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

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

SAFE AHG EMERGENCY MOTION TO TERMINATE EXCLUSIVITY

Emergency relief has been requested. Relief is requested not later than June 24, 2025.

If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set, or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

The Ad Hoc Group of SAFE Parties (the "**SAFE AHG**")[1] in the above-captioned chapter 11 cases (the "**Chapter 11 Cases**") of Rhodium Encore LLC and its affiliated debtors and debtors in possession (collectively, the "**Debtors**"), by and through their undersigned counsel, respectfully submit this emergency motion to terminate the Debtors' Exclusive Periods (as defined herein) to allow the SAFE AHG to file its own plan (the "**Motion**").[2] In support of this Motion, the SAFE AHG respectfully represents as follows:

PRELIMINARY STATEMENT

1. The SAFE AHG represents 80% of the SAFEs in the Chapter 11 Cases, which in turn are the estates' only remaining significant creditor group. Notably, the SAFE creditors are the Debtors' largest stakeholders by far, having contributed approximately $87 million in cash to

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

[2] Capitalized terms used but not defined herein shall have the meanings given to them in the Amended Third Exclusivity Motion or the *Declaration of David M. Dunn In Support of Chapter 11 Petitions and First Day Relief* [Docket No. 35] (the "**First Day Declaration**"), as appropriate.

Debtor Rhodium Enterprises Inc. ("**REI**"), double the contribution of cash contributed by common stockholders, and tens of millions of dollars more than all senior creditors combined (even before most of those creditors were repaid). The SAFE AHG's patience with the handling of these cases by the Debtors' conflicted board, its conflicted management and its conflicted professionals is at an end. For too long, the Debtors have used their monopoly of the plan process to "make[] creditors the hostages of Chapter 11 debtors."[3]

2. The SAFE AHG accordingly moves to terminate exclusivity, so that other stakeholders, including the SAFE AHG, can propose a ***feasible*** plan for exiting these bankruptcy cases without additional undue delay. The Bankruptcy Code provides debtors with 120 days to propose a plan of reorganization. The Debtors have now sought to extend that period three times and have had a full 286 days to propose a confirmable plan, without success.[4] Instead, on the day their last extension was set to expire, the Debtors filed a placeholder plan [Docket No. 1174] ("**Placeholder Plan**") that manifestly cannot be confirmed, and that serves only to further box out SAFE creditors from proposing a workable plan. In short, with the one-year anniversary of these cases rapidly approaching, the Debtors are nowhere near a plan to distribute the assets of the estates (which all are liquid or in the process of liquidation) in a manner consistent with the Bankruptcy Code.

3. The Debtors' lack of progress is particularly remarkable because these cases are not complex, at least not anymore. During the February 19, 2025 mediation, in which the SAFE

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[3] *See Utd. Savings Ass'n v. Timbers of Inwood Forest Assocs., Ltd. (In re Timbers of Inwood Forest Assocs., Ltd.)*, 808 F.2d 363, 372 (5th Cir. 1987) (en banc), *aff'd*, 484 U.S. 365 (1988).

[4] On May 26, 2025 the Debtors sought to further extend their Exclusive Periods. *See Debtors' Amended Third Motion for Entry of an Order (I) Extending the Debtors' Exclusive Periods to File a Chapter 11 Plan and Solicit Acceptances Thereof Pursuant to Section 1121 of the Bankruptcy Code and (II) Granting Related Relief* [Docket No. 1185] (the "**Amended Third Exclusivity Motion**"). The SAFE AHG intends to timely object to this request at the appropriate time.

AHG was a key participant, the framework was established for a transaction between Whinstone US, Inc. ("**Whinstone**") and the Debtors (the "**Whinstone Transaction**").[5] Pursuant to the Whinstone Transaction, the Debtors sold substantially all of their assets, ceased operations, and exchanged mutual releases with Whinstone, yielding more than $185 million in proceeds ("**Proceeds**") for distribution to the Debtors' creditors and other stakeholders.[6] According to the Debtors, at least $100 million of the Whinstone Transaction Proceeds will be left at Debtor Rhodium Technologies LLC ("**Technologies**") after repayment of senior creditors and administrative fees.

4. The only task that remains before the Debtors, in other words, is distributing that remaining value—again, around $100 million or more—to the Debtors' two remaining categories of stakeholders: (i) SAFE creditors, who together contributed about $87 million to the Debtors pursuant to their SAFE contracts; and (ii) owners of the Debtors' common stock, who paid the Debtors about $43 million for their equity. This allocation should be simple. The SAFE creditors' formerly contingent right to receive payment of the "Cash-Out Amount"—the full $87 million face amount of the SAFE instruments—has been triggered by the Whinstone Transaction. Application of inter-Debtor agreements require payment of virtually all of the $100 million in remaining Proceeds to REI, the SAFE counterparty, and the issuer of all outside common stock. And the absolute priority rule and the plain terms of the SAFE agreements entitle the SAFEs to full repayment of the Cash-Out Amount from REI before REI common stock is entitled to any

[5] The Debtors announced the Whinstone Transaction in open court on March 19, 2025, with counsel for the Debtors thanking Judge Mullin, who presided over the one-day February 19, 2025 mediation, for getting the parties "most of the way there." *Whinstone US, Inc. v. Imperium Inv. Holdings LLC, et al.*, Case No. 24-03240 (ARP), Mar. 19, 2025 Hr'g Tr. at 6:12-13 (the "**March 19 Transcript**").

[6] Due to favorable price action, the SAFE AHG understands the Riot stock received by the Debtors in connection with the Whinstone Transaction was actually about $50.9 million (net of selling costs), resulting in total Proceeds of the Whinstone Transaction equal to at least $186.9 million.

recovery.

5. So why the delay in filing a confirmable plan?[7] Unfortunately, the Debtors' full board (the "**Conflicted Board**"), and the professionals who were hired by and report to the Conflicted Board, are plagued by conflicts of interest, and remain intent on cutting releases for themselves, Imperium and the insiders, at any cost. Indeed, the Conflicted Board's inability to act as an honest broker in these cases is so clear that a motion for appointment of a trustee would have been a near certainty. Pre-petition, the Debtors formed a special committee of independent directors ("**Special Committee**") and delegated to the Special Committee and its separate counsel sole responsibility for all Conflict Matters, including matters relating to the determination of recovery priorities among stakeholders, and allocation of Proceeds between SAFE creditors, and equity holders at Imperium, on the Conflicted Board and at REI.

6. Unfortunately, the Conflicted Board continues to insert itself in matters that have been deemed Conflict Matters, including by filing the Placeholder Plan, which was signed by the Firm alone, which incorrectly categorizes SAFEs as equity (a designation that directly benefits members of the Conflicted Board) and which cannot be confirmed. Among myriad other fatal flaws, the Placeholder Plan provides no funding to the proposed litigation trust for pursuit of claims against insiders—claims that the Special Committee has acknowledged are [redacted]—and calls for the Debtors (not a stakeholder beneficiary party, or even the Special Committee) to choose the trustee. Indeed, the Conflicted Board itself appears to recognize the Placeholder Plan is dead on arrival. *See In re Rhodium Encore LLC*, Case No. 24-90448 (ARP) [Docket No. 1215] May 27, 2025 Hr'g Tr. at 13:24-14:21 (the "**May 27 Transcript**") (Ms.

[7] The Placeholder Plan signed by Quinn Emanuel Urquhart & Sullivan LLP (the "**Firm**") on May 22, 2025, is manifestly unconfirmable, as even the Firm appears to admit.

Tomasco advising in response to questions from the Court concerning irregular aspects of the Placeholder Plan that "plan negotiations" are "ongoing" and "we definitely anticipate refining the plan significantly").

7. For its part, the Special Committee has frozen the SAFE AHG out of plan discussions for weeks. Even if the SAFEs were not the Debtors' only remaining significant creditor group—and they are—the Special Committee's decision to exclude the estates' largest stakeholders from negotiations would have been incredibly counterproductive. As it is, the Special Committee's approach guarantees that any plan they propose will be unconfirmable, since they have made no effort to obtain the SAFE creditors' support. Critically moreover, the SAFE AHG is unaware of the Special Committee ever proposing, or even considering, a resolution to the Chapter 11 Cases that does not provide a release to Imperium and the insiders, plus a hefty cash distribution.[8] This approach not only would be contrary to settled law, it would siphon off value to wrongdoers that should be available to pave the way to an agreement amongst innocent stakeholders, including consenting common stockholders (as the SAFEs will propose). An Insider-release plan, in contrast, guarantees months of protracted plan confirmation litigation.

8. The Debtors' exclusive period to propose a plan of reorganization—already extended multiple times—is hampering the progress of these cases and should be terminated. Unlike the Debtors, the SAFE AHG can propose a plan (the "**Proposed Plan**") with terms that actually comport with the Bankruptcy Code ***right now*** and move promptly to a value-maximizing near-term distribution for innocent REI stakeholders. Moreover, in an effort to avoid, or at least

[8] After satisfaction of REI's $95 million worth of net intercompany claims, only a maximum of about $5 million would be left at Technologies, where Imperium holds its allegedly 61% equity interest. Hence, even without subordination, Imperium's recovery would be limited to about $2.5 million at the absolute maximum, with no release. The SAFE AHG is unaware of the Special Committee ever considering limiting the insiders even to this pre-subordination maximum recovery.

limit, plan litigation, the SAFE AHG is willing to begin sharing Whinstone Transaction Proceeds with equity holders who consent to the Proposed Plan ***before*** the SAFEs are repaid in full, notwithstanding the SAFEs' rights to preferential recoveries under the absolute priority rule and the SAFE documents themselves.

9. For the avoidance of doubt, the SAFE AHG does not seek to prevent the Debtors from seeking to propose their own confirmable plan, or even from pursuing the underdeveloped Placeholder Plan (if they really believe it can be confirmed). Rather, the SAFE AHG seeks only to level the playing field and allow the SAFE AHG an opportunity to share its vision for a rapid and equitable exit from these cases with other stakeholders, and move promptly toward a value-maximizing resolution.

BACKGROUND

10. As discussed below, resolution of these cases at this stage should be relatively straight-forward, including because the SAFE parties are the estates' only significant remaining creditors, and the Debtors have liquidated all of their assets and ceased operations.

A. SAFE Creditors Provided More Cash to the Debtors Than Any Other Constituent

11. The SAFE parties provided more capital to the Debtors pursuant to their SAFE contracts than any other stakeholder in these cases—$87 million. In contrast, according to the Debtors' books and records, common stockholders collectively paid to the Debtors only about $43 million in total for their approximately 118 million shares in REI. See *Notice of Filing of Second Am. Equity List of Rhodium Enterprises, Inc.* [Docket No. 1054], at 6 (May 5, 2025 filing identifying total number of outstanding REI shares as 117,994,464). The Debtors' promissory notes have now been repaid,[9] but those amounts also were dwarfed by the SAFE claims, with

[9] The Debtors did not repay a small amount of additional promissory notes based on objections by the SAFE AHG and others.

around $57 million outstanding on the Petition Date. Presumptively valid trade debt, which also has been repaid, amounted to just $1 million.[10] *Id*. The SAFE parties, in other words, contributed more capital to the Debtors than did all other creditors ***combined***, and about double the amount of cash paid-in by equity.

B. The SAFEs Are Liabilities, Not Equity, as Debtors Once Expressly Acknowledged

12. The term SAFE—Simple Agreement for Future Equity—is in some respects a misnomer. To be sure, the SAFEs are "agreements," and the SAFEs contemplate certain circumstances under which the SAFEs convert to shares in REI stock. However, the SAFEs also contemplate other circumstances under which REI is required to pay back to the SAFE holders the entire amount the SAFE holders paid to REI. *See* Ex. B, Simple Agreement for Future Equity of Infinite Mining LLC ("**Infinite Mining SAFE Agreement**"), at §§ 1(b), 1(c). Specifically, "if there is a Liquidity Event" or a "Dissolution Event" the SAFE holder becomes "automatically entitled" to "receive a portion of Proceeds [of the Liquidity Event or Dissolution Event] equal to the Cash-Out Amount, ***due and payable to the [i]nvestor immediately.***" *Id*.[11] As a consequence, SAFE parties were creditors even before the Whinstone Transaction triggered their right to the Cash-Out Amount.

13. The Bankruptcy Code defines "creditor" to include any "entity that has a claim against the debtor that arose at the time of or before the order of relief." 11 U.S.C. § 101(10). "Claim," in turn, is defined to include, *inter alia*, any "***right to payment***, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, ***contingent,*** matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." 11 U.S.C. § 101(5)(A) (emphasis added). On

[10] The Debtors did not repay a small amount of additional alleged trade debt based on objections by the SAFE AHG and others.

[11] In a Liquidity Event, the investor also can take the conversion amount, to the extent it results in Proceeds greater than the Cash-Out Amount.

the Petition Date, the SAFE holders' right to receive "payment" of the Cash-Out Amount was still contingent, because there had not yet been a triggering event (there has been now, as discussed below). But even on the Petition Date, the SAFE parties still were creditors within the plain meaning of the Bankruptcy Code. *See In re JNL Funding Corp.*, 438 B.R. 356, 363 (Bankr. E.D.N.Y. 2010) ("[A] contingent right to payment constitutes a claim, and the holder of such a contingent right is a creditor.").

14. Notably, until counsel reporting to the Conflicted Board recently changed their tune, the Debtors always identified the SAFEs specifically as [redacted] According to the Debtors, REI "controls and is responsible for all operational, management and administrative decisions" of the Debtors and "consolidates the financial results of Rhodium Technologies and its subsidiaries." First Day Decl. ¶¶ 58, 61. REI books the SAFEs as [redacted]:

[redacted]

See Ex. C, Consolidated Financial Statements of Rhodium Enterprises, Inc. from December 31, 2023 and 2022 (excerpted).

15. REI's categorization of SAFEs as [redacted] was not a decision it took lightly. Rather, Rhodium's finance department prepared a specific accounting policy memorandum [redacted] In determining

appropriate accounting treatment, [redacted]

16. The Bankruptcy Code, and the Firm's own prior admissions make crystal clear that the SAFEs do not constitute equity. The definition of "equity security" in the bankruptcy code includes a "share in a corporation," "interest of a limited partner in a limited partnership," or "warrant or right, ***other than a right to convert***, to purchase sell or subscribe to a share, security, or interest" specified elsewhere in the definition. 11 U.S.C. § 101(16)(A)-(C) (emphasis added). The SAFE contemplates scenarios where SAFE holders would become holders of stock in the Debtors, but solely by means of ***conversion***, not purchase. For example, in the event of an Equity Financing or Listing Event, the SAFEs would "***automatically convert***" into the number of shares of stock equal to $87 million (the "**Purchase Amount**"). As explained below, there will be no Listing Event in these cases; instead, the Whinstone Transaction constitutes a Liquidity Event or Dissolution Event, entitling SAFE holders to cash. But even the stock-based contingencies contemplated by the SAFEs expressly call for "conversion," further confirming that the parties to the SAFE agreements are ***creditors*** not equity.

17. Although the Conflicted Board recently filed an objection to the SAFE claims in which the Firm contends that the SAFEs are "equity securities," that is the exact opposite of the position that the Firm took at the beginning of these cases in correspondence with the U.S. Trustee. From the beginning of these cases, the Debtors have sought desperately to avoid appointment of a stakeholder committee of any kind, with the Firm going so far as to claim at the first day hearing that Rhodium's bankruptcy was filed "with no unsecured creditors." *In re Rhodium Encore LLC,*

Case No. 24-90448 (ARP) [Docket No. 135] Aug. 30, 2024 H'g Tr. at 10:7-13 ("**August 30 Transcript**") (Ms. Tomasco representing that "there is no unsecured debt of any—no funded unsecured debt, no vendor debt"). That claim was false, not only because it mischaracterized the SAFE claims, but also because, as the Debtors later were forced to admit, Debtors were obligated on certain unsecured notes and vendor claims, resulting in the belated formation of the UCC in November 2024.

18. The Debtors also fought Akin's request for the appointment of a SAFE committee in September 2024, claiming that SAFEs are ***neither*** debt, nor equity. In a letter to the U.S. Trustee dated September 25, 2024, the Firm cited the Bankruptcy Code definition of "equity security" to argue that *"**SAFEs are not equity.**"* Specifically, the Firm argued:

> ***Under the Bankruptcy Code, SAFEs are not equity***. Section 101(16) defines "equity security" as "(A) share in a corporation, whether or not transferable or denominated 'stock', or similar security; (B) interest of a limited partner in a limited partnership; or (C) warrant or right, ***other than a right to convert,*** to purchase, sell, or subscribe ***to a share,*** security, or interest of a kind specified in subparagraph (A) or (B) of this paragraph." (emphasis added). ***In other words, warrants, options and contingent rights to convert to stock are not equity under the Bankruptcy Code.***

See Ex. E, Letter from Patty Tomasco to Ha Nguyen, Esq., Office of the U.S. Trustee [Docket No. 1124-10] (second and third emphases in original).

19. In the recently filed omnibus objection to SAFE claims, however, the Firm now cites the Bankruptcy Code definition of "equity security" to argue the exact opposite—that SAFEs ***are*** equity.[12] The Firm's parsing of the Bankruptcy Code definition of "equity security" was

[12] *See Debtors' Omnibus Objection to Claims Pursuant to Bankruptcy Code Sections 502(B), Bankruptcy Rule 3007, And Local Rule 3007-1 Because SAFE Holders Do Not Hold Claims* [Docket No. 1126], at ¶¶ 31-32 (the "**SAFE Claim Objection**") (arguing that the definition of "'claim' under section 101(5) of the Bankruptcy Code excludes equity interests from its ambit," then citing the definition of "equity security" to argue SAFEs are so-excluded).

obviously right the first time. Indeed, as the Debtors' actual accounting team recognized in a non-litigation context, [redacted].[13]

C. Whinstone Transaction Triggers SAFE Parties' Entitlement to Cash-Out Amount

20. The Debtors announced the Whinstone Transaction on the record at a hearing on March 19, 2025, and indicated that Judge Mullin had gotten the parties "most of the way [t]here" at the February 19, 2024 mediation over which he presided (and in which the SAFE AHG played a key role). March 19 Transcript, at 6:12-13. The Whinstone Transaction triggered the Debtors' obligation to pay the full $87 million Cash-Out Amount. Under the SAFE agreements, the occurrence of a "Liquidity Event" or a "Dissolution Event" requires REI to pay the Cash-Out Amount to SAFE creditors (the Cash-Out Amount is defined as the amount paid by SAFE holders to REI pursuant to the SAFE agreement). *See* Ex. B, Infinite Mining SAFE Agreement at §§ 1(b), 1(c). A "Liquidity Event" is defined under the SAFE as "a Change of Control other than a Listing Event." *Id.* at § 2. A "Change of Control," in turn, is defined to include "a sale, lease or other disposition of all or substantially all of the assets of the Company," among other things. *Id.* The term "'Dissolution Event' means (i) a voluntary termination of operations, (ii) a general assignment for the benefit of the Company's creditors or (iii) any other liquidation, dissolution or winding up of the Company (**excluding** a Liquidity Event), whether voluntary or involuntary." *Id.* (emphasis in original).

[13] Nor are the SAFE creditors' claims subordinated to the level of equity under 510(b). Section 510(b) applies only to "a claim for damages." The SAFEs do not assert any claims for damages; rather, they merely observe that the nature of their SAFE claim entitles them recovery ahead of common stock. Claims to enforce the terms of a "financing contract" are not subject to subordination under Section 510(b). *See Gernsbacher v. Campbell (In re Equip. Equity Holdings, Inc.)*, 491 B.R. 792, 863 (Bankr. N.D. Tex. 2013) ("[A]ll claims of security holders are not subordinated under Section 510(b). For example, claims of noteholders for payments required by the note, based upon the instrument itself, are not claims 'for damages arising from the purchase or sale of such a security' and are accordingly not subject to subordination under section 510(b).") (citing 4 COLLIER ON BANKRUPTCY, § 510.04[6]).

21. The Whinstone Transaction either was a Liquidity Event or a Dissolution Event. The Whinstone Transaction liquidated the substantially all of the Debtors' assets and resulted in a cessation of the Debtors' operations. According to the First Day Declaration, the Company's business formerly consisted of "mining digital currency assets ***utilizing Company owned-computer equipment (the miners)***." First Day Declaration, at ¶ 62. On the Petition Date, the Company had two mining facilities—one located in Temple, Texas, and the other located in Rockdale, Texas. *Id.* The Debtors sold the Temple facility post-petition in a deal that closed on or around December 18, 2024. After closing, according to the Debtors' recently filed Disclosure Statement, "the Debtors installed the Company owned miners formerly housed at the Temple Site into the Rockdale Site." *Disclosure Statement for Joint Chapter 11 Plan of Rhodium Encore LLC and Its Affiliated Debtors* [Docket No. 1179] (the "**Disclosure Statement**"). Pursuant to the Whinstone Transaction, the Debtors sold all of the Company owned miners (along with all other "tangible property") located at Rockdale, including the mining rigs moved from Temple after that site was sold. In other words, they no longer have the machines necessary to carry out the only operations the Debtors have ever claimed to have had.

22. The parties also terminated the Whinstone lease and power agreements, contracts that the Debtors repeatedly described as the "life blood" of the Company. Indeed, under questioning by Debtors' counsel, Mr. Charles Topping recently testified at the June 4, 2025 hearing that without those power contracts, the Debtors could not continue to operate. The Debtors also agreed to vacate the Rockdale premises within three Business Days following the closing of the Whinstone Transaction. The closing occurred on April 28, 2025, and the Debtors therefore were contractually required to vacate their last operational site on or before May 1, 2025. There can be no good faith assertion that Debtors are continuing to operate following the Whinstone

Transaction, or that Debtors remain engaged in any activities other than liquidating their few remaining assets.[14]

23. As a consequence, the SAFE creditors' formerly contingent right to payment of the Cash-Out Amount has matured into a current right to such payment. Under the absolute priority rule, the SAFEs are entitled to repayment in full before equity has the right to any recovery. *See, e.g.*, *French v. Linn Energy, L.L.C. (In re Linn Energy, LLC)*, 936 F.3d 334, 341 n.1 (5th Cir. 2019). The SAFE agreements also expressly recognize the SAFE parties' priority over equity. Payment of the Cash-Out Amount is identified repeatedly as a "liquidation preference," and the "Liquidation Priority" paragraph provides that "payments for Common Stock" are "on par" with payments for the Conversion Amount, and "junior to payments [that] … are Cash-Out Amounts or similar liquidation preferences." Contrary to the terms of the SAFE, the Debtors argue that the SAFEs' claim for $87 million in cash somehow recovers "pari passu" with approximately 118 million shares of common stock. That contention not only ignores the express terms of the SAFE, it simply makes no sense.

D. Intercompany Claims Require Most Transaction Proceeds to Be Paid to REI

24. According to the Debtors, after repayment of senior creditors and administrative costs, approximately $100 million in liquidating Proceeds will be available at Technologies for distribution in accordance with the Bankruptcy Code.[15] REI, the counterparty to the SAFE agreements and issuer of common stock to all outside holders, owns about 40% of Technologies,

[14] The Firm's representation during the hearing on May 27, 2025 that the Debtors continue to have "operations" after the Whinstone Transaction was at best mistaken, and at worst designed to bolster the Conflicted Board's absurd contention that the Whinstone Transaction did not trigger the SAFEs' right to the Cash-Out Amount. *See* May 27 Transcript, at 10:18-23.

[15] Debtors have yet to explain what drove the decision to deposit the Proceeds at Technologies, and the SAFE AHG reserves all of its rights, remedies, claims and objections concerning that approach.

with the balance of Technologies' equity owned by Imperium.[16] Technologies, however, is party to contracts with REI pursuant to which it agreed to return to REI the $87 million in SAFE proceeds transferred to Technologies by REI in 2021, in the event of a liquidation or dissolution.

25. REI's contractual right to be repaid $87 million is of course senior to Imperium's equity claim at Technologies. Moreover, also according to the Debtors, Technologies owes another approximately $8.2 million in net claims to REI, meaning that, in total, REI has a claim for about $95 million at Technologies that must be satisfied before Imperium is paid anything in respect of its equity.[17] Remarkably, the Firm reporting to the Conflicted Board has insisted that certain of REI's claims against Technologies either are not valid, or should not be enforced, once again inserting itself directly into Conflict Matters, and once again coming down on the side of the insiders.

26. In addition, when the SAFE contracts were executed and the SAFE proceeds contributed to Technologies, Technologies' operating agreement specifically [redacted]. In yet another rank breach of their duty of loyalty, the insiders, through their control of REI's board—an entity that they control, but where they own no economic stake—caused Technologies to [redacted]. Under principles of equity, Imperium cannot be permitted to rely on [redacted] produced by the insiders' brazen self-dealing to siphon off value that rightfully must be returned to REI.

[16] As the SAFE AHG has long argued, and the Special Committee has now agreed, Imperium wrongfully took a so-called "control premium" in connection with the roll up transaction, artificially reducing REI's ownership of Technologies. The Proposed Plan will reverse the control premium.

[17] Imperium's interest at Technologies also should be subordinated pursuant to the Bankruptcy Code based on its rank breaches of fiduciary duties and other misconduct.

E. Special Committee Determines Claims Against Insiders Are [redacted], But Proposes to Give Insiders Seven Figure Distribution and a Release

27. The Special Committee's initial efforts at investigating the insiders seem to have missed certain facts. However, after the SAFE AHG wrote the Special Committee in December 2024 and January 2025 detailing insider misconduct, and requested that it review critical sources of overlooked ESI, the Special Committee began to see the light. *See, e.g.* Ex. F, Letter from the SAFE AHG to the Special Committee of REI (Dec. 26, 2024), and Ex. G, Letter from the SAFE AHG to the Special Committee of REI (Jan. 10, 2024). On or around March 31, 2025, the Special Committee made a presentation to the SAFE AHG, in which the Special Committee arrived at most of the conclusions urged in the SAFE AHG's correspondence in December and January.

28. Among other things, the Special Committee now agrees that [redacted]

29. The Special Committee missed a number of valuable claims focused on by the SAFE AHG, including relating to [redacted], and [redacted]. Nevertheless, even the Special Committee

recognizes that the claims against Imperium and the insiders are as serious as they come. According to the Special Committee's demand letters, [redacted]. *See* Ex. H, Demand Letter from the Special Committee of REI to Imperium (Apr. 19, 2025), at 22. And the SAFE AHG submits the value of those claims actually is much greater. Indeed, by itself, [redacted].

30. In any other case, one would expect the Special Committee to have moved quickly to confirm a plan that places these enormously valuable estate claims in a trust for the benefit of the Debtors' stakeholders, who are the true victims of the insiders' misconduct. For weeks, the Special Committee refused to provide a copy of its Imperium demand letters with the SAFE AHG. When that correspondence finally was produced on May 1, 2025 (designated "mediation privileged," even though the letters pre-date the mediation, and still subject to unexplained redactions), the SAFE AHG was shocked to learn [redacted]. *See* Ex. I, Demand Letter from the Special Committee of REI to Imperium (Apr. 5, 2025), at 2.[18] The Special Committee has cut the SAFE AHG out of plan communications for weeks. However, in light of [redacted], one can only presume the Special Committee will agree to allow Imperium and the insiders to get off on terms even less favorable to the estates, and less consistent with the value of the claims the insiders face.

[18] As the Special Committee itself acknowledges, [redacted]

F. Parties Proceed to Plan Mediation Subject to Conflicted Board Recusal Order

31. At the March 19, 2025 hearing where the Debtors announced the Whinstone Transaction, they (unilaterally) announced an intent to defer mediation of plan-related issues with key stakeholders for two full months, with the stated explanation that the mediator selected by the Debtors was not available until that time. Stakeholders were understandably concerned about the delay and pressed the Debtors to work with parties in interest to identify an alternative mediator. Thereafter, on April 21, 2025, retired bankruptcy Judge Russell F. Nelms was selected and appointed to mediate "concerning allocation and distribution of estate assets to stakeholders and related matters . . . ." *See Agreed Mediation Order* [Docket No. 966], at ¶ 1 (the "**Agreed Mediation Order**").

32. The Agreed Mediation Order, which was signed by both the Firm and Barnes & Thornburg LLP ("**Barnes**"), called for the recusal of the Conflicted Board and the Firm from most matters at issue in the mediation based on their conflicts of interest. Agreed Mediation Order, at ¶ 5 (signed on behalf of Debtors by Patricia Tomasco and on behalf of Special Committee by Trace Schmeltz). The Conflicted Board was appointed by Imperium and includes founders Chase and Cameron Blackmon. First Day Declaration, at ¶ 70. Jonas Norr, another Conflicted Board member, invested in entities that collectively own approximately 12.7% of REI common stock. *See Notice of Filing of the Second Amended Equity List of Rhodium Enterprises, Inc.* [Docket. No. 1054]. The Agreed Mediation Order specifically acknowledges that "current and former members of the full board of directors of REI and investment vehicles owned or controlled by such members, and/or members appointed by them, have individual financial interests in the outcome of the Mediation." *See* Agreed Mediation Order, at ¶ 5. The Agreed Mediation Order further acknowledged that ***"the question of how consideration is allocated, including in a restructuring or as part of a plan of reorganization, between different constituents who have asserted***

conflicting legal and equitable theories to support their claims and interests, is an inherent Conflict Matter ('Allocation Conflict') over which the Special Committee has authority on behalf of Debtors." *Id.*

33. The insiders accordingly were "recused from participating in any deliberations or analysis" concerning "the Allocation Conflict or any other Conflict Matter." *Id.* The Agreed Mediation Order also acknowledged that the Special Committee "retained, and the estates have paid for, independent counsel (Barnes & Thornburg LLP)," and provided that the Special Committee would not seek advice from "Quinn Emanuel or any other law firm that reports to the full board of the Debtors concerning the Allocation Conflict or any other Conflict Matter." *Id.* at ¶6. Notably, the Special Committee is the sole body authorized by the Debtors' charter to handle "Conflict Matters" in any context, whether inside or outside of mediation.[19]

34. Beginning on April 28, 2025, stakeholders met in person for two days in an attempt to reach a mediated agreement regarding a proposed distribution of the Debtors' assets (the "**Plan Mediation**").[20] After the Plan Mediation, the SAFE AHG continued to discuss potential plan terms, including with other stakeholders. The SAFE AHG understands that the Special Committee remains engaged in plan discussions with other parties, but the Special Committee has not spoken to the SAFE AHG or its representatives concerning proposed plan terms since May 16, 2025. The Special Committee has never proposed, to the SAFE AHG's knowledge, plan terms that could be confirmed, or that omit a release of claims against the insiders.

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[19] Unfortunately, the Firm and the Conflicted Board have largely ignored the limitations on their involvement in these cases, culminating in the filing by the Firm of the SAFE Claim Objection and Placeholder Plan. The Conflicted Board's filings, signed by the Firm, clearly impinge on issues that the Firm has acknowledged constitute "Conflict Matters," including "the question of how consideration is allocated, including in a restructuring or as part of a plan of reorganization, between different constituents who have asserted conflicting legal and equitable theories to support their claims." Agreed Mediation Order, at ¶ 6.

[20] *See* Agreed Mediation Order, at ¶ 1 (approving appointment of the Hon. Russell F. Nelms (Ret.) as mediator).

G. The Placeholder Plan Is Not Confirmable, and Serves Only to Further Extend Exclusivity

35. On May 22, 2025, the day that the Exclusive Periods were set to expire, the Debtors filed their Placeholder Plan. Of import, the Placeholder Plan, which although it contains certain hallmarks of a plan of reorganization,[21] is, as this Court noted,[22] really a plan of liquidation. Initially, the Placeholder Plan was filed without an accompanying disclosure statement or motion to approve plan solicitation procedures. And, as acknowledged by Debtors' counsel on May 27, 2025, the Placeholder Plan will require "significant" revisions prior to approval of any disclosure statement.[23] The Placeholder Plan was filed not because the Debtors have an actionable plan and the support of any stakeholders, but rather for the sole purpose of extending exclusivity.

36. The Placeholder Plan is manifestly unconfirmable. It proposes the payment in full of the Debtors' secured debt and non-SAFE unsecured debt. Placeholder Plan, at ¶¶ 4.1-4.6. It then purports to classify *all other stakeholders*, irrespective of legal rights, entitlement or other status, into a single class for voting and distribution purposes. *Id*. at ¶ 4.10. The Placeholder Plan suggested that to the extent a portion or all of this group of stakeholders can reach an agreement regarding the allocation of the "Equity Reserve" (as defined in the Placeholder Plan) that agreement will be incorporated into the Placeholder Plan or otherwise implemented. *Id*. To the extent no agreement is reached, the Debtors intend to interplead what is defined as the Equity Reserve with the Court. *Id*. at ¶ 5.3.

37. The Placeholder Plan also proposes to transfer the "Non-Released D&O Claims" to a wholly ***unfunded*** "Rhodium Litigation Trust" (each as defined in the Placeholder Plan).

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[21] *See* Placeholder Plan, at ¶ 1.100 (definition of "Reorganized Debtor"), ¶ 10.3 (Discharges); ¶ 5.4 (Continued Corporate Existence), ¶ 8.7 and ¶ 10.1 (Vesting of Assets in Reorganized Debtors)

[22] May 27 Transcript, at 9:18-19.

[23] May 27 Transcript, at 14:19-21.

Placeholder Plan, at ¶ 5.2(a), (d). Even though the insiders who control the Debtors are the unquestionable targets of the Non-Released D&O Claims, the Debtors propose that they, not the Special Committee, and not the parties who will benefit from the proceeds of the Non-Released D&O Claims, select the trustee of the Rhodium Litigation Trust. *Id*. at ¶ 5.2(b). A trustee who is expected to serve, at least initially, without compensation. *Id*. at ¶ 5.2(c). This should be seen for what it is: a blatant attempt by the insiders, who control the Debtors, to bury the Trust Causes of Action (as defined in the Placeholder Plan), which include the Non-Released D&O Claims, in an entity with no funding to pursue them, thus effectively releasing the targets of the Trust Causes of Action.

38. Without explanation and ignoring the more than $2 million spent by the estates (and the Debtors' stakeholders) for the Special Committee to investigate claims and causes of actions against insiders[24]—the very claims proposed to be transferred into the Litigation Trust—the Placeholder Plan and the Debtors disavow any responsibility for advising stakeholders regarding the merits of the Trust Causes of Action. ***Incredibly, the Placeholder Plan states that the "Debtors express no opinion on the merits of any of the Trust Causes of Action or on the recoverability of any amounts as a result of any such Causes of Action***." Placeholder Plan, at ¶ 5.2(d). Nothing could more clearly establish that the Placeholder Plan is a concoction of the Conflicted Board, and the Conflicted Board alone, than this assertion, which directly contradicts the Special Committee's own findings that [redacted].

39. Finally, without explanation, the Conflicted Board propose to continue the corporate existence of REI and Technologies, despite the lack of any remaining Debtor assets or

[24] *See Opposition to Motion to Compel and Emergency Motion for a Protective Order Regarding Requests for Production of Documents from Ad Hoc Group of SAFE Parties* [Docket No. 1113], at ¶ 4.

operations. Their proposal to create the illusion of a continuing corporate structure post-bankruptcy appears to be nothing more than a clumsy (and unsuccessful) attempt by the Conflicted Board to undermine the SAFE holders' rights to payment of the Cash-Out Amount. Erecting zombie, post-bankruptcy entities, with no purpose other than to prejudice the SAFEs and reward Imperium and the members of the Conflicted Board, yet again illustrates why the Conflicted Board and counsel reporting to the Conflicted Board must be barred from continuing involvement in Conflict Matters in these cases.

ARGUMENT

40. The SAFE AHG is prepared right now to propose a plan of reorganization that comports with the Bankruptcy Code, including the absolute priority rule, does not provide insiders with "get out of jail free" cards, enforces intercompany agreements according to their terms and, most importantly, can actually be confirmed. The SAFE AHG should be given an opportunity to file the Proposed Plan, including so that other stakeholders can weigh its terms against any that may be proposed by the Debtors and/or the Special Committee, each of which has to date shown interest only in plan approaches that release the insiders who appointed the Conflicted Board, and provides insiders with large cash distributions to boot.

41. The Bankruptcy Code limits the period of time during which a debtor has the exclusive right to file a plan of reorganization and solicit acceptances thereof to 120 and 180 days, respectively. *See* 11 U.S.C. § 1121(b), (c). The Bankruptcy Court "may for cause reduce or increase" the initial exclusivity periods upon the request of a party in interest and after notice and a hearing, and upon a showing of "cause." 11 U.S.C. § 1121(d)(1). "This provision curbs the unfair disadvantage to creditors of giving the debtor perpetual exclusive rights to initiate a plan." *Jasik v. C.S. Conrad (In re Matter of Jasik)*, 727 F.2d 1379, 1380 (5th Cir. 1984). "To divine

whether there is cause to extend or reduce exclusivity, courts typically apply a number of non-exclusive factors." *In re New Meatco Provisions, LLC*, No. 2:13-BK-22155-PC, 2014 WL 917335, *3 (Bankr. C.D. Cal. Mar. 10, 2014). These factors, commonly referred to as the *Adelphia* factors, include:

(i) whether the debtor has made progress in negotiations with its creditors;

(ii) whether the debtor has demonstrated reasonable prospects for filing a viable plan;

(iii) the existence of good faith progress toward reorganization;

(iv) the necessity for sufficient time to permit the debtor to negotiate a plan of reorganization and prepare adequate information;

(v) the amount of time which has elapsed in the case;

(vi) the size and complexity of the case;

(vii) whether an unresolved contingency exists;

(viii) the fact that the debtor is paying its bills as they become due; and

(ix) whether the debtor is seeking an extension of exclusivity in order to pressure creditors to submit to the debtor's reorganization demands.

See id. (citation omitted) (granting UCC motion to terminate exclusivity approximately nine months after petition date, where debtor had already received two extensions and only plan filed by debtors included exculpation and limitation of liability language demanded by debtors and opposed by creditors); *see also In re New Millennium Mgmt., LLC*, 2014 WL 792115, at *6 (Bankr. S.D. Tex. Feb. 25, 2014) (same) (citing *In re GMG Capital Partners III, L.P.*, 503 B.R. 596, 600 (Bankr. S.D.NY. 2014).

42. The correct application of the factors includes a broad, global view focused on what is best for the cases. The primary consideration should be whether terminating exclusivity would facilitate moving the cases forward. *In re Dow Corning Corp.*, 208 B.R. 661, 670 (Bankr. E.D. Mich. 1997); *see also In re Adelphia*, 352 B.R. 578, at 590 (Bankr. S.D.N.Y. 2006); *see also*

Aug. 26, 2011 Hr'g Tr. at 56:14-56:16, *In re Indianapolis Downs, LLC*, Case No. 11-11046 (BLS) (Bankr. D. Del.) [Docket No. 410] (explaining that the analysis comes down to "whether or not reasonable progress is being made"). As discussed below, the pertinent factors overwhelmingly counsel in favor of terminating the Debtors' Exclusive Periods, including because doing so will facilitate advancing the Chapter 11 Cases towards an expeditious and value maximizing conclusion.

I. Cause Exists to Terminate the Exclusive Periods

a. *Adelphia* Factors 1, 2 and 3: The Debtors Have Excluded the SAFE AHG From Plan Negotiations, Shown No Prospects for Filing a Viable Plan, Made No Progress Toward Reorganization, and Exclusivity Should Be Terminated

43. To date, the Debtors have shown no ability to reach an agreement regarding the terms of a confirmable plan with its SAFE creditors. To the contrary, the Debtors and the Special Committee have cut the SAFE AHG—a group representing 80% of the estates' largest stakeholder category, and their only remaining significant creditors—out of plan negotiations entirely. Indeed, the SAFE AHG suspects the Special Committee and the Debtors, left to their own devices, will propose a "release plan" that cuts a huge check to insiders, grants them releases, and uses recoveries rightfully belonging to SAFEs to pay off equity holders to gain their support for a plan they otherwise never would accept. To say that the estates' last remaining creditors have lost faith would be an understatement.

44. And that is a key factor when considering whether exclusivity should continue. Sept. 27, 2016 Hr'g Tr. at 97:1-99:10, *In re Samson Res. Corp.*, Case No. 15-11934 (BLS) (Bankr. D. Del.) [Docket No. 1418] (denying the debtors' motion for an extension of exclusivity where the debtors failed to engage in negotiations with the creditors' committee). Indeed, courts look to the subjective perspective of the creditors and whether creditors have lost confidence in a debtor when considering whether sufficient progress has been made by a debtor to justify its continued

monopoly of the plan process. *See, e.g.*, *In re All Seasons Indus., Inc.*, 121 B.R. 1002, 1006 (Bankr. N.D. Ill. 1990) (considering the creditors' view of the situation without considering whether such view was justified); Sept. 27, 2016 Hr'g Tr. at 98:16–99:6, *In re Fountain Powerboat Indus.*, No. 09-07132-8-RDD, 2009 WL 4738202, at *6 (Bankr. E.D.N.C. Dec. 4, 2009) (considering whether a creditor had lost confidence in the debtors' management when deciding a motion to terminate exclusivity); *see also In re New Meatco Provisions, LLC*, 2014 WL 917335 at *3 (granting motion to terminate exclusivity when the court found, among other things, that "there is little credible evidence upon which the court can base a finding that [the debtor] will . . . make further progress in negotiating with creditors[.]"); *In re Crescent Beach Inn, Inc.*, 22 B.R. 155, 160–61 (terminating exclusivity period given the principal parties' inability to agree on reorganization "at the expense of all creditors of the debtor").

45. Courts also terminate exclusivity where debtors are not able to demonstrate reasonable prospects for filing a viable plan or the existence of good faith progress toward reorganization. *See, e.g.*, *In re GMG Cap. Partners III, L.P.*, 503 B.R. at 602 (denying debtor's motion to extend exclusivity where, among other things, debtor had no prospect of confirming a plan without a creditor's support); *In re New Meatco Provisions, LLC*, 2014 WL 917335, at *3 (granting motion to terminate exclusivity when the court found, among other things, that "there is little credible evidence upon which the court can base a finding that [the debtor] will . . . be able to present a plan of liquidation that has creditor support and a prospect at confirmation within a reasonable period of time"); *In re New Millennium Mgmt.*, 2014 WL 792115 at *7 (rejecting debtor's motion to extend exclusivity period where, among other things, debtor had not demonstrated reasonable prospects for filing a viable plan and had made little progress toward reorganization).

46. It is self-evident that the Placeholder Plan was not filed in good faith as required by the Bankruptcy Code and is rife with fatal flaws. For example, the Placeholder Plan proposes to transfer estate claims against insiders to a litigation trust, ***but provides the trust no funding, and proposes to have the litigation trustee selected by the Debtors themselves***. This kind of clumsy self-dealing has no place in a Chapter 11 plan proposed in good faith. Adding insult to injury, after paying more than $2 million for an investigation into the Trust Causes of Action (as defined in the Placeholder Plan), and after the Special Committee concluded the estate claims are [redacted], the Placeholder Plan says that the Debtors ***"express no opinion on the merits of any of the Trust causes of Action or on the recoverability of any such amounts."*** *See* Placeholder Plan, at ¶ 5.2(d). The Placeholder Plan also improperly classifies creditors and interest holders in a single class for distribution purposes. *See* 11 U.S.C. § 1122. While debtors are afforded certain flexibility regarding classification, "one clear rule . . . emerges from otherwise muddled caselaw on §1122 class classification: thou shalt not classify similar claims differently in order to gerrymander an affirmative vote on a reorganization plan." *In re Greystone III Joint Venture*, 995 F.2d 1274, 1279 (5th Cir. 1991).

47. Critically, moreover, the Placeholder Plan violates the absolute priority rule, which prohibits distribution to equity holders without the consent of senior creditors. *See* 11 U.S.C. §1129(b)(2)(B)(ii). As discussed above, the SAFE Parties are creditors, entitled to repayment of the Cash-Out Amount in full before equity is permitted to recover anything. Absent the agreement of the SAFE parties, the Debtors' plan may not provide a distribution on account of Bankruptcy Code section 510(b) claims and/or other equity interests. Before the February 19, 2025 mediation got the parties "most of the way" to the deal that became the Whinstone Transaction, counsel to the Conflicted Board acknowledged on multiple occasions that, if the Cash-Out Amount were

triggered (as it has been by the Whinstone Transaction), the SAFEs would be entitled to recover ahead of equity.[25]

48. What changed? First, the Whinstone Transaction triggered the Cash-Out Amount, foiling the Conflicted Board's hope to emerge from the Chapter 11 Cases based on the issuance of worthless "take back paper," and in possession of speculative claims against Whinstone that the insiders could treat like a lottery ticket—a massive windfall for the insiders if it hit, but devastating to innocent stakeholders if it did not. Fortunately, the February 19, 2025 mediation—at which the SAFE AHG was a key participant—got the parties "most of the way" to the Whinstone Transaction, meaning there is now $100 million or more available for SAFE creditors and innocent equity after repayment of senior debt and administrative costs. Second, the Debtors have realized they must seize recoveries due to the SAFE AHG in order to achieve their ends: gifting to Imperium and the insiders a multi-million-dollar distribution plus a release. It is a not very subtle gambit by the Debtors, and one that should not be permitted to continue under the protection of plan exclusivity.

b. *Adelphia* Factors 4 and 5: The Debtors Have Had More Than Enough Time To Negotiate, But They Are Only Willing to Consider Terms That Release the Insiders, and Do So By Mischaracterizing the SAFEs As Equity

49. These cases were filed in August, 2024. It is now June 6, 2025, and the Debtors are not any closer to proposing a plan of reorganization that actually can be confirmed than they were before plan mediation began. If anything, they have moved backwards, including by cutting the SAFE AHG out of negotiations, and signaling to insiders that the Debtors will grant them releases on absurdly lenient terms. Courts routinely terminate exclusivity in cases where the

[25] Apparently, the Firm also deceived Proof Capital, by repeatedly promising that the Debtors would not seek to equitize Proof, and then proceeding to do so anyway. *Response of Proof Capital Alternative Income Fund, Proof Capital Alternative Growth Fund, and Proof Proprietary Investment Fund, Inc. to Debtors' Further Disclosure Regarding the "Proof Transaction"* [Docket No. 1221], at ¶ 13.

debtors have failed to negotiate a confirmable plan despite sufficient time to do so and in consideration of the amount of time the cases have been pending. *See, e.g.*, *In re New Meatco Provisions, LLC*, 2014 WL 917335, at *3 (granting motion to terminate exclusivity where, among other things, "there is little credible evidence upon which the court can base a finding that [the debtor] will either make further progress in negotiating with creditors or be able to present a plan of liquidation that has creditor support and a prospect at confirmation within a reasonable period of time"); *In re New Millennium Mgmt., LLC*, 2014 WL 792115, at *7 (rejecting debtor's motion to extend exclusivity period where, among other things, debtor had sufficient time to negotiate a plan, but had not done so); *In re Pub. Serv. Co. of N.H.*, 99 B.R. 155, 175–77 (Bankr. D.N.H. 1989) (denying the motion to extend exclusivity when the court considered that the stalemate between the debtor and a creditor would not promote a consensual plan within a reasonable time frame); *see also In re R.G. Pharmacy*, 374 B.R. 484, 488 (stating that breakdown of negotiations between debtor and objecting creditors impacted several factors such that continuation of exclusivity was not likely to improve progress toward reorganization).

50. This should not be a difficult negotiation. As a result of the Whinstone Transaction, all that remains in these cases is for the Debtors to distribute the Whinstone Transaction proceeds and remaining estate assets in accordance with equity, fairness and the Bankruptcy Code.[26] The Debtors have now had nearly three months to propose a confirmable plan for a relatively simple capital structure. In addition, the Debtors have had the benefit of a plan-related mediation. Despite this, to date, no viable plan has emerged. Instead, stakeholders are faced with a conflicted plenary board that seeks to insert itself into nearly every decision and

[26] Aside from cash, the only material estate assets remaining are claims and causes of actions against third parties. These claims and causes of action can and should be prosecuted post-confirmation under the governance and control of the stakeholders who will directly benefit from their resolution.

numerous law firms that have charged millions for restructuring and investigation work. Under these facts, the Debtors cannot plausibly argue that they have not had time to negotiate a consensual plan. Prolonging the Debtors' unilateral ability to pursue a dead-end Placeholder Plan will only result in increased professional fee burn to the detriment of all stakeholders, a result that the SAFE AHG seeks to avoid by asking this Court to terminate exclusivity and permit it to file and prosecute its own liquidating plan.

c. *Adelphia* Factors 6 and 7: These Cases Are Not "Complex," They Are In Liquidation, As the Court Correctly Observed Based on Placeholder Plan

51. During the May 27, 2025 hearing, the Court noted after reviewing the Placeholder Plan and Disclosure Statement, "it looks to me like its really a plan of liquidation,"[27] and correctly observed that "all of the [Debtors'] business have been sold" and that "there's no more operations."[28] The Debtors' reply at the hearing—"I think that there are still operations, Your Honor, and – but albeit on a very small scale"—is incorrect, and certainly misleading. There is no dispute that the only business the Debtors ran prior to the Whinstone Transaction (mining bitcoin at Rockdale using Company-owned mining rigs) terminated when the Debtors closed the Whinstone Transaction, pursuant to which they ceased all mining operations, sold their mining rigs to Whinstone, and agreed to exit the Rockdale premises "within three business days."[29] While Debtors may now be engaged in finalizing the liquidation and winding up of the Debtors, those are not business "operations," at least not according to how the Debtors' defined their business when these cases were filed. *See, e.g.*, First Day Declaration, at ¶ 62 (describing Rhodium's operations as "mining digital currency assets ***utilizing Company-owned computer equipment (the***

[27] May 27 Transcript, at 9:18-19.

[28] May 27 Transcript, at 10:18-20.

[29] *See Notice of Filing Redlined Versions of the Purchase and Sale Agreement and the Form of Compromise, Settlement and Release Agreement* [Docket No. 1029-2], at § 3.8.

miners)") (emphasis added); August 30 Transcript, at 5:20-22 (Ms. Tomasco, describing the Debtors business as "an industrial-scale digital asset technology company that ***uses proprietary technology to mine Bitcoin***")

52. Termination of exclusivity is particularly appropriate where, as here, "there is no business to reorganize." *See, e.g.*, *In re New Meatco Provisions, LLC*, 2014 WL 917335, *3 (terminating exclusivity in Chapter 11 "liquidation case which is neither large nor complex, but . . . has been pending for nearly a year without a confirmed plan"). In *Meatco*, the debtor, which also had sold all of its operating assets to a competitor, filed for bankruptcy on May 8, 2013. *Id*. at *1. The debtor sought and obtained two extensions of its 120-day exclusivity period, and on January 4, 2014, asked for a third extension through March 16, 2024. *Id*. The official committee of unsecured creditors objected, and filed its own motion to terminate, which the court granted. *Id*. at *2. Among other things, the official committee of unsecured creditors argued that continuing exclusivity arguably only conforms with the "legislative purpose" to the extent a "reorganization" is still on the table. *Id*. After an initial hearing on January 5, 2014 (about eight months after the petition date), the court granted the motion to terminate on March 10, 2014. *Id*. at *4.

53. The *Meatco* court found that the totality of the *Dow Corning* factors weigh in favor of termination, including because the debtor was not an operating entity, there was no business to reorganize; rather, "this is a liquidation case which is neither large [n]or complex, but it has been pending for nearly a year with a confirmed plan." *Id.* at *3. The court went on to observe that negotiations between the debtor and its creditors had been "acrimonious, and have reached an impasse." *Id*. Here, the situation is even more problematic.

54. The Debtors and Special Committee have not bothered even to speak to the SAFE AHG for more than three weeks and appear laser-focused on providing releases to the insiders,

while turning SAFE creditor recoveries over to insiders and common equity holders in order to induce equity consent to the otherwise unconscionable "get of jail free" care being offered to Imperium and its founders. All this despite the havoc insiders wrought with investor funds for the past five years, and the Special Committee's own conclusion that claims against them are [redacted]. In *Meatco*, the debtor also appeared focused on the interests of insiders, threatening the official committee of unsecured creditors that it would convert the case to "a chapter 7 rather than agree to modify the Exculpation and Limited Liability Clause contained in [the debtor's] proposed plan." *Id.* at *4.

55. Ultimately, the *Meatco* court "agree[d] with the Creditors' Committee that it is time 'the playing field [is] leveled so that all the players, including the debtor, [have] an even chance in proposing a . . . plan which might be acceptable to the creditors in the case." *Id*. at *3 (citing *In re Gen. Bearing Corp.*, 136 B.R. 361, 367 (Bankr. S.D.N.Y. 1992)). That is all the SAFE AHG seeks here: an opportunity to provide competing terms for a plan of reorganization that ***does not*** provide a release to the insiders, but that does honor the absolute priority rule, while also offering to provide early sharing of proceeds with equity holders if they agree to support the proposed plan. The SAFE AHG submits that it should be permitted to do so.

d. *Adelphia* Factor 9: The Debtors Are Using Exclusivity to Pressure Stakeholders Into Accepting a Deal That Releases Imperium and Insiders

56. Courts have recognized that a debtor's ability to exert undue pressure on creditors through the extension of exclusivity must be monitored and limited. *In re Texaco Inc.*, 76 B.R. 322, 326 (Bankr. S.D.N.Y. 1987) ("An extension should not be employed as a tactical device to put pressure on parties in interest to yield to a plan they consider unsatisfactory." (quoting S. Rep. No. 95-989, 95th Cong. 2d Sess. 118 (1978))); *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd. (In re Timbers of Inwood Forest Assocs., Ltd.)*, 808 F.2d 363, 372 (5th Cir.

1987) (characterizing Bankruptcy Code section 1121 as "a congressional acknowledgement that creditors, whose money is invested in the enterprise no less than the debtor's, have a right to a say in the future of that enterprise"), *aff'd*, 484 U.S. 365 (1988).

57. As noted above, throughout this case, the Debtors have taken positions that fail to advance the reorganization process, including refusing to share the results of the Special Committee's investigations without restriction until ordered to do so, delaying the distribution of updated cash waterfalls and inappropriately marking information professionals' eyes' only and subject to mediation privilege. To that end, the SAFE AHG believes that the Debtors' focus on obtaining releases of the Insider claims and, shockingly, even attempting to extract a material payment to the insiders, has stymied the settlement process. These tactics have resulted in little hope of settlement or consensual resolution and, instead, have driven the parties further apart. Because the votes of these creditors are required to confirm any plan proposed in these cases, the Debtors' tactics have created an impasse that can only be overcome at this point by the termination of exclusivity, which would permit the SAFE AHG to propose a plan that is fair and acceptable to the majority of the Debtors' remaining stakeholders.

II. Terminating Exclusivity Will Move the Cases Forward for the Benefit of the Estates and Will Not Prejudice the Debtors

58. While the *Adelphia* factors are all significant considerations for the courts, a "primary consideration" in determining whether to terminate exclusivity is whether doing so will "facilitate moving the case forward." *Dow Corning Corp.*, 208 B.R. at 670; *Adelphia*, 352 B.R. at 590 ("[T]he test is better expressed as determining whether terminating exclusivity would move the case forward materially, to a degree that wouldn't otherwise be the case."); *see also Official Comm. of Unsecured Creditors v. Henry Mayo Newhall Mem'l Hosp. (In re Henry Mayo Newhall Mem'l Hosp.)*, 282 B.R. 444, 452 (B.A.P. 9th Cir. 2002) (holding that "a transcendent

consideration is whether adjustment of exclusivity will facilitate moving the case forward toward a fair and equitable resolution"). There can be no doubt that terminating exclusivity is in the interest of moving the cases forward.

59. The SAFE AHG is prepared to file a confirmable plan that will bring the Debtors' cases to a swift conclusion. The SAFE AHG's proposal, based substantially on the terms set forth in the attached **Exhibit A**, would utilize the tools already available to the Debtors and its stakeholders to ensure that the proceeds of the Whinstone Transaction are distributed to the innocent stakeholders of the Debtors ***without*** releasing the estates enormously valuable claims against Imperium and the insiders. If the Court were to permit the SAFE AHG to file and prosecute such a plan, terminating exclusivity would undoubtedly have the effect of moving these cases forward through the near-term confirmation and implementation of a plan that would represent the interests and have the support of the SAFE AHG.[30]

RESERVATION OF RIGHTS

60. This Motion is submitted without prejudice to, and with a full reservation of, the SAFE AHG's rights, claims, defenses and remedies, including the right to amend, modify or supplement this Motion to raise additional objections and to object to and introduce evidence at any hearing relating to the Fourth Exclusivity Motion, and without in any way limiting any other rights of the SAFE AHG, as may be appropriate.

EMERGENCY CONSIDERATION

61. Under Local Rule 9013-1, the SAFE AHG respectfully requests emergency consideration of the Motion no later than June 24, 2025. The Debtors' request to approve the

[30] The SAFE AHG should be permitted to file its plan because, among other things, it may engender sufficient stakeholder support to avoid otherwise costly litigation, including battles over the Conflicted Board's objection to SAFE claims and other priority issues.

adequacy of the Disclosure Statement regarding the Placeholder Plan is set for July 8, 2025 (the "**Disclosure Statement Hearing**"). Unless the Motion is heard sufficiently in advance of this date, stakeholders and estate professionals will be forced to prepare for the Disclosure Statement Hearing without the benefit of knowing whether the Exclusive Periods will be terminated. This may result in an unnecessary waste of estate resources. Further, to the extent the Court grants the Motion and the Exclusive Periods are terminated, the SAFE AHG intends to file the Proposed Plan immediately, which may allow the Court to consider both the Proposed Plan and, to the extent the Debtors persist with their Placeholder Plan, the Placeholder Plan simultaneously. Accordingly, the SAFE AHG submits that emergency consideration of the Motion is appropriate.

CONCLUSION

For the foregoing reasons, the SAFE AHG respectfully requests that the Court (i) terminate the Debtors' Exclusive Periods; and (ii) grant such other relief as may be just and proper.

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Dated: June 6, 2025

Respectfully Submitted,

AKIN GUMP STRAUSS HAUER & FELD LLP

/s/ *Sarah Link Schultz*
Sarah Link Schultz (State Bar No. 24033047; S.D. Tex. 30555)
Elizabeth D. Scott (State Bar No. 24059699; S.D. Tex. 2255287)
2300 N. Field Street, Suite 1800
Dallas, TX 75201-2481
Telephone: (214) 969-2800
Email: sschultz@akingump.com
Email: edscott@akingump.com

- and -

Mitchell P. Hurley (admitted *pro hac vice*)
One Bryant Park
New York, NY 10036-6745
Telephone: (212) 872-1000
Email: mhurley@akingump.com

Counsel to the Ad Hoc Group of SAFE Parties

CERTIFICATE OF CONFERENCE

I hereby certify that on May 22, 2025, counsel to the SAFE AHG, in response to a request from Trace Schmeltz, counsel to the Special Committee, advised that they do not consent to a further extension of the Exclusive Periods. Mr. Schmeltz responded by adding Patty Tomasco, counsel to the Debtors to the communication and advising that the Debtors would proceed with filing a plan. The dispute regarding the continuation of the Exclusive Periods remains unresolved.

/s/ Sarah Link Schultz
Sarah Link Schultz

Certificate of Service

I hereby certify that on June 6, 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 A

IN RE RHODIUM ENCORE, LLC, *ET AL*.

Illustrative Summary of Principal Terms and Conditions for Liquidating Plan

This summary (this "**Plan Summary**") sets forth certain material terms of a plan (the "**Plan**") to be proposed by the SAFE AHG (as defined below), to the extent permitted, in Rhodium Encore, LLC, et al., cases commenced under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "**Bankruptcy Code**"), in the United States Bankruptcy Court for the Southern District of Texas (the "**Bankruptcy Court**").

This Plan Summary does not include a description of all of the terms, conditions, and other provision that are to be contained in the Plan. This Plan Summary and the undertakings contemplated herein are subject in all respects to due diligence, the terms of any restructuring support agreement, and the negotiation, execution, and delivery of the definitive documents.

The regulatory, tax, accounting, and other legal and financial matters and effects related to the Plan Summary or any related transactions have not been fully evaluated and any such evaluation may affect the terms and structure of any restructuring or related transactions.

THIS PLAN SUMMARY IS NOT AN OFFER OR A SOLICITATION WITH RESPECT TO ANY SECURITIES, LOANS OR OTHER INSTRUMENTS OR A SOLICITATION OF ACCEPTANCES OF A CHAPTER 11 PLAN WITHIN THE MEANING OF SECTION 1125 OF THE BANKRUPTCY CODE. ANY SUCH OFFER, ACCEPTANCE OR SOLICITATION WILL COMPLY WITH ALL APPLICABLE LAW, INCLUDING SECURITIES LAWS AND/OR PROVISIONS OF THE BANKRUPTCY CODE. NOTHING CONTAINED IN THIS PLAN SUMMARY SHALL BE AN ADMISSION OF FACT OR LIABILITY OR DEEMED BINDING ON ANY PARTIES.

PLAN OVERVIEW[1]

Plan Overview	
Debtors[2]	Rhodium Enterprises, Inc, ("**REI**") and its direct and indirect debtor subsidiaries (collectively, the "**Debtors**").
Plan	The Plan shall be a chapter 11 plan of liquidation proposed by the ad hoc group of SAFE Parties (the "**SAFE AHG**").

[1] Capitalized terms not defined herein shall have the meanings ascribed to them in the *Joint Chapter 11 Plan of Rhodium Encore LLC and its Affiliated Debtors* [Docket No 1174].

[2] Debtors in these chapter 11 cases and the last four digits of their corporate identification numbers are as follows: Rhodium Encore LLC ("**REI**") (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 ("**Rhodium Technologies**") (3973). The mailing and service address of Debtors in these chapter 11 cases is 2617 Bissonnet Street, Suite 234, Houston, TX 77005.

Treatment of Claims[3] and Interests[4]	
Administrative and Priority Tax Claims	Holders of Allowed[5] administrative claims and priority tax claims (together, the "**Administrative and Priority Tax Claims**"), shall be paid in full in cash on the Effective Date. Administrative expense claims shall include Professional Fees Claims that are Allowed by final order of the Bankruptcy Court (as defined below); *provided, however*, if a final order approving the Professional Fee Claims has not been entered on the Effective Date, then such Allowed Professional Fee Claims shall be paid as soon as reasonably practicable following entry of the applicable final order.
Rhodium 2.0 Secured Notes Claims (Class 1)	Class 1 consists of the Rhodium 2.0 Secured Notes Claims. *Treatment:* Except to the extent that a Holder of an Allowed Class 1 Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release and discharge of such Allowed Class 1 Claim, each such Holder shall receive payment in Cash in an amount equal to such Allowed Class 1 Claim on the Effective Date or as soon as reasonably practicable thereafter. For the avoidance of doubt, Class 1 Claims asserted by Insiders[6] and/or litigation targets shall not be entitled to a distribution unless litigation related to such Claim Holder has been resolved and resulted in an Allowed Claim. *Impairment*: Holders of Class 1 Claims are Unimpaired and not entitled to vote.
Rhodium Encore Secured Notes Claims (Class 2)	Class 2 consists of the Rhodium Encore Secured Notes Claims. *Treatment:* Except to the extent that a Holder of an Allowed Class 2 Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release and discharge of such Allowed Class 2 Claim, each such Holder shall receive payment in Cash in an amount equal to such Allowed Class 2 Claim on the Effective Date or as soon as reasonably practicable thereafter. For the avoidance of doubt, Class 2 Claims asserted by Insiders and/or litigation targets shall not be entitled to a distribution unless litigation related to such Claim Holder has been resolved and resulted in an Allowed Claim. *Impairment*: Holders of Class 2 Claims are Unimpaired and not entitled to vote.
Rhodium Technologies Secured Notes Claims (Class 3)[7]	Class 3 consists of the Rhodium Technologies Secured Notes Claims. *Treatment:* Except to the extent that a Holder of an Allowed Class 3 Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release and discharge of such Allowed Class 3 Claim, each such Holder shall receive payment in Cash in an amount equal to such Allowed Class 3 Claim on the Effective Date or as soon as reasonably practicable thereafter. For the avoidance of doubt, Class 3

3 "**Claim**" has the meaning set forth in section 101(5) of the Bankruptcy Code.

4 "**Interests**" means, collectively, the shares (or any class thereof), common stock, preferred stock, limited liability company interests, and any other equity, ownership, or profits interests of any Debtor.

5 "**Allowed**" means any claim that is determined to be an allowed claim in the Chapter 11 Cases in accordance with section 502 and/or section 506 of the Bankruptcy Code.

6 "**Insider**" has the meaning set forth in section 101(31) of the Bankruptcy Code.

7 The SAFE AHG is reviewing the recently filed documents related to the Debtors' purported post-petition equitization of certain Rhodium Technologies Secured Notes and reserves the right, in connection with the Plan and/or pursuant to other order of this Court, to seek to reverse such equitization.

	Claims asserted by Insiders and/or litigation targets shall not be entitled to a distribution unless litigation related to such Claim Holder has been resolved and resulted in an Allowed Claim. *Impairment*: Holders of Class 3 Claims are Unimpaired and not entitled to vote.
Priority Non-Tax Claims (Class 4)	Class 4 consists of Priority Non-Tax Claims. *Treatment*: Except to the extent that a Holder of an Allowed Class 4 Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release and discharge of such Allowed Class 4 Claim, each such Holder shall receive payment in Cash in an amount equal to such Allowed Class 4 Claim on the Effective Date or as soon as reasonably practicable thereafter. *Impairment*: Holders of Class 4 Claims are Unimpaired and not entitled to vote.
Guaranteed Unsecured Claims (Class 5a)	Class 5a consists of the Guaranteed Unsecured Claims. *Treatment:* Except to the extent that a Holder of an Allowed Class 5a Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release and discharge of such Allowed Class 5a Claim, each such Holder shall receive payment in Cash in an amount equal to such Allowed Class 5a Claim on the Effective Date, or as soon as reasonably practicable thereafter. For the avoidance of doubt, Class 5a Claims asserted by Insiders and/or litigation targets shall not be entitled to a distribution unless litigation related to such Claim Holder has been resolved and resulted in an Allowed Claim. *Impairment*: Holders of Class 5a Claims are Unimpaired and not entitled to vote.
General Unsecured Claims (Class 5b)	Class 5b consists of the General Unsecured Claims. *Treatment:* Except to the extent that a Holder of an Allowed Class 5b Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release and discharge of such Allowed Class 5b Claim, each such Holder shall receive payment in Cash in an amount equal to such Allowed Class 5b Claim on the Effective Date or as soon as reasonably practicable thereafter. For the avoidance of doubt, Class 5b Claims asserted by Insiders and/or litigation targets shall not be entitled to a distribution unless litigation related to such Claim Holder has been resolved and resulted in an Allowed Claim. *Impairment*: Holders of Class 5b Claims are Unimpaired and not entitled to vote.
SAFE Claims (Class 5c)	Class 5c consists of SAFE Claims. *Treatment*: The Plan will provide for the Allowance of Claims equal to the sum of (a) the face amount of the SAFE Agreements, which amount is approximately $86.9 million *plus* (b) interest accruing from the Petition Date through the Effective Date at the Federal Judgment Rate (the "**SAFE Plan Distribution**"). In full and final satisfaction, settlement, release and discharge of such Allowed SAFE Claims, either: 1. If all of the Equity Classes[8] and Class 9d vote to accept the Plan, then the Holders of Allowed SAFE Claims shall receive (i) the first $65 million of

[8] The "**Equity Classes**" are Classes 8, 9a, 9b, and 9c.

	Plan Distribution Funds[9] on the Effective Date or as soon as reasonably practicable thereafter (the "**Initial Plan Distribution Funds**"); and (ii) 85% of each of (a) the Plan Distribution Funds and (b) the Litigation Trust Proceeds (as defined below) until the aggregate amount of clauses (i) and (ii) is equal to the SAFE Plan Distribution; 2. If any Equity Class votes to reject the Plan and Class 9d votes to accept the Plan, then the Holders of Allowed SAFE Claims shall receive 100% of each of (i) the Plan Distribution Funds and (ii) the Litigation Trust Proceeds until the aggregate amount of clauses (i) and (ii) is equal to the SAFE Plan Distribution; 3. If Class 9d votes to reject the Plan and all of the Equity Classes vote to accept to the Plan, the Holders of Allowed SAFE Claims shall receive 100% of (i) the Plan Distribution Funds and (ii) the Litigation Trust Proceeds until the aggregate amount of clauses (i) and (ii) is equal to the SAFE Plan Distribution; or 4. If one or more of the Equity Classes and Class 9d votes to reject the Plan, the Holders of Allowed SAFE Claims shall receive 100% of (i) the Plan Distribution Funds and (ii) the Litigation Trust Proceeds until the aggregate amount of clauses (i) and (ii) is equal to the SAFE Plan Distribution. *Impairment*: Holders of SAFE Claims are Impaired and entitled to vote.
Intercompany Claims (Class 6)	Class 6 consists of Intercompany Claims. *Treatment*: In full and final satisfaction, settlement, release and discharge of such Allowed Class 6 Claims, each Holder shall receive payment in Cash in an amount equal to such Allowed Intercompany Claim on the Effective Date, or as soon as reasonably practicable thereafter.[10] *Impairment*: Holders of Class 6 Claims are Unimpaired and not entitled to vote.
Late Filed Claims (Class 7)[11]	Class 7 consists of Late Filed Claims. *Treatment*: To the extent the Court determines that Holders of Late Filed Claims are entitled to a distribution notwithstanding the Claims being filed after the applicable Bar Date, except to the extent that a Holder of an Allowed Class 7 Claim agrees to a less favorable treatment, in full and final satisfaction settlement, release and discharge of such Allowed Class 7 Claim, each such Holder shall receive payment in Cash in an amount equal to such Allowed Class 7 Claim on the later of (i) the Effective Date or as soon as reasonably practicable thereafter and (ii) a final Court determination that the Holders of Late Filed Claims are entitled to a

[9] "**Plan Distribution Funds**" shall be equal to 100% of the Debtors' Cash on the Effective Date less (i) payments required to be made pursuant to the Plan on account of Allowed Claims on the Effective Date or as soon as reasonably practicable thereafter, (ii) the Disputed Claims Reserve, (iii) the Professional Fee Escrow, (iv) the Initial Litigation Trust Funding, (v) the Substantial Contribution Claim, and (vi) the Imperium Distribution Amount (if applicable).

[10] Based on the Debtors' books and records, the Intercompany Claim owing to REI from Rhodium Technologies has been understated by at least $50 million. Prior to the Effective Date, the Debtors' Schedules shall be reflected to accurately reflect Rhodium Technologies' liabilities to REI.

[11] To the extent the Court determines that Late Filed Claims are not required to be paid in connection with Plan confirmation, this Class 7 shall be eliminated.

	distribution. *Impairment*: Holders of Class 7 Claims are Unimpaired and not entitled to vote.
Section 510(b) Claims (Class 8)[12]	Class 8 will consist of Section 510(b) Claims. *Treatment*: Except to the extent that a Holder of an Allowed Class 8 Claim agrees to a less favorable treatment, all Holders of Allowed Class 8 Claims shall receive the same treatment under the Plan as afforded to them on account of their Existing Common Interests, Warrants, and/or LTIP Interests, as applicable. *Impairment*: Holders of Class 8 Claims are Unimpaired and note entitled to vote.
Existing Common Interests (Class 9a)	Class 9a will consist of Existing Common Interests. *Treatment*: In full and final satisfaction, settlement, release and discharge of such Allowed Existing Common Interests, either: 1. If all of the Equity Classes and Class 9d vote to accept the Plan, then the Holders of Allowed Class 9a Interests shall receive their pro rata share, calculated as between the Equity Classes, (i) after the payment of the Initial Plan Distribution Funds to the Holders of Allowed SAFE Claims, 15% of each of (a) the Plan Distribution Funds and (b) the Litigation Trust Proceeds, until the Holders of the Allowed SAFE Claims have received the SAFE Plan Distribution; and thereafter, (ii) 100% of each of (a) Plan Distribution Funds and (b) the Litigation Trust Proceeds; 2. If any of the Equity Classes votes to reject the Plan and Class 9d votes to accept the Plan, then, after payment in full of the SAFE Plan Distribution from (a) the Plan Distribution Funds and (b) the Litigation Trust Proceeds, to the Holders of Allowed SAFE Claims, the Allowed SAFE Claims, the Holders of Allowed Class 9a Interests shall receive their pro rata share, calculated as between the Equity Classes, of 100% of the remaining (i) Plan Distribution Funds and (ii) Litigation Trust Proceeds; 3. If Class 9d votes to reject the Plan and all of the Equity Classes vote to accept to the Plan, then, after payment in full of the SAFE Plan Distribution from (a) the Plan Distribution Funds and (b) the Litigation Trust Proceeds, to the Allowed SAFE Claims, the Holders of Allowed Class 9a Interests shall receive their pro rata share, calculated as between the Equity Classes, of 100% of the remaining (i) Plan Distribution Funds and (ii) Litigation Trust Proceeds; or 4. If any of the Equity Classes or Class 9d votes to reject the Plan, then, after payment in full of the SAFE Plan Distribution from (a) the Plan Distribution Funds and (b) the Litigation Trust Proceeds, to the Allowed SAFE Claims, the Holders of Allowed Class 9a Interests shall receive their pro rata share, calculated as between the Equity Classes, of 100% of the remaining (i) Plan Distribution Funds and (ii) Litigation Trust Proceeds. *Impairment*: Holders of Class 9a Interests are Impaired and entitled to vote.

[12] As of the date hereof, the SAFE AHG is investigating whether any Class 8 Claims exist and the inclusion of Class 8 Claims in this Plan Summary shall not be construed as an admission that any Class 8 Claims exist.

Warrants (Class 9b)	Class 9b will consist of Warrants[13]. 1. *Treatment*: If all of the Equity Classes and Class 9d votes to accept the Plan, then the Holders of Allowed Class 9b Warrants shall receive their pro rata share, calculated as between the Equity Classes, (i) after the payment of the Initial Plan Distribution Funds to the Holders of Allowed SAFE Claims, 15% of each of (a) the Plan Distribution Funds and (b) the Litigation Trust Proceeds, until the Holders of the Allowed SAFE Claims have received the SAFE Plan Distribution; and thereafter, (ii) 100% of each of (a) Plan Distribution Funds and (b) the Litigation Trust Proceeds; 2. If any of the Equity Classes votes to reject the Plan and Class 9d votes to accept the Plan, then, after payment in full of the SAFE Plan Distribution from (a) the Plan Distribution Funds and (b) the Litigation Trust Proceeds, to the Allowed SAFE Claims, the Holders of Allowed Class 9b Warrants shall receive their pro rata share, calculated as between the Equity Classes, of 100% of the remaining (i) Plan Distribution Funds and (ii) Litigation Trust Proceeds; 3. If Class 9d votes to reject the Plan and all of the Equity Classes vote to accept to the Plan, then, after payment in full of the SAFE Plan Distribution from (a) the Plan Distribution Funds and (b) the Litigation Trust Proceeds, to the Allowed SAFE Claims, the Holders of Allowed Class 9b Warrants shall receive their pro rata share, calculated as between the Equity Classes, of 100% of the remaining (i) Plan Distribution Funds and (ii) Litigation Trust Proceeds; or 4. If any of the Equity Classes or Class 9d votes to reject the Plan, then, after payment in full of the SAFE Plan Distribution from (a) the Plan Distribution Funds and (b) the Litigation Trust Proceeds, to the Allowed SAFE Claims, the Holders of Allowed Class 9b Warrants shall receive their pro rata share, calculated as between the Equity Classes, of 100% of the remaining (i) Plan Distribution Funds and (ii) Litigation Trust Proceeds. *Impairment*: Holders of Class 9b Interests are Impaired and entitled to vote.
LTIP Interests (Class 9c)	Class 9c will consist of LTIP Interests. 1. *Treatment*: If all of the Equity Classes and Class 9d vote to accept the Plan, then the Holders of Allowed Class 9c Interests shall receive their pro rata share, calculated as between the Equity Classes, (i) after the payment of the Initial Plan Distribution Funds to the Holders of Allowed SAFE Claims, 15% of each of (a) the Plan Distribution Funds and (b) the Litigation Trust Proceeds, until the Holders of the Allowed SAFE Claims have received an aggregate distribution equal to the SAFE Plan Distribution; and thereafter, (ii) 100% of each of (a) Plan Distribution Funds and (b) the Litigation Trust Proceeds; 2. If any of the Equity Classes votes to reject the Plan and Class 9d votes to accept the Plan, then, after payment in full of the SAFE Plan Distribution

[13] "**Warrants**" means all equity warrants issued by the Debtors exercisable for shares of Class A common stock in REI, including, for the avoidance of doubt, the Fairbairn Warrants and the Penny Warrants (each as defined in Exhibit A to the *Joint Chapter 11 Plan of Rhodium Encore LLC and Its Affiliated Debtors* [Docket No. 1174]).

	from (a) the Plan Distribution Funds and (b) the Litigation Trust Proceeds, to the Allowed SAFE Claims, the Holders of Allowed Class 9c Interests shall receive their pro rata share, calculated as between the Equity Classes, of 100% of the remaining (i) Plan Distribution Funds and (ii) Litigation Trust Proceeds; 3. If Class 9d votes to reject the Plan and all of the Equity Classes vote to accept to the Plan, then, after payment in full of the SAFE Plan Distribution from (a) the Plan Distribution Funds and (b) the Litigation Trust Proceeds, to the Allowed SAFE Claims, the Holders of Allowed Class 9c Interests shall receive their pro rata share, calculated as between the Equity Classes, of 100% of the remaining (i) Plan Distribution Funds and (ii) Litigation Trust Proceeds; or 4. If any of the Equity Classes or Class 9d votes to reject the Plan, then, after payment in full of the SAFE Plan Distribution from (a) the Plan Distribution Funds and (b) the Litigation Trust Proceeds, to the Allowed SAFE Claims, the Holders of Allowed Class 9c Interests shall receive their pro rata share, calculated as between the Equity Classes, of 100% of the remaining (i) Plan Distribution Funds and (ii) Litigation Trust Proceeds. *Impairment*: Holders of Class 9c Interests are Impaired and entitled to vote.
Imperium Interests (Class 9d)	Class 9d will consist of Imperium Interests. *Treatment*: Holders of the Imperium Interests shall receive, in full satisfaction, settlement, release and discharge of such Allowed Class 9d Interests, and notwithstanding arguments in favor of equitably subordinating such interests in full, a percentage of the Cash available for distribution at Rhodium Technologies equal to Imperium's ownership share of Rhodium Technologies (to be adjusted for the unwinding of the Rollup); *provided, however*, that in all cases, the aggregate amount of the distributions on account of all Imperium Interests shall not exceed [$2] million (the "**Imperium Distribution Amount**"). If the Class 9d Interests vote to accept the Plan, then the Imperium Distribution Amount shall be paid to the Holders of Imperium Interests on the Effective Date. If the Class 9d Interests vote to reject the Plan, then the Imperium Distribution Amount shall be held in the Disputed Interest Reserve pending the resolution of claims to be brought by the Litigation Trust against Imperium and its principals. For the avoidance of doubt, Class 9d Interests asserted by Imperium shall not be entitled to a distribution unless litigation related to such Interest Holder has been resolved and resulted in one or more Allowed Interests. *Impairment*: Holders of Class 9d Interests are Impaired and entitled to vote.
Intercompany Interests (Class 10)	Class 10 will consist of Intercompany Interests *Treatment*: Except as necessary to effectuate the provisions of the Plan, the Debtors shall cease to exist after the Effective Date and Holders of Intercompany Interests shall not be entitled to any distributions.

Plan Implementation and Other Terms	
Plan Implementation	The Plan shall provide for the enforcement of the Contribution Agreements[14] by and between REI and Rhodium Technologies. The Plan will reserve for any Disputed Claims in Classes 1, 2, 3, 4, 5a and 5b (collectively, the "**Disputed Claims Reserve**") and for any Disputed Interests in Classes 9a, 9b, 9c and 9d (collectively, the **Disputed Interest Reserve**"). Not less than ten Business Days prior to the deadline to vote to accept or reject the Plan, the SAFE AHG shall file the Plan Supplement identifying whether an individual will be appointed on behalf of the Debtors' estates to (i) serve as the Distribution Agent, (ii) object to claims, (iii) file tax returns and (iv) otherwise provide estate winddown services and/or if this role will be filled by the Litigation Trust. To the extent the role will not be filled by the Litigation Trust, then the costs and expenses of such role shall be subject to a budget and paid by the Litigation Trust. The Plan shall otherwise provide for usual and customary mechanisms for the implementation of the Plan and its terms and conditions.
Substantial Contribution Claim	In recognition of the substantial contribution made by the SAFE AHG in connection with the Plan and the Chapter 11 Cases, the Plan shall provide for the payment of the reasonable and documented fees and expenses incurred by counsel to the SAFE AHG in connection with the Debtors chapter 11 process, including, negotiating and documenting the Plan and related documentation in an amount not to exceed $[●] million (the "**Substantial Contribution Claim**").
Litigation Trust	The Plan shall provide for a litigation trust (the "**Litigation Trust**") that will be vested with all non-Cash assets of the Debtors as of the Effective Date (the "**Litigation Trust Assets**"). Any and all proceeds of the Litigation Trust Assets, whether in existence on the Effective Date or thereafter, (the "**Litigation Trust Proceeds**") shall be distribute in accordance with the terms of the Plan, *provided, however*, 15% of first $30 million of Litigation Trust Proceeds may be retained by the Trust Administrator, in consultation with the Advisory Board (each as defined here) for purposes of funding the Litigation Trust. The Litigation Trust will be initially funded with $7 million on the Effective Date plus an amount to fund winddown expenses (the "**Initial Litigation Trust Funding**"). The Trust Administrator (as defined below), in consultation with the Advisory Board, may seek additional outside sources of litigation funding on market terms for similar litigation matters with any such litigation funding to be repaid from proceeds of litigation. The activities of the Litigation Trust shall be directed by a trust administrator (the "**Trust Administrator**"). The Trust Administrator shall be selected by vote of Holders of SAFE Claims whose votes shall be calculated based on the face

[14] The "**Contribution Agreements**" are (i) that certain contribution agreement entered into by and between REI and Rhodium Technologies, dated June 30, 2021 and all amendments thereto, including that certain amendment to the June 2021 contribution agreement entered into by and between REI and Rhodium Technologies, dated December 1, 2021, and (ii) that certain contribution agreement entered into by and between REI and Rhodium Technologies, dated December 1, 2021.

	amount of their SAFE Claims ("**Trust Administrator Selection Procedures**"). The Litigation Trust shall have an advisory board of three members (the "**Advisory Board**"), two of whom will be selected by the SAFE Parties and one of whom will be selected by the Holders of Claims in the Equity Classes. The Trust Administrator will consult with the Advisory Board, as appropriate, as determined in the Trust Administrator's sole discretion. The Trust Administrator shall select professionals to assist the Litigation Trust and shall approve all fee arrangements, each in consultation with the Advisory Board. On the Effective Date, all attorney-client privileges, work product protections, joint client privilege, mediation privilege, common interest or joint defense privilege or protection and all other privileges, immunities or protections from disclosure (the "**Privileges**") held by any of (i) the Debtors or (ii) the pre-petition or post-petition committee or subcommittee of the board of directors or equivalent governing body of any of the Debtors and their predecessors (together the "**Privilege Transfer Parties**") related in any way to the Litigation Trust Assets or the analysis or prosecution of any Litigation Trust Assets (the "**Transferred Privileged Information**") shall be transferred and assigned to, and vested in, the Litigation Trust and its authorized representatives. The Transferred Privileged Information shall include documents and information of all manner, whether oral, written or digital, and whether or not previously disclosed or discussed. For the avoidance of doubt, the Privileges shall include any right or obligation to preserve or enforce or waive a privilege that arises from any joint defense, common interest or similar agreement involving any of the Privilege Transfer Parties. For the avoidance of doubt, no Insider will be entitled to distributions form the Litigation Trust.
Executory Contracts and Unexpired Leases	The Plan will provide that the executory contracts and the unexpired leases that are not assumed as of the Effective Date (either pursuant to the Plan or a separate motion) will be deemed rejected pursuant to section 365 of the Bankruptcy Code.
Releases, Injunctions and Exculpation	The Plan shall include standard release, injunction, and exculpation provisions; *provided, however*, for the avoidance of doubt, the Plan will not provide for a release for (i) any person who serves, or has served, at any time, as a director or officer of any of the Debtors or their subsidiaries, in their capacity as such, who is currently or has ever been an Insider of any of the Debtors or any of their subsidiaries, (ii) counsel to the Debtors and the Special Committee, or (iii) any entity affiliated in any manner with the parties identified in clauses (i) and (ii), including to the extent they are a Related Party.
Other Customary Plan Provisions	The Plan shall provide for other standard and customary provisions, including in respect of the cancellation of existing claims and interests, the vesting of assets, the compromise and settlement of claims, the retention of jurisdiction by the bankruptcy court and the resolution of disputed claims.
Tax Matters	The SAFE AHG and the Debtors shall cooperate in good faith (and/or cause their Affiliates to cooperate in good faith) to ensure the Plan is implemented in a tax efficient manner.

Definitive Documents	This Plan Summary does not include a description of all of the terms, conditions and other provisions that will be contained in the definitive documentation (the "**Definitive Documents**"). The documents implementing the Plan shall be consistent in all material respects with this Plan Summary, unless otherwise agreed to by the SAFE AHG.
Conditions Precedent to Consummation of the Plan	The Plan shall contain customary conditions to effectiveness, which shall be acceptable to the SAFE AHG in all respects.

EXHIBIT B

THIS INSTRUMENT AND ANY SECURITIES ISSUABLE PURSUANT HERETO HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**"), OR UNDER THE SECURITIES LAWS OF CERTAIN STATES. THESE SECURITIES MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED EXCEPT AS PERMITTED IN THIS SAFE AND UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT OR AN EXEMPTION THEREFROM.

RHODIUM ENTERPRISES, INC.

SAFE
(Simple Agreement for Future Equity)

THIS CERTIFIES THAT in exchange for the payment by Infinite Mining LLC, a Montana limited liability company (the "**Investor**") of **ONE MILLION FOUR HUNDRED FIFTY THOUSAND and 00/100's DOLLARS ($1,450,000.00)** (the "**Purchase Amount**") on 09 / 07 / 2021 **, 2021**, Rhodium Enterprises, Inc., a Delaware corporation (the "**Company**"), hereby issues to the Investor the right to certain shares of the Company's Capital Stock, subject to the terms set forth below.

The "**Valuation Cap**" is $3,000,000,000.

The "**Discount Rate**" is 85%.

See **Section 2** for certain additional defined terms.

1. ***Events***

(a) **Equity Financing or Listing Event**. If there is an Equity Financing or a Listing Event before the termination of this Simple Agreement for Future Equity ("**this SAFE**"), on the initial closing of such Equity Financing or, in the case of a Listing Event, immediately prior to the consummation of such Listing Event, the Company will automatically issue to the Investor either (i) in the case of an Equity Financing, the number of shares of stock issued in the Equity Financing equal to the Purchase Amount divided by the applicable Conversion Price or (ii) in the case of a Listing Event, the number of shares of Common Stock of the Company equal to the Purchase Amount divided by the applicable Conversion Price (such shares issued upon conversion in the case of clause (i) or clause (ii), the "**Conversion Shares**").

In connection with the issuance of Conversion Shares, the Investor will execute and deliver to the Company all of the transaction documents related to the Equity Financing or Listing Event; provided, that such documents (i) are the same documents to be entered into with the purchasers of stock issued in the Equity Financing or other holders of Common Stock in the case of a Listing Event, with appropriate variations for the Conversion Shares if applicable, and (ii) have customary exceptions to any drag-along applicable to the Investor, including (without limitation) limited representations, warranties, liability and indemnification obligations for the Investor.

(b) **Liquidity Event**. If there is a Liquidity Event before the termination of this SAFE, the Investor will automatically be entitled (subject to the liquidation priority set forth in Section 1(d) below) to receive a portion of Proceeds due and payable to the Investor immediately prior to, or concurrent with, the consummation of such Liquidity Event, equal to the greater of (i) the Purchase Amount (the "**Cash-Out Amount**") or (ii) the amount payable on the number of shares of Common Stock equal to the Purchase Amount divided by the Liquidity Price (the "**Conversion Amount**"). If any of the Company's securityholders are given a choice as to the form and amount of Proceeds to be received in a Liquidity Event, the Investor will be given the same choice, *provided* that the Investor may not choose to receive a form of consideration that the Investor would be ineligible to receive as a result of the Investor's failure to satisfy any requirement or limitation generally applicable to the Company's securityholders, or under any applicable laws.

Notwithstanding the foregoing, in connection with a Change of Control intended to qualify as a tax-free reorganization, the Company may reduce the cash portion of Proceeds payable to the Investor by the amount determined by its board of directors in good faith for such Change of Control to qualify as a tax-free reorganization for U.S. federal income tax purposes, provided that such reduction (A) does not reduce the total Proceeds payable to such Investor and (B) is applied in the same manner and on a pro rata basis to all securityholders who have equal priority to the Investor under Section 1(d).

(c) **Dissolution Event**. If there is a Dissolution Event before the termination of this SAFE, the Investor will automatically be entitled (subject to the liquidation priority set forth in Section 1(d) below) to receive a portion of Proceeds equal to the Cash-Out Amount, due and payable to the Investor immediately prior to the consummation of the Dissolution Event.

(d) **Liquidation Priority**. In a Liquidity Event or Dissolution Event, this SAFE is intended to operate like standard Common Stock. The Investor's right to receive its Cash-Out Amount is:

(i) Junior to payment of outstanding indebtedness and creditor claims, including contractual claims for payment and convertible promissory notes (to the extent such convertible promissory notes are not actually or notionally converted into Capital Stock); and

(ii) On par with payments for other SAFEs, and if the applicable Proceeds are insufficient to permit full payments to the Investor and such other SAFEs, the applicable Proceeds will be distributed pro rata to the Investor and such other SAFEs in proportion to the full payments that would otherwise be due.

The Investor's right to receive its Conversion Amount is (A) on par with payments for Common Stock and other SAFEs who are also receiving Conversion Amounts or Proceeds on a similar as-converted to Common Stock basis, and (B) junior to payments described in clauses (i) and (ii) above (in the latter case, to the extent such payments are Cash-Out Amounts or similar liquidation preferences).

(e) **Termination**. This SAFE will automatically terminate (without relieving the Company of any obligations arising from a prior breach of or non-compliance with this SAFE) immediately following the earliest to occur of: (i) the issuance of Capital Stock to the Investor pursuant to Section 1(a); or (ii) the payment, or setting aside for payment, of amounts due to the Investor pursuant to Section 1(b) or Section 1(c).

2. ***Definitions***

"**Capital Stock**" means the capital stock of the Company, including, without limitation, the Common Stock.

"**Change of Control**" means (i) a transaction or series of related transactions in which any "person" or "group" (within the meaning of Section 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended), becomes the "beneficial owner" (as defined in Rule 13d-3 under the Securities Exchange Act of 1934, as amended), directly or indirectly, of more than 50% of the outstanding voting securities of the Company having the right to vote for the election of members of the Company's board of directors, (ii) any reorganization, merger or consolidation of the Company, other than a transaction or series of related transactions in which the holders of the voting securities of the Company outstanding immediately prior to such transaction or series of related transactions retain, immediately after such transaction or series of related transactions, at least a majority of the total voting power represented by the outstanding voting securities of the Company or such other surviving or resulting entity or (iii) a sale, lease or other disposition of all or substantially all of the assets of the Company.

"**Common Stock**" means the Class A Common Stock of the Company, par value $0.0001 per share.

"**Company Capitalization**" is an amount of shares, calculated immediately prior to the Equity Financing or Listing Event, as applicable, and without double-counting, in each case calculated on an as-converted to Common Stock basis equal to the sum of:

- all shares of Capital Stock issued and outstanding;
- all Converting Securities;
- all (i) issued and outstanding Options and (ii) Promised Options; and
- the Unissued Option Pool, except that any increase to the Unissued Option Pool in connection with the Equity Financing or Listing Event, as applicable, shall only be included to the extent that the number of Promised Options exceeds the Unissued Option Pool prior to such increase.

"**Conversion Price**" means the either: (1) the SAFE Price or (2) the Discount Price, whichever calculation results in a greater number of Conversion Shares.

"**Converting Securities**" includes this SAFE and other convertible or exchangeable securities issued by the Company, including but not limited to: (i) other SAFEs; (ii) convertible promissory notes and other convertible debt instruments; (iii) Class B Common Stock of the Company, $0.0001 par value per share and (iv) convertible securities that have the right to convert into shares of Capital Stock.

"**Direct Listing**" means the Company's initial listing of its Common Stock (other than shares of Common Stock not eligible for resale under Rule 144 under the Securities Act) on a national securities exchange by means of an effective registration statement on Form S-1 filed by the Company with the SEC that registers shares of existing capital stock of the Company for resale, as approved by the Company's board of directors. For the avoidance of doubt, a Direct Listing shall not be deemed to be an underwritten offering and shall not involve any underwriting services.

"**Discount Price**" means the price per share of the Capital Stock sold in the Equity Financing or upon the closing of the Listing Event, as applicable, multiplied by the Discount Rate.

"**Dissolution Event**" means (i) a voluntary termination of operations, (ii) a general assignment for the benefit of the Company's creditors or (iii) any other liquidation, dissolution or winding up of the Company (**excluding** a Liquidity Event), whether voluntary or involuntary.

"**Dividend Amount**" means, with respect to any date on which the Company pays a dividend on its outstanding Common Stock, the amount of such dividend that is paid per share of Common Stock multiplied by (x) the Purchase Amount divided by (y) the Liquidity Price (treating the dividend date as a Liquidity Event solely for purposes of calculating such Liquidity Price).

"**Equity Financing**" means a bona fide transaction or series of transactions with the principal purpose of raising capital, pursuant to which the Company issues and sells Capital Stock at a fixed valuation, including but not limited to, a pre-money or post-money valuation, and includes the conversion of any warrants, options or Simple Agreement for Future Equity agreements (other than this SAFE and any other Simple Agreement for Future Equity agreements between Investor and the Company), all at the conversion amounts set forth in those instruments; provided, however, that at Investor's election, "Equity Financing" shall not include any transaction or series of transactions resulting in aggregate capital proceeds of less than $20,000,000 where the aggregate implied value of all outstanding Capital Stock at the closing of such transaction(s) exceeds the Valuation Cap.

"**Initial Public Offering**" means the closing of the Company's first firm commitment underwritten public offering of Common Stock pursuant to a registration statement filed under the Securities Act.

"**Liquidity Capitalization**" is calculated as of immediately prior to the Liquidity Event, and (without double-counting, in each case calculated on an as-converted to Common Stock basis):

- Includes all shares of Capital Stock issued and outstanding;
- Includes all (i) issued and outstanding Options and (ii) to the extent receiving Proceeds, Promised Options;
- Includes all Converting Securities, **other than** any SAFEs and other convertible securities where the holders of such securities are receiving Cash-Out Amounts or similar liquidation preference payments in lieu of Conversion Amounts or similar "as-converted" payments; and
- Excludes the Unissued Option Pool.

"**Liquidity Event**" means a Change of Control other than a Listing Event.

"**Liquidity Price**" means the price per share equal to the Valuation Cap divided by the Liquidity Capitalization.

"**Listing Event**" means either (i) an Initial Public Offering, (ii) a SPAC Event, or (iii) a Direct Listing.

"**Options**" includes options, restricted stock awards or purchases, RSUs, SARs, warrants or similar securities, vested or unvested.

"**Proceeds**" means cash and other assets (including without limitation stock consideration) that are proceeds from the Liquidity Event or the Dissolution Event, as applicable, and legally available for distribution.

"**Promised Options**" means promised but ungranted Options that are the greater of those (i) promised pursuant to agreements or understandings made prior to the execution of, or in connection with, the term sheet or letter of intent for the Equity Financing or Liquidity Event, as applicable (or the initial closing of the Equity Financing or consummation of the Liquidity Event, if there is no term sheet or letter of intent), (ii) in the case of an Equity Financing, treated as outstanding Options in the calculation of the Capital Stock's price per share, or (iii) in the case of a Liquidity Event, treated as outstanding Options in the calculation of the distribution of the Proceeds.

"**SAFE**" means an instrument containing a future right to shares of Capital Stock, similar in form and content to this instrument, purchased by investors for the purpose of funding the Company's business operations. References to "this SAFE" mean this specific instrument.

"**SAFE Price**" means the price per share equal to the Valuation Cap divided by the Company Capitalization (as adjusted for any stock splits, stock dividends, reorganizations, recapitalizations and the like effected in connection with a Listing Event).

"**SPAC Event**" means the direct or indirect acquisition of the Company by a special purpose acquisition company (a "**SPAC**") that (x) results in the capital stock of the Company being listed on a U.S. securities exchange and (y) constitutes such SPAC's "initial business combination" (as such term is used in such SPAC's constituent documents).

"**Subsequent Convertible Securities**" means convertible securities that the Company may issue after the issuance of this instrument with the principal purpose of raising capital, including but not limited to, other SAFEs, convertible debt instruments and other convertible securities.

"**Unissued Option Pool**" means all shares of Capital Stock that are reserved, available for future grant and not subject to any outstanding Options or Promised Options (but in the case of a Liquidity Event, only to the extent Proceeds are payable on such Promised Options) under any equity incentive or similar Company plan.

3. ***Company Representations***

(a) The Company is a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation, and has the power and authority to own, lease and operate its properties and carry on its business as now conducted. As of the date hereof, the Company has no preferred stock authorized or issued and outstanding.

(b) The execution, delivery and performance by the Company of this SAFE is within the power of the Company and, other than with respect to the actions to be taken when equity is issued to the Investor, has been duly authorized by all necessary actions on the part of the Company (subject to section 4(d)). This SAFE constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights generally and general principles of equity. To its knowledge, the Company is not in violation of (i) its current certificate of incorporation or bylaws, (ii) any material statute, rule or regulation applicable to the Company or (iii) any material debt or contract to which the Company is a party or by which it is bound, where, in each case, such violation or default, individually, or together with all such violations or defaults, could reasonably be expected to have a material adverse effect on the Company.

(c) The performance and consummation of the transactions contemplated by this SAFE do not and will not: (i) violate any material judgment, statute, rule or regulation applicable to the Company; (ii) result in the acceleration of any material debt or contract to which the Company is a party or by which it is bound; or (iii) result in the creation or imposition of any lien on any property, asset or revenue of the Company or the suspension, forfeiture, or nonrenewal of any material permit, license or authorization applicable to the Company, its business or operations.

(d) No consents or approvals are required in connection with the performance of this SAFE, other than: (i) the Company's corporate approvals; (ii) any qualifications or filings under applicable securities laws; and (iii) necessary corporate approvals for the authorization of Capital Stock issuable pursuant to Section 1.

(e) To its knowledge, the Company owns or possesses (or can obtain on commercially reasonable terms) sufficient legal rights to all patents, trademarks, service marks, trade names, copyrights, trade secrets, licenses, information, processes and other intellectual property rights necessary for its business as now conducted and as currently proposed to be conducted, without any conflict with, or infringement of the rights of, others.

4. ***Investor Representations***

(a) The Investor has full legal capacity, power and authority to execute and deliver this SAFE and to perform its obligations hereunder. This SAFE constitutes valid and binding obligation of the Investor, enforceable in accordance with its terms, except as limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights generally and general principles of equity.

(b) The Investor is an accredited investor as such term is defined in Rule 501 of Regulation D under the Securities Act, and acknowledges and agrees that if not an accredited investor at the time of an Equity Financing, the Company may void this SAFE and return the Purchase Amount. The Investor has been advised that this SAFE and the underlying securities have not been registered under the Securities Act, or any state securities laws and, therefore, cannot be resold unless they are registered under the Securities Act and applicable state securities laws or unless an exemption from such registration requirements is available. The Investor is purchasing this SAFE and the securities to be acquired by the Investor hereunder for its own account for investment, not as a nominee or agent, and not with a view to, or for resale in connection with, the distribution thereof, and the Investor has no present intention of selling, granting any participation in, or otherwise distributing the same. The Investor has such knowledge and experience in financial and business matters that the Investor is capable of evaluating the merits and risks of such investment, is able to incur a complete loss of such investment without impairing the Investor's financial condition and is able to bear the economic risk of such investment for an indefinite period of time.

5. ***Miscellaneous***

(a) Any provision of this SAFE may be amended, waived or modified by written consent of the Company and either (i) the Investor or (ii) the majority-in-interest of all then-outstanding SAFEs with the same "Valuation Cap" and "Discount Rate" as this SAFE (and SAFEs lacking one or both of such terms will be considered to be the same with respect to such term(s)), *provided that* with respect to clause (ii): (A) the Purchase Amount may not be amended, waived or modified in this manner, (B) the consent of the Investor and each holder of such SAFEs must be solicited (even if not obtained), and (C) such amendment, waiver or modification treats all such holders in the same manner. "**Majority-in-interest**" refers to the holders of the applicable group of SAFEs whose SAFEs have a total Purchase Amount greater than 50% of the total Purchase Amount of all of such applicable group of SAFEs.

(b) Any notice required or permitted by this SAFE will be deemed sufficient when delivered personally or by overnight courier or sent by email to the relevant address listed on the signature page, or 48 hours after being deposited in the U.S. mail as certified or registered mail with postage prepaid, addressed to the party to be notified at such party's address listed on the signature page, as subsequently modified by written notice.

(c) The Investor is not entitled, as a holder of this SAFE, to vote or be deemed a holder of Capital Stock for any purpose other than tax purposes, nor will anything in this SAFE be construed to confer on the Investor, as such, any rights of a Company stockholder or rights to vote for the election of directors or on any matter submitted to Company stockholders, or to give or withhold consent to any corporate action or to receive notice of meetings, until shares have been issued on the terms described in Section 1. However, if the Company pays a dividend on outstanding shares of Common Stock (that is not payable in shares of Common Stock) while this SAFE is outstanding, the Company will pay the Dividend Amount to the Investor at the same time.

(d) In the event of an Initial Public Offering, if required by the underwriters, the Investor will enter into a lock-up agreement in respect of the Conversion Shares, on terms no less favorable than those agreed to by the Company's

executive officers and directors. The Investor appoints the Company as its agent and attorney to execute, on the Investor's behalf, any such lock-up agreement.

(e) Neither this SAFE nor the rights in this SAFE are transferable or assignable, by operation of law or otherwise, by either party without the prior written consent of the other; *provided, however*, that this SAFE and/or its rights may be assigned without the Company's consent by the Investor (i) to the Investor's estate, heirs, executors, administrators, guardians and/or successors in the event of Investor's death or disability, or (ii) to any other entity who directly or indirectly, controls, is controlled by or is under common control with the Investor, including, without limitation, any general partner, managing member, officer or director of the Investor, or any venture capital fund now or hereafter existing which is controlled by one or more general partners or managing members of, or shares the same management company with, the Investor; and *provided, further*, that the Company may assign this SAFE in whole, without the consent of the Investor, in connection with a reincorporation to change the Company's domicile.

(f) In the event any one or more of the provisions of this SAFE is for any reason held to be invalid, illegal or unenforceable, in whole or in part or in any respect, or in the event that any one or more of the provisions of this SAFE operate or would prospectively operate to invalidate this SAFE, then and in any such event, such provision(s) only will be deemed null and void and will not affect any other provision of this SAFE and the remaining provisions of this SAFE will remain operative and in full force and effect and will not be affected, prejudiced, or disturbed thereby.

(g) All rights and obligations hereunder will be governed by the laws of the State of the State of Delaware, without regard to the conflicts of law provisions of such jurisdiction. Any legal proceeding or action arising out of or relating to this SAFE or the transactions contemplated hereby shall be brought in the chancery or federal courts in the State of Delaware, and the parties hereto shall submit to the exclusive jurisdiction of each such court in any such proceeding or action. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY HEREBY IRREVOCABLY WAIVES ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING OR CLAIM, ARISING OUT OF OR IN CONNECTION WITH THIS SAFE OR ANY MATTER ARISING HEREUNDER.

(h) The parties acknowledge and agree that for United States federal and state income tax purposes this SAFE is, and at all times has been, intended to be characterized as stock, and more particularly as common stock for purposes of Sections 304, 305, 306, 354, 368, 1036 and 1202 of the Internal Revenue Code of 1986, as amended. Accordingly, the parties agree to treat this SAFE consistent with the foregoing intent for all United States federal and state income tax purposes (including, without limitation, on their respective tax returns or other informational statements).

(i) This SAFE may be executed and delivered in two or more separate counterparts (including any such counterpart executed or delivered via electronic submission), any one of which need not contain the signatures of more than one party, but each of which will be an original and all of which together shall constitute one and the same agreement binding on the parties hereto.

(*Signature page follows*)

IN WITNESS WHEREOF, the undersigned have caused this SAFE to be duly executed and delivered.

RHODIUM ENTERPRISES, INC.

By: Cameron Blackmon

Cameron Blackmon
Co-President

Address:

4146 W US Highway 79
Rockdale, TX 76567-5278

Email: Cameronblackmon@rhodiummining.io

INVESTOR:

INFINITE MINING LLC

Richard Camara

Name: Richard Camara

Title: Infinite Mining, LLC Manager

Address: 321 Hodge Creek Rd.

Kila, MT 59920

Email: richardcamara@me.com

HELLOSIGN

Audit Trail

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EXHIBIT E

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Pennzoil Place, 711 Louisiana Street, Suite 500, Houston, Texas 77002-2721 | TEL (713) 221-7000 FAX (713) 221-7100

WRITER'S DIRECT DIAL NO.
(713) 221-7227

WRITER'S EMAIL ADDRESS
pattytomasco@quinnemanuel.com

September 25, 2022

Ha Nguyen, Esq.
C. Ross Travis, Esq.
Office of the United States Trustee
515 Rusk Street, Suite 3516
Houston, Texas 77002

VIA ELECTRONIC MAIL

Re: *In re Rhodium Encore LLC, et al*., Case No. 24-90448 (ARP) (jointly administered) – Opposition to the Appointment of Official Committee of SAFE Holders

Dear Mr. Nguyen, Mr. Travis:

We represent Rhodium Encore LLC and its affiliated Debtors ("Rhodium," or "Debtors"). This responds to the letter sent on September 19, 2024 to the U.S. Trustee's office by Mitchell P. Hurley of Akin Gump Strauss Hauer & Feld LLP on behalf of Blockchain Recovery Investment Consortium ("BRIC") in its capacity as the Complex Asset Recovery Manager for Celsius Network LLC and affiliated post-Effective Date Debtors (collectively, "Celsius").

Mr. Hurley requested the appointment of an official committee to represent the interests of holders of Simple Agreements for Future Equity ("SAFEs") with Debtor Rhodium Enterprises, Inc. ("REI"). The Debtors oppose the appointment of what would be effectively a committee representing the interest of holders of an option for equity of REI, and specifically non-voting common stock, upon the occurrence of certain events. Such triggering events did not occur as of the Petition Date. Presently, the holders of SAFEs (the "SAFE Holders") hold neither claims nor interests in the Debtors, and as such they do not qualify for an official committee under section 1102 of the Bankruptcy Code.

Because the committee the SAFE Holders propose could not function as either a creditors' committee or an equity committee under section 1102(b), the office of the U.S. Trustee should not appoint an official committee of SAFE Holders.

SAFEs are Not Debt and Not Equity; They Are at Most Contingent Equity

As one court explained, "SAFE Notes are a type of security which allow investors to contribute capital to a business entity that will convert into equity upon the occurrence of a future 'conversion' event specified in the SAFE Note. SAFE Notes are classified as securities by the United States Securities and Exchange Commission ('the SEC')." *LifeVoxel Virginia SPV, LLC v. LifeVoxel.AI, Inc*., 622 F. Supp. 3d 935, 941 n.1 (S.D. Cal. 2022) (internal references omitted).

Under the Bankruptcy Code, SAFEs are not equity. Section 101(16) defines "equity security" as "(A) share in a corporation, whether or not transferable or denominated 'stock', or similar security; (B) interest of a limited partner in a limited partnership; or (C) warrant or right, ***other than a right to convert***, to purchase, sell, or subscribe ***to a share***, security, or interest of a kind specified in subparagraph (A) or (B) of this paragraph." (emphasis added). In other words, warrants, options and contingent rights to convert to stock are not equity under the Bankruptcy Code.

Here, the SAFE in question itself provides that it should be treated on par with common stock and as junior to all debt.

The SAFE is automatically convertible into non-voting Class A Common Stock of REI, with par value of $0.0001 per share (or payable in cash in the case of a change of control where cash is the consideration) upon the occurrence of any one of the following triggering events: (i) an Equity Financing (an equity raise), (ii) a Listing Event (an IPO), or (iii) a Liquidity Event (a change of control other than an IPO). Notably, the filing of a chapter 11 is not a triggering event under the SAFE.

Upon an Equity Financing or a Listing Event, the Investor will receive a number of non-voting Class A Common Stock of REI calculated according to a formula linked to the purchase amount and company capitalization, subject to a discount and valuation cap. It is an automatic conversion subject to the execution of applicable documents.

If there is a Liquidity Event (a change of control other than an IPO) where there are cash proceeds, the Investor will receive cash, after payment of the creditors, subject to a formula linked to the purchase amount and company capitalization.

If there is a Dissolution Event (winding up of operations), the Investor will be entitled, after payment of creditors, to the purchase amount.

In other words, if the event triggering conversion of the SAFE results in the issuance of shares, the SAFE Holders will receive non-voting Class A Common Stock of REI. If the event triggering termination of the SAFE results in a cash payment, the SAFE Holders will be entitled to cash *after all other creditors are paid*. If no triggering event occurs, the SAFE Holders will not be entitled to either. Importantly, the filing for chapter 11 relief or insolvency are not triggering events under the SAFE—only a liquidation or equity raise would trigger the SAFE and only under specific conditions.

The SAFE provides that in a Liquidity Event or Dissolution Event, the "SAFE is intended to operate like standard Common Stock," subordinating any cash-out payments "to payment of outstanding indebtedness and creditor claims, including contractual claims for payment and convertible promissory notes" and "[o]n par with payments for other Safes, and if the applicable Proceeds are insufficient to permit full payments to the Investor and such other Safes, the applicable Proceeds will be distributed pro rata." Furthermore, "[t]he Investor's right to receive its Conversion Amount is (A) on par with payments for Common Stock and other Safes who are also receiving Conversion Amounts or Proceeds on a similar as-converted to Common Stock basis, and (B) junior to payments" of (i) "outstanding indebtedness and creditor claims, including contractual claims for payment and convertible promissory notes" and (ii) payments of other SAFEs, including those paid pro-rata (to the extent such payments are Cash-Out Amounts or similar liquidation preferences).

Importantly, SAFE Holders are not entitled "to vote or be deemed a holder of Capital Stock for any purpose other than tax purposes, nor will anything in this Safe be construed to confer on the Investor, as such, any rights of a Company stockholder or rights to vote for the election of directors or on any matter submitted to Company stockholders, or to give or withhold consent to any corporate action or to receive notice of meetings, until shares have been issued on the terms described" in the SAFE. However, "if the Company pays a dividend on outstanding shares of Common Stock (that is not payable in shares of Common Stock) while this Safe is outstanding, the Company will pay the Dividend Amount to the Investor at the same time."

The SAFEs are therefore not presently debt or equity: they are an option to obtain equity, and they provide for a cash payment only in the event of a wind down of REI or a change of control that results in a cash payment, in which event the SAFEs will be treated like non-voting common stock.

Importantly, as of the Petition Date, none of the triggering events under the SAFEs occurred. At most, therefore, the SAFEs should be treated as contingent equity securities.

Any Potential Claims of SAFE Holders Will be Subordinated to Other Claims

Pursuant to section 510(b) of the Bankruptcy Code, any claim related to the purchase or sale of a security of a debtor is "subordinated to all claims or interests that are senior to or equal the claim or interest represented by such security, except that if such security is common stock, such claim has the same priority as common stock." 11 U.S.C. § 510(b). *See also In re SeaQuest Diving, LP*, 579 F.3d 411, 418 (5th Cir. 2009) (citing *In re Geneva Steel Co.*, 281 F.3d 1173, 1177 (10th Cir. 2002)). Any potential claims related to the SAFEs would therefore in any case be subordinated to other claims.

Any Investigations by SAFE Holders Would be Duplicative and Present a Conflict of Interest

The SAFE Holders attempt to justify the appointment of their official committee with an offer to conduct an investigation into recent transactions and transactions with insiders. But the Special Committee of Independent Directors of REI, represented by an independent counsel paid for by the estate, is currently investigating transactions with insiders and, notably, transactions with Celsius at the urging of certain creditors. There is no reason to duplicate such investigations,

especially at the hourly rates of Akin Gump. Additionally, the investigation of the Celsius transactions at the request of creditors disqualifies Celsius from serving on a statutory committee tasked with conducting investigations into transactions.

Factors for Appointing an Official Committee Weigh Against a SAFE Committee

As a gating issue, section 1102(a) of the Bankruptcy Code provides that the U.S. Trustee "may appoint additional committees of creditors or of equity security holders as the United States trustee deems appropriate," comprising under section 1102(b)(1) "seven largest claims against the debtor of the kinds represented on such committee" or under section 1102(b)(2) "seven largest amounts of equity securities of the debtor of the kinds represented on such committee." Because the committee the SAFE Holders propose could not function as either a creditors' committee or an equity committee under section 1102(b), the office of the U.S. Trustee should not appoint an official committee of SAFE Holders.

But even if the SAFEs did fall under one of the 1102 categories—which they do not—other factors also weigh against the appointment of a SAFE Holders committee as spearheaded by Celsius.

When considering whether to appoint a committee under section 1102(a)(2) of the Bankruptcy Code, courts consider the following types of factors: (i) whether debtors are likely to prove solvent, (ii) whether the class of security seeking a committee is adequately represented by stakeholders already at the table, (iii) the complexity of the Debtors' cases; and (iv) the likely cost to Debtors' estates of the requested committee. *In re Pilgrim's Pride Corp*., 407 B.R. 211, 216 (N.D. Tex. Bankr. 2009).

The solvency factor is tied to the fourth factor, the likely cost to the Debtors' estate. Although the Debtors filed for chapter 11 protections with assets exceeding liabilities, the Debtors filed for bankruptcy relief because of debilitating liquidity issues, at least partly caused by their dispute with Whinstone. The Debtors had to incur expensive DIP financing to finance these chapter 11 cases and are attempting to finalize the sale of certain assets to meet their obligations. Appointment of an additional committee with its escalating professional fees would only exacerbate the liquidity crunch of the Debtors and may precipitate a fire sale of their assets, changing the solvency position of the estate.

The appointment of a SAFE Holders' committee would dramatically escalate the cost of these chapter 11 cases by adding a group of professionals with goals divergent from maximizing the value for all stakeholders. Tellingly, one of the arguments of the SAFE Holders appears to be that there is enough money for their professionals to spend on various duplicative investigations, because the Debtors appear to be solvent. But one recent example in this district presents a cautionary tale of escalating professional fees incurred by various committees that surpassed recoveries to creditors and other stakeholders: Sorrento went from entering chapter 11 as a massively solvent company to a liquidating sell-off of its decimated assets after various professionals incurred tens of millions of dollars in fees. The U.S. Trustee's office should be mindful of overstaffing a much smaller estate with professionals representing unnecessary committees and thus reducing recoveries to all stakeholders.

The second factor, whether the class of security seeking a committee is adequately represented by stakeholders already at the table, weighs heavily against the appointment of a SAFE Holders committee. Celsius, or SAFE Holders, could not represent all creditors, or all equity. And even after the appointment of a SAFE committee as spearheaded by Celsius, the SAFE Holders would still not be adequately represented. The party seeking the appointment of an official committee, Celsius, has a side letter with REI, granting it additional rights and benefits divergent from and exceeding the rights and benefits of other SAFE Holders. To the extent Celsius has a contingent interest, it transparently seeks to transform its tenuous position into an official committee, thereby funding its own parochial interests by the estate.

The third factor, the complexity of the Debtors' cases, does not warrant an appointment of an unusual non-equity, non-creditor committee. The Debtors' cases do not represent complex issues to be investigated or explored. The Debtors simply face liquidity issues and litigation concerns due to its dispute with Whinstone, which the SAFE Holders could not help to resolve nor would be motivated to resolve.

Conclusion

The SAFE Holders allegedly represented by Celsius, as parties seeking the appointment of a committee, bear the burden of persuasion. But they have not met this burden. Celsius' main arguments appear to be that there is enough estate money to be spent to appoint a highly unusual non-creditor non-equity committee, which could then go on a spending spree of all kinds of duplicative investigations. The proposed SAFE Holders committee would not be contributing value to the estate—to the contrary, it would present an unjustifiable burden on the estate.

We respectfully submit that the appointment of a SAFE Holders committee is neither warranted nor appropriate.

If you have any questions, or would like to discuss further, please do not hesitate to contact me.

Very truly yours,

Patricia B. Tomasco

EXHIBIT F

FILED UNDER SEAL

EXHIBIT G

FILED UNDER SEAL

EXHIBIT H

FILED UNDER SEAL

EXHIBIT I

FILED UNDER SEAL

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

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

ORDER GRANTING THE SAFE AHG EMERGENCY MOTION TO TERMINATE EXCLUSIVITY

Upon the Emergency Motion of the Ad Hoc Group of SAFE Parties (the "**Motion**") to terminate the Debtors' exclusive periods; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is permissible pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that notice of the Motion and opportunity for a hearing on the Motion were appropriate and no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor and this Court, having considered same, and any response(s) thereto, is of the opinion that the Motion should be **GRANTED**.

[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.

IT IS HEREBY ORDERED THAT:

1. The Motion is **GRANTED** as set forth herein.

2. The Debtors' exclusive periods to file and solicit votes on a chapter 11 plan are hereby terminated pursuant to Bankruptcy Code section 1121.

3. Any party in interest is authorized to file and solicit votes on a chapter 11 plan and disclosure statement in accordance with the requirements of the Federal Rules of Bankruptcy Procedure and the Bankruptcy Code.

4. Notwithstanding any other Federal Rules of Bankruptcy Procedure or any other applicable rule or guideline, the terms and conditions of this Order are immediately effective and enforceable upon its entry.

5. To the extent this Order is inconsistent with any prior order or pleading with respect to the Motion in these cases, the terms of this Order shall govern.

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

SIGNED:

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ALFREDO R. PÉREZ
UNITED STATES BANKRUPTCY JUDGE