Docket #0815 Date Filed: 02/24/2025

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

In re:	§	
	§	
RHODIUM ENCORE LLC, et al.,[1]	§	No. 24-90448-ARP
	§	
	§	Chapter 11
Debtors.	§	

WHINSTONE US INC.'S NOTICE OF APPEAL
TO THE U.S. DISTRICT COURT - SOUTHERN DISTRICT OF TEXAS

Whinstone US, Inc., a creditor and interested party herein, pursuant to 28 U.S.C. § 158(a) appeals to the United States District Court for the Southern District of Texas from the following order entered by the United States Bankruptcy Court for the Southern District of Texas:

- **Doc. 579 – No. 24-90448:** Interim Order on Phase 1 of Motion to Assume Executory Contracts (ECF Nos. 7 and 32), entered Dec. 16, 2024 [Exhibit A].
- **Doc. 763 – No. 24-90448:** Second Interim Order on Phase 1 of Motion to Assume Executory Contracts (ECF Nos. 7 and 32), entered Feb. 10, 2025 [Exhibit B].
- **Doc. 800 – No. 24-90448:** Agreed Order Granting Debtors' Motion and Supplemental Motion to Assume Certain Executory Contracts with Whinstone US, Inc. (ECF Nos. 7 and 32), entered on Feb. 24, 2025 [Exhibit C].
- All other rulings that, as a matter of law for purposes of appeal, are merged into these orders as stated in Fed. R. Bankr. P. 8003(a)(4).

The parties to the orders appealed from, and the names and addresses of their counsel are:

[1] The Debtors in these chapter 11 cases and the last 4 digits of their corporate identification numbers are: 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 Debtors in these chapter 11 cases is 2617 Bissonnet Street, Suite 234, Houston, Texas 77005.

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Parties to the judgment:

Rhodium Encore LLC
Jordan HPC LLC
Rhodium JV LLC
Rhodium 2.0 LLC
Rhodium 10MW LLC
Rhodium 30MW LLC
Rhodium Enterprises Inc.
Rhodium Technologies LLC
Rhodium Renewables LLC
Air HPC LLC
Rhodium Shared Services LLC
Rhodium Ready Ventures LLC
Rhodium Industries LLC
Rhodium Encore Sub LLC
Jordan HPC Sub LLC
Rhodium 2.0 Sub LLC
Rhodium 10MW Sub LLC
Rhodium 30MW Sub LLC
Rhodium Renewables Sub LLC

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WHINSTONE US INC.

Exhibit A

Interim Order on Phase 1 of Motion to Assume Executory Contracts (ECF Nos. 7 and 32)

ECF No. 579

Entered December 16, 2024

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

IN RE:	§	
	§	
RHODIUM ENCORE LLC, *et al.*,	§	**CASE NO: 24-90448 (ARP)**
	§	
Debtors.	§	**Jointly Administered**
	§	
		CHAPTER 11

INTERIM ORDER ON PHASE 1 OF MOTION TO ASSUME EXECUTORY CONTRACTS (ECF NOS. 7 & 32)

I. PROCEDURAL HISTORY

On August 24, 2024, Rhodium Encore LLC, Jordan HPC LLC, Rhodium JV LLC, Rhodium 2.0 LLC, Rhodium 10MW LLC, and Rhodium 30MW LLC each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the "Initial Debtors"). The Initial Debtors' cases are jointly administered as *In re Rhodium Encore LLC, et al.*, Case No. 24-90448 (ARP). Contemporaneously, the Initial Debtors also filed a Motion to Assume Certain Executory Contracts with Whinstone US, Inc. ("Whinstone")(the "Motion to Assume").[1] On August 29, 2024, additional affiliates of the Initial Debtors also filed for chapter 11 relief: Rhodium Technologies LLC, Rhodium Enterprises Inc., Rhodium Renewables LLC, Rhodium Ready Ventures LLC, Rhodium Industries LLC, Rhodium Shared Services LLC, Rhodium Renewables Sub LLC, Rhodium 30MW Sub LLC, Rhodium Encore Sub LLC, Rhodium 10MW Sub LLC, Rhodium 2.0 Sub LLC, Air HPC LLC, and Jordan HPC Sub LLC (these parties together with the Initial Debtors,

[1] ECF No. 7.

are the "Debtors"). The Debtors filed Debtors' Supplemental Motion to Assume Certain Executory Contracts with Whinstone US, Inc. (together, both are referred to as the "Motion to Assume").[2] The complete schedule of contracts the Debtors have moved to assume is listed in the Motion to Assume.[3]

First day hearings took place on August 30, 2024, and at that time the Court considered and heard arguments on a proposed scheduling order for the contested matter involving the Motion to Assume. The Court entered a Scheduling Order for Contested Matter ("Scheduling Order"), on September 5, 2024.[4] The Scheduling Order set forth deadlines for discovery and motion practice.[5] The deadline for substantial completion of document production was September 26, 2024. The deadline to complete all depositions was October 31, 2024. The deadline to file dispositive and pre-hearing motions was October 16, 2024. Each side was permitted to file an individual hearing brief by November 7, 2024. The deadline to file Witness Lists, Exhibit Lists, and Exhibits was November 7, 2024. The final pre-hearing conference and hearing on the motions was November 8, 2024.[6]

The Motion to Assume was actively litigated. Second day hearings took place on September 23, 2024.[7] On October 4, 2024, Whinstone filed an Emergency Motion for Status Conference,[8] and the Court held the status conference on October 8, 2024.[9] The Court heard argument on the Scheduling Order but took no action. Pursuant to the Scheduling Order, both Parties filed Motions for Summary Judgment prior to the October 16, 2024 deadline.[10] On October 23, 2024, Whinstone filed a new

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2 ECF No. 32.
3 ECF No. 32-1 at 4-6.
4 ECF No. 121.
5 *Id.*
6 *Id.*
7 ECF No. 182 (PDF with attached Audio File).
8 ECF No. 210.
9 ECF No. 216 (PDF with attached Audio File).
10 ECF No. 121; ECF No. 208 (Whinstone); ECF No. 272 (Debtors).

Emergency Motion for Status Conference.[11] The Court heard the argument on October 25, 2024, and advised the parties to confer on discovery issues.[12] The hearing was continued until October 28, 2024.[13] At the October 28, 2024, status conference the parties requested and the Court agreed to bifurcate the issues for hearing on the Motion to Assume into a Phase 1 and Phase 2.[14] The Motion for Summary Judgment hearings were held on November 8, 2024.[15]

Both Motions for Summary Judgement were denied on the record at the outset of the Phase 1 hearing on November 12, 2024. The hearing on Phase 1 issues was conducted over four days from November 12, 2024, to November 15, 2024. The Court admitted numerous exhibits[16] and heard testimony from Michael Robinson (Co-Chief Restructuring Officer for Debtors),[17] Nathan Nichols (co-founder and Co-CEO of Rhodium),[18] David Schatz (Operations Manager for Whinstone at the Rockdale site),[19] Nicholas Burnett (Whinstone's expert witness – Senior Service Supervisor for CTI Field Services),[20] Alex Peloubet (Vice President of Finance and Accounting for Rhodium),[21] Chad Harris (former CEO of Whinstone),[22] Jeffrey McGonegal (former CFO and Senior Advisor to Riot Platforms Inc. ("Riot," which acquired Whinstone on May 26, 2021[23])),[24] Jeff Matthews (Whinstone's expert witness – CPA

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11 ECF No. 328.
12 ECF No. 339.
13 *Id.*
14 ECF No. 351 (Update provided to court regarding agreement of bifurcation of the trial as stated on the record).
15 ECF No. 412 (PDF with attached Audio File).
16 Trial Tr., November 12, 2024, 5:19-7:4.
17 Trial Tr., November 12, 2024, 65-101.
18 Trial Tr., November 12, 2024, 105-321; Trial Tr., November 13, 2024, 335-385.
19 Trial Tr., November 13, 2024, 386-480.
20 Trial Tr., November 13, 2024, 482-576.
21 Trial Tr., November 13, 2024, 578-683.
22 Trial Tr., November 14, 2024, 691-987.
23 Trial Tr., November 14, 2024, 1005:14-16 – Whinstone direct examination of Jeff McGonegal (Q. Okay. And so let's go to May 26, 2021. That's the closing date, right? A. Correct.).
24 Trial Tr., November 14, 2024, 989-1045; Trial Tr., November 15, 2024, 1064-1156.

and Certified Fraud Examiner),[25] and Nenad Miljkovic (Debtor's expert witness – Professor of Mechanical Science and Engineering).[26]

The issues during the Phase 1 hearing addressed which agreements control the relationship between the parties, whether any of the agreements were superseded by other agreements, the existence of defaults, whether any agreements were terminated as a result of a breach, and whether any defaults have continued or have been cured. Phase 2 will address issues of cure, compensation, and adequate assurance.

II. RELEVANT FACTS

Debtors are an industrial scale digital asset technology company using proprietary technology to mine bitcoin.[27] Debtors conduct their principal operations out of two buildings at the Whinstone Rockdale hosting center: Building B and Building C. In early 2020, Nick Cerasuolo, Cameron Blackmon, Chase Blackmon, and Nathan Nichols[28] proposed a partnership hosting opportunity to Whinstone[29] at the Rockdale site. The Rockdale site is leased to Whinstone from SLR Property LP, which acquired the property from the Alcoa Corporation ("Alcoa"). The infrastructure that Alcoa had previously installed on the

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[25] Trial Tr., November 15, 2024, 1157-1198.

[26] Trial Tr., November 15, 2024, 1201-1314.

[27] ECF No. 271-1 at 2.

[28] Trial Tr., November 14, 2024, 848:19-21 – Whinstone cross examination of Harris (A. Nick was one of the four, I guess, founding partners of Rhodium. So there was Nick, Cameron, Chase, and Nathan.).

[29] Trial Tr., November 13, 2024, 389:23-390:3 – Whinstone direct examination of Schatz (Q. When did you first learn about Rhodium? A. In probably early 2020.Q. How did you first learn about Rhodium? A. They showed up on-site one day with Nathan, Chase and a few others from the Rhodium team showed up at our office.); Trial Tr., November 13, 2024, 390:12-15 – Whinstone direct examination of Schatz (They wanted some sort of a hosting opportunity. They were looking to house machines somewhere and didn't have a site to house them, so looking for opportunity -- a partnership.).

site made the property a good fit to build Whinstone's data center.[30] Chad Harris found the Rockdale site in 2019,[31] and negotiated the lease with Alcoa.[32] Harris also served as the CEO of Whinstone at the time the agreements between Whinstone and the Debtors were signed.[33]

A. Agreements Between the Parties

In early 2020, Imperium Investment Holdings, LLC ("Imperium")[34] and Whinstone entered a joint venture, resulting in the formation of Rhodium JV LLC ("Rhodium JV").[35] Imperium owned 87.5% of Rhodium JV's equity, and Whinstone owned the remaining 12.5%.[36] Rhodium JV holds ownership interests in four entities which operate miners in Building C: Rhodium 30MW (Rhodium JV holds 70%),

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[30] Trial Tr., November 13, 2024, 389:4-19 – Whinstone direct examination of Schatz (Q. Okay. Who owns that -- well, who does Whinstone lease this facility from? A. Now a company called SLR. Used to be Alcoa. Q. And why was this former -- well, why was this Alcoa site a good site to build Whinstone's data center? A. There was previously a substation built that we could tie into, so the infrastructure was already there. Alcoa had gone out of business, so it was kind of available, power and space. There was also water available from what we call Alcoa Lake that's on the property, and then there's a pretty robust skilled workforce that had been laid off by Alcoa, so kind of a perfect fit for us coming in.).

[31] Trial Tr., November 13, 2024, 388:11-12 – Whinstone direct examination of Schatz (A. Chad Harris, at some point in mid to early 2019, he found the site.).

[32] Trial Tr., November 14, 2024, 703:24-704:2 – Debtors direct examination of Harris (Q. You negotiated the lease with Alcoa to get the Rockdale site, right? A. I was one of the people that worked on it, that's correct.).

[33] Trial Tr., November 14, 2024, 691:12-22 – Debtors direct examination of Harris (Q. You previously served as the CEO of Whinstone, correct? A. I did. Q. And you've previously signed contracts on behalf of Whinstone, right? A. I did. Q. But you're no longer working at Whinstone, right? A. No. Q. When did you leave? A. February 1st, 2023.).

[34] Imperium is a private equity firm and is a majority investor in each deal Rhodium enters. Trial Tr., November 14, 2024, 979:11-17 – Debtors redirect examination of Harris (Q. Okay. So just so it's clear here, what Mr. Cerasuolo told you on behalf of Rhodium in December of 2020 was that Imperium is majority investor in each deal, PE firm -- that means private equity? A. I -- or -- in this context, I believe that would be the correct way to say it.).

[35] ECF No. 208 at 3; ECF No. 208-8 (Operating Agreement for Rhodium JV LLC – March 6, 2020).

[36] ECF No. 208-8 at 10; ECF No. 271-1 at 2.

Rhodium Encore (Rhodium JV owns 50%), Rhodium 10MW (Rhodium JV owns 50%) and Rhodium 2.0 (Rhodium JV owns 65%).[37] The remaining interest in these entities are owned by third-party investors who provided debt and equity to the entities.[38] Debtors refer to these four entities as the operating entities. Debtors refer to Rhodium JV as the holding company.[39]

In July 2020, Rhodium 30MW entered into a New Hosting Service Agreement ("30MW Agreement") to receive 30MW of power from Whinstone at a fixed price.[40] Also in July 2020, Rhodium JV entered into 20 identical New Hosting Service Agreements ("5MW Agreements," and together with the 30MW Agreement, the "July 2020 Agreements") to receive 5MW of power from Whinstone at a fixed price for a period of 10 years.[41] Fourteen of the 20 5MW Agreements were later assigned to Rhodium Encore, Rhodium 10MW, and Rhodium 2.0.[42]

In November 2020, Whinstone and Jordan HPC (a subsidiary of another Debtor entity, Air HPC LLC), entered into the Jordan HPC Colocation Agreement[43] ("Jordan Agreement") pursuant to which Whinstone provided 25MW of power and space in Building B to Jordan HPC.[44] Debtors refer to Jordan HPC as the operating entity.[45] Debtors refer to Air HPC LLC as the holding company.[46] Unlike the miners in

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37 *Id.*
38 *Id.*
39 ECF No. 387.
40 ECF No. 208-6.
41 ECF No. 208-5.
42 ECF No. 385-28.
43 ECF No. 208-7.
44 ECF No. 409 at 3.
45 ECF No. 387.
46 *Id.*

Building C that are immersion-cooled (through the use of BitCool), the miners in Building B are air-cooled.[47]

Shortly after executing the above-referenced agreements, the parties executed three additional agreements with effective dates of December 31, 2020. First was the Withdrawal, Dissociation, and Membership Interest Agreement ("Withdrawal Agreement") pursuant to which Whinstone's 12.5% equity stake in Rhodium JV was redeemed, at Whinstone's request, for business and tax purposes.[48] The second agreement was the Rhodium JV Hosting Agreement ("December JV Agreement") between Rhodium JV and Whinstone.[49] This agreement was signed January 18, 2021, but made effective December 31, 2020. Whinstone argues this agreement was a restructuring and renegotiation of the July 2020 Agreements and that this December 2020 agreement, which covered some of the same subject matter as the July 2020 Agreements, superseded earlier agreements.[50] The Debtors argue this agreement was a profit sharing agreement that entitled Whinstone to a synthetic dividend equivalent to its prior ownership interest in Rhodium JV.[51] According to Debtors, this agreement was only intended to change the form of Whinstone's equity interest to a revenue sharing provision and, therefore, did not supersede the July 2020 Agreements.[52] The third agreement effective on December 31, 2020 is the Air HPC Hosting Agreement ("December Air Agreement," and together with the December JV Agreement, the "December 2020 Agreements") between Air HPC LLC and Whinstone.[53] Whinstone argues this agreement

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47 Trial Tr., November 15, 2024, 1221:18-22 – Debtors direct examination of Miljkovic (Q. What is – how does the Rhodium operation in Building B differ from the Rhodium operation inside of Building C? A. So Building B is an air-cooled mine. It doesn't use immersion cooling.).

48 ECF No. 208 at 4; *See generally*, ECF No. 208-9.

49 ECF No. 208-3.

50 ECF No. 409 at 4.

51 ECF No. 408 at 1.

52 *Id.*

53 ECF No. 208-4.

renegotiated and superseded the Jordan Agreement.[54] The Debtors argue that this agreement gave Whinstone a share of the profits that Air HPC receives from Jordan HPC and that it did not supersede the Jordan Agreement.[55] The final contract at issue between the parties is the Water Supply Services Agreement ("Water Agreement") by which Whinstone provides water to assist in the cooling of the mining infrastructure.[56] Whinstone argues that the Water Agreement was automatically terminated in November 2023 (pursuant to Section 4(B) of its terms)[57] at the time Whinstone alleges termination of the December 2020 Agreements.[58]

The Debtors seek authorization to assume all the above-referenced agreements on their original terms.[59]

B. Notices of Default

Beginning in 2022, the relationship between the Debtors and Whinstone deteriorated. Whinstone sent a first Notice of Default to Debtors on May 17, 2022 ("First Notice of Default").[60] The First Notice of Default was addressed to Rhodium Enterprises Inc., Rhodium JV LLC, Air HPC LCC, and Rhodium 30MW LLC. This notice alleged a default under the Jordan Agreement and both December 2020 Agreements for failure to pay hosting fees (of no less than $18,500,000) and violations of the Data Center Rules and Acceptable Use Policy.[61] Debtors responded on May 20, 2022, that they vigorously disputed

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54 ECF No. 409 at 4.
55 ECF No. 408 at 1-2.
56 ECF No. 365-5.
57 *Id.* at 3 (In the event the Hosting Agreement is terminated, this Agreement shall automatically terminate such that the termination of the Hosting Agreement shall automatically result in the termination of both agreements, except as specifically set forth herein or therein.).
58 ECF No. 208-12.
59 ECF No. 7 at 12.
60 ECF No. 208-11.
61 *Id.*

Whinstone's arguments and that Whinstone had no basis for suspending or terminating its obligations under the agreements.[62]

Whinstone sent a second Notice of Default to Debtors on August 25, 2022 ("Second Notice of Default").[63] This notice was addressed to Kirkland & Ellis, Rhodium JV LLC, and Air HPC LLC. The notice alleged defaults under both December 2020 Agreements for BitCool spills and for Rhodium personnel's failure to adhere to OSHA requirements.[64]

Whinstone sent a third Notice of Default to Debtors on April 28, 2023 ("Third Notice of Default").[65] This notice was addressed to Kirkland & Ellis, Rhodium JV LLC, and Air HPC LLC. The notice alleged a breach of the December 2020 Agreements for failure to pay the past due amount of $13,582,106.10.[66] This included past due revenue share payments and other past due amounts. On May 2, 2023, Whinstone filed its breach of contract case, as will be described below. Debtors responded to the Third Notice of Default on May 3.[67] Debtors disputed the claims made by Whinstone in the Third Notice of Default but made payments of $3,000,000 to cover "other past due amounts" that Whinstone alleged were due.[68]

C. Prepetition Litigation

On May 2, 2023, Whinstone filed breach of contract claims against some Debtors, *Whinstone US, Inc. v. Rhodium 30 MW LLC, Rhodium JV LLC, Air HPC LLC, and Jordan HPC LLC*, Cause No. CV41873, pending in the 20th District Court of Milam County, Texas (the "Milam

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62 ECF No. 208-19.
63 ECF No. 405-49.
64 *Id.*
65 ECF No. 208-14.
66 *Id.*
67 ECF No. 208-20.
68 *Id.*

Litigation").[69] Whinstone alleged that the referenced Debtor entities breached the terms of the December JV Agreement and the December Air Agreement.[70] In September 2023, the trial court ordered the parties to arbitrate Whinstone's claims and stayed the suit pending the outcome of the arbitration.[71] Whinstone sought a petition for a writ of mandamus review, which was denied. *In re Whinstone US, Inc.,* 2023 WL 8102018 (Tex.App.-Austin (3 Dist.), 2023). Following the denial of the mandamus, Whinstone turned off the power to Debtor's operations at Rockdale.[72] As a result, Debtors sought a temporary injunction hearing before the Honorable Judge Youngblood in Milam County District Court.[73] Judge Youngblood ordered Whinstone to turn the power back on.[74]

In January 2024, Whinstone shut the power off again after a BitCool spill.[75] At that time, the temporary injunction was still in effect.[76] The Rhodium defendants in the Milam Litigation filed various motions to compel Whinstone to restore power, and after a two-day evidentiary hearing, an emergency arbitrator ordered Whinstone to restore Debtor's

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69 ECF No. 7 at 7.

70 *Id.*

71 *Id.* at 8.

72 *Id.*

73 Trial Tr., November 13, 2024, 449:15-17 – Debtors direct examination of Schatz.

74 Trial Tr., November 13, 2024, 450:20-24 – Debtors direct examination of Schatz (Q. So after you testified about the safety stuff, after Judge Youngblood looked at the notice of termination that was sent on November 27th, he ordered Whinstone to turn Rhodium's power back on? A. Correct.).

75 Trial Tr., November 15, 2024, 1134:3-12 – Debtors cross examination of McGonegal (Q. You may recall that Whinstone turned the power off in Building C again in January of 2024, right? A. That was after the spill? Q. Yes, it's after Whinstone sent a notice purporting to be very concerned about a BitCool spill. A. Yes, I do recall that. Q. You remember that? A. Yes.).

76 Trial Tr., November 15, 2024, 1133:23-1134:10 – Debtors cross examination of McGonegal (Q. Okay. But Whinstone turned the power off again in Building C before any ruling from the Third Court of Appeals on the validity of the injunction, right? A. When was -- when did that turnoff occur? Q. You may recall that Whinstone turned the power off in Building C again in January of 2024, right? A. That was after the spill? Q. Yes, it's after Whinstone sent a notice purporting to be very concerned about a BitCool spill. A. Yes, I do recall that.).

power and site access.[77] In March 2024, Judge Youngblood's temporary injunction was overturned on appeal.[78] The Court of Appeals ruled the temporary injunction be dissolved because it violated Rule 683's requirement that all injunctions "be specific in terms" and "describe in reasonable detail...the act or acts sought to be restrained." *Whinstone US Inc. v. Rhodium 30MW, LLC*, 691 S.W.3d 47, 55 (Tex.App.-Austin (3 Dist.), 2024). Following the Court of Appeals holding, Debtors sought further review from the emergency arbitrator, who issued an order confirming the temporary injunction would remain in effect until at least June 2024, when the Court of Appeals' mandate would issue.[79]

D. Notices of Termination

Two Notices of Termination were sent to Debtors during the pendency of the Milam Litigation. A Notice of Termination dated November 27, 2023, ("2023 Notice of Termination")[80] was sent to Debtors the next business day after the writ of mandamus was denied and the same day Whinstone shut off power. The Notice of Termination only alleged the same $13,582,106.10 payment failure as the First Notice of Default. The second Notice of Termination was sent to the Debtors on April 22, 2024 ("2024 Notice of Termination")[81] after Judge Youngblood's temporary injunction was dissolved on appeal. As will be described below, the 2024 Notice of Termination listed a large number of bases to terminate the agreements.

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77 ECF No. 7 at 9.

78 Trial Tr., November 13, 2024, 480:7-9 – Whinstone cross examination of Schatz (Q. Was Judge Youngblood's TRO ultimately overturned on appeal? A. Yes.).

79 ECF No. 7 at 10 ("On April 3, 2024, the emergency arbitrator issued an order confirming that the district court's injunction remained in full force and effect at least until the appeals court issued its mandate in June 2024.").

80 ECF No. 208-12.

81 ECF No. 208-15.

III. JURISDICTION

The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, which grants district courts original and exclusive jurisdiction over all Title 11 cases.[82] Pursuant to 28 U.S.C. § 157(b)(1), bankruptcy judges may hear and determine all core proceedings arising under Title 11. A determination of a debtor's ability to assume an executory contract is a core matter under 28 U.S.C. § 157(b)(2)(A). Therefore, the bankruptcy judge may hear and determine the Motion to Assume. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The basis for the relief requested by the parties are sections 365(a) and 105(a) of the Bankruptcy Code, and rules 6004(h) and 6006 of the Bankruptcy Rules.

IV. LEGAL STANDARD

Section 365 of the Bankruptcy Code ("Section 365") allows "the trustee, subject to the court's approval, [to] assume or reject any executory contract or unexpired lease of the debtor."[83] A contract is executory if some extent of performance remains for both parties. *In re Chesapeake Energy Corp.*, 622 B.R. 274 (Bankr. S.D. Tex. 2020). Section 365 allows a debtor to re-evaluate whether to continue performance of a contract based upon the circumstances faced by the debtor during the bankruptcy case. *Id.* Section 365 only applies to a contract in existence at the commencement of the bankruptcy proceeding.[84] The key issue here is which contracts, if any, were in effect at the time of the bankruptcy filing, as only those contracts can be assumed or rejected. Both parties bear elements of the burden of production and persuasion. The objecting party bears the initial burden of showing default under the agreements. *In re Vitanza*, No. 98-19611DWS, 1998 WL 808629, at *14 (Bankr. E.D. Pa. 1998). The debtor bears the ultimate burden to show the contracts are subject to assumption and all the requirements

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[82] 28 U.S.C. § 1334(a).
[83] 11 U.S.C. § 365(a).
[84] *See* 3 COLLIER ON BANKRUPTCY P. 365.02 (16th ed. 2024).

of assumption have been met. *Id.* In this case, Whinstone, as the objecting party, bears the initial burden of showing it exercised its termination rights (in response to the alleged defaults) under the terms of the contract. *Id.* Here, Whinstone argues that the December 2020 Agreements superseded all the other agreements and that the December 2020 Agreements were terminated in November 2023, or in the alternative, that all the agreements were terminated in April 2024, bringing the 25 contracts between the parties outside the purview of Section 365. The Debtors must show that the contracts were not terminated prior to the bankruptcy filing.

The decision to assume an executory contract is a matter within the debtor's business judgment. *In re Autoseis, Inc.*, 2014 WL 2558241, at *2 (Bankr. S.D. Tex. 2014); *see also In re Pisces Energy, LLC*, 2009 WL 7227880, at *6 (Bankr. S.D. Tex. 2009) ("Courts apply the "business judgment test," which requires a showing that the proposed course of action will be advantageous to the estate and the decision be based on sound business judgment."). The business judgment rule requires that a court approve the debtor's business decision unless the decision is the product of "bad faith, or whim, or caprice." *In re Ultra Petroleum Corp., 621 B.R. 188, 197* (Bankr. S.D. Tex. 2020) (quoting *In re Trans World Airlines, Inc.*, 261 B.R. 103, 121 (Bankr. D. Del. 2001)). "As long as assumption of a lease appears to enhance a debtor's estate, court approval of a debtor-in-possession's decision to assume the lease should only be withheld if the debtor's judgment is clearly erroneous, too speculative, or contrary to the provisions of the Bankruptcy Code." *Richmond Leasing Co. v. Capital Bank, N.A.,* 762 F.2d 1303, 1309 (5th Cir. 1985). In the absence of a showing of bad faith or an abuse of business discretion, the debtor's business judgment will not be altered. *In re Pisces Energy, LLC*, 2009 WL 7227880, at *6 (Bankr. S.D. Tex. 2009).

If the Court determines that the agreements were not terminated but that the debtor defaulted under one or more of the agreements, the

agreements cannot be assumed unless the debtor: (A) cures, or provides adequate assurance that the trustee will promptly cure, [the default]; (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and (C) provides adequate assurance of future performance under such contract or lease.[85] The party opposing the motion to assume has the initial burden of demonstrating default and proper notice of default. *In re Rachels Indus., Inc.*, 109 B.R. 797, 802 (Bankr. W.D. Tenn. 1990). If the defaults are established by the evidence, the burden shifts to debtor to provide satisfactory proof that the defaults have been cured or will be cured, and that there will be adequate assurance of future performance. *Id.*

V. DISCUSSION

A. The Debtors Satisfied the Business Judgment Standard

Here, the business judgment standard has been satisfied through the testimony of Michael Robinson. Robinson is the Co-Chief Restructuring Officer for the Debtors.[86] The highlights of Robinson's testimony include that the difference between the contract power price and the market power price is "roughly $33,"[87] that there would be "extensive" costs associated with rejecting the Whinstone agreements,[88] that the Debtors

[85] 11 U.S.C. § 365(b)(1).
[86] ECF No. 42 at 1.
[87] Trial Tr. November 12, 2024, 72:12 – Debtors direct examination of Robinson.
[88] Trial Tr. November 12, 2024, 75:2-15 – Debtors direct examination of Robinson (It could be quite extensive. It could involve us ultimately having to procure a new facility that would have costs for its lease. It would additionally have the potentially incremental cost of energy if we procured it at market rates. We would have to take into consideration the dismantling of the infrastructure that currently exists in the miners, and then the relocation of those. There would be costs and there would be likely significant time to do that. And during that time, we would not be generating revenue. So there would be the opportunity cost to that revenue.).

invested $150 million in the Rockdale site,[89] and that assumption of the agreements provides the best bath to recover for creditors.[90] As a result of the largely uncontroverted testimony that the 10–year fixed rate power contracts are very favorable to the Debtors, the Court finds that the assumption of the agreements would enhance Debtors' estate.[91]

B. The December 2020 Agreements Did Not Supersede the Prior Agreements Between the Parties

Whinstone makes two principal arguments as to why the December 2020 Agreements superseded all the prior agreements. First, Whinstone argues that the "merger clause" in the December 2020 Agreements works to superseded and terminate all prior agreements between the contracting parties. Second, Whinstone argues that with respect to agreements which were not between the same parties, the agreements were novated by the December 2020 Agreements. Based on the evidence and the plain language of the agreements there are several reasons why the Court finds that the December 2020 Agreements did not supersede all prior agreements.

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[89] Trial Tr., November 12, 2024, 70:18-20 – Debtors direct examination of Robinson (Q. Mr. Robinson, how much did the debtors invest in the Rockdale location? A. Roughly $150 million.).

[90] Trial Tr., November 12, 2024, 76:17-19 – Debtors direct examination of Robinson ("it really provides the best path to recovery for creditors").

[91] Trial Tr., November 12, 2024, 80:3-13 – Whinstone cross-examination of Robinson (Q. And it's your testimony that it's in the debtors' business judgment to assume -- a sound exercise of the debtors' business judgment to assume all 25 contracts? A. That's right. Q. And you believe that they are -- I think the word that Mr. Stokes used was the "lifeblood" of your business; is that right? A. I think that's correct, alongside the infrastructure and all the invested capital, but yes.); Trial Tr., November 12, 2024, 82:1-2 – Whinstone cross-examination of Robinson (Q. And that's for all 25, just to be clear? A. That's right.).

(1) Merger Clause Arguments

The December 2020 Agreements contain a merger clause in Section 23.10.[92] Courts generally give effect to these clauses. While previous agreements between the parties included merger clauses similar to Section 23.10 of the December 2020 Agreements (see Section 18.1 of the 30MW Agreement and Section 17.1 of the 5MW Agreements), the previous agreements also included specific language addressing termination of prior agreements. Section 18.2 of the 30MW Agreement (quoted below) and Section 17.2 of the 5MW Agreements[93] contain this language:

> **With effect from the date of this Agreement all Services shall be provided solely in accordance with the terms of this Agreement and all prior agreements and understandings between the Parties in relation to the same shall be deemed terminated from the date hereof.** Save in respect of rights and liabilities arising prior to such date, all such prior agreements and understandings shall cease to be of effect from the date of signature of this Agreement. In no event shall the pre-printed terms and conditions found on any Customer purchase order, acknowledgment, or other form be considered an amendment or modification of this Agreement, even if such documents are signed by representatives of both parties; Such pre-printed terms shall be null and void of no force and effect (emphasis added).[94]

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[92] Section 23.10 reads as follows:

> This Agreement is the only agreement between the Parties relating to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, and negotiations, whether written or oral, between the Parties relating to such subject matter. Unless otherwise expressly permitted in this Agreement, no modification, amendment, or waiver of this Agreement is effective or binding unless made in a writing that references this Agreement and is signed by both Parties. ECF No. 208-3; ECF No. 208-4.

[93] ECF No. 208-5 (Section 17.2 of the 5MW Agreements contain the same language as Section 18.2 of the 30MW Agreement).

[94] ECF No. 208-6.

The evidence shows that when the parties wanted to terminate prior agreements, they did so specifically. The termination Whinstone argues occurred as a result of the December 2020 Agreements is not specific termination and would render Section 18.2 of the 30MW Agreement and Section 17.2 of the 5MW Agreements superfluous and a nullity.

Additionally, Whinstone's argument that the December 2020 Agreements contain an unambiguous merger clause that must be given effect is not supported by the other evidence presented. For there to be an effective "merger clause" three elements must be satisfied: (1) the last contract must be between the same parties as the first, (2) the contracts must embrace the same subject matter, and (3) the parties must have intended the contracts to merge. *Smith v. Smith*, 794 S.W.2d 823, 827-28 (Tex. App.—Dallas 1990, writ dism'd). Here, none of the elements are satisfied.

First, while the December JV Agreement[95] and the 5MW Agreements were originally between the same parties, fourteen of the 20 5MW Agreements were assigned to operating entities before the termination notices.[96] The 30MW Agreement[97] is not between the same parties as either of the December 2020 Agreements. The December Air Agreement and the Jordan Agreement are also not between the same parties. Whinstone uses the novation argument discussed below to try and resolve this issue.

Second, the agreements do not embrace the same subject matter. In a March 31, 2020, email to Harris,[98] sent early in the parties' relationship and before any agreements had been signed, was a chart that outlined separate assignable power contracts and separate

[95] ECF No. 208-3.
[96] ECF No. 385-28.
[97] ECF No. 208-6.
[98] ECF No. 386-14.

agreements.[99] This chart is evidence of the parties' early intent for separate agreements. The December 2020 Agreements contained a revenue sharing provision whereas the prior agreements did not. Debtors also repeatedly emphasized that the distinction between operating entity and holding company was "critical to the entirety of the business."[100] This distinction was explained to Whinstone multiple times.[101] In reference to the December 2020 Agreements that would become effective three days later, an email was sent to Harris, the person negotiating the agreements for Whinstone, that stated "The only thing that matters is the Rev Share formula. As discussed, by "agreeing" to said terms in this hosting agreement it doesn't mean that future agreements will start with this version for actual operating entities. Rather, this is the standard for a Rev Share arrangement entity."[102] This email recognizes the parties' intent for the operating entities and holding companies to operate under a different set of agreements.

The three factors do not support Whinstone's reading of the merger clause, and the Court finds that the merger clause in the December 2020 Agreements does not serve to supersede all prior agreements.

There is another independent reason why the Court finds that the merger clause as read by Whinstone cannot be given effect. The December JV Agreement signed January 18, 2021, but made effective as of December 31, 2020, and the Withdrawal, Dissociation, and Membership Interest Redemption Agreement,[103] also dated December 31, 2020, evidenced the same transaction, i.e. the redemption of Whinstone's 12.5% interest in JV and the granting of a 12.5% revenue share in Rhodium JV. As a result, these documents must be construed together. When the parties have executed separate documents covering

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[99] *Id.*
[100] Trial Tr., November 12, 2024, 145:12-13 – Debtors direct examination of Nichols.
[101] ECF No. 387.
[102] *Id.*
[103] ECF No. 208-9.

the same topic and intend these documents to "operate as two halves of the same business transaction," then the Court must treat them as one contract. *Segovia v. Equities First Holdings, LLC*, 2008 WL 2251218, at *9 (Del.Super.,2008). Whinstone gave up its 12.5% ownership interest in Rhodium JV through the Withdrawal Agreement and the December JV Agreement provided Whinstone with a 12.5% revenue share payment. Nichols testified that this change in ownership structure was completed for business and tax reasons affecting Northern Data[104] (the parent company of Whinstone at the time).[105] Debtors accommodated these changes.[106] Harris tried to change the ownership structure, but the Debtors did not accept the proposed changes.[107]

Whinstone argues that the agreements are separate and should not be read together. The basis for this argument is a comment to a draft of the December JV Agreement by a representative of Debtors. The comment reads, "Redemption is separate and distinct and should not be listed in this agreement. The documents should be standalone and not

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[104] Trial Tr., November 12, 2024, 132:9-12 – Debtors direct examination of Nichols (A. Yeah, generally, it was business and tax reasons for Northern Data. But it was only because of Northern Data wanting a different structure.).

[105] Trial Tr., November 12, 2024, 132:13-15 – Debtors direct examination of Nichols (Q. And remind me, so Northern Data is what? A. Is the German parent company, at the time, of Whinstone US.).

[106] Trial Tr., November 12, 2024, 133:8-12 – Debtors direct examination of Nichols (A. That nothing changes, that we're merely trying to accommodate business and -- and tax issues that are happening at Northern Data and we wanted to be a good partner and to be able to help in that regard.).

[107] ECF No. 389-6; Trial Tr., November 12, 2024, 134:25-135:19 – Debtors direct examination of Nichols (A. He was trying to change the definition in 6.1 for 12.5 percent of profit to clear up any uncertainty, and particularly that the 12 ½ percent profit will be derived from the customers and/or its subsidiaries at the facility. Q. Okay. Was that, to your understanding, consistent with the deal that Whinstone had at that time? A. No. Q. Why not? A. Because. As you saw from the previous slide, it was all about, you know, an indirect interest. The ownership or the value that was created was based off of the holdings of that holdco where we both held our economic interest. Q. Did Rhodium accept, to your understanding, Mr. Harris's proposed addition of the language related to getting the 12 1/2 percent of the subsidiaries? A. No, it did not.).

refer to one another."[108] This comment did not change the effect of the December JV Agreement. Just because the documents do not explicitly refer to each other does not mean that they should not be read together. Several instruments made as part of one transaction will be read together even when they are executed at different times and do not refer to each other. *Southwestern Energy Production Co. v. Forest Resources, LLC*, 83 A.3d 177, 187 (Pa. Super., 2013). What matters is the intent of the parties as expressed in the agreement, determined by examining the language used by the parties in the contract. *Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 662 (Tex. 2005).

Here, the relevant contracting language are the sections contemplating which agreement controls the parties' relationship after the December 31, 2020, effective date. Section 4 of the Withdrawal Agreement states:

> Whinstone and Rhodium JV agree that all the terms and conditions of any other agreements, entered into between them, including but not limited to the duties and obligations of the Parties to each other under any hosting or colocation agreements, shall continue as set forth in such agreement.[109]

For the Court to determine the intentions of the parties, Section 4 of the Withdrawal Agreement must be harmonized with Section 23.10 of the December JV Agreement. This is done by looking at the commercial context, the communications between the parties, and the parties' course of performance.

The testimony of Harris is particularly helpful. Harris acknowledges he was expressly told Rhodium JV would not be drawing power under

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[108] ECF No. 407-18; Trial Tr., November 12, 2024, 273:12-274:19 – Whinstone cross examination of Nichols.
[109] ECF No. 208-9.

the December 2020 Agreements.[110] Harris testified that the 5MW Agreements were in effect at the time the Withdrawal Agreement was signed.[111] The 30MW Agreement were also in effect at the time the Withdrawal Agreement was signed,[112] so Section 4 of the Withdrawal Agreement applies, at a minimum, to the July 2020 Agreements.

As further evidence that the December 2020 Agreements did not supersede all prior agreements, after the December 2020 Agreements were executed, the parties continued to follow the pricing terms of the July 2020 Agreements. Nichols testified that Whinstone always charged Debtors for actual consumption, as set out in the July 2020 Agreements, rather than for the full block of power as set out in the December 2020 Agreements.[113]

Whinstone disagrees with Debtors' argument and Harris testified that the Debtors were billed pursuant to the December 2020 Agreements.[114] Whinstone's argument is based on the claim that

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[110] Trial Tr., November 14, 2024, 797:6-10 – Debtors cross examination of Harris (Q. And Rhodium, on December 30th, 2020, expressly told you that it wouldn't be Rhodium JV LLC that would be drawing that power, correct? A. That's what it states).

[111] Trial Tr., November 14, 2024, 810:12-813:14.

[112] Trial Tr., November 12, 2024, 159:7-17 – Debtors direct examination of Nichols (Q. Okay. So at the time the redemption agreement was signed, what hosting or colocation agreements were in place between the parties? A. You had the 20, 5-megawatt contracts, you had the Rhodium 30-Megawatt power contract, you also had the Jordan power contract. Q. So what agreements, to your understanding, was the redemption agreement referring to when it said parties wanted to continue their business relationship? A. All of those power agreements.).

[113] Trial Tr., November 12, 2024, 172:4-16 – Debtors direct examination of Nichols (A. They always follow the power agreements. Q. And what is the basis of your understanding there? A. Because we always paid for the power that we consume. Q. Okay. And is that the basis for the power charge, to your understanding under the power agreements? A. Yes. Q. Is that the basis for the power charge under the profit share agreements to your understanding? A. No.).

[114] Trial Tr., November 14, 2024, 895:10-14 – Whinstone cross examination of Harris (A. In the invoices that were shown to me and then the correlating payments that were in the bank statements that we went over, that charge – those charges came strictly from the December agreement.).

Debtors were not charged under the July 2020 Agreements, because if Debtors had been charged under the July 2020 Agreements Debtors would have been billed an extra $10,000 fee. This is because at the time, Debtors were not using greater than 80% of the power capacity[115] and the terms of the 30MW Agreement state:

> Whinstone will invoice the Customer a fixed monthly fee of $10,000 (USD) for the Advanced Remote Hands Service…Notwithstanding the prior sentence, until all Specified Power Draw is provided, and all the Miners have been installed, Whinstone will invoice the Customer for Advanced Remote Hands Service based on the average number of installed Miners during the prior month. This fixed monthly fee will be credited towards Customer's power bill in the result that there is greater than or equal to eighty percent (80%) of the Specified Power Draw."[116]

However, the plain language of this provision does not state Debtors would have automatically been billed $10,000. The amount Debtors would be billed was subject to change based on the number of miners deployed. Therefore, the fact Debtors were not billed the $10,000 fee is not conclusive evidence that Debtors were not being billed under the July 2020 Agreements.

Furthermore, the way Debtors were charged was not consistent with the December 2020 Agreements. Under the December 2020 Agreements, the monthly power charge should be "the greater of (i) the Power Charge for the aggregate amount of power actually consumed…and (ii) the Power Charge for the volume of power represented by the then-current Specified Power Draw."[117] Whinstone charged Debtors for power

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[115] Trial Tr., November 14, 2024, 895:17,20-23 – Whinstone cross examination of Harris (So you would have this charge for any capacity that didn't meet the full volume, you know, but up to the 80 percent and this fee was still in there, as well.).

[116] ECF No. 208-6 at 9; ECF No. 208-5 at 9 (5MW Agreement contains the same language as the 30MW Agreement with a dollar value of $1667 rather than $10,000).

[117] ECF No. 208-3 at 10; ECF No. 208-4 at 10.

actually consumed even though that amount of power was less than the then-current Specified Power Draw, as required under the December 2020 Agreements.

Whinstone also billed the operating entities (which were not parties to the December 2020 Agreements) for power and the operating entities paid their own power deposits, which Nichols explained to Harris was necessary because of Debtors organizational structure.[118] Whinstone accepted the wire transfers for those deposits.[119] Additionally in August 2021, after the December 2020 Agreements had become effective, Harris sent Nichols an email acknowledging that the operating entities (Rhodium Encore, Rhodium 2.0, and Rhodium 10MW) would be deploying miners at the site.[120]

Lastly, the plain language of the Jordan Agreement does not support supersession by the December 2020 Agreements. The Jordan Agreement states: "unless otherwise expressly permitted in this Agreement, no modification, amendment, or waiver of this Agreement is effective or binding unless made in a writing that references this Agreement and is signed by both Parties."[121] The Jordan Agreement can only be superseded by an agreement that references the Jordan Agreement. The plain language of the December Air Agreement does not reference the Jordan Agreement and is not signed by the parties to the Jordan Agreement, so the agreement was not superseded.[122]

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[118] ECF No. 393-15 at 5 ("we will need these deposits to be split by entity because of our organizational structure and the underlying debt that investors have UCC-1 statements on.").
[119] Trial Tr., November 12, 2024, 177:19-21 – Debtors direct examination of Nichols (Q. Did Whinstone accept the wires from the operating subsidiaries for those deposits? A. Yes.).
[120] ECF No. 393-15 at 11 ("deployment of miners in Encore, Rhodium 2.0, and 10MW.").
[121] ECF No. 208-7, Section 23.10.
[122] ECF No. 208-4, Section 23.10.

(2) Novation Arguments

Even though the agreements are not between the same parties, Whinstone nevertheless argues the 30MW Agreement and the Jordan Agreement were superseded by the December 2020 Agreements through novation.[123] There are four elements to novation: (1) the validity of a previous obligation; (2) an agreement among all parties to accept a new contract; (3) the extinguishment of the previous obligation; and (4) the validity of the new agreement. *Vickery v. Vickery*, 999 S.W.2d 342, 356 (Tex.1999). There are two ways a party can establish element three, the extinguishment of the previous obligation. First, a party can show that the later agreement is so inconsistent with the earlier agreement that the two agreements cannot exist together. *Fulcrum Central v. AutoTester, Inc.*, 102 S.W.3d 274 (Tex.App.-Dallas, 2003). Second, in the absence of inconsistent provisions, whether a subsequent agreement is a novation of the first is a question of intent. *Id.* It must clearly appear that the parties intended a novation, and novation is never presumed. *Id.* In the absence of an express agreement, whether one contract novates an earlier contract is usually a question of fact. *Id.* The testimony of Harris that Whinstone would receive 25% of bitcoin mined in Building B[124] specifically contradicts the novation argument.

Here, this Court has also found that the evidence and testimony, as demonstrated through the merger clause discussion above, does not show that the December 2020 Agreements cannot exist together with the earlier agreements. Next, the Court must look at the parties' intent. The evidence does not establish that the parties clearly intended a novation. In fact, the distinction between operating entity and holding company was "critical to the entirety of the business."[125] The evidence and testimony analyzed by this Court under the merger clause

[123] ECF No. 409 at 17.
[124] ECF No. 389-1 at 6; Trial Tr., November 14, 2024, 815:21-22 – Debtors cross examination of Harris ("we'd receive 25%").
[125] Trial Tr., November 12, 2024, 145:12-13 – Debtors direct examination of Nichols.

discussion above supports the fact the parties intended all 25 agreements to remain in effect.

(3) Conclusion

Based on the evidence, testimony presented, and the plain language of the agreements, the Court finds that the December 2020 Agreements did not supersede any of the earlier-entered agreements between the parties and all 25 agreements remained in effect. The Court must now determine whether any of these 25 agreements were terminated prior to the petition date.

C. The 2023 Notice of Termination Did Not Terminate the Agreements Between the Parties

The 2023 Notice of Termination, which was sent only to Rhodium JV LLC and Air HPC LLC, alleges payment defaults by both parties under their respective December 2020 Agreements.[126] No other termination events are claimed under this notice. The 2023 Notice of Termination alleged that Debtors owed Whinstone at least $13,582,106.10.[127] This Notice of Termination references the Third Notice of Default and purports to terminate the December 2020 Agreements immediately pursuant to Section 7.1.[128] Section 7.1 lists bases for which Whinstone may suspend services.[129] In this case, Whinstone argues they are suspending services because Debtors have failed to pay an amount due within three business days of being notified the payment is overdue.[130]

Whinstone presented two different calculations at the hearing, one by Ernst & Young ("EY") and one by Jeff Matthews, to explain the

[126] ECF No. 208-12.
[127] *Id.*
[128] *Id.*
[129] ECF No. 208-3 at 12.
[130] *Id.*

basis for the Debtors payment shortfall. The EY calculation[131] was used by Whinstone to support the 2023 Notice of Termination. However, based on the testimony, EY created this calculation without all the relevant information. The calculation was based on 100% ownership of all operating entities, which the Court has found not to be the case. The holding companies from which Whinstone received their revenue share payment did not have 100% ownership of the operating entities, and Whinstone was not entitled to a revenue share calculated based on 100% ownership of the operating entities by the holding company. *See* Section II, A of this Interim Order. Harris understood this ownership structure. Harris testified "we'd receive 25%" in acknowledgment of Whinstone receiving 25% of bitcoin mined in Building B (Air HPC).[132] 25% represents the proper revenue share payment to Whinstone since Whinstone receives a 50% revenue share from Air HPC and Air HPC owns 50% of the Jordan operating entity. The other 50% of the Jordan operating entity is owned by third-party investors. Harris also knew Whinstone would not be paid their revenue share payment until the debt was repaid from the various operating entities. Harris testified about WhatsApp messages between him and Nichols where Nichols explained the profit share agreement would provide returns once the investors were paid.[133]

At the hearing, Whinstone called expert witness Jeff Matthews, CPA and certified fraud examiner, to testify on the calculations he completed in support of Whinstone's arguments.[134] Matthews testified he ran two calculations, (i) the formula and mechanical steps of Annex 2 with Debtor's financial information assuming 100% ownership of all the

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[131] ECF No. 386-10.

[132] ECF No. 389-1 at 6; Trial Tr., November 14, 2024, 815:21-22 – Debtors cross examination of Harris.

[133] Trial Tr., November 14, 2024, 758:12-13 – Debtors cross examination of Harris ("this will return X after the investors are paid.").

[134] Trial Tr., November 15, 2024, 1158:11-12 – Whinstone direct examination of Matthews ("I'm a Certified Public Accountant and a certified fraud examiner.").

operating entities,[135] and (ii) an alternate calculation he believed followed Debtor's methodology, including some deductions that were contained in the various operating agreements.[136] Since this Court has determined that all 25 contracts were in effect and that the holding companies did not have a 100% ownership share in the operating entities, (ii) is the correct process for calculating the revenue share payment owed to Whinstone. This calculation puts Whinstone in the same position they would have been had they retained their original ownership share in Rhodium JV. Annex 2 of the December 2020 Agreements states the revenue share payment shall be calculated "based on what is effectively" EBITDA.[137] This idea is explained in more detail in an email to Harris, "The deal was never EBITDA. It is effectively EBITDA, but there could be differences. Refer to original RHODIUM JV LLC OPERATING AGREEMENT" and "EBITDA is not the right metric. It needs to be cash dividend equivalent. This has and always was the deal."[138] Using this calculation Matthews found Debtors underpaid Whinstone.[139] Matthews testified that when using the Debtors calculation formula, the true amount Debtors owed Whinstone at the time this notice was sent was less than $200,000.[140] If these calculations are correct and Debtors underpaid Whinstone around $200,000, a $1,500,000 overpayment Rhodium JV made to Whinstone in

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[135] Trial Tr., November 15, 2024, 1159:14-21 – Whinstone direct examination of Matthews (A. My first opinion was that Rhodium did not follow the formula or the mechanical steps that are outlined in Annex 2. Q. And did you form additional opinions? A. Yes. If one were to follow the formula and those mechanical steps and incorporate Rhodium's financial information, applying those steps results in Rhodium underpaying Whinstone.).

[136] Trial Tr., November 15, 2024, 1159:24-1160:4 – Whinstone direct examination of Matthews (A. I ran an alternate calculation. When I reviewed Rhodium's methodology, it appears that they included some deductions that were contained in various operating agreements, and so when I applied those deductions, I also come up with an underpayment to Whinstone.).

[137] ECF No. 208-3, Annex 2; ECF No. 208-4, Annex 2.

[138] ECF No. 389-19 at 2.

[139] Trial Tr., November 15, 2024, 1176:20-25 – Debtors cross examination of Jeff Matthews (Q. You still come up with an underpayment that way? A. I do, yes.).

[140] Trial Tr., November 15, 2024, 1190:7-1192:17 – Debtors cross examination of Jeff Matthews.

2021 resolved this potential breach. Peloubet testified that a calculation error by Debtors resulted in the overpayment and that Debtors never asked for the money back or reduced any future profit share payments to account for the overpayment.[141]

Even assuming there had not been an overpayment, the 2023 Notice of Termination was not an effective termination of the December 2020 Agreements because the monetary defaults specified were inaccurate. If the notice specifies an inaccurate default or that the party is required to pay more than the actual amount owed, then the notice has not specified "the default" or "the action required to cure the default." *Gregory v. Bank of America*, N.A., 2017 WL 2561561 (Tex.App.-San Antonio, 2017).

D. The 2024 Notice of Termination Did Not Terminate the Agreements Between the Parties

The 2024 Notice of Termination was sent to Rhodium JV LLC, Rhodium 30MW LLC, Air HPC LLC, and Jordan HPC LLC after the Milam Litigation commenced and was intended to supplement the 2023 Notice of Termination in the event the December 2020 Agreements had not superseded all the prior agreements.[142] The Notice of Termination alleges in cursory fashion numerous reasons for termination under the December JV Agreement, the December Air Agreement, the 30MW

[141] Trial Tr. November 13, 2024, 674:2-10 – Debtors cross examination of Alex Peloubet (Q. And did that error result in Whinstone receiving more money in 2021 or less money? A. It resulted in Whinstone receiving about $1.5 million more. Q. Did Rhodium ever ask for that money back? A. No, not to my knowledge. Q. Did Rhodium reduce any future profit share payments in light of the 2021 overpayment? A. No, we did not.).

[142] ECF No. 208-15 ("While Whinstone stands on its Termination Notice and its position that all of the above-referenced agreements have either been terminated, superseded, and/or replaced, Whinstone provides this notice in the event that a court or arbitrator determines that any of those agreements remains in effect as of the date of this letter.").

Agreement, the 5MW Agreements, and the Jordan Agreement.[143] Broadly speaking, the alleged events of termination fall into four categories: (a) failure to pay the correct amount under the revenue share agreements, (b) other monetary defaults, (c) termination due to insolvency with respect to each of the entities, and (d) non-monetary defaults with respect to each of the entities.

(1) The 2024 Notice of Termination Did Not Terminate the Jordan Agreement

As it relates to the Jordan Agreement, none of the breaches alleged by Whinstone under Sections 5.1 (Customer Access), 5.2 (Compliance with Data Center Rules), 9.1 (Compliance with AUP), 9.7 (Compliance with Applicable Law), 12.2 (Customer ownership of Customer Equipment), and 17.1.2 (Insolvency of Rhodium 30MW) were included in the three notices of default sent to Debtors: the First Notice of Default,[144] the Second Notice of Default,[145] or Third Notice of Default.[146] While the First Notice of Default discusses violations of the AUP and the Second Notice of Default discusses violation of applicable law, neither notice mentions the Jordan Agreement. Therefore, notice was not provided as required under Section 19 (Notice) of the Jordan Agreement.[147] Whinstone premised their argument of insolvency as a basis for termination on the insolvency of Rhodium 30MW. There is no termination of the Jordan Agreement under 17.1.2 (Insolvency) since Rhodium 30MW was not a party to the Jordan Agreement. No evidence or testimony was provided by Whinstone to support the breach alleged under Section 9.7 (Compliance with Applicable Law).

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[143] *Id.*
[144] ECF No. 208-11.
[145] ECF No. 405-49.
[146] ECF No. 208-14.
[147] ECF No. 208-7 at 19. The aforementioned notices were addressed to Rhodium JV LLC as required by the agreement, but the notices did not reference the Jordan Agreement.

(2) The 2024 Notice of Termination – Revenue Share Payments

Under the First Notice of Default,[148] Whinstone argues they are owed at least $10,000,000 in unpaid revenue share payments.[149] Under the Third Notice of Default,[150] Whinstone argues they are owed $12,139,135 in unpaid revenue share payments.[151] As discussed above, this cannot form the basis for termination of the December 2020 Agreements.

Whinstone is not arguing unpaid revenue share payments as a basis for termination of the 30MW Agreement or the 5MW Agreements, as these agreements did not contain a revenue sharing provision.

(3) The 2024 Notice of Termination – Monetary Defaults

Whinstone argues under the Second Notice of Default[152] that Debtors breached the December 2020 Agreements for payment defaults related to the "Dry Cooler 2 Discharge." These payment defaults were remedied within the appropriate cure period.[153] The payment defaults Whinstone argues under the Third Notice of Default[154] for past due amounts were remedied when Debtor promptly sent more than $3,000,000 to Whinstone.[155]

Under Section 3.6 of the 30MW Agreement and the 5MW Agreements, "All amounts paid under this Agreement shall be paid in

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[148] ECF No. 208-11.
[149] *Id*. at 3.
[150] ECF No. 208-14.
[151] *Id.*
[152] ECF No. 405-49.
[153] Trial Tr., November 13, 2024, 444:15-19 – Debtors cross-examination of Schatz (Q. And once again, just to be clear, Rhodium, in fact, paid for the remediation efforts that occurred to clean up that spill of BitCool, right? A. That's correct.).
[154] ECF No. 208-14.
[155] ECF No. 208-20.

accordance with all work performed and services provided."[156] Debtors did not breach this Section of the 30MW Agreement or 5MW Agreements for the same reasons Debtors did not breach the December 2020 Agreements above.

(4) The 2024 Notice of Termination – Insolvency

Whinstone also argues that Debtors were insolvent, and this is a breach of Section 17.1.2 (Insolvency) of the December 2020 Agreements and Section 14.2.2 (Termination – Insolvency) of the 30MW Agreement. Under the December 2020 Agreements, the non-breaching may terminate the agreement "if a Party is unable to pay its financial obligations when due."[157] Under the 30MW Agreement, insolvency occurs when "the Defaulting Party becomes insolvent including being unable to pay its debts as they fall due and/or that the value of its assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities, [or] proposes an individual, company, or partnership voluntary arrangement."[158] Whinstone argues Debtors were unable to pay their debts as they came due and that Debtors attempted to make arrangements with creditors to defer their obligations, as evident from Debtor's financial statements and failure to repay secured debt.[159] The only evidence Whinstone bases these assertions on is the testimony of Nathan Nichols and Chase Blackmon at the December 5, 2023, Motion for Temporary Injunction hearing.[160] The testimony discusses the amount of debt held by various entities.[161] Whinstone fails to demonstrate how the existence of this debt means Debtors will be unable to pay off the debt when it comes due and thus

[156] ECF No. 208-6 at 8; ECF No. 208-6 at 13.
[157] ECF No. 208-3 at 18; ECF No. 208-4 at 18.
[158] ECF No. 208-6 at 19.
[159] ECF No. 409 at 10.
[160] ECF No. 208-10.
[161] *Id.*

be considered "insolvent" under the December 2020 Agreements or the 30MW Agreement.

The 2024 Notice of Termination lists Rhodium 30MW's insolvency as a basis for termination of the 5MW Agreements.[162] Rhodium 30MW was never a party to any of the 5MW Agreements. Under Texas law, "a party generally must be a party to a contract before it can be held liable for a breach of the contract." *Ibe v. Jones*, 836 F.3d 516, 524 (C.A.5 (Tex.), 2016). As a result, none of the 5MW Agreements can be terminated based on the alleged insolvency of Rhodium 30MW, which was never a party to any of the 5MW Agreements.

(5) The 2024 Notice of Termination – Non-Monetary Defaults

(a) Legal Framework to Analyze Non-Monetary Defaults

No definition of "material breach" is provided for in the documents or correspondence between the parties, so this Court must determine a working understanding of material breach in the agreements between the parties.

Materiality is an issue to be determined by the trier of fact. *Hudson v. Wakefield*, 645 S.W.2d 427, 430 (Tex. 1983). Material breaches excuse the non-breaching party from further performance, non-material breaches do not excuse future performance. In determining whether a failure to render or to offer performance is material, the following circumstances are significant: (a) the extent to which the injured party will be deprived of the benefit which he reasonably expected; (b) the extent to which the injured party can be adequately compensated for the part of that benefit of which he will be deprived; (c) the extent to which the party failing to perform or to offer to perform will suffer forfeiture; (d) the likelihood that the party failing

[162] ECF No. 208-15.

to perform or to offer to perform will cure his failure, taking account of all the circumstances including any reasonable assurances; (e) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing. Additionally, the less the non-breaching party is deprived of the expected benefit of the contract, the less material the breach. *Leonard v. Knight*, 551 S.W.3d 905, 910 (Tex.App.-Hous. (14 Dist.), 2018).

(b) December 2020 Agreements

The 2024 Notice of Termination did not terminate either of the December 2020 Agreements for a material breach under Sections 5.1 (Access to the Facility) or 5.2 (Data Center Rules) of those agreements. The ATV incident[163] was properly remedied.[164] Whinstone argues that Debtors committed a material breach through "improperly designed and/or operated liquid cooling equipment [that] has impermissibly discharged potentially harmful chemical effluent."[165] Using the above framework, this Court must determine whether the spills were a material breach. First, Schatz testified that Debtors reimbursed Whinstone for the costs of spill remediation.[166] Second, Schatz said in an email, "I completely agree it isn't reasonable to stop production every time there are fluid spills on the ground."[167] Debtors also implemented a Spill Prevention, Control, and Countermeasure Plan.[168] The evidence here does not support a finding that the BitCool spills are a material breach under the analysis above.

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[163] ECF No. 208-11.

[164] ECF No. 407-35; Trial Tr., November 13, 2024, 440:24-25 – Debtors cross-examination of Schatz (we agree that Rhodium companies have completed the below-referenced items.).

[165] ECF No. 208-11.

[166] Trial Tr., November 13, 2024, 437-439, 444:19,25 – Debtors cross-examination of Schatz.

[167] ECF No. 403-1.

[168] ECF No. 388-32.

The 2024 Notice of Termination did not terminate either of the December 2020 Hosting Agreements for a material breach under Section 9.1 (Use of Services). The same alleged breaches under this Section were included under Section 5.1 and Section 5.2, and these alleged breaches were remedied. Whinstone argues that Debtors have overused power in excess of its Specified Power Draw. Nichols testified that this is not the case.[169] Whinstone did not provide any evidence or testimony at the hearing to support this argument.

The 2024 Notice of Termination also did not terminate either of the December 2020 Hosting Agreements for a material breach under Section 9.3 (Customer Equipment). Section 9.3 states "Customer shall be responsible for providing all the Customer equipment" and "Customer shall be solely responsible for maintaining the Customer Equipment in operable condition."[170] While Section 9.3 was listed as a basis for termination in the Second Notice of Default,[171] cleanup for the spills listed in that notice were reimbursed. Therefore, the alleged breach was properly remedied.[172] Whinstone produced testimony from Burnett about three fan separation incidents at the Rockdale site.[173] The

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[169] Trial Tr., November 12, 2024, 174:19-21 – Debtors direct examination of Nichols (Q. Do you use more than the specified power draw at Rockdale? A. No.).

[170] ECF No. 208-3 at 14; ECF No. 208-4 at 13-14.

[171] ECF No. 405-49.

[172] Trial Tr., November 13, 2024, 444:10-25 – Debtors cross examination of Schatz (Q. Let's keep marching forward. In July of 2022, the next bullet point says: Approximately 900-gallon BitCool discharge. Do you see that? A. Yes. Q. And once again, just to be clear, Rhodium, in fact, paid for the remediation efforts that occurred to clean up that spill of BitCool, right? A. That's correct. Q. Next bullet point: January 2023, 600-gallon BitCool discharge. First thing I'm going to ask you, of course, is you don't disagree that Rhodium, in fact, paid for the remediation efforts to clean up that BitCool discharge? A. I do not disagree.).

[173] Trial Tr., November 13, 2024, 515:24-516:16 – Debtors cross examination of Burnett (Q. Now, you're aware of three fan separation incidents in total at the Rockdale site, right? A. That's correct. Q. And you're not aware of any injuries to anyone relating to the three fan separation incidents, right? A. That's correct. Q. You're not aware of any property damage to any property owned by anyone other than Rhodium in connection with these three fan separation incidents, right? A. I wouldn't -- I wouldn't totally agree with that. Q. You're not aware of any such property damage,

fan failures were not a basis for termination because their cause was inconclusive, and the alleged breach was properly remedied.[174]

The 2024 Notice of Termination also did not terminate either of the December 2020 Hosting Agreements for a material breach under Section 9.8 (Compliance with Law). Whinstone argues that Rhodium personnel have not been provided and/or are not making use of the OSHA safety requirement-compliant personal fall protection systems while performing work at the Facility.[175] No evidence or testimony has been provided that the alleged OSHA issues have been the subject of regulatory action.

Whinstone argues that because the holding companies did not have full ownership of the operating companies, the Equipment in the facility is not the sole property of the holding companies, and as a result Section 10.1 (Ownership of Customer Equipment) and 10.2 (Ownership of Generated Assets) of the December Hosting Agreements were breached. However, reading the plain language of Sections 10.1 and 10.2 does not support this assertion. The language of the agreements demonstrates these sections serve to protect Debtors as Customer rather than a basis for Whinstone to claim breach.[176] In any event, this argument is premised on the supersession of the earlier agreements, which this Court found did not occur.

Whinstone argues that Debtors breached Sections 12.2 (Customer Representations – Customer Equipment) and 20 (Assignment;

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right? A. There was an environmental cleanup. That's damage to property. But it had been remedied, yes.).

[174] *Id.*

[175] ECF No. 405-49.

[176] ECF No. 208-3 at 15 (In no event shall Provider claim ownership of any of the Customer Equipment.); ECF No. 208-4 at 15 (In no event shall Provider claim ownership of any of the Customer Equipment.).

Subcontracting) as these sections work with Sections 10.1 and 10.2.[177] Whinstone did not provide proper notice of this alleged breach through any communications to Debtors or provided an opportunity to cure, as required under the December 2020 Agreements. Whinstone has provided no specific evidence or given Debtors proper notice of the alleged breach of Section 23.4 (No Third-Party Beneficiaries).

(c) 30MW Agreement

Termination of the 30MW Agreement cannot succeed because the 2024 Notice of Termination does not provide the level of detail necessary under the language of the agreement. Section 14.2.1 (Termination for Material Breach) requires the non-defaulting party to "specify[ing] the breach."[178] This language is unambiguous. Looking at the rules of contract construction, "the" is "used as a function word to indicate the following noun or noun equivalent is definite or has been previously specified by context or by circumstance."[179] The 2024 Notice of Termination does not provide the specifics that the language of the agreement unambiguously requires. Regardless, Whinstone did not allege any additional non-monetary defaults as a basis for the termination that were not alleged as a basis for termination of the December 2020 Agreements. The reason none of these non-monetary defaults terminate the agreements are explained above.

(d) 5MW Agreements

The 2024 Notice of Termination also did not terminate the 5MW Agreements. Whinstone bases their termination argument on breaches

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[177] Trial Tr., November 14, 2024, 1043:22-25 – Whinstone direct examination of McGonegal ("if the bitcoin or those assets are pledged or moved or used by somebody else, it – it – it would be a violation under the agreement.").

[178] ECF No. 208-6 at 18.

[179] The, MERRIAM–WEBSTER.com, https://www.merriam-webster.com/dictionary/the.

by Rhodium 30MW.[180] However, Rhodium 30MW was never a party to any of the 5MW Agreements. Under Texas law, "a party generally must be a party to a contract before it can be held liable for a breach of the contract." *Ibe v. Jones*, 836 F.3d 516, 524 (C.A.5 (Tex.), 2016). As a result, none of the 5MW Agreements can be terminated based on the actions of Rhodium 30MW, which was never a party to any of the 5MW Agreements. Regardless, Whinstone did not allege any additional non-monetary defaults as a basis for termination that were not alleged as a basis for termination of the December 2020 Agreements. The reason none of these non-monetary defaults terminate the agreements are explained above.

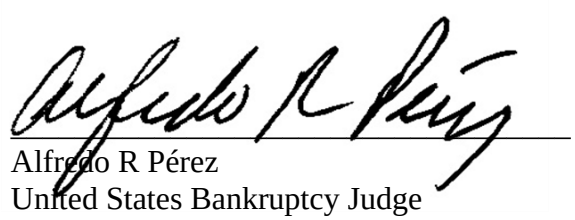
VI. CONCLUSION

At a minimum the Debtors owe or will owe Whinstone the revenue share payments for 2024 and any other amounts due in the ordinary course. None of the payment defaults alleged in the 2024 Notice of Termination terminated the agreements between Debtors and Whinstone. The nonmonetary defaults alleged in 2024 Notice of Termination were generally not material, were cured, or were not sufficiently specific to terminate the agreements. In Phase 2 the Court will determine if any of the nonmonetary defaults (or any other alleged default which did not result in termination) provides a sufficient basis to trigger the Debtors' obligations under 11 U.S.C. § 365(b)(1). If Debtors' obligations are triggered, the Court must determine the appropriate cure, compensation, and/or adequate assurance under the statute. Therefore, it is

[180] ECF No. 208-15 at 2.

ORDERED that the parties are to confer with each other and with the Court's Case Manager to determine the scope and an appropriate date for the Phase 2 hearing.

SIGNED 12/16/2024



Alfredo R Pérez
United States Bankruptcy Judge

Exhibit B

Second Interim Order on Phase 1 of Motion to Assume Executory Contracts (ECF Nos. 7 and 32)

ECF No. 763

Entered February 10, 2025

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

IN RE:	§	
	§	**CASE NO: 24-90448**
RHODIUM ENCORE LLC, *et al.*,	§	
Debtors.	§	**Jointly Administered**
	§	**CHAPTER 11**

SECOND INTERIM ORDER ON PHASE 1 OF MOTION TO ASSUME EXECUTORY CONTRACTS (ECF NOS. 7 & 32)

I. PROCEDURAL HISTORY

On August 24, 2024, Rhodium Encore LLC, Jordan HPC LLC ("Jordan HPC"), Rhodium JV LLC ("Rhodium JV"), Rhodium 2.0 LLC, Rhodium 10MW LLC, and Rhodium 30MW LLC ("Rhodium 30MW") each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the "Initial Debtors"). The Initial Debtors' cases are jointly administered as *In re Rhodium Encore LLC, et al.*, Case No. 24-90448 (ARP). Contemporaneously, the Initial Debtors also filed a Motion to Assume Certain Executory Contracts with Whinstone US, Inc. ("Whinstone")(the "Motion to Assume").[1] On August 29, 2024, additional affiliates of the Initial Debtors also filed for chapter 11 relief: Rhodium Technologies LLC, Rhodium Enterprises Inc., Rhodium Renewables LLC, Rhodium Ready Ventures LLC, Rhodium Industries LLC, Rhodium Shared Services LLC, Rhodium Renewables Sub LLC, Rhodium 30MW Sub LLC, Rhodium Encore Sub LLC, Rhodium 10MW Sub LLC, Rhodium 2.0 Sub LLC, Air HPC LLC ("Air HPC"), and Jordan HPC Sub LLC (these parties together with the Initial Debtors, are the "Debtors"). The Debtors filed Debtors' Supplemental Motion to Assume Certain Executory Contracts with Whinstone US, Inc. (together, both

[1] ECF No. 7.

are referred to as the "Motion to Assume").[2] The complete schedule of contracts the Debtors have moved to assume is listed in the Motion to Assume.[3]

After extensive motion practice, and at the request of the parties, the Court agreed to bifurcate the issues for hearing on the Motion to Assume into a Phase 1 and Phase 2.[4] Phase 1 addressed which agreements controlled the relationship between the parties, whether any of the agreements were superseded by other agreements, the existence of defaults, whether any agreements were terminated as a result of a breach, and whether any defaults had continued or had been cured. These issues were hotly contested. Whinstone argued the relationship between Whinstone and the Debtor was controlled by the December 2020 Agreements (as defined herein), whereas Debtors argued all 25 contracts between the parties were in effect and controlling. The Phase 1 hearing was conducted over four days from November 12, 2024, to November 15, 2024. The Court admitted numerous exhibits[5] and heard testimony from nine witnesses. The parties agreed Phase 2 was to be limited to issues of cure, compensation, and adequate assurance.

Following the Phase 1 hearing, this Court issued a 38-page Interim Order on Phase 1 of Motion to Assume Executory Contracts (ECF Nos. 7 & 32) ("Interim Order").[6] The Court asked the parties to confer with each other to determine the scope of Phase 2. After extensive communication, and two status conferences,[7] Whinstone and the Debtors have been unable to agree on the scope of the Phase 2 hearing. Therefore, still at issue following the January 24, 2025, Status

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2 ECF No. 32.
3 ECF No. 32-1 at 4-6.
4 ECF No. 351 (Update provided to court regarding agreement of bifurcation of the trial as stated on the record).
5 Trial Tr., November 12, 2024, 5:19-7:4.
6 ECF No. 579.
7 ECF No. 619; ECF No. 725.

Conference on the Motion to Assume[8] is the scope of the Phase 2 hearing. As outlined in the Interim Order and above,

> The Phase 1 hearing addressed which agreements control the relationship between the parties, whether any of the agreements were superseded by other agreements, the existence of defaults, whether any agreements were terminated as a result of a breach, and whether any defaults have continued or have been cured. Phase 2 will address issues of cure, compensation, and adequate assurance.[9]

Using this agreed upon framework and for the reasons set forth below, the Court will conduct a Phase 2 hearing limited to the Ancillary Charge Invoices and the Miscellaneous Invoices (as defined herein) and whether any adequate assurance is necessary.

II. RELEVANT FACTS

In July 2020, Rhodium 30MW entered into a New Hosting Service Agreement ("30MW Agreement") to receive 30MW of power from Whinstone at a fixed price.[10] Also in July 2020, Rhodium JV entered into twenty identical New Hosting Service Agreements with Whinstone ("5MW Agreements," and together with the 30MW Agreement, the "July 2020 Agreements") to receive 5MW of power at a fixed price for a period of ten years.[11] In November 2020, Whinstone and Jordan HPC (a subsidiary of another Debtor entity, Air HPC LLC), entered into the Jordan HPC Colocation Agreement[12] with Whinstone ("Jordan Agreement") for 25MW of power and space in Building B.[13]

The parties then executed three additional agreements with effective dates of December 31, 2020: the Withdrawal, Dissociation, and

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8 ECF No. 725.
9 ECF No. 579 at 4.
10 ECF No. 208-6; ECF 579 at 6.
11 ECF No. 208-5; ECF 579 at 6.
12 ECF No. 208-7; ECF 579 at 6.
13 ECF No. 409 at 3; ECF 579 at 6.

Membership Interest Agreement ("Withdrawal Agreement") pursuant to which Whinstone's 12.5% equity stake in Rhodium JV was redeemed at Whinstone's request for business and tax purposes,[14] the Rhodium JV Hosting Agreement ("December JV Agreement") between Rhodium JV and Whinstone,[15] and the Air HPC Hosting Agreement ("December Air Agreement," and together with the December JV Agreement, the "December 2020 Agreements").[16] The final contract at issue between the parties is the Water Supply Services Agreement ("Water Agreement") by which Whinstone provides water to assist in the cooling of the mining infrastructure.[17] Whinstone argues the Water Agreement was automatically terminated in November 2023 at the same time they argue the December 2020 Agreements were terminated.[18]

Based on the evidence and the plain language of the agreements, this Court found the December 2020 Agreements did not supersede all prior agreements.[19] These reasons are discussed in depth in the Interim Order.[20] This Court then analyzed whether any of the 25 agreements were terminated prior to the petition date and found they were not terminated.[21] The testimony presented in the Phase 1 hearing demonstrated the December 2020 Agreements controlled the profit share, and the July 2020 Agreements controlled the power draw.[22] In

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[14] ECF No. 208 at 4; *See generally*, ECF No. 208-9; ECF No. 579 at 7.
[15] ECF No. 208-3; ECF No. 579 at 7.
[16] ECF No. 208-4; ECF No. 579 at 7.
[17] ECF No. 365-5; ECF No. 579 at 8.
[18] ECF No. 208-12.
[19] ECF No. 579 at 15.
[20] ECF No. 579 at 16-25.
[21] ECF No. 579 at 25-28, 37.
[22] ECF No. 579 at 20-21; Trial Tr., November 14, 2024, 797:6-10 – Debtors cross examination of Harris (Q. And Rhodium, on December 30th, 2020, expressly told you that it wouldn't be Rhodium JV LLC that would be drawing that power, correct? A. That's what it states); Trial Tr., November 12, 2024, 159:7-17 – Debtors direct examination of Nichols (Q. Okay. So at the time the redemption agreement was signed, what hosting or colocation agreements were in place between the parties? A. You had the 20, 5-megawatt contracts, you had the Rhodium 30-Megawatt power contract, you also had the Jordan power contract. Q. So what agreements, to your understanding, was the redemption agreement referring to when it said parties wanted to continue their business relationship? A. All of those power agreements.);

the Interim Order, this Court ruled all the agreements between the parties are enforceable and subject to assumption. Whinstone argues that because of the findings in the Interim Order, there are "new" defaults arising under the December 2020 Agreements that must be addressed in Phase 2. Whinstone tries to further expand the scope of Phase 2 through the introduction of these new bases of default that did not result in termination.[23] Whinstone's justification for this expansion is the sentence in the Interim Order that "[i]n Phase 2 the Court will determine if any of the nonmonetary defaults (or any other alleged default which did not result in termination) provides a sufficient basis to trigger the Debtors' obligations under 11 U.S.C. § 365(b)(1)."[24] Expansion of Phase 2 is improper, as Phase 1 addressed the existence of defaults and this sentence was not an invitation for Whinstone to introduce new bases of default.[25] This sentence merely explains Phase 2 will focus on whether any identified defaults from Phase 1 will result in the need for cure, compensation, and/or adequate assurance.

III. JURISDICTION

The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, which grants district courts original and exclusive jurisdiction

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Trial Tr., November 12, 2024, 171:25–172:16 – Debtors direct examination of Nichols (Q. Do you recall, as between the profit share agreements and the power agreements, which agreements' pricing terms for power the parties followed? A. They always follow the power agreements. Q. And what is the basis of your understanding there? A. Because we always paid for the power that we consume. Q. Okay. And is that the basis for the power charge, to your understanding under the power agreements? A. Yes. Q. Is that the basis for the power charge under the profit share agreements to your understanding? A. No.); ECF No. 579 at 22-23 ("Whinstone charged Debtors for power actually consumed even though that amount of power was less than the then-current Specified Power Draw, as required under the December 2020 Agreements.").

[23] ECF No. 641.

[24] ECF No. 641.

[25] ECF No. 645 at 27; Trial Tr., October 28, 2024, 27:20-22 – The Court to the parties (I don't think it's appropriate to rely on a breach that hasn't been identified during this process.); Trial Tr., October 28, 2024, 27:25–28:2 – The Court to the parties (I just want to make sure that whatever the Debtor -- whatever Whinstone is intending to rely upon for a breach, that that has been identified.).

over all Title 11 cases.[26] Pursuant to 28 U.S.C. § 157(b)(1), bankruptcy judges may hear and determine all core proceedings arising under Title 11. A determination of a debtor's ability to assume an executory contract is a core matter under 28 U.S.C. § 157(b)(2)(A). Therefore, the bankruptcy judge may hear and determine the Motion to Assume. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The basis for the relief requested by the parties are sections 365(a) and 105(a) of the Bankruptcy Code, and rules 6004(h) and 6006 of the Bankruptcy Rules.

IV. DISCUSSION

According to Whinstone, there are four alleged defaults that must be addressed in Phase 2. The Court addresses these arguments in turn.

A. The amount due under the monthly power draw under Section 6.1 of the December JV Agreement.

Whinstone argues Debtors failure to pay the Specified Power Draw was not at issue in Phase 1 because during Phase 1 Whinstone had believed it charged Debtors for power under December 2020 Agreements, but the Interim Order ruled Debtors drew power and were billed under the July 2020 Agreements[27] while the December 2020 Agreements controlled the revenue share.[28] Since there was no supersession and all of the agreements were in effect at the petition date, Whinstone now argues Debtors were contractually required to make payments under Section 6.1 of the December JV Agreement and Debtors did not make these payments. This argument is logically inconsistent because Whinstone has all along alleged the relationship was governed by the December 2020 Agreements. Additionally, Whinstone has already charged Debtors for their power usage. The testimony presented in Phase 1 demonstrated the July 2020 Agreements

[26] 28 U.S.C. § 1334(a).
[27] ECF No. 641 at 3.
[28] ECF No. 579 at 18.

controlled the power draw,[29] and the evidence showed Whinstone never provided power to any Debtor entity beyond the power contracted for and used by the operating companies under the July 2020 Agreements. Whinstone cannot now charge Debtors again for power usage they have already been charged for.

Whinstone never invoiced Debtors for the Specified Power Draw under Section 6.1 of the December JV Agreement. Furthermore, based on the testimony provided during Phase 1, Harris was expressly told Rhodium JV (one of the Debtor entities) would not be drawing power under the December 2020 Agreements.[30] This testimony contradicts Whinstone's claim they believed they were charging Debtors for power under the December 2020 Agreements.[31] Phase 1 was for addressing the existence of defaults.[32] Whinstone cannot bring up new theories of default during Phase 2, and certainly cannot bring up a new theory of default based on the fact this Court held in Phase 1 that all agreements were in effect, as Whinstone has been arguing from the beginning the December JV Agreement was controlling and it was the earlier agreements between the parties that had been superseded. This argument will not be considered in Phase 2.

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[29] Trial Tr., November 12, 2024, 171:25–172:16 – Debtors direct examination of Nichols (Q. Do you recall, as between the profit share agreements and the power agreements, which agreements' pricing terms for power the parties followed? A. They always follow the power agreements. Q. And what is the basis of your understanding there? A. Because we always paid for the power that we consume. Q. Okay. And is that the basis for the power charge, to your understanding under the power agreements? A. Yes. Q. Is that the basis for the power charge under the profit share agreements to your understanding? A. No.); ECF No. 579 at 22-23 ("Whinstone charged Debtors for power actually consumed even though that amount of power was less than the then-current Specified Power Draw, as required under the December 2020 Agreements.").

[30] Trial Tr., November 14, 2024, 797:6-10 – Debtors cross examination of Harris (Q. And Rhodium, on December 30th, 2020, expressly told you that it wouldn't be Rhodium JV LLC that would be drawing that power, correct? A. That's what it states).

[31] ECF No. 641 at 3.

[32] ECF No. 579 at 4.

B. The amount owed under the Water Agreement for 2024 (up to the petition date).

Whinstone argues they did not invoice Debtors under the Water Agreement because they thought the Water Agreement terminated at the end of 2023, the same time Whinstone argues the December 2020 Agreements were terminated.[33] Whinstone previously invoiced Debtors for the Water Agreement at the beginning of each respective year, but did not bill Debtors in 2024 for water under the Water Agreement.[34] According to the terms of the agreement, Debtor shall pay Whinstone annually on the anniversary of the Effective Date (August 12, 2021)[35] and no invoice is required under the Water Agreement unless requested.[36] As previously discussed, this Court held in the Interim Order that none of the 25 agreements were terminated pre-petition.[37] With all the agreements held enforceable and subject to assumption, Whinstone would like to receive payment from Debtors under the Water Agreement for 2024 and is alleging Debtors non-payment of the amount owed under the Water Agreement is a default.

Whinstone raised this basis of default on January 17, 2025.[38] According to the evidence, Whinstone did not raise this basis of default in any of their earlier filings with this Court. Additionally, Debtors argue Whinstone has not provided useable water and has breached the Water Agreement.[39] This court does not need to determine whether Whinstone breached the Water Agreement. As previously discussed, it is improper for new bases of default to be raised in Phase 2 and Whinstone is trying to use nonpayment of the Water Agreement as a

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[33] ECF No. 676 at 4.
[34] ECF No. 676-6 (email from Michael Thomas to John Stokes).
[35] ECF No. 365-5 at 1.
[36] ECF No. 365-5 at 2.
[37] ECF No. 579 at 25-28, 37.
[38] ECF No. 641; ECF No. 676-6 (email from Michael Thomas to John Stokes).
[39] Trial Tr. November 15, 2024, at 1242:22-23, 1245:19-24 ("I found that the water was well out of specification") (Q. Based on your analysis, using either the inlet or the outlet, was the water that was being provided by Whinstone within the specifications set by Güntner? A. No, it wasn't, neither the inlet nor the outlet.).

new basis of default. Therefore, this Court will not include the Water Agreement in the Phase 2 hearing, especially when failure to pay amounts under the Water Agreement could have been identified in Phase 1 and plead in the alternative, which Whinstone routinely did with respect to other issues.[40]

C. The amount claimed by Whinstone under the Jeff Matthews calculation.

In the Interim Order, this Court determined the Ernst & Young revenue share calculation used by Whinstone[41] was not correct. At the Phase 1 hearing Whinstone also presented an alternate calculation run by Jeff Matthews using Debtor's methodology.[42] Using that methodology, Matthews found Debtors underpaid Whinstone around $200,000.[43] This Court did not, and does not, take a position on the accuracy of the calculation. However, this Court did find that *if* Matthews's calculations are correct, and Debtors underpaid Whinstone

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[40] ECF No. 208 at 7 ("Out of an abundance of caution and in light of arguments raised by the Debtors in the pre-bankruptcy litigation, Whinstone issued another termination notice on April 22, 2024 identifying additional grounds for terminating the Rhodium JV December Hosting Agreement and, to the extent the twenty 5MW agreements existed and were not previously superseded, Whinstone terminated those agreements, as well, due to existing, uncured defaults."); ECF No. 358 at 23 ("But even if Debtors' interpretation of the Rev Share Payment provision prevails, Rhodium JV and Air HPC still breached their payment obligations."); ECF No. 409 at 21 ("Even if this Court finds that the November 2023 Termination Notice was not effective, Whinstone's April 2024 Termination Notice removes any doubt that any contract that existed between Whinstone and the Debtors is no longer executory.").

[41] ECF No. 386-10.

[42] ECF No. 579 at 27; Trial Tr., November 15, 2024, 1159:22–1160:4 – Whinstone direct examination of Matthews (Q. And is there any other opinion that you formed? A. I ran an alternate calculation. When I reviewed Rhodium's methodology, it appears that they included some deductions that were contained in various operating agreements, and so when I applied those deductions, I also come up with an underpayment to Whinstone.).

[43] ECF No. 579 at 27; Trial Tr., November 15, 2024, 1176:20-25 – Debtors cross examination of Jeff Matthews (Q. You still come up with an underpayment that way? A. I do, yes.).

around $200,000, a $1,500,000 million overpayment made to Whinstone in 2021 resolved any potential breach.[44]

Whinstone next argues that under Section 6.5 of the December 2020 Agreements[45] Debtors cannot off-set any amount owed to Whinstone.[46] However, Whinstone's argument is incorrect.[47] The language of Section 6.5 states "[c]ustomer shall not off-set any amount owed or alleged to be owed by Provider to Customer against any other payments due to Provider."[48] According to this provision, Debtors cannot off-set any amount owed/alleged to be owed by Whinstone to Debtors against any payments Debtors owe to Whinstone. Here, the $1,500,000 million is an overpayment, not a payment Whinstone would owe the Debtors under any of the 25 agreements. Whinstone also argues while Rhodium JV was the party that underpaid Whinstone, Air HPC was the party that overpaid Whinstone, and Air HPC's overpayment cannot be used to cure Rhodium JV's default.[49] This argument ignores the fact Whinstone accepted and has kept the overpayment, making Whinstone more than whole. This argument also misinterprets Matthews' testimony. Whinstone argues Matthews testified the underpayment came from Rhodium JV, but Matthews was using the term "Rhodium" to describe the Debtors generally, rather than to identify a specific Debtor entity.[50]

Whinstone further argues even if the $1,500,000 million overpayment resolves the $200,000 underpayment, a resolved default is still a default that gives rise to the Debtors obligations under Section

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44 ECF No. 579 at 27-28.
45 ECF No. 208-3 at 12; ECF No. 208-4 at 12.
46 ECF No. 641 at 9.
47 ECF No. 641 at 9.
48 ECF No. 208-1 at 12; ECF No. 208-2 at 12.
49 ECF No. 740 at 6; Trial Tr., November 13, 2024, 673:24–674:1 – Debtors direct examination of Alex Peloubet (Q. Which operating entity did that formula error affect? A. It really impacted the Jordan entity.).
50 Trial Tr., November 15, 2024, 1159:24–1160:4 – Whinstone direct examination of Matthews (I ran an alternate calculation. When I reviewed Rhodium's methodology, it appears they included some deductions that were contained in various operating agreements, and so when I applied those deductions, I also come up with an underpayment to Whinstone.).

365.[51] The evidence shows Whinstone never provided notice to Debtors of the alleged $200,000 underpayment as required under the terms of the December 2020 Agreements.[52] Therefore, there is no default to be included in a Phase 2 hearing.

D. The amounts identified in Whinstone's proof of claim for prepetition invoices ($2,243,438.25).

Whinstone argues that after reviewing its productions it has determined all or nearly all the 47 invoices totaling $2,243,438.25, or similar information about the unpaid amounts, have been timely and previously produced.[53] Whinstone states it merely produced the information again on October 29, 2024, following Debtor's requests for Whinstone to supplement its interrogatory responses.[54] Debtor argues none of the invoices were properly disclosed in discovery.[55] According to Debtor, Whinstone did not disclose the invoices in discovery in response to Debtor's interrogatories,[56] and only identified the invoices on October 30, 2024, after the close of discovery.[57]

Based on the information submitted by the parties after the Phase 1 hearing, it appears nine of the invoices totaling $760,711.78 came due post-petition. These invoices cannot form the basis of the pre-petition default, and in any event, Debtor has agreed to pay them.

An additional 16 invoices totaling $1,108,533.23 for ancillary charges incurred at Building C ("Ancillary Charge Invoices") are the subject of a dispute between the parties. Phase 2 will address any legal issues

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[51] This argument was made in the slideshow Whinstone produced for the January 24, 2025, status conference.

[52] ECF No. 208-3 § 17.1.1; ECF No. 208-4 § 17.1.1 (It is a Termination Event 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.").

[53] ECF No. 641-2 (Invoice and AR Production Reconciliation excel spreadsheet).

[54] ECF No. 641 at 9.

[55] ECF No. 676 at 9.

[56] ECF No. 676-4.

[57] ECF No. 676 at 10; ECF No. 676-5.

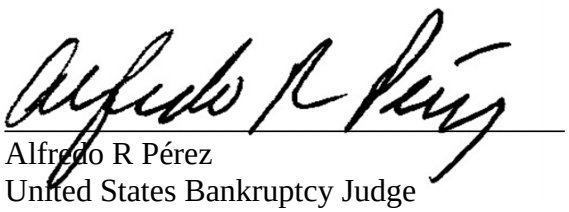
relating to the Ancillary Charge Invoices as well as the 22 remaining invoices totaling $374,145.98 ("Miscellaneous Invoices"). In other words, whether the Ancillary Charge Invoices or the Miscellaneous Invoices are valid and properly owed, whether demand was ever made for payment of any of these invoices, and which amounts (if any) that are not resolved by the overpayment may still be owed.

V. CONCLUSION

For the reasons stated above, amounts claimed to be due under the power draw, the Water Agreement, and the Jeff Matthews calculation are not the proper subject for a Phase 2 hearing because they were never raised prior to or during Phase 1, a proper demand was never made for them, and at least as it relates to the $200,000 underpayment under the Jeff Matthews alternate calculation, to the extent it may have been owed, it was satisfied by the overpayment.

With respect to the Ancillary Charge Invoices and the Miscellaneous Invoices, this Court will conduct a Phase 2 hearing on February 26, 2025, at 1:00 p.m. (Central Time) at Houston Courtroom 400, to determine the validity of these invoices including any legal issues, whether demand was ever made for payment, and which amounts (if any) are still owed after consideration of the overpayment and whether any adequate assurance is necessary.

SIGNED 02/10/2025



Alfredo R Pérez
United States Bankruptcy Judge

Exhibit C

Agreed Order Granting Debtors' Motion and Supplemental Motion to Assume Certain Executory Contracts with Whinstone US, Inc. (ECF Nos. 7 and 32)

ECF No. 800

Entered on Feb. 24, 2025

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

In re:	§	Chapter 11
	§	
RHODIUM ENCORE LLC, *et al.*,[1]	§	Case No. 24-90448 (ARP)
	§	
Debtors.	§	
	§	(Jointly Administered)
	§	

AGREED ORDER GRANTING DEBTORS' MOTION AND SUPPLEMENTAL MOTION TO ASSUME CERTAIN EXECUTORY CONTRACTS WITH WHINSTONE US, INC.
(ECF Nos. 7 and 32)

Upon the Motion and the Supplemental Motions, (the "Motion"),[2] of Rhodium Encore LLC and its debtor affiliates, as debtors and debtors in possession (collectively, the "Debtors"), pursuant to sections 365(a) and 105(a) of title 11 of the United States Code (the "Bankruptcy Code") and rules 6004 and 6006 of the Federal Rules of Bankruptcy Procedure, for entry of an order (i) approving the Debtors' assumption of the Whinstone Contracts set forth on **Exhibit 1** attached hereto, and (ii) granting related relief, as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided, and it appearing

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

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the Motion.

that no other or further notice needs be provided; and the Court having reviewed the Motion; and all objections, if any, to the Motion having been resolved or overruled; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors and their respective estates, creditors, and all parties in interest; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Debtors are authorized to assume all Whinstone Contracts listed on Exhibit 1 attached hereto.

2. The Debtors are authorized, but not directed, to perform all of their obligations under the Whinstone Contracts, and implement the actions contemplated thereby, including payment of any amounts that become due and owing in the ordinary course of business.

3. The December 16, 2024, *Interim Order on Phase 1 of Motion to Assume Executory Contracts (ECF Nos. 7 & 32)* (ECF No. 579) ("First Interim Order") is incorporated by reference in its entirety as if fully restated herein.

4. The February 10, 2025 *Second Interim Order on Phase 1 of Motion to Assume Executory Contracts (ECF Nos. 7 & 32)* (ECF No. 763) (the "Second Interim Order") is incorporated by reference in its entirety as if fully restated herein.

5. This Court found that the Debtors overpaid Whinstone $1.5 million in connection with the Profit Share Agreement (*See* ECF No. 579 at 27, 28; and ECF No. 763 at 10) (the "Overpayment"). Whinstone claims additional amounts owed by Debtors for "Ancillary Charge Claims" and "Miscellaneous Invoices" as described by the Court in its Second Interim Order (ECF 763, at 11-12). The Debtors object to the Ancillary Charge Claims and Miscellaneous Invoices.

To facilitate the entry of this Order and subject to the reservation of rights below, Debtors agree that Whinstone may retain the Overpayment; Whinstone agrees that no further payments from Debtors are owed for the Ancillary Charge Claims and Miscellaneous Invoices (the "Compromise"). Based on that agreement, the Court finds and Whinstone agrees, subject to its reservation of rights below, that the Debtors need not prove adequate assurance of future performance or cure of any defaults under 11 U.S.C. § 365(b).

6. The Debtors are authorized to take all actions necessary or appropriate to implement the relief granted in this Order.

7. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

8. Whinstone reserves the right to appeal the Court's First Interim Order, Second Interim Order, and, except with respect to the Compromise, this Order. Accordingly Whinstone agrees to the form of this Order only except for the Compromise to which it agrees in substance. Whinstone does not intend, and does not, waive any right it may have except as set forth in the Compromise.

Signed: February 22, 2025

Alfredo R Pérez
United States Bankruptcy Judge

AGREED AS TO FORM AND SUBSTANCE:

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Counsel to Whinstone US, Inc.

Exhibit 1

Schedule of Contracts

Contract	Effective Date	Counterparties	Date Assigned	Assigned to Rhodium Affiliate
Rhodium JV LLC Profit Sharing Agreement				
Hosting Agreement	12/31/2020	Rhodium JV LLC and Whinstone US, Inc.	N/A	N/A
Air HPC LLC Profit Sharing Agreement				
Hosting Agreement	12/31/2020	Air HPC LLC and Whinstone US, Inc.	N/A	N/A
Rhodium Encore LLC Hosting Agreements				
New Hosting Service Agreement No. #R-5MW-001	07/09/2020	Rhodium JV LLC and Whinstone US, Inc.	9/30/2021	Rhodium Encore LLC
New Hosting Service Agreement No. #R-5MW-002	07/09/2020	Rhodium JV LLC and Whinstone US, Inc.	9/30/2021	Rhodium Encore LLC
New Hosting Service Agreement No. #R-5MW-003	07/09/2020	Rhodium JV LLC and Whinstone US, Inc.	9/30/2021	Rhodium Encore LLC
New Hosting Service Agreement No. #R-5MW-004	07/09/2020	Rhodium JV LLC and Whinstone US, Inc.	9/30/2021	Rhodium Encore LLC
New Hosting Service Agreement No. #R-5MW-005	07/09/2020	Rhodium JV LLC and Whinstone US, Inc.	9/30/2021	Rhodium Encore LLC
Rhodium 2.0 LLC Hosting Agreements				
New Hosting Service Agreement No. #R-5MW-006	07/09/2020	Rhodium JV LLC and Whinstone US, Inc.	9/30/2021	Rhodium 2.0 LLC

Contract	Effective Date	Counterparties	Date Assigned	Assigned to Rhodium Affiliate
New Hosting Service Agreement No. #R-5MW-007	07/09/2020	Rhodium JV LLC and Whinstone US, Inc.	9/30/2021	Rhodium 2.0 LLC
New Hosting Service Agreement No. #R-5MW-008	07/09/2020	Rhodium JV LLC and Whinstone US, Inc.	9/30/2021	Rhodium 2.0 LLC
New Hosting Service Agreement No. #R-5MW-009	07/09/2020	Rhodium JV LLC and Whinstone US, Inc.	9/30/2021	Rhodium 2.0 LLC
New Hosting Service Agreement No. #R-5MW-010	07/09/2020	Rhodium JV LLC and Whinstone US, Inc.	9/30/2021	Rhodium 2.0 LLC
New Hosting Service Agreement No. #R-5MW-011	07/09/2020	Rhodium JV LLC and Whinstone US, Inc.	9/30/2021	Rhodium 2.0 LLC
New Hosting Service Agreement No. #R-5MW-012	07/09/2020	Rhodium JV LLC and Whinstone US, Inc.	9/30/2021	Rhodium 2.0 LLC
Rhodium 10MW LLC Hosting Agreements				
New Hosting Service Agreement No. #R-5MW-013	07/09/2020	Rhodium JV LLC and Whinstone US, Inc.	9/30/2021	Rhodium 10MW LLC
New Hosting Service Agreement No. #R-5MW-014	07/09/2020	Rhodium JV LLC and Whinstone US, Inc.	9/30/2021	Rhodium 10MW LLC
Rhodium 30MW LLC Hosting Agreements				
New Hosting Service Agreement	07/07/2020	Rhodium 30MW and Whinstone US, Inc.	N/A	N/A
New Hosting Service Agreement No. #R-5MW-015	07/09/2020	Rhodium JV LLC and Whinstone US, Inc.	4/29/2024	Rhodium 30MW LLC

Contract	Effective Date	Counterparties	Date Assigned	Assigned to Rhodium Affiliate
New Hosting Service Agreement No. #R-5MW-016	07/09/2020	Rhodium JV LLC and Whinstone US, Inc.	4/29/2024	Rhodium 30MW LLC
New Hosting Service Agreement No. #R-5MW-017	07/09/2020	Rhodium JV LLC and Whinstone US, Inc.	4/29/2024	Rhodium 30MW LLC
New Hosting Service Agreement No. #R-5MW-018	07/09/2020	Rhodium JV LLC and Whinstone US, Inc.	4/29/2024	Rhodium 30MW LLC
New Hosting Service Agreement No. #R-5MW-019	07/09/2020	Rhodium JV LLC and Whinstone US, Inc.	4/29/2024	Rhodium 30MW LLC
New Hosting Service Agreement No. #R-5MW-020	07/09/2020	Rhodium JV LLC and Whinstone US, Inc.	4/29/2024	Rhodium 30MW LLC
Jordan HPC LLC Hosting Agreement				
Colocation Agreement	11/02/2020	Jordan HPC LLC and Whinstone US Corporation	N/A	N/A
Rhodium Industries LLC Water Supply Services Agreement				
Whinstone Building C Water Supply Services Agreement	08/12/2021	Rhodium Industries LLC—together with its affiliates, including Rhodium JV LLC, Rhodium 30MW LLC, Rhodium Encore LLC, Rhodium 2.0 LLC, Jordan HPC LLC, Rhodium 10MW LLC—	N/A	N/A

Contract	Effective Date	Counterparties	Date Assigned	Assigned to Rhodium Affiliate
		and Whinstone US, Inc.		