

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

In re:

RHODIUM ENCORE LLC, *et*
al.,¹

Debtors.

§
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§
§
§
§

Chapter 11

Case No. 24-90448 (ARP)

(Jointly Administered)

**DEBTORS' WITNESS AND EXHIBIT LIST FOR HEARING ON DEBTORS'
APPLICATION FOR AN UPDATED ORDER AUTHORIZING THE RETENTION AND
EMPLOYMENT OF LEHOTSKY KELLER COHN LLP AS
SPECIAL LITIGATION COUNSEL
(Relates to Docket Nos. 173, 263, 835, 891, & 1111)**

Debtors hereby submit this *Witness and Exhibit List* in connection with the hearing scheduled for June 4, 2025, at 2:30 PM (CT) (the "Hearing") before the Honorable Alfredo R. Perez, United States Bankruptcy Judge, Courtroom 400, 515 Rusk Street, Houston, Texas 77002. Debtors do not believe that live witness testimony is necessary, as the underlying material facts do not appear to be reasonably in dispute. Nonetheless, in the event there are material fact disputes requiring witness testimony, Debtors submit this witness list.

I. WITNESSES

Debtors may call any of the following witnesses at the Hearing:

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.



2490448250602000000000004

1. Any witness called or designated by any other party
2. Any witness necessary to rebut the testimony of any witness called or designated by any other party
3. Charles Topping

II. EXHIBITS

Debtors may offer into evidence any one or more of the following exhibits at the Hearing:

EX.	DESCRIPTION	M A R K E D	O F F E R E D	O B J E C T	A D M I T	D A T E	DISPOSITION AFTER HEARING
1	Declaration of Charles Topping (ECF 1111-1)						
2	May 16, 2023 Letter J. Cohn to Cameron Blackmon (ECF 835 Ex. A)						
3	March 4, 2025 Letter J. Cohn to Cameron Blackmon (ECF 835 Ex. B)						
4	Debtors' Application for Order Authorizing Retention of LKC and attachments (ECF 173)						
	Any exhibit necessary to rebut the evidence of any witness offered or designated by any other party						
	Any exhibit offered or designated by any other party						
	Any other pleading or document filed by a party to this case						

Debtors reserve the right to ask the Court to take judicial notice of pleadings, transcripts, and documents, including those filed in or in connection with this proceeding, and to supplement or amend this Witness and Exhibit List.

Dated: June 2, 2025

STRIS & MAHER LLP

/s/ Colleen R. Smith

Colleen R. Smith
1717 K Street NW Suite 900
Washington, DC 20006
Phone: (202) 800-5749
csmith@stris.com

Peter K. Stris
Victor O'Connell
John Stokes
17785 Center Court Dr N., Suite 600
Cerritos, CA 90703
Phone: (213) 995-6800
Fax: (213) 261-0299
pstris@stris.com
voconnell@stris.com
jstokes@stris.com

Bridget C. Asay
15 E. State Street, Suite 2
Montpelier, VT 05602
Phone: (213) 995-6800
basay@stris.com

Attorneys for Debtors

Certificate of Service

I, Collen R. Smith, hereby certify that on the 2nd day of June, 2025, a 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/Colleen R. Smith
Colleen R. Smith

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.	§	(Jointly Administered)
	§	

DECLARATION OF CHARLES TOPPING

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

1. I am General Counsel and Secretary of Rhodium Enterprises, Inc., which directly or indirectly manages other Rhodium-family entities, including but not limited to Rhodium 30MW LLC, Rhodium JV LLC; Rhodium 2.0 LLC, Rhodium 10MW LLC, Rhodium Encore LLC, Jordan HPC LLC, and Air HPC LLC (collectively referred to as “Rhodium” herein). Except for any matters stated to be based upon information and belief, I have personal knowledge of the facts set forth below, and if called as a witness, I could and would competently attest to them.

2. I submit this Declaration in support of Debtors’ Response to the Objection of the Ad Hoc Group of Safe Parties to Debtors’ Application for an Updated Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel.

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.

3. On May 16, 2023, Rhodium retained Lehotsky Keller Cohn LLP (“LKC”) to represent Rhodium in connection with a lawsuit that Whinstone commenced in Milam County, Texas, on May 2, 2023.

4. Rhodium and LKC negotiated the terms of the engagement at arms’ length. Rhodium and LKC agreed that LKC would provide a significant discount on its hourly rates in exchange for a potential success fee. The potential success fee included components that would apply if Rhodium were to file affirmative claims against Whinstone for damages. The success fee is described in Rhodium’s May 16, 2023 engagement letter with LKC. At the time, I understood that Rhodium’s management team was unsure whether such a claim would be necessary because Rhodium’s management team hoped instead that a good relationship with Whinstone could be restored.

5. LKC’s discounted fees benefitted Rhodium by preserving cash flow. And indeed, over the course of the litigation, Whinstone’s aggressive tactics, including refusal to arbitrate and self-help shutdowns, impinged on Rhodium’s cash flow. The potential success fee aligned Rhodium’s and LKC’s incentives if Rhodium later pursued affirmative claims against Whinstone. The engagement letter also included a fixed fee for Jonathan Cohn’s time that was intended to approximate his expected monthly fees at discounted rates.

6. Over the course of the engagement, LKC helped Rhodium successfully defend itself against Whinstone. LKC and Stris & Maher LLP obtained a temporary restraining order and three different injunctions, including two emergency injunctions after Whinstone shut down Rhodium’s power. It is my belief that without the injunctions, Rhodium would likely have been forced out of business.

7. After Rhodium filed for bankruptcy, on September 14, 2024, Jonathan Cohn prepared a draft LKC retention application that set forth the specific terms of the May 2023 engagement letter, including the rate discounts and specific components of the potential success fee. At that time, the Rhodium-Whinstone dispute was in active litigation. It was not in Rhodium's interest to disclose to Whinstone the details of Rhodium's agreement with LKC. Ultimately, Rhodium via its bankruptcy counsel filed a retention application for LKC that disclosed that Rhodium's agreement with LKC included discounted hourly rates in exchange for a partial contingency fee based upon the successful outcome of the litigation. The retention application did not, however, disclose the specific details of the success fee.

8. It was my understanding at the time that the initial retention application was filed that its description of the partial contingency fee based upon the outcome of the litigation was sufficient to inform creditors and other interested parties about the existence of the success fee. This continued to be my understanding at least until February 2025.

9. To my knowledge, no issue was raised by a creditor or any other interested party with respect to payment of a contingency fee to LKC until around February 2025. On or around February 17, 2025, which was just two days before the scheduled mediation on February 19, 2025, I learned that counsel for the Ad Hoc Group had recently asserted that the details of the LKC contingency fee had to be disclosed in order for LKC to be paid any contingency fee. At that time I also learned that the Ad Hoc Group further asserted that because LKC's retention application did not disclose additional details, LKC should not be paid any contingency fee.

10. After Rhodium became aware that the Ad Hoc Group had raised this issue, Rhodium decided to address it regardless of whether the Ad Hoc Group's belatedly expressed concern was valid.

11. One option for Rhodium was to seek to amend the LKC retention application to include the specific terms of the May 2023 engagement letter. At that point, however, it appeared to be possible that Rhodium and Whinstone might reach a settlement involving *both* the affirmative case for damages *and* the sale to Whinstone of the Rhodium assets in Rockdale. Rhodium was concerned that the transaction documents might not identify what portion of the total proceeds is attributable to the affirmative case and what portion is attributable to the Rockdale assets. Although the engagement letter did not explicitly address this scenario (because Rhodium and LKC did not attempt to address every conceivable scenario that might hypothetically arise when they entered into the engagement in May 2023), Rhodium believed that LKC was owed a contingency fee under the terms of the agreement. A settlement on those terms would necessarily reflect value attributed to Rhodium's affirmative damages claims against Whinstone. Paying the contingency fee under those circumstances was thus consistent with Rhodium and LKC's intent at the outset.

12. Accordingly, Rhodium and LKC decided to amend the May 2023 engagement letter to expressly address this potential settlement scenario. Rhodium then submitted a proposed amendment to LKC's retention that both disclosed the original May 2023 engagement letter and the amended March 4, 2025 engagement letter.

13. Rhodium fully recognizes the value of the services that LKC provided over the past two years and also recognizes that LKC provided those services at a discounted rate in reliance on the potential success fee. LKC helped save Rhodium from going out of business multiple times and paved the way for a settlement with Whinstone. The value of LKC's services includes the affirmative claims against Whinstone that LKC helped develop and pursue in both the arbitration and the bankruptcy proceeding.

14. Rhodium had no intent to structure a deal with Whinstone that would attempt to circumvent LKC's success fee. Not paying the fee would be inconsistent with my understanding of Rhodium and LKC's intent. It is my opinion that it would also be unfair in light of LKC's successes and the discounted rates it provided for nearly two years.

15. Rhodium and LKC negotiated the language of the March 4, 2025 engagement letter in good faith and at arms' length. Rhodium and LKC also made other minor clarifying changes to the letter, including, for instance, specifying more precisely the trigger for the fee related to prevailing on Rhodium's interpretation of the contracts, which this Court addressed in resolving Debtors' Motion to Assume. The clarifying changes were consistent with the parties' intent from the beginning of the engagement, and in Rhodium's view, it was in the best interest of the estates to provide clarification.

16. Finally, although the objection to LKC's fee is being pressed by the Ad Hoc Group, I do not view payment of the fee as a matter between LKC and the Ad Hoc Group. LKC has represented Rhodium for two years through multiple periods of time when the survival of Rhodium's business was on the line. Together with Stris & Maher LLP, LKC obtained exceptional results for Rhodium and doing so often meant meeting imminent, after-hours needs and taking on emergency filings and emergency hearings on short notice. Rhodium has a reciprocal obligation to LKC and is committed to having LKC fully compensated for the work it has done and the success fee it has earned.

Dated: May 14, 2025

/s/Charles R. Topping
Charles R. Topping

Exhibit 2

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.

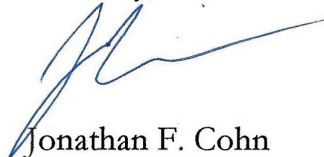
Right to Consult and Modifications of Agreement: You have the right to consult with other counsel concerning the terms of this engagement letter. By executing this engagement letter, the Client confirms that it understands and accepts all of the terms set forth in this letter and that this letter has 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 3

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:

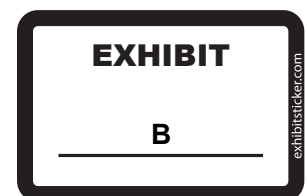
Thank you for selecting Lehotsky Keller Cohn LLP to represent the Rhodium entities listed below¹ (“you” or “Client”) in *Whinstone US Inc. v. Rhodium 30MW LLC, et al.*, No. CV41873, filed in Milam County, Texas; in *Rhodium JV, LLC, et al. v. Whinstone US, Inc.*, No. 01-0005-7116, filed with the American 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 4

**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

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*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.