The Adequate Protection Liens shall be subject only to the Carve Out (as defined in the DIP Motion), as set forth in and subject to the terms and conditions of the DIP Orders, and shall be junior and subordinated to the liens and security interests granted in favor of the DIP Secured Parties (as defined in the DIP

Motion) pursuant to the DIP Orders (the “***DIP Liens***”) and Prior Permitted Liens,⁸ if any, on such assets, and senior to all other liens on such assets.

(b) In respect of any Adequate Protection Liens, the Prepetition Secured Parties may not exercise (or seek relief from the Court to exercise) any remedies against the Collateral so long as there any DIP Obligations (as defined in the DIP Motion) outstanding, and any such security interests in and Adequate Protection Liens on such Collateral shall not be entitled to be credit bid for any such Collateral (and any sale of such Collateral shall be free and clear of the Adequate Protection Liens (if any) provided that such liens and security interests attach to the cash proceeds, if any, of such sale after the DIP Obligations are Paid in Full (as defined in the DIP Motion)).

(c) The Debtors shall maintain their cash management arrangements in a manner consistent with this Court’s order(s) granting the Debtors’ cash management motion.

5. Limitations on Charging Expenses; No Marshalling; Section 552(b) Waiver

a. *Limitation on Charging Expenses.* Except to the extent of the Carve Out, no costs or expenses of administration of the Chapter 11 Cases or any Successor Cases (or any future proceedings that may result therefrom) at any time, including, without limitation, any costs and expenses incurred in connection with the preservation, protection, or enhancement of realization by the Consenting Prepetition Secured Parties upon the Consenting Prepetition Collateral shall be charged against or recovered from the Consenting Prepetition Collateral as to the Consenting Prepetition Secured Parties whether pursuant to section 506(c) of the Bankruptcy Code or other similar legal or equitable doctrine or otherwise, without the prior written consent of the Consenting

⁸ “***Prior Permitted Liens***” means valid, perfected and non-avoidable senior liens in existence immediately prior to the applicable Petition Date or valid and non-avoidable liens in existence immediately prior to the applicable Petition Date that are perfected subsequent to such Petition Date as permitted by section 546(b) of the Bankruptcy Code. For the avoidance of doubt, Prior Permitted Liens shall not include any Prepetition Notes Liens.

Prepetition Secured Parties with respect to the Consenting Prepetition Collateral, and no such consent shall be implied, directly or indirectly, from anything contained in this Final Order or the DIP Orders (including, without limitation, consent to the Carve Out or the approval of any budget hereunder) or from any other action, inaction, or acquiescence by any of the Consenting Prepetition Secured Parties to any charge, lien, assessment or claim against the Consenting Prepetition Secured Parties with respect to the Consenting Prepetition Collateral, whether under section 506(c) of the Bankruptcy Code or otherwise.

b. *No Marshalling; Section 552(b) Waiver.* In no event shall the Consenting Prepetition Secured Parties be subject to the equitable doctrine of “marshaling” or any similar doctrine with respect to the Consenting Prepetition Collateral. The Consenting Prepetition Secured Parties shall be entitled to all of rights and benefits of section 552(b), and the “equities of the case” exception thereunder shall not apply to any of the Consenting Prepetition Secured Parties with respect to proceeds, products, offspring, or profits of any of the Consenting Prepetition Collateral.

c. For the avoidance of doubt, the provisions of this paragraph 5 shall only apply to the Consenting Prepetition Secured Parties, and shall not apply to any Prepetition Secured Parties that are not Consenting Prepetition Secured Parties.

6. **Reporting.** The Debtors and their representatives shall (a) provide the Prepetition Secured Parties with (i) all reports, documents, and information required to be delivered under the DIP Loan Documents (contemporaneously when the same is required to be delivered thereunder), and (ii) reasonable access, upon reasonable notice and during regular business hours, to the Debtors’ books and records, assets and properties, for purposes of monitoring the Debtors’ businesses and operations and the value of the Prepetition Collateral, and (b) cooperate and consult with, and provide information reasonably requested by the Prepetition Secured Parties concerning

the Debtors' businesses, financial condition, properties, business operations and assets, and the Debtors hereby authorize their representatives to cooperate and consult with, and promptly provide to the such parties (in each case, together with their respective advisors) such information.

7. Effect of the Debtors' Stipulations Regarding Consenting Prepetition Secured Parties on Third Parties.

(a) The Debtors' stipulations, admission, agreements and releases concerning the Consenting Prepetition Secured Parties contained in this Final Order shall be binding upon the Debtors and any successor thereto in all circumstances and for all purposes immediately upon entry of this Final Order.

(b) The Debtors' Stipulations concerning the Consenting Prepetition Secured Parties in this Final Order shall be binding upon all parties-in-interest, including, without limitation, the Official Committee, any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases, and any other person or entity seeking to act on behalf of the Debtors' estates, including any chapter 7 or chapter 11 trustee or examiner appointed or elected for any of the Debtors in the Chapter 11 Cases or any Successor Cases, and each of their respective successors and assigns, in all circumstances and for all purposes, unless the Official Committee or such other party-in-interest (i) obtains requisite standing (subject in all respects to any agreement or applicable law which may limit or affect such entity's right or ability to do so) pursuant to an order of the Court entered prior to the Challenge Deadline (as defined below), (ii) timely and properly commences and serves an adversary proceeding or contested matter (subject to the limitations contained herein) (each, a "**Challenge Proceeding**") by no later than the Challenge Deadline (as defined below), (A) objecting to or alleging any basis to impair, restrict, deny or otherwise challenge the right of any of the Consenting Prepetition Secured Parties to credit bid, in whole or

in part, the Consenting Prepetition Liens or the Consenting Prepetition Secured Obligations under section 363(k) of the Bankruptcy Code or otherwise, or (B) objecting to or challenging the amount, validity, perfection, enforceability, priority, scope or extent of the Consenting Prepetition Secured Obligations, the Consenting Prepetition Liens, the Consenting Prepetition Collateral or the Consenting Prepetition Notes Documents, or otherwise objecting to or challenging any of the admissions, stipulations, findings or releases included in the Debtors' Stipulations (sub-clauses (A)-(B)), collectively, the "**Challenges**", and each, a "**Challenge**"), and (iii) obtains a final non-appealable order by a court of competent jurisdiction in favor of the plaintiff sustaining any such Challenge in any timely and duly-filed Challenge Proceeding; *provided, however*, that any pleadings filed in connection with any Challenge Proceeding, including any motion served and filed with the Court seeking requisite standing and authority to pursue a Challenge, shall include a draft complaint attached thereto and shall otherwise set forth with specificity the basis for each such Challenge, and any Challenge not so specified in a Challenge Proceeding timely and properly filed prior to the Challenge Deadline shall be deemed forever, waived, released and barred.

(c) If no such Challenge Proceeding is timely and properly filed by the Challenge Deadline, or if the Court does not rule in favor of plaintiff in any such timely and properly filed Challenge Proceeding, then, without application to or further order of the Court, (i) each of the admissions, stipulations, findings and releases contained in the Debtors' Stipulations shall be binding on all parties-in-interest, including, without limitation, any Official Committee, any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases, or any other party-in-interest (including, without limitation, any chapter 7 trustee or chapter 11 trustee or examiner appointed or elected for any of the Debtors in the Chapter 11 Cases or any Successor Cases), and (ii) the Consenting Prepetition Secured Obligations shall constitute allowed claims

against each of the Debtors in the Chapter 11 Cases and any Successor Cases, and the Consenting Prepetition Liens shall forever be deemed to be legal, valid, binding, continuing, perfected and enforceable, as of the Petition Date, against each of the Debtors in the Chapter 11 Cases and any Successor Cases.

(d) If any such Challenge Proceeding is timely filed by the Challenge Deadline, the Debtors' Stipulations shall nonetheless remain binding and preclusive on any Official Committee, any non-statutory committees appointed or formed in the Chapter 11 Cases, or any other party-in-interest (including, without limitation, any chapter 7 trustee or chapter 11 trustee or examiner appointed or elected for any of the Debtors in the Chapter 11 Cases or any Successor Cases), except to the extent that any of the admissions, stipulations, findings or releases contained in the Debtors' Stipulations were expressly challenged in such Challenge Proceeding (and solely as to the plaintiff party that timely filed such Challenge Proceeding and not, for the avoidance of doubt, any other party-in-interest).

(e) For purposes of this Final Order, the "**Challenge Deadline**" means the date that is (i) the earlier of (A) seventy-five (75) calendar days from the Petition Date, or (B) the date that is sixty (60) calendar days from the date of appointment of the Official Committee (the time period set forth in this sub-clause (i), the "**Initial Challenge Deadline**"), (ii) such later date as has been agreed to in writing by the Consenting Prepetition Secured Parties, or (iii) such later date as has been ordered by the Court, for cause shown, upon a motion filed with the Court prior to the Initial Challenge Deadline (the time period established by clauses (i), (ii) and (iii) of this paragraph 35(e), the "**Challenge Period**"); *provided*, that (x) if the Chapter 11 Cases are converted to chapter 7 and a chapter 7 trustee is appointed prior to the Challenge Deadline, then the Challenge Deadline for any such chapter 7 trustee shall be extended (solely as to such chapter 7 trustee) to the date that

is the later of (1) the Challenge Deadline then in effect at the time of its appointment, or (2) the date that is ten (10) calendar days after its appointment, and (y) the filing of a motion by the Official Committee prior to the Initial Challenge Deadline seeking standing with respect to a Challenge, attaching a draft complaint setting forth such Challenge, shall toll the Challenge Deadline for the Official Committee solely in respect of such Challenge until the date that is one Business Day after the entry of an order of the Bankruptcy Court ruling on such motion.

(f) Nothing in this Final Order vests or confers on any person or entity, including any Official Committee or any statutory or non-statutory committee appointed or formed in the Chapter 11 Cases, or any other party-in-interest standing or authority to pursue any Challenge belonging to the Debtors or their estates, and all rights to object to any request for such standing are expressly reserved.

8. **Modification of Automatic Stay.** The Debtors are authorized and directed to perform all acts and to make, execute, and deliver any and all instruments as may be necessary to implement the terms and conditions of this Final Order and the transactions contemplated hereby. The stay of section 362 of the Bankruptcy Code is hereby modified to permit the parties to accomplish the transactions contemplated by this Final Order and effectuate all of the terms and provisions of this Final Order.

9. **Survival of Final Order.** The provisions of this Final Order shall be binding upon any trustee appointed during the Cases or upon a conversion to cases under chapter 7 of the Bankruptcy Code, and any actions taken pursuant hereto shall survive entry of any order which may be entered converting the Cases to chapter 7 cases, dismissing the Cases under section 1112 of the Bankruptcy Code or otherwise, confirming or consummating any plan(s) of reorganization or liquidation or otherwise, or approving or consummating any sale of any Prepetition Notes

Collateral or Adequate Protection Collateral, whether pursuant to section 363 of the Bankruptcy Code or included as part of any plan. The terms and provisions of this Final Order, as well as the priorities in liens and security interests granted pursuant to this Final Order shall continue notwithstanding any conversion of the Cases to chapter 7 cases under the Bankruptcy Code, dismissal of the Cases, confirmation or consummation of any plan(s) of reorganization or liquidation, approval or consummation of any sale, or otherwise.

10. **No Third-Party Rights.** Except as explicitly provided for herein, this Final Order does not create any rights for the benefit of any third party, creditor, equity holder, or any direct, indirect, or incidental beneficiary.

11. **Binding Effect.** The terms of this Final Order shall be valid and binding upon the Debtors, all creditors of the Debtors, and all other parties in interest from and after the entry of this Final Order by this Court.

12. **Enforceability; Waiver of Any Applicable Stay.** This Final Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable nunc pro tunc to the applicable Petition Date immediately upon entry hereof. Notwithstanding Bankruptcy Rule 6004(h), 6006(d), 7062, or 9014 or any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Final Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Final Order.

13. **Headings.** The headings in this Final Order are for purposes of reference only and shall not limit or otherwise affect the meaning of this Final Order.

14. **Retention of Jurisdiction.** The Court has and will retain jurisdiction to enforce this Final Order and with respect to all matters arising from or related to the implementation of this Final Order.

Dated: _____, 2024

ALFREDO R. PEREZ
UNITED STATES BANKRUPTCY JUDGE

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

In re:	§	Chapter 11
RHODIUM ENCORE LLC, <i>et al.</i> , ¹	§	Case No. 24-90448 (ARP)
Debtors.	§	(Jointly Administered)
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**INTERIMFINAL ORDER (I) AUTHORIZING DEBTORS TO USE CASH
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SECURED PARTIES; (III) MODIFYING AUTOMATIC STAY; AND (IV) GRANTING
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(Relates to ECF ~~No. _____~~)Nos. 37 and 83)

Upon the motion (the “*Motion*”)² of the above-referenced debtors, as debtors in possession (collectively, the “*Debtors*”) in the above-captioned cases (the “*Cases*”), pursuant to sections 105, 361, 362, 363, 503, 506, 507, and 552 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “*Bankruptcy Code*”), Rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”), Rules 2002-1, 4001-1, 4002- 1, and 9013-1 of the Bankruptcy Local Rules of the United States Bankruptcy Court for the Southern District of Texas (the “*Local Rules*”), and the Procedures for Complex Chapter 11 Cases in the Southern District of Texas (the “*Complex Case Rules*”), seeking, among other things:

¹ 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.

² ~~Each~~ To the extent not defined herein, each capitalized term that is not defined herein shall have the meaning ascribed to such term in the Motion ~~or the DIP Motion (as defined below), as applicable, the DIP Motion (as defined below), or the Final Order (I) Authorizing the Debtors to Obtain Secured Superpriority Postpetition Financing (II) Granting Liens and Providing Claims with Superpriority Administrative Expense Status, (III) Modifying the Automatic Stay, and (IV) Granting Related Relief (the “Final DIP Order”), as applicable.~~

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(a) authorization for the Debtors to use “cash collateral” as such term is defined in section 363(a) of the Bankruptcy Code in which the Prepetition Secured Parties (as defined below) have liens or other interests therein (“**Cash Collateral**”), if any, solely in accordance with the terms of this interimfinal order (together with all annexes and exhibits hereto, the “**InterimFinal Order**”);

(b) authorization for the Debtors to grant adequate protection to the Prepetition Secured Parties of their Prepetition Notes Liens in the Prepetition Notes Collateral (each as defined below) (including Cash Collateral, if any), in each case solely to the extent of any Diminution in Value of their interests therein, as set forth herein;

(c) modification of the automatic stay imposed by section 362 of the Bankruptcy Code solely to the extent necessary to implement and effectuate the terms and provisions of this InterimFinal Order;

~~(d) — that this Court (as defined herein) schedule a final hearing (the “**Final Hearing**”) to be held before this Court within 21 days of entry of the Interim Order to consider entry of a final order granting the relief requested in the Motion on a final basis (the “**Final Order**”);~~

~~(e)(d)~~ waiver of any applicable stay with respect to the effectiveness and enforceability of this InterimFinal Order (including a waiver pursuant to Bankruptcy Rule 6004(h)); and

~~(f)(c)~~ granting related relief;

and the interim hearing having been held by the Court on August 30, 2024 (the “**Interim Hearing**”); and the final hearing having been held by the Court on September 23, 2024 (the “**Final Hearing**”) pursuant to Bankruptcy Rule 4001 and Local Rules 2002-1, 4001-1, and 9013-1, notice of the Motion and the relief sought therein having been given by the Debtors as set forth in this InterimFinal Order; and the Court having considered the *Declaration of David M. Dunn in Support of Chapter 11 Petitions and First Day Relief* (the “**First Day Declaration**”), and the *Declaration of Michael Robinson in Support of Debtor-in-Possession Financing* (the “**DIP Declaration**”), the Approved Budget (as defined herein), offers of proof, evidence adduced, and the statements of counsel at the Interim Hearing and Final Hearing; and the Court having considered the ~~interim~~ relief requested in the Motion, and it appearing to the Court that granting the relief sought in the Motion on the terms and conditions herein contained is necessary and essential to enable the

Debtors to preserve the value of the Debtors' businesses and assets and that such relief is fair and reasonable and that entry of this ~~Interim~~Final Order is in the best interest of the Debtors and their respective estates and creditors; and due deliberation and good cause having been shown to grant the relief sought in the Motion,

IT IS HEREBY FOUND AND DETERMINED THAT:³

A. **Petition Date.** On August 24, 2024 (the "**Initial Petition Date**") and August 29, 2024 (the "**Subsequent Petition Date**"),⁴ each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Southern District of Texas (the "**Court**").

B. **Debtors in Possession.** Each Debtor has continued with the management and operation of its respective businesses and properties as a debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Cases.

C. **Jurisdiction and Venue.** The Court has jurisdiction over the Motion, these Cases, and the parties and property affected hereby pursuant to 28 U.S.C. § 1334 and the Amended Standing Order of Reference from the United States District Court for the Southern District of Texas, dated May 24, 2012. Venue for these Cases is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The Debtors have confirmed their consent, pursuant to Bankruptcy Rule 7008, to the entry of a final order by the Court in connection with the Motion to the extent that it is later determined that the Court, absent consent of the parties, could not enter final orders or judgments in connection

³ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Bankruptcy Rule 7052

⁴ As used herein, "**Petition Date**" means the Initial Petition Date; provided that with respect to the Debtors which commenced their Cases subsequent to August 24, 2024, "**Petition Date**" shall refer to the respective dates on which such Cases were commenced.

with the Motion consistent with Article III of the United States Constitution. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

D. **Committee.** As of the date hereof, no official committee of unsecured creditors has been appointed in these Cases pursuant to section 1102 of the Bankruptcy Code (any such committee, the “**Committee**”).

E. **Bank Accounts.** The Debtors acknowledge and agree that, as of the applicable Petition Date, none of the Debtors has either opened or maintains any bank accounts other than the accounts listed in the exhibit attached to the Cash Management Motion.⁵

F. **Adequate Protection.** Pursuant to sections 105, 361, 362, and 363 of the Bankruptcy Code, the Prepetition Secured Parties are entitled to adequate protection of their respective security interests in and liens on the Prepetition Notes Collateral (collectively, the “**Prepetition Notes Liens**”), including the Cash Collateral, if any,⁶ solely to the extent of any post-petition diminution in value of their respective Prepetition Notes Liens in the Prepetition Notes Collateral resulting from, among other things, the use, sale, or lease of any of the Prepetition Notes Collateral (including the Cash Collateral, if any), the imposition of the automatic stay pursuant to section 362(a) of the Bankruptcy Code, and any other reason for which adequate protection may be granted under the Bankruptcy Code (“**Diminution in Value**”), as set forth in this ~~Interim~~Final Order. The foregoing shall not, nor shall any provision of this ~~Interim~~Final Order be construed as, a determination or finding that there has been or will be any Diminution in Value of the Prepetition

⁵ “**Cash Management Motion**” means the *Emergency Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue Their Existing Cash Management System, (B) Honor Certain Pre-Petition Obligations Related Thereto, and (C) Continue to Perform Intercompany Transactions, (II) Granting Superpriority Administrative Expense Status to Post-Petition Intercompany Balances, and (III) Granting Related Relief.*

⁶ The Debtors have asserted that they believe certain of the Prepetition Secured Parties might have unperfected liens, and have reserved the right to avoid any unperfected liens.

Notes Collateral (including Cash Collateral, if any) and the rights of all parties as to such issues are hereby preserved. Based on the Motion, the First Day Declaration, and the record presented to the Court at the Interim Hearing and Final Hearing, the terms of the proposed adequate protection arrangements and of the use of the Prepetition Notes Collateral, including the Cash Collateral, if any, are fair and reasonable and reflect the Debtors' prudent business judgment.

G. **Need to Use Cash Collateral.** The Debtors have requested entry of this ~~Interim Order pursuant to Bankruptcy Rule 4001(b)(2) and Local Rules 4001-1, 4002-1, and 9013-1 and have an immediate~~ Final Order and have a need to obtain use of the Prepetition Notes Collateral, including the Cash Collateral, if any, in compliance with, and subject in all respects to, the Approved Budget (subject in all respects to any Permitted Variances (as defined below)) in order to, among other things, (A) permit the orderly continuation of their businesses, and (B) pay the costs of administration of their estates and satisfy other working capital and general corporate purposes of the Debtors. ~~An immediate and critical~~ A need exists for the Debtors to use the Cash Collateral, consistent with the Approved Budget (subject to any Permitted Variances), for working capital purposes, other general corporate purposes of the Debtors, and the satisfaction of costs and expenses of administering the Cases. The ability of the Debtors to obtain liquidity through the use of the Cash Collateral, if any, is vital to the Debtors and their efforts to maximize the value of their estates. Absent entry of this ~~Interim~~ Final Order, the Debtors' estates and reorganization efforts will be immediately and irreparably harmed.

H. **Debtors' Stipulations.** After consulting with their attorneys and financial advisors, and without prejudice to the rights of other parties in interest, including any Official Committee, the Debtors admit, stipulate, acknowledge, and agree to the statements set forth in this paragraph (collectively, the "Debtors' Stipulations"): (i) as of the Petition Date, certain of the

Debtors issued, and were Borrowers (as defined in the Prepetition Notes) under the Consenting Prepetition Notes, and thus were justly and lawfully indebted and liable to the Consenting Prepetition Secured Parties, without defense, counterclaim, or offset of any kind, in an aggregate principal amount plus accrued and unpaid interest of not less than the amounts set forth in footnote 7, plus fees, expenses (including advisors' and professionals' fees and expenses, in each case, that are chargeable or reimbursable under the applicable agreements), disbursements, charges, claims, indemnities and other costs and obligations of whatever nature incurred in connection therewith which are chargeable or otherwise reimbursable under the applicable agreements or applicable law (collectively, the "***Consenting Prepetition Obligations***";⁷ (ii) the Consenting Prepetition Obligations are secured by legal, valid, perfected, binding, enforceable, and nonavoidable senior liens on and security interests in substantially all assets of Rhodium 2.0 whether now owned or hereafter acquired as set forth in the Rhodium 2.0 Security Agreements (the "***Consenting Prepetition Collateral***") to secure the Consenting Prepetition Obligations (collectively, the "***Consenting Prepetition Liens***"; and (iv) the Debtors acknowledge and agree that as of the Petition Date (a) the Consenting Prepetition Liens on the Consenting Prepetition Collateral were valid, binding, enforceable, non-avoidable, and properly perfected and were granted to, or for the benefit of, the Consenting Prepetition Secured Parties for fair consideration and reasonably equivalent value; (b) the Consenting Prepetition Liens were senior in priority over any and all other liens on the Consenting Prepetition Collateral.

⁷ The "***Consenting Prepetition Secured Parties***" and the approximate principal amount of notes issued by Rhodium 2.0 held by each (such holdings being the "***Consenting Prepetition Notes***") are as follows: (i) Private Investor Club Feeder Fund 2020-G LLC, \$10.19 million; (ii) Private Investor Club Feeder Fund 2020-H LLC, \$8.06 million; (iii) Stadlin Group Investments-Series Rockdale LLC, \$735,000, (iv) Shane Blackmon, \$1,052,000; and (v) Elysium Mining, \$1,242,000.

H.I. **Notice.** In accordance with Bankruptcy Rules 2002, 4001(b) and (c), and 9014, and the Local Rules 2002-1, 4001-1, and 9013-1, notice of the Interim Hearing and Final Hearing and the ~~emergency~~ relief requested in the Motion has been provided by the Debtors. Under the circumstances, the notice given by the Debtors of the Motion, the relief requested herein, and the InterimFinal Hearing complies with Bankruptcy Rules 2002, 4001(b) and (c), and 9014 and the Local Rules 2002-1, 4001-1, and 9013-1.

H.I. **Relief Essential; Best Interest.** The Debtors have requested entry of this InterimFinal Order pursuant to Bankruptcy Rule 4001(b)(2). The relief requested in the Motion (and as provided in this InterimFinal Order) is necessary, essential, and appropriate for the continued operation of the Debtors' businesses and the management and preservation of the Debtors' assets and the property of their estates. It is in the best interest of the Debtors' estates that the Debtors be allowed to use the Cash Collateral, if any, under the terms hereof. The Debtors have demonstrated good and sufficient cause for the relief granted herein.

Now, therefore, upon the record of the proceedings heretofore held before this Court with respect to the Motion, the evidence adduced at the Interim Hearing, and the statements of counsel thereat, and based upon the foregoing findings and conclusions,

IT IS HEREBY ORDERED THAT:

1. **Motion Granted.** The interimfinal relief sought in the Motion is granted, and the use of Cash Collateral, if any on ~~an-interima~~ final basis is authorized, subject to the terms of this InterimFinal Order.

2. **Objections Overruled.** Any objections to the Motion with respect to the entry of this InterimFinal Order that have not been withdrawn, waived, or settled and all reservations of rights included therein, are hereby denied and overruled with prejudice.

3. **Authorization to Use Cash Collateral; Budget.**

a.(a) Subject to the terms and conditions of this ~~Interim~~Final Order, the Court hereby authorizes the Debtors' use of Cash Collateral, if any, solely and exclusively in a manner consistent with the "Approved Budget" (as defined in the *Emergency Motion of Debtors for Entry of Interim and Final Orders (i) Authorizing the Debtors to Obtain Secured Superpriority Postpetition Financing, (ii) Granting Liens and Providing Claims with Superpriority administrative Expense Status, (iii) Modifying the Automatic Stay, (iv) Scheduling a Final Hearing, and (v) Granting Related Relief* (together with the proposed orders and all exhibits annexed thereto, the "**DIP Motion**") (the "**Approved Budget**") (subject to any "Permitted Variances" (as defined in the DIP Motion) (the "**Permitted Variances**"), in accordance with and subject to the terms and conditions of the provisions of the interim and final orders entered by the Court approving the DIP Motion (collectively, the "**DIP Orders**"), and for no other purposes.

b.(b) Notwithstanding anything to the contrary contained in the Motion or herein, any payment to be made hereunder, and any authorization contained herein, shall be subject to and in accordance with the DIP Orders, and, in particular, the Approved Budget (subject to any Permitted Variances), which shall control. To the extent there is any inconsistency between the terms of the DIP Orders (including any Approved Budget) and any approval or action taken or proposed to be taken hereunder, the terms of the DIP Orders shall control. In addition, nothing in the Motion or herein shall be construed as a waiver or consent that conflicts with any agreement or obligation provided for in the DIP Loan Documents (as defined in the DIP Motion).

e.(c) For the avoidance of doubt, except as otherwise set forth in the Approved Budget, Cash Collateral, if any, may not be used (i) by any non-Debtor entity or (ii) to pay any fees, costs, expenses, and/or any other amounts of any non-Debtor entity.

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4. **Adequate Protection for the Prepetition Secured Parties.** Subject to the terms of this InterimFinal Order, the Prepetition Secured Parties are entitled, pursuant to sections 361, 362, and 363 of the Bankruptcy Code, and in consideration of the stipulations and consents set forth herein, to adequate protection of their Prepetition Notes Liens in the Prepetition Notes Collateral (including Cash Collateral, if any), in each case solely to the extent of any Diminution in Value of their interests therein, as follows:

a-(a) The Prepetition Secured Parties, are hereby granted, effective and perfected as of the entry of this InterimFinal Order, and without the necessity of the execution, recordation or filing by the Debtors or any of the Prepetition Secured Parties of any pledge, collateral or security documents, mortgages, deeds of trust, financing statements, notations of certificates of title for titled goods, or any similar document or instrument, or the taking of any other action (including, without limitation, entering into any control agreements or taking possession or control of any Prepetition Notes Collateral), of the Prepetition Notes Liens in the Prepetition Notes Collateral (including Cash Collateral, if any) from and after the applicable Petition Date, valid, binding, enforceable and automatically perfected post-petition liens on and security interests in (the “**Adequate Protection Liens**”) all property of the Debtors, whether existing on the applicable Petition Date or thereafter acquired that is not subject to valid, perfected, and non-avoidable liens or perfected after the applicable Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code except for (i) Rhodium Renewables LLC and (ii) all claims and causes of action (and the proceeds thereof) under sections 502(d), 506(c), 544, 545, 547, 548, 549, 550, or 724(a) of the Bankruptcy Code or under any applicable state law (the “**Adequate Protection Collateral**”, and together with the Prepetition Notes Collateral, the “**Collateral**”). The Adequate Protection Liens shall be subject only to the Carve Out (as defined in the DIP Motion), as set forth in and

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subject to the terms and conditions of the DIP Orders, and shall be junior and subordinated to the liens and security interests granted in favor of the DIP Secured Parties (as defined in the DIP Motion) pursuant to the DIP Orders (the “**DIP Liens**”) and Prior Permitted Liens,⁸ if any, on such assets, and senior to all other liens on such assets.

b.(b) In respect of any Adequate Protection Liens ~~and any Prepetition Notes Liens or otherwise~~, the Prepetition Secured Parties may not exercise (or seek relief from the Court to exercise) any remedies against the Collateral so long as there any DIP Obligations (as defined in the DIP Motion) outstanding, and any such security interests in and ~~liens~~ Adequate Protection Liens on such Collateral shall not be entitled to be credit bid for any such Collateral (and any sale of such Collateral shall be free and clear of the ~~Prepetition Notes Liens and any~~ Adequate Protection Liens (if any) provided that such liens and security interests attach to the cash proceeds, if any, of such sale after the DIP Obligations are Paid in Full (as defined in the DIP Motion~~)).~~

e.(c) The Debtors shall maintain their cash management arrangements in a manner consistent with this Court’s order(s) granting the Debtors’ cash management motion.

~~5. — Access. Upon five (5) business days’ prior written notice (as applicable, including via acknowledged electronic mail), the Debtors shall permit the Prepetition Secured Parties to, during normal business hours and in a manner that does not unreasonably interfere with the ordinary course activities and operations of the Debtors, have reasonable access to and inspect the Debtors’ books and records pertaining to the Prepetition Notes Collateral and the Adequate Protection Collateral; it being understood that nothing in this paragraph 5 shall require the Debtors~~

⁸ “**Prior Permitted Liens**” means valid, perfected and non-avoidable senior liens in existence immediately prior to the applicable Petition Date or valid and non-avoidable liens in existence immediately prior to the applicable Petition Date that are perfected subsequent to such Petition Date as permitted by section 546(b) of the Bankruptcy Code. For the avoidance of doubt, Prior Permitted Liens shall not include any Prepetition Notes Liens.

~~(or any of their advisors) to take any action that would conflict with any applicable requirements of law or any binding agreement, or that would waive any attorney-client or similar privilege.~~

5. Limitations on Charging Expenses; No Marshalling; Section 552(b) Waiver

a. *Limitation on Charging Expenses.* Except to the extent of the Carve Out, no costs or expenses of administration of the Chapter 11 Cases or any Successor Cases (or any future proceedings that may result therefrom) at any time, including, without limitation, any costs and expenses incurred in connection with the preservation, protection, or enhancement of realization by the Consenting Prepetition Secured Parties upon the Consenting Prepetition Collateral shall be charged against or recovered from the Consenting Prepetition Collateral as to the Consenting Prepetition Secured Parties whether pursuant to section 506(c) of the Bankruptcy Code or other similar legal or equitable doctrine or otherwise, without the prior written consent of the Consenting Prepetition Secured Parties with respect to the Consenting Prepetition Collateral, and no such consent shall be implied, directly or indirectly, from anything contained in this Final Order or the DIP Orders (including, without limitation, consent to the Carve Out or the approval of any budget hereunder) or from any other action, inaction, or acquiescence by any of the Consenting Prepetition Secured Parties to any charge, lien, assessment or claim against the Consenting Prepetition Secured Parties with respect to the Consenting Prepetition Collateral, whether under section 506(c) of the Bankruptcy Code or otherwise.

b. *No Marshalling; Section 552(b) Waiver.* In no event shall the Consenting Prepetition Secured Parties be subject to the equitable doctrine of “marshaling” or any similar doctrine with respect to the Consenting Prepetition Collateral. The Consenting Prepetition Secured Parties shall be entitled to all of rights and benefits of section 552(b), and the “equities of the case”

exception thereunder shall not apply to any of the Consenting Prepetition Secured Parties with respect to proceeds, products, offspring, or profits of any of the Consenting Prepetition Collateral.

c. For the avoidance of doubt, the provisions of this paragraph 5 shall only apply to the Consenting Prepetition Secured Parties, and shall not apply to any Prepetition Secured Parties that are not Consenting Prepetition Secured Parties.

6. **Reporting.** The Debtors and their representatives shall (a) provide the Prepetition Secured Parties with (i) all reports, documents, and information required to be delivered under the DIP Loan Documents (contemporaneously when the same is required to be delivered thereunder), and (ii) reasonable access, upon reasonable notice and during regular business hours, to the Debtors' books and records, assets and properties, for purposes of monitoring the Debtors' businesses and operations and the value of the Prepetition Collateral, and (b) cooperate and consult with, and provide information reasonably requested by the Prepetition Secured Parties concerning the Debtors' businesses, financial condition, properties, business operations and assets, and the Debtors hereby authorize their representatives to cooperate and consult with, and promptly provide to the such parties (in each case, together with their respective advisors) such information.

7. **Effect of the Debtors' Stipulations Regarding Consenting Prepetition Secured Parties on Third Parties.**

(a) The Debtors' stipulations, admission, agreements and releases concerning the Consenting Prepetition Secured Parties contained in this Final Order shall be binding upon the Debtors and any successor thereto in all circumstances and for all purposes immediately upon entry of this Final Order.

(b) The Debtors' Stipulations concerning the Consenting Prepetition Secured Parties in this Final Order shall be binding upon all parties-in-interest, including, without

limitation, the Official Committee, any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases, and any other person or entity seeking to act on behalf of the Debtors' estates, including any chapter 7 or chapter 11 trustee or examiner appointed or elected for any of the Debtors in the Chapter 11 Cases or any Successor Cases, and each of their respective successors and assigns, in all circumstances and for all purposes, unless the Official Committee or such other party-in-interest (i) obtains requisite standing (subject in all respects to any agreement or applicable law which may limit or affect such entity's right or ability to do so) pursuant to an order of the Court entered prior to the Challenge Deadline (as defined below), (ii) timely and properly commences and serves an adversary proceeding or contested matter (subject to the limitations contained herein) (each, a "**Challenge Proceeding**") by no later than the Challenge Deadline (as defined below), (A) objecting to or alleging any basis to impair, restrict, deny or otherwise challenge the right of any of the Consenting Prepetition Secured Parties to credit bid, in whole or in part, the Consenting Prepetition Liens or the Consenting Prepetition Secured Obligations under section 363(k) of the Bankruptcy Code or otherwise, or (B) objecting to or challenging the amount, validity, perfection, enforceability, priority, scope or extent of the Consenting Prepetition Secured Obligations, the Consenting Prepetition Liens, the Consenting Prepetition Collateral or the Consenting Prepetition Notes Documents, or otherwise objecting to or challenging any of the admissions, stipulations, findings or releases included in the Debtors' Stipulations (sub-clauses (A)-(B), collectively, the "**Challenges**", and each, a "**Challenge**"), and (iii) obtains a final non-appealable order by a court of competent jurisdiction in favor of the plaintiff sustaining any such Challenge in any timely and duly-filed Challenge Proceeding; *provided, however, that any pleadings filed in connection with any Challenge Proceeding, including any motion served and filed with the Court seeking requisite standing and authority to pursue a Challenge, shall include*

a draft complaint attached thereto and shall otherwise set forth with specificity the basis for each such Challenge, and any Challenge not so specified in a Challenge Proceeding timely and properly filed prior to the Challenge Deadline shall be deemed forever, waived, released and barred.

(c) If no such Challenge Proceeding is timely and properly filed by the Challenge Deadline, or if the Court does not rule in favor of plaintiff in any such timely and properly filed Challenge Proceeding, then, without application to or further order of the Court, (i) each of the admissions, stipulations, findings and releases contained in the Debtors' Stipulations shall be binding on all parties-in-interest, including, without limitation, any Official Committee, any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases, or any other party-in-interest (including, without limitation, any chapter 7 trustee or chapter 11 trustee or examiner appointed or elected for any of the Debtors in the Chapter 11 Cases or any Successor Cases), and (ii) the Consenting Prepetition Secured Obligations shall constitute allowed claims against each of the Debtors in the Chapter 11 Cases and any Successor Cases, and the Consenting Prepetition Liens shall forever be deemed to be legal, valid, binding, continuing, perfected and enforceable, as of the Petition Date, against each of the Debtors in the Chapter 11 Cases and any Successor Cases.

(d) If any such Challenge Proceeding is timely filed by the Challenge Deadline, the Debtors' Stipulations shall nonetheless remain binding and preclusive on any Official Committee, any non-statutory committees appointed or formed in the Chapter 11 Cases, or any other party-in-interest (including, without limitation, any chapter 7 trustee or chapter 11 trustee or examiner appointed or elected for any of the Debtors in the Chapter 11 Cases or any Successor Cases), except to the extent that any of the admissions, stipulations, findings or releases contained in the Debtors' Stipulations were expressly challenged in such Challenge Proceeding (and solely

as to the plaintiff party that timely filed such Challenge Proceeding and not, for the avoidance of doubt, any other party-in-interest).

(e) For purposes of this Final Order, the “**Challenge Deadline**” means the date that is (i) the earlier of (A) seventy-five (75) calendar days from the Petition Date, or (B) the date that is sixty (60) calendar days from the date of appointment of the Official Committee (the time period set forth in this this sub-clause (i), the “**Initial Challenge Deadline**”), (ii) such later date as has been agreed to in writing by the Consenting Prepetition Secured Parties, or (iii) such later date as has been ordered by the Court, for cause shown, upon a motion filed with the Court prior to the Initial Challenge Deadline (the time period established by clauses (i), (ii) and (iii) of this paragraph 35(e), the “**Challenge Period**”); *provided*, that (x) if the Chapter 11 Cases are converted to chapter 7 and a chapter 7 trustee is appointed prior to the Challenge Deadline, then the Challenge Deadline for any such chapter 7 trustee shall be extended (solely as to such chapter 7 trustee) to the date that is the later of (1) the Challenge Deadline then in effect at the time of its appointment, or (2) the date that is ten (10) calendar days after its appointment, and (y) the filing of a motion by the Official Committee prior to the Initial Challenge Deadline seeking standing with respect to a Challenge, attaching a draft complaint setting forth such Challenge, shall toll the Challenge Deadline for the Official Committee solely in respect of such Challenge until the date that is one Business Day after the entry of an order of the Bankruptcy Court ruling on such motion.

(f) Nothing in this Final Order vests or confers on any person or entity, including any Official Committee or any statutory or non-statutory committee appointed or formed in the Chapter 11 Cases, or any other party-in-interest standing or authority to pursue any

Challenge belonging to the Debtors or their estates, and all rights to object to any request for such standing are expressly reserved.

6-8. Modification of Automatic Stay. The Debtors are authorized and directed to perform all acts and to make, execute, and deliver any and all instruments as may be necessary to implement the terms and conditions of this InterimFinal Order and the transactions contemplated hereby. The stay of section 362 of the Bankruptcy Code is hereby modified to permit the parties to accomplish the transactions contemplated by this InterimFinal Order and effectuate all of the terms and provisions of this InterimFinal Order.

7-9. Survival of InterimFinal Order. The provisions of this InterimFinal Order shall be binding upon any trustee appointed during the Cases or upon a conversion to cases under chapter 7 of the Bankruptcy Code, and any actions taken pursuant hereto shall survive entry of any order which may be entered converting the Cases to chapter 7 cases, dismissing the Cases under section 1112 of the Bankruptcy Code or otherwise, confirming or consummating any plan(s) of reorganization or liquidation or otherwise, or approving or consummating any sale of any Prepetition Notes Collateral or Adequate Protection Collateral, whether pursuant to section 363 of the Bankruptcy Code or included as part of any plan. The terms and provisions of this InterimFinal Order, as well as the priorities in liens and security interests granted pursuant to this InterimFinal Order shall continue notwithstanding any conversion of the Cases to chapter 7 cases under the Bankruptcy Code, dismissal of the Cases, confirmation or consummation of any plan(s) of reorganization or liquidation, approval or consummation of any sale, or otherwise.

8-10. No Third-Party Rights. Except as explicitly provided for herein, this InterimFinal Order does not create any rights for the benefit of any third party, creditor, equity holder, or any direct, indirect, or incidental beneficiary.

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9.11. Binding Effect. The terms of this InterimFinal Order shall be valid and binding upon the Debtors, all creditors of the Debtors, and all other parties in interest from and after the entry of this InterimFinal Order by this Court.

10.12. Enforceability; Waiver of Any Applicable Stay. This InterimFinal Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable nunc pro tunc to the applicable Petition Date immediately upon entry hereof. Notwithstanding Bankruptcy Rule 6004(h), 6006(d), 7062, or 9014 or any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this InterimFinal Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this InterimFinal Order.

11.13. Headings. The headings in this InterimFinal Order are for purposes of reference only and shall not limit or otherwise affect the meaning of this InterimFinal Order.

12.14. Retention of Jurisdiction. The Court has and will retain jurisdiction to enforce this InterimFinal Order and with respect to all matters arising from or related to the implementation of this InterimFinal Order.

13. Final Hearing. A final hearing on the relief requested in the Motion shall be held on [____], 2024, at __:__.m. (prevailing Central time). Any party in interest objecting to the relief sought at the Final Hearing shall file written objections no later than [____];

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~~2024, at []:[] p.m. (prevailing Central time). If no objections to entry of a final order on the Motion are timely received, the Court may enter such final order without need for the final hearing.~~

Dated: _____, 2024

THE HONORABLE ALFREDO PEREZ
UNITED STATES BANKRUPTCY JUDGE