

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

<p>In re:</p> <p>RHODIUM ENCORE LLC, et al.,<sup>1</sup></p> <p style="text-align: center;">Debtor.</p>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p>No. 24-90448-ARP</p> <p>Chapter 11</p>
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**Whinstone US Inc.'s Response in Opposition to  
Debtors' Motion for Partial Summary Judgment**

(Relates to Docket Nos. 7, 32, 272)

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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.



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## Summary of Response

This is the response of Whinstone US Inc. (“**Whinstone**”) to *Debtors’ Motion for Partial Summary Judgment* (“**Motion**”) [Doc. 272].

Debtors’ Motion requires—but does not request—that this Court decide a threshold issue: which contracts control the parties’ relationship. This Court must determine that issue before the Court can determine whether a default occurred and what the cure is. Debtors dodge this issue and seek relief predicated on the illogical notion that all 25 contracts between Whinstone and Debtors are in effect. The Motion does not establish what contracts exist, so it fails for that reason.

The Motion also fails to show that Whinstone’s termination notices were ineffective.

First, Debtors proffer a nonsensical interpretation of the contracts that renders the duty to pay Whinstone *any* amounts illusory. That cannot be the case. Whinstone—in return for supplying up to a total of 155 megawatts of power—was entitled to a set percentage of the revenue generated under the Rhodium JV and Air HPC December 2020 hosting agreements (12.5% and 50%, respectively), secured by those entities’ representations that they would own the Bitcoin mined and all equipment used in that endeavor. But Debtors contend Whinstone is only owed a percentage of whatever revenue Debtors see fit to flow through their holding companies—debtors Rhodium JV and Air HPC. This completely discretionary compensation is not permitted by the contracts or Texas law. Whinstone thus justifiably terminated the pertinent contracts.

Second, Debtors feign ignorance about the grounds for termination. The termination notices of November 27, 2023 (“**November 2023 Notice**”) and April 22, 2024 (“**April 2024 Notice**”) (collectively the “**Notices**”) were just the last in a series of correspondence between Whinstone and Debtors about Debtors’ defaults under the contracts. When the Notices were transmitted, Debtors knew exactly what the grounds for termination were.

## Statement of Facts

### A. General background.

Whinstone's prior briefing provides the general background of the dispute in its Preliminary Response and Objection to Debtors' Motion and Supplemental Motion to Assume Certain Executory Contracts [Doc. 144 at 1–18] and Motion for Partial Summary Judgment [Doc. 208 at 3–7]. Whinstone incorporates those facts and citations herein.

In brief, Whinstone hosts cryptocurrency mining operations at its facility in Rockdale, Texas. It provides services (e.g., power, cooling, and internet connectivity) needed to support cryptocurrency mining equipment. Whinstone and Imperium Investment Holdings LLC created joint venture Rhodium JV in 2020. Whinstone owned 12.5% of the venture; Imperium owned 87.5%. Whinstone and Rhodium JV executed twenty substantially similar “hosting agreements” in July 2020 whereby Whinstone would provide Rhodium JV space in Building C of the Rockdale facility for mining operations, a total of 100 megawatts of power, and related services (the “**5MW Agreements**”). Under those agreements, Whinstone could sell the power in certain circumstances, in lieu of providing it to Rhodium JV, but would share the profits from that resale. Whinstone later signed a similar agreement with Rhodium JV's subsidiary, Rhodium 30MW, agreeing to provide space in Building C, 30 megawatts of power at below-market rates, and related services (the “**30MW Agreements**”). That agreement also contained a power sale/credit provision.

Subsequently, Rhodium principals formed Air HPC and a subsidiary, Jordan HPC, to operate Bitcoin miners in unused space in Building B at the Rockdale facility. Whinstone signed a “colocation” agreement with Jordan HPC to provide space, services, and 25 megawatts of power for those operations (the “**Jordan Agreement**”). All told, Whinstone obliged itself to supply 155 megawatts of power to the Rhodium entities (130 megawatts in Building C and 25 megawatts in Building B).

In December 2020, Whinstone redeemed its equity interests in Rhodium JV. In exchange, Imperium consented to a new arrangement whereby Whinstone signed two new separate “hosting agreements”—one with Rhodium JV (for Building C operations) and the other for Air HPC (for Building B operations)—providing space, services, and a total of 155 megawatts of power to the two buildings at the Rockdale facility (130 megawatts in Building C and 25 megawatts in Building B).

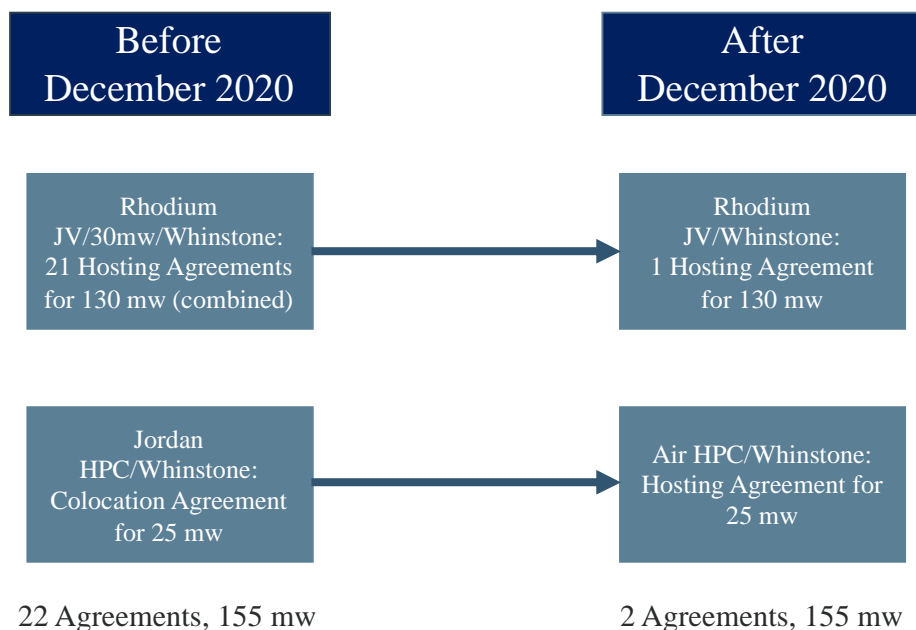
These are the “**December Hosting Agreements**” at issue herein [Doc. 207-3, 207-4]. It is Whinstone’s position that the December Hosting Agreements superseded all prior agreements above, changed the terms of Whinstone’s compensation for providing the below-market electricity rates, eliminated the “power credits” in the prior agreements, and authorized charges for other services, among other changes.

These December Hosting Agreements required Rhodium JV and Air HPC to pay the following fees and charges, among others:

- Rhodium JV and Air HPC must pay a monthly “Power Charge” in a sum that is “the greater of (i) the Power Charge for the aggregate amount of power actually consumed (expressed in kWh) by all power-consuming devices in the Customer Area, and (ii) the Power Charge for the volume of power represented by the then-current Specified Power Draw (expressed in kWh).” The “Power Charge” is calculated based on “a stated amount of power (expressed in kWh)” and determined “on a per-kWh cost that is equal to the effective per-kWh cost of power to the Facility as a whole for the subject month (i.e., the Facility’s wholesale power cost (including both supply and delivery charges, including any retail adders) less any credit amounts actually received by [Whinstone] under applicable ERCOT load response programs); provided, however, that in the event that such effective per-kWh cost exceeds \$0.01705, the Power Charge shall be determined using \$0.01705 as the assumed Facility per-kWh power cost” [Doc. 207-3 at § 6; Doc. 207-4 at § 6].

- Rhodium JV and Air HPC had to pay a “Hosting Share Payment” in a sum equal to a percentage of their “earnings before interest, taxes, depreciation, and amortization”—i.e., EBITDA—as measured over a calendar-year basis. The EBITDA percentage under the Rhodium JV December Hosting Agreement and Air HPC December Hosting Agreement, is twelve and one-half percent (12.5%) (“12.5% Rev Share Payment”) and fifty percent (50%) (“50.0% Rev Share Payment”). These together are “**Rev Share Payments.**” Annex 2 of the agreements defines the precise Rev Share Payment calculations. The payments were due “monthly, quarterly, or annually,... provided, however, that in any case, payment shall be made within ninety (90) Business Days following the closing of [the applicable Debtor’s] books for such period, but in any event no later than one hundred twenty (120) calendar days following the end of such period” [Doc. 207-3 at § 6, Annex 2; 207-4 at § 6, Annex 2].

The “before” and “after” contract scenario was:



In 2021, Whinstone, Rhodium JV, and several Rhodium JV affiliates signed an agreement obligating Whinstone to supply water to Building C for use in the Debtors’ mining operations. In September

2021, Rhodium JV purported to assign 14 of the 5MW Agreements to its subsidiaries Rhodium Encore, Rhodium 2.0, and Rhodium 10MW.

**B. The December Hosting Agreements imposed several other duties.**

The December Hosting Agreements imposed additional obligations/conditions on Rhodium JV and Air HPC, including (a) Data Center Rules prohibiting certain conduct while Rhodium JV and Air HPC mine cryptocurrency at the facility, including compliance with state and federal regulations and laws; (b) representations that “Customer Equipment” was owned by the two Rhodium entities at their respective facilities; and (c) that the two Rhodium entities owned the cryptocurrency generated from the operation of the Customer Equipment [Doc. 207-3 at §§ 2.1, 5, 9.8, 10.1, 10.2, 12.1; Doc. 207-4 at §§ 2.1, 5, 9.8, 10.1, 10.2, 12.1].

A party could terminate the agreement “with immediate effect as of the date set forth in a written notice thereof provided to” the defaulting party if a “termination event” occurred, including:

- Payment Default: “If a Party fails to make a payment to the other Party owed under this Agreement when due, unless such default is remedied within three (3) Business Days following the breaching Party’s receipt of notice by the non-breaching Party of such failure.”
- Insolvency: “If a Party is unable to pay its financial obligations when due, becomes subject to insolvency proceedings, applies for or institutes insolvency proceedings or offers or makes an arrangement with its creditors generally, or if a third-party applies for insolvency proceedings against such Party and such proceedings are not stayed or discharged within thirty (30) days, unless such proceeding is dismissed due to insufficiency of assets.”
- Material Breach: “If a Party fails to perform or otherwise breaches a material obligation under this Agreement and such breach is either not susceptible to being cured or is not being cured within ten (10) Business Days after the breaching Party becomes aware of such breach. The Parties agree that any Force Majeure Event can never result in a material breach.”

[Doc. 207-3 at §§ 17.1, 17.2; Doc. 207-4 at §§ 17.1, 17.2].

**C. Defaults regarding the December Hosting Agreements.**

As noted in notices dated May 17, 2022, and April 28, 2023, there were several defaults under the December Hosting Agreements [Doc. 207-13, 207-14].

Payment Defaults—The Rhodium entities’ quarterly profit share calculations violated the December Hosting Agreements. Rhodium JV and Air HPC failed to calculate their respective portions of the Rev Share Payments on a consolidated financial basis—i.e., including the newly-formed operating subsidiaries—resulting in a combined shortfall exceeding \$20 million [Doc. 35 at ¶ 42, 207-11 at ¶ 60; *see also* Exhibits 1-A to 1-D, attached hereto]. This scheme allowed Rhodium JV and Air HPC to artificially reduce the revenue reflected on their books, which, in turn, reduced Whinstone’s revenue-based payments. Rhodium JV and Air HPC also reduced the Rev Share Payments by improperly altering the calculation used to estimate EBITDA and applying deductions the agreements did not permit. *See* Exhibit 1.

Breach of representations and warranties—Rhodium JV and Air HPC breached representations and warranties that they would own the equipment used in Bitcoin mining operations and all resulting “generated digital assets” [Doc. 207-3 at §§ 10.1, 10.2; Doc. 207-3 at §§ 10.1, 10.2]. Rhodium JV and Air HPC *do not* own the equipment or mined Bitcoin [Ex. 2-C at 44:20–24, 45:7–13; Ex. 2-B at 302:13–20, 338:13–21].

Data Center Rules—Rhodium JV and Air HPC violated Data Center Rules, including recurring coolant spills, a fire caused by an improperly designed Air HPC filter, and an incident that injured three Rhodium-affiliate employees in an ATV accident [Doc. 207-13].

Two of these incidents required Whinstone to submit environmental incident reports to the Texas Commission on Environmental Quality, which also cited Rhodium JV for failing to timely report the incidents itself as required by law. Because of Rhodium JV’s and Air HPC’s conduct, Whinstone suspended services to Rhodium JV and Air HPC three times: first in July 2021, again in January 2023

in response to a BitCool discharge, and a third time in January 2024 for yet another BitCool spill.

**D. Notices of default and termination.**

Whinstone transmitted several notices of default and notices of termination, including notices of default on May 17, 2022, and April 28, 2023 [Doc. 207-13, 207-14].

The May 2022 notice primarily concerned calculation and payment of the 2021 Rev Share Payment. Whinstone calculated that Rhodium JV and Air HPC owed not less than \$18.5 million in unpaid hosting fees [Doc. 207-13]. After that notice, the Debtors made a partial payment in the amount of \$8,097,268, leaving at least \$10,402,732 outstanding from the 2021 Rev Share Payment.

The April 2023 notice addressed (1) the remaining unpaid 2021 Rev Share Payment, (2) past-due amounts for the 2022 Rev Share Payment, (3) past-due amounts for the 2023 Rev Share Payment, (4) past-due amounts under the water agreement for Building C, (5) unpaid labor supplied by Whinstone for the Debtors' benefit, and (6) charges imposed by governmental authorities [Doc. 207-14]. The combined amount due and owing at that time, on all listed defaults, was about \$13.6 million.

There was no complete cure of the defaults noticed in the May 2022 and April 2023 notices. The unpaid 2021 Rev Share Payment from the 2022 Default Notice—more than \$10 million—remained outstanding [Doc. 207-12; Doc. 207-15].

Accordingly, on or about November 27, 2023, Whinstone issued the 2023 Termination Notice, which terminated the December Hosting Agreements immediately [Doc. 207-12]. The 2023 Termination Notice also noted that not less than \$6.6 million in additional Rev Share Payments for 2023 had come due and not been paid, making the total amount owed to Whinstone approximately \$20 million as of that date [*Id.*].

**E. Litigation.**

In May 2023, Whinstone sued Rhodium 30MW, Rhodium JV, Air HPC, and Jordan HPC in the 20th District Court of Milam County, Texas seeking declaratory relief and including claims



for breach of contract regarding the December Hosting Agreements. The court ordered arbitration. The arbitration was ongoing when this bankruptcy case was filed.

Whinstone issued the 2024 Termination Notice on April 22, 2024, clarifying that to the extent the original hosting agreements and colocation agreements were still in effect and not superseded, Whinstone terminated those agreements, as well, due to existing, uncured defaults such as payment defaults, breaches of representations and warranties, and persistent violations of Data Center Rules and applicable law [Doc. 207-15].

## Legal Standard

Section 365 of the Bankruptcy Code only permits the assumption of contracts in existence at the commencement of the bankruptcy proceeding. *See* 3 Collier on Bankruptcy P 365.02 (16th 2024). Contracts terminated prior to bankruptcy cannot be assumed or rejected in bankruptcy because there is nothing left to assume or reject. *See Endeavour GP, LLC v. Endeavour Highrise, L.P. (In re Endeavour Highrise, L.P.)*, 432 B.R. 583, 658 (Bankr. S.D. Tex. 2010) (“Thus, the Contracts were terminated prior to the filing of the [d]ebtor’s bankruptcy and could not be assumed or rejected in bankruptcy.”); *see also In re C.M. Turtur Invest., Inc.*, 93 B.R. 526, 535 (Bankr. S.D. Tex. 1988) (“The contract, having been terminated, cannot be executory”).

So, if a contract is properly terminated under applicable state law before the bankruptcy filing, Section 365 does not apply. 3 Collier on Bankruptcy ¶ 365.02 (16th ed. 2024). “Breach of [a] contract occurs when a party fails to perform a duty required by the agreement.” *In re Texans CUSO Ins. Group, LLC*, 426 B.R. 194, 205 (Bankr. N.D. Tex. 2010).

The debtor, “as the moving party, bears the ultimate burden of production and persuasion that the [contract] is subject to assumption and that all requirements for assumption have been met.” *In re Vitanza*, No. 98-19611DWS, 1998 WL 808629, at \*14 (Bankr. E.D. Pa. Nov. 13, 1998) (citing *In re Rachels Indus., Inc.*, 109 B.R. 797, 802 (Bankr. W.D. Tenn. 1990)). The debtor must thus show that the contract was not terminated pre-petition. *Id.* The objecting party bears the initial burden of showing defaults under the contract. *Id.*

Summary judgment is required if the movant establishes that there is no genuine dispute of material fact, and the law entitles it to judgment. FED. R. CIV. P. 56(c). Disputes about material facts are “genuine” if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A party moving for summary judgment “must ‘demonstrate the absence of a genuine issue of material fact,’ but need

not negate the elements of the nonmovant's case.” *Little v. Liquid Air HPC Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986)). If the moving party meets this burden, Rule 56(c) requires the responding party to show by competent summary judgment evidence that specific facts exist over which there is a genuine issue for trial. *Id.*

## Argument

To obtain summary judgment, the Debtors must prove: (a) that no genuine issue of material fact exists as to whether Debtors defaulted under the various contracts, and (b) that no reasonable person could find that the contracts were terminated pre-petition. *See Vitanza*, 1998 WL 808629, at \*14; *In re Deep Marine Holdings, Inc.*, No. 09-39313, 2011 WL 846139, at \*1 (Bankr. S.D. Tex. Mar. 7, 2011). The Motion establishes neither.

**A. This Court must first decide which contracts controlled the parties’ relationship.**

The Debtors ask this Court to rule (1) that they did not breach any of the 25 contracts with Whinstone, and (2) that Whinstone did not terminate the contracts pre-petition. But the Debtors sidestep the threshold issue: which contracts controlled the parties’ relationship at the time?

The Debtors argue that all 25 contracts with Whinstone controlled [Doc. 7 at 21–23]. So the Debtors must first show that each of these contracts are “subject to assumption and that all requirements for assumption have been met.” *Vitanza*, 1998 WL 808629, at \*14. But by asking this Court to rule that Whinstone did not validly terminate *any* of these contracts [Doc. 272 at 39], the Motion puts the cart before the horse. The threshold issue is: were all 25 contracts then in effect to be terminated? Whinstone has argued in its summary judgment motion that, based on contract language therein, the Rhodium JV December Hosting Agreement superseded the 5MW agreements [Doc. 208]. That’s a threshold issue the Motion here fails to address.<sup>2</sup>

However, Debtors’ Motion attacks the validity of Whinstone’s termination of the 5MW Agreements, the 30MW Agreement, and the Jordan Agreement, without first establishing whether these contracts were even in effect [Doc. 272 at 26–39]. In short, the Motion fails to establish a factual predicate for the relief sought. On this basis alone, the Motion must be denied.

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<sup>2</sup> Whinstone does not move for summary judgment on the issue of supersession/novation of the Rhodium 30MW or Jordan contracts by the December Hosting Agreements. But that issue is also implicated by Debtors’ Motion.

**B. The Motion fails to establish the Debtors' payment obligations.**

The central proposition in the Motion is that the Debtors' payment obligation to Whinstone consisted of a percentage of *only* whatever profits they decided to distribute from their operating companies to Rhodium JV and Air HPC [Doc. 272 at 20]. The December Hosting Agreement doesn't say that.

1. *Debtors' interpretation of the December Hosting Agreements is inconsistent.*

Debtors' argument myopically relies on two parts of the December Hosting Agreements—section 6.1 and Annex 2—while ignoring other contract language. The argument is thus: the two agreements define “Customer” as being Rhodium JV and Air HPC, respectively [Doc. 207-3 at 2; Doc. 207-4 at 2]. Section 6.1 of the agreements provides that Rhodium JV and Air HPC must pay to Whinstone this “Hosting Share Payment”: “An amount equal to approximately [12.5% or 50%] of customer EBITDA measured over a calendar-year basis [Doc. 207-3 at § 6.1; Doc. 207-4 at § 6.1]. The precise “[12.5% or 50%] Rev Share Payment” which approximated customer EBITDA is defined in Annex 2.” [*Id.*]. Debtors cite language in Annex 2 describing how the “Customer” should calculate its net income, make certain tax adjustments, and make deductions to arrive at the payment due Whinstone [Doc. 207-3 at Annex 2; Doc. 207-4 at Annex 2]. All this, the Debtors argue, shows that Rhodium JV and Air HPC owe 12.5% and 50%, respectively, of their profits, “as calculated using [their] financials and the specific steps defined in Annex 2” [Doc. 272 at 22, 23].

But that is not how a contract is interpreted. Rather: “In interpreting a contract, [courts] consider the entire agreement and, to the extent possible, resolve any conflicts by harmonizing the agreement's provisions, rather than by applying arbitrary or mechanical default rules.” *Occidental Permian, Ltd. v. Citation 2002 Inv. LLC*, 689 S.W.3d 899, 904–05 (Tex. 2024) (cleaned up). “This harmonizing approach requires courts to ‘give effect to all the provisions of the contract so that

none will be rendered meaningless.” *Id.* No single provision taken alone is given controlling effect; rather, each must be considered in the context of the instrument as a whole. *Plains Expl. & Prod. Co. v. Torch Energy Advisors Inc.*, 473 S.W.3d 296, 305 (Tex. 2015).

So, what is the context of the December Hosting Agreements? The recitals in the December Hosting Agreements explain that the “Customer currently owns or desires to procure dedicated Bitcoin mining devices, and desires to install such devices in a facility at which Customer may manage and operate such devices remotely” [Doc. 207-3 at 2; Doc. 207-4 at 2]. In turn, Whinstone “is willing to provide such hosting services *to Customer*, subject to the terms and conditions set forth in this Agreement” [*Id.*]. To effectuate that goal, Whinstone agreed to provide space (“providing the *Customer* Area”) [Doc. 207-3 at § 3.2; Doc. 207-4 at § 3.2], services (hosting the “*Customer* Equipment” in the “*Customer* Area” and installing “Customer Equipment”) [*Id.*], and power (which was “to be made available to Customer”) [Doc. 207-3 at § 2.1; Doc. 207-4 at § 2.1]. In exchange, Rhodium JV and Air HPC agreed to pay for power used in the “*Customer* Area” and a defined percentage of “*customer* EBITDA” [*Id.*].

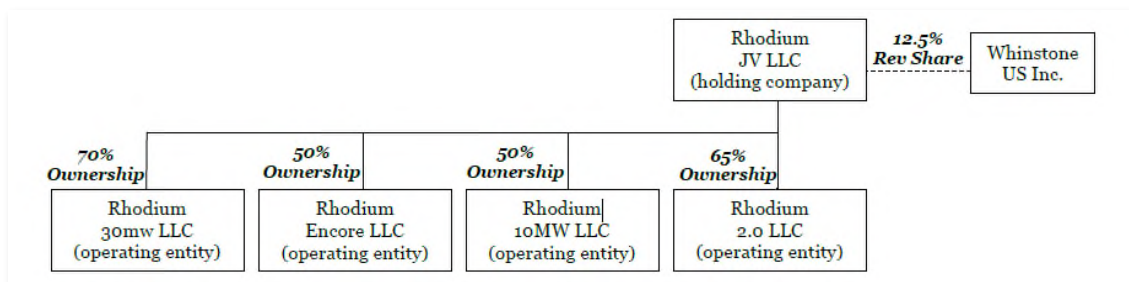
Whinstone performed its part of the bargain, providing space, power, and services to Rhodium JV and Air HPC. But Rhodium JV and Air HPC did not live up to their obligations.

Instead, Debtors played a game of “gotcha” by taking a narrow view of the definition of “Customer” when it comes to calculating their payment obligations, but an expansive reading when it comes to Whinstone’s obligations to the “Customer.” The inconsistency Debtors ask this Court to accept is not born of an attempt to harmonize the provisions of the contract. *Occidental Permian, Ltd.*, 689 S.W.3d at 904–05. It is a naked attempt to accept all the benefits of the December Hosting Agreements and avoid the burden. *In re Tex. Health Enterprises, Inc.*, 246 B.R. 832, 835 (Bankr. E.D. Tex. 2000) (stating that “a trustee can only assume an executory contract by accepting the burdens of that contract as well as its benefits”).

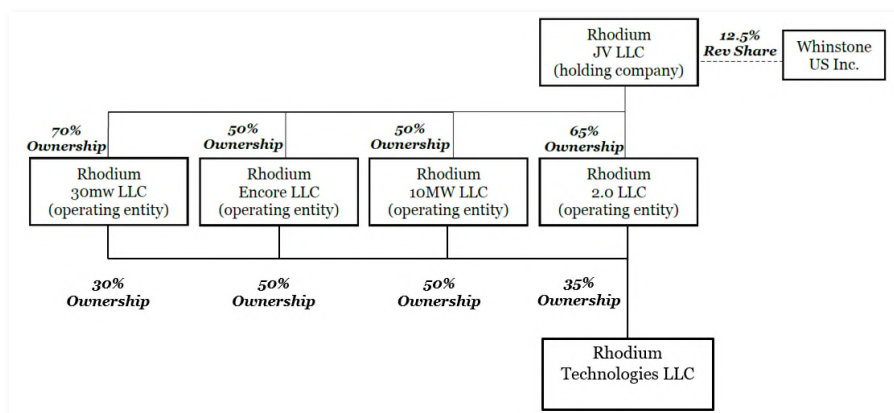
2. *Debtors' interpretation of the December Hosting Agreement makes Rhodium JV's and Air HPC's consideration illusory.*

Debtors try to convince this Court that Whinstone could not reasonably expect to receive a percentage of profits from the entities operating at the Rockdale facility because Rhodium JV and Air HPC “do[] not own a 100% interest in those entities” [Doc. 272 at 24, 25]. But, in attempting to explain why that would be the case, Debtors expose precisely why Whinstone *must* be entitled to profits from the Bitcoin mining operations—regardless of which “Rhodium” entity actually mined the Bitcoin.

The Motion has a misleading, incomplete chart to explain their structure and the flow of profits:



[Doc. 272 at 24]. The chart, Debtors argue, shows that Rhodium JV's portion of the Bitcoin mining profit, rather than all profit, should be “the starting block for the . . . Rev Share Payment.” The facial plausibility of this argument disappears once it is understood who owns the unaccounted-for 30-50% of the “operating entities” listed. Rather than being some “outside investors” as Debtors claim [Doc. 272 at 8, 17], debtor Rhodium Technologies (the parent company of Rhodium JV) holds the other ownership interest percentages.



Ex. 2-B at 345:13–346:11; Ex. 2-E at 98:3–99:9]. Simply put, the profit that Rhodium JV and Air HPC refuse to recognize on their books is merely diverted around Whinstone so that it stays within the Imperium enterprise.

The invitation for mischief—which Debtors already partially accepted—is clear. If Debtors’ contract interpretation were correct, they could simply maximize Rhodium Technologies’ ownership percentages in the operating entities (thereby reducing Rhodium JV and Air HPC’s ownership to virtually nothing) and reduce the payment obligations to Whinstone. In fact, according to Debtors’ worldview, there is nothing preventing Rhodium JV from divesting itself completely from the operating entities and having *all* profits flow to Rhodium Technologies. In that case, Whinstone would be obligated to provide the same space, services, and power without receiving a single cent from the Rev Share Payments.

In short, Debtors consider the “Rev Share Payment” discretionary. Discretionary consideration cannot support a contract. *Lewis v. Vitol, S.A.*, No. 01-05-00367-CV, 2006 WL 1767138, at \*6 (Tex. App.—Houston [1st Dist.] June 29, 2006, no pet.). So, in fact, Debtors ask this Court to interpret these December Hosting Agreements to render them unenforceable. Texas law does not permit that. Rather, courts interpret contracts with a view to enforceability and mutuality of obligation. *See Air HPC Am. Jet Charter, Inc. v. Lawhon*, 93 S.W.3d 441, 444 (Tex. App.—Houston [14th Dist.] 2002, pet. denied). Courts interpret contracts so that no provision is rendered meaningless or illusory. *See Nortech, Inc. v. Shawcor Canada Holdings Ltd.*, No. 01-16-00281-CV, 2017 WL 2806787, at \*5 (Tex. App.—Houston [1st Dist.] June 29, 2017, no pet.). Debtors’ proffered reading of the December Hosting Agreements is unreasonable as a matter of law. More importantly, it runs counter to the language of the December Hosting Agreements and thus—as explained below—what the parties intended.



3. *Debtors’ interpretation of the December Hosting Agreements ignores the commercial context in which the agreements were signed.*

Another glaring omission from the Motion is an explanation of the circumstances in which the December Hosting Agreements were executed. *See Houston Expl. Co. v. Wellington Underwriting Agencies, Ltd.*, 352 S.W.3d 462, 469 (Tex. 2011) (stating that a court may consider “the commercial or other setting in which the contract was negotiated and other objectively determinable factors that give a context to the transaction between the parties”).

At the time the December Hosting Agreements were executed, the only subsidiary ‘operating entities’ in existence were Rhodium 30MW, Rhodium 2.0, and Jordan HPC—with Rhodium JV owning 70% of Rhodium 30MW and 100% of Rhodium 2.0 and Air HPC owning 87.5%” [Doc. 271-1 at ¶ 7; Ex. 2-G at 12, 22]. That was the corporate structure that Debtors claim Whinstone “understood from the outset of the parties’ relationship” [Doc. 272 at 24]. Given that the “operating entities” were subsidiaries in which Rhodium JV and Air HPC have a controlling interest, the “Rev Share Payment” for Rhodium JV and Air HPC is the same whether calculated at the level of the holding company (Rhodium JV or Air HPC) or at the level of the operating entities (Rhodium 30MW or Jordan) because Rhodium JV and Air HPC report their financials on a consolidated basis (i.e., all subsidiary financial information is reported at 100%). As the Rhodium Bitcoin enterprise spun out new operating entity subsidiaries post-execution—Rhodium 10MW, and Rhodium Encore—the arrangement remained the same. Rhodium JV had a controlling interest in each of them [Doc. 271-1 at ¶ 7].

However, as Debtors began selling off additional ownership interests in the operating entities, they consolidated those interests in Rhodium Technologies [Ex. 2-B at 345:13–346:11]. Debtors used that minority interest to divert revenue around Rhodium JV and Air HPC and artificially deflate the Rev Share Payment to Whinstone.

4. *The Rev Share Payments entitle Whinstone to a percentage of all profits derived from Bitcoin mining at its facility.*

Debtors want to have their cake and eat it too. They want Whinstone to treat their operating subsidiaries like “Customers” when it suits the Rhodium enterprise but only want to pay Whinstone as if Rhodium JV and Air HPC are the only “Customers” under the contract. They want to accept all of the benefits of the December Hosting Agreements while arguing that the Rev Share Payment can—at their discretion—be rendered meaningless.

But the parties bargained for something else. Whinstone is entitled to 12.5% and 50% of the operation-wide adjusted EBITDA for all Bitcoin mining operations in Building C and Building B at its facility, respectively. Because Debtors admit that they did not pay those amounts, Debtors defaulted on their contractual obligations and Whinstone properly terminated them on that basis, amongst others.

**C. Debtors defaulted on their payment obligations.**

Debtors breached the December Hosting Agreements in several ways. They admit to a payment default once this Court determines that their contract interpretation is unreasonable. They breached representations and warranties. They operated unsafely. They became insolvent.<sup>3</sup> That is why they attack the form, not the substance, of Whinstone’s termination notices.

*1. Payment defaults*

Debtors admit that Rhodium JV and Air HPC did not pay Whinstone 12.5% and 50%, respectively, of the profits realized from Bitcoin mining operations in Building C and Building B at Whinstone’s facility [Doc. 272 at 15–16]. Because that is precisely what the December Hosting Agreements require, Debtors admit that Rhodium JV and Air HPC are in default under those contracts.

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<sup>3</sup> This response focuses on the payment defaults and breach of the equipment/Bitcoin ownership representations, but Whinstone does not waive the other defaults specified in its termination notices as grounds that its termination was valid.

But even if Debtors' interpretation of the Rev Share Payment provision prevails, Rhodium JV and Air HPC still breached their payment obligations. Annex 2 to the December Hosting Agreements sets forth the steps for calculating Whinstone's Rev Share Payment:

- Step 1: Customer shall prepare its books and records based on its internal accounting policies and procedures for the Measurement Period in order to calculate Net Income.
- Step 2: Customer shall make certain tax adjustments, as prescribed by and in accordance with US tax law, to its Net Income in order to accurately estimate its annual federal, state and local tax liability for the Measurement Period ("Cash Tax Estimate").
- Step 3: Customer make certain deductions from Net Income for any forecasted working capital and capital expenditure needs (excluding dividends) of the Customer for the future ("Retained Cash").
- Step 4: Customer shall deduct from Net Income any contractual debt obligations service obligations Customer pays prior to the Lump Sum Hosting Payment ("Debt Service")
- Step 5: The result of Customer adjusting Net Income in Step 1 for steps 2, 3 and 4, shall be defined as the preliminary cash available for payment ("Preliminary-Cash-Available-For-Payment").

[Doc. 207-3 at 28, Doc. 207-4 at 28]. Rhodium JV and Air HPC applied two deductions not contemplated in Annex 2's formula that reduced the Rev Share Payment tendered to Whinstone.

First, Rhodium JV and Air HPC subtracted from "Net Income" the amount of "Revenue, net - cryptocurrency mining" and added "Proceeds from sale of self-mined BTC." Ex. 1. Overall, the "Revenue, net - cryptocurrency mining" figure exceeded the amount of "Proceeds from sale of self-mined BTC," which effectively reduced the "Net Income" amount. *Id.* Second, Rhodium JV and Air HPC applied a percentage-based reduction termed the "Intermediary Company Available Cash Margin %" to Whinstone's Rev Share Payments. *Id.* Neither of these deductions are mentioned in Annex 2, but they had the effect of reducing Whinstone's Rev Share Payments by at least \$1,014,311. *Id.* So, even if Debtors are correct that the Rev Share Payment should be calculated based on Rhodium JV and Air HPC's "Net Income," Rhodium JV and Air HPC *still underpaid* Whinstone.

In sum, no matter how this Court ultimately decides the Rev Share Payment interpretation issue, this much is clear—Rhodium JV and Air HPC breached their payment obligations.

## 2. *Breach of representations and warranties*

Rhodium JV and Air HPC both represented that “the Customer Equipment is the sole property of the Customer” [Doc. 207-3 at § 10.1; Doc. 207-4 at § 10.1]. Rhodium JV and Air HPC represented that any Bitcoin “generated from the operation of the Customer Equipment, are the sole property of the Customer” [Doc. 207-3 at § 10.2; Doc. 207-4 at § 10.2]. There is no dispute the representations were false. Debtors have made clear on multiple occasions—including this Motion [*see* Doc. 272 at 10]—that they do not own the equipment used at Whinstone’s facility and do not own the Bitcoin generated from the mining operations [Doc. 271-1 at ¶ 7; Doc. 207-17 at 70:16-71:23, 72:20–73:6, 75:6-12, 76:12-18, 106:1-14].

## 3. *Insolvency*

Debtors have repeatedly stated that they treat a debt held by one “Rhodium” entity is treated as a debt held by all Rhodium entities [Ex. 2-A at 52:9–53:10, 134:12–135:2]. If “Rhodium” is unable to pay its debts as they come due, then all the “Rhodium” entities would properly be deemed insolvent [Doc. 207-10 at 120:1–21, 134:12–135:2; Ex. 2-B at 359:17–360:5, 361:15–362:1]. And that is precisely that occurred. The *entire* Rhodium enterprise was “unable to pay its financial obligations when due” and was in the process of making arrangements with creditors to defer those obligations<sup>4</sup> [Doc. 207-3 at § 17.1.2; Doc. 207-4 at § 17.1.2; Ex. 2-D; Ex. 2-E at 1446:3–24; Ex. 2-F at 1]. That is “insolvency” as defined by the December Hosting Agreements [Doc. 207-3 at § 17.1.2; Doc. 207-4 at § 17.1.2]

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<sup>4</sup> Debtors highlight Whinstone’s interrogatory response [Doc. 272 at 37] to argue that Whinstone cannot establish Debtors were insolvent at the time the April 2024 Notice was sent. Not only do Debtors ignore the evidence that the response directs them to, but that response was provided before depositions commenced and while Whinstone was awaiting more fulsome document production from Debtors.

**D. Whinstone properly terminated all possible contracts between the parties.**

Debtors' defaults under the December Hosting Agreements are well-documented.<sup>5</sup> So, it becomes Debtors' burden to show that these contracts (or others that could be in existence) were not terminated before the filing of their bankruptcy petitions. *In re Vitanza*, No. 98-19611DWS, 1998 WL 808629, at \*14 (Bankr. E.D. Pa. Nov. 13, 1998) (citing *In re Rachels Industries, Inc.*, 109 B.R. 797, 802 (Bankr. W.D. Tenn. 1990)).

*1. The notice in November 2023 terminated the December Hosting Agreements.*

Debtors' sole basis for arguing that the November 2023 Notice did not validly terminate the December Hosting Agreements is that Rhodium JV and Air HPC only had to pay a percentage of the profits flowing through those entities [Doc. 272 at 20–26]. As explained above, that interpretation is wrong—the contracts say otherwise. *See supra*.

Accordingly, Whinstone repeatedly notified Rhodium JV and Air HPC of their Rev Share Payment defaults. First, Whinstone provided notice of payment defaults on May 17, 2022 [Doc. 207-13]. Rhodium JV and Air HPC failed to cure the default [Doc. 207-14]. Then, Whinstone provided notice of payment defaults on April 28, 2023 [*Id.*]. Rhodium JV and Air HPC again failed to cure the default [Doc. 207-12; Doc. 272 at 20–26]. Finally, Whinstone provided a notice of termination on November 27, 2023, with immediate effect [Doc. 207-12].

Each of the notices of default and the notice of termination complied with the form of the notice set forth in section 19 of the December Hosting Agreements [Doc. 207-3 at § 19; Doc. 207-4 at § 19]. Whinstone provided far more than the contractually required three-day cure period set forth in section

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<sup>5</sup> Because Debtors have not sought summary judgment as to whether the December Hosting Agreements superseded all prior contracts, they cannot establish their entitlement to summary judgment on the validity *vel non* on Whinstone's pre-petition termination of those contracts.

17.1.1 [Doc. 207-3 at § 17.1.1; Doc. 207-4 at § 17.1.1]. The termination was valid and effective. Debtors are not entitled to summary judgment on this issue.

2. *The April 2024 Notice terminated any and all contracts between the parties.*

Because the November 2023 Notice validly terminated the December Hosting Agreements—which were the only contracts in effect between Whinstone and the Debtors at that time—Debtors’ arguments regarding the validity of the April 2024 Notice are mooted. But even if the Court reaches this issue, the April 2024 Notice also validly terminated the parties’ contracts.

a. The April 2024 Notice properly terminated the December Hosting Agreements.

No basis exists for disputing proper termination of the December Hosting Agreements.

First, Debtors argue that Whinstone was not entitled to any additional amounts under those contracts. As explained above, that is not the case. Rhodium JV and Air HPC diverted revenue and made improper deductions for purported “debt repayment” so as to reduce their payments to Whinstone. Whinstone’s termination on this basis was valid.

Second, Debtors insist that Whinstone failed to show that Rhodium JV or Air HPC were insolvent at the time of the notice. The fact that Debtors filed their bankruptcy petitions four months after the April 2024 Notice certainly shows that Whinstone was correct on this point. Despite Debtors’ efforts to resist discovery on this issue in the state court litigation and arbitration, it was patently clear at the time the notice was sent, Debtors made clear that the *entire* Rhodium enterprise was “unable to pay its financial obligations when due” and was in the process of making arrangements with creditors to defer those obligations<sup>6</sup> [Doc. 207-3 at § 17.1.2; Doc. 207-4 at § 17.1.2; Ex. 2-D; Ex. 2-E at 1446:3–24; Ex. 2-F at 1].

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<sup>6</sup> Debtors highlight Whinstone’s interrogatory response [Doc. 272 at 37] to argue that Whinstone cannot establish Debtors were insolvent at the time the April 2024 Notice was sent. Not only do Debtors ignore the evidence that the response directs them to, but that response was provided before depositions commenced and while Whinstone was awaiting more fulsome document production from Debtors.

Lastly, Debtors claim that Whinstone failed to follow contractual notice and cure provisions. Regarding payment defaults, Whinstone had provided ample notice and opportunity to cure [Doc. 207-13; Doc. 207-14]. Rhodium JV and Air HPC did not cure within the three-day period provided for in section 17.1.1, so Whinstone was able to terminate the December Hosting Agreements with immediate effect.

For other defaults—failure to own the Bitcoin mining equipment (§§ 9.3, 10.1, 12.2), failure to own the generated Bitcoin (§ 10.2), assignment and third-party beneficiaries (§§ 20 and 23.4)—those provisions are clear, single-purpose provisions. Debtors cannot plausibly claim, for example, that they did not understand Whinstone’s complaint when it cited, for example, the provision addressing Bitcoin ownership. Rhodium JV did not own the mined Bitcoin; there is no other explanation required.

Debtors are doubly mistaken when they insist that Whinstone was required to provide an opportunity for cure of the above-listed breaches. The breaches (other than payment defaults and violation of the Data Center Rules/applicable law) were simply not susceptible to a cure. Rhodium JV and Air HPC’s breaches of these provisions would require a wholesale reorganization of their business model. So, the December Hosting Agreement provides that Whinstone could terminate immediately rather than needlessly waiting for the ten-day cure period to expire [Doc. 207-3 at § 17.1.3; Doc. 207-4 at § 17.1.3].

- b. Debtors fail to show that the 5MW Agreements, the 30MW Agreement, and the Jordan Agreement were still in effect.

As Whinstone explains more fully in its motion for partial summary judgment, the December Hosting Agreements superseded all contracts previously in effect (i.e., the 5MW Agreements, the 30MW Agreement, and the Jordan Agreement) [Doc. 207]. But due to the likely presence of fact issues involved in the determination of whether the 30MW Agreement and Jordan Agreement were superseded, Whinstone limited its motion to the issue of the 5MW Agreements [Doc. 207 at 7 n.14].

But Debtors, for their part, have not moved for summary judgment on the issue of whether the December Hosting Agreements did or did not supersede any prior agreements.

Because the issue of whether Whinstone's April 2024 Notice validly terminated the 5MW Agreements, the 30MW Agreement, and the Jordan Agreement implicates whether these agreements were even in effect and needed to be terminated, Debtors have not established the factual predicate needed to reach the merits of this requested relief. But setting that issue aside, Debtors' complaints about Whinstone's termination of these contracts does not withstand scrutiny.

c. The April 2024 Notice validly terminated the 5MW Agreements.

Debtors attack the validity of Whinstone's termination of the 5MW Agreements on the basis that: "(1) the only breaches of contract it alleges are based on the actions of a non-party and (2) the Notice did not comply with mandatory contractual notice and cure provisions" [Doc. 272 at 27].

First, Debtors claim that Whinstone's termination was based on actions of a non-party is risible. Debtors know that the inclusion of "Rhodium 30MW" rather than "Rhodium JV" was a simple typo. Debtors know—and Whinstone knows—that Rhodium 30MW was not a party to that agreement. This transparent "gotcha" ploy does not change the fact that preceding the April 2024 Notice was years of correspondence complaining about the conduct implicated by Whinstone's reference to sections 2.1.4 (compliance with Data Center Rules), 3.6 (payment defaults), and 16.3 (compliance with applicable law) [Doc. 207-13; Doc. 207-14]. This minor typo "deviation" from the contractual notice requirements did not meaningfully impair HPC Rhodium JV's ability to understand the grounds for termination. *See S. Tex. Elec. Co-op. v. Dresser-Rand Co., Inc.*, 575 F.3d 504, 509 (5th Cir. 2009) (holding that a notice was effective despite "deviations from the written notice requirement" that "did not impair HPC the purpose of that requirement"); *see also James Constr. Group, LLC v. Westlake Chem. Corp.*, 650 S.W.3d 392, 406 (Tex. 2022). Debtors cannot play dumb about these issues at this stage of the parties' relationship.



Second, Debtors argue that Whinstone did not provide the contractually required cure period similarly ignores the correspondence (including notices of default) that preceded the April 2024 Notice [Doc. 207-13; Doc. 207-14]. Rhodium JV had more than 30 days to cure its defaults; it had years.

d. The April 2024 Notice validly terminated the 30MW Agreement.

Debtors resist the termination of the 30MW Agreement on nearly identical grounds as they use against the termination of the 5MW Agreements [Doc. 271 at 32–34]. This attempt similarly fails.

Rhodium 30MW (or parent Rhodium JV) was copied on all correspondence preceding the April 2024 Notice [Doc. 207-13; Doc. 207-14]. It knew of the defaults Whinstone identified and had ample time to cure. It did not and cannot now claim surprise or confusion about the basis for Whinstone’s termination.

e. The April 2024 Notice validly terminated the Jordan HPC Agreement.

Debtors attack the termination of the Jordan Agreement on similar grounds: they again feign surprise about the basis for Whinstone’s termination, despite voluminous correspondence the parties exchanged [Doc. 272 at 34–35; Doc. 207-13; Doc. 207-14]. Thus, they again raise issue with an obvious typo identifying Rhodium 30MW as the insolvent entity [Doc. 272 at 34–35]. Debtors could surely surmise from the context of the notice that Whinstone was referring to Jordan HPC’s insolvency. But, in any event, Debtors have dispelled any notion that there was a meaningful distinction between the entities for purposes of insolvency. On multiple occasions they have explained that a debt held by one “Rhodium” entity is treated as a debt held by all Rhodium entities [Ex. 2-A at 52:9–53:10, 134:12–135:2]. So, if “Rhodium” is unable to pay its debts as they come due, then all the “Rhodium” entities would properly be deemed insolvent [Doc. 207-10 at 120:1–21, 134:12–135:2; Ex. 2-B at 359:17–360:5, 361:15–362:1].

### **Relief Requested**

Whinstone asks this Court to deny the Motion [Doc. 272].

Respectfully submitted:

/s/ Mark C. Moore

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COUNSEL TO WHINSTONE US INC.

### **Certificate of Service**

I certify that I caused this document to be filed on October 30, 2024, using the Court's CM/ECF System which caused it to be served upon those parties registered in the system to receive such service and pursuant to Local Rule 9013-1(d).

/s/ Mark C. Moore

Mark C. Moore

# EXHIBIT 1

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

	§	
In re:	§	
	§	No. 24-90448-ARP
RHODIUM ENCORE LLC, et al., <sup>1</sup>	§	
	§	Chapter 11
Debtor.	§	
	§	

**Declaration of Jeffrey G. Matthews in Support of Whinstone US Inc.'s  
Response in Opposition to Debtors' Motion for Partial Summary  
Judgment**

I, Jeffrey G. Matthews, pursuant to section 1746 of title 28 of the United States Code, hereby declare under penalty of perjury that the following is true to the best of my knowledge, information, and belief:

1. I am a retained expert for Whinstone US Inc., which has objected to *Debtors' Motion to Assume Certain Executory Contracts with Whinstone US, Inc.* [Doc. 7]. In my capacity as a retained expert, I have analyzed issues concerning the alleged breach of the "December 2020 Hosting Agreements": an agreement between Whinstone and Rhodium JV LLC, and an agreement between Whinstone and Air HPC LLC.

---

<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.

2. Attached to this declaration are true and correct PDF excerpts of native excel files provided to me by Whinstone that were produced by Debtors in connection with this contested matter:

**Exhibit 1-A:** Rhodium 2021 Operating Company Calculation of Available Cash After Tax (for 12-month period ending December 31, 2021) (produced with the bates label Rhodium RHOD-BK-00040050)

**Exhibit 1-B:** Rhodium 2022 Operating Company Calculation of Available Cash After Tax (for 12-month period ending December 31, 2022) (produced with the bates label RHOD-BK-00037953)

**Exhibit 1-C:** Rhodium 2023 Operating Company Calculation of Available Cash After Tax (for 12-month period ending December 31, 2023) (produced with the bates label RHHOD-BK-00065617)

**Exhibit 1-D:** Rhodium 2024 Operating Company Calculation of Available Cash After Tax (for 6-month period ending June 30, 2024) (produced with the bates label RHOD-BK-00040531)

3. In connection with my work in this contested matter, I have analyzed Rhodium JV's and Air's computation of the "Rev Share Payment" set forth in Section 6.1 and Annex 2 of the December 2020 Hosting Agreements

4. I recalculated the Hosting Share Payment calculation applying the formula and mechanical steps outlined in as follows<sup>2</sup>:

- a. I calculated the "EBITDA" using the same methodology that Rhodium Enterprises Inc. uses in its Form S-1 filed on January 18, 2022, and worksheets to determine the "Operating Company Available Cash"<sup>3</sup>;

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<sup>2</sup> I understand the parties have a dispute as to the accuracy of the financial statements Rhodium produces. To date, Rhodium has not provided sufficient information for me to verify the underlying financial statements used in this computation. Thus, I have used what Rhodium presents as the financial position of the entities. Should discrepancies become known at a later date, I will revise the computation accordingly.

<sup>3</sup> Rhodium Enterprises Inc., Form S-1 ("2022 S-1"), filed on January 18, 2022, located at [https://www.sec.gov/Archives/edgar/data/1874985/000121390022002442/fs12022a6\\_rhodium.htm](https://www.sec.gov/Archives/edgar/data/1874985/000121390022002442/fs12022a6_rhodium.htm); Exs. 1-A, 1-B, 1-C, 1-D.

- b. I applied Rhodium's estimated tax rate to "Income (Loss) Before Income Taxes" for the years 2021 through 2023 and the first and second quarters of 2024 provided by Rhodium<sup>4</sup>;
- c. CADSD stands for cash available for debt service and distributions. I was initially asked to assume this amount may represent the capital raised by investors. Although I question some of the amounts contained therein, consistent with Step 4 in Annex 2, I assumed the amounts associated with this deduction we paid debt service obligations. Therefore, to calculate the "Operating Company Available Cash after CADSD Hurdle", I applied the calculation according to Section 6.1 of the Rhodium Operating Agreements<sup>5</sup>; and
- d. Finally, I apply "Whinstone Current Profit Share %" according to the December 2020 Hosting Agreements to the Operating Company Available Cash after CADSD Hurdle to determine the Whinstone's Hosting Share Payment.

5. I was unable to identify any support or provisions in the December 2020 Hosting Agreements or any prior contracts between Whinstone and any Rhodium entity for certain deductions Rhodium JV and Air made. As such, I did not adopt Rhodium JV and Air's deductions to "Cash Available for Payment" for the following:

- a. Reducing Net income by replacing "Revenue, net - cryptocurrency mining" with "Proceeds from sale of self-mined BTC"<sup>6</sup>;

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<sup>4</sup> Exs. 1-A, 1-B, 1-C, 1-D.

<sup>5</sup> Doc. 207-3 at § 6.1, Annex 2; Doc. 207-4 at § 6.1, Annex 2.

<sup>6</sup> Exs. 1-A, 1-B, 1-C, 1-D.



- b. Reduce payments by an “Intermediary Company Available Cash Margin %.”<sup>7</sup>

6. Applying Rhodium’s methodology, which I find flawed for the aforementioned reasons, based on the information I had as of October 14, 2024, Whinstone Rev Share Payments for 2021 through 2023 and the first and second quarters of 2024 amount to \$15,130,415, compared to \$14,116,104 that Rhodium paid, resulting in an underpayment of no less than \$1,014,311.

  
Jeff Matthews

10-30-2024  
Date

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<sup>7</sup> Exs. 1-A, 1-B, 1-C, 1-D.

# EXHIBIT 1-A



± 2021 Operating Company Calculation of Available Cash After Tax						
	Rhodium 30MW LLC For the Twelve Months Ended Dec 31, 2021	Jordan HPC LLC For the Twelve Months Ended Dec 31, 2021	Rhodium 2.0 LLC For the Twelve Months Ended Dec 31, 2021	Rhodium Encore LLC For the Twelve Months Ended Dec 31, 2021	Rhodium 10MW LLC For the Twelve Months Ended Dec 31, 2021	
<b>Revenue:</b>						
Revenue, net - cryptocurrency mining	\$ 62,192,958	\$ 43,480,308	\$ 3,970,021	\$ 23,799,115	\$ 4,187,095	
<b>Total Revenue:</b>	<u>\$ 62,192,958</u>	<u>\$ 43,480,308</u>	<u>\$ 3,970,021</u>	<u>\$ 23,799,115</u>	<u>\$ 4,187,095</u>	
<b>Costs and expenses:</b>						
Cost of revenues	\$ (4,713,451)	\$ (3,244,695)	\$ (429,797)	\$ (1,667,254)	\$ (315,879)	
Selling, general and administrative	\$ (3,651,295)	\$ (1,857,410)	\$ (2,970,648)	\$ (1,920,324)	\$ (816,478)	
Depreciation and amortization	\$ (7,938,956)	\$ (3,466,506)	\$ (749,968)	\$ (3,450,262)	\$ (565,832)	
Impairment of cryptocurrencies	\$ (6,432,913)	\$ (3,900,510)	\$ (7,587,156)	\$ (4,924,606)	\$ (3,049,026)	
<b>Total costs and expenses</b>	<u>(22,736,615)</u>	<u>(12,469,121)</u>	<u>(11,737,570)</u>	<u>(11,962,446)</u>	<u>(4,747,215)</u>	
<b>Operating profit</b>	<u>\$ 39,456,343</u>	<u>\$ 31,011,187</u>	<u>\$ (7,767,549)</u>	<u>\$ 11,836,669</u>	<u>\$ (560,120)</u>	
<b>Other income (expense)</b>						
Realized gain/loss on cryptocurrencies	\$ 3,204,881	\$ 2,300,654	\$ 9,302,736	\$ 6,073,958	\$ 2,022,525	
Interest expense	\$ (474,559)	\$ (35,288)	\$ (60,411)	\$ (42,023)	\$ --	
SAFE expense	\$ --	\$ --	\$ --	\$ --	\$ --	
Other income (expense)	\$ 3,677,063	\$ 951,891	\$ 12	\$ 468,036	\$ 180,703	
<b>Total other income (expense)</b>	<u>6,407,385</u>	<u>3,217,257</u>	<u>9,242,337</u>	<u>6,499,971</u>	<u>2,203,228</u>	
<b>Income (Loss) Before Income Taxes</b>	<u>45,863,728</u>	<u>34,228,444</u>	<u>1,474,788</u>	<u>18,336,640</u>	<u>1,643,108</u>	
<b>Income Tax Expense</b>	<u>\$ (10,259,176)</u>	<u>\$ (7,645,455)</u>	<u>\$ (722,258)</u>	<u>\$ (4,237,951)</u>	<u>\$ --</u>	
<b>Net Income</b>	<u>\$ 35,604,552</u>	<u>\$ 26,582,989</u>	<u>\$ 752,530</u>	<u>\$ 14,098,689</u>	<u>\$ 1,643,108</u>	
<b>Adjustments to reconcile Net Income to Available Cash After Tax:</b>						
Net Income	\$ 35,604,552	\$ 26,582,989	\$ 752,530	\$ 14,098,689	\$ 1,643,108	
Revenue, net - cryptocurrency mining	\$ (62,192,958)	\$ (43,480,308)	\$ (3,970,021)	\$ (23,799,115)	\$ (4,187,095)	
Impairment of cryptocurrencies	\$ 6,432,913	\$ 3,900,510	\$ 7,587,156	\$ 4,924,606	\$ 3,049,026	
Realized gain/loss on cryptocurrencies	\$ (3,204,881)	\$ (2,300,654)	\$ (9,302,736)	\$ (6,073,958)	\$ (2,022,525)	
Income Tax Expense	\$ 10,259,176	\$ 7,645,455	\$ 722,258	\$ 4,237,951	\$ --	
Depreciation and amortization	\$ 7,938,956	\$ 3,466,506	\$ 749,968	\$ 3,450,262	\$ 565,832	
Proceeds from sale of self-mined BTC	\$ 58,931,140	\$ 42,684,409	\$ 3,512,306	\$ 21,137,840	\$ 3,446,812	
<b>Available Cash (Loss) Before Tax</b>	<u>\$ 53,768,898</u>	<u>\$ 38,498,907</u>	<u>\$ 51,461</u>	<u>\$ 17,976,275</u>	<u>\$ 2,495,158</u>	
Depreciation and amortization	\$ (7,938,956)	\$ (3,466,506)	\$ (749,968)	\$ (3,450,262)	\$ (565,832)	
<b>Taxable Income</b>	<u>\$ 45,829,942</u>	<u>\$ 35,032,401</u>	<u>\$ (698,507)</u>	<u>\$ 14,526,013</u>	<u>\$ 1,929,326</u>	
Income Tax Rate	21.0%	21.0%	21.0%	21.0%	21.0%	
Income Tax Expense	\$ (9,624,288)	\$ (7,356,804)	\$ --	\$ (3,050,463)	\$ (405,158)	
<b>Available Cash (Loss) After Tax</b>	<u>\$ 44,144,610</u>	<u>\$ 31,142,103</u>	<u>\$ 51,461</u>	<u>\$ 14,925,812</u>	<u>\$ 2,089,999</u>	

± 2021 WUS Profit Share Calculation						
Current Profit Share	Rhodium 30MW LLC	Jordan HPC LLC	Rhodium 2.0 LLC	Rhodium Encore LLC	Rhodium 10MW LLC	
<b>Operating Company Available Cash</b>	<b>\$44,144,610</b>	<b>\$31,142,103</b>	<b>\$51,461</b>	<b>\$14,925,812</b>	<b>\$2,089,999</b>	
Intermediary Company CADSD Hurdle <sup>1</sup>	\$29,171,931	\$15,000,000	\$56,250,000	\$41,250,000	\$16,880,000	
Intermediary Company CADSD Preference % <sup>2</sup>	0%	20%	20%	20%	20%	
Intermediary Company Ownership in OpCo %	70.8%	50.0%	65.0%	50.0%	50.0%	
<b>Intermediary Company Dividend</b>	<b>\$10,604,959</b>	<b>\$14,299,472</b>	<b>\$10,292</b>	<b>\$2,985,162</b>	<b>\$418,000</b>	
Intermediary Company Available Cash Margin % <sup>3</sup>	95.8%	95.8%	95.8%	95.8%	95.8%	
Intermediary Company Available Cash	\$10,159,551	\$13,698,894	\$9,860	\$2,859,786	\$400,444	
Whinstone Current Profit Share %	12.5%	50.0%	12.5%	12.5%	12.5%	
<b>Whinstone Current Synthetic Dividend</b>	<b>\$1,269,944</b>	<b>\$6,849,447</b>	<b>\$1,232</b>	<b>\$357,473</b>	<b>\$50,055</b>	<b>\$8,528,151.97</b>

**Footnotes:**

- (1) CADSD Hurdle - Contractually, no distributions can be made to the Intermediary companies (Rhodium JV LLC and Air HPC LLC) until the CADSD hurdle is exceeded. CADSD stands for cash available for debt service and distributions
- (2) CADSD Preference - Prior to the CADSD hurdle being met, the percentage of Operating Company Available Cash that can be paid out to the Intermediary Company
- (3) Intermediary Company Available Cash Margin - 21% rate less 80% deduction for dividends received deduction (DRD)

RHOD-BK-00040050

# EXHIBIT 1-B

+ 2022 Operating Company Calculation of Available Cash After Tax									
	Rhodium 30MW LLC For the Twelve Months Ended December 31, 2022		Jordan HPC LLC For the Twelve Months Ended December 31, 2022		Rhodium 2.0 LLC For the Twelve Months Ended December 31, 2022		Rhodium Encore LLC For the Twelve Months Ended December 31, 2022		Rhodium 10MW LLC For the Twelve Months Ended December 31, 2022
<b>Revenue:</b>									
Revenue, net - cryptocurrency mining	\$	22,180,293	\$	19,194,705	\$	24,060,765	\$	22,072,475	\$ 9,098,820
Riot energy sales owed to Rhodium - Open <sup>4</sup>	\$	--	\$	--	\$	--	\$	--	\$ --
<b>Total Revenue:</b>	\$	22,180,293	\$	19,194,705	\$	24,060,765	\$	22,072,475	\$ 9,098,820
<b>Costs and expenses:</b>									
Cost of revenues	\$	(4,145,804)	\$	(4,036,758)	\$	(4,411,718)	\$	(4,070,782)	\$ (1,656,932)
Selling, general and administrative	\$	(5,619,686)	\$	(5,222,292)	\$	(6,514,174)	\$	(5,192,502)	\$ (1,866,452)
Depreciation and amortization	\$	(6,051,186)	\$	(4,492,917)	\$	(6,719,462)	\$	(7,145,907)	\$ (2,508,162)
Impairment of PPE	\$	(5,059)	\$	(2,957,266)	\$	(18,186,630)	\$	(9,849,992)	\$ (2,359,599)
Impairment of cryptocurrencies	\$	(4,625,923)	\$	(3,722,538)	\$	(2,293,444)	\$	(4,389,176)	\$ (1,343,619)
<b>Total costs and expenses</b>		(20,447,659)		(20,431,770)		(38,125,428)		(30,648,359)	(9,734,764)
<b>Operating profit</b>	\$	1,732,634	\$	(1,237,066)	\$	(14,064,663)	\$	(8,575,884)	\$ (635,943)
<b>Other income (expense)</b>									
Realized gain/loss on cryptocurrencies	\$	1,510,444	\$	1,248,674	\$	1,207,395	\$	1,503,866	\$ 538,900
Interest expense	\$	(1,632)	\$	(1,360)	\$	(63,371)	\$	(47,278)	\$ (544)
SAFE expense	\$	--	\$	--	\$	--	\$	--	\$ --
Other income (expense)	\$	8,215	\$	6,847	\$	(3,927,925)	\$	6,846	\$ 2,737
<b>Total other income (expense)</b>		1,517,027		1,254,162		(2,783,901)		1,463,435	\$ 541,093
<b>Income (Loss) Before Income Taxes</b>		3,249,661		17,096		(16,848,564)		(7,112,450)	\$ (94,850)
<b>Benefit from (provision for) income taxes</b>	\$	942,402	\$	4,958	\$	(4,886,084)	\$	(2,062,610)	\$ (27,507)
<b>Net Income (Loss)</b>	\$	4,192,063	\$	22,054	\$	(21,734,648)	\$	(9,175,060)	\$ (122,357)
<b>Adjustments to reconcile Net Income to Available Cash After Tax:</b>									
Net Income	\$	4,192,063	\$	22,054	\$	(21,734,648)	\$	(9,175,060)	\$ (122,357)
Revenue, net - cryptocurrency mining	\$	(22,180,293)	\$	(19,194,705)	\$	(24,060,765)	\$	(22,072,475)	\$ (9,098,820)
Impairment of cryptocurrencies	\$	4,625,923	\$	3,722,538	\$	2,293,444	\$	4,389,176	\$ 1,343,619
Realized gain/loss on cryptocurrencies	\$	(1,510,444)	\$	(1,248,674)	\$	(1,207,395)	\$	(1,503,866)	\$ (538,900)
Income Tax Expense	\$	(942,402)	\$	(4,958)	\$	4,886,084	\$	2,062,610	\$ 27,507
Depreciation and amortization	\$	6,051,186	\$	4,492,917	\$	6,719,462	\$	7,145,907	\$ 2,508,162
Impairment of PPE	\$	5,059	\$	2,957,266	\$	18,186,630	\$	9,849,992	\$ 2,359,599
Proceeds from sale of self-mined BTC	\$	21,409,291	\$	18,568,847	\$	23,175,960	\$	21,378,688	\$ 8,807,535
<b>Available Cash (Loss) Before Tax</b>	\$	<b>11,650,383</b>	\$	<b>9,315,285</b>	\$	<b>8,258,772</b>	\$	<b>12,074,973</b>	\$ <b>5,286,344</b>
Depreciation and amortization	\$	(6,051,186)	\$	(4,492,917)	\$	(6,719,462)	\$	(7,145,907)	\$ (2,508,162)
<b>Taxable Income</b>	\$	<b>5,599,197</b>	\$	<b>4,822,368</b>	\$	<b>1,539,310</b>	\$	<b>4,929,066</b>	\$ <b>2,778,182</b>
Income Tax Rate		21.0%		21.0%		21.0%		21.0%	21.0%
Income Tax Expense	\$	(1,175,831)	\$	(1,012,697)	\$	(323,255)	\$	(1,035,104)	\$ (583,418)
<b>Available Cash (Loss) After Tax</b>	\$	<b>10,474,552</b>	\$	<b>8,302,588</b>	\$	<b>7,935,517</b>	\$	<b>11,039,869</b>	\$ <b>4,702,926</b>
+ 2022 WUS Profit Share Calculation									
Current Profit Share	Rhodium 30MW LLC		Jordan HPC LLC		Rhodium 2.0 LLC		Rhodium Encore LLC		Rhodium 10MW LLC
<b>Operating Company Available Cash</b>	<b>\$10,474,552</b>		<b>\$8,302,588</b>		<b>\$7,935,517</b>		<b>\$11,039,869</b>		<b>\$4,702,926</b>
Intermediary Company CADSD Current Hurdle <sup>1</sup>	\$0		\$0		\$56,198,539		\$26,324,188		\$14,790,001
Intermediary Company CADSD Preference % <sup>2</sup>	0%		20%		20%		20%		20%
Intermediary Company Ownership in OpCo %	70.8%		50.0%		65.0%		50.0%		50.0%
<b>Intermediary Company Dividend</b>	<b>\$7,418,993</b>		<b>\$5,811,812</b>		<b>\$1,587,103</b>		<b>\$2,207,974</b>		<b>\$940,585</b>
Intermediary Company Available Cash Margin % <sup>3</sup>	95.8%		95.8%		95.8%		95.8%		95.8%
Intermediary Company Available Cash	\$7,107,395		\$5,567,716		\$1,520,445		\$2,115,239		\$901,081
Whinstone Current Profit Share %	12.5%		50.0%		12.5%		12.5%		12.5%
<b>Whinstone Current Synthetic Dividend</b>	<b>\$888,424</b>		<b>\$2,783,858</b>		<b>\$190,056</b>		<b>\$264,405</b>		<b>\$112,635</b>
<b>Total Profit Share without Energy Credits</b>	<b>Less Progress Invoice</b>		<b>Less Remaining Energy Credits (to be confirmed with Ryan Werner)</b>				<b>Tentative Amount Owed (owed to RHDM)</b>		
<b>\$</b>	<b>4,239,378</b>	<b>\$</b>	<b>(1,392,464)</b>	<b>\$</b>			<b>(3,250,171)</b>	<b>\$</b>	<b>(403,257)</b>

**Footnotes:**

(1) CADSD Current Hurdle - Contractually, no distributions can be made to the Intermediary companies (Rhodium JV LLC and Air HPC LLC) until a pre-determined CADSD hurdle is exceeded. CADSD stands for cash available for debt service and distributions. The CADSD Cu

(2) CADSD Preference - Prior to the CADSD hurdle being met, the percentage of Operating Company Available Cash that can be paid out to the Intermediary Company

(3) Intermediary Company Available Cash Margin - 21% rate less 80% deduction for dividends received deduction (DRD)

(4) Rhodium calculated total energy sales for Q3-22 to be \$4,642,635 and invoiced a progress payment of \$1,392,464. The total energy sales need to be confirmed by Riot. As of 1/18/23, this amount has not been confirmed.

# EXHIBIT 1-C

+ 2023 Operating Company Calculation of Available Cash After Tax										
	Rhodium 30MW LLC For the Twelve Months Ended December 31, 2023		Rhodium Jordan HPC LLC For the Twelve Months Ended December 31, 2023		Rhodium 2.0 LLC For the Twelve Months Ended December 31, 2023		Rhodium Encore LLC For the Twelve Months Ended December 31, 2023		Rhodium 10MW LLC For the Twelve Months Ended December 31, 2023	
Revenue:										
Revenue, net - cryptocurrency mining	\$	12,461,029	\$	11,718,315	\$	14,573,507	\$	13,331,385	\$	5,719,587
Riot energy sales owed to Rhodium - Open <sup>4</sup>	\$	--	\$	--	\$	--	\$	--	\$	--
Total Revenue:	\$	12,461,029	\$	11,718,315	\$	14,573,507	\$	13,331,385	\$	5,719,587
Costs and expenses:										
Cost of revenues	\$	(4,068,071)	\$	(3,656,022)	\$	(4,957,207)	\$	(4,285,177)	\$	(1,866,243)
Selling, general and administrative	\$	(2,629,354)	\$	(2,310,348)	\$	(3,060,619)	\$	(2,193,689)	\$	(890,172)
Depreciation and amortization	\$	(4,349,881)	\$	(4,139,226)	\$	(3,584,273)	\$	(3,144,658)	\$	(4,266,768)
Impairment of Equipment	\$	--	\$	--	\$	--	\$	--	\$	--
Impairment of cryptocurrencies	\$	(730,023)	\$	(625,258)	\$	(681,230)	\$	(722,673)	\$	(284,225)
Total costs and expenses		(11,777,329)		(10,730,854)		(12,283,328)		(10,346,196)		(7,307,408)
Operating profit	\$	683,700	\$	987,461	\$	2,290,179	\$	2,985,189	\$	(1,587,821)
Other income (expense)										
Realized gain/loss on cryptocurrencies	\$	794,764	\$	677,523	\$	866,882	\$	761,420	\$	324,924
Interest expense	\$	(6,712)	\$	(5,594)	\$	(70,831)	\$	(51,794)	\$	(2,237)
SAFE expense	\$	--	\$	--	\$	--	\$	--	\$	--
Other income (expense)	\$	(175,265)	\$	(146,068)	\$	(204,465)	\$	(143,173)	\$	(47,462)
Total other income (expense)		612,786		525,861		591,586		566,453		275,225
Income (Loss) Before Income Taxes		1,296,487		1,513,323		2,881,765		3,551,642		(1,312,596)
Benefit from (provision for) income taxes	\$	(375,981)	\$	(438,864)	\$	(835,712)	\$	(1,029,976)	\$	380,653
Net Income (Loss)	\$	920,506	\$	1,074,459	\$	2,046,053	\$	2,521,666	\$	(931,943)
Adjustments to reconcile Net Income to Available Cash After Tax:										
Net Income		920,506	\$	1,074,459	\$	2,046,053	\$	2,521,666	\$	(931,943)
Revenue, net - cryptocurrency mining	\$	(12,461,029)	\$	(11,718,315)	\$	(14,573,507)	\$	(13,331,385)	\$	(5,719,587)
Impairment of cryptocurrencies	\$	730,023	\$	625,258	\$	681,230	\$	722,673	\$	284,225
Realized gain/loss on cryptocurrencies	\$	(794,764)	\$	(677,523)	\$	(866,882)	\$	(761,420)	\$	(324,924)
Income Tax Expense	\$	375,981	\$	438,864	\$	835,712	\$	1,029,976	\$	(380,653)
Depreciation and amortization	\$	4,349,881	\$	4,139,226	\$	3,584,273	\$	3,144,658	\$	4,266,768
Impairment of Equipment	\$	--	\$	--	\$	--	\$	--	\$	--
Proceeds from sale of self-mined BTC	\$	12,487,768	\$	11,715,362	\$	14,741,496	\$	13,292,282	\$	5,695,821
Available Cash (Loss) Before Tax	\$	5,608,366	\$	5,597,330	\$	6,448,375	\$	6,618,450	\$	2,889,706
Depreciation and amortization	\$	(4,349,881)	\$	(4,139,226)	\$	(3,584,273)	\$	(3,144,658)	\$	(4,266,768)
Taxable Income	\$	1,258,484	\$	1,458,104	\$	2,864,102	\$	3,473,792	\$	(1,377,062)
Income Tax Rate		21.0%		21.0%		21.0%		21.0%		21.0%
Income Tax Expense	\$	(264,282)	\$	(306,202)	\$	(601,461)	\$	(729,496)	\$	--
Available Cash (Loss) After Tax	\$	5,344,084	\$	5,291,128	\$	5,846,913	\$	5,888,953	\$	2,889,706
+ 2023 WUS Profit Share Calculation										
Current Profit Share		Rhodium 30MW LLC		Jordan HPC LLC		Rhodium 2.0 LLC		Rhodium Encore LLC		Rhodium 10MW LLC
Operating Company Available Cash		\$5,344,084		\$5,291,128		\$5,846,913		\$5,888,953		\$2,889,706
Intermediary Company CADSD Current Hurdle <sup>1</sup>		\$0		\$0		\$45,159,805		\$15,293,024		\$10,089,102
Intermediary Company CADSD Preference % <sup>2</sup>		0%		20%		20%		20%		20%
Intermediary Company Ownership in OpCo %		70.8%		50.0%		65.0%		50.0%		50.0%
Intermediary Company Dividend		\$3,785,147		\$2,645,564		\$1,169,383		\$1,177,791		\$577,941
Intermediary Company Available Cash Margin % <sup>3</sup>		95.8%		95.8%		95.8%		95.8%		95.8%
Intermediary Company Available Cash		\$3,626,171		\$2,534,450		\$1,120,269		\$1,128,323		\$553,668
Whinstone Current Profit Share %		12.5%		50.0%		12.5%		12.5%		12.5%
Whinstone Current Synthetic Dividend		\$453,271		\$1,267,225		\$140,034		\$141,040		\$69,208
Total 2023 Profit Share without Energy Credits		Less Q1 2023 Profit Share Paid		Less Remaining Energy Credits Progress Payment (to be confirmed with Ryan Werner)				Tentative Amount Owed (owed to RHDm)		
\$	2,070,779	\$	(500,000)	\$	(4,642,635)	\$	(3,071,856)			

**Footnotes:**

- (1) CADSD Current Hurdle - Contractually, no distributions can be made to the Intermediary companies (Rhodium JV LLC and Air HPC LLC) until a pre-determined CADSD hurdle is exceeded. CADSD stands for cash available for debt service and distributions. The CADSD Curr
- (2) CADSD Preference - Prior to the CADSD hurdle being met, the percentage of Operating Company Available Cash that can be paid out to the Intermediary Company
- (3) Intermediary Company Available Cash Margin - 21% rate less 80% deduction for dividends received deduction (DRD)
- (4) Rhodium calculated total energy sales for Q3-22 to be \$4,642,635 and invoiced a progress payment of \$1,392,464. The total energy sales need to be confirmed by Riot. As of 1/18/23, this amount has not been confirmed.

# EXHIBIT 1-D

+ 2024 Operating Company Calculation of Available Cash After Tax										
	Rhodium 30MW LLC For the Six Months Ended June 30, 2024		Rhodium Jordan HPC LLC For the Six Months Ended June 30, 2024		Rhodium 2.0 LLC For the Six Months Ended June 30, 2024		Rhodium Encore LLC For the Six Months Ended June 30, 2024		Rhodium 10MW LLC For the Six Months Ended June 30, 2024	
Revenue:										
Revenue, net - cryptocurrency mining	\$	4,416,205	\$	6,175,811	\$	5,536,242	\$	4,677,378	\$	2,037,618
Riot energy sales owed to Rhodium - Open <sup>4</sup>	\$	--	\$	--	\$	--	\$	--	\$	--
Total Revenue:	\$	4,416,205	\$	6,175,811	\$	5,536,242	\$	4,677,378	\$	2,037,618
Costs and expenses:										
Cost of revenues	\$	(1,469,541)	\$	(1,850,105)	\$	(1,818,432)	\$	(1,471,301)	\$	(640,565)
Selling, general and administrative	\$	(1,828,240)	\$	(1,610,636)	\$	(2,131,100)	\$	(1,526,481)	\$	(617,778)
Depreciation and amortization	\$	(1,076,257)	\$	(1,706,396)	\$	(1,795,700)	\$	(1,500,986)	\$	(2,134,314)
Impairment of Equipment	\$	(3,756)	\$	(3,130)	\$	(6,990)	\$	(4,993)	\$	(1,997)
Unrealized gain/loss in cryptocurrencies	\$	2,896	\$	2,591	\$	3,805	\$	3,392	\$	1,926
Total costs and expenses		(4,374,898)		(5,167,676)		(5,748,417)		(4,500,369)		(3,392,728)
Operating profit	\$	41,307	\$	1,008,136	\$	(212,175)	\$	177,009	\$	(1,355,110)
Other income (expense)										
Realized gain/loss on cryptocurrencies	\$	100,053	\$	103,592	\$	95,649	\$	86,823	\$	32,034
Interest expense	\$	(7,072)	\$	(5,893)	\$	(39,664)	\$	(28,930)	\$	(2,357)
SAFE expense	\$	--	\$	--	\$	--	\$	--	\$	--
Other income (expense)	\$	(948)	\$	(3)	\$	0	\$	(0)	\$	0
Total other income (expense)		92,034		97,696		55,986		57,893		29,677
Income (Loss) Before Income Taxes		133,340		1,105,832		(156,189)		234,902		(1,325,433)
Benefit from (provision for) income taxes	\$	(38,669)	\$	(320,691)	\$	45,295	\$	(68,122)	\$	384,376
Net Income (Loss)	\$	94,672	\$	785,140	\$	(110,894)	\$	166,781	\$	(941,057)
Adjustments to reconcile Net Income to Available Cash After Tax:										
Net Income	\$	94,672	\$	785,140	\$	(110,894)	\$	166,781	\$	(941,057)
Revenue, net - cryptocurrency mining	\$	(4,416,205)	\$	(6,175,811)	\$	(5,536,242)	\$	(4,677,378)	\$	(2,037,618)
Unrealized gain/loss in cryptocurrencies	\$	(2,896)	\$	(2,591)	\$	(3,805)	\$	(3,392)	\$	(1,926)
Realized gain/loss on cryptocurrencies	\$	(100,053)	\$	(103,592)	\$	(95,649)	\$	(86,823)	\$	(32,034)
Income Tax Expense	\$	38,669	\$	320,691	\$	(45,295)	\$	68,122	\$	(384,376)
Depreciation and amortization	\$	1,076,257	\$	1,706,396	\$	1,795,700	\$	1,500,986	\$	2,134,314
Impairment of Equipment	\$	3,756	\$	3,130	\$	6,990	\$	4,993	\$	1,997
Proceeds from sale of self-mined BTC	\$	4,983,720	\$	6,679,073	\$	6,149,304	\$	5,234,718	\$	2,212,091
Available Cash (Loss) Before Tax	\$	1,677,920	\$	3,212,436	\$	2,160,108	\$	2,208,007	\$	951,391
Depreciation and amortization	\$	(1,076,257)	\$	(1,706,396)	\$	(1,795,700)	\$	(1,500,986)	\$	(2,134,314)
Taxable Income	\$	601,663	\$	1,506,040	\$	364,408	\$	707,021	\$	(1,182,923)
Income Tax Rate		21.0%		21.0%		21.0%		21.0%		21.0%
Income Tax Expense	\$	(126,349)	\$	(316,268)	\$	(76,526)	\$	(148,474)	\$	--
Available Cash (Loss) After Tax	\$	1,551,571	\$	2,896,168	\$	2,083,583	\$	2,059,532	\$	951,391
+ 2024 WUS Profit Share Calculation										
Current Profit Share		Rhodium 30MW LLC		Jordan HPC LLC		Rhodium 2.0 LLC		Rhodium Encore LLC		Rhodium 10MW LLC
Operating Company Available Cash		\$1,551,571		\$2,896,168		\$2,083,583		\$2,059,532		\$951,391
Intermediary Company CADSD Current Hurdle <sup>1</sup>		\$0		\$0		\$39,473,658		\$9,519,154		\$7,253,007
Intermediary Company CADSD Preference % <sup>2</sup>		0%		20%		20%		20%		20%
Intermediary Company Ownership in OpCo %		70.8%		50.0%		65.0%		50.0%		50.0%
Intermediary Company Dividend		\$1,098,958		\$1,448,084		\$416,717		\$411,906		\$190,278
Intermediary Company Available Cash Margin % <sup>3</sup>		95.8%		95.8%		95.8%		95.8%		95.8%
Intermediary Company Available Cash		\$1,052,802		\$1,387,264		\$399,214		\$394,606		\$182,286
Whinstone Current Profit Share %		12.5%		50.0%		12.5%		12.5%		12.5%
Whinstone Current Synthetic Dividend		\$131,600		\$693,632		\$49,902		\$49,326		\$22,786
Total 2024 Profit Share without Energy Credits										Tentative Amount Owed (owed to RHDm)
\$		947,246						\$		947,246

**Footnotes:**

(1) CADSD Current Hurdle - Contractually, no distributions can be made to the Intermediary companies (Rhodium JV LLC and Air HPC LLC) until a pre-determined CADSD hurdle is exceeded. CADSD stands for cash available for debt service and distributions. The CADSD Current Hurdle is calculated by taking the cumulative available cash of the operating company and subtracting that from the original CADSD hurdle. If the cumulative available cash of the operating company exceeds the hurdle, the hurdle is removed.

(2) CADSD Preference - Prior to the CADSD hurdle being met, the percentage of Operating Company Available Cash that can be paid out to the Intermediary Company

(3) Intermediary Company Available Cash Margin - 21% rate less 80% deduction for dividends received deduction (DRD)

(4) As you are aware, Rhodium has previously included calculations of energy sale profits owed by Whinstone to Rhodium (without deducting those amounts from the profit share paid by Rhodium JV or Air HPC). Rhodium does not include such a calculation here, but reserves all rights with respect to the energy sale profits and other damages that are owed by Whinstone to Rhodium and are at issue in the parties' pending litigation.

# EXHIBIT 2



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

In re:	§	
	§	
RHODIUM ENCORE LLC, et al., <sup>1</sup>	§	No. 24-90448-ARP
	§	
Debtor.	§	Chapter 11
	§	
	§	

**Declaration of J. Michael Thomas in Support of Whinstone US Inc.'s  
Response in Opposition to Debtors' Motion for Partial Summary  
Judgment**

I, J. Michael Thomas, pursuant to section 1746 of title 28 of the United States Code, hereby declare under penalty of perjury that the following is true to the best of my knowledge, information, and belief:

1. I am an attorney with the firm Foley & Lardner LLP and am counsel of record for Whinstone US Inc., which has objected to *Debtors' Motion to Assume Certain Executory Contracts with Whinstone US, Inc.* [Doc. 7].

2. I submit this Declaration in support of Whinstone's response to Debtors' Motion for Partial Summary Judgment.

3. Attached hereto as Exhibit 2-A are true and correct excerpts of the December 5, 2023, hearing on the Motion for Temporary Injunction in the case styled *Whinstone US, Inc. v.*

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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.

*Rhodium 30MW LLC et al.*, Cause No. CV41873, in the 20th Judicial District Court for Milam County, Texas.

4. Attached hereto as Exhibit 2-B are true and correct excerpts of the March 1, 2024, hearing on the Motion for Temporary Injunction in the arbitration styled *Rhodium JV, LLC et al. v. Whinstone US, Inc.*, AAA No. 01-23-0005-7116, before the American Arbitration Association, Commercial Arbitration Division.

5. Attached hereto as Exhibit 2-C are true and correct excerpts of the April 2, 2024, hearing on the Motion to Modify Temporary Injunction in the arbitration styled *Rhodium JV, LLC et al. v. Whinstone US, Inc.*, AAA No. 01-23-0005-7116, before the American Arbitration Association, Commercial Arbitration Division.

6. Attached hereto as Exhibit 2-D is a true and correct copy of a document bearing bates stamp RHOD-BK-00089454, which Debtors produced as part of this proceeding.

7. Attached hereto as Exhibit 2-E are true and correct excerpts of the rough transcript of the deposition of Nathan Nichols, taken on October 28, 2024, in connection with this proceeding.

8. Attached hereto as Exhibit 2-F is a true and correct copy of a document bearing bates stamp RHOD-BK-00016039, which Debtors produced as part of this proceeding.

9. Attached hereto as Exhibit 2-G is a true and correct copy of a document bearing bates stamp RHOD-BK-00040670, which Debtors produced as part of this proceeding.

10. I hereby declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.



---

J. Michael Thomas

10-30-2024

Date

# EXHIBIT 2-A

December 05, 2023

1

Page 1

## REPORTER'S RECORD

VOLUME 1 OF 1

CAUSE NO. CV41873

Whinstone US, INC.,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
v.	§	MILAM COUNTY, TEXAS
	§	
Rhodium 30MW LLC; Rhodium	§	
JV, LLC; Air HPC LLC; and	§	
Jordan HPC LLC,	§	
Defendants.	§	20TH JUDICIAL DISTRICT

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MOTION FOR TEMPORARY INJUNCTION

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On the 5th day of December, A.D., 2023, the above entitled and numbered cause came on for hearing, and the following proceedings were had before the Honorable John Youngblood, Judge Presiding, 20th Judicial District, held in Cameron, Milam County, Texas:

Proceedings reported by Computerized Stenotype Machine; Reporter's Record produced by Computer-Assisted Transcription.

December 05, 2023

2 to 5

Page 2					Page 4				
1	A P P E A R A N C E S				1	THE COURT: Gentlemen, that brings us to			
2	Foley & Lardner LLP				2	Whinstone versus Rhodium, 41873. I've got the file up			
3	2021 McKinney Avenue, Suite 1600				3	here.			
4	Dallas, Texas 75201				4	(Brief interruption)			
5	rslovak@foley.com; slockhart@foley.com;				5	THE COURT: All right. Back to Whinstone.			
6	bmarx@foley.com				6	Parties ready to proceed?			
7	BY: ROBERT SLOVAK, STEVEN C. LOCKHART,				7	MR. SLOVAK: We are, Your Honor.			
8	BRANDON MARX				8	MR. THOMPSON: Yes, Your Honor.			
9	Appearing for the Plaintiff				9	THE COURT: All right. Very well. All			
10	Cappolino Dodd & Krebs, LLP				10	right. I'm sure you'll tell me more about why we're			
11	312 S. Houston Ave.				11	here, but, according to my memory, we had a hearing back			
12	Cameron, Texas 76520				12	on September 13th about the arbitration issue. I ruled			
13	BY: CRAIG W. BROWN				13	that it should go to arbitration. Plaintiffs petitioned			
14	Appearing for the Plaintiff				14	the Court of Appeals for mandamus. That was denied.			
15	Whinstone US, Inc.				15	And then the next day, morning, evening -- I'm not			
16	Deputy General Counsel				16	sure -- Whinstone locked Rhodium out of the premises,			
17	pwooding@riot.inc				17	more or less, and I signed an emergency order,			
18	BY: PATRICK WOODING				18	basically, to maintain the status quo going forward.			
19	Appearing for the Plaintiff				19	All right. So what -- where are we going			
20	Lehotsky Keller Cohn LLP				20	today?			
21	919 Congress Avenue				21	MR. THOMPSON: Yes, Your Honor.			
22	Austin, Texas 78701				22	Will Thompson. I represent Rhodium. We're here on			
23	will@lkofirm.com				23	Rhodium's Motion for Temporary Injunction. Obviously,			
24	BY: WILL THOMPSON				24	that hearing had to be set based on the granting of the			
25	Appearing for the Defendants				25	TRO. With Your Honor's permission, I'll just introduce			
	Stris & Maher LLP								
	777 S. Figueroa Street, Suite 3850								
	Los Angeles, CA 90017								
	jstokes@stris.com; voconnell@stris.com;								
	pbrody@stris.com								
	BY: JOHN STOKES, VICTOR O'CONNELL,								
	PETER BRODY								
	Appearing for the Defendants								
	SHERRI K. WILLIAMSON,								
	Certified Shorthand Reporter								
	in and for the State of Texas								
	* * * * *								
Page 3					Page 5				
1	VOLUME 1				1	the motion and get moving on it.			
2	December 5, 2023				2	THE COURT: Okay.			
3	Caption.....1				3	MR. THOMPSON: Thank you.			
4	Appearances.....2				4	Rhodium was forced to seek a TRO,			
5	Proceedings.....4				5	Your Honor, and move for this temporary injunction			
6	Opening Statements				6	because on Monday of last week, Whinstone locked the			
7	By Mr. Thompson.....4				7	doors, had security escort our personnel from the			
8	By Mr. Slovak.....9				8	premises, and shut off the power. Your Honor may recall			
9	PLAINTIFF'S WITNESSES	Direct	Cross	Vol.	9	that Rhodium, my client, mines Bitcoin at the Rockdale			
10	DAVID SCHATZ.....138,176	167		1	10	facility that Whinstone operates, and on Monday, at			
11	JEFFREY MCGONEGAL.....178	186		1	11	10:00 P.M., that's when all this happened.			
12	GERALD HARTFORD.....194,207	204		1	12	Whinstone's offered only one reason for			
13	DEFENDANTS' WITNESSES	Direct	Cross	Vol.	13	taking this extreme step. Whinstone thinks Rhodium has			
14	CHASE BLACKMON.....19,111	35,113		1	14	miscalculated the profit-sharing payments that Rhodium			
15	NATHAN NICHOLS.....116	133		1	15	makes to Whinstone under a couple of contracts that			
16	EXHIBIT INDEX				16	we'll talk about. It's a dispute about whether we've			
17	PLAINTIFF'S EXHIBITS	Offered	Admitted	Vol.	17	interpreted the contract correctly and whether we're			
18	P-1-Ground Lease Agreement	142	143	1	18	paying the right number. There's no dispute that we've			
19	DEFENDANTS' EXHIBITS	Offered	Admitted	Vol.	19	paid them and have paid them and will pay them millions			
20	R1-Declaration	20	20	1	20	of dollars in profit sharing. It's just a dispute about			
21	R3-Contract	210	210	1	21	how we calculate how many millions it is.			
22	R4-Contract	210	210	1	22	At core, Whinstone thinks it should get a			
23	R5-Contract	183	183	1	23	certain percentage of the profits. It should take its			
24	R6-Contract	183	183	1	24	cut from the operating entities that mine the Bitcoin,			
25	R10-Contracts	210	210	1	25	but, in truth, Whinstone signed its profit-sharing			
	R12-Notice of Termination	168	168	1					
	R13-Letter	170	170	1					
	End of Volume 1.....227								
	Court Reporter's Certificate.....228								

December 05, 2023

50 to 53

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1 THE COURT: I'm going to overrule the  
 2 objection. You can answer.  
 3 THE WITNESS: Yes. None of the Rockdale  
 4 operating subsidiaries or their holding companies have  
 5 any -- sorry -- they are not owned by Rhodium  
 6 Renewables.  
 7 Q (BY MR. LOCKHART) But your complaint, in part,  
 8 is money can't filter up here (Indicating) so that you  
 9 can go build a new, shiny facility and finish it all the  
 10 way out; correct?  
 11 A I don't believe we said that.  
 12 Q Okay. You don't want to use money that's  
 13 generated from down here (Indicating) in order to work  
 14 its way up the chain to nonparties so that it can go  
 15 over and help buy stuff at the Temple facility?  
 16 A Well, sir, we're not looking to -- Maybe I  
 17 don't understand the question. I'm sorry. Can you say  
 18 it again?  
 19 Q You talk about Temple throughout your  
 20 declaration, on multiple occasions; correct?  
 21 A Temple is mentioned in my declaration.  
 22 Q And right now Temple -- Is Temple a U-shaped  
 23 facility?  
 24 A Temple is a U-shaped facility, yes, sir.  
 25 Q I mean -- Forgive my crude drawing here, but it

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1 looks something like that (Indicating); fair?  
 2 Shape-wise?  
 3 A That's fair.  
 4 Q Okay. And right now at the Temple facility,  
 5 Rhodium fills this side over here (Indicating); right?  
 6 A We are currently operating in PowerShell A,  
 7 which is that long --  
 8 Q This is A (Indicating)?  
 9 A Yeah, the long, skinny part over there.  
 10 Q Okay. And what's this (Indicating)?  
 11 A That is PowerShell C.  
 12 Q Is that where, like, the ops center and all  
 13 that stuff is?  
 14 A Server room, stuff like that.  
 15 Q Okay. Are you going to have miners down there  
 16 at some point?  
 17 A Not currently anticipated.  
 18 Q Okay. But -- This is B, I take it  
 19 (Indicating)?  
 20 A Yes, sir.  
 21 Q All right. Is B empty right now?  
 22 A B is -- B and C are largely being used for  
 23 storage as of this moment.  
 24 Q So there's space there for miners?  
 25 A There could be space there for miners.

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1 Q You could locate miners here? That's your  
 2 intention, in fact; right?  
 3 A We were originally planning to build out the  
 4 majority of the Temple facility; however, that is not  
 5 currently on the docket today.  
 6 Q Because you want to use money from other  
 7 operations in order to fund this; right?  
 8 A No, sir.  
 9 Q Okay. Is it your sworn testimony that no money  
 10 that's been generated from the Rockdale facility has  
 11 gone to finance anything over here at the Temple  
 12 facility?  
 13 A I did not say that.  
 14 MR. STOKES: Objection. I -- Sorry. I  
 15 think that misstates the witness's testimony.  
 16 MR. LOCKHART: I asked if it was his  
 17 testimony, Your Honor. That's not me stating any  
 18 testimony.  
 19 THE COURT: I'm going to overrule the  
 20 objection. The witness can answer.  
 21 THE WITNESS: No, sir, I did not say that.  
 22 Q (BY MR. LOCKHART) So, in fact, money has been  
 23 sent -- that was earned at the Rockdale facility, sent  
 24 up the chain and used, in part, to fund the creation of  
 25 a new facility?

Page 53

1 A The profits that Rhodium has earned through  
 2 its --  
 3 Q That's a yes-or-no question.  
 4 A -- operating entities at the Rockdale facility  
 5 have been used for various purposes, not solely for  
 6 building out the Temple facility, but --  
 7 Q Is the answer to my question "yes"?  
 8 A Funds from the operating subsidiaries has  
 9 flowed up to Rhodium Enterprises to be used at the  
 10 Temple facility.  
 11 Q All right. Let's go to your -- Paragraph 1 of  
 12 your --  
 13 MR. LOCKHART: May I stand here,  
 14 Your Honor?  
 15 THE COURT: That's fine.  
 16 Q (BY MR. LOCKHART) Are you okay with it? Am I  
 17 making you uncomfortable?  
 18 A No. You're good.  
 19 Q If I am, I'll move away.  
 20 A You're good.  
 21 Q All right. So let's go to Paragraph 1. Second  
 22 sentence, you say, "I have personal knowledge of the  
 23 facts set forth below, and if called, I could and would  
 24 competently attest to them." Did I get that right?  
 25 A That is what this says.

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118 to 121

<p style="text-align: right;">Page 118</p> <p>1 Q And how many megawatts of power is Rhodium 2 using at PowerShell A today?</p> <p>3 A We have a contract in power of up to 102.5mw.</p> <p>4 Q Do you know how much Rhodium is actually 5 utilizing in that space?</p> <p>6 A I would say currently it's, roughly, 93.6mw.</p> <p>7 Q How much excess capacity is there, then, in 8 PowerShell A that you could use today? I'm making you 9 do the math.</p> <p>10 A There isn't any, actually. It's settled by 11 infrastructure.</p> <p>12 Q So Rhodium can't build anything today in 13 PowerShell A; is that fair?</p> <p>14 A Yes. We have a miner or a server in every 15 slot.</p> <p>16 Q Did Rhodium enter into any recent revisions to 17 the -- any side letters relating to the lease that 18 Rhodium has at Temple?</p> <p>19 MR. LOCKHART: Objection; vague, confusing 20 as to what Rhodium. Also, best evidence on the 21 agreements, side letter agreements. Where are they? We 22 would have gotten them in discovery.</p> <p>23 THE COURT: Do you want to rephrase your 24 question?</p> <p>25 MR. O'CONNELL: Sure.</p>	<p style="text-align: right;">Page 120</p> <p>1 Q 30mw, Encore, 10mw, Rhodium 2.0; correct?</p> <p>2 A Yes.</p> <p>3 Q Do any of those have current debt obligations?</p> <p>4 A Yes.</p> <p>5 Q Which ones?</p> <p>6 A Encore and 2.0.</p> <p>7 Q How much is Encore's debt obligation?</p> <p>8 A Roughly, \$25 million.</p> <p>9 Q And how much is 2.0's debt obligation?</p> <p>10 A Roughly, \$29 million.</p> <p>11 Q And do the other two have debt obligations?</p> <p>12 A No. We've paid those off to our shareholders 13 from the onset.</p> <p>14 Q About how much are we talking about total that 15 those two operating entities owe to investors?</p> <p>16 A 54 million.</p> <p>17 Q And when is that money due?</p> <p>18 A July 30th of 2024.</p> <p>19 Q Does Rhodium have the money to pay those debt 20 obligations as it sits here today?</p> <p>21 A No.</p> <p>22 Q How much cash on hand does it have?</p> <p>23 A 25 million.</p> <p>24 Q After electricity costs, how much does Rockdale 25 generate a month?</p>
<p style="text-align: right;">Page 119</p> <p>1 Q (BY MR. O'CONNELL) As you sit here today, can 2 Rhodium march into PowerShell C and start setting up 3 infrastructure?</p> <p>4 A No.</p> <p>5 Q Can it march into PowerShell B and start 6 setting up infrastructure?</p> <p>7 A No.</p> <p>8 Q You'd have to do a whole new deal with the 9 landlord to use B or C; isn't that true?</p> <p>10 A Yes.</p> <p>11 MR. LOCKHART: Objection. Objection; best 12 evidence. The agreement is not before us. Obviously -- 13 I'd like to voir dire him on this, Judge.</p> <p>14 THE COURT: I'm going to sustain the 15 objection.</p> <p>16 Q (BY MR. O'CONNELL) Do you know if there's a 17 Certificate of Occupancy on PowerShell C?</p> <p>18 A I do not.</p> <p>19 Q If the Rockdale facility is shut down for an 20 extended period of time, what would happen to Rhodium as 21 an organization?</p> <p>22 A It would go bankrupt.</p> <p>23 Q Do you see the four names of entities down on 24 the bottom left there (Indicating)?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 121</p> <p>1 A Between \$4.5 and \$5 million.</p> <p>2 Q About \$5 million; fair to say?</p> <p>3 A \$5 million, yes.</p> <p>4 Q And we've got about seven months until the debt 5 obligations are due; right?</p> <p>6 A Yes, sir.</p> <p>7 Q And Rhodium's -- If Rhodium continues to 8 generate 5 million a month in revenues from the Rockdale 9 facility, do you believe that you will be able to pay 10 back those investors on time?</p> <p>11 A Yes.</p> <p>12 Q Do you have ongoing interactions with those 13 investors?</p> <p>14 A Yes, sir.</p> <p>15 Q They're aware of the general economics of the 16 business and that Rhodium is on track to pay?</p> <p>17 MR. LOCKHART: Objection; calls for 18 speculation.</p> <p>19 THE COURT: I'll sustain that objection.</p> <p>20 Q (BY MR. O'CONNELL) So is there any way that 21 Rhodium can survive without the Rockdale facility?</p> <p>22 A No.</p> <p>23 Q Can it rely on the Temple revenue to make 24 enough money to pay back the Encore and Rhodium 2.0 25 entities?</p>



December 05, 2023

134 to 137

Page 134

1 A I apologize. The 10 million is at  
2 Technologies.

3 Q Okay. How much at Renewables? Because it's a  
4 lot more than that, isn't it?

5 A No. It's zero.

6 Q Zero?

7 A I believe so, yes, sir.

8 Q Have to take your word on it because we don't  
9 have financials.

10 Rhodium Enterprises, debt?

11 A No, sir.

12 Q So you pay cash for everything over at  
13 Renewables?

14 A Pretty much, yes, sir.

15 Q Where did you get that cash? Because it wasn't  
16 operating.

17 A We got it from an \$87 million SAFE investment,  
18 which is a Sale Agreement for Future Equity, and then we  
19 also got it from cash flows of operations.

20 Q From down there (Indicating); right?

21 A Yes, sir.

22 Q So if you'd left it down here (Indicating),  
23 they could continue on, shutter things, not have costs  
24 in power during a shutdown; right?

25 A Well, sir --

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1 Q And have enough cash to survive; right?

2 A Yes.

3 Q Okay. You said -- I think I heard you. Did  
4 you say \$30 million loss at the end of this year if  
5 these are shut down or even if they're open?

6 A If they're shut down.

7 Q How much is the loss if they're open?

8 A For the business?

9 Q Yeah.

10 A There isn't a loss.

11 Q Do you know what those numbers are?

12 A Roughly.

13 Q What's your background, by the way?

14 A I have an accounting degree.

15 Q Okay. Are there insufficient obligations --  
16 or -- excuse me. Is there insufficient money currently  
17 on hand in order to pay the debts -- Strike that.

18 Is there insufficient money to pay the  
19 outstanding debts of the company right now?

20 A At this exact moment, yes.

21 Q Would you say the company is insolvent?

22 A No.

23 Q Does JV have any expenses? You said it didn't  
24 have any employees.

25 A Well, it has the profit-share expense, sir.

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1 Q Have you told your shareholders that you've  
2 been using profits from the Whinstone facility to pay  
3 debts of other entities?

4 MR. O'CONNELL: Objection; vague.

5 THE COURT: Yeah, that was a bit vague.

6 Do you want to restate the question, please?

7 THE WITNESS: We haven't used --

8 Q (BY MR. LOCKHART) How much debt does  
9 Whinstone -- Excuse me. How much debt is on the books  
10 of the Enterprise for the profit share to Whinstone?

11 A Can you clarify that question, sir? I'm sorry.

12 Q We have a dispute that is currently ongoing.  
13 Typically, you do a reserve, right, when you have a  
14 dispute? How much reserve have you put on the books for  
15 the potential exposure that exists from this lawsuit?

16 A We believe that this lawsuit is frivolous and  
17 meritless.

18 Q So is that zero?

19 A No. We have cash on hand. That's at the --  
20 both the Technologies and the Rhodium --

21 Q That's not what I asked. Sir, that's not what  
22 I asked.

23 A Okay.

24 Q I asked: How much on your books do you have  
25 listed as reserve as it relates to the potential

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1 exposure in this lawsuit?

2 A I would say zero.

3 Q Is that consistent with GAAP?

4 MR. O'CONNELL: Objection; calls for a  
5 legal conclusion.

6 MR. LOCKHART: He's an accountant.

7 THE WITNESS: I am not.

8 Q (BY MR. LOCKHART) Okay. You have an accounting  
9 degree?

10 A Yes, sir.

11 Q Do you understand GAAP?

12 A Generally. It's been a few years since I went  
13 to college.

14 THE COURT: I think he can answer the  
15 question.

16 THE WITNESS: I don't have enough personal  
17 knowledge to know if that's in compliance with GAAP or  
18 not.

19 MR. LOCKHART: Pass.

20 MR. O'CONNELL: No further questions.

21 THE COURT: All right. Sir, you can step  
22 down. Thank you.


23 THE WITNESS: Thank you, Your Honor.

24 THE COURT: Next witness?

25 MR. THOMPSON: Your Honor, Rhodium doesn't

December 05, 2023

226 to 228

<p style="text-align: right;">Page 226</p> <p>1 of poking holes in the filing by Mr. Blackmon. Some of</p> <p>2 it held up, some of it became shaky, and some of it was</p> <p>3 blown out of the water, but at the end of the day, the</p> <p>4 issue for me, as I was discussing with Mr. Slovak</p> <p>5 earlier, is the downside of putting this on hold until</p> <p>6 this matter can be resolved by your arbitrator.</p> <p>7 And so that's what I'm going to rule this</p> <p>8 evening is -- I am going to grant injunctive relief. I</p> <p>9 think it's fair to increase the bond. I'm going to</p> <p>10 increase the bond to a million dollars, and the</p> <p>11 injunction will last until your arbitrator can rule on</p> <p>12 further matters regarding everything we've talked about</p> <p>13 today, putting -- whether operations out there can</p> <p>14 continue or not.</p> <p>15 MR. SLOVAK: To be clear, Your Honor, is</p> <p>16 your ruling that it -- the injunction is to be in place</p> <p>17 until there's a final adjudication on the merits between</p> <p>18 the parties?</p> <p>19 THE COURT: No. I'm going to let the</p> <p>20 arbitrator take a look at it at the time that he takes</p> <p>21 up -- he or she takes up arbitration.</p> <p>22 MR. SLOVAK: So meaning that -- allow the</p> <p>23 arbitrator to decide whether the injunction should stay</p> <p>24 in place?</p> <p>25 THE COURT: Yes. All right?</p>	<p style="text-align: right;">Page 228</p> <p>1 STATE OF TEXAS )</p> <p>2 COUNTY OF MILAM )</p> <p>3</p> <p>4 I, SHERRI K. WILLIAMSON, Certified Shorthand</p> <p>5 Reporter in and for the State of Texas, do hereby</p> <p>6 certify that the above and foregoing contains a true and</p> <p>7 correct transcription of all portions of evidence and</p> <p>8 other proceedings requested in writing by counsel for</p> <p>9 the parties to be included in this volume of the</p> <p>10 Reporter's Record, in the above-styled and numbered</p> <p>11 cause, all of which occurred in open court or in</p> <p>12 chambers and were reported by me.</p> <p>13 I further certify that this Reporter's Record of</p> <p>14 the proceedings truly and correctly reflects the</p> <p>15 exhibits, if any, offered by the respective parties.</p> <p>16 I further certify that the total cost for the</p> <p>17 preparation of this Reporter's Record is \$_____</p> <p>18 and will be paid by BRANDON MARX for the Plaintiff.</p> <p>19 WITNESS MY OFFICIAL HAND this the 11th day of</p> <p>20 December, 2023.</p> <p>21 </p> <p>22 SHERRI K. WILLIAMSON, TX CSR #5105</p> <p>23 Expiration Date: 7-31-2025</p> <p>24 U.S. LEGAL SUPPORT, INC.</p> <p>25 Firm Registration No. 122</p> <p>16825 Northchase Dr., Suite 900</p> <p>Houston, TX 77060</p> <p>713-653-7100</p>
<p style="text-align: right;">Page 227</p> <p>1 MR. THOMPSON: Thank you, Your Honor.</p> <p>2 MR. SLOVAK: Thank you.</p> <p>3 (PROCEEDINGS CONCLUDED AT 6:39 P.M.)</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	

# EXHIBIT 2-B

Transcript of Temporary Injunction Hearing  
Conducted on March 1, 2024

3 (9 to 12)

9	<p>1 PROCEEDINGS</p> <p>2 MR. FLORES: Mr. Stokes, you will be</p> <p>3 leading for Claimant today. Mr. Stokes, if you</p> <p>4 don't mind, please identify the rest of your team</p> <p>5 for Claimant?</p> <p>6 MR. STOKES: Absolutely. For counsel</p> <p>7 today we have myself, we have Victor O'Connell</p> <p>8 from my firm. We have Todd Disher and we have Jon</p> <p>9 Cohn, both from the Lehotsky firm. We have a</p> <p>10 couple of client representatives that are on the</p> <p>11 line here as well. We have Charles Topping, Chuck</p> <p>12 Topping, Kessha Spruill and Brendan Cottrell, who</p> <p>13 are here as well. Just so y'all know who those</p> <p>14 names are.</p> <p>15 MR. FLORES: And Mr. Stokes for -- I'm</p> <p>16 sorry, Mr. Lockhart, for Respondent could you</p> <p>17 please identify who we have for your side today?</p> <p>18 MR. LOCKHART: In addition to myself, we</p> <p>19 have Rob Slovak, Michael Thomas, Brandon Marx, all</p> <p>20 of them are counsel. We also have Tanya Durham, a</p> <p>21 paralegal, and then we have a number of witnesses</p> <p>22 and a client rep is Patrick Wooding.</p> <p>23 MR. FLORES: I have a few more people who</p> <p>24 just joined the call. Give me one second. There</p> <p>25 is a Eddie Klekar.</p>	11
10	<p>1 MR. LOCKHART: Eddie Klekar is one of the</p> <p>2 witnesses for Whinstone. And then in addition you</p> <p>3 have David Schatz, who is a witness for Whinstone</p> <p>4 and then we have three experts.</p> <p>5 MR. FLORES: And Bridget Asay is also in</p> <p>6 the wait room.</p> <p>7 MR. STOKES: She is an attorney for the</p> <p>8 Claimants.</p> <p>9 MR. FLORES: I'm going to admit them real</p> <p>10 quick. Give me one moment.</p> <p>11 ARBITRATOR YOUNG: While we're at it, Mr.</p> <p>12 Stokes, how many witnesses will you all have?</p> <p>13 MR. STOKES: We have three witnesses</p> <p>14 today.</p> <p>15 MR. LOCKHART: Mr. Young, from a</p> <p>16 housekeeping perspective, I mean, I don't know how</p> <p>17 long Mr. Stokes is anticipating going with his</p> <p>18 three witnesses. We can obviously estimate cross</p> <p>19 of those three witnesses, so that not everyone has</p> <p>20 to stay on all --</p> <p>21 ARBITRATOR YOUNG: Let me start out the</p> <p>22 way I did last time by framing what we're here for</p> <p>23 and what we're not here for.</p> <p>24 This is the hearing on the application for</p> <p>25 emergency relief filed by the Claimants, and this</p>	12

1 is the evidentiary hearing in support of that

2 application.

3 Mr. Lockhart, you have responded. Your

4 response was in last night on time, and it also

5 contained an alternative application for emergency

6 relief on behalf of your clients.

7 And I think we should talk about that just

8 a moment, because I don't think we are ready to

9 hear that application for emergency relief today.

10 I would propose to hear it, just not today.

11 I think we need to give the Claimants an

12 opportunity to respond to it, give you an

13 opportunity for a brief reply if you need it, and

14 then I think we should hear it next week. Does

15 that suit?

16 MR. LOCKHART: So Mr. Young, I don't --

17 whether you characterize it as an affirmative

18 request for injunctive relief or conditions on the

19 injunctive relief that the Claimants seek to have

20 entered, it is a difference without a distinction.

21 And under Rule 39, you can apply conditions to any

22 relief that you -- you grant including posting the

23 security which we address in -- in that relief

24 requested. It is a condition, as well as acts

25 that are necessary in order for power to be

1 restored. Again, a condition that you can place

2 on the Claimants before entering any relief.

3 So I don't really think it is affirmative

4 relief so much as it is conditional relief for

5 now.

6 ARBITRATOR YOUNG: Okay. I hear that. I

7 don't think I agree with it, at least not the way

8 it is pleaded, so I think I'm going to stick to

9 not hearing that today. I'm not going to tell you

10 not to talk about it. If you need to talk about

11 it, you need to talk about it. But I am not -- I

12 am not intending to hear or rule on that

13 application today.

14 I would go ahead and lay down a schedule

15 for next week and a hearing. If you conclude that

16 you don't want that, that is okay, but let's go

17 ahead and set that up so that it is there and

18 available to you if you need it.

19 Mr. Stokes, can you reply to that quickly?

20 Can you reply by Tuesday?

21 MR. STOKES: We have not conferred

22 internally. I expect that we can reply by Tuesday

23 if that would be your preference, Mr. Young.

24 ARBITRATOR YOUNG: I would like it in by

25 close of business Tuesday at the latest. And

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76 (301 to 304)

<p style="text-align: right;">301</p> <p><b>1 of turn in that regard but that would be the</b></p> <p><b>2 documents specifically.</b></p> <p>3 Q Mr. Nichols, I'm not asking you about the</p> <p>4 annex I'm asking you when the crypto, the bitcoin</p> <p>5 is sold and mined money is generated. And as I</p> <p>6 understand what you just testified to, that money</p> <p>7 is generated and comes into the subsidiaries. And</p> <p>8 from the subsidiary yes, it is -- then there were</p> <p>9 deductions that are made for expenses and other</p> <p>10 items, and the remainder is then flowed up to JV.</p> <p>11 Is that what I understand your testimony to be?</p> <p><b>12 A Yes, sir.</b></p> <p>13 Q Okay. And then from there, we will talk</p> <p>14 about how you calculate it later, but what I</p> <p>15 understand you to be saying is you take out those</p> <p>16 expenses first and then you apply the EBITDA</p> <p>17 formula at the JV level. That is how you are</p> <p>18 doing it?</p> <p><b>19 A Yes, there is specifically allocable</b></p> <p><b>20 expenses such as the employees of Building C that</b></p> <p><b>21 need to be paid. After those expenses happen,</b></p> <p><b>22 there is a profit. This is a profit share. There</b></p> <p><b>23 is a -- there is an amount of profit that is left</b></p> <p><b>24 over. That profit is then transferred up to the</b></p> <p><b>25 holdings companies where the contract lies</b></p>	<p style="text-align: right;">303</p> <p>1 bitcoin?</p> <p><b>2 A I believe that they do sell bitcoin.</b></p> <p><b>3 Sometimes they don't, it is not -- but it is,</b></p> <p><b>4 depends on the market.</b></p> <p>5 MR. SLOVAK: Can you pull up R48? R48 is</p> <p>6 December 30th, 2020 hosting agreement.</p> <p>7 (Exhibit R48 marked.)</p> <p>8 Q Between Rhodium JV and Whinstone, are you</p> <p>9 familiar with this document?</p> <p><b>10 A Yes, sir. This is the synthetic dividend</b></p> <p><b>11 document.</b></p> <p>12 Q Well, it says on its face hosting</p> <p>13 agreement, right?</p> <p><b>14 A Yes, but Chad Harris who is the CEO of</b></p> <p><b>15 Whinstone never thought --</b></p> <p>16 Q Did I ask that question, sir?</p> <p>17 MR. SLOVAK: I am going to object as</p> <p>18 nonresponsive, okay.</p> <p>19 Q It says hosting agreement, right, sir?</p> <p><b>20 A That says hosting agreement.</b></p> <p>21 Q And in the hosting agreement the customer</p> <p>22 is defined as Rhodium JV. Do you see that?</p> <p><b>23 A Yes.</b></p> <p>24 MR. SLOVAK: Tanya, if you will go to</p> <p>25 Section 12.2.</p>
<p style="text-align: right;">302</p> <p><b>1 specifically for the profit share or the synthetic</b></p> <p><b>2 dividend, but that is how we calculate the payment</b></p> <p><b>3 to Whinstone.</b></p> <p>4 Q Okay. Just so I understand, is it your</p> <p>5 testimony that the bitcoin is liquid or it comes</p> <p>6 in as income at the -- to the individual operating</p> <p>7 entities?</p> <p><b>8 A I'm not 100 percent sure, but I believe</b></p> <p><b>9 so.</b></p> <p>10 Q Do they sell the bitcoin at the subsidiary</p> <p>11 level?</p> <p><b>12 A I'm not sure.</b></p> <p>13 Q What entities own the equipment at</p> <p>14 Building C?</p> <p><b>15 A The equipment is owned by the operating</b></p> <p><b>16 subsidiaries.</b></p> <p>17 Q And when you say "by the operating</p> <p>18 subsidiaries," do you mean Rhodium 2.0, 10MW, 30MW</p> <p>19 and Encore?</p> <p><b>20 A Yes, sir.</b></p> <p>21 Q And Rhodium JV only has one expense and it</p> <p>22 is profit sharing; correct?</p> <p><b>23 A That is correct.</b></p> <p>24 Q How can there be operating expenses to pay</p> <p>25 at the subsidiary level if they haven't sold</p>	<p style="text-align: right;">304</p> <p>1 Q You will see the representation here is</p> <p>2 that customer equipment is owned by the customer</p> <p>3 and that is defined by -- defined as Rhodium JV.</p> <p>4 Did I get that right?</p> <p><b>5 A Well, if you look at the entirety of the</b></p> <p><b>6 contract --</b></p> <p>7 Q I'm sorry --</p> <p><b>8 A -- it shows customer equipment.</b></p> <p>9 Q I don't mean to interrupt, I'm just asking</p> <p>10 a question.</p> <p>11 Customer Equipment Section 12.2 says,</p> <p>12 unless specifically disclosed otherwise, customer</p> <p>13 equipment is owned by customer.</p> <p>14 Did I read that right?</p> <p><b>15 A Yes, sir, and there is no equipment by</b></p> <p><b>16 this customer.</b></p> <p>17 Q And Mr. Nichols, what specific claims are</p> <p>18 being brought against Whinstone in this</p> <p>19 arbitration?</p> <p>20 MR. STOKES: I'm sorry, I'm going to</p> <p>21 object to the extent it calls for a legal</p> <p>22 conclusion. I think that I heard this similar</p> <p>23 objection from Mr. Slovak coming the other</p> <p>24 direction.</p> <p>25 MR. SLOVAK: His understanding of what</p>

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85 (337 to 340)

<p style="text-align: right;">337</p> <p>1 25 megawatts, right, sir?</p> <p>2 <b>A Yes, sir.</b></p> <p>3 Q And if you go, Tanya, to Section 4.1, you</p> <p>4 will see that it -- I won't go through it at the</p> <p>5 same level of detail, but it also talks</p> <p>6 specifically about the provision of the specified</p> <p>7 power draw in exactly the same manner that the</p> <p>8 December 31st, 2020 agreement talked about with</p> <p>9 respect to Whinstone and Rhodium JV, do you agree</p> <p>10 with that, sir?</p> <p>11 <b>A Yes, sir.</b></p> <p>12 Q And between the two contracts dated</p> <p>13 December the 31st, 2020 in Exhibits R48 and 49 it</p> <p>14 calls for up to 155 megawatts of power, right,</p> <p>15 sir?</p> <p>16 <b>A Yes, sir.</b></p> <p>17 Q Okay. What specific relief is Rhodium JV</p> <p>18 seeking against Whinstone at this arbitration</p> <p>19 hearing today?</p> <p>20 <b>A By Rhodium JV in particular?</b></p> <p>21 Q Yes, sir.</p> <p>22 <b>A Well, it is -- I believe it is based off</b></p> <p>23 <b>of which contracts that govern again, but I think</b></p> <p>24 <b>specifically it is that there is an irreparable</b></p> <p>25 <b>harm that is happening to all of the entities in</b></p>	<p style="text-align: right;">339</p> <p>1 <b>JV in particular, I would just say that it creates</b></p> <p>2 <b>a cascading effect for the entirety of the</b></p> <p>3 <b>organization. And most importantly, it doesn't</b></p> <p>4 <b>allow us to pay you-all for the damages that you</b></p> <p>5 <b>are seeking that we owe you.</b></p> <p>6 Q And so that is harm to Whinstone, right?</p> <p>7 <b>A It is harm to Whinstone, it is harm to the</b></p> <p>8 <b>shareholders of all of the organization.</b></p> <p>9 MR. SLOVAK: Tanya, will you go back to --</p> <p>10 if you go back to R48 and to section -- I'm sorry,</p> <p>11 I want to admit R49 any objection to that.</p> <p>12 MR. STOKES: No objection.</p> <p>13 ARBITRATOR YOUNG: 49 is in.</p> <p>14 (Exhibit R49 admitted.)</p> <p>15 Q If you go to R48, and I won't do this with</p> <p>16 both or they're the same, but in R48 section 23.4</p> <p>17 you will see in 23.4, go to the text on the next</p> <p>18 page, please, Tanya.</p> <p>19 It talks about the fact that the agreement</p> <p>20 is for the sole and exclusive benefit of the</p> <p>21 parties and their permitted -- their respective</p> <p>22 permitted successors and assigns.</p> <p>23 Did I read that right?</p> <p>24 <b>A Yes, sir.</b></p> <p>25 Q And this agreement in December post dates</p>
<p style="text-align: right;">338</p> <p>1 <b>Building C as well as --</b></p> <p>2 Q Anything else?</p> <p>3 <b>A -- it says in the arbitration document is</b></p> <p>4 <b>\$55 million growing now and monetary damages as</b></p> <p>5 <b>well as the fact that we're suffering irreparable</b></p> <p>6 <b>harm, that the business is likely going to</b></p> <p>7 <b>terminate, imminently going to terminate a</b></p> <p>8 <b>significant amount of its employees. That it</b></p> <p>9 <b>cannot continue to withstand operation and that</b></p> <p>10 <b>will create a cascading effect overall for the</b></p> <p>11 <b>entirety of our organization including but not</b></p> <p>12 <b>limited to the claimants that are in front of you.</b></p> <p>13 Q If Rhodium has no equipment in Building C,</p> <p>14 how is it being irreparably harmed?</p> <p>15 <b>A Sir, I thought earlier today you said that</b></p> <p>16 <b>the equipment was at Rhodium JV. Are you --</b></p> <p>17 Q Again, maybe I misunderstood you, sir. I</p> <p>18 thought you testified that Rhodium JV did not own</p> <p>19 the equipment?</p> <p>20 <b>A I did testify that, but I'm saying your</b></p> <p>21 <b>team is also --</b></p> <p>22 Q If Rhodium JV did not own the equipment,</p> <p>23 my question to you is how is it being irreparably</p> <p>24 harmed?</p> <p>25 <b>A I would say that they are -- for Rhodium</b></p>	<p style="text-align: right;">340</p> <p>1 all of the 20 5 megawatt agreements by five</p> <p>2 months, right, sir?</p> <p>3 <b>A Yes, sir.</b></p> <p>4 Q And if you go to Section 20, Tanya.</p> <p>5 Section 20.</p> <p>6 It indicates that either party can assign</p> <p>7 this agreement in whole or in part without the</p> <p>8 prior written consent of the other party except</p> <p>9 that either party may assign this agreement in</p> <p>10 whole or in part to an affiliate or successor or</p> <p>11 wholly-owned subsidiary of such a party?</p> <p>12 Has this agreement, the December 2020</p> <p>13 agreement between Rhodium JV and Whinstone been</p> <p>14 assigned to anyone, sir?</p> <p>15 <b>A No.</b></p> <p>16 Q What about Exhibit 49, the December 30th,</p> <p>17 2020 agreement between Whinstone and Air HPC? Has</p> <p>18 it been assigned to anyone?</p> <p>19 <b>A No.</b></p> <p>20 Q So Tanya, if you will go to Annex A of</p> <p>21 this agreement -- Annex 2, sorry, I apologize.</p> <p>22 This talks about a revenue share payment</p> <p>23 of 12.5 percent. Did I read that?</p> <p>24 <b>A That's correct.</b></p> <p>25 Q And that 12.5 percent revenue share</p>



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<p style="text-align: right;">345</p> <p>1 venture.</p> <p>2 Q So let me go back to the question I asked</p> <p>3 you. There are no other owners of Rhodium JV,</p> <p>4 right, sir?</p> <p>5 A That's correct.</p> <p>6 Q Who are the other owners of the --</p> <p>7 A The other owners of the operating</p> <p>8 subsidiaries, there is an equity table that</p> <p>9 happens. There is -- there is equity that was</p> <p>10 exchanged at Rhodium Enterprises, Inc. for a</p> <p>11 corporate reorg and there is also creditors that</p> <p>12 are at the operating subsidiaries.</p> <p>13 Q That is -- I didn't ask about creditors.</p> <p>14 So just to be clear if I understand your answer</p> <p>15 correctly, the other owners of the Opcos 2.0,</p> <p>16 10MW, 30MW and Encore below Rhodium JV are</p> <p>17 actually Rhodium Enterprises, correct?</p> <p>18 A There is originally --</p> <p>19 Q That is not what I asked, sir. Right now</p> <p>20 as we sit here today, the other owners of the</p> <p>21 operating companies below Rhodium JV are Rhodium</p> <p>22 Enterprises, right?</p> <p>23 A The subsidiaries are wholly-owned. There</p> <p>24 is a holdings company above that is Rhodium JV.</p> <p>25 Above that there is Rhodium Technologies and</p>	<p style="text-align: right;">347</p> <p>1 bottom of the first page of R2 from Ashley Jonson</p> <p>2 to some folks in the organization including you,</p> <p>3 Nathan Nichols at RHDM.com, right?</p> <p>4 MR. STOKES: I'm sorry?</p> <p>5 A I don't see --</p> <p>6 Q Am I looking at the wrong thing?</p> <p>7 MR. SLOVAK: Tanya, go to the top of the</p> <p>8 first page, there you go. Top of the second page.</p> <p>9 A Got it, yes, sir.</p> <p>10 Q Okay. And this email from Ashley Jonson</p> <p>11 to you among other parties says, please see the</p> <p>12 attached for the Q3 calculations?</p> <p>13 A Uh-huh.</p> <p>14 Q Right?</p> <p>15 A Yes, sir, that's correct.</p> <p>16 Q This is a calculation for quarter 3 for</p> <p>17 2023 that has been provided by Rhodium to</p> <p>18 Whinstone, right?</p> <p>19 A Yes.</p> <p>20 Q And down at the bottom right there is a</p> <p>21 calculation table. And this intermediate company</p> <p>22 ownership and Opco that is the percentage that is</p> <p>23 being reduced for the ownership by Rhodium</p> <p>24 Technologies, correct?</p> <p>25 A I'm sorry, can you zoom in?</p>
<p style="text-align: right;">346</p> <p>1 Rhodium Technologies is owned by two other holding</p> <p>2 companies.</p> <p>3 Q That is not what I asked you, sir. With</p> <p>4 all due respect we're talking about Rhodium 10MW,</p> <p>5 Rhodium 30MW, Rhodium Encore and Rhodium 2.0. You</p> <p>6 have just told this arbitrator that there are</p> <p>7 other owners of those entities besides Rhodium JV.</p> <p>8 And my question to you is who are those others?</p> <p>9 A I would say that the subsidiaries are</p> <p>10 owned by the parent company, which is Rhodium</p> <p>11 Technologies.</p> <p>12 Q Thank you, sir.</p> <p>13 And in the payments that you-all are</p> <p>14 making to Whinstone from Rhodium JV, there are</p> <p>15 power credits being deducted, correct?</p> <p>16 A Sorry, can you ask the question again?</p> <p>17 Q Sure. In the payments that Rhodium JR is</p> <p>18 making to Whinstone, there are power credits being</p> <p>19 deducted, correct, sir?</p> <p>20 A I don't believe so, because I don't</p> <p>21 believe we have been paid any power credits.</p> <p>22 MR. SLOVAK: So if you take out, Tammy, if</p> <p>23 you will pull up R2.</p> <p>24 (Exhibit R2 marked.)</p> <p>25 Q You will see here there is an email at the</p>	<p style="text-align: right;">348</p> <p>1 MR. SLOVAK: Tanya, if you can zoom in on</p> <p>2 the current profit share box down at the bottom.</p> <p>3 A Yes, sir.</p> <p>4 Q And the bottom line there says, total 23</p> <p>5 -- 2023 profit share without energy credits,</p> <p>6 right?</p> <p>7 A That's right, yes, sir.</p> <p>8 Q Okay. And so the manner by which the</p> <p>9 calculation is being deducted is by taking out</p> <p>10 energy records, right, sir?</p> <p>11 A This is a pro forma. So this is an</p> <p>12 example that showed the amount that is owed to</p> <p>13 Rhodium. Rhodium has paid in full as if the</p> <p>14 energy credits don't exist. This is just our</p> <p>15 recommendation as to how bills should be allocated</p> <p>16 to your group.</p> <p>17 Q So is it your testimony that you have paid</p> <p>18 something other than what is represented on this</p> <p>19 spreadsheet?</p> <p>20 A I believe that this is a pro forma</p> <p>21 calculation. The payments that have been paid to</p> <p>22 Whinstone. I can't specifically attest to them</p> <p>23 right now, but we have not been deducting from the</p> <p>24 profit share owed to Whinstone right now because</p> <p>25 we wanted to be good tenants, because we didn't</p>

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Conducted on March 1, 2024

90 (357 to 360)

<p style="text-align: right;">357</p> <p>1 Q What happened to the money that has been</p> <p>2 earned from the bitcoin mined subsidiary levels,</p> <p>3 where does it go?</p> <p>4 MR. STOKES: Objection, that is a vague</p> <p>5 question, excuse me.</p> <p>6 ARBITRATOR YOUNG: Say that again.</p> <p>7 MR. STOKES: I objected to the question as</p> <p>8 vague, what happens to the money, sorry.</p> <p>9 Q Let me ask a better question.</p> <p>10 Does money earned from mining bitcoin at</p> <p>11 Rockdale, is it used for any purposes other than</p> <p>12 paying investors in Rhodium JV?</p> <p>13 A Yes, it is used to pay employees.</p> <p>14 Q What else?</p> <p>15 A It is used to upgrade the fleet at Rhodium</p> <p>16 10 megawatts, Rhodium 2.0, Rhodium Encore and</p> <p>17 Rhodium -- I don't know if I got that right,</p> <p>18 Rhodium 30 megawatts. So it is a continuous</p> <p>19 necessity that the cash that we use it is either</p> <p>20 to pay back the creditors, which were well on our</p> <p>21 way of doing and we were earmarking capital. And</p> <p>22 again, we have lost over \$6 million being offline</p> <p>23 right now to pay those creditors.</p> <p>24 But besides that, it is used to refresh</p> <p>25 the fleet, because the bitcoin mining is</p>	<p style="text-align: right;">359</p> <p>1 more profit to Whinstone as well as the other</p> <p>2 entities. Think of it as a waterfall effect or</p> <p>3 also the money that we use that is at the Rockdale</p> <p>4 facility. As soon as -- as recently as within 60</p> <p>5 days ago, we have used the profitability that has</p> <p>6 been at the Rockdale facility to upgrade our</p> <p>7 Rockdale fleet.</p> <p>8 Q You would agree -- you would agree that if</p> <p>9 the money -- if the money that has been used from</p> <p>10 Rockdale at other operations had all been left at</p> <p>11 the subsidiary level, it would be able to satisfy</p> <p>12 the 25 or the 54 million dollars of outstanding</p> <p>13 debt in 2.0 and Encore, right, sir?</p> <p>14 A If we didn't flow up the funds of the</p> <p>15 subsidiaries, we wouldn't be able to pay Whinstone</p> <p>16 their profit share agreement.</p> <p>17 Q That is not what I asked you, sir. If you</p> <p>18 didn't flow the funds beyond to Temple JV and used</p> <p>19 that money to fund operations at Temple and some</p> <p>20 expenses outside of the subsidiaries you would be</p> <p>21 able to fund -- you would have enough money to</p> <p>22 payoff debt, right, sir?</p> <p>23 A We would have enough money to payoff the</p> <p>24 debt if our operations weren't shutdown.</p> <p>25 Q That is not what I asked you. If you-all</p>
<p style="text-align: right;">358</p> <p>1 continuous arms that requires repurchasing of new</p> <p>2 equipment.</p> <p>3 Q Is money earned at Rockdale used to fund</p> <p>4 operations at some point?</p> <p>5 A It is used --</p> <p>6 Q Yes or no question, sir. Is money earned</p> <p>7 from mining bitcoin at Rockdale used in whole or</p> <p>8 in part to operate any operation?</p> <p>9 A In part, yes.</p> <p>10 Q Is money earned at Rockdale mining bitcoin</p> <p>11 used to fund employees that work at --</p> <p>12 A No.</p> <p>13 Q Is money earned --</p> <p>14 A Sorry, let me clarify that. Is it</p> <p>15 directly allocable labor I would say no. When it</p> <p>16 comes to, like, the executives, myself their</p> <p>17 salaries there that is part of SG&amp;A part of the</p> <p>18 Rockdale operations are used to pay those</p> <p>19 employees salaries.</p> <p>20 Q Has money earned at Rockdale been used to</p> <p>21 refresh the fleet at Temple?</p> <p>22 A The money that is being generated at -- so</p> <p>23 yes, but can I answer a complete question about</p> <p>24 operating the fleet at Temple? It also operates</p> <p>25 the fleet at Rockdale which, therefore, applies</p>	<p style="text-align: right;">360</p> <p>1 weren't flowing -- had not been flowing money up</p> <p>2 out of the JV level from operations at Rockdale to</p> <p>3 things at Temple, you would be able to satisfy the</p> <p>4 debt, right?</p> <p>5 A Yes.</p> <p>6 Q Are you buying -- you mentioned about</p> <p>7 buying a new fleet of miners. Are you buying a</p> <p>8 new fleet for Temple and moving Temple miners to</p> <p>9 Rockdale?</p> <p>10 A Yes. We also would gladly purchase and</p> <p>11 contract --</p> <p>12 Q I'm sorry. You are done with the answer.</p> <p>13 A I apologize, I apologize.</p> <p>14 Q So you have provided some indication in</p> <p>15 here and lawyers have argued that you-all have</p> <p>16 contracts at the Rockdale facility for the</p> <p>17 purchase of miners that you haven't been able to</p> <p>18 fulfill. Are you familiar with that allegation?</p> <p>19 MR. STOKES: Objection, misstates -- if</p> <p>20 he's quoting something that I said, it misstates</p> <p>21 it. I think that is what he's saying he's doing.</p> <p>22 Q Let's just see what it says in paragraph 6</p> <p>23 of his declaration. Tanya, if you will pull it</p> <p>24 up, the one in this case, February, paragraph 6.</p> <p>25 By the way, Temple operates at a loss,</p>

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Transcript of Temporary Injunction Hearing  
Conducted on March 1, 2024

91 (361 to 364)

<p style="text-align: right;">361</p> <p>1 right, sir?</p> <p>2 <b>A No, sir.</b></p> <p>3 Q You're telling this arbitrator that the</p> <p>4 Temple facility is profitable?</p> <p>5 <b>A Yes, sir.</b></p> <p>6 Q Mr. Blackmon testified that it was</p> <p>7 operating at a loss, is he lying?</p> <p>8 <b>A I think there is a big difference between</b></p> <p>9 <b>\$40,000 bitcoin price and \$62,000 bitcoin price at</b></p> <p>10 <b>the time of Mr. Blackmon's testimony.</b></p> <p>11 Q What is the profits at the Temple facility</p> <p>12 now, sir?</p> <p>13 <b>A I couldn't tell you off the top of my</b></p> <p>14 <b>head.</b></p> <p>15 Q Are you flowing money back down from</p> <p>16 Temple to the other Rockdale entities?</p> <p>17 <b>A We would use money that is from the Temple</b></p> <p>18 <b>facility to payoff the debts of the subsidiaries,</b></p> <p>19 <b>yes. We respect the creditor.</b></p> <p>20 Q And you have sufficient funds available to</p> <p>21 do that at present?</p> <p>22 <b>A If the Rockdale facility was online.</b></p> <p>23 Q That wasn't my question. Are you making</p> <p>24 enough profit at Temple's facility to pay the</p> <p>25 debt?</p>	<p style="text-align: right;">363</p> <p>1 <b>personally.</b></p> <p>2 Q How much have you reserved on the books of</p> <p>3 those entities for that Midas lawsuit?</p> <p>4 MR. STOKES: Mr. Young, I'm sorry I need</p> <p>5 to interject one further continuing objection,</p> <p>6 that he's asking him for testimony about</p> <p>7 testimony, ongoing testimony in another matter.</p> <p>8 Anything that is asking for a legal conclusion is</p> <p>9 objectionable.</p> <p>10 ARBITRATOR YOUNG: Legal conclusion, yes.</p> <p>11 Are you objecting to the line of inquiry about</p> <p>12 other litigation?</p> <p>13 MR. STOKES: No, I think it is okay for</p> <p>14 him to ask him facts about things, but I just want</p> <p>15 to make sure the objection clear for the record,</p> <p>16 because I think we've changed legal topics over</p> <p>17 and over again and I just want to make it very</p> <p>18 clear.</p> <p>19 ARBITRATOR YOUNG: No legal conclusions as</p> <p>20 to that litigation, but that question is to a fact</p> <p>21 witness about that litigation are fine, correct?</p> <p>22 MR. STOKES: Agreed, yes, sir.</p> <p>23 ARBITRATOR YOUNG: All right.</p> <p>24 MR. SLOVAK: Maybe I was confusing with my</p> <p>25 question.</p>
<p style="text-align: right;">362</p> <p>1 <b>A No.</b></p> <p>2 Q So at the enterprise level you're</p> <p>3 insolvent, right?</p> <p>4 <b>A No.</b></p> <p>5 MR. STOKES: Objection, again calls for --</p> <p>6 Q Rhodium entities have been sued by Midas,</p> <p>7 right?</p> <p>8 <b>A Yes, sir.</b></p> <p>9 MR. STOKES: Just note my, pardon me, my</p> <p>10 objection to the last question.</p> <p>11 ARBITRATOR YOUNG: Got it.</p> <p>12 MR. STOKES: Thank you, sir.</p> <p>13 Q Some of the Rhodium entities have been</p> <p>14 sued by Midas, right?</p> <p>15 <b>A Yes, sir.</b></p> <p>16 Q And they have been sued for patent</p> <p>17 infringement?</p> <p>18 <b>A Yes, sir.</b></p> <p>19 Q And have you reserved -- well, and among</p> <p>20 those entities sued for patent infringement are</p> <p>21 all of those entities operating out at property</p> <p>22 Rhodium JV, Rhodium 30MW, Rhodium 10MW, Rhodium</p> <p>23 2.0 and Rhodium Encore, right?</p> <p>24 <b>A There is, yes, among every other entity</b></p> <p>25 <b>that they can find and as well as naming us</b></p>	<p style="text-align: right;">364</p> <p>1 Q I was just asking how much -- he's the</p> <p>2 co-CEO, testified about all the financial matters</p> <p>3 out here. Mr. Nichols, the question is how much</p> <p>4 have you reserved at Rhodium JV and Rhodium</p> <p>5 subsidiaries operating out at Rockdale for the</p> <p>6 Midas litigation?</p> <p>7 <b>A Without speaking too much to the</b></p> <p>8 <b>litigation, because I don't know what is allowed</b></p> <p>9 <b>or not allowed to be said, we feel very confident</b></p> <p>10 <b>about how the Midas case is going as well as</b></p> <p>11 <b>significant claims that have been dropped in</b></p> <p>12 <b>regards to Midas. Therefore, we don't feel that</b></p> <p>13 <b>there is, you know, a significant dollar figure</b></p> <p>14 <b>that will need to be paid.</b></p> <p>15 Q Again, I'm not asking about your legal</p> <p>16 view of it. I'm just asking how much have you</p> <p>17 reserved at Rhodium JV and its subsidiary</p> <p>18 operating levels, how much have you reserved on</p> <p>19 the books for that potential liability as an --</p> <p>20 <b>A Off the top of my head, I'm not on -- once</b></p> <p>21 <b>that is behind, this legal case in particular I</b></p> <p>22 <b>think off the top of my head it is roughly 1 to 2</b></p> <p>23 <b>million.</b></p> <p>24 Q And you have also -- there is also a</p> <p>25 shareholder derivative suit that has been brought</p>

Transcript of Temporary Injunction Hearing  
Conducted on March 1, 2024

103 (409 to 412)

409	<p>1 same log-in information?</p> <p>2 ARBITRATOR YOUNG: Good question, Jared?</p> <p>3 MR. FLORES: I don't know that right now.</p> <p>4 I'm trying to make sure I can set this up so we</p> <p>5 can have the same one for tomorrow.</p> <p>6 ARBITRATOR YOUNG: Jared, if you can't do</p> <p>7 that are you going to be able to distribute a new</p> <p>8 link for it sometime?</p> <p>9 MR. FLORES: Yes, I will.</p> <p>10 ARBITRATOR YOUNG: You're a good man.</p> <p>11 Jared is going to send out a new calendar invite</p> <p>12 and it should be the same information.</p> <p>13 MR. FLORES: If it fails I will circulate</p> <p>14 a new one tonight, but pray for me. Give me one</p> <p>15 second.</p> <p>16 ARBITRATOR YOUNG: Okay. Anything further</p> <p>17 we need to discuss before we go away?</p> <p>18 MR. SLOVAK: Usually ask about dress code,</p> <p>19 no ties?</p> <p>20 ARBITRATOR YOUNG: Good point. I have --</p> <p>21 I'm not going go to wear one. It is entirely</p> <p>22 possible jacket will come off because I don't</p> <p>23 think our air conditioner is working. It is</p> <p>24 actually hot enough that we need it. At any rate</p> <p>25 I'm absolutely in favor of a more relaxed casual</p>	411
410	<p>1 attire day. I would say business casual is</p> <p>2 appropriate and blue jeans casual probably isn't</p> <p>3 unless we can't see your blue jeans in which case</p> <p>4 you can get away with it. Does that make sense to</p> <p>5 everybody?</p> <p>6 MR. STOKES: It does.</p> <p>7 MR. SLOVAK: Yes.</p> <p>8 ARBITRATOR YOUNG: Let's not be uptight on</p> <p>9 Saturday. We're working on a Saturday, let's be</p> <p>10 cool about it, all right. Anything else?</p> <p>11 MR. STOKES: I just want to clarify one</p> <p>12 thing with Jared. So will we need to re-forward</p> <p>13 the calendar invite you sent to anybody, you know,</p> <p>14 that needs to log on like a client rep?</p> <p>15 MR. FLORES: No, it should be same exact</p> <p>16 link passcode, meeting ID, all that jazz.</p> <p>17 ARBITRATOR YOUNG: The operative words</p> <p>18 there are should be. I would stand ready to</p> <p>19 forward just in case.</p> <p>20 MR. STOKES: We will be.</p> <p>21 ARBITRATOR YOUNG: Hope you don't need it.</p> <p>22 All right, folks. It is 6:18 and we are in recess</p> <p>23 until 9 a.m. in the morning. Thanks to you-all.</p> <p>24 And Mr. Flores and I are going to have a brief</p> <p>25 chat then we are going away too. Good night,</p>	412

1 everyone.

2 (Hearing adjourned at 6:18 p.m.)

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1 CERTIFICATE

2

3 I, SUSAN S. KLINGER, a Certified Shorthand

4 Reporter for the State of Texas, do hereby

5 certify:

6 That the aforementioned proceedings were

7 taken by me stenographically and transcribed under

8 my direction, that such transcript is a true

9 record of the proceedings.

10 I further certify that I am not related to

11 any of the parties to this action by blood or


12 marriage; and that I am in no way interested in

13 the outcome of this matter.

14 IN WITNESS WHEREOF, I have hereunto set my

15 hand this 5th day of March, 2024.

16

17 

18 Susan S. Klinger, RMR-CRR, CSR

19

20

21

22

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24

25

# EXHIBIT 2-C

Transcript of Hearing  
Conducted on April 2, 2024

2 (5 to 8)

5	7
<p>1 PROCEEDINGS</p> <p>2 THE ARBITRATOR: All right. Everyone.</p> <p>3 Good morning, welcome. It is 9:07 by my clock,</p> <p>4 Central Time. We're on the record. This is the</p> <p>5 matter of Rhodium v. Whinstone. We are here to</p> <p>6 have a hearing on Rhodium's motion to modify. I</p> <p>7 think it may have a longer name than that, but</p> <p>8 that's what I'm going to call it for our purposes</p> <p>9 this morning.</p> <p>10 That motion to modify pertains to a prior</p> <p>11 order that I issued, and it's Mr. Stokes' motion.</p> <p>12 I'll ask counsel preliminarily, give us some idea,</p> <p>13 gentlemen, of what the plan is. I'll start with</p> <p>14 Mr. Stokes. Are we going to have an evidentiary</p> <p>15 hearing, are we taking evidence, how many</p> <p>16 witnesses? Can you answer those questions for me?</p> <p>17 MR. STOKES: Well, if we -- if we need to</p> <p>18 have a hearing today, we have one witness to put</p> <p>19 on. He will be very brief. It's Mr. Nichols, who</p> <p>20 is here. There is a preliminary issue that I'd</p> <p>21 like to raise.</p> <p>22 THE ARBITRATOR: Can I step over to</p> <p>23 Mr. Lockhart for a moment?</p> <p>24 MR. STOKES: Absolutely.</p> <p>25 THE ARBITRATOR: I want to know from</p>	<p>1 can all go home, we can be done before we even</p> <p>2 start it, but so far we've asked them twice to</p> <p>3 confirm that they will wait until the mandate</p> <p>4 issues in June and we haven't gotten a straight</p> <p>5 answer and I think -- I think that's telling about</p> <p>6 what's going on here. What they said yesterday</p> <p>7 was that their response brief states their</p> <p>8 position clearly. Well, what's very clearly not</p> <p>9 in the response brief is any statement that they</p> <p>10 will follow the injunction until the mandate</p> <p>11 issues in June. And I think that tells us -- I</p> <p>12 think that might tell us what we need to know what</p> <p>13 they're planning to do, because here's what I</p> <p>14 think they're trying to set up.</p> <p>15 They want to wait -- just to be blunt</p> <p>16 about it, until you no longer have jurisdiction,</p> <p>17 Mr. Young, and then they're going to turn around</p> <p>18 and say, It doesn't matter that the mandate hasn't</p> <p>19 issued. This injunction is not enforceable, so we</p> <p>20 don't have to follow it. And what are we going to</p> <p>21 do? We can't hold them in contempt at this point.</p> <p>22 They are going to do this. They're going to take</p> <p>23 the position that they are not required to follow</p> <p>24 the injunction while waiting for the mandate, and</p> <p>25 they're going to shut us down.</p>
6	8
<p>1 Mr. Lockhart, do you have a particular plan? Are</p> <p>2 there witnesses, what evidence do you want to</p> <p>3 adduce today? Understanding that we're going to</p> <p>4 deal with the preliminary matter here in a moment.</p> <p>5 MR. LOCKHART: The evidence that we'd</p> <p>6 enter today or move for entry of is -- it consists</p> <p>7 of the exhibits, largely, that we identified</p> <p>8 yesterday. We don't have any witnesses. We</p> <p>9 obviously will cross-examine whoever they put up</p> <p>10 to the extent necessary.</p> <p>11 THE ARBITRATOR: Okay. Thank you for</p> <p>12 that.</p> <p>13 Mr. Stokes, your preliminary matter.</p> <p>14 MR. STOKES: Sure. So at some level I</p> <p>15 think the most important question today is</p> <p>16 actually whether we need to be here at all.</p> <p>17 Whinstone says there's no emergency because the</p> <p>18 mandate doesn't issue until June. But what</p> <p>19 they've conspicuously failed to say is that</p> <p>20 they're going to abide by the injunction, by the</p> <p>21 District Court's injunction, until then. And so I</p> <p>22 think at the outset, we need an answer to that</p> <p>23 question. Because if they will tell us that</p> <p>24 they'll abide by the injunction until the mandate</p> <p>25 issues, we don't need to be here this morning. We</p>	<p>1 Now, if I'm wrong about that, all</p> <p>2 Mr. Lockhart has to say is, We're going to follow</p> <p>3 the injunction until the mandate issues in June,</p> <p>4 and we will be done for the day. If he won't say</p> <p>5 that, and I'm predicting right now that he will</p> <p>6 not, then we have our answer about whether we need</p> <p>7 emergency relief and whether this hearing needs to</p> <p>8 proceed as planned.</p> <p>9 So I think at the outset here, we're</p> <p>10 entitled to an answer on that question.</p> <p>11 THE ARBITRATOR: Mr. Lockhart?</p> <p>12 MR. LOCKHART: Yeah, they're not entitled</p> <p>13 to an answer on that question. You know, the</p> <p>14 claimants are trying their level best to create a</p> <p>15 reason to run to you and ask for relief. You</p> <p>16 know, originally they filed the motion because the</p> <p>17 Court of Appeals entered the opinion or the ruling</p> <p>18 and they allege that Whinstone refused to state</p> <p>19 its position. And that was at a time that we</p> <p>20 hadn't seen the order. We weren't even aware that</p> <p>21 the opinion had issued at the time. We agreed</p> <p>22 that we'd circle back if there was anything that</p> <p>23 we needed to discuss about it.</p> <p>24 When Whinstone actually stated its</p> <p>25 position in its brief yesterday, and that is that</p>

Transcript of Hearing  
Conducted on April 2, 2024

11 (41 to 44)

41	<p>1 Q What was the date?</p> <p>2 A I don't know it, sir.</p> <p>3 Q So you don't know if it was before or</p> <p>4 after that acquisition?</p> <p>5 A I believe it was before the acquisition</p> <p>6 because --</p> <p>7 Q Is your sworn testimony that it was before</p> <p>8 the acquisition?</p> <p>9 A I'm not 100 percent certain.</p> <p>10 Q Okay. You'd have to look at records,</p> <p>11 correct?</p> <p>12 A If you're asking me to give a specific</p> <p>13 dollar figure at a specific date, yes, I would</p> <p>14 have to look at records.</p> <p>15 Q Let's be clear. Is it impossible -- I</p> <p>16 don't mean this in a rude way, but is it</p> <p>17 impossible for you to answer a yes-no question as</p> <p>18 simple as that, yes or no? Do you have to give an</p> <p>19 explanation every time, or can you answer yes-no</p> <p>20 questions?</p> <p>21 MR. STOKES: Objection. He's harassing</p> <p>22 the witness.</p> <p>23 THE ARBITRATOR: Yeah, Mr. Lockhart,</p> <p>24 you're stuck with the answer you get. I think you</p> <p>25 can handle that.</p>	43	<p>1 A I would argue that we're in continuous</p> <p>2 threats by Whinstone.</p> <p>3 Q Nobody has said that they are move -- they</p> <p>4 are going to remove any equipment from the</p> <p>5 Rockdale site, correct?</p> <p>6 A Explicitly, no, they have not.</p> <p>7 Q Not implicitly either, correct? There's</p> <p>8 been no threat?</p> <p>9 A Frankly, I believe the actions that were</p> <p>10 continued by Whinstone to this day are threats.</p> <p>11 Q You were at the December 5th hearing,</p> <p>12 correct?</p> <p>13 A I was, yes, sir.</p> <p>14 Q And you heard the testimony of Whinstone</p> <p>15 representatives saying there was no -- there was</p> <p>16 no intent to remove equipment from the facility,</p> <p>17 correct?</p> <p>18 A Yes, sir.</p> <p>19 Q Okay. And since that time, nobody said</p> <p>20 anything directly to the contrary of that?</p> <p>21 A That's correct.</p> <p>22 Q No equipment's been removed?</p> <p>23 A No, sir.</p> <p>24 Q Hasn't -- no one from Whinstone has</p> <p>25 disconnected any equipment?</p>
42	<p>1 BY MR. LOCKHART:</p> <p>2 Q So you talked about removal of equipment.</p> <p>3 And since November 27th, 2023, has there been any</p> <p>4 threat to remove equipment conveyed to any Rhodium</p> <p>5 entity?</p> <p>6 A Is November 27th, 2023, the notice of</p> <p>7 termination date?</p> <p>8 Q Correct. You just looked at it, right?</p> <p>9 That was November 27th, 2023.</p> <p>10 MR. LOCKHART: You want to bring that back</p> <p>11 up for him, Mr. Stokes?</p> <p>12 MR. STOKES: Happily.</p> <p>13 MR. LOCKHART: Great. Thank you.</p> <p>14 MR. STOKES: May I?</p> <p>15 MR. LOCKHART: Please.</p> <p>16 MR. STOKES: Great. Let me make sure I'm</p> <p>17 sharing the right thing.</p> <p>18 BY MR. LOCKHART:</p> <p>19 Q See the date up there, Mr. Nichols?</p> <p>20 A Yes, sir.</p> <p>21 Q Okay. Since the date of this letter, can</p> <p>22 you -- there's been no threat to remove any</p> <p>23 equipment from the Rockdale facility, correct?</p> <p>24 A Not an explicit threat, no.</p> <p>25 Q There's been no threat, correct?</p>	44	<p>1 A There -- I mean, there was power that was</p> <p>2 turned off. All of our power was disconnected.</p> <p>3 Q No one has gone in and removed, i.e.,</p> <p>4 disconnected -- has disconnected your equipment</p> <p>5 from where it sits today, correct?</p> <p>6 A That's correct.</p> <p>7 Q So you talked about the Rockdale entities</p> <p>8 on your direct. And by the Rockdale entities you</p> <p>9 mean Rhodium 30mw, right?</p> <p>10 A Yes.</p> <p>11 Q Rhodium 2.0?</p> <p>12 A Yes.</p> <p>13 Q Rhodium 10mw?</p> <p>14 A Yes.</p> <p>15 Q Rhodium Encore?</p> <p>16 A Yes.</p> <p>17 Q And Jordan HPC?</p> <p>18 A Yes, alongside Rhodium JV and Air HPC,</p> <p>19 which are the holdings companies.</p> <p>20 Q Well, your testimony was they have no</p> <p>21 equipment at the Rockdale facility, either</p> <p>22 Rhodium JV or Air HPC, correct?</p> <p>23 A Correct, they do not directly own</p> <p>24 equipment.</p> <p>25 MR. STOKES: Sorry, Mr. Lockhart, can I</p>

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Conducted on April 2, 2024

12 (45 to 48)

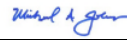
45	<p>1 take this down?</p> <p>2 MR. LOCKHART: Sure. Thanks.</p> <p>3 BY MR. LOCKHART:</p> <p>4 Q Rhodium JV and Air HPC own no equipment</p> <p>5 out at Rockdale?</p> <p>6 <b>A That's correct.</b></p> <p>7 Q Rhodium JV and Air HPC own none of the</p> <p>8 Bitcoin that is mined out at Rockdale?</p> <p>9 <b>A Well, they participate in the value that</b></p> <p>10 <b>is created from the Bitcoin that is generated at</b></p> <p>11 <b>the operating subsidiaries.</b></p> <p>12 Q Do they own the Bitcoin?</p> <p>13 <b>A No, they do not own the Bitcoin.</b></p> <p>14 Q They only get some monetary value, not the</p> <p>15 full value of the Bitcoin, but some monetary value</p> <p>16 that's generated by the Bitcoin that gets</p> <p>17 distributed by 2.0, 30mw, Encore, 10mw and Jordan,</p> <p>18 right?</p> <p>19 <b>A Yes, they get an economic interest of</b></p> <p>20 <b>them.</b></p> <p>21 Q But they don't have an ownership interest</p> <p>22 in actually anything that's generated by the</p> <p>23 Rhodium OpCo entities out at Rockdale?</p> <p>24 <b>A Yes. That was a specific desire by</b></p> <p>25 <b>Chad Harris to enter into this agreement. They</b></p>	47	<p>1 and Air HPC, let's go back. We know that they</p> <p>2 don't own any equipment out there. We know that</p> <p>3 they don't own the cryptocurrency that is mined</p> <p>4 out there, right?</p> <p>5 MR. STOKES: Objection, compound.</p> <p>6 MR. LOCKHART: He's already testified to</p> <p>7 it.</p> <p>8 THE ARBITRATOR: He has.</p> <p>9 BY MR. LOCKHART:</p> <p>10 Q So -- so is there anything that Rhodium JV</p> <p>11 owns out at the Rockdale facility?</p> <p>12 <b>A I would say they own the rights under the</b></p> <p>13 <b>contracts.</b></p> <p>14 Q What contracts?</p> <p>15 <b>A The Air HPC and Rhodium JV governing</b></p> <p>16 <b>contracts.</b></p> <p>17 Q Okay. What rights are those?</p> <p>18 <b>A There's a synthetic dividend that governs</b></p> <p>19 <b>the revenue share, the rights that -- and those</b></p> <p>20 <b>rights underneath the facility.</b></p> <p>21 Q Well, actually that's an obligation that</p> <p>22 they owe to Whinstone, not a right, correct?</p> <p>23 <b>A I'm not a lawyer. I'm not sure.</b></p> <p>24 Q Okay. So do they own rights to have power</p> <p>25 out at Rockdale?</p>
46	<p>1 <b>did have ownership.</b></p> <p>2 Q Did I ask you anything about Mr. Harris?</p> <p>3 <b>A No.</b></p> <p>4 Q Did I ask you about an ownership interest</p> <p>5 at one time?</p> <p>6 <b>A I just felt the color would be helpful.</b></p> <p>7 Q Could you please just answer my questions</p> <p>8 and this will move much more quickly, as opposed</p> <p>9 to volunteering? Can we have that agreement?</p> <p>10 MR. STOKES: Objection. Ask the witness</p> <p>11 to enter an agreement with the attorney? I'm not</p> <p>12 sure about that.</p> <p>13 MR. LOCKHART: You mean like asking us to</p> <p>14 agree to the words that you want us to use, that's</p> <p>15 your emergency? Again, can we have the --</p> <p>16 BY MR. LOCKHART:</p> <p>17 Q Mr. Nichols, can we have the agreement --</p> <p>18 THE ARBITRATOR: I'm going to sustain that</p> <p>19 objection. Let's move on.</p> <p>20 BY MR. LOCKHART:</p> <p>21 Q So I want to break down the different</p> <p>22 entities that are out at Rockdale, because there</p> <p>23 are only five entities out at Rockdale, correct?</p> <p>24 <b>A Operating subsidiaries, yes.</b></p> <p>25 Q Well, if we need to go back to Rhodium JV</p>	48	<p>1 <b>A There's 24 contracts that are across all</b></p> <p>2 <b>the various entities.</b></p> <p>3 MR. LOCKHART: Objection, nonresponsive.</p> <p>4 Mr. Young, I mean, it's a very specific question.</p> <p>5 He continues to go off on tangents.</p> <p>6 MR. STOKES: I'm sorry, if --</p> <p>7 THE ARBITRATOR: Well, Mr. Stokes, I am</p> <p>8 going to instruct your witness because he is</p> <p>9 roaming.</p> <p>10 Mr. Nichols, you need to answer the</p> <p>11 question that's asked. You need to make sure that</p> <p>12 you answer what is asked. You explain only to the</p> <p>13 extent necessary to make your answer truthful and</p> <p>14 correct. You certainly may explain to that</p> <p>15 extent, but no farther. Wait for the next</p> <p>16 question. And your counsel can come back and add</p> <p>17 in the color on a redirect examination. I'm going</p> <p>18 to ask you to be a little more attentive to the</p> <p>19 question that is asked, make sure that you answer</p> <p>20 it. I'm not telling you you can't explain, but</p> <p>21 your explanations should be limited to the</p> <p>22 question that is asked.</p> <p>23 THE WITNESS: Understood, Arbitrator</p> <p>24 Young.</p> <p>25</p>



Transcript of Hearing  
Conducted on April 2, 2024

38 (149 to 152)

149	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	burden and you must deny their relief. Thank you. THE ARBITRATOR: All right. Gentlemen, let's see if we can wrap this up. Mr. Stokes, is there anything further that needs to be heard today? MR. STOKES: No. THE ARBITRATOR: Mr. Lockhart, same question. MR. LOCKHART: No, Arbitrator Young. THE ARBITRATOR: All right. Then this matter is submitted. In a moment I'm going to adjourn the hearing and release everyone. I want to remind counsel that I will ask you to stay along with me with our court reporter. He has asked for some clarifications and so let's give him the opportunity to get his questions answered before we completely disband. Mr. Stokes, Mr. Lockhart, I will assume that that will be the two of you, and everyone else is released upon adjournment. Mr. Flores, you're welcome to stay too if you think that's necessary for you to do. MR. LOCKHART: We actually need Mr. Nichols. We cleared up I think most of the questions -- or all the questions that the court
150	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	reporter had for our side. I believe what he indicated -- we did this while you were away. We had some spare time. THE ARBITRATOR: All right. MR. LOCKHART: And I believe most of his questions relate to Mr. Nichols' testimony. THE ARBITRATOR: Okay. Mr. Stokes, comments on that? MR. STOKES: No, that's accurate. I think Mr. Nichols should stick around -- I think it was questions about spelling. THE ARBITRATOR: And I'm happy for Mr. Nichols to stay for purposes of corrections, but I am not happy for him to continue his testimony. There's a difference. MR. STOKES: Agreed. THE ARBITRATOR: Mr. Nichols, we will ask you to remain with us as well. MR. NICHOLS: Yes, sir. THE ARBITRATOR: It is 2:12 p.m. Central time. We are adjourned. Everyone else is released. Good day to all. (Deposition concluded at 2:12 p.m.)

151	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	CERTIFICATE OF REPORTER  I, Micheal A. Johnson, hereby certify that the witness in the foregoing deposition was by the Arbitrator duly sworn to tell the truth, the whole truth, and nothing but the truth in the within-entitled cause; That said hearing was taken in shorthand by me, a disinterested person, at the time and place therein stated, and that the testimony of said hearing was thereafter reduced to typewriting, by computer, under my direction and supervision;  I further certify that I am not of counsel or attorney for either or any of the parties to the said hearing, nor in any way interested in the event of this cause, and that I am not related to any of the parties thereto.  Dated: 5th day of April, 2024   MICHEAL A. JOHNSON, RDR, CRR NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
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# EXHIBIT 2-D

## (Filed Under Seal)



# EXHIBIT 2-E

1       ROUGH DRAFT OF THE DEPOSITION OF

2               NATHAN NICHOLS

3    The following transcript of proceeding or any

4    portion thereof taken on October 28, 2024, is

5    being delivered unedited and uncertified by the

6    certified court reporter.

7    The PURCHASER AGREES NOT TO DISCLOSE THIS

8    UNEDITED TRANSCRIPTION IN ANY FORM, WRITTEN OR

9    ELECTRONIC, to anyone who has no connection to

10   this case. This is an unofficial transcription

11   which should not be relied upon for purposes of

12 verbatim citation of testimony.

13 This transcription has not been checked,

14 proofread, or corrected. It is a draft

15 transcript, not a certified transcript. As such,

16 IT WILL CONTAIN COMPUTER-GENERATED

17 MISTRANSLATIONS OF STENOTYPE CODE OR ELECTRONIC

18 TRANSMISSION ERRORS, RESULTING IN INACCURATE OR

19 NONSENSICAL WORD COMBINATIONS OR UNTRANSLATED

20 STENOTYPE SYMBOLS WHICH CANNOT BE DECIPHERED BY

21 NONSTENOTYPISTS.

22 Corrections will be made in the preparation

23 of the certified transcription, resulting in

24 differences in content, page and line numbers,

25 punctuation, and formatting.

1 THE COURT REPORTER: Mr. Lockhart,

2 you're getting real time today, you want a same

3 day rough and a three day expedite of the final,

4 correct?

5 \* \* \* \* \*

6 THE COURT REPORTER: Metro, do you

7 need a copy of today's deposition?

8 MR. O'CONNELL: Yes.

9 THE COURT REPORTER: Do you need

10 real time, same day rough, and three-day business

1 30-Megawatt?

2 A. Yes.

3 Q. And then Rhodium 30-Megawatt contributed

4 that membership interest in -- strike that.

5 Rhodium Enterprises, Inc., contributed

6 its 30 percent membership interest in Rhodium

7 30-Megawatt to Rhodium Technologies; is that

8 right?

9 A. I'm not sure specifically how those

10 mechanics worked, but --

11 Q. Sitting -- sitting here today, does

12 Rhodium Technologies hold a 30 percent membership

13 interest in Rhodium 30-Megawatt?

14 A. I believe so.

15 Q. Okay. Would -- would -- would the process

16 that we just walked through with respect to

17 Rhodium 30-Megawatt apply to Rhodium 10-Megawatt?

18 MR. STOKES: Object to form.

19 MR. LOCKHART: I'm happy to walk

20 through it.

21 MR. STOKES: Are -- when you say

22 "process," are you going back to the beginning of

23 the formation --

24 MR. LOCKHART: Yeah, the process

25 of investors being exchanged out at Rhodium



1 Enterprises, and then Rhodium Enterprises moving

2 its interest in Rhodium 10-Megawatt down to

3 Rhodium Technologies.

4 A. The -- the -- the process was the same

5 across all of the entities.

6 Q. (BY MR. LOCKHART) Okay.

7 A. Or the operation.

8 Q. How they were rolled up?

9 A. Yes.

10 Q. Okay.

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1 paid by July 30th, 2024?

2 A. No.

3 Q. And, in fact, last fall, as late -- as

4 early as last fall of 2023, there had been

5 communications indicating that payment was not

6 going to be made by the July 30th deadline,

7 correct?

8 A. I don't think that's true.

9 Q. You don't think it's true or you don't --

10 or you know, it's not true?

11 MR. LEMMON: Object to the form.

12 A. There --

13 MR. STOKES: Same objection.

14 A. There was communications with investors on

15 a Plan B, on if the debt couldn't be repaid, but

16 there was mutual understanding between the

17 creditors and Rhodium that Temple was going to be

18 sold before the debt came due.

19 Q. (BY MR. LOCKHART) So are you saying that

20 a sale of Temple was necessary in order for the

21 debt to be repaid?

22 MR. LEMMON: Object to the form.

23 MR. STOKES: Same objection.

24 A. Yes.

25 Q. (BY MR. LOCKHART) And that's because

11 A. No.

12 Q. Okay. I'll pass. I assume you're

13 reserving?

14 MR. STOKES: We're going to

15 reserve.

16 MR. LOCKHART: We can go off the

17 record.

18 THE VIDEOGRAPHER: We are going

19 off the record at 6:41 p.m.

20

21

22

23

24

25

# EXHIBIT 2-F

## (Filed Under Seal)

# EXHIBIT 2-G

## (Filed Under Seal)