

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

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

**THE AD HOC GROUP OF SAFE PARTIES' WITNESS AND EXHIBIT LIST FOR THE
HEARING SCHEDULED FOR JUNE 4, 2025 AT 2:30 P.M. CT**

Case No. 24-90448 (ARP)	Name of Debtor: Rhodium Encore LLC, et al.
Adversary No: n/a	Style of Adversary: n/a
Witnesses: 1. Charles Topping; 2. Any witness called or designated by any other party; and 3. Any rebuttal witnesses as necessary The SAFE AHG reserves the right to cross-examine any witness called by any other party.	
	Judge: Honorable Alfredo R. Pérez
	Hearing Date: June 4, 2025
	Hearing Time: 2:30 p.m. CT
	Party's Name: The Ad Hoc Group of SAFE Parties (the " <u>SAFE AHG</u> ") ²
	Attorney's Name: Sarah Link Schultz
	Attorney's Phone: 214-969-4367

¹ 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), Jordan HPC Sub LLC (0463), Rhodium 2.0 Sub LLC (5319), Rhodium 10MW Sub LLC (3827), Rhodium 30MW Sub LLC (4386), Rhodium Encore Sub LLC (1064), Rhodium Enterprises, Inc. (6290), Rhodium Industries LLC (4771), Rhodium Ready Ventures LLC (8618), Rhodium Renewables LLC (0748), Air HPC LLC (0387), Rhodium Renewables Sub LLC (9511), Rhodium Shared Services LLC (5868), and Rhodium Technologies LLC (3973). The mailing and service address of Debtors in these chapter 11 cases is 2617 Bissonnet Street, Suite 234, Houston, TX 77005.

² As defined in *First Supplemental Verified Statement of Ad Hoc Group of SAFE Parties Pursuant to Bankruptcy Rule 2019* [Docket No. 607].



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	Nature of Proceeding: Hearing on Application for an Updated Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel [Docket No. 835]
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EXHIBIT LIST

Ex. #	Description	Offered	Objection	Admitted / Not Admitted	Disposition
1.	Declaration of David M. Dunn in Support of Chapter 11 Petitions and First Day Relief [Docket No. 35]				
2.	Application for Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel [Docket No. 173]				
3.	Order Granting the Application for Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel [Docket No. 263]				
4.	LKC Engagement Letter with Debtors, dated May 16, 2023				
5.	LKC Revised Engagement Letter, dated March 4, 2025				
6.	Redline of LKC Engagement Letters				
7.	Letter from the SAFE AHG to Debtors (Mar. 10, 2025)				
8.	Email from the SAFE AHG to Debtors (Mar. 20, 2025)				
9.	Email from SAFE AHG to Debtors (Feb. 18, 2025)				
10.	Any document or pleading filed in the above-captioned case				
11.	Any exhibit designated by any other party				
12.	Any exhibit necessary to rebut the evidence or testimony of any witness				

EXHIBIT LIST

Ex. #	Description	Offered	Objection	Admitted / Not Admitted	Disposition
	offered or designated by any other party				

RESERVATION OF RIGHTS

The SAFE AHG reserves all rights, including, but not limited to, the right to amend, revise, or supplement this Witness and Exhibit List at any time, to designate additional witnesses and exhibits, and to call any person identified as a witness by any other party in interest or introduce any document identified as an exhibit by any other party in interest for any permissible purpose under the Federal Rules of Bankruptcy Procedure and the Federal Rules of Evidence.

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Date: June 2, 2025

Respectfully Submitted,

AKIN GUMP STRAUSS HAUER & FELD LLP

/s/ Sarah Link Schultz

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CERTIFICATE OF SERVICE

I hereby certify that on June 2, 2025, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Sarah Link Schultz
Sarah Link Schultz

EXHIBIT 1

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

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

**DECLARATION OF DAVID M. DUNN
IN SUPPORT OF CHAPTER 11 PETITIONS AND FIRST DAY RELIEF**

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

1. I am co-Chief Restructuring Officer of debtor Rhodium Enterprises, Inc. (“Rhodium Enterprises”), which is the direct and indirect parent of the remaining debtors (collectively, the “Debtors,” or the “Company,” or “Rhodium”). I am also a Principal of Province, LLC (“Province”), a nationally recognized financial advisory firm focusing on restructurings, growth opportunities, and fiduciary-related services.

2. I am a seasoned corporate restructuring professional with over twenty (20) years of experience in high-profile board, buy-side, and advisory roles. My background includes large and complex financial restructurings, operational transformations, mergers and acquisitions, interim management, distressed financings, and litigation-oriented investments.

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.



3. Over the course of my twenty-year career, I have served as a chief restructuring officer, financial advisor to debtors, advisor to or member of boards of directors, litigation and liquidation trustee, and plan administrator. Before joining Province, I executed principal investments in distressed debt and equity instruments across a diverse range of industries, first at Arrowgrass Capital Partners and then at Cross Sound Management, a corporate distressed investment firm that I co-founded. I began my career practicing law within the financial restructuring departments of Sidley Austin LLP and then Akin Gump Strauss Hauer & Feld LLP.

4. My experience includes global engagements across a broad range of industries, including power, upstream E&P, E&P services, metals and mining, monoline and mortgage insurance, media, gaming, and retail.

5. Based on my work with the Debtors, my oversight of the work that Province has performed for the Debtors, my review of relevant documents, and my discussions with members of the Company's management team, I am generally knowledgeable and familiar with the Company's day-to-day operations, business and financial affairs, books and records, and the circumstances leading to the commencement of these chapter 11 cases. I am authorized to submit this declaration ("Declaration") on behalf of the Debtors to assist the Court and other parties in interest in understanding the circumstances that compelled the commencement of these chapter 11 cases and in support of the Debtors' voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") filed with the United States Bankruptcy Court for the Southern District of Texas (the "Bankruptcy Court") on the date hereof (the "Petition Date") and the motions filed concurrently herewith (the "First Day Motions").

6. Except as otherwise indicated, I base the facts set forth in this Declaration on my personal knowledge, my review of relevant documents (including the Debtors' books and

records), information provided to me by the Debtors' employees, my opinion based upon experience, knowledge, and information concerning the Debtors' operations and financial condition, or my discussions with the Debtors' officers and advisors, including professionals at Province and Quinn Emanuel Urquhart & Sullivan LLP ("Quinn Emanuel" and collectively with Province, the "Advisors"). If called upon to testify, I would testify competently to the facts set forth in this Declaration.

7. I organized this Declaration into four (4) parts. The first part provides an overview of the Debtors and their chapter 11 cases. The second part provides a short primer on cryptocurrency and describes the Company's business, its organizational and capital structure, its history, and its current operations. The third part describes the events leading to the filing of these chapter 11 cases. The fourth part summarizes the relief requested in the First Day Motions and the legal and factual bases supporting it.

I. OVERVIEW

8. The Company is an industrial scale digital asset technology company utilizing proprietary technologies to mine Bitcoin. The Company achieves sustainability and cost-effectiveness through the use of a fully integrated infrastructure platform, access to low-cost power, and directly owning and operating a majority of the components of its customized mining sites. The fully integrated infrastructure platform includes a proprietary liquid-cooling technology system, efficiency optimization software, and end-to-end management software allowing the Company to maintain low operating costs and manage energy consumption. Strategically chosen Texas sites allowed the Company to obtain competitive energy pricing through long-term energy contracts. The Company owns some of the largest liquid-cooling mining sites in the world, with approximately 227.5 MW of deployed capacity with mostly liquid-

cooled miners across two operational data centers in Texas (the “Data Centers”). The Company’s principal operations are conducted at a facility in Rockdale, Texas owned by Whinstone US, Inc. (“Whinstone”) with significant infrastructure investment from the Company (the “Rockdale Site”). The Company’s additional bitcoin mining operations are located at a second facility in Temple, Texas (the “Temple Site”).

9. The Debtors derive substantially all of their revenue at the Rockdale Site from Bitcoin mining. The fully customized design of the Debtors’ mining sites with liquid cooling technology infrastructure extending the lifecycle of mining hardware and reducing energy consumption allows the Debtors to significantly control the costs of mining Bitcoin. Through the use of proprietary software and infrastructure, the Debtors have the flexibility to curtail operations and release energy capacity during emergencies and high-demand periods, allowing their power supplier to sell unused capacity back to the Texas power market. In exchange, the Debtors have a contractual right to recoup from their power suppliers energy credits.

10. In addition to Bitcoin mining operations similar to those at the Rockdale Site, the Debtors also provide hosting services to third parties at the Temple Site.

11. Since inception, the Debtors have built a considerable asset base, gained market trust as a low-cost, reliable Bitcoin miner, and demonstrated a multi-year track record of successful management of their businesses.

12. A confluence of events, however, has significantly affected the Debtors’ liquidity position and led to their need to seek chapter 11 protection.

- First, the landlord and power supplier providing colocation and hosting services to Rhodium at the Rockdale Site—Whinstone—was acquired by a direct competitor of Rhodium, publicly-listed Riot Blockchain, Inc. (“Riot”). The acquisition resulted in souring of the relationship and Whinstone’s efforts to oust Rhodium from Whinstone’s Rockdale Site, which Rhodium developed with a two-year investment of over \$150 million in custom infrastructure in exchange for certain favorable long-term contracts.

- Second, Whinstone sued Rhodium to terminate the Rhodium contracts and eject Rhodium from the location Rhodium developed at its own expense, to make space for Rhodium's competitor, Riot, and to give Riot the benefit of existing desirable power agreements necessary to conduct mining operations (the "Whinstone Litigation"). Rhodium was not the only tenant at the Rockdale location, and, on information and belief, Whinstone similarly undertook efforts to oust its other tenants except for Riot at the Rockdale location. Whinstone is currently being sued by its other Rockdale tenants. The Whinstone Litigation is ongoing in multiple forums and is accompanied by escalating litigation costs.
- Third, lacking success in litigation, Whinstone resorted to self-help, switching off power to Rhodium's Bitcoin mining infrastructure on two occasions, one lasting eight weeks, resulting in at least \$9 million losses of revenue to Rhodium and unpredictability in Rhodium's operation. The improper shutdown also caused extensive damage to Rhodium's equipment and infrastructure that further reduced the ability to mine Bitcoin and required significant time and expense to repair.
- Fourth, Whinstone refused to credit to Rhodium certain energy credits due to Rhodium for decreasing power usage during periods of scarcity. Such energy credits were to compensate Rhodium for (i) loss of revenue when energy was sold back to Texas power markets during periods of energy scarcity, and (ii) providing capital for deposits so Whinstone could procure power contracts in the first place. The amounts due for the energy credits are approximately \$67 million. Without these contractually obligated payments, Rhodium experienced liquidity shortages.
- Fifth, adverse weather events affected the energy supply and infrastructure of Rhodium, resulting in Rhodium's Bitcoin mining operations at the Temple Site being offline and resulting in a loss of revenue.

13. Taken together, these factors placed a considerable strain on the Debtors' liquidity.

As of the Petition Date, the Debtors have only approximately \$2,494,703.79 in total liquidity.

14. Several important events occurred in the months leading up to these cases that bear on the Debtors' position before the Court today. First, in the months leading up to these cases, the Debtors' management actively took steps to decrease operating costs and reduce and delay capital expenditures. These actions, however, were insufficient to enable the Debtors to resolve their liquidity issues caused by interruptions in generating revenue and collecting receivables due to the actions of Whinstone, in addition to escalating litigation costs. Given the Debtors' decreasing liquidity, the Debtors recognized the need to explore alternatives to inject liquidity

and ensure their continuation as a going concern, maximizing value for the benefit of all stakeholders.

15. To that end, in April 2024, the Debtors engaged Quinn Emanuel to explore restructuring alternatives, and soon thereafter engaged Province.

16. The Debtors engaged with parties both inside and outside the corporate structure to relieve liquidity pressures, including potential third-party financing providers and potential asset purchasers. At the same time, the Debtors continued to pursue litigation with Whinstone to resolve service interruptions and collection of receivables.

17. Over the very recent past, two primary paths emerged: (i) a sale of certain assets of the Company that would provide liquidity to continue servicing Debtors' debt and provide additional capital to operate the Debtors' business as well as fund litigation against Whinstone to resolve it expeditiously, and (ii) a chapter 11 case to consummate a comprehensive restructuring, including debtor-in-possession financing provided by a third-party DIP provider.

18. Ultimately, the Debtors and their advisors explored both options in parallel in the weeks leading up to the filing of these chapter 11 cases, trying to improve each deal to make it as beneficial as possible for the Company and its stakeholders. The Debtors and the Advisors discussed both options extensively, assessing in detail the advantages and disadvantages of each option and their feasibility.

19. The Company engaged in marketing efforts to sell one of its mining facilities and has received a preliminary letter of intent for a \$105 million cash acquisition. However, the risks associated with pending litigation caused this deal to not be consummated pre-petition.

20. After extensive discussions with the Advisors, the Debtors concluded, for the reasons discussed in more detail below, that a chapter 11 case to consummate a comprehensive

restructuring, including debtor-in-possession (“DIP”) financing provided by a third-party DIP provider, represented the optimal path forward and best positioned the Debtors for long-term success, while simultaneously continuing to pursue the sale of certain assets to provide additional liquidity to the Debtors.

21. As discussed further below, the restructuring contemplated by the Debtors will enable the Debtors to continue operating their business.

22. The Debtors have run the best process possible in light of the facts presented and are confident this path is the best path for the Company and all stakeholders. By utilizing the chapter 11 process and tools made available by the Bankruptcy Code, the Debtors hope to emerge as a reorganized and stronger enterprise for the benefit of all of their stakeholders.

23. Accordingly, on August 24, 2024, six affiliates of the Debtors filed in this Court voluntary petitions for chapter 11 relief: Rhodium Encore LLC, Jordan HPC LLC, Rhodium JV LLC, Rhodium 2.0 LLC, Rhodium 10MW LLC, and Rhodium 30 MW LLC (the “Initial Debtors”). The Initial Debtors’ cases are jointly administered as *In re Rhodium Encore LLC, et al.*, Case No. 24-90448 (ARP).

24. On this date, additional affiliates of the Initial Debtors have filed in this Court voluntary petitions for chapter 11 relief: Rhodium Technologies LLC (“Rhodium Technologies”), Rhodium Enterprises Inc. (“Rhodium Enterprises”), Rhodium Renewables LLC (“Rhodium Renewables”), Rhodium Ready Ventures LLC (“Rhodium Ready Ventures”), Rhodium Industries LLC (“Rhodium Industries”), Rhodium Shared Services LLC (“Rhodium Shared Services”), Rhodium Renewables Sub LLC (“Rhodium Renewables Sub”), 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 (the “Additional Debtors,” and, together with the Initial Debtors, the “Debtors”).

25. The Additional Debtors requested joint administration of their subsequently filed chapter 11 cases with the cases of the Initial Debtors, *In re Rhodium Encore LLC, et al.*, Case No. 24-90448 (ARP). This declaration and the first day motions filed on the same date by the Additional Debtors are applicable also to the Initial Debtors.

II. THE DEBTORS’ BUSINESS

A. Cryptocurrency and Mining Generally

26. To better understand the Company’s history, business operations, and events leading to these chapter 11 cases, it is helpful to provide a brief primer on cryptocurrency and mining.

1. Blockchains

27. Blockchain is the ledger technology that underlies Bitcoin and other cryptocurrencies. A blockchain is a decentralized and distributed digital public ledger that stores information in a secure, verifiable and permanent way. One of the advantages of blockchain over other database technologies is that it is completely decentralized, meaning that no entity or computer owns and stores the full database. Instead, the blockchain ledger is partially distributed across computers that act as nodes in a peer-to-peer network, which requires every transferor storage of information in the public ledger to be approved by the majority of nodes in the network.

2. Digital Assets/Cryptocurrency

28. Cryptocurrency (or, colloquially, “crypto”) is a type of decentralized, encrypted digital asset that acts as a medium of exchange or store of value. Many cryptocurrencies are a popular application of blockchain technology, enabling transactions on the network to be settled, confirmed and stored in a distributed public ledger through a process called mining. Most

cryptocurrencies are not backed by a central bank or governmental entity and have no physical form.

29. Most cryptocurrencies use encryption techniques to control the creation of units and to verify the transfer of funds. For Bitcoin, every single transaction, and the ownership of every single digital asset in circulation, is recorded on the blockchain, which effectively contains a record of all account balances. Each Bitcoin account on the blockchain is identified solely by its unique public key, which renders it effectively anonymous, and is secured with its associated private key, which is kept secret, like a password. The combination of private and public cryptographic keys constitutes a secure digital identity in the form of a digital signature, providing strong control of ownership. By executing and digitally signing a Bitcoin transaction with a private key, users can send cryptocurrencies to other users around the world.

30. Because no single entity owns or operates a decentralized network such as the one for Bitcoin, and the infrastructure is collectively maintained by a public user base, the network does not rely on governmental authorities, financial institutions, or any central certifying authority to create, transmit, or determine the value of digital assets. Instead, the value of a cryptocurrency is determined by supply and demand for the units, with prices—denominated in U.S. dollars or other cryptocurrencies such as Bitcoin—being set at cryptocurrency exchanges. The prices of digital assets quoted on cryptoexchanges are extremely volatile.

31. The two most popular cryptocurrencies are Bitcoin and Ether. Bitcoin was the first cryptocurrency to be created, and as of July 26, 2024, the market value of all Bitcoins in circulation was approximately \$1.34 trillion. Ether is the second largest cryptocurrency, with a market capitalization of approximately \$392.88 billion as of July 26, 2024.

32. The market for digital assets has been growing exponentially. Bitcoin’s daily exchange volume rose from \$92 million in January 2017 to more than \$50 billion in May 2021. The initial exchange rate recorded on October 5, 2009 was \$0.000764 for every Bitcoin. It then reached a high of \$68,789 on November 10, 2021, declined in December 2022 to approximately \$16,800, and subsequently rose to its all-time high on March 14, 2024, when one Bitcoin was worth \$73,750.07. The price of Bitcoin marginally declined since then to the current price of \$59,207.40 as of August 16, 2024.

3. Digital Asset Mining

33. The verification of transactions over the blockchain can occur through one of two processes: (i) proof of work and (ii) proof of stake. For proof of work systems, such as Bitcoin, a blockchain algorithm uses mining to validate a transaction: the participating computers on the network, called nodes, compete to validate a transaction by solving cryptographic puzzles using computer processing power to confirm and add new blocks to the blockchain. The first node to validate the transaction receives a reward, generally in the form of more cryptocurrency. Mining activities require massive amounts of computing power and energy.

34. More specifically, specialized computers, or “miners,” power and secure blockchains by solving complex cryptographic algorithms to validate transactions on specific digital asset networks. To add blocks to the blockchain, a miner must map an input data set consisting of the existing blockchain, plus a block of the most recent digital asset transactions and an arbitrary number called a “nonce,” to an output data set of a predetermined length using the hash algorithm. Solving these algorithms is also known as “solving or completing a block.” Solving a block results in a reward of digital assets, such as Bitcoin. This is called “mining.” The rewards of digital assets can be sold profitably when the sale price of the digital asset exceeds the direct costs of mining, which generally consists of the cost of mining hardware, the cost of the

electrical power to operate the computer, and other facility costs to house and operate the equipment.

35. Mining processing power is generally referred to as “hashing power.” A “hash” is the computation run by mining hardware in support of the blockchain. A miner’s “hash rate” refers to the rate at which it can solve such computations per second. Miners with higher rated hash rate, when operating at maximum efficiency, have a higher chance of completing a block in the blockchain and receiving a digital asset reward. Thus, revenues from digital asset mining are impacted not only by volatility in Bitcoin prices, but also by increases in the Bitcoin blockchain’s network hash rate resulting from the growth in the overall quantity and quality of miners working to solve blocks on the Bitcoin blockchain and the difficulty level associated with the secure hashing algorithm employed in solving the blocks. The difficulty adjusts approximately every two weeks to ensure a consistent block time, which can influence mining profitability.

36. The likelihood that an individual mining participant acting alone will solve a block and be awarded a digital asset is extremely low. As a result, to maximize the opportunities to receive a reward, most large-scale miners, including the Debtors, have joined with other miners in “mining pools” where the computing power of each pool participant is coordinated to complete the block on the blockchain and mining rewards are distributed to participants in accordance with the rules of the mining pool. The Debtors have agreements with their mining pools to pay a negotiated volume rate of below-market fees between 19–20 basis points (0.19%–0.20%) to participate in the pools and receive their pro rata share of the Bitcoins mined with the Debtors’ participation.

37. The method for creating new Bitcoin is mathematically controlled in a manner such that the supply of Bitcoin grows at a limited rate based on a pre-determined schedule. The

number of Bitcoins awarded for solving a new block is automatically halved every 210,000 blocks. This means every block up to and including block 210,000 produced a reward of 50 Bitcoin, while blocks beginning with 210,001 produced a reward of 25 Bitcoin. Blocks are mined on average every 10 minutes, which means 144 blocks are mined per day on average. This deliberately controlled rate of Bitcoin creation means that the number of Bitcoin in existence will never exceed 21 million and that Bitcoin cannot be devalued through excessive production unless the Bitcoin network's source code (and the underlying protocol for Bitcoin issuance) is altered. The current fixed reward for solving a new block is 3.125 Bitcoin per block. The supply of Bitcoin is limited to 21 million Bitcoin, which is expected to be reached in 2140, after which no additional Bitcoin will be mined. As of the Petition Date, approximately 93.96% or 19.7 million Bitcoins have been mined.

B. Company History

1. Company History

38. When Rhodium's principals first met Whinstone's then-CEO in 2019, Whinstone's "facility" was nothing more than a large plot of empty land. At the time, Whinstone had few employees, limited prospects, and virtually no money. So, it offered Rhodium a guaranteed 10-year electricity deal—the most important cost input for Bitcoin mining—and in exchange, Rhodium would pay to build out the Rockdale Site. Critical to the deal was a fixed price for electricity for the 10-year term.

39. The Debtors were then formed variously between March 2020 and June 2021. The parties formed a joint venture, Rhodium JV LLC, to carry out their deal. Rhodium's founders owned 87.5% of Rhodium JV's equity, and Whinstone owned the remaining 12.5%. Rhodium JV serves as a holding company for operating entities actually conducting the Bitcoin mining operation at the Rockdale Site.

i. The Rockdale Site

40. The Company invested over \$150 million building out the Rockdale Site over two years, which involved installing complex and proprietary infrastructure that cannot readily be used anywhere else. Much of the Rockdale Site investment was funded by outside investors of the Company; the Debtors also incurred related funded debt.

41. In July 2020, Whinstone and Rhodium JV entered into twenty identical hosting agreements, each providing for Rhodium JV to receive 5MW of electricity from Whinstone (the “5MW Agreements”) at a fixed price for at least ten years. Also in July 2020, Whinstone and Rhodium 30 MW LLC entered into a power agreement for Rhodium 30MW LLC to receive 30MW of power from Whinstone at a fixed price (the “30MW Agreement,” and, with the 5MW Agreements, the “Hosting Agreements”). The terms of these Hosting Agreements are materially identical. On September 30, 2021, Rhodium JV assigned fourteen of the 5MW Agreements to Rhodium Encore LLC, Rhodium 2.0 LLC, and Rhodium 10MW LLC. More recently, Rhodium JV assigned to Rhodium 30MW six of the 5MW Agreements, which are not currently active.

42. As part of Rhodium’s investment in the undeveloped Rockdale Site, Rhodium and Whinstone initially created a joint venture, pursuant to which Whinstone initially had a 12.5% ownership interest in Rhodium JV. On December 31, 2020, Whinstone redeemed its ownership interest in Rhodium JV in exchange for 12.5% of Rhodium JV’s profits under its profit sharing agreement (the “Profit Sharing Agreement”), effectively giving Whinstone a “synthetic dividend” (the “Redemption Agreement”). The Profit Sharing Agreement did not give Whinstone an interest in any other entity’s profits, nor did it expressly mention any of the other contracts among the parties. On the other hand, the accompanying Redemption Agreement provided that the duties

and obligations of the parties to each other under any existing hosting or power agreements will continue as set forth in such agreements.

43. Separately, Whinstone entered into another profit sharing agreement with Air HPC, where Whinstone was receiving 50% of Air HPC's profits, as defined in the agreement (together with Rhodium JV Profit Sharing Agreement, the "Profit Sharing Agreements").

44. Rhodium JV and Air HPC are holding companies receiving dividends from their operating subsidiaries. Air HPC conducts mining operations in Building B of the Rockdale Site through its subsidiary Jordan HPC LLC ("Jordan HPC"). Rhodium JV conducts the operations in Building C of the Rockdale Site through subsidiaries Rhodium 30MW LLC ("Rhodium 30MW"), Rhodium Encore LLC ("Rhodium Encore"), Rhodium 2.0 LLC ("Rhodium 2.0") and Rhodium 10MW LLC ("Rhodium 10MW"). Building C represents about 80% of Rhodium's mining capacity at the Rockdale Site while Building B represents the other 20%.

45. Consistent with the Profit Sharing Agreements, Rhodium JV and Air HPC have regularly passed on the designated percentage of their after-tax cash profits to Whinstone (the "Profit Sharing Payments"). The Profit Sharing Payments only attach to the operations at the Rockdale Site, are specifically defined in Annex 2 to the Profit Sharing Agreements, and are separate from the electricity payments due to Whinstone under Hosting Agreements. The Profit Sharing Payments did not start accruing until 2021.

46. Separately, Debtors Rhodium Industries, Rhodium JV, Rhodium Encore, Rhodium 2.0, Rhodium 10MW, Rhodium 30MW and Jordan HPC entered into a water supply agreement with Whinstone for the provision of industrial water to assist with cooling of the Debtors' miners (the "Water Supply Agreement"). Cooling is a critical part of a mining operation and contributes substantially to the efficiency and profitability of the operation. Rhodium uses for

its Rhodium JV subsidiaries a liquid coolant technology employing a dielectric fluid, which is nonconductive, meaning that the miners can be fully submerged in the coolant for maximum heat relief, dramatically increasing their heat efficiency and, consequently, productivity. The dielectric fluid is then circulated through external cooling systems which are cooled with water. For this system to work at maximum efficiency, an industrial water supply is necessary for the cooling system and fans to work properly. Because Whinstone refused to perform under the Water Supply Agreement and does not currently provide water services to the Company, the cooling system, and thus the miners themselves, work less efficiently, increasing downtime during periods of high heat.

47. The Air HPC operating subsidiary, Jordan HPC, uses an air cooling system instead of liquid cooling. Whinstone entered into a 25 MW power contract with Jordan HPC.

48. The Rhodium facility at the Rockdale Site has in place 125 MW worth of infrastructure with a current hash rate of 2.8 EH/s.

ii. The Temple Site

49. On August 31, 2021, the Company entered into a 10-year datacenter lease with Temple Green Data LLC (“Temple Green Data”) to receive datacenter site hosting and power supply services at the Temple Site. The Temple Site mining operation is conducted by Rhodium Renewables.

50. The Debtor’s operations at the Temple Site utilize liquid immersion cooling system. The facility has in place 102.5 MW worth of infrastructure with a current hash rate of 2.7 EH/s.

iii. Capital Raises

51. The Company conducted several capital raises to fund the investment in its Bitcoin mining infrastructure. To fund the development of the Rockdale Site, the Debtors issued equity and debt to several groups of investors. Investors in Rhodium 30MW and Jordan HPC obtained equity and secured debt in those two entities, respectively, but their debt was paid off early. Rhodium Encore and Rhodium 2.0 raised capital in the form of equity and debt in early 2021, and their debt remains outstanding, except as described below. Rhodium Encore issued secured notes in the amount of \$23,100,000, under which approximately \$22.155 million is still outstanding with a current interest rate of 8.00%. Rhodium 2.0 issued secured notes in the amount of \$31,500,000, under which approximately \$25.114 million is outstanding, of which \$20.56 million carries a current interest rate of 8.00% and \$4.554 million carries the interest rate of 2.20%. The respective equity interests of all investors in the Debtors were subsequently rolled up to Rhodium Enterprises in a June 30, 2021 reorganization (the Rollup defined below).

52. In July 2024, some of the Rhodium Encore and Rhodium 2.0 noteholders exchanged their notes for approximately \$6.4 million of secured notes of Rhodium Technologies, with collateral consisting of certain assets of Rhodium 30MW (the “Note Exchange”). The Rhodium Technologies’ notes issued pursuant to the Note Exchange carry an interest rate of 5.5%.

53. Between June 2, 2021 and October 19, 2021, in an effort to raise capital for the Company, Rhodium Enterprises entered into multiple Simple Agreements for Future Equity (“SAFE”) with certain investors, issuing rights to receive shares of Rhodium Enterprises Class A common stock upon the occurrence of subsequent financing or public listing, for a total of \$87 million in aggregate.

54. In September 2022, the Debtors issued debt and equity warrants to a group of investors, with secured notes issued by Rhodium Technologies and warrants exercisable for shares of Class A common stock in Rhodium Enterprises. Rhodium Technologies issued secured notes in the amount of \$18,899,900.00, under which approximately \$10,477,496.24 remains outstanding.

55. Together with the Note Exchange, Rhodium Technologies' secured liabilities amount to approximately \$16,899,496.24.

iv. The IPO Attempt

56. In 2021, in an effort to raise capital for the Company, Rhodium Enterprises underwent a corporate reorganization to become a holding company for the Company in preparation for an Initial Public Offering (the "IPO") on NASDAQ through an Up-C structure. Rhodium Enterprises filed with the Securities and Exchange Commission ("SEC") a Registration Statement on October 28, 2021, an updated Registration Statement on January 18, 2022, and abandoned plans of an IPO in late 2022, withdrawing its Registration Statement on November 15, 2022.

v. The Rollup

57. Rhodium Enterprises was formed on April 22, 2021 as a Delaware corporation to become a holding corporation for Debtor Rhodium Technologies (formerly named Rhodium Enterprises LLC) and its Debtor subsidiaries upon completion of a corporate reorganization that closed on June 30, 2021 (the "Rollup").

58. Rhodium Enterprises is the sole managing member of Rhodium Technologies. It controls and is responsible for all operational, management and administrative decisions related to Rhodium Technologies' business and consolidates the financial results of Rhodium Technologies and its subsidiaries.

59. Pursuant to the Rollup, the Company completed the execution of its corporate reorganization whereby (1) all non-controlling interest unit holders of Rhodium 30MW, Jordan HPC, Rhodium Encore, Rhodium 2.0, and Rhodium 10MW; and (2) all non-controlling interest unit holders of Rhodium Technologies (collectively, the “Rollup Participants”) entered into a transaction whereby in-kind contributions of the Rollup Participants’ ownership in the respective entities (the “Non-Controlling Membership Interests”) were made to Rhodium Enterprises in exchange for 110,593,401 shares of Class A common stock, par value \$0.0001 per share, of Rhodium Enterprises (the “Class A Common Stock”). Rhodium Enterprises then transferred the Non-Controlling Membership Interests to Rhodium Technologies in exchange for units of Rhodium Technologies (“Rhodium Units”) as a value-for-value in-kind contribution.

60. Immediately prior to the corporate reorganization, non-Debtor Imperium Investments Holdings LLC (“Imperium”), a limited liability company, directly held 92% of the equity interests in Rhodium Technologies, which held 100% of the equity interests in its subsidiaries, Rhodium Industries, Rhodium Shared Services, Rhodium JV and Air HPC. Rhodium JV held interests in its subsidiaries, Rhodium 30MW, Rhodium Encore, Rhodium 10MW and Rhodium 2.0 (70%, 50%, 50% and 65%, respectively). Air HPC held 50% of the equity of its subsidiary, Jordan HPC.

61. As a result of the corporate reorganization, (a) Imperium retained 180,835,811 Rhodium Units, or approximately 62.1% of the economic interest in Rhodium Technologies, (b) Rhodium Enterprises acquired 110,593,401 Rhodium Units, or approximately 37.9% of the economic interest in Rhodium Technologies, (c) Rhodium Enterprises became the sole managing member of Rhodium Technologies, is responsible for all operational, management and administrative decisions relating to Rhodium Technologies’ business, and consolidates financial

results of Rhodium Technologies and its subsidiaries, (d) Rhodium Enterprises became a holding company whose only material asset consists of membership interests in Rhodium Technologies, (e) Rhodium Enterprises issued 100 shares of its Class B common stock, par value \$0.0001 per share, to Imperium, which has 100% of the outstanding voting power of Rhodium Enterprises, (f) Rhodium Enterprises issued 110,593,401 shares of Class A Common Stock to the Rollup Participants, which have no voting power of Rhodium Enterprises, and (g) Rhodium Technologies directly or indirectly owns all of the outstanding equity interests in the subsidiaries through which the Company operates its assets. As of June 30, 2024, Imperium owned 177,357,448 Rhodium Units and Rhodium Enterprises owned 114,332,113 Rhodium Units. In other words, Imperium owns 60.670824% of Rhodium Technologies, and Rhodium Enterprises owns 39.329176% of Rhodium Technologies, which in turn owns, directly or indirectly, the operating subsidiaries of the Company.

2. Data Centers and Business Operations

62. The Company is an operator of dedicated, purpose-built facilities for digital asset mining. The Company's primary business activities consist of mining digital currency assets utilizing Company-owned computer equipment (the miners) to process transactions conducted on the Bitcoin network in exchange for transaction processing fees awarded in digital currency assets. The Company is an industrial-scale Bitcoin mining infrastructure company in Texas, with approximately 227.5 MW of available power as of the Petition Date, only 25 MW of which are air-cooled, and 53,712 deployed miners. The Company uses two facilities: the co-located Rockdale Site and the leased Temple Site. The Debtors operating the Rockdale Site own 42,504 miners, of which they lease 8,880 miners to Rhodium Renewables operating the Temple Site, with 33,624 remaining at the Rockdale Site in Buildings B and C. Rhodium Renewables has 20,088 miners deployed at the Temple Site, of which 8,880 are leased from Debtors operating the

Rockdale Site and 11,208 are owned by Rhodium Renewables. Rhodium Renewables hosts at the Temple Site an additional 5,376 miners owned by a non-Debtor, for a total of 25,464 miners deployed at the Temple Site. Additionally, Rhodium Renewables keeps at the Temple Site 10,486 miners that are not deployed but are used as spares or “bench” parts.

63. Debtor Rhodium Shared Services provides to the Debtors operational services under a Shared Services Agreement (the “SSA”). Under the SSA, Rhodium Shared Services provides the Debtors with employees, utilities, insurance, services related to local taxes, certain other professional services, vendor contracts, and other operational needs of the Debtors.

64. The Debtors’ primary sources of revenue are revenues generated from mining: the sale of Bitcoin mined by Debtors-owned mining computers. Additional revenue is generated from Debtors’ miner hosting operations at the Temple Site, pursuant to which a non-debtor pays Rhodium Renewables for the energy consumed by that non-debtor’s 5,376 miners hosted at the Temple Site and a profit share depending on performance and market conditions.

i. Mining

65. The Company has focused on Bitcoin mining since its inception. The Company participates in “mining pools” organized by mining pool operators, in which the Company shares its mining power with the hash rate generated by other miners participating in the pool to earn cryptocurrency rewards. The mining pool operator provides a service that coordinates the computing power of the independent mining enterprises participating in the mining pool. Revenues from cryptocurrency mining are impacted by volatility in Bitcoin prices, as well as increases in the Bitcoin blockchain’s hash rate resulting from the growth in the overall quantity and quality of miners working to solve blocks on the Bitcoin blockchain and the difficulty level associated with the secure hashing algorithm employed in solving the blocks.

66. Currently, the Debtors convert their mined Bitcoin into U.S. dollars on a regular basis, generally within four days of mining. Consequently, the Debtors currently do not generally hold large amounts of Bitcoins on their balance sheet at any given time, with amounts recently averaging about 3.3 Bitcoins. Additionally, as of the Petition Date, the Debtors have approximately 14.93 Bitcoins on deposit with their broker to facilitate transactions related to their mining operations.

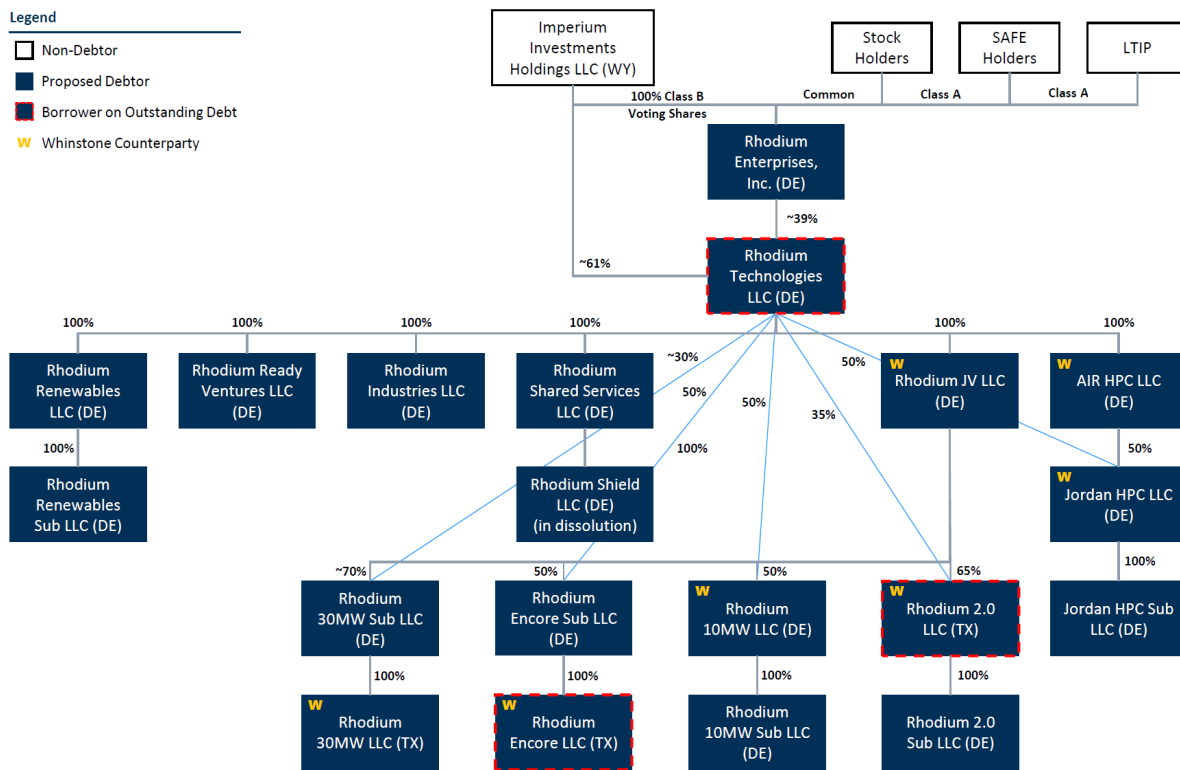
ii. Other Sources of Revenue

67. Additional revenue is generated from hosting operations. Rhodium Renewables hosts at the Temple Site 5,376 miners owned by a non-Debtor. Under the miner hosting arrangement, the non-Debtor pays Rhodium Renewables for the energy consumed by its miners and a profit share depending on performance and market conditions.

3. Corporate Structure

68. A chart illustrating the Company's complete organizational structure as of the Petition Date is attached as **Exhibit A** to this Declaration. The following chart depicts the Company's simplified corporate structure:

CORPORATE STRUCTURE


RHODIUM


69. All of the Debtors are owned, directly or indirectly, by Debtor Rhodium Enterprises, and are wholly owned, directly or indirectly, by a subsidiary of Rhodium Enterprises, Debtor Rhodium Technologies.

4. Corporate Governance and Management

70. The Company's governance structure reflects its corporate structure: non-Debtor Imperium owns all of the outstanding voting interests of Debtor Rhodium Enterprises, which has its own board, listed below. Rhodium Enterprises is the manager of Rhodium Technologies. Rhodium Technologies is the manager of Debtors Rhodium JV. In turn, Rhodium JV is the manager of Debtors Rhodium Encore, Rhodium 2.0, Rhodium 30MW, and Rhodium 10MW, as well as their subsidiaries and parents. Rhodium Technologies is also the Manager of Rhodium Renewables, Rhodium Ready Ventures, Rhodium Industries, Rhodium Shared Services, Air HPC

LLC, and their subsidiaries. The governing bodies of the Debtors are included in the table below, beginning with Rhodium Enterprises Inc.'s highly experienced board and management consisting of the following individuals:

<i>Rhodium Enterprises Inc.</i>	
Name	Position
Chase Blackmon	Director and Co-Chief Executive Officer
Nathan Nichols	Director and Co-Chief Executive Officer
Cameron Blackmon	Director, President, and Chief Technology Officer
Charles Topping	Secretary and General Counsel
Kevin Hays	Chief Financial Officer
David Eaton	Independent Director
Jonas Norr	Independent Director
Renata Szkoda	Independent Director
Caleb Van Zoeren	Senior Vice President of Operations
Alex Peloubet	Vice President of Accounting and Finance
Morgan Soule	Vice President and Assistant General Counsel
Alicia Catatao	Vice President of Human Resources
Matt Smith	Vice President of Strategy, Mining
Zach Kerr	Vice President of Technology
Ashley Jonson	Controller
<i>Rhodium Technologies LLC</i>	
Name	Position
Rhodium Enterprises LLC	Manager

<i>Rhodium Renewables LLC</i>	
Name	Position
Rhodium Technologies LLC	Manager
<i>Rhodium Renewables Sub LLC</i>	
Name	Position
Rhodium Technologies LLC	Manager
<i>Rhodium Ready Ventures LLC</i>	
Name	Position
Rhodium Technologies LLC	Manager
<i>Rhodium Industries LLC</i>	
Name	Position
Rhodium Technologies LLC	Manager
<i>Rhodium Shared Services LLC</i>	
Name	Position
Rhodium Technologies LLC	Manager
<i>Rhodium Shared Services PR LLC</i>	
Name	Position
Rhodium Technologies LLC	Manager
<i>Air HPC LLC</i>	
Name	Position
Rhodium Technologies LLC	Manager
<i>Jordan HPC LLC</i>	
Name	Position
Rhodium Technologies LLC	Manager

<i>Rhodium JV LLC</i>	
Name	Position
Rhodium Technologies LLC	Manager
<i>Rhodium Encore LLC</i>	
Name	Position
Rhodium JV LLC	Manager
<i>Rhodium Encore Sub LLC</i>	
Name	Position
Rhodium JV LLC	Manager
<i>Rhodium 2.0 LLC</i>	
Name	Position
Rhodium JV LLC	Manager
<i>Rhodium 2.0 Sub LLC</i>	
Name	Position
Rhodium JV LLC	Manager
<i>Rhodium 10MW LLC</i>	
Name	Position
Rhodium JV LLC	Manager
<i>Rhodium 10MW Sub LLC</i>	
Name	Position
Rhodium JV LLC	Manager
<i>Rhodium 30 MW Sub LLC</i>	
Name	Position
Rhodium JV LLC	Manager

<i>Rhodium 30 MW LLC</i>	
Name	Position
Rhodium JV LLC	Manager

5. Prepetition Capital Structure

71. The following description of the Debtors' capital structure is for informational purposes only and is qualified in its entirety by reference to the documents setting forth the specific terms of the Debtors' obligations and any related agreements.

i. Rhodium Encore Secured Notes:

72. In early 2021, Rhodium Encore issued to various investors secured notes in the aggregate amount of \$23,100,000. Rhodium Encore also issued to its investors minority equity interests, which were subsequently exchanged in the Rollup for class A non-voting stock in Rhodium Enterprises. In August 2024, some of the Rhodium Encore noteholders exchanged their notes for new notes of Rhodium Technologies. Currently, approximately \$22.155 million of the Rhodium Encore secured notes is still outstanding with a current interest rate of 8.00%.

ii. Rhodium 2.0 Secured Notes:

73. In early 2021, Rhodium 2.0 issued to various investors secured notes in the aggregate amount of \$31,500,000. Rhodium 2.0 also issued to its investors minority equity interests, which were subsequently exchanged in the Rollup for class A non-voting stock in Rhodium Enterprises. In August 2024, some of the Rhodium 2.0 noteholders exchanged their notes for new notes of Rhodium Technologies. Currently, approximately \$25.114 million of the Rhodium 2.0 secured notes is still outstanding, of which \$20.56 million carries a current interest rate of 8.00% and \$4.554 million carries the interest rate of 2.20%.

iii. Rhodium Technologies Secured Notes:

74. In September 2022, the Debtors issued debt and equity warrants to a group of investors, with secured notes issued by Rhodium Technologies and warrants exercisable for shares of Class A common stock in Rhodium Enterprises. Rhodium Technologies issued secured notes in the amount of \$18,899,900.00, under which approximately \$10,477,496.24 is still outstanding with annual interest rate of 3.05%.

75. In July 2024, some of the Rhodium Encore and Rhodium 2.0 noteholders exchanged their notes for approximately \$6.4 million of new secured notes of Rhodium Technologies, with collateral consisting of certain assets of Rhodium 30MW (i.e., the “Note Exchange”). The Rhodium Technologies’ notes issued pursuant to the Note Exchange carry an interest rate of 5.50%. As a result of the Note Exchange together with the September 2022 issuance of secured notes, Rhodium Technologies secured obligations currently amount to \$16.899 million.

76. The Debtors currently have secured debt amounting to approximately \$64.168 million, consisting of \$16.899 million in secured notes issued by Rhodium Technologies, \$25.114 million in secured notes issued by Rhodium 2.0, and \$22.155 million in secured notes issued by Rhodium Encore.

iv. Other Unsecured Claims:

77. The Debtors have few other unsecured claims outstanding as of the Petition Date, consisting mostly of litigation claims (described in more detail below).

6. Ongoing Litigation against the Company

78. The Company also faces litigation, discussed below.

i. The Whinstone Litigation

79. The dispute with Whinstone appears connected to one of Rhodium’s largest competitors, publicly-listed Riot, acquiring Whinstone in a “strategic acquisition” on May 26, 2021. In its 2021 Form 10-K, Riot discusses its newly acquired business of co-location services for Bitcoin mining companies and an expansion project of the Rockdale Site to add several new buildings for liquid-cooled mining operations. Riot touted that “the Whinstone Facility provides the critical infrastructure and workforce necessary for institutional-scale miners to deploy and operate their miners.” It also stated that “[w]e provide our clients with licensed space in specifically designed buildings to operate large quantities of miners with access to sufficient amounts of electricity to operate those miners under colocation agreements.” There was, however, an obstacle in Riot’s way: Rhodium, its miners, and its long-term contracts at competitive energy rates meant to compensate Rhodium for its investment in the very infrastructure Riot was now advertising.

80. In its public SEC filings, Form 10-Q for 2023 Q2, Riot has acknowledged that the contracts with Rhodium are “Legacy Contracts inherited through the Whinstone acquisition containing below-market terms.” Riot wants to either replace those contracts with “revised hosting agreements on market terms,” or, as it has done with other “Legacy Hosting” clients, remove Rhodium from the premises and use Rhodium’s infrastructure “as part of [Riot’s own] Bitcoin Mining operations.” *Id.*

81. The purported dispute that led to Whinstone filing the Whinstone Litigation concerns the payments due to Whinstone under the contracts described above, specifically the Profit Sharing Agreements.

82. In April 2023, Whinstone’s counsel wrote to Rhodium JV, Air HPC, Rhodium 30MW, and the Rhodium parent company to notify them that certain Rhodium entities had allegedly breached the Profit Sharing Agreements by an alleged failure to pay fees due under those agreements, and demanded over \$13.5 million to remedy the underpayments and other alleged contractually owed amounts. Whinstone’s counsel further stated that Whinstone would terminate the Profit Sharing Agreements if Rhodium did not comply with the demand.

83. Shortly thereafter, on May 2, 2023, Whinstone filed against certain Debtors a breach of contract case captioned *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 “Whinstone Litigation”). Whinstone amended the petition twice, alleging that Rhodium breached the terms of the Profit Sharing Agreements related to the Rockdale Site where Rhodium conducts Bitcoin mining operations, resulting in an alleged underpayment of now twice as much as Whinstone previously claimed: \$26 million in hosting and service fees. Whinstone also sought, among other things, a declaration that the Profit Sharing Agreements replace or supersede its other agreements with the Debtors.

84. Rhodium successfully moved to compel arbitration, and in September 2023 the trial court ordered the parties to arbitrate Whinstone’s claims and stayed the suit pending the outcome of the arbitration.

85. Over six weeks later—and without taking any steps to commence arbitration—Whinstone filed a petition for writ of mandamus in the Third Court of Appeals in Texas. The Court of Appeals denied the petition on Wednesday, November 22, 2023 (the day before Thanksgiving).

86. Acting without warning late in the evening on Monday, November 27, 2023—the next business day—Whinstone shut off the power supply to all Rhodium operations at the Rockdale Site and had armed security escort a Rhodium employee at the Rockdale Site off of the premises.

87. While the shutdown was happening, notwithstanding stayed litigation and a court order to arbitrate the dispute, and while refusing to engage in arbitration with Rhodium, on November 27, 2023, Whinstone, through its counsel, sent a Notice of Termination letter to the Rhodium defendants’ counsel, notifying the Rhodium defendants that the Profit Sharing Agreements were “terminated effective immediately” because of the failure to pay the amount demanded by the April 2023 letter. The November 2023 letter stated that because of the termination, “Whinstone immediately ceases providing power and Hosting Services to Rhodium pursuant to” the Profit Sharing Agreements, and effectively threatened to begin removing Rhodium’s equipment, because it demanded an address to which the equipment should be sent.

88. This unlawful shutdown was an existential threat to Rhodium. Accordingly, Rhodium filed an emergency motion for a temporary restraining order and temporary injunction in the district court, asking the court for a temporary injunction requiring Whinstone to reinstate Rhodium’s access to the premises, restore power, water, and all other utilities at the site, and in all other respects restore the status quo. The trial court first entered a temporary restraining order and then, after a five-hour evidentiary hearing, granted the temporary injunction on December 12, 2023. The trial court explained that Rhodium faced irreparable harm on multiple fronts, including permanent harm to its equipment and custom-built facilities, immeasurable harm to its goodwill and reputation, loss of its highly skilled Rockdale workforce, and the likelihood that Rhodium

would go out of business. Rhodium gave the required \$1,000,000 security, and Whinstone appealed the injunction to the Third Court.

89. Throughout the course of those proceedings, and despite the district court’s order compelling arbitration, Whinstone repeatedly refused to initiate an arbitration. Thus, on December 11, 2023, Rhodium initiated arbitration against Whinstone relating to the claims and counterclaims at issue in the Whinstone Litigation, including Rhodium’s claims for energy credits and its damages under the Water Supply Agreement. Whinstone’s baseless attempts to renege on its deal with Rhodium have materially harmed Rhodium’s business, causing Rhodium at least \$67 million in damages. Whinstone sent a letter to the American Arbitration Association (“AAA”) threatening to sue it for exercising jurisdiction over the dispute. Nevertheless, Whinstone filed an answer and counterclaims on December 29, 2023, and the parties began the arbitrator selection process under the rules of the AAA.

90. But shortly thereafter, Whinstone decided once again to turn off the power to Rhodium’s operations. It abruptly disconnected power to Building C at Rockdale—which houses about 80% of Rhodium’s operations at the Rockdale Site—late in the evening on Friday, January 12, 2024. Earlier that day, Rhodium had a minor failure of one of its over 600 fans, resulting in a small spill of BitCool, a non-toxic, non-hazardous, biodegradable coolant similar to a mineral oil that was used in Rhodium’s immersion cooling systems. The spill was quickly cleaned up. Citing this incident, Whinstone again shut down Rhodium’s power, this time having a Riot attorney send Rhodium a “Notice of Suspension,” claiming that Whinstone had a right to contractually suspend power indefinitely. Whinstone allegedly relied on the Rhodium JV Profit Sharing Agreement to switch off power to all operating subsidiaries of the Company housed in Building C.

91. The improper shutdown caused extensive damage to Rhodium’s equipment and infrastructure that further reduced the ability to mine Bitcoin and required significant time and expense to repair. It is unclear whether Whinstone was profiting from the shutdown by selling the unused electric power capacity back to the ERCOT market. But Whinstone was contractually obligated to guarantee the provision of electricity for at least 96-97% of time—which was not happening during its arbitrary power shutdowns.

92. Rhodium filed various motions seeking to cause Whinstone to restore power to Rhodium’s operations at the Rockdale site, and was ultimately successful in obtaining an emergency order from an emergency arbitrator, who, unpersuaded by Whinstone’s pretextual safety concerns after a two-day evidentiary hearing, ordered Whinstone to once again restore Rhodium’s power and site access. This time—and for now—Whinstone complied. But all together, Whinstone unjustifiably kept the power off for eight weeks, costing Rhodium over \$9 million dollars in unmined Bitcoin and causing significant harm to Rhodium’s business.

93. Undeterred, Whinstone subsequently sent another letter threatening the AAA for exercising jurisdiction—and this time adding a threat against the emergency arbitrator personally.

94. Whinstone successfully appealed the earlier Milam County court’s temporary injunction, and on March 27, 2024, the Texas Third Court of Appeals vacated that temporary injunction solely on the ground that certain provisions of the injunction order were vague. The appellate ruling did not disturb any of the district court’s underlying factual or legal conclusions regarding the need for injunctive relief against the Notice of Termination.

95. Given the risk of irreparable harm should Whinstone implement its Notice of Termination, Rhodium immediately sought a further order from the emergency arbitrator. 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. Thus, there was no need for the emergency arbitrator to enter a further injunction at that time.

96. But in April 2024, Whinstone tried again: it purported to tender to Rhodium JV, Rhodium 30MW, Jordan HPC, and Air HPC a new, broader notice of termination of all power agreements and profit sharing agreements with any and all Rhodium entities, which was not sensibly based on any terms of the challenged contracts. In response, in June 2024, Rhodium obtained interim relief in the arbitration enjoining Whinstone from acting on *any* of its notices of termination and its notice of suspension.

97. Currently, Whinstone is providing power to Rhodium, but it is continuing its attempts to invalidate the injunctive relief Rhodium has obtained, including by filing a new, pending emergency motion in Texas state court. Rhodium remains at risk that Whinstone will stop providing power, as it had done repeatedly.

98. Defending the Whinstone Litigation in multiple forums is costly, and the costs are escalating as Rhodium continues playing whack-a-mole defending itself against Whinstone's self-help and appeals in various forums. The Whinstone Litigation is, however, a bet-the-company litigation: if Whinstone succeeds, Rhodium will lose not just its damages but, more importantly, its life-blood—the energy supply to its mining site—and also its very access to the Rockdale Site with all the customized infrastructure in which Rhodium invested over \$150 million over two years and which is not readily movable to another location. This would leave Whinstone with a windfall of the infrastructure and highly desirable energy contracts necessary to conduct mining operations, which Rhodium's competition and Whinstone's strategic purchaser, Riot, would thus inherit.

ii. Second Whinstone Litigation

99. Undeterred by its lack of success in the first Whinstone Litigation, Whinstone tried again, but in a different forum: on July 19, 2024, Whinstone filed an action in the District Court of Tarrant County, Texas, *Whinstone US, Inc. v. Imperium Investment Holdings LLC, Nathan Nichols, Chase Blackmon, Cameron Blackmon, Nicholas Cerasuolo, Rhodium Enterprises, Inc., Rhodium Technologies, LLC, and Rhodium Renewables, LLC*, Cause No. 153-354718-24 (the “Second Whinstone Litigation”). The case alleges various causes of action in relation with the Profit Sharing Agreement, including primary and control liability as well as aiding liability under sections 33(B) and 33(F) of the Texas Securities Act, fraud/fraudulent inducement, and conspiracy. The main allegations appear to claim that Whinstone suffered damages as a result of various capital raises and restructurings of the Debtors, which, Whinstone alleges, decreased its revenues derived from the Profit Sharing Agreement. In making such allegations, Whinstone conveniently forgets that such capital raises were necessary to provide capital to build out the Rockdale Site for the benefit of both Rhodium and Whinstone, and that without investor contributions, there would be no Rockdale infrastructure or any profits to share in the first place. By filing an action against the ultimate parent of the Debtors, Imperium, Whinstone attempted to stifle any further attempts at out-of-court restructuring of the Debtors and the Company. The Debtors-defendants intend to vigorously defend themselves against any such spurious allegations, which appear to be Whinstone’s attempt to have yet another bite of an apple.

iii. The MGT Action

100. On January 13, 2022, Rhodium was named as a defendant in a civil lawsuit alleging infringement of two patents and seeking compensatory and other damages. The case is captioned *Midas Green Technologies, LLC v. Rhodium Enterprises, Inc. et al.*, Civil Action

Number 6:22-CV-00050-ADA, and is pending in the U.S. District Court for the Western District of Texas (the “MGT Action”). The initial complaint named defendants Rhodium Enterprises, Rhodium Technologies, Rhodium 10MW, Rhodium 2.0, Rhodium 30MW, Rhodium Encore, Rhodium Industries, Rhodium JV, Rhodium Renewables, Rhodium Shared Services, Rhodium Shared Services PR Inc., Chase Blackmon, Cameron Blackmon, and Nathan Nichols. The plaintiff has amended its complaint multiple times, most recently filing a Third Amended Complaint on March 29, 2023, naming defendants Rhodium Enterprises, Rhodium Technologies, Rhodium 10MW, Rhodium 2.0, Rhodium 30MW, Rhodium Encore, Rhodium Renewables, Rhodium Renewables Sub, and Rhodium Ready Ventures.

101. The Rhodium defendants asserted counterclaims for noninfringement, invalidity, and unenforceability of both asserted patents. The plaintiff subsequently dropped its claims against Rhodium Renewables Sub and Rhodium Ready Ventures, dropped one of the two originally asserted patents, and narrowed the asserted claims as to the remaining patent. The matter is pending at this time with respect to only one asserted patent. Discovery closed on February 9, 2024. The court held a pretrial conference on April 9, 2024. At the conference, the court orally granted defendants’ motion for summary judgment of noninfringement. Plaintiff then requested the opportunity to readdress the court’s ruling after revising an expert’s report. The court expressed that it did not think plaintiff could present additional evidence that would benefit the court, but said that it would let the parties know if that changed. The court has not further responded to or ruled on plaintiff’s request. The trial, previously scheduled for April 22, 2024, has been continued without a new trial date set. It is unclear at this time whether plaintiff will be appealing the court order.

7. Recent Financial Performance

102. Given Whinstone's power shutdowns, contractual breaches, costs and uncertainty caused by escalating legal battles with Whinstone, the Debtors' financial performance has been declining. The Debtors had a net income of approximately \$13,540,000 for the three months ending June 30, 2024. Since inception, the Debtors in large part relied on debt and equity financing to fund their operations.

103. As of June 30, 2024, the Debtors reported approximately \$225,497,701 in total assets and approximately \$209,314,900 in total liabilities. For the three months ending June 30, 2024, the Debtors reported total revenue of approximately \$23,961,000.

III. SIGNIFICANT EVENTS LEADING TO CHAPTER 11 FILING

A. Challenges Facing Debtors' Business

104. Although the Debtors' operating performance has been strong, a number of factors have affected Debtors' liquidity. These primary factors include, among other things: (i) the souring of the relationship between Rhodium and its principal landlord and power supplier, Whinstone, after Riot acquired Whinstone; (ii) ongoing litigation costs, including litigation with Whinstone; (iii) power supply interruptions caused by Whinstone; (iv) weather-related power supply disruptions; and (v) Whinstone's refusal to pay Rhodium energy credits. These events leading to the chapter 11 filing are discussed in further detail below.

1. Whinstone's Acquisition by Riot

105. One of the largest competitors of Rhodium, publicly-listed Riot, acquired Whinstone in May 2021 and then attempted to oust Rhodium from the Rockdale Site using both litigation and self-help. Rhodium developed the Rockdale Site with a two-year investment of over \$150 million in custom infrastructure in exchange for certain favorable long-term contracts, which Riot intended to terminate so that it could take over and use the location for its own

purposes (*see* the Whinstone Litigation section above). These activities of Riot caused significant disruptions in the Debtors' business (*see* Whinstone Litigation above).

2. Ongoing Litigation Costs

106. The Debtors fight in parallel multiple lawsuits, the most important of which is the Whinstone Litigation.

107. The Whinstone Litigation is carried on between state courts and arbitration, with interlocutory appeals venued in state courts. Whinstone filed a breach of contract lawsuit on May 2, 2023, against certain Debtors in the 20th District Court of Milam County, Texas. After Rhodium successfully compelled arbitration, it ended up having to file an arbitration complaint itself, because Whinstone was refusing to comply with the court's arbitration order and instead engaged in self-help and meritless appeal of the order compelling arbitration. The various necessary injunctions and temporary restricting orders, along with their appeals and a related arbitration, cause a significant drain of both personnel and financial resources on the Debtors. The unpredictability and constant threat of irregular litigation tactics of Whinstone make budgeting for this litigation difficult and render long-term business planning almost impossible under the circumstances.

108. As if that was not enough, Whinstone filed yet another suit against certain Debtors and their non-Debtor affiliates in the Tarrant County, Texas, state court on July 19, 2024. Playing whack-a-mole with Whinstone's actions brought in various fora is not only costly, but also disruptive to the operations of the Company, making planning for business operations and budgeting extremely difficult.

109. Rhodium also has pending since January 13, 2022 a patent lawsuit in the MGT Action in the Western District of Texas. *See supra* ¶¶ 100-101.

3. Power Supply Interruptions Caused By Whinstone

110. Riot, a competitor of the Company, acquired Whinstone in May 2021 and, in unlawful efforts to eject Rhodium from the Rockdale Site that Rhodium had developed, Riot caused Whinstone to engage in self-help, locking out the Debtors from the Rockdale Site and turning off the power supply to the Debtor's Bitcoin mining infrastructure at the Site. After a state court ordered Whinstone to restore the power supply to the Debtors' infrastructure, Whinstone initially complied, but a few weeks later again switched off power to the facility for weeks before Rhodium was able to obtain an emergency order from an arbitrator for Whinstone to restore power. These interruptions of electricity supply to Debtors' Bitcoin miners further resulted in significant losses to the Debtors due to both the loss of Bitcoin revenue estimated to be at least \$9 million as well as lengthy, costly repairs to the equipment damaged by the improper shutdown, for a total of at least \$10 million.

4. Weather-Related Power Supply Disruptions

111. Both the Rockdale and the Temple Site Data Centers are located in Texas. Although Texas locations have the advantage of lower energy prices, they also come with the unreliability of power supply, which is especially exacerbated during storms. The Data Centers utilized by the Debtors were affected by multiple storms and adverse weather events.

5. Whinstone's Refusal to Pay Rhodium Earned Energy Credits

112. The Debtors have agreements with Whinstone to reduce energy use during high energy demand, so Whinstone, as Rhodium's power provider, could sell excess capacity back to the Texas power markets in exchange for energy credits. But Whinstone did not credit the Debtors with any of the earned energy credits to which the Debtors are contractually entitled, neither for voluntary reduction of energy usage, such as during periods of increased power demand in the ERCOT markets, nor for involuntary reductions, such as during power shutdowns

at the Rockdale Site. This continued pattern of repeated contractual breaches by Whinstone over the last several years has resulted in an uncompensated loss of revenue for the Debtors of at least \$67 million.

B. Liquidity Constraints

113. The aforementioned factors—interruptions in electricity supply and ongoing litigation—have, in turn, placed a significant strain on the Debtors’ liquidity. The strain has been compounded by Whinstone’s unwillingness to pay the Debtors their earned energy credits. Given that the Debtors’ access to the capital markets—like others in the industry—is limited, the Debtors explored various liquidity-enhancing initiatives, including pausing expansion activities and monitoring payables. Despite these efforts, as of the Petition Date, the Debtors’ liquidity stands at approximately \$2,494,703.79.

C. Restructuring Efforts

114. Facing the declining liquidity and escalating litigation costs described above, in early 2024 the Debtors began to explore options for a comprehensive restructuring solution and engaged Quinn Emanuel with respect thereto. In summer 2024, the Debtors engaged Province.

115. The Debtors and their advisors engaged with their creditor constituents about alternative paths forward.

116. The Debtors need breathing space to stabilize their operations, negotiate with their creditors, stop constant threats of power interruptions and other self-help initiatives of Whinstone, concentrate litigation in one forum to the extent possible, and obtain time to expeditiously resolve the Whinstone Litigation to regain access to liquidity and amounts owed Debtors by Whinstone, such as tens of millions of dollars in energy credits.

117. The Debtors have secured DIP financing: under the proposed DIP facility, the Debtors will gain critical access to DIP financing in the aggregate amount of up to \$30 million or

500 BTC, with an interim DIP borrowing of \$15 million or 250 BTC following entry of the interim DIP order.

IV. THE FIRST DAY MOTIONS

118. The Debtors have filed, or expect to file, with the Court First Day Pleadings seeking orders granting various forms of relief intended to stabilize the Debtors' business operations, facilitate the efficient administration of these chapter 11 cases, and expedite a swift and smooth reorganization. The First Day Pleadings include the following:

- (i) *Debtors' Supplemental Emergency Motion For An Order (I) Directing Joint Administration Of Chapter 11 Cases; And (II) Granting Related Relief* (the "Supplemental Joint Administration Motion");
- (ii) *Emergency Motion Of Debtors For Entry Of An Order (I) Authorizing Debtors To (A) File A Consolidated Creditor Matrix And A Consolidated List Of 30 Largest Unsecured Creditors And (B) Redact Certain Personal Identification Information; And (II) Approving Form And Manner Of Notifying Creditors Of Commencement Of Chapter 11 Cases And Other Information* (the "Creditor Matrix Motion");
- (iii) *Emergency Ex Parte Application for Entry of an Order Authorizing the Employment and Retention of Kurtzman Carson Consultants, LLC DBA Verita Global as Claims, Noticing, and Solicitation Agent* (the "Verita Retention Application");
- (iv) *Emergency Motion Of Debtors For Entry Of Interim And Final Orders (I) Authorizing The Debtors To (A) Continue Their Existing Cash Management System, (B) Honor Certain Pre-Petition Obligations Related Thereto, And (C) Continue To Perform Intercompany Transactions, (II) Granting Superpriority Administrative*

Expense Status To Post-Petition Intercompany Balances, And (III) Granting Related Relief (the “Cash Management Motion”);

- (v) *Emergency Motion Of The Debtors For Entry Of Interim And Final Orders (I) Authorizing The Debtors’ Use Of Cash Collateral, (II) Granting Adequate Protection, (III) Modifying The Automatic Stay, (IV) Scheduling A Final Hearing, And (V) Granting Related Relief* (the “Cash Collateral Motion”);
- (vi) *Emergency Motion Of Debtors For Entry Of Interim And Final Orders (I) Authorizing Debtors To (A) Continue Insurance Programs, And (B) Pay Certain Obligations With Respect Thereto; (II) Granting Automatic Stay With Respect To Workers’ Compensation Claims; And (III) Granting Related Relief* (the “Insurance Motion”);
- (vii) *Debtors’ Emergency Motion For An Order (I) Extending The Time To File Schedules Of Assets And Liabilities, Schedules Of Current Income And Expenditures, Schedules Of Executory Contracts And Unexpired Leases, Statements Of Financial Affairs, And Rule 2015.3 Financial Reports, And (II) Granting Related Relief* (the “SOFA and SOAL Extension Motion” and collectively with the Supplemental Joint Administration Motion, the Creditor Matrix Motion, the Verita Retention Application, the Cash Management Motion, the Cash Collateral Motion, and the Insurance Motion, the “First Day Motions”).

119. The First Day Motions seek authority to, among other things, ensure the continuation of the Debtors’ cash management system and other operations in the ordinary course of business with as minimal interruption as possible on account of the commencement of these chapter 11 cases. In my capacity as co-Chief Restructuring Officer, and based on my experience

and knowledge, I believe that the relief requested in the First Day Motions is necessary to provide the Debtors an opportunity to work towards a successful restructuring that will inure to the benefit of each stakeholder.

120. Certain of the First Day Motions request authority to pay certain prepetition claims against the Debtors. The Debtors have narrowly tailored these requests for immediate authority to pay certain prepetition claims to those instances where the failure to pay would cause immediate and irreparable harm to the Debtors and their estates. The Debtors will defer seeking other relief to subsequent hearings before the Court.

121. I am familiar with the content and substance of each of the First Day Motions and hereby reference and expressly incorporate into this Declaration the facts in each First Day Motion. In my capacity as co-Chief Restructuring Officer, and based on my experience and knowledge, I believe approval of the relief sought in each of the First Day Motions is critical to the Debtors' ability to successfully implement their chapter 11 strategy, with minimal disruption to their business operations. Obtaining the relief sought in the First Day Motions will permit the Debtors to preserve and maximize the value of their estates for the benefit of all of their stakeholders.

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

Dated: August 29, 2024

Respectfully submitted,

/s/ David Dunn

Co-Chief Restructuring Officer

EXHIBIT A

Organizational Chart



Structure Chart

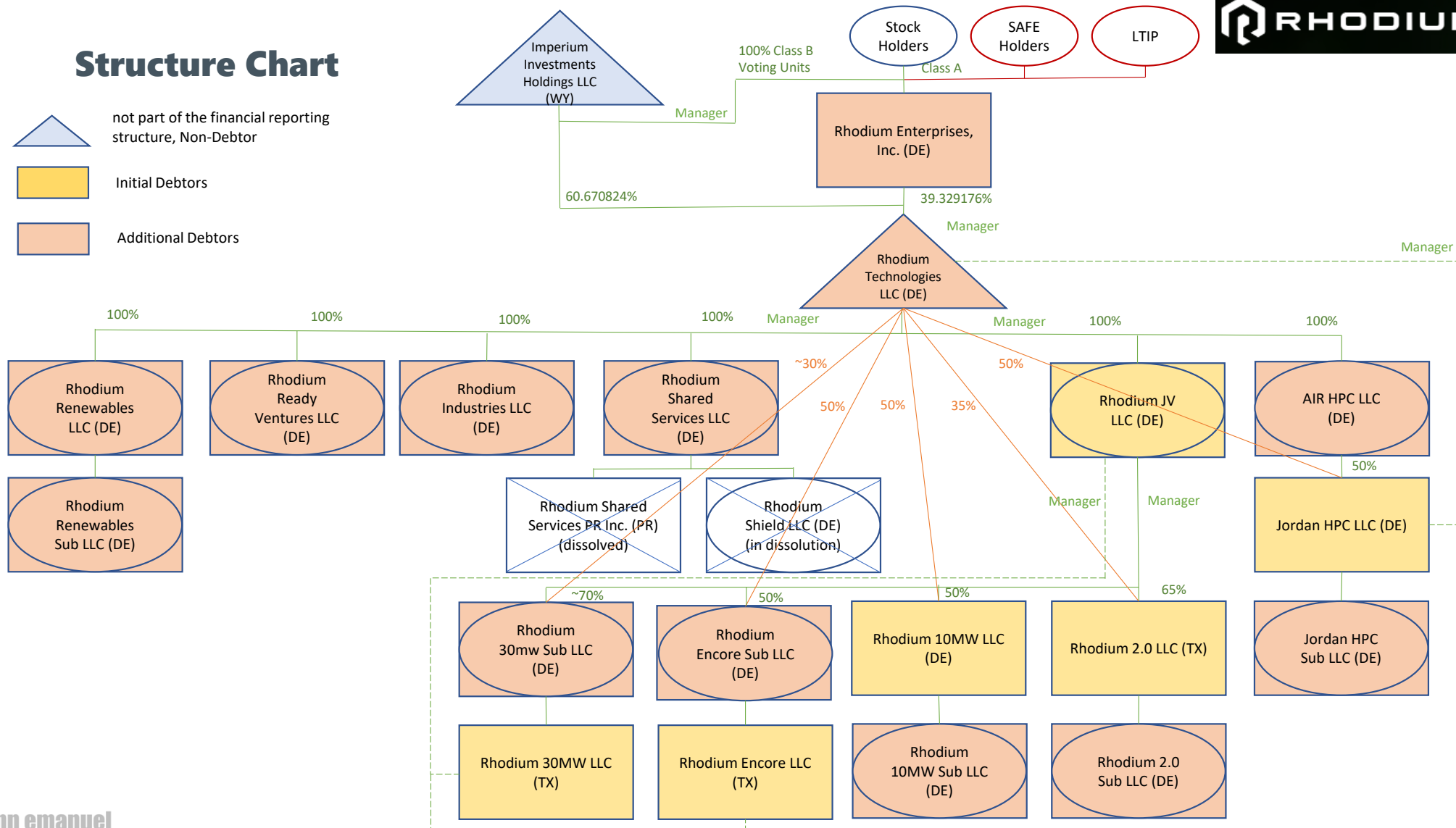
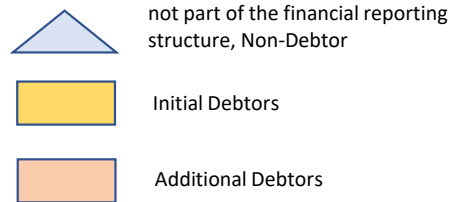


EXHIBIT 2

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

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

**APPLICATION FOR ORDER AUTHORIZING THE RETENTION
AND EMPLOYMENT OF LEHOTSKY KELLER COHN LLP
AS SPECIAL LITIGATION COUNSEL**

IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING. UNLESS OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE YOUR RESPONSE ELECTRONICALLY AT [HTTPS://ECF.TXSB.USCOURTS.GOV/](https://ecf.txsb.uscourts.gov/) WITHIN TWENTY-ONE DAYS FROM THE DATE THIS MOTION WAS FILED. IF YOU DO NOT HAVE ELECTRONIC FILING PRIVILEGES, YOU MUST FILE A WRITTEN OBJECTION THAT IS ACTUALLY RECEIVED BY THE CLERK WITHIN TWENTY-ONE DAYS FROM THE DATE YOU WERE SERVED WITH THIS PLEADING. YOU MUST SERVE A COPY OF YOUR RESPONSE ON THE PERSON WHO SENT YOU THE NOTICE; OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

TO THE UNITED STATES BANKRUPTCY JUDGE

Rhodium Encore LLC and its debtor affiliates, as debtors and debtors-in-possession in the above-captioned chapter 11 cases (collectively, “Debtors” or “Rhodium”) respectfully submit this Application for Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP

¹ 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), Jordan HPC Sub LLC (0463), Rhodium 2.0 Sub LLC (5319), Rhodium 10MW Sub LLC (3827), Rhodium 30MW Sub LLC (4386), Rhodium Encore Sub LLC (1064), Rhodium Enterprises, Inc. (6290), Rhodium Industries LLC (4771), Rhodium Ready Ventures LLC (8618), Rhodium Renewables LLC (0748), Rhodium Renewables Sub LLC (9511), Rhodium Shared Services LLC (5868), and Rhodium Technologies LLC (3973). The mailing and service address of Debtors in these chapter 11 cases is 2617 Bissonnet Street, Suite 234, Houston, TX 77005.



as Special Litigation Counsel (the “Application”) pursuant to sections 327(e), 328(a), 330, of 1107 of title 11 of the United States Code (the “Bankruptcy Code”), rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), rules 2014-1 and 2016-1 of the Local Bankruptcy Rules for the Southern District of Texas (the “Local Rules”), and paragraph 47 of the Procedures for Complex Chapter 11 Cases in the Southern District of Texas (the “Complex Case Procedures”). In support of this Application, Debtors submit the Declaration of Jonathan F. Cohn (“Cohn Declaration”) and the Declaration of Charles Topping (“Topping Declaration”).

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A) and (O). Venue of Debtors’ chapter 11 cases is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The relief requested in this Application is sought pursuant to 11 U.S.C. §§ 105, 327(e), 328(a), 330, 503, 507, and 1107(a).

BACKGROUND

3. On August 24, 2024 (the “Petition Date”), Debtors filed voluntary petitions under chapter 11 of the Bankruptcy Code. The factual background regarding Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of Debtors’ chapter 11 cases, is set forth in the Declaration of David M. Dunn in Support of Chapter 11 Petitions and First Day Relief (ECF No. 35).

4. On August 24, 2024, the Court entered an order jointly administering the bankruptcy cases under case number 24-90448 (ARP). *See* Order (I) Directing Joint Administration of Chapter 11 Cases; and (II) Granting Related Relief (ECF No. 8).

5. On August 24, 2024, Debtors filed a Motion to Assume Certain Executory Contracts With Whinstone US, Inc. (ECF No. 7). On August 29, 2024, Debtors filed a Supplemental Motion to Assume Certain Executory Contracts With Whinstone US, Inc. (ECF No. 32).

6. Debtors now seek to retain Lehotsky Keller Cohn LLP as special litigation counsel. *See* Topping Decl. ¶ 6. Lehotsky Keller Cohn LLP represented Debtors in this matter before the Petition Date and continues to represent them in this matter currently. *Id.* ¶ 7. Lehotsky Keller Cohn LLP therefore has extensive knowledge of the factual and legal issues in the dispute and extensive knowledge of Debtors' business, corporate structure, and history. *Id.*

7. Debtors seek to retain Lehotsky Keller Cohn LLP as special litigation counsel in its dispute with Whinstone US, Inc. (the "Whinstone Dispute"). As outlined below, the Whinstone Dispute consists of multiple lawsuits and an arbitration, and is the focus of Debtors' Motion to Assume Certain Executory Contracts With Whinstone US, Inc. (ECF No. 7) and Debtors' Supplemental Motion to Assume Certain Executory Contracts With Whinstone US, Inc. (ECF No. 32) (collectively "Motions to Assume Contracts with Whinstone"). Lehotsky Keller Cohn LLP has represented Debtors in this critical and sweeping dispute with Whinstone since May of 2023 and thus has extensive knowledge of the legal and factual issues in the dispute. Topping Decl. ¶ 7.

8. The Whinstone Dispute, which is outlined fully in Debtors' Motion to Assume Certain Executory Contracts With Whinstone US, Inc. (ECF No. 7), began around May 2022 after Debtors' competitor, Riot, acquired Whinstone and became unhappy with the terms of the contracts between Whinstone and Debtors. At that time, Whinstone wrote to a number of Rhodium entities, including Rhodium JV, to notify them that they had allegedly breached the

Rhodium JV Profit Sharing Agreement (to which only Rhodium JV was a party) by failing to pay Whinstone the share of profits it was entitled to under the Agreement, and demanding over \$10 million to remedy the breach.

9. A year later, in April 2023, Whinstone again alleged that various Rhodium entities were in breach of the Rhodium JV and Air HPC Profit Sharing Agreements by failing to pay Whinstone its share of profits and demanded \$13.5 million to remedy the underpayments.

10. On May 2, 2023, Whinstone (flouting the parties' contractual agreement to arbitrate), filed breach of contract claims against certain Debtors in a case captioned *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 County Litigation"). Whinstone now alleged that it was owed \$26 million under the Rhodium JV and Air HPC Profit Sharing Agreements. It also sought a declaration that the two Profit Sharing Agreements replaced or superseded the Power Agreements it had with other Debtors.

11. Along with co-counsel (Stris & Maher LLP), Lehotsky Keller Cohn LLP appeared for Debtors in the Milam County Litigation, filed counterclaims against Whinstone, and successfully compelled the case to arbitration. In September 2023, the trial court ordered the parties to arbitrate and stayed the suit pending the outcome of the arbitration.

12. Instead of commencing arbitration, Whinstone (after a lengthy delay) sought mandamus review in the Texas appellate courts. *See In re Whinstone US, Inc.*, No. 03-23-00717-CV (Tex. App.—Austin). After Lehotsky Keller Cohn LLP successfully secured a victory for Rhodium in those proceedings, Whinstone engaged in extralegal, extracontractual self-help: The next business day, November 27, 2023, Whinstone, without notice and without cause, turned off Debtors' power at the Rockdale site, forced Rhodium's staff out of the facility, declared the two

Profit Sharing Agreements it has with Rhodium JV and Air HPC, respectively, terminated, and started the process of evicting Debtors.

13. Debtors, again represented by Lehotsky Keller Cohn LLP and Stris & Maher LLP, sought a temporary restraining order and a temporary injunction in the Milam County Litigation the next day to enjoin Whinstone’s unlawful actions. The Milam County District Court granted both requests for relief and, on December 12, 2023, ordered Whinstone to “restore and maintain the status quo” including “with respect to the provision of electricity, access, and other services.” The Court also ordered Debtors to post a \$1 million bond, which they did.

14. In the meantime, and because Whinstone still had not commenced arbitration, Debtors, again represented by Lehotsky Keller Cohn LLP and Stris & Maher LLP, initiated arbitration against Whinstone in a case captioned *Rhodium JV LLC, Air HPC LLC, Rhodium 30MW LLC, Rhodium Encore LLC, Rhodium 2.0 LLC, Rhodium 10MW LLC, Jordan HPC LLC v. Whinstone US, Inc.*, Case No. 01-23-0005-7116, with the American Arbitration Association (“AAA”) on December 11, 2023, relating to the claims and counterclaims at issue in the Milam County Litigation (the “Arbitration”).

15. Despite the Temporary Injunction Order requiring Whinstone to “restore and maintain the status quo ... *with respect to the provision of electricity*,” Whinstone decided once again to turn off the power to Rhodium’s operations. Late in the evening on Friday, January 12, 2024, Whinstone abruptly disconnected power to Building C at Rockdale—containing 80% of Rhodium’s operations at the Rockdale Site. Whinstone attempted to justify cutting off the power by pointing to a trivial incident earlier that day, in which Rhodium had a minor failure of one of its over 600 cooling fans, resulting in a small spill of BitCool, a non-toxic, non-hazardous, biodegradable coolant similar to a mineral oil that was used in Rhodium’s immersion cooling

systems. Whinstone, through a Riot attorney, sent Rhodium a “Notice of Suspension” that asserted it was suspending power indefinitely to Building C under the Rhodium JV Profit Sharing Agreement.

16. Because the AAA had yet to appoint an arbitrator, Debtors, again represented by Lehotsky Keller Cohn LLP and Stris & Maher LLP, sought emergency relief in the Milam County Litigation from the unlawful suspension. The Milam County District Court declined to grant further relief, finding it did not have jurisdiction to do so.

17. Debtors, again represented by Lehotsky Keller Cohn LLP and Stris & Maher LLP, asked the AAA to appoint an emergency arbitrator and to enjoin Whinstone from continuing to act on the Notice of Suspension. The AAA appointed Emergency Arbitrator James L. Young, who (on March 1 and 2, 2024) heard two full days of evidence and argument from the parties on Rhodium’s motion for emergency relief. On March 7, 2024, the Emergency Arbitrator granted Rhodium’s request for emergency relief, enjoined Whinstone from acting on the Notice of Suspension, and ordered Whinstone to restore power and services to Building C.

18. In the meantime, Whinstone had appealed the temporary injunction order issued in the Milam County Litigation. Lehotsky Keller Cohn LLP and Stris & Maher LLP again represented Debtors in that appeal. On March 27, 2024, the Texas Third Court of Appeals vacated that Temporary Injunction Order solely on the ground that certain provisions of the injunction order were vague. The appellate ruling did not disturb any of the district court’s underlying factual or legal conclusions regarding the need for injunctive relief against the Notice of Termination.

19. On April 11, 2024, the AAA appointed former Texas Supreme Court Justice Harriet O’Neill as the Merits Arbitrator. On April 18, 2024, Whinstone filed an “emergency” motion to dissolve the Emergency Arbitrator’s temporary injunction and a plea to jurisdiction. In

addition, four days later, on April 22, 2024, Whinstone issued yet another Notice of Termination to Rhodium, this time purporting to terminate both the Profit Share Agreements with Rhodium JV and Air HPC, and all the Power Contracts with various Rhodium entities. As a result, Debtors, again represented by Lehotsky Keller Cohn LLP and Stris & Maher LLP, were forced to file another request for emergency relief with the AAA, yet again seeking protection from Whinstone's efforts to evict it.

20. On June 4, 2024, Justice O'Neill issued an order denying all of Whinstone's motions, granting all of Debtors' motions, and setting the merits trial for January 20-25, 2025. The order enjoined Whinstone from acting on both of its Notices of Termination and its Notice of Suspension while the matter was litigated. Shortly thereafter, Justice O'Neill set a full schedule for the arbitration and the parties began discovery.

21. Unhappy with these results yet again, Whinstone turned back to the Milam County Litigation for relief. On June 5, 2024, Whinstone filed an "emergency" motion to vacate the Emergency Arbitrator's March 7, 2024 Order, but never noticed a hearing on the motion. Then on August 15, 2024, Whinstone filed an "emergency" motion to vacate Justice O'Neill's June 4, 2024 order and a motion to release the entirety of the \$1 million bond Debtors had deposited with the Milam County District Court.

22. Unsuccessful in both the Milam County Litigation and the Arbitration, Whinstone tried another forum and another theory. On July 19, 2024, Whinstone filed a new action, this time in the District Court of Tarrant County, Texas: *Whinstone US, Inc. v. Imperium Investment Holdings LLC, Nathan Nichols, Chase Blackmon, Cameron Blackmon, Nicholas Cerasuolo, Rhodium Enterprises, Inc., Rhodium Technologies, LLC, and Rhodium Renewables, LLC*, Cause No. 153-354718-24 (the "Tarrant County Litigation"). The main allegations paint Whinstone as

a defrauded investor that suffered damages as a result of various capital transactions and expenditures by Debtors and their non-Debtor affiliates, which, Whinstone alleges, decreased the share of profits it expected from the Rhodium JV Profit Sharing Agreement. The Debtor defendants in that case (Rhodium Enterprises, Inc., Rhodium Technologies, LLC, and Rhodium Renewables, LLC) were represented by Lehotsky Keller Cohn LLP and Stris & Maher LLP.

23. Shortly after Debtors filed their Petitions in this Court on August 24, 2024, they filed suggestions of bankruptcy in the Milam County Litigation and the Arbitration. Thereafter, the Milam County Litigation and Arbitration were stayed. On September 2, 2024, certain Debtors removed the Tarrant County Litigation from state court to the United States Bankruptcy Court for the Northern District of Texas. They have moved to have the case transferred to this Court.

24. The Milam County Litigation, the Arbitration, and the Tarrant County Litigation all center around the same contractual dispute between Whinstone and Debtors. The parties' central disputes are which contracts are in effect and control the parties' relationship, how much is owed by the parties under those contracts, and whether Whinstone may lawfully terminate those contracts. These same disputes are the focus of the Motions to Assume Contracts With Whinstone (ECF Nos. 7, 32).

25. Debtors require knowledgeable counsel to represent them in the Whinstone Dispute. Lehotsky Keller Cohn LLP has represented Debtors in this Dispute from the beginning of litigation. Topping Decl. ¶ 7. It not only has substantial legal expertise, it has extensive historical knowledge of the factual and legal issues underlying the dispute. It is therefore uniquely positioned to effectively and efficiently continue representing Debtors in the Whinstone Dispute. *Id.* ¶¶ 7–8.

26. Lehotsky Keller Cohn LLP has billed Debtors for its work on the Whinstone Dispute, primarily on a hourly basis. All attorneys billed hourly, except one whose time was previously billed based on a monthly fixed fee. *Id.* ¶ 9. Going forward, it will bill on the same basis, with an update to the Firm’s 2024 standard rates, but with all attorneys billing hourly, if approved by this Court to serve as special litigation counsel. *Id.* ¶ 10. There is also a contingent fee depending on the outcome of litigation that has not changed. *Id.* ¶¶ 9–10.

RELIEF REQUESTED

27. By this Application, and pursuant to sections 327(e), 328(a), and 330 of the Bankruptcy Code, Bankruptcy Rules 2014 and 2016, Local Rules 2014-1 and 2016-1, and paragraph 47 of the Complex Case Procedures, Debtors request entry of an order approving the employment and retention of Lehotsky Keller Cohn LLP as its special litigation counsel in the above described matter (the Whinstone Dispute) effective as of the Petition Date.

28. Bankruptcy Rule 2014(a) requires that an application for retention and employment pursuant to § 327 include the following: (1) specific facts showing the necessity for employment; (2) the name of the firm to be employed; (3) the reasons for the selection; (4) the professional services to be rendered; (5) any proposed arrangement for compensation; and (6) to the best of the applicant’s knowledge, all of the person’s connections with the debtor, creditor, any other party-in-interest, their respective attorneys and accountants, the United States Trustee, or any personnel employed in the Office of the United States Trustee. These requirements, and the requirements of the Local Rules, are addressed below.

A. The Necessity of Special Litigation Counsel, the Selection of Lehotsky Keller Cohn LLP, and the Proposed Scope of Services

29. Debtors have determined that the retention of special litigation counsel is necessary to protect their interests in the above described matter. *See* Topping Decl. ¶ 6. Section 327(e) of the Bankruptcy Code states:

The trustee, with the court’s approval, may employ, for a specified special purpose, other than to represent the trustee in conducting the case, an attorney that has represented the debtor, if in the best interest of the estate, and if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.

11 U.S.C. § 327(e).

30. “Section 327(e) promotes economy in administration by recognizing that continuing the retention of pre-petition counsel/creditors will avoid wasteful expense and delay that might result from having to hire disinterested counsel unfamiliar with the subject matter.” *Pequeno v. Schmidt*, No. CV B-05-071, 2007 WL 9754362, at *4 (S.D. Tex. Sept. 27, 2007), *aff’d sub nom. In re Pequeno*, 299 F. App’x 372 (5th Cir. 2008) (cleaned up).

31. “The purpose for which an attorney is to be employed [under § 327(e)] must be specified and may not encompass bankruptcy services typically provided by the trustee’s general bankruptcy counsel concerning the administration of the bankruptcy case.” 3 COLLIER ON BANKRUPTCY ¶ 327.01 (16th ed. 2021).

32. Lehotsky Keller Cohn LLP has represented Debtors in this matter since May of 2023. Topping Decl. ¶ 7. It continues to represent Debtors in all aspects of this matter today. *Id.* Through its work, Lehotsky Keller Cohn LLP attorneys have gained extensive knowledge of Debtors’ business, corporate structure, and the legal issues and relevant evidence at issue in the matter. *Id.* Based on Lehotsky Keller Cohn LLP’s pre-petition work, Debtors believe that

Lehotsky Keller Cohn LLP is uniquely able to continue representing them in an effective and efficient manner. *Id.*

33. Lehotsky Keller Cohn LLP has represented Debtors in the Whinstone Dispute along with co-counsel Stris & Maher LLP. *Id.* ¶ 13. Lehotsky Keller Cohn LLP is a boutique firm with a small, but highly qualified, team of attorneys. The Whinstone Dispute has required a significant number of attorney hours, often on very short time frames. *Id.* Accordingly, Debtors retained both Lehotsky Keller Cohn LLP and Stris & Maher LLP, another small firm, to accomplish the substantial work needed to handle the Dispute. *Id.* Both firms have extensive experience handling complex commercial disputes, such as this one. Lehotsky Keller Cohn LLP brings specialized knowledge of Texas law, practice, and procedure to the representation, while Stris & Maher LLP has broad knowledge of Debtors' business, corporate structure, and history. *Id.*

34. Based on the above, Debtors request that the Court enter an order permitting Debtors to retain and employ Lehotsky Keller Cohn LLP as follows:

a. Lehotsky Keller Cohn LLP, along with co-counsel Stris & Maher LLP, may represent Debtors in all matters in which the Whinstone Dispute is at issue, including specifically in the Motions to Assume Contracts With Whinstone (ECF Nos. 7, 32), and in the Tarrant County Litigation.

B. Past Compensation Debtors Have Paid Lehotsky Keller Cohn LLP

35. Local Rule 2014-1(a) requires that any “application for employment by an attorney for the debtor . . . must have attached the statement required by Fed. R. Bankr. P. 2016(b) and § 329 of the Bankruptcy Code.”

36. Section 329(a) requires “[a]ny attorney representing a debtor in a case” to “file with the court a statement of the compensation paid or agreed to be paid, if such payment or

agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.” 11 U.S.C. § 329(a).

37. As set forth in the Cohn Declaration: Lehotsky Keller Cohn LLP received its first retainer of \$200,000 from Debtors to represent them in the Whinstone dispute on May 18, 2023. Cohn Decl. ¶ 16. During the one year period prior to the Petition Date, Lehotsky Keller Cohn LLP received payments totaling \$2,203,448.41 for fees and expenses in connection with the Whinstone Dispute, including the Tarrant County Litigation, and a separate matter. *Id.* ¶ 20. As of August 28, 2024, Debtors have paid all fees and expenses they owe to Lehotsky Keller Cohn LLP prior to the Petition Date, and have a remaining retainer of \$400,000 on account with the Firm. *Id.* ¶ 21.

38. Federal Rule of Bankruptcy Procedure 16(b) requires “[e]very attorney for a debtor,” to “file and transmit to the United States trustee . . . the statement required by § 329 of the Code including whether the attorney has shared or agreed to share the compensation with any other entity.” The statement must “include the particulars of any such sharing or agreement to share by the attorney.” *Id.* However, under section 504 of the Bankruptcy Code, “a person receiving compensation or reimbursement under section 503(b)(2) or 503(b)(4) of this title may not share or agree to share (1) any such compensation or reimbursement with another person; or (2) any compensation or reimbursement received by another person under such sections.” 11 U.S.C. 504(a).

39. As set forth in the Cohn Declaration, Lehotsky Keller Cohn LLP has neither shared nor agreed to share (a) any compensation or reimbursement it has received or may receive from Debtors with another person, other than the employees of Lehotsky Keller Cohn LLP, or (b) any

compensation or reimbursement another person has received or may receive from Debtors. *See* Cohn Decl. ¶ 22.²

C. Proposed Arrangement for Future Compensation

40. Lehotsky Keller Cohn LLP has agreed to serve as special litigation counsel and to receive compensation from Debtors for its work on the above-described matter based on a combination of hourly billing and a contingent fee, plus reimbursement of the actual and necessary expenses that it incurs, subject to the approval of this Court, in compliance with sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the Complex Case Procedures, and/or any other orders of the Court. Topping Decl. ¶¶ 10. Lehotsky Keller Cohn LLP will also make a reasonable effort to comply with the requests for information and additional disclosures as set forth in the Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses filed under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases, effective November 1, 2013 (the “U.S. Trustee Guidelines”), both in connection with this Application and any applications for compensation and reimbursement of expenses to be filed by Lehotsky Keller Cohn LLP in these chapter 11 cases.

41. For the Whinstone Dispute, Lehotsky Keller Cohn LLP agrees to receive fees on the basis of time billed at hourly rates, plus a contingent fee depending on the outcome of litigation. Cohn Decl. ¶ 6. Lehotsky Keller Cohn LLP’s hourly rates vary with the seniority of its attorneys and are adjusted from time to time. *Id.* ¶¶ 6, 25. Work is assigned among attorneys so

² Again, Lehotsky Keller Cohn LLP worked with Stris & Maher LLP as co-counsel representing Debtors in the Whinstone Dispute. Topping Decl. ¶ 13. The two firms bill Debtors separately. *Id.* Lehotsky Keller Cohn LLP has not shared or agreed to share any compensation or reimbursement it has or may receive from Debtors with Stris & Maher LLP. Cohn Decl. ¶ 22. Similarly, Stris & Maher LLP has not shared or agreed to share any compensation or reimbursement it has or may receive from Debtors with Lehotsky Keller Cohn LLP. *Id.*

as to meet Debtors' needs, including timing requirements, in an economically efficient manner. *Id.* ¶ 7. Lehotsky Keller Cohn LLP agreed to discount its standard hourly rates in exchange for a contingent fee. *Id.* ¶ 6.

42. Expenses related to Lehotsky Keller Cohn LLP's services will be included in the monthly fee statements and quarterly fee applications and may include third-party disbursements, such as expert fees, and other costs. *Id.* ¶ 7. It is Lehotsky Keller Cohn LLP's intent to bill such expenses at cost. *Id.*

43. Lehotsky Keller Cohn LLP's fees and expenses incurred in connection with this representation are to be paid out of Debtors' estates. Lehotsky Keller Cohn LLP will apply to this Court for allowance of compensation and reimbursement of expenses in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the Complex Case Procedures, and any other applicable procedures and orders of the Court. *Id.* ¶ 24.

44. Lehotsky Keller Cohn LLP's standard rates for 2024 are as follows: \$1400 per hour for name partners, \$1300 per hour for other partners, \$1000 per hour for counsel, \$850 per hour for associates, and \$500 per hour for a staff attorney. Cohn Decl. Sch. 3. These rates are consistent with rates that Lehotsky Keller Cohn LLP has charged in other comparable complex cases with no variation based upon the geographical location of a case. *Id.* ¶ 6. For the Whinstone Dispute, however, Lehotsky Keller Cohn LLP has agreed to discount its rates in exchange for a contingent fee. For the first \$250,000 of time at standard rates in a month, there will be a 20% discount. For the next \$250,000 of time at standard rates in a month, there will be a 25% discount. For all additional time in a month, there will be a 30% discount. *Id.*

45. Debtors recognize that they have the responsibility to closely monitor the billing practices of their counsel to ensure that the fees and expenses paid by the estates remain consistent

with Debtors' expectations and the exigencies of these chapter 11 cases. Topping Decl. ¶ 12. Debtors will review and monitor the invoices that Lehotsky Keller Cohn LLP submits. *Id.*

D. Lehotsky Keller Cohn LLP Will Avoid Duplicative Work

46. Debtors have retained various other restructuring professionals and counsel in these chapter 11 cases for particular purposes. Debtors, Lehotsky Keller Cohn LLP, and such other counsel have fully discussed Lehotsky Keller Cohn LLP's role in these chapter 11 cases so as to avoid duplication of work. *See* Topping Decl. ¶ 13. Rather than resulting in any extra expense to Debtors' estates, it is anticipated that the efficient coordination of efforts of Debtors' attorneys and other professionals will promote the efficient prosecution and effective administration of these chapter 11 cases. *Id.* Lehotsky Keller Cohn LLP has agreed to make reasonable efforts to avoid duplication of services by any other professionals employed by Debtors. Cohn Decl. ¶ 8.³

E. Lehotsky Keller Cohn LLP Neither Holds Nor Represents Any Adverse Interest

47. To the best of Debtors' knowledge, information, and belief, as set forth in the Cohn Declaration, Lehotsky Keller Cohn LLP, does not represent or hold any interest adverse to Debtors or their estates with respect to the matter on which Lehotsky Keller Cohn LLP is to be employed. *See* Cohn Decl. ¶ 12. Additionally, Lehotsky Keller Cohn LLP will conduct an ongoing review of its files to ensure that it continues to neither represent nor hold any interests adverse to Debtors or their estates with respect to the matter on which Lehotsky Keller Cohn LLP is to be employed pursuant to this Application. *Id.*

³ Again, Lehotsky Keller Cohn LLP has worked with Stris & Maher LLP as co-counsel representing Debtors in the Whinstone Dispute. Cohn Decl. ¶ 8 n.2. The firms have worked together to ensure their work is not duplicative and will continue to do so if approved by the Court to serve as special litigation counsel.

48. Bankruptcy Rule 2014(a) requires that any application for order of employment must “be accompanied by a verified statement of the person to be employed setting forth the person’s connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.” The Cohn Declaration sets forth this required information. *See* Cohn Decl. ¶¶ 11–14.

* * *

Debtors respectfully request that this Court enter an order allowing the retention and employment of Lehotsky Keller Cohn LLP as special litigation counsel upon the terms described in this Application and for such other and further relief as the Court may deem just and appropriate.

Respectfully submitted this 22nd day of September, 2024.

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

/s/ Patricia B. Tomasco

Patricia B. Tomasco (SBN 01797600)

Joanna D. Caytas (SBN 24127230)

Cameron Kelly (SBN 24120936)

Alain Jaquet (*pro hac vice*)

700 Louisiana Street, Suite 3900

Houston, Texas 77002

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Email: pattytomasco@quinnemanuel.com

Email: joannacaytas@quinnemanuel.com

Email: cameronkelly@quinnemanuel.com

Email: alainjaquet@quinnemanuel.com

- and -

Eric Winston (*pro hac vice*)
Razmig Izakelian (*pro hac vice*)
865 S. Figueroa Street, 10th Floor
Los Angeles, California 90017
Telephone: 213-443-3000
Facsimile: 213-443-3100
Email: ericwinston@quinnemanuel.com
Email: razmigizakelian@quinnemanuel.com

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

Certificate of Service

I, Patricia B. Tomasco, hereby certify that on the 22nd day of September, 2024, a copy of the foregoing Application was served by the Electronic Case Filing System for the United State Bankruptcy Court for the Southern District of Texas.

/s/ Patricia B. Tomasco

Patricia B. Tomasco

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

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

**DECLARATION OF JONATHAN F. COHN IN SUPPORT OF THE APPLICATION
FOR AN ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF
LEHOTSKY KELLER COHN LLP AS SPECIAL LITIGATION COUNSEL**

The undersigned as proposed counsel for Rhodium Encore LLC and its debtor-affiliates in the above-captioned chapter 11 cases, as debtors and debtors-in-possession (collectively, the “Debtors” or “Rhodium”), hereby submits this declaration in support of the Application for Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel.

Pursuant to 28 U.S.C. § 1746, I, Jonathan F. Cohn, hereby declare as follows:

1. My name is Jonathan F. Cohn. I am over 18 years of age. I am competent to make this declaration and have personal knowledge of the facts stated herein. Each and every statement contained herein is true and correct. To the extent any of the information disclosed herein requires amendments or modifications upon the completion of further review or as additional information

¹ 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), Jordan HPC Sub LLC (0463), Rhodium 2.0 Sub LLC (5319), Rhodium 10MW Sub LLC (3827), Rhodium 30MW Sub LLC (4386), Rhodium Encore Sub LLC (1064), Rhodium Enterprises, Inc. (6290), Rhodium Industries LLC (4771), Rhodium Ready Ventures LLC (8618), Rhodium Renewables LLC (0748), Rhodium Renewables Sub LLC (9511), Rhodium Shared Services LLC (5868), and Rhodium Technologies LLC (3973). The mailing and service address of Debtors in these chapter 11 cases is 2617 Bissonnet Street, Suite 234, Houston, TX 77005.

becomes available, a supplemental declaration will be submitted reflecting such amended or modified information.

2. I am an attorney duly admitted to practice in the District of Columbia, the State of New York, and the State of Arkansas.

3. I am a partner in the law firm of Lehotsky Keller Cohn LLP (the “Firm”). The Firm maintains its primary office at 408 W. 11th Street, 5th Floor, Austin, Texas 78701. The Firm’s main telephone number is (512) 693-8350, and its main facsimile number is (833) 233-2202.

4. This declaration is submitted in support of the Application for Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel (the “Application”) pursuant to sections 327(e), 328(a), and 330 of title 11 of the United States Code (the “Bankruptcy Code”), rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), rules 2014-1 and 2016-1 of the Local Bankruptcy Rules for the Southern District of Texas (the “Local Rules”) and paragraph 47 of the Procedures for Complex Cases in the Southern District of Texas (the “Complex Case Procedures”).

5. Subject to Court approval, the Firm proposes to provide legal services to Rhodium at the rate approved by the Court in compliance with sections 328(a) and 1103(a) of the Bankruptcy Code. The Firm proposes to provide legal services in connection with all matters related to the dispute between Debtors and Whinstone US, Inc. (the “Whinstone Dispute”), specifically including (i) Debtors’ Motion to Assume Certain Executory Contracts With Whinstone US, Inc. (ECF No. 7) and Debtors’ Supplemental Motion to Assume Certain Contracts With Whinstone US, Inc. (ECF No. 32) (collectively, the “Motions to Assume Contracts with Whinstone”), and (ii) *Whinstone US, Inc. v. Imperium Investment Holdings LLC, Nathan Nichols, Chase Blackmon, Cameron Blackmon, Nicholas Cerasuolo, Rhodium Enterprises, Inc., Rhodium Technologies, LLC,*

and Rhodium Renewables, LLC, Tarrant County District Court Cause No. 153-354718-24 (the “Tarrant County Litigation”).

6. For the Whinstone Dispute, Lehotsky Keller Cohn LLP agrees to receive fees on the basis of time billed at discounted hourly rates, plus a contingent fee depending on the outcome of litigation. Lehotsky Keller Cohn LLP’s standard rates for 2024 are as follows: \$1400 per hour for name partners, \$1300 per hour for other partners, \$1000 per hour for counsel, \$850 per hour for associates, and \$500 per hour for a staff attorney. These rates are consistent with rates that Lehotsky Keller Cohn LLP has charged in other comparable complex cases with no variation based upon the geographical location of a case. For the Whinstone Dispute, however, Lehotsky Keller Cohn LLP has agreed to discount its rates in exchange for a contingent fee. For the first \$250,000 of time at standard rates in a month, there will be a 20% discount. For the next \$250,000 of time at standard rates in a month, there will be a 25% discount. For all additional time in a month, there will be a 30% discount.

7. The Firm will assign work among attorneys and other professionals so as to meet Debtors’ needs, including timing requirements, in an economically efficient manner. A full list of the Firm’s rates is attached hereto as Schedule 3. The Firm’s rates are reviewed periodically and adjusted, typically on January 1 of each year. Expenses related to the Firm’s services will be included in its monthly fee statements and quarterly fee applications and may include third-party disbursements, such as expert fees, and other costs. It is the Firm’s intent to bill such expenses at cost.

8. I have discussed the Firm's proposed role as Special Litigation Counsel in Debtors' chapter 11 proceedings with Debtors, and I believe the services rendered by the Firm will not unnecessarily duplicate those rendered by any other professional retained by Rhodium.²

9. In conjunction with Rhodium's retention of the Firm, I directed a search of the Firm's conflicts system for each individual and entity listed on the attached Schedule 1, which lists Rhodium's creditors, insiders, and potentially interested individuals and entities identified to date. Together, these creditors, insiders, and potentially interested individuals and entities are referred to as the "Potential Parties-in-Interest").

10. The Firm may represent affiliates of creditors whose identities and affiliations do not show in the conflicts system. Further, the Firm based its review of conflicts on entities whom Rhodium identified as Potential Parties-in-Interest (as shown on Schedule 1). It is possible that there are Potential Parties-in-Interest that Rhodium did not identify in their records that are clients of the Firm.

11. The following summarizes the findings of my review of the information available on the Firm's conflicts system regarding the individuals and entities identified on Schedule 1, and my and the Firm's connections with Rhodium and its current and former officers, directors, and professionals.

12. Lehotsky Keller Cohn LLP will conduct an ongoing review of its files to ensure that it continues to neither represent nor hold any interests adverse to Debtors or their estates with respect to the matters on which the Firm is to be employed pursuant to this Application.

² In particular, I note that the Firm worked with proposed Special Litigation Counsel Stris & Maher LLP as co-counsel representing Debtors in the Whinstone Dispute pre-petition. The two firms worked together to ensure their work was not duplicative, and they will continue to do so if approved by the Court to serve as Special Litigation Counsel.

A. Current Clients of the Firm that are Potential Parties-in-Interest

13. The Firm does not currently represent any Potential Parties-in-Interest, as identified on Schedule 1, that may have direct or individual claims or interests against Rhodium.

B. Former Clients of the Firm that are Potential Parties-in-Interest

14. The Firm previously represented Potential Parties-in-Interest (or their affiliates) as reflected on Schedule 2. None will impact the Firm's ability to fulfill its obligations as special litigation counsel to Rhodium as allowed by 11 U.S.C. § 327(e).

C. The Firm's Payment History with the Debtors

15. The Firm is not a creditor of the Debtors, except insofar as it has performed work and advanced expenses after the Petition Date for which it has not yet been paid.

16. On May 18, 2023, the Firm received its first retainer, of \$200,000, from Debtors for representation in connection with the Whinstone Dispute.

17. During the 90-day period prior to the August 24, 2024 Petition Date, the Firm received payments totaling \$640,888 for work on the Whinstone Dispute and a separate matter.

18. On August 27, 2024, the Firm was paid \$142,144 by Rhodium Shared Services LLC (which was not a debtor in this chapter 11 proceeding at the time) for services rendered in connection with the Whinstone Dispute.

19. On August 28, 2024, the Firm was paid \$355,339.20 by Rhodium Shared Services LLC (which was not a debtor in this chapter 11 proceeding at the time) for services rendered in connection with the Whinstone Dispute.

20. As required by section 329(a) of the Bankruptcy Code and rule 2016(b) of the Bankruptcy Rules, I declare that during the one year period prior to the Petition Date, the Firm received payments totaling \$2,203,448.41 in connection with the Whinstone Dispute and a separate matter.

21. As of August 28, 2024, Debtors have paid all fees and expenses due to the Firm through the Petition Date, and have a remaining retainer of \$400,000 on account with the Firm.

22. The Firm has neither shared nor agreed to share (a) any compensation or reimbursement it has received or may receive from Debtors with another person, other than the employees of the Firm, or (b) any compensation or reimbursement another person has received or may receive from Debtors.

D. Relationship Between Firm Personnel and Rhodium

23. Firm personnel had no relationship with Rhodium before representing Rhodium in the Whinstone Dispute.

E. Statement Regarding U.S. Trustee Guidelines

24. The Firm shall apply for compensation for professional services rendered and reimbursement of expenses in connection with its representation of Rhodium in this case in compliance with sections 330 and 331 of the Bankruptcy Code and applicable provisions of the Bankruptcy Rules, Local Rules, and any other applicable procedures and orders of the Court. The Firm also intends to make a reasonable effort to comply with the U.S. Trustee's requests for information and additional disclosures as set forth in the Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases Effective as of November 1, 2013 (the "U.S. Trustee Fee Guidelines"), both in connection with this Application as well as the fee applications that may be filed by the Firm in connection with the representation of Rhodium.

25. The following is provided in response to the request for additional information set forth in Paragraph D.1 of the U.S. Trustee Fee Guidelines:

Question: Did the Firm agree to any variations from, or alternatives to, the Firm's standard billing arrangement for this engagement?

Answer: Yes. The Firm's standard billing arrangement is hourly. For the Whinstone Dispute, the Firm agreed to reduce its hourly rates in exchange for a contingent fee.

Question: Do any of the Firm's professionals in this engagement vary their rate based on the geographical location of the Rhodium chapter 11 case?

Answer: No. The hourly rates used by the Firm in representing Rhodium are consistent with the rates that the Firm charges comparable clients.

Question: If the Firm has represented Rhodium in the 12 months prepetition, disclose the Firm's billing rates and material financial terms for the prepetition engagement, including any adjustments during the 12 months prepetition. If the Firm's billing rates and material financial terms have changed post-petition, explain the difference and the reasons for the difference.

Answer: In the 12 months pre-petition, the Firm has represented Rhodium in the Whinstone Dispute and a separate matter. In the Whinstone Dispute, the Firm was retained on an hourly basis at its standard 2023 rates—\$1300 for name partners, \$1200 for other partners, \$900 for counsel, and \$750 for associates—with two exceptions. First, those hourly rates were discounted in exchange for a contingent fee. Second, the work of one attorney was charged based on a monthly flat fee. In a new engagement letter, which was post-petition for some Debtors but pre-petition for another Debtor, the hourly rates were updated to the Firm's standard 2024 rates, with the same two exceptions noted above. In a separate, post-petition engagement letter, the Firm agreed to charge hourly for all attorneys, including the attorney whose work was previously charged based on a monthly flat fee. In the other matter, the Firm was retained on a monthly flat-fee.

Question: Has Rhodium approved the Firm's budget and staffing plan, and if so, for what budget period?

Answer: Rhodium regularly reviews the Firm's staffing and invoices. Rhodium requested a budget for this engagement, which the Firm provided and which Rhodium has approved.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 22nd day of September 2024.

/s/ Jonathan F. Cohn
Jonathan F. Cohn

PARTIES-IN-INTEREST LIST

Bankruptcy Judges and Staff for Southern District of Texas

Judge Marvin Isgur
 Judge Christopher M. Lopez
 Judge Jeffrey P. Norman
 Judge Eduardo V. Rodriguez
 Judge Alfredo R. Perez
 Tyler Laws
 Akeita House
 Peter Bray
 Jason Marchand
 Sierra Thomas-Anderson
 Rosario Saldana
 Zilde Martinez
 Tracey Conrad
 Shannon Holden
 Christina Bryan
 Melissa Morgan-Faircloth
 Aaron Jackson
 Mario Rios
 Yvonne Ho
 Samantha Warda
 Dena Hanovice Palermo
 Carol Felchak
 Jeannie Chavez
 Ana Castro
 Sam S. Sheldon
 Shannon Jones

US Trustee

Ha Minh Nguyen
 Christopher Ross Travis

Client Corporate Group

Rhodium Enterprises, Inc.
 Rhodium Technologies LLC
 Rhodium Renewables LLC
 Rhodium 2.0 LLC
 Rhodium Encore LLC
 Rhodium 30MW LLC
 Rhodium 10MW LLC
 Rhodium JV LLC
 Air HPC LLC
 Jordan HPC LLC
 Rhodium Industries LLC

Rhodium Shared Services LLC
 Rhodium Ready Ventures LLC
 Rhodium Renewables Sub LLC
 Rhodium 2.0 Sub LLC
 Rhodium Encore Sub LLC
 Rhodium 30MW Sub LLC
 Rhodium 10MW Sub LLC
 Jordan HPC Sub LLC

Adverse Party and Potentially Adverse Party/Creditor of Rhodium Technologies LLC Rhodium 2.0 LLC, Rhodium Technologies LLC, & Rhodium Encore LLC

Proof Capital Alternative Growth Fund
 Proof Capital Alternative Income Fund
 Proof Proprietary Investment Fund Inc.
 C5 Capital LLC
 Sing Family Enterprise Limited
 Abundance 2021, LLC
 Imperium Investments Holdings LLC
 SCM Worldwide LLC
 Michael Garrie
 Chang Living Trust
 Vesano Ventures LLC
 Daniel Garrie
 Limitless Advisors LLC
 Del Papa Ventures Ltd
 Fellowship Management Group, LLC
 Yang, Patty
 Pepper Grove Holdings Limited
 Alfred Murray Capital, LLC
 AnnMarie Fornaro Trust dated January
 9, 2017
 Blain, Derek
 Brown, Michael
 BT Real Estate LLC
 Bullfrog Investment Group Inc.
 Celsius Core LLC
 Coroneos, Paul A
 GenGlobal RIG LLC
 Gilbert, Sean Michael
 Hibble, Adam
 Infinite Mining, LLC
 J. Blue Company, LLC

Jennings, Brett
 JWS QRP HOLDINGS LLC
 Karl, Philip
 Kessner, Matthew J
 Laczko, Zoltan
 Lau, James
 LIQUID MINING FUND I LLC
 Magic Circle Trust
 Mcbee, Christopher
 Mettlehead Capital, LLC
 Moorhead, Jordan
 Noble Crest Capital, LLC
 Orr, Douglas
 Philip M. Fornaro Trust dated January 9,
 2017
 Precint Holdings, LLC
 Private Investor Club Feeder Fund 2021-
 H LLC
 RH Fund III, a series of Telegraph
 Treehouse, LP
 RH Fund I, a series of Permit RH, LP
 Ranger Private Investment Partners, L.P.
 RKS Investments LLC
 Salvadori, Alexander Matthew
 Shoemaker, Robert
 Solo Sessions, LLC Profit Sharing Plan
 Brennan M. Nacol 2015 Irrevocable
 Trust
 Smith, Jeffrey
 Stefkov, Emil
 Ten R Ten, LLC
 Thakur, Neil Kumar
 The Kirk A. Blackmon 2013 Family
 Trust
 Thunder Mountain Holdings LLC
 Permit Ventures, LLC
 TZ SOLO401K TRUST
 Vantage FBO Amber Wimberly IRA
 Weber, Brad
 Winchester Partners, LP
 Ethos Investments XV, LLC
 AFC Development LLC
 Arctos Credit LLC (*I believe this is
 n/k/a NYDIG or owned by NYDIG)
 Christopher Blackerby
 Clark and Laurie Kemble
 Colin Hutchings

Equity Trust Company Custodian FBO
 Valentin Angelkov IRA
 ERC Capital LLC
 Guarav Parikh 2020 Revocable Trust
 Jacquelyn B. Nacol 2015 Irrevocable
 Trust
 KeekBC LLC
 LNW Family II LP
 Omega Capital Ventures S R L
 Pat C. Hawkins
 Printing Capital I LP
 Private Investor Club Feeder Fund 2020-
 G LLC
 Private Investor Club Feeder Fund 2020-
 H LLC
 R2BMNI LLC
 Resolutions Real Estate Services LLC
 Robert M. and Nancy T. Spencer
 Rossano N. Wlodawsky and Marnie S.
 Wlodawsky Joint Revocable Living
 Trust
 Ryan Nacol 2015 Irrevocable Trust
 Scott A. Thurman
 Shane M. Blackmon
 Stadlin Group Investmnents LLC
 The Goodman Family Trust
 Thomas Lienhart
 Upgradeya Investments LLC
 Chase Blackmon
 Cameron Blackmon
 Nathan Nichols
 DROip3 LLC
 The Trudo T. M. Letschert, II Revocable
 Trust
 Solo Sessions LLC
 345 Partners SPV2 LLC
 Brian Cullinan
 GR Fairbairn Family Trust
 GRF Tiger Trust
 Jacob Rubin
 Jerald and Melody Howe Weintraub
 Revocable Living Trust
 Kintz Family Trust
 Moore Revocable Trust Dated July 31,
 2014
 NC Fairbairn Family Trust
 Nina Claire Fairbairn Revocable Trust
 Paul Schwarz

Richard Fullerton
 Transcend Partners Legend Fund LLC
 Valley High Limited Partnership
 Wilkins-Duignan 2009 Revocable Trust
 Jerald M Weintraub/Jerald and Melody
 Howe Weintraub Revocable Living
 Trust DTD 02/05/98, as amended
 Grant Fairbairn Revocable Trust
 NCF Eagle Trust
 Jonathan E Aborn
 Ers Captial LLC
 James M. Farrar & Adda B.D. Farrar
 (JWROS)
 Morrison Park Capital LLC/Anthony E
 Ausiello
 ELYSIUM MINING, LLC
 RH Fund II, a series of Telegraph
 Treehouse, LP/Benefit of Angel list
 Gaurav Parikh 2020 Revocable Trust
 TYLER BOSSERMAN/Vida Kick LLC
 Whinstone US, Inc.
 Riot Platforms, Inc.
 Temple Green Data LLC
 NetZero Energy LLC
 Rowan Green Data LLC
 Quinbrook Infrastructure Partners
 Midas Green Technologies LLC
 RC Enterprises, LLC dba Electronic
 Cleaners
 Gunn Restoration, LLC
 Blackmon Mooring of Austin, LLC
 Richard Camara
 Justin Camara
 Dick Camara
 Trine Mining, LLC
 Cross The River, LLC
 Celsius Network LLC
 Celsius KeyFi LLC
 Celsius Lending LLC
 Celsius Mining LLC
 Celsius Network, Inc.
 Celsius Network Limited
 Celsius Networks Lending LLC
 Celsius US Holding LLC

**Hosting Customer of Rhodium
 Renewables LLC**

TX 3 Mining LLC

Directors, Officers, and Employees

Nathan Nichols
 Chase Blackmon
 Cameron Blackmon
 Kevin Hays
 Charles Topping
 Caleb VanZoeren
 Morgan Soule
 Alex Peloubet
 Alicia Catatao
 Matt Smith
 Zach Kerr
 Renata Szkoda
 Jonas Lauren Norr
 David L. Eaton
 L. Spencer Wells
 Imperium Investments Holdings LLC

Former Directors and Officers

Nicholas Cerasuolo
 James Calvin
 Bartholomew Mallon
 Anthony Ausiello
 Jared Melillo
 Marshall Long
 John Lewis Zoeckler

Top Shareholders

Malcolm P and Emily T Fairbairn 2021
 Charitable Remainder
 DLT Data Center 1 LLC
 Private Investor Club Feeder Fund 2020-
 G LLC

Vendors/Service Providers

Proof Corporate Advisory Inc.
 Byline Bank
 U.S. Bank
 Vantage Bank
 First Republic Bank
 Assured Partners
 Lockton Companies
 Sprung Instant Structures Inc.
 EdgarAgents LLC
 Bobcat
 Adobe
 Fiberlight LLC

Carruth-Doggett Inc
 Cambridge Viscosity LLP
 Amplified Containers, LLC
 Equiniti Trust Company LLC
 Hmtech Asic Repair
 Relevant Industrial LLC
 S&P Global Market Intelligence LLC
 Modis
 BMS Management
 Collaborative Office Interiors
 East TX Fencing and Fabrication
 Prolim Corporation
 Virginia Ewing
 Industrial Shelving Systems
 DSI Ventures Inc.
 Tetty's Tees
 Carl Richardson
 Kirkland & Ellis LLP
 Melodie Zoeckler Photography
 2Way Supply
 Titan IO, Inc
 Texas Blockchain Council
 Rowan Green Data LLC
 Munters Corporation
 Asana Inc
 Goodwin Procter LLP
 Ellenoff Grossman
 Amplified Electric
 Armanino
 Kelvion
 PRM Filtration
 Dell Technologies
 Dry Coolers Inc
 ChemFoundry Inc
 H&K Electrical Contractor Inc
 ThermoSystems Inc
 Air Filters Inc
 Whinstone US Inc
 Ameritex Machine & Fabrication
 Peregrine Prime Inc
 Big Johnson Plumbing, Inc
 Marcum LLP
 CDW Direct LLC
 Philip M. Fornaro & Associates Ltd.
 Blockchain Tax Partners
 Efani

JFDI Consultants LLC
 Harrington Industrial Plastics LLC
 Blue HG LLC
 K&L Gates LLP
 Lucent Point, LLC
 McDonnell Boehnen Hulbert &
 Berghoff LLP
 A60 ES LLC
 Rolland Safe and Lock Company
 The BVA Group LLC
 Bray International Inc
 Producers Video Corporation
 Magnetic Mill LLC
 FNK IR, LLC
 Southern Petroleum Laboratories, Inc
 Whispli
 Baer Engineering
 Coinbase Inc.
 DeWitt Law Firm
 Leinart Cleaning LLC
 Mechanical Reps Inc.
 XT-Shanghai Fengy Cable Technology
 Co. Ltd.
 Mettler Toledo LLC
 Industrial Builders Inc.
 Adventure Pictures
 Overhead Door Co. of Central
 Texas/Ideal Slate LLC
 Susan Butenhoff
 Prime Controls
 Leppo Rents
 Optex Solutions
 Net Solutions LLC
 Potter Anderson & Corroon LLP
 PFS Financing Corporation
 Woodway Builders LLC
 Simply Rack Warehouse Equipment
 CICB
 Chain Solutions Ltd.
 Sessions, Israel, & Shartle
 Cardinal Intellectual Property
 Connect Discovery
 Hot Corner Food
 Moffitt Services
 CHAPMAN SPINGOLA LLP
 DOCUMATION OF SAN ANTONIO
 Twisted L BBQ

Advanced Crypto Services LLC
 Henry Horelica
 CSP Safety
 AED Professionals
 Standon Pipe Supports
 Salary.com
 Kane Russell Coleman Logan PC
 One Stop Mining
 McMaster-Carr Supply
 Queue Associates Inc.
 Asset Hound LLC
 Mothership Incubator, LLC
 Upstreamdata
 Hawk Chain Solutions
 Johnson Equipment Company
 Acorn Waste Solutions
 Kelly Hart & Hallman LLP
 Grapnel Tech Services
 Bartlett Electric Co-Op Inc
 Sunbelt Rentals
 K2 Discovery
 JMS Southeast Inc.
 Intuit Quickbooks
 Portico Apartments
 Byron Gossett
 Reliant Energy
 Texas Mutual Insurance Company
 Zochnet LLC
 Kyng Energy Investments
 Shell Technology Center
 Blue Cross Blue Shield
 Bill.com
 American Express
 Canaan US Inc.
 AsicXchange Inc.
 Waste Management Inc.
 AJX Group Inc
 T Fulton Trucking
 Guntner US LLC
 Beam Dental Insurance
 Guardian Insurance
 Okta Inc.
 Riveron LLC
 StrongDM
 Giga Energy Inc.
 Alerus Financial, N.A.

Temple Bolt Supply
 Bearden Creek Advisors LLC
 Ray Barrett
 One LLP
 Marsh USA LLC
 Stris & Maher LLP
 CNA Insurance
 Hash House Tech Inc
 Net Sync
 Unum Group
 UHC
 Consilio LLC
 Rippling Inc.
 KMC Equipment
 Expensify
 Delaware State Government
 Ernst & Young LLP
 Lehotsky Keller LLP
 Gillam & Smith LLP
 Malone Bailey LLP
 Bloomberg Industry Group
 Texas Disposal Systems
 Auradine
 Liebherr USA Co.
 Ochsner Interests
 Access Retirement Solutions
 Lancium LLC
 Dawson Van Orden Inc.
 Unfinished Projects LLC
 SHANDONG TAIAN HIKING
 INTERNATIONAL COMMERCE
 GROUP CO.LTD
 Stylus Jinn Repair
 MESO
 Swisher Acquisitions
 SecureW2
 NTX Mechanical and Welding LLC
 Checkr Inc
 Lonestar Taproot LLC
 MicroBT
 DHL Analytical
 Westguard Insurance Company
 AF Group Inc.
 Artemis Power Tech LLC
 B. Riley Securities Inc.
 City of Temple

Elevate
 Puerto Rico Tax Department
 NYDIG LLC
 HKA Global LLC
 Keating and Son's Tire
 Mark Grams
 Texas Comptroller of Public Accounts
 New Pig Corporation
 Schneider Freight Power
 Magruder Executive Search
 Summit Fire and Security
 MongoDB Inc.
 Progressive Insurance
 Alamo Prism Communications Inc.
 Bitmain Technologies Delaware Limited
 First Insurance
 Milam County Courthouse
 McMillan James Equipment Company
 Northeast Series of Lockton Companies
 DLR Plumbing
 Three Way Logistics Inc
 3A General Contractors LLC
 The TASA Group Inc.
 American Arbitration Association
 Stoel Rives LLP
 Milam County Tax Assessor
 Quinn Emanuel Urquhart & Sullivan
 LLP
 ExpertLink LLC
 Victor Martinez
 Gregg Law PC
 National Benefits Services LLC
 The Cleaning Guys LLC
 Aerotek Inc.
 Barnes & Thornburg LLP
 Alternative Environmental & Recycling
 Services Inc.
 ClearVue Landscapes
 JND eDiscovery
 Logic Systems Inc.
 Gunns Restoration
 Greg Riley Professional Engineer
 Propour, LLC
 Donnelley Financial LLC
 John Dees
 Brandon and Clark, Inc.

Schedule 2**Disclosures of Relationships to Potential Parties-in-Interest**

1. Lehotsky Keller Cohn LLP has in the past represented the following Potential Parties-in-Interest:

Chase Blackmon	Cameron Blackmon	Nathan Nichols	Imperium Investment Holdings, LLC
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Lehotsky Keller Cohn's work for Messrs. Blackmon, Mr. Nichols, and Imperium Investment Holdings, LLC, was limited to obtaining an extension of time for them to respond to Whinstone's petition in the Tarrant County district court in connection with the Whinstone Dispute. They have since hired separate counsel. That prior representation will not impact the Firm's ability to fulfill its obligations as special litigation counsel to Rhodium.

Schedule 3**Lehotsky Keller Cohn LLP Hourly Professional Services Rates (effective January 1, 2024)**

Professional	Title	Hourly Rate	Law School
Steve Lehotsky	Name Partner	\$1400	Harvard 2002
Scott Keller	Name Partner	\$1400	Texas 2007
Jon Cohn	Name Partner	\$1400	Harvard 1997
Andrew Davis	Partner	\$1300	Columbia 2012
Todd Disher	Partner	\$1300	Baylor 2013
Matt Frederick	Partner	\$1300	Texas 2003
Kyle Hawkins	Partner	\$1300	Minnesota 2009
Jeremy Maltz	Partner	\$1300	Chicago 2016
Mithun Mansinghani	Partner	\$1300	Harvard 2011
Mike Schon	Partner	\$1300	Arizona State 2004
Will Thompson	Partner	\$1300	Chicago 2013
Katie Yarger	Partner	\$1300	Duke 2008
Leah Bower	Counsel	\$1000	Duke 2017
Gaby Gonzalez-Araiza	Counsel	\$1000	Berkeley 2017
Shannon Grammel	Counsel	\$1000	Stanford 2017
Ari Herbert	Counsel	\$1000	Texas 2017
Jared Magnuson	Counsel	\$1000	Georgia 2018
Josh Morrow	Counsel	\$1000	Harvard 2017
Drew Waldbeser	Counsel	\$1000	Indiana 2016
Adeline Lambert	Associate	\$850	Georgia 2020
Jacob Richards	Associate	\$850	Harvard 2022
Mark Rothrock	Associate	\$850	Duke 2020
Alexis Swartz	Associate	\$850	Chicago 2020
Michele Somboon	Staff Attorney	\$500	DePaul 2009

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

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

**DECLARATION OF CHARLES TOPPING IN SUPPORT OF
APPLICATION FOR ORDER AUTHORIZING THE
RETENTION AND EMPLOYMENT OF LEHOTSKY KELLER COHN LLP
AS SPECIAL LITIGATION COUNSEL**

Pursuant to 28 U.S.C. § 1746, I, Charles Topping, hereby declare as follows:

1. I am the General Counsel and Secretary of Rhodium Enterprises, Inc. (collectively with its debtor-affiliates in the above-captioned chapter 11 cases, as debtors and debtors in possession, “Debtors”). In my current role, I am responsible for supervising outside counsel and monitoring and managing legal fees and expenses.

2. Commencing on August 24, 2024 (the “Petition Date”), the Debtors each filed with this Court a voluntary case under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). Debtors continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

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), Jordan HPC Sub LLC (0463), Rhodium 2.0 Sub LLC (5319), Rhodium 10MW Sub LLC (3827), Rhodium 30MW Sub LLC (4386), Rhodium Encore Sub LLC (1064), Rhodium Enterprises, Inc. (6290), Rhodium Industries LLC (4771), Rhodium Ready Ventures LLC (8618), Rhodium Renewables LLC (0748), Rhodium Renewables Sub LLC (9511), Rhodium Shared Services LLC (5868), and Rhodium Technologies LLC (3973). The mailing and service address of the Debtors in these chapter 11 cases is 2617 Bissonnet Street, Suite 234, Houston, TX 77005.

3. This declaration is submitted in support of the Application for Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel (the “Application”).

4. This Declaration is provided pursuant to the U.S. Trustee’s Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses filed under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases, effective as of November 1, 2013.

5. Except as otherwise indicated herein, the facts set forth in this Declaration are based upon my personal knowledge, the information provided to me by Debtors’ advisors, or my opinion based upon my knowledge and experience as General Counsel and Secretary of Rhodium Enterprises, Inc. I am authorized to submit this Declaration on behalf of Debtors.

6. As described herein and in the accompanying Application, Debtors seek entry of an order authorizing Debtors to retain Lehotsky Keller Cohn LLP to represent them in connection with the Whinstone Dispute. Debtors require knowledgeable counsel to represent them in this matter and have determined that the retention of special litigation counsel is necessary to protect each of the Debtors’ respective interests in this important matter.

7. Debtors seek to retain Lehotsky Keller Cohn LLP as special litigation counsel because of the firm’s successful representation of Debtors in the Whinstone Dispute. As described in greater detail in the Application, Debtors have employed Lehotsky Keller Cohn LLP to represent them in this matter since May of 2023. Lehotsky Keller Cohn LLP continues to represent Debtors in this matter currently. Lehotsky Keller Cohn has extensive knowledge of Debtors’ business, history, corporate structure, and the legal and factual disputes at issue in this matter. In addition, it is already in possession of many of the documents and other evidence relevant to this matter. Accordingly, Lehotsky Keller Cohn LLP is both well-qualified and

uniquely positioned to serve as special litigation counsel to Debtors in an efficient and expert manner. I believe Lehotsky Keller Cohn LLP's continued representation of Debtors in this matter will best serve the interest of Debtors, their estates, and their creditors.

8. Lehotsky Keller Cohn LLP also has the sophisticated litigation background necessary to tackle this matter. I understand that the firm is a sophisticated litigation boutique with a significant Texas practice. Lehotsky Keller Cohn LLP litigates a wide range of significant cases. The firm has extremely talented trial and appellate lawyers.

9. Previously, Debtors have paid Lehotsky Keller Cohn LLP for their work on the Whinstone Dispute on a mostly hourly basis, with one attorney's time being charged based on a monthly flat fee, plus a contingent fee depending on the outcome of litigation.

10. Debtors have agreed with Lehotsky Keller Cohn LLP to a discounted hourly billing arrangement plus a contingent-fee arrangement for its representation of Debtors in the Whinstone Dispute if this Court grants the Application. I have confirmed that the rates Lehotsky Keller Cohn LLP will charge Debtors in the post-petition period will be the same as the rates Lehotsky Keller Cohn LLP charged Debtors in the period immediately preceding the Petition Date, plus an adjustment to 2024 standard rates consistent with Lehotsky Keller Cohn LLP's hourly billing practices.

11. Debtors understand and agree that Lehotsky Keller Cohn LLP's hourly billing rates vary from individual to individual based on the individual's position with the firm (*e.g.*, partner, associate). I have reviewed Lehotsky Keller Cohn LLP's rates and the material terms of its engagement and can confirm they are consistent with those of comparably skilled professionals in this market that Debtors have employed.

12. In my capacity as General Counsel and Secretary at Rhodium Enterprises, Inc., I am responsible for supervising outside counsel retained by Debtors in the ordinary course of business. I am also responsible for reviewing the invoices regularly submitted by outside counsel to Debtors. Debtors recognize that they have the responsibility to closely monitor the billing practices of their outside counsel to ensure the fees and expenses paid by the estates remain consistent with Debtors' expectations and the exigencies of these chapter 11 cases. As they did pre-petition, Debtors intend to continue to bring discipline, predictability, client involvement, and accountability to the counsel fees and expenses reimbursement process. To that end, Debtors intend to closely review and monitor the invoices that Lehotsky Keller Cohn LLP submits, if this Court grants the Application.

13. I believe that the services rendered by Lehotsky Keller Cohn LLP will not be unnecessarily duplicative of those rendered by any other professional Debtors have retained. So as to avoid duplication of work, Debtors have discussed Lehotsky Keller Cohn LLP's role in these chapter 11 cases with the other professionals Debtors have retained. In particular, I believe that the services rendered by Lehotsky Keller Cohn LLP with regard to the Whinstone Dispute will not be unnecessarily duplicative of those rendered by Stris & Maher LLP. Debtors retained both Lehotsky Keller Cohn LLP and Stris & Maher LLP to represent them in the Whinstone Dispute at the beginning of the dispute. The firms have worked together to represent Debtors in every aspect of the Whinstone Dispute. The Whinstone Dispute has required a significant number of attorney hours, often on very short time frames. Attorneys from both firms were needed to accomplish the substantial work needed to handle the Whinstone Dispute. I have reviewed the invoices submitted separately by both firms and can confirm that the work performed by the two firms has not been duplicative, but rather has been necessary to meet the significant demands of

the Dispute. In addition, Lehotsky Keller Cohn LLP brings specialized knowledge of Texas law, practice, and procedure to the representation, while Stris & Maher LLP has broad knowledge of Debtors' business, corporate structure, and history. Their co-representation of Debtors has been vital to the successes that Debtors have achieved in the Whinstone Dispute. I believe their continued co-representation of Debtors in connection with the Whinstone Dispute will best serve the interest of Debtors, their estates, and their creditors.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 22nd, 2024.

/s/ Charles Topping
Charles Topping
General Counsel and Secretary
Rhodium Enterprises, Inc.

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

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

**ORDER GRANTING THE APPLICATION FOR ORDER AUTHORIZING THE
RETENTION AND EMPLOYMENT OF LEHOTSKY KELLER COHN LLP
AS SPECIAL LITIGATION COUNSEL
(Relates to ECF No. _____)**

This matter comes before the Court upon the application, dated September 22, 2024 (the “Application”),² of Rhodium Encore LLC and its debtor affiliates, as debtors and debtors in possession (collectively, “Debtors”), for entry of an order, pursuant to sections 327(e), 328(a), 330, and 1107 of the Bankruptcy Code, Bankruptcy Rules 2014 and 2016, Local Rules 2014-1 and 2016-1, and paragraph 47 of the Procedures for Complex Case Procedures, authorizing Debtors to retain and employ Lehotsky Keller Cohn LLP as special litigation counsel.

The Court has considered the Application and the Cohn Declaration and the Topping Declaration submitted therewith. This Court has jurisdiction to consider the Application and the relief requested therein pursuant to 28 U.S.C. § 1334. Venue is proper before this Court pursuant

¹ 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), Jordan HPC Sub LLC (0463), Rhodium 2.0 Sub LLC (5319), Rhodium 10MW Sub LLC (3827), Rhodium 30MW Sub LLC (4386), Rhodium Encore Sub LLC (1064), Rhodium Enterprises, Inc. (6290), Rhodium Industries LLC (4771), Rhodium Ready Ventures LLC (8618), Rhodium Renewables LLC (0748), Rhodium Renewables Sub LLC (9511), Rhodium Shared Services LLC (5868), and Rhodium Technologies LLC (3973). The mailing and service address of 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 Application.

to 28 U.S.C. §§ 1408 and 1409. The Court may consider and rule on the Application as it is a core proceeding pursuant to 28 U.S.C. § 157(b).

The Court is satisfied, based on the representations made in the Application and Cohn Declaration that Lehotsky Keller Cohn LLP “does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which [Lehotsky Keller Cohn LLP] is to be employed,” as required by 11 U.S.C. § 327(e). The Court is satisfied that due and proper notice of the Application was provided, that such notice was adequate and appropriate under the circumstances, and no other or further notice need be provided. All objections, if any, to the Application have been withdrawn, resolved, or overruled. The Court has determined that the legal and factual bases set forth in the Application establish just cause to grant the relief requested therein. The relief requested in the Application is necessary for Debtors’ reorganization and is in the best interest of Debtors and their respective estates and creditors. Accordingly,

IT IS HEREBY ORDERED THAT:

1. Debtors are authorized, but not directed, pursuant to sections 327(e), 328(a), 329, and 504 of the Bankruptcy Code, Bankruptcy Rules 2014 and 2016, Local Rules 2014 and 2016, and paragraph 47 of the Complex Case Procedures, to retain and employ Lehotsky Keller Cohn LLP as special litigation counsel in these chapter 11 cases, effective as of the Petition Date, as follows:

a. Lehotsky Keller Cohn LLP, along with co-counsel Stris & Maher LLP, may represent Debtors in all matters in which the Whinstone Dispute is at issue, including specifically in the Motions to Assume Contracts With Whinstone (ECF Nos. 7, 32), and in the Tarrant County Litigation; and

2. Debtors shall retain and employ Lehotsky Keller Cohn LLP under a general retainer

in accordance with Lehotsky Keller Cohn LLP's normal hourly rates and disbursement policies, as contemplated by the Application.

3. Lehotsky Keller Cohn LLP shall be compensated in accordance with, and will file interim and final fee applications for allowance of its compensation and expenses, and shall be subject to, sections 330 and 331 of the Bankruptcy Code and applicable provisions of the Bankruptcy Rules, the Local Rules, the U.S. Trustee Guidelines and any other applicable procedures and orders of the Court. For billing purposes, Lehotsky Keller Cohn LLP will keep its time in one-tenth (1/10) hour increments in accordance with the U.S. Trustee Guidelines. Lehotsky Keller Cohn LLP also intends to make a reasonable effort to comply with the U.S. Trustee's requests for information and additional disclosures as set forth in the U.S. Trustee Guidelines, both in connection with the Application and any interim and final fee applications to be filed by Lehotsky Keller Cohn LLP in these chapter 11 cases. All billing records filed in support of Lehotsky Keller Cohn LLP's fee applications will use an open and searchable LEDES or other electronic data format and will use the U.S. Trustee's standard project categories.

4. Lehotsky Keller Cohn LLP shall be reimbursed for reasonable and necessary expenses as provided by the U.S. Trustee Guidelines.

5. Lehotsky Keller Cohn LLP shall use its best efforts to avoid any duplication of services provided by any of Debtors' other retained professionals in these chapter 11 cases.

6. Lehotsky Keller Cohn LLP shall provide seven days' notice to Debtors, the U.S. Trustee, and the attorneys for any statutory committee appointed in these chapter 11 cases of any increase in Lehotsky Keller Cohn LLP's hourly rates as set forth in the Cohn Declaration. The U.S. Trustee retains all rights to object to any rate increase on all grounds, including the reasonableness standard set forth in section 330 of the Bankruptcy Code, and the Court retains the

right to review any rate increase pursuant to section 330 of the Bankruptcy Code.

7. To the extent the Application is inconsistent with this Order, the terms of this Order shall govern.

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

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

Dated: _____, 2024

ALFREDO R. PEREZ
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 3

ENTERED

October 14, 2024

Nathan Ochsner, Clerk

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

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

**ORDER GRANTING THE APPLICATION FOR ORDER AUTHORIZING THE
RETENTION AND EMPLOYMENT OF LEHOTSKY KELLER COHN LLP
AS SPECIAL LITIGATION COUNSEL**

(Relates to ECF No. 173)

This matter comes before the Court upon the application, dated September 22, 2024 (the “Application”),² of Rhodium Encore LLC and its debtor affiliates, as debtors and debtors in possession (collectively, “Debtors”), for entry of an order, pursuant to sections 327(e), 328(a), 330, and 1107 of the Bankruptcy Code, Bankruptcy Rules 2014 and 2016, Local Rules 2014-1 and 2016-1, and paragraph 47 of the Procedures for Complex Case Procedures, authorizing Debtors to retain and employ Lehotsky Keller Cohn LLP as special litigation counsel.

The Court has considered the Application and the Cohn Declaration and the Topping Declaration submitted therewith. This Court has jurisdiction to consider the Application and the relief requested therein pursuant to 28 U.S.C. § 1334. Venue is proper before this Court pursuant

¹ 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), Jordan HPC Sub LLC (0463), Rhodium 2.0 Sub LLC (5319), Rhodium 10MW Sub LLC (3827), Rhodium 30MW Sub LLC (4386), Rhodium Encore Sub LLC (1064), Rhodium Enterprises, Inc. (6290), Rhodium Industries LLC (4771), Rhodium Ready Ventures LLC (8618), Rhodium Renewables LLC (0748), Rhodium Renewables Sub LLC (9511), Rhodium Shared Services LLC (5868), and Rhodium Technologies LLC (3973). The mailing and service address of 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 Application.

to 28 U.S.C. §§ 1408 and 1409. The Court may consider and rule on the Application as it is a core proceeding pursuant to 28 U.S.C. § 157(b).

The Court is satisfied, based on the representations made in the Application and Cohn Declaration that Lehotsky Keller Cohn LLP “does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which [Lehotsky Keller Cohn LLP] is to be employed,” as required by 11 U.S.C. § 327(e). The Court is satisfied that due and proper notice of the Application was provided, that such notice was adequate and appropriate under the circumstances, and no other or further notice need be provided. All objections, if any, to the Application have been withdrawn, resolved, or overruled. The Court has determined that the legal and factual bases set forth in the Application establish just cause to grant the relief requested therein. The relief requested in the Application is necessary for Debtors’ reorganization and is in the best interest of Debtors and their respective estates and creditors. Accordingly,

IT IS HEREBY ORDERED THAT:

1. Debtors are authorized, but not directed, pursuant to sections 327(e), 328(a), 329, and 504 of the Bankruptcy Code, Bankruptcy Rules 2014 and 2016, Local Rules 2014 and 2016, and paragraph 47 of the Complex Case Procedures, to retain and employ Lehotsky Keller Cohn LLP as special litigation counsel in these chapter 11 cases, effective as of the Petition Date, as follows:

a. Lehotsky Keller Cohn LLP, along with co-counsel Stris & Maher LLP, may represent Debtors in all matters in which the Whinstone Dispute is at issue, including specifically in the Motions to Assume Contracts With Whinstone (ECF Nos. 7, 32), and in the Tarrant County Litigation; and

2. Debtors shall retain and employ Lehotsky Keller Cohn LLP under a general retainer

in accordance with Lehotsky Keller Cohn LLP's normal hourly rates and disbursement policies, as contemplated by the Application.

3. Lehotsky Keller Cohn LLP shall be compensated in accordance with, and will file interim and final fee applications for allowance of its compensation and expenses, and shall be subject to, sections 330 and 331 of the Bankruptcy Code and applicable provisions of the Bankruptcy Rules, the Local Rules, the U.S. Trustee Guidelines and any other applicable procedures and orders of the Court. For billing purposes, Lehotsky Keller Cohn LLP will keep its time in one-tenth (1/10) hour increments in accordance with the U.S. Trustee Guidelines. Lehotsky Keller Cohn LLP also intends to make a reasonable effort to comply with the U.S. Trustee's requests for information and additional disclosures as set forth in the U.S. Trustee Guidelines, both in connection with the Application and any interim and final fee applications to be filed by Lehotsky Keller Cohn LLP in these chapter 11 cases. All billing records filed in support of Lehotsky Keller Cohn LLP's fee applications will use an open and searchable LEDES or other electronic data format and will use the U.S. Trustee's standard project categories.

4. Lehotsky Keller Cohn LLP shall be reimbursed for reasonable and necessary expenses as provided by the U.S. Trustee Guidelines.

5. Lehotsky Keller Cohn LLP shall use its best efforts to avoid any duplication of services provided by any of Debtors' other retained professionals in these chapter 11 cases.

6. Lehotsky Keller Cohn LLP shall provide seven days' notice to Debtors, the U.S. Trustee, and the attorneys for any statutory committee appointed in these chapter 11 cases of any increase in Lehotsky Keller Cohn LLP's hourly rates as set forth in the Cohn Declaration. The U.S. Trustee retains all rights to object to any rate increase on all grounds, including the reasonableness standard set forth in section 330 of the Bankruptcy Code, and the Court retains the

right to review any rate increase pursuant to section 330 of the Bankruptcy Code.

7. To the extent the Application is inconsistent with this Order, the terms of this Order shall govern.

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

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

Signed: October 14, 2024


Alfredo R Pérez
United States Bankruptcy Judge

EXHIBIT 4

LEHOTSKY KELLER COHN LLP

Jonathan F. Cohn
Partner
200 Massachusetts Ave. NW
Washington, DC 20001

May 16, 2023

Cameron Blackmon
4146 W US Highway 79
Rockdale, TX 76567

Dear Cameron:

Thank you for selecting Lehotsky Keller Cohn LLP to represent Rhodium 30MW LLC, Rhodium JV LLC, Air HPC LLC, and Jordan HPC LLC (“you” or “Client”) in *Whinstone US Inc. v. Rhodium 30MW LLC, Rhodium JV LLC, Air HPC LLC, and Jordan HPC LLC* (“this Matter”).

Our attorney-client relationship will commence when you have agreed to the material terms of our engagement.

Fees: The fee for this Matter will be comprised of: (1) a \$25,000 monthly fixed fee for all work by Jonathan Cohn; (2) discounted hourly rates for all other timekeepers; and (3) a potential success fee as described below.

The standard rates for attorneys at Lehotsky Keller Cohn LLP are as follows:

- Scott Keller and Steve Lehotsky: \$1,300
- Other partners, including Will Thompson: \$1,200
- Counsels: \$900
- Associates: \$750

We will provide discounts from these standard rates each month. Per month: for the first \$250,000 of time at standard rates, there will be a 20% discount; for the next \$250,000 of time at standard rates, there will be a 25% discount; and for all

additional time, there will be a 30% discount. Bills for the hourly fees, the \$25,000 monthly fixed fee, and reasonable expenses (including but not limited to photocopies, on-line computer assisted legal research, travel, and court filing fees) shall be issued monthly and payable within 30 days of issuance.

The potential success fee has three components:

(a) \$600,000 if (i) the contracts at issue in the Matter (including those you seek to enforce) are not terminated and, if addressed by a court, your interpretation of key contractual provisions (as identified by the attached email dated on May, 16, 2023) is upheld or (ii) you are acquired by Whinstone or an affiliate, to be paid 30 days after settlement of the Matter, the closing of such acquisition, or a non-appealable final judgment;

(b) 5% of any recovered energy credits up to \$5 million, and 1% of any additional recovered energy credits, to be paid 30 days after each monthly utilization by Rhodium; and

(c) 10% of any additional amounts not attributable to energy credits that you recover, including, but not limited to, compensatory damages, incidental or consequential damages, punitive or exemplary damages, civil fines, costs, and attorneys' fees, to be paid 30 days after settlement of the Matter or a non-appealable final judgment, provided, that in the case of a settlement, the amount on which the 10% success fee will be payable will be the amount that is net of any monetary concessions given to Whinstone or its affiliates.

Retainer: You shall post a retainer of \$200,000. Insofar as the retainer is used to pay monthly invoices, the retainer shall be replenished monthly.

Conflicts: Lehotsky Keller Cohn LLP represents, and in the future will represent, many other clients. During the time we are working for Client, one or more existing or future clients may ask us to represent them in an actual or potential transaction or contested matter, including litigation or other dispute resolution proceedings, adverse to the interests of the Client. By entering into this engagement, you agree that Lehotsky Keller Cohn LLP can accept all such representations, even if the other client's interests are or may become directly adverse to the Client's interests, unless the matter is substantially related to any matter in which we are representing the Client or will require disclosure of your confidential information. The Client waives all actual and potential conflicts of interest that might exist because of any such representation undertaken by Lehotsky Keller Cohn LLP and you will not assert that any engagement of Lehotsky

Keller Cohn LLP is a basis to challenge or to disqualify Lehotsky Keller Cohn LLP from undertaking or continuing any such representation.

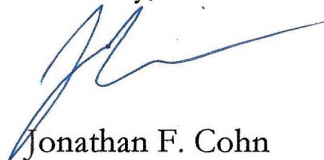
Right to Consult and Modifications of Agreement: You have the right to consult with other counsel concerning the terms of this engagement letter. By executing this engagement letter, the Client confirms that it understands and accepts all of the terms set forth in this letter and that this letter has been signed by the Client voluntarily and with the benefit of the information necessary to make a fully informed decision to agree to these terms. You intend for your consent to be effective and fully enforceable and to be relied upon by Lehotsky Keller Cohn LLP in accepting this representation. These terms may not be modified unilaterally, and any amendment or modification of these terms will be effective only upon execution of a writing signed by an authorized person for the Client and by a partner at Lehotsky Keller Cohn LLP authorized to approve such changes.

Notice of Changes: It is important that all information provided to us is complete, accurate and up to date so that we can represent your interests fully. Accordingly, please ensure that we are notified of any changes or variations to that information which may arise after the date it is provided to us, as well as any new circumstances which might be relevant to the work we are undertaking for you.

Governing Law and Venue: This Agreement shall be construed and enforced in accordance with the laws of the State of Texas, without regard to conflict of law principles.

Please sign and return to me a copy of this letter.

Sincerely,



Jonathan F. Cohn

Agreed to and accepted:

Rhodium 30MW LLC

Rhodium JV LLC

Air HPC LLC

Jordan HPC LLC

By: 
Cameron Blackmon

Title: Authorized Signatory

Date: 5/16/2023

EXHIBIT 5

LEHOTSKY KELLER COHN LLP

Jonathan F. Cohn
Partner
200 Massachusetts Ave. NW
Washington, DC 20001

March 4, 2025

Cameron Blackmon
2617 Bissonnet Street, Ste 234
Houston, TX 77005

Dear Cameron:

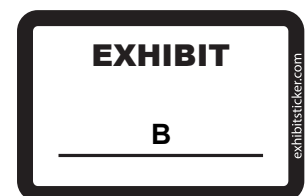
Thank you for selecting Lehotsky Keller Cohn LLP to represent the Rhodium entities listed below¹ (“you” or “Client”) in *Whinstone US Inc. v. Rhodium 30MW LLC, et al.*, No. CV41873, filed in Milam County, Texas; in *Rhodium JV, LLC, et al. v. Whinstone US, Inc.*, No. 01-0005-7116, filed with the American Arbitration Association, and in *In re Rhodium Encore LLC*, No. 4:24-bk-90448 filed in Southern District of Texas Bankruptcy Court (collectively, “this Matter”).

This engagement letter supersedes our previous engagement letters regarding this dispute.

Fees: The fee for this Matter will be comprised of: (1) discounted hourly rates; and (2) a potential success fee as described below.

The standard rates for attorneys at Lehotsky Keller Cohn LLP are as follows:

¹ Rhodium Encore LLC, Jordan HPC LLC, Rhodium JV LLC, Rhodium 2.0 LLC, Rhodium 10MW LLC, Rhodium 30MW LLC, Jordan HPC Sub LLC, Rhodium 2.0 Sub LLC, Rhodium 10MW Sub LLC, Rhodium 30MW Sub LLC, Rhodium Encore Sub LLC, Rhodium Enterprises, Inc., Rhodium Industries LLC, Rhodium Ready Ventures LLC, Rhodium Renewables LLC, Rhodium Renewables Sub LLC, Rhodium Shared Services LLC, and Rhodium Technologies LLC.



- Jonathan Cohn, Scott Keller and Steve Lehotsky: \$1,400
- Other partners, including Will Thompson: \$1,300
- Counsels: \$1000
- Associates: \$850

These standard rates were in effect on January 1, 2024, and were increased on January 1, 2025. Nonetheless, as an accommodation to you, we will maintain the same rates for this Matter for 2025.

We will continue to provide discounts from these standard rates each month. Per month: for the first \$250,000 of time at standard rates, there will be a 20% discount; for the next \$250,000 of time at standard rates, there will be a 25% discount; and for all additional time, there will be a 30% discount. Bills for the hourly fees and reasonable expenses (including but not limited to photocopies, on-line computer assisted legal research, travel, legal advice on retention and compensation matters, and court filing fees) shall be issued monthly and payable within 30 days of issuance.

The potential success fee is calculated as follows:

(a) \$600,000 if (i) the Bankruptcy Court's order on Debtor's Motion to Assume is upheld in a non-appealable final judgment (or the appeal is dismissed), to be paid 30 days after such non-appealable final judgment (or dismissal) or (ii) you (or all or substantially all of the Rockdale assets) are acquired by Whinstone or an affiliate, to be paid 30 days after the closing of such acquisition;

(b) 5% of any recovered energy credits up to \$5 million, and 1% of any additional recovered energy credits, payable 30 days after each monthly utilization by Rhodium and subject to Bankruptcy Court approval; and

(c) 10% of any additional damages not attributable to energy credits that you recover, including, but not limited to, compensatory damages, incidental or consequential damages, punitive or exemplary damages, civil fines, costs, and attorneys' fees, payable 30 days after settlement of the Matter or a non-appealable final judgment and subject to Bankruptcy Court approval, provided, that in the case of a settlement, the amount on which the 10% success fee will be payable will be the amount that is net of any monetary concessions given to Whinstone or its affiliates;

(d) In relation to the fees listed in Sections (b) and (c), if you (or all or substantially all of the Rockdale assets) are acquired by Whinstone or an affiliate, in a transaction that resolves or otherwise terminates the Matter, the Client and Lehotsky Keller Cohn LLP will determine in good faith the portion of transaction value to the

Client allocable to the energy credits and damages specified in Sections (b) and (c). If the Client and Lehotsky Keller Cohn LLP are unable to reach a resolution regarding the amount of fees payable under Sections (b) and (c), including with respect to the allocation of transaction value allocable to the energy credits and damages, such dispute shall be resolved by the Bankruptcy Court.

Each Client is jointly and severally responsible to pay all fees and reasonable costs.

Retainer: You have posted a retainer of \$200,000. Insofar as the retainer is used to pay invoices, the retainer shall be replenished monthly.

Conflicts: Lehotsky Keller Cohn LLP represents, and in the future will represent, many other clients. During the time we are working for Client, one or more existing or future clients may ask us to represent them in an actual or potential transaction or contested matter, including litigation or other dispute resolution proceedings, adverse to the interests of the Client. By entering into this engagement, you agree that Lehotsky Keller Cohn LLP can accept all such representations, even if the other client's interests are or may become directly adverse to the Client's interests, unless the matter is substantially related to any matter in which we are representing the Client or will require disclosure of your confidential information. The Client waives all actual and potential conflicts of interest that might exist because of any such representation undertaken by Lehotsky Keller Cohn LLP and you will not assert that any engagement of Lehotsky Keller Cohn LLP is a basis to challenge or to disqualify Lehotsky Keller Cohn LLP from undertaking or continuing any such representation.

Right to Consult and Modifications of Agreement: You have the right to consult with other counsel concerning the terms of this engagement letter. By executing this engagement letter, the Client confirms that it understands and accepts all of the terms set forth in this letter and that this letter has been signed by the Client voluntarily and with the benefit of the information necessary to make a fully informed decision to agree to these terms. You intend for your consent to be effective and fully enforceable and to be relied upon by Lehotsky Keller Cohn LLP in accepting this representation. These terms may not be modified unilaterally, and any amendment or modification of these terms will be effective only upon execution of a writing signed by an authorized person for the Client and by a partner at Lehotsky Keller Cohn LLP authorized to approve such changes.

Notice of Changes: It is important that all information provided to us is complete, accurate and up to date so that we can represent your interests fully. Accordingly, please ensure that we are notified of any changes or variations to that

information which may arise after the date it is provided to us, as well as any new circumstances which might be relevant to the work we are undertaking for you.

Governing Law and Venue: This Agreement shall be construed and enforced in accordance with the laws of the State of Texas, without regard to conflict of law principles.

Please sign and return to me a copy of this letter.

Sincerely,

/s/ Jonathan F. Cohn

Jonathan F. Cohn

Agreed to and accepted on behalf of Rhodium:

By: _____
Cameron Blackmon

Title:

Date: _____

EXHIBIT 6

LEHOTSKY KELLER COHN LLP

Jonathan F. Cohn
Partner
200 Massachusetts Ave. NW
Washington, DC 20001

~~May 16~~ March 4, 2023 2025

Cameron Blackmon
~~4146 W US Highway 79~~

2617 Bissonnet Street, Ste 234
~~Rockdale~~ Houston, TX ~~76567~~ 77005

Dear Cameron:

Thank you for selecting Lehotsky Keller Cohn LLP to represent the Rhodium ~~30MW LLC, Rhodium JV LLC, Air HPC LLC, and Jordan HPC LLC~~ entities listed below¹ (“you” or “Client”) in *Whinstone US Inc. v. Rhodium 30MW LLC*, ~~*Rhodium JV LLC*~~, ~~*Air HPC LLC*~~, and ~~*Jordan HPC LLC*~~ *(et al., No. CV41873, filed in Milam County, Texas; in Rhodium JV, LLC, et al. v. Whinstone US, Inc., No. 01-0005-7116, filed with the American Arbitration Association, and in In re Rhodium Encore LLC, No. 4:24-bk-90448 filed in Southern District of Texas Bankruptcy Court (collectively, “this Matter”)).*

¹ Rhodium Encore LLC, Jordan HPC LLC, Rhodium JV LLC, Rhodium 2.0 LLC, Rhodium 10MW LLC, Rhodium 30MW LLC, Jordan HPC Sub LLC, Rhodium 2.0 Sub LLC, Rhodium 10MW Sub LLC, Rhodium 30MW Sub LLC, Rhodium Encore Sub LLC, Rhodium Enterprises, Inc., Rhodium Industries LLC, Rhodium Ready Ventures LLC, Rhodium Renewables LLC, Rhodium Renewables Sub LLC, Rhodium Shared Services LLC, and Rhodium Technologies LLC.

~~Our attorney-client relationship will commence when you have agreed to the material terms of our engagement.~~

This engagement letter supersedes our previous engagement letters regarding this dispute.

Fees: The fee for this Matter will be comprised of: (1) ~~a \$25,000 monthly fixed fee for all work by Jonathan Cohn;~~ (2) discounted hourly rates ~~for all other timekeepers;~~ and (3) a potential success fee as described below.

The standard rates for attorneys at Lehotsky Keller Cohn LLP are as follows:

- Jonathan Cohn, Scott Keller and Steve Lehotsky: ~~\$1,300~~1,400
- Other partners, including Will Thompson: ~~\$1,200~~1,300
- Counsels: ~~\$900~~1000
- Associates: ~~\$750~~850

These standard rates were in effect on January 1, 2024, and were increased on January 1, 2025. Nonetheless, as an accommodation to you, we will maintain the same rates for this Matter for 2025.

We will continue to provide discounts from these standard rates each month. Per month: for the first \$250,000 of time at standard rates, there will be a 20% discount; for the next \$250,000 of time at standard rates, there will be a 25% discount; and for all additional time, there will be a 30% discount. Bills for the hourly fees, ~~the \$25,000 monthly fixed fee,~~ and reasonable expenses (including but not limited to photocopies, on-line computer assisted legal research, travel, legal advice on retention and compensation matters, and court filing fees) shall be issued monthly and payable within 30 days of issuance.

The potential success fee ~~has three components~~ is calculated as follows:

(a) \$600,000 if (i) the ~~contracts at issue in the Matter (including those you seek to enforce) are not terminated and, if addressed by a court, your interpretation of key contractual provisions (as identified by the attached email dated on May, 16, 2023) is upheld or~~ (ii) you Bankruptcy Court's order on Debtor's Motion to Assume is upheld in a non-appealable final judgment (or the appeal is dismissed), to be paid 30 days after such non-appealable final judgment (or dismissal) or (ii) you (or all or substantially all of the Rockdale assets) are acquired by Whinstone or an affiliate, to be paid 30 days after settlement of the Matter, the closing of such acquisition, or a non-appealable final judgment;

(b) 5% of any recovered energy credits up to \$5 million, and 1% of any additional recovered energy credits, ~~to be paid~~payable 30 days after each monthly utilization by Rhodium and subject to Bankruptcy Court approval; and

(c) 10% of any additional ~~amounts~~damages not attributable to energy credits that you recover, including, but not limited to, compensatory damages, incidental or consequential damages, punitive or exemplary damages, civil fines, costs, and attorneys' fees, ~~to be paid~~payable 30 days after settlement of the Matter or a non-appealable final judgment and subject to Bankruptcy Court approval, provided, that in the case of a settlement, the amount on which the 10% success fee will be payable will be the amount that is net of any monetary concessions given to Whinstone or its affiliates;

(d) In relation to the fees listed in Sections (b) and (c), if you (or all or substantially all of the Rockdale assets) are acquired by Whinstone or an affiliate, in a transaction that resolves or otherwise terminates the Matter, the Client and Lehotsky Keller Cohn LLP will determine in good faith the portion of transaction value to the Client allocable to the energy credits and damages specified in Sections (b) and (c). If the Client and Lehotsky Keller Cohn LLP are unable to reach a resolution regarding the amount of fees payable under Sections (b) and (c), including with respect to the allocation of transaction value allocable to the energy credits and damages, such dispute shall be resolved by the Bankruptcy Court.

Each Client is jointly and severally responsible to pay all fees and reasonable costs.

Retainer: You ~~shall post~~have posted a retainer of \$200,000. Insofar as the retainer is used to pay ~~monthly~~ invoices, the retainer shall be replenished monthly.

Conflicts: Lehotsky Keller Cohn LLP represents, and in the future will represent, many other clients. During the time we are working for Client, one or more existing or future clients may ask us to represent them in an actual or potential transaction or contested matter, including litigation or other dispute resolution proceedings, adverse to the interests of the Client. By entering into this engagement, you agree that Lehotsky Keller Cohn LLP can accept all such representations, even if the other client's interests are or may become directly adverse to the Client's interests, unless the matter is substantially related to any matter in which we are representing the Client or will require disclosure of your confidential information. The Client waives all actual and potential conflicts of interest that might exist because of any such representation undertaken by Lehotsky Keller Cohn LLP and you will not assert that any engagement of Lehotsky Keller Cohn LLP is a basis to challenge or to disqualify Lehotsky Keller Cohn LLP from undertaking or continuing any such representation.

Right to Consult and Modifications of Agreement: You have the right to consult with other counsel concerning the terms of this engagement letter. By executing this engagement letter, the Client confirms that it understands and accepts all of the terms set forth in this letter and that this letter has been signed by the Client voluntarily and with the benefit of the information necessary to make a fully informed decision to agree to these terms. You intend for your consent to be effective and fully enforceable and to be relied upon by Lehotsky Keller Cohn LLP in accepting this representation. These terms may not be modified unilaterally, and any amendment or modification of these terms will be effective only upon execution of a writing signed by an authorized person for the Client and by a partner at Lehotsky Keller Cohn LLP authorized to approve such changes.

Notice of Changes: It is important that all information provided to us is complete, accurate and up to date so that we can represent your interests fully. Accordingly, please ensure that we are notified of any changes or variations to that information which may arise after the date it is provided to us, as well as any new circumstances which might be relevant to the work we are undertaking for you.

Governing Law and Venue: This Agreement shall be construed and enforced in accordance with the laws of the State of Texas, without regard to conflict of law principles.

Please sign and return to me a copy of this letter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jonathan F. Cohn", is written over a red printed name.

/s/ Jonathan F. Cohn

Jonathan F. Cohn

Agreed to and accepted on behalf of Rhodium:
Rhodium 30MW LLC

Rhodium JV LLC By:
Air HPC LLC

Cameron Blackmon

A handwritten signature in black ink that reads "Cameron Blackmon". The signature is written in a cursive style with a large, sweeping initial "C".

Title: ~~Authorized Signatory~~

Date: 5/16/2023 _____

EXHIBIT 7

Akin Gump Strauss Hauer & Feld LLP
One Bryant Park
Bank of America Tower
New York, NY 10036

T +1 212.872.1000
F +1 212.872.1002
akingump.com

Akin

Mitchell P. Hurley
+1 212.872.1011
mhurley@akingump.com

March 10, 2025

VIA E-MAIL (pattytomasco@quinnemanuel.com, mates@slollp.com)

Patricia B. Tomasco
Quinn Emanuel Urquhart & Sullivan, LLP
700 Louisiana Street, Suite 3900
Houston, Texas 77002

Rhonda Mates
Streusand, Landon, Ozburn & Lemmon LLP
Spyglass Point, 1801 S. MoPac Expy. #320
Austin, TX 78746

Re: *In re Rhodium Encore, LLC, et al.*, Case No. 24-90448 (ARP) (Bankr. S.D. Tex.)

Dear Ms. Tomasco and Ms. Mates:

We write on behalf of the ad hoc group of parties to Simple Agreements for Future Equity (the “SAFE AHG”) to seek from the Debtors¹ certain diligence information in connection with the above referenced chapter 11 proceedings (the “Chapter 11 Cases”). The requests below are not intended to be exhaustive, nor to modify or limit any prior requests.

1. All agreements between Lehotsky Keller Cohn (“LKC”) or Stris & Maher LLP (“Stris”) on the one hand, and any of the Debtors or any insiders (as defined in the Bankruptcy Code, and collectively with Debtors, the “Clients”) on the other.
2. All LKC and Stris invoices, billing correspondence or similar documents sent to any Client, and other documents sufficient to identify, for each month or other billing period, the relevant timekeepers billing to the matter, the periodic and

¹ 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), Jordan HPC Sub LLC (0463), Rhodium 2.0 Sub LLC (5319), Rhodium 10MW Sub LLC (3827), Rhodium 30MW Sub LLC (4386), Rhodium Encore Sub LLC (1064), Rhodium Enterprises, Inc. (6290), Rhodium Industries LLC (4771), Rhodium Ready Ventures LLC (8618), Rhodium Renewables LLC (0748), Air HPC LLC (0387), Rhodium Renewables Sub LLC (9511), Rhodium Shared Services LLC (5868), and Rhodium Technologies LLC (3973). The mailing and service address of Debtors in these chapter 11 cases is 2617 Bissonnet Street, Suite 234, Houston, TX 77005.



Patricia Tomasco
Rhonda Mates
March 10, 2025
Page 2

cumulative number of hours each such timekeeper billed to the matter (including, without limitation, documents sufficient to identify the hours devoted to Client matters by Jonathan Cohn while LKC was receiving a monthly \$25,000 payment for Mr. Cohn's services), the periodic and cumulative value of time, and the period and cumulative amounts actually billed to the Client.

3. Documents sufficient to identify the dates and amounts of all payments made to LKC or Stris by any Client, including, without limitation, the dates and amounts of all "retainer" and "retainer replenishment" payments made by any Client to LKC or Stris, and copies of all invoices, agreements, or other similar documents related to such payments.
4. All documents and communications concerning any modified proposed engagement of LKC, such as the proposed modified terms provided in the March 4, 2025 engagement letter between LKC and Debtors (the "New Engagement Letter"), as attached at Exhibit A to the *Application for an Updated Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel* (the "New Retention Application").
5. The email dated May 16, 2023 that forms a part of the May 16, 2023 engagement letter, and apparently was attached to that letter, but that was not included with the Debtors' submission in connection with the New Retention Application.
6. Documents sufficient to identify projected LKC and Stris fees, and how they fit into (i) the Debtors' projections, and (ii) the 13-week budget filed by Debtors at Exhibit A to the *Notice of Filing of Exhibit A to the Emergency Motion of the Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors' Use of Cash Collateral, (II) Granting Adequate Protection, (III) Modifying the Automatic Stay, and (IV) Granting Related Relief* (the "Cash Collateral Budget").
7. Any disclosures from LKC or Stris to Debtors regarding any potential conflicts of interest, including whether LKC or Stris hold or represent any interests adverse to the estate.

Production of the requested materials is urgent, including in light of the Debtors' recent application concerning the engagement of LKC. We will make ourselves available to meet and confer concerning the foregoing requests at your reasonable convenience, including March 11 or 12, 2025 between 10:00 a.m. and 5:00 p.m. Central Time. Please advise your availability in those windows. Nothing herein constitutes a waiver or relinquishment of any of the SAFE AHG's claims, defenses, rights, or remedies, all of which are expressly reserved.

We look forward to hearing from you.

Akin

Patricia Tomasco
Rhonda Mates
March 10, 2025
Page 3

Sincerely,

/s/ *Mitchell Hurley*
Mitchell Hurley

Cc: Peter Stris, Jonathan Cohn

EXHIBIT 8

Yang, Karen

From: Yang, Karen
Sent: Thursday, March 20, 2025 6:14 PM
To: Patty Tomasco; Razmig Izakelian
Cc: jon@lkcfirm.com; Rhonda Mates; pstris@stris.com; Schmeltz, Trace; Underwood, Charlotte; Hurley, Mitchell; Schultz, Sarah A.; Scott, Elizabeth D.
Subject: RE: In re Rhodium Encore, LLC, et al., Case No. 24-90448 (ARP) (Bankr. S.D. Tex.) - 3.10.2025 SAFE AHG Diligence Letter
Attachments: In re Rhodium Encore LLC et al, No. 24-90448 - 3.10.2025 SAFE AHG Diligence Letter.pdf
Follow Up Flag: Follow up
Flag Status: Completed

Raz and Patty:

Thank you for the call on March 14 regarding our March 10 diligence letter. Below is our understanding following that call. We have reattached the diligence letter for your convenience.

- Regarding item #1, we explained that the material we seek is not publicly available and that we requested all insider engagement agreements with LKC and Stris, including engagement agreements pursuant to which LKC and/or Stris acted individually for the insiders (alongside or instead of the Debtors). You represented that the Debtors do not have the engagement agreements between LKC and Stris, on one hand, and the Debtors' insiders, on the other hand, and indicated that the Debtors would not even ask the insiders to provide them, despite the fact that the insiders also are members of the Debtors' board of directors, and own Debtors "ultimate parent," Imperium. During our call, you complained repeatedly about the supposed costs of responding to the SAFE AHG's requests, but your refusal to take steps required by applicable rules (like at least asking your client's fiduciaries to provide documents responsive to our requests) and repeated breaches of the Debtors' promises to deliver agreed discovery are the real driver of the costs of which you complain.
- Regarding items #2 -3, we explained again that the information we seek is not publicly available and is not limited to retention applications or post-petition fees and explained why we believe these materials are clearly relevant. We explained, for example, that we are entitled to know exactly how much the Debtors have paid LKC and Stris up to March 4, 2025 in connection with both **pre- and** post-petition matters, including to examine (i) whether paying \$25,000 per month to a lawyer actually qualifies as a "discount," (ii) whether the claimed hourly fee discounts were actually provided to Debtors, and (iii) how those rates and payments compare to those charged by, and paid to, the Stris firm in connection with the Whinstone matter. Also, Stris and LKC have received substantial preference payments, and the cadence of Debtors' pre-petition receipt and payment of Stris and LKC bills may be relevant to the estate's claims in that regard. You said that you would take our explanation regarding the relevance of these items back to the Debtors and let us know if you will agree to produce anything further. The material sought is of obvious relevance to the motion Debtors just filed, and to the estates' valuable preference claims, and is not unduly burdensome to produce. We have now received documents concerning request #2, but **not** #3, for the **post**-petition period, and have received no documents covering either request #2 or #3 for the **pre**-petition period, which should include, inter alia, LKC's invoices from inception of the engagement. Please confirm that you will produce all such missing documents from request #2 and #3 by **Monday, March 24** at 5:00 CT, or we will assume we are at an impasse and proceed accordingly.
- Regarding item #4, you agreed to produce responsive documents to the extent not privileged and stated that you would do so by **March 21, 2025**. You refused on burden grounds to provide a privilege log with respect to any responsive documents that you are withholding on the basis of privilege. We are at an

impasse concerning your refusal to provide a privilege log (required, as you surely must be aware, under applicable law) and will proceed accordingly.

- Regarding item #5, you confirmed that you are refusing to produce this May 16, 2023 email on privilege grounds. We understand that we are at an impasse and will proceed accordingly.
- Regarding item #6, you agreed to produce documents regarding the projected amount of fees for LKC and Stris going forward in the projections and stated that you would do so by **March 21, 2025**.
- Regarding #7, you confirmed that Debtors are representing that all disclosures made by Stris and LKC to the Debtors concerning potential conflicts of interests have been included in their publicly filed fee applications. For the avoidance of doubt, the SAFE AHG is relying on the accuracy of this representation, and reserves all of its rights, remedies, claims and defenses if any aspect of it turns out to be false.

The SAFE AHG reserves all of its rights, remedies, claims and defenses.

Thank you,
Karen

Karen A. Yang
Akin

2300 N. Field Street | Suite 1800 | Dallas, TX 75201 | USA | Direct: [+1 214.969.4325](tel:+12149694325)
kyang@akingump.com | akingump.com | [Bio](#)

From: Yang, Karen

Sent: Monday, March 10, 2025 12:21 PM

To: Patty Tomasco <pattytomasco@quinnemanuel.com>; Razmig Izakelian <razmigizakelian@quinnemanuel.com>; Rhonda Mates <mates@slollp.com>

Cc: jon@lkcfirm.com; pstris@stris.com; Schmeltz, Trace <TSchmeltz@btlaw.com>; Underwood, Charlotte <Charlotte.Underwood@btlaw.com>; Hurley, Mitchell <mhurley@AkinGump.com>; Schultz, Sarah A. <sschultz@AkinGump.com>; Scott, Elizabeth D. <EDScott@AKINGUMP.com>

Subject: In re Rhodium Encore, LLC, et al., Case No. 24-90448 (ARP) (Bankr. S.D. Tex.) - 3.10.2025 SAFE AHG Diligence Letter

Counsel,

Please see the attached correspondence.

Thanks,
Karen

Karen A. Yang
Akin

2300 N. Field Street | Suite 1800 | Dallas, TX 75201 | USA | Direct: [+1 214.969.4325](tel:+12149694325)
kyang@akingump.com | akingump.com | [Bio](#)

EXHIBIT 9

From: Schultz, Sarah A.
Sent: Tuesday, February 18, 2025 6:38 PM
To: Razmig Izakelian; Yang, Karen; Lindsay Weber; Hurley, Mitchell; Underwood, Charlotte; Scott, Elizabeth D.; Schmeltz, Trace
Cc: Patty Tomasco; Ben Roth
Subject: RE: Rodium Production

While I appreciate that point, I don't think that is how disclosure works under 328 or 329 of the Bankruptcy Code. Were the proposed contingency terms disclosed to the UST or other parties when this retention application was granted? I was surprised to see that there was no disclosure regarding the quantum of method of calculating the contingency fee in the actual retention application.

Further, although I have not researched the issue, I am not certain that the privilege continues to apply when you incorporate a document into a business agreement as between parties. I am hopeful that we can reach an agreement around this issue, but we reserve the right to challenge your assertion of privilege.

Best,

Sarah

Sarah Link Schultz

[Akin](#)

Direct: [+1 214.969.4367](tel:+12149694367)

Pronouns: she/her/hers ([What's this?](#))

From: Razmig Izakelian <razmigizakelian@quinnemanuel.com>
Sent: Tuesday, February 18, 2025 5:17 PM
To: Schultz, Sarah A. <sschultz@AkinGump.com>; Yang, Karen <KYang@akingump.com>; Lindsay Weber <lindsayweber@quinnemanuel.com>; Hurley, Mitchell <mhurley@AkinGump.com>; Underwood, Charlotte <Charlotte.Underwood@btlaw.com>; Scott, Elizabeth D. <EDScott@AKINGUMP.com>; Schmeltz, Trace <TSchmeltz@btlaw.com>
Cc: Patty Tomasco <pattytomasco@quinnemanuel.com>; Ben Roth <benroth@quinnemanuel.com>
Subject: RE: Rodium Production

Sarah, it appears that this term is only relevant if LKC seeks the \$600k fee under (a)(i). We currently do not know whether LKC is seeking this fee, and we (QE) do not have authority to waive the Debtors' privileges or protections, but we are happy to revisit this if/when LKC ever seeks the \$600k.

From: Schultz, Sarah A. <sschultz@AkinGump.com>
Sent: Tuesday, February 18, 2025 2:09 PM
To: Razmig Izakelian <razmigizakelian@quinnemanuel.com>; Yang, Karen <KYang@akingump.com>; Lindsay Weber <lindsayweber@quinnemanuel.com>; Hurley, Mitchell <mhurley@AkinGump.com>; Underwood, Charlotte <Charlotte.Underwood@btlaw.com>; Scott, Elizabeth D. <EDScott@AKINGUMP.com>
Cc: Patty Tomasco <pattytomasco@quinnemanuel.com>; Ben Roth <benroth@quinnemanuel.com>
Subject: RE: Rodium Production

[EXTERNAL EMAIL from sschultz@akingump.com]

Raz: How is a third party in bankruptcy supposed to determine if LKC is entitled to collect the contingency fee without some disclosure around this term?

Sarah Link Schultz

Akin

Direct: +1 214.969.4367

Pronouns: she/her/hers ([What's this?](#))

From: Razmig Izakelian <razmigizakelian@quinnemanuel.com>

Sent: Tuesday, February 18, 2025 3:43 PM

To: Yang, Karen <KYang@akingump.com>; Lindsay Weber <lindsayweber@quinnemanuel.com>; Hurley, Mitchell <mhurley@AkinGump.com>; Underwood, Charlotte <Charlotte.Underwood@btlaw.com>; Schultz, Sarah A. <sschultz@AkinGump.com>; Scott, Elizabeth D. <EDScott@AKINGUMP.com>

Cc: Patty Tomasco <pattytomasco@quinnemanuel.com>; Ben Roth <benroth@quinnemanuel.com>

Subject: RE: Rodium Production

Karen, the May 16, 2023 email is a communication between Charles Topping (the Debtors' general counsel) and Jon Cohn (the Debtors' outside counsel) that includes "interpretation of key contractual provisions" and therefore is protected from disclosure by both the attorney-client privilege and work-product protections.

From: Yang, Karen <KYang@akingump.com>

Sent: Tuesday, February 18, 2025 1:14 PM

To: Razmig Izakelian <razmigizakelian@quinnemanuel.com>; Lindsay Weber <lindsayweber@quinnemanuel.com>; Hurley, Mitchell <mhurley@AkinGump.com>; Underwood, Charlotte <Charlotte.Underwood@btlaw.com>; Schultz, Sarah A. <sschultz@AkinGump.com>; Scott, Elizabeth D. <EDScott@AKINGUMP.com>

Cc: Patty Tomasco <pattytomasco@quinnemanuel.com>; Ben Roth <benroth@quinnemanuel.com>

Subject: RE: Rodium Production

[EXTERNAL EMAIL from kyang@akingump.com]

Raz:

Thank you for your production today of the May 16, 2023 Lehotsky Keller Cohn engagement letter (the "[LKC Engagement Letter](#)") with Rhodium. Page 2 of the LKC Engagement Letter refers to an email attachment dated May 16, 2023 (the "[May 16, 2023 Email](#)") in which Rhodium interprets "key contractual provisions" in the Whinstone-Rhodium contracts. Please produce the May 16, 2023 Email originally attached to the LKC Engagement Letter at your earliest convenience.

Thanks,
Karen

Karen A. Yang

Akin

2300 N. Field Street | Suite 1800 | Dallas, TX 75201 | USA | Direct: +1 214.969.4325

kyang@akingump.com | akingump.com | [Bio](#)

From: Razmig Izakelian <razmigizakelian@quinnemanuel.com>

Sent: Tuesday, February 18, 2025 12:53 PM

To: Lindsay Weber <lindsayweber@quinnemanuel.com>; Hurley, Mitchell <mhurley@AkinGump.com>; Yang, Karen

<KYang@akingump.com>; Underwood, Charlotte <Charlotte.Underwood@btlaw.com>; Schultz, Sarah A. <sschultz@AkinGump.com>; Scott, Elizabeth D. <EDScott@AKINGUMP.com>
Cc: Patty Tomasco <pattytomasco@quinnemanuel.com>; Ben Roth <benroth@quinnemanuel.com>
Subject: RE: Rodium Production

****EXTERNAL Email****

The password is **yG&?_P2x3rw7\$m[d**

From: Razmig Izakelian
Sent: Tuesday, February 18, 2025 10:53 AM
To: Lindsay Weber <lindsayweber@quinnemanuel.com>; 'Hurley, Mitchell' <mhurley@AkinGump.com>; 'Yang, Karen' <KYang@akingump.com>; 'Underwood, Charlotte' <Charlotte.Underwood@btlaw.com>; 'Cc: Schultz, Sarah A.' <sschultz@AkinGump.com>; 'Scott, Elizabeth D.' <EDScott@AKINGUMP.com>
Cc: Patty Tomasco <pattytomasco@quinnemanuel.com>; Ben Roth <benroth@quinnemanuel.com>
Subject: RE: Rodium Production

Counsel:

Please find below a link for an additional production. I will send the password separately.

From: Razmig Izakelian
Sent: Thursday, February 6, 2025 6:46 PM
To: Lindsay Weber <lindsayweber@quinnemanuel.com>; Hurley, Mitchell <mhurley@AkinGump.com>; Yang, Karen <KYang@akingump.com>; Underwood, Charlotte <Charlotte.Underwood@btlaw.com>; Cc: Schultz, Sarah A. <sschultz@AkinGump.com>; Scott, Elizabeth D. <EDScott@AKINGUMP.com>
Cc: Patty Tomasco <pattytomasco@quinnemanuel.com>; Ben Roth <benroth@quinnemanuel.com>
Subject: RE: Rodium Production

Counsel:

Please find below a link for an additional production. I will send the password separately.

<https://qe.sharefile.com/public/share/web-sb2c76ac85ec5448b8394f8e14944ef6c>

From: Lindsay Weber <lindsayweber@quinnemanuel.com>
Sent: Thursday, January 23, 2025 2:33 PM
To: Hurley, Mitchell <mhurley@AkinGump.com>; Yang, Karen <KYang@akingump.com>; Underwood, Charlotte <Charlotte.Underwood@btlaw.com>; Cc: Schultz, Sarah A. <sschultz@AkinGump.com>; Scott, Elizabeth D. <EDScott@AKINGUMP.com>
Cc: Patty Tomasco <pattytomasco@quinnemanuel.com>; Razmig Izakelian <razmigizakelian@quinnemanuel.com>; Ben Roth <benroth@quinnemanuel.com>
Subject: RE: Rodium Production

Counsel:

Please find below a link to our most recent production. I will send the password momentarily.

Best,
Lindsay

<https://qe.sharefile.com/public/share/web-s169caff64b7c48b18c26b5134550c6b6>

From: Lindsay Weber

Sent: Tuesday, January 21, 2025 8:11 PM

To: 'Hurley, Mitchell' <mhurley@AkinGump.com>; 'Yang, Karen' <KYang@akingump.com>; 'Underwood, Charlotte' <Charlotte.Underwood@btlaw.com>; 'Cc: Schultz, Sarah A.' <sschultz@AkinGump.com>; 'Scott, Elizabeth D.' <EDScott@AKINGUMP.com>

Cc: Patty Tomasco <pattytomasco@quinnemanuel.com>; Razmig Izakelian <razmigizakelian@quinnemanuel.com>; Ben Roth <benroth@quinnemanuel.com>

Subject: RE: Rodium Production

Counsel:

We wanted to let you know that the production referenced in my email below is still processing and we will have it for you tomorrow.

Best,
Lindsay

From: Lindsay Weber

Sent: Friday, January 17, 2025 7:00 PM

To: Hurley, Mitchell <mhurley@AkinGump.com>; Yang, Karen <KYang@akingump.com>; Underwood, Charlotte <Charlotte.Underwood@btlaw.com>; Cc: Schultz, Sarah A. <sschultz@AkinGump.com>; Scott, Elizabeth D. <EDScott@AKINGUMP.com>

Cc: Patty Tomasco <pattytomasco@quinnemanuel.com>; Razmig Izakelian <razmigizakelian@quinnemanuel.com>; Ben Roth <benroth@quinnemanuel.com>

Subject: Rodium Production

Counsel:

Please find a production from Rhodium on the link below. I will follow up with the password. Please note, we are still working through some privileged communications, and will follow up with a production on Tuesday (given Monday's holiday) of those documents. Let us know if any issues accessing.

Best,
Lindsay

<https://qe.sharefile.com/public/share/web-s322d5c3842b342dc8f42e2759c38ab2c>

Lindsay Weber

Associate

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