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 POST-HEARING SUBMISSION ON NEW RETENTION APPLICATION[1]

It is undisputed that LKC and the Debtors did not attach to the Original Retention Application their pre-petition, May 16, 2023 engagement letter, or disclose the details of any success fee. At the Hearing, the Debtors argued that their New Retention Application merely seeks to "honor[] the deal" that has "been in place from day one," from "two years ago." *See* Tab A (attaching cited excerpts of the June 4, 2025 hearing transcript ("June 4 Tr.") at 6).

But that is not the relief requested by the New Retention Application. Instead, LKC and the Debtors ask the Court to adopt a brand-new engagement letter, dated March 4, 2025, that expressly "supersedes" the terms of the May 16, 2023 letter. *See* Tab B (attaching redline admitted at the hearing as *SAFE AHG Ex. 6* [Docket No. 1220-6]). The March 4, 2025 letter was prepared by LKC and the Debtors ***after*** LKC's services were complete and ***after*** LKC knew already the structure of the Whinstone Transaction. The March 4, 2025 letter is engineered to trigger a success fee, including under circumstances not contemplated by the "original deal."[2]

[1] DLT Data Center 1 LLP joined the SAFE AHG's Objection, see ECF No. 1171, and joins this post-hearing submission as well. Capitalized terms not defined herein shall have the meaning provided in the SAFE AHG's objection to the New Retention Application. *See* ECF No. 891.

[2] The Debtors argue flatly in reply in the New Retention Application that "the revised engagement letter does not change the agreement." *Debtors' Reply in Support of Application for an Updated Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel* [Docket No. 1111] ("Debtors' Reply"), at 9. That claim is belied by even a cursory review of the redline comparing the March 4, 2025 agreement with the May 16, 2023 agreement, which is a sea of red and blue ink. *See* Tab B. And of course, if the May 16, 2023 letter

The Debtors and LKC argue that their proposed "amendment" of the October 14, 2025 Retention Order is permitted on a "*nunc pro tunc*" basis, relying primarily on *Fanelli V. Hensley* (*In re Triangle Chems., Inc.*, 697 F.2d 1280 (5th Cir. 1983) and *In re Wichita River Oil* Corp, 214 B.R. 308 (E.D. La. 1997). *See Debtors' Reply in Support of Application for an Updated Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel* [Docket No. 1111] ("Debtors' Reply"), at 7 (arguing Court has discretion "to amend the retention order" retroactively); *Reply in Support of Debtors' Application for an Updated Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel* [Docket No. 1105] ("LKC Reply"), at 12 (same).

The Debtors and LKC are mistaken, and the cases they cite wholly inapposite. Each involved a professional who failed to file any retention application at all until late in the bankruptcy case. Here, in contrast, LKC and the Debtors filed the Original Retention Application (without disclosing any details concerning the proposed contingency fee) on September 22, 2024. Debtors and LKC obtained the Retention Order on October 14, 2025 – more than 7 months ago – and the deadline to seek to "amend" that Retention Order has long since passed. *See Objection of the Ad Hoc Group of SAFE Parties to Debtors' Application for an Updated Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel* [Docket No. 891] ("SAFE AHG Objection"), at ¶ 13.

But even if the New Retention Application did not seek an untimely amendment, the *nunc pro tunc* relief they seek would be unavailable. To be sure, the Fifth Circuit has authorized *nunc pro tunc* retentions in "rare" circumstances, but "did not intend to 'encourage non-observance of the contemplated preemployment court approval' process," or for retroactive applications to be

really were the same, the Debtors and LKC would have asked this Court for its adoption, rather than create a new letter after all of LKC's work was finished.

"granted 'carte blanch' to relegate the Bankruptcy Code and Rules as mere formalities." *In re Coleman*, 655 B.R. 441, 453 (Bankr. N.D. Miss. 2023) (quoting *In re Triangle Chems., Inc.*, 697 F.2d at 1289 & *In re Hydro Servs., Inc.*, 277 B.R. 309, 310-11 (Bankr. E.D. Tex. 2001) (alteration in original) (footnote omitted)); *see also In re Palacios*, Case No. 14-70076, 2016 WL 361569 at *14 (Bankr. S.D. Tex. Jan. 27, 2016) (footnote omitted) (citations omitted) (rejecting *nunc pro tunc* application and holding that "only under rare or exceptional circumstances" should "retroactive employment be approved").

Instead, the Fifth Circuit expressly limited *nunc pro tunc* relief to situations where, through an ***oversight***, the professional simply failed to file a retention application ***at all*** when the case began. *See, e.g., In re Triangle Chems., Inc.*, 697 F.2d 1280 (professional who mistakenly failed to file retention application retained *nunc pro tunc* without objection by any party in interest); *In re Wichita River Oil Corp.*, 214 B.R. at 310 (alteration in original) (similar). Indeed, the Debtors themselves expressly acknowledge that the relief they seek is unavailable except to cure the result of an "oversight." *See* Debtors' Reply at 7, 8.

This was no oversight. As established at the June 4, 2025 hearing, the Debtors made a deliberate, strategic choice not to disclose the May 16, 2023 success fee terms when they filed their September 22, 2024 motion.[3] In so doing, they deprived the estates' parties-in-interest of their right to examine the proposed retention, including the details of the proposed success fee, and determine whether or not to object ***before LKC's services were provided.*** Now that LKC's services are complete, they cannot come back and insist on the benefit of those undisclosed terms, particularly because the non-disclosure was knowing and intentional.

[3] Omission of the March 4, 2025 letter could not have been an oversight, because it did not even exist at the time of the Original Retention Application, and instead was crafted six months later, after LKC's work was done.

LKC prepared the initial draft of the retention motion, which it supplied to the Debtors on September 14, 2025. The LKC draft included a paragraph disclosing the details of the proposed success fee compensation arrangement embodied in the May 16, 2023 letter. *See* SAFE AHG Ex. 17, Docket No. 1228-10, at 1, ¶ 52.[4] In a September 22, 2024 email chain, however, the Debtors and LKC determined to delete the success fee paragraph. In that communication, LKC relayed a question from Mr. Topping as to whether to retain the success fee disclosure, but redact it from the public record. SAFE AHG Ex. 13, Docket No. 1228-4; *see also* June 4 Tr. at 61-62. Instead, the decision was made to "just delete it." *Id*. The Debtors and LKC admit that this decision, far from constituting a "mistake," was a deliberate and considered "judgment call" made by experienced bankruptcy professionals. *See id.* at 56-57 ("Q. And the omission of the letter and the details from the application was deliberate, right? A: Yes …."); *see also id.* at 10-11 (Debtors' counsel arguing that "a judgment call" was made to omit the success fee details from the application).

The Debtors and LKC argue their omission was appropriate because complying with Rule 2014 would not have been "in the Debtors' interest." SAFE AHG Ex. 10, Docket No. 1228-1, at ¶ 7 ("It was not in Rhodium's interest to disclose … the details of Rhodium's agreement with LKC.") But Rule 2014 is mandatory; a debtor does not get to decide unilaterally whether to comply. *See* Fed R. Bankr. P. 2014(a)(1), (2)(E) (emphasis added) (requiring that professional can be retained "only on . . . application," and that the application "***must*** state specific facts showing .

[4] At the hearing, Debtors argued that LKC can retroactively change the terms of its engagement because LKC supposedly relied on Quinn to prepare the Original Fee Application. But LKC prepared the draft motion, which specifically cited Rule 2014, which in turn unambiguously required LKC to disclose the details of its proposed contingent fee agreement. Moreover, "the Court [and] its officers … are charged with the responsibility" of complying with Bankruptcy Court Rules; while LKC "may not be a bankruptcy specialist," it "has been admitted to practice" in this Court *pro hac vice* and should "be held accountable for knowing how to acquit [itself] properly" here, including by following rules that LKC itself cited in its draft retention application. *See In re Rivera*, 2002 Bankr. LEXIS 975 (Bankr. E.D. Tex Aug. 21, 2002) (denying *nunc pro tunc* retention of contingent fee firm that was not a "bankruptcy specialist" and failed to file a timely retention application, despite fact that firm's "services yielded a substantial contribution to the estate").

. . any proposed arrangement for compensation"). To the extent the Debtors and LKC believed disclosing the terms of the LKC agreement ***to Whinstone*** would have been counterproductive, they could have simply taken advantage of the sealing provisions of the Protective Order, which was entered on September 18, 2024, four days before the Original Retention Application was filed. Under the Protective Order, Debtors could have redacted the success fee terms from the version of the Original Retention Application filed on the public record. *See Stipulated Protective Order* [Docket No. 152] at ¶ 4.2(E) (providing that confidential information, "if filed with the Court, shall be redacted from the Court filing, either by redacting the relevant text … or redacting the entirety of any exhibit" containing confidential information).

In fact, the Debtors considered doing exactly that, but chose not to. In a September 22, 2024 communication with LKC and Debtors, Mr. Topping wondered "whether we could just delete those details, [and] [i]f not… redact all mentions of them, assuming that's allowed." *SAFE AHG Ex. 13* [Docket No. 1228-4] at 1; June 4 Tr. at 61-62. Instead of making the required disclosures and applying redactions, the Debtors' general counsel and two sophisticated law firms decided to "just delete" it. *Id.* at 65. This is not "neglect," excusable or otherwise; it is a deliberate choice made by LKC and the Debtors to proceed in a manner inconsistent with Rule 2014, and must not be rewarded with a *nunc pro tunc* retention. *In re Hydro Servs. Inc.*, 277 B.R. 309, 310-11 (Bankr. E.D. Tex. 2001) (denying *nunc pro tunc* retention application in the absence of "excusable neglect"); *In re Rivera* 2002 Bankr. LEXIS 975, *7 (denying *nunc pro tunc* application where failure to comply with rules was not an "oversight"). The New Retention Application should be denied accordingly.

The SAFE AHG notes, however, that this is not necessarily the end of the line for LKC. Both the Debtors and LKC argue that the disclosures made in connection with the Original

Retention Application concerning the May 16, 2023 letter were sufficient for that letter to form a part of the Retention Order. Likewise, they argue that the May 16, 2023 letter entitles LKC to a success fee on the same terms as does the March 4, 2025 letter. The SAFE AHG disagrees with the moving parties on both of these counts. But nothing stops LKC from arguing to the Court in connection with a future application that LKC is entitled to a success fee based on these or other claims. In that event, whether, and to what extent, LKC has earned a success fee, or some kind of additional lode-star payment, will be up to the Court (subject, of course, to a full reservation of rights to object by the SAFE AHG and other stakeholders). But that is a question for another day. Concerning the issue for decision now, the SAFE AHG respectfully submits that the New Retention Application seeking to deem the March 4, 2025 letter a part of the October 14, 2024 Retention Order should be denied.[5]

Dated: June 10, 2025

Respectfully Submitted,

AKIN GUMP STRAUSS HAUER & FELD LLP

/s/ Sarah Link Schultz

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- and -

Mitchell P. Hurley (admitted *pro hac vice*)

[5] LKC argues that SAFEs have no standing to challenge LKC's fees because, as creditors, they are likely to recover in full even were LKC to receive a massive contingent fee. In fact, Section 1109(b) permits any "party in interest" to "appear and be heard on any issue," and applies to any party with "a financial interest in the estates' assets (the debtor, creditor or equity security holder)." *See, e.g., Truck Ins. Exch. v. Kaiser Gypsum Co.*, 602 U.S. 268, 269 (2024). No distributions have yet been made to SAFEs in these cases, and until they are repaid in full, there can be no doubt that the SAFEs have the requisite financial interests in these cases to provide them with standing. *Id.* (observing that text of 1109(b), and the right of any party in interest to "appear and be heard" is "capacious"). Moreover, as indicated in footnote 2, DLT Data Center 1 LLP has joined the SAFE AHG objection, and is a holder of common stock.

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Counsel to the Ad Hoc Group of SAFE Parties

CERTIFICATE OF SERVICE

I hereby certify that on June 10, 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

TAB A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS (HOUSTON)

IN RE:	.	Case No. 24-90448
	.	Chapter 11
RHODIUM ENCORE LLC, et al.	.	
	.	515 Rusk Street
	.	Houston, TX 77002
Debtors.	.	
	.	Wednesday, June 4, 2025
. . . . .	.	2:35 p.m.

TRANSCRIPT OF AMENDED APPLICATION TO EMPLOY LEHOTSKY KELLER COHN LLP AS SPECIAL LITIGATION COUNSEL [835]
BEFORE THE HONORABLE ALFREDO R. PEREZ
UNITED STATES BANKRUPTCY COURT JUDGE

TELEPHONIC APPEARANCES:

For the Debtors:	Stris & Maher LLP By: JOHN R. STOKES, ESQ. 17785 Center Court Dr., Ste. 600 Cerritos, CA 90703-9312 213-995-6813
	Quinn Emanuel Urquhart & Sullivan, LLP By: RAZMIG IZAKELIAN, ESQ. 865 S. Figueroa St., 10th Floor Los Angeles, CA 90017-5003 213-443-3000
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Proceedings recorded by electronic sound recording, transcript produced by transcription service.

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For the Ad Hoc Group of SAFE Parties:	Akin Gump Strauss Hauer & Feld LLP By: MITCHELL P. HURLEY, ESQ. Bank of America Tower 1 Bryant Park New York, NY 10036 212-872-1011
	Akin Gump Strauss Hauer & Feld LLP By: SARAH A. SCHULTZ, ESQ. 2300 N. Field St. Suite 1800 Dallas, TX 75201 214-969-4367
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For DLT Data Center LLC (DLT1):	Olshan Frome Wolosky LLP By: MICHAEL S. FOX., ESQ. 1325 Avenue of the Americas New York, NY 10019 212-451-2300

I N D E X
6/5/25

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
FOR THE DEBTORS:				
Charles Topping	32	49/109		

EXHIBITS	ADMITTED
ECF Number 1105-4	40
ECF Number 1222-2	40
ECF Number 1222-4	43

THE COURT: Why don't you turn on your camera real quick? All right. You can turn off the camera once you get that. Otherwise, you'll be on twice.

MR. STOKES: I don't need that. Once is more than enough. Okay. Great. Thank you, Your Honor. John Stokes for the debtors.

I have, I guess, an opening or a presentation to make. We have one witness to put on on our side as well.

THE COURT: Okay.

MR. STOKES: So with your permission, I'll proceed. We're here today on the debtors application for an updated order authorizing the retention of LKC. And I want to start by talking about what the goal is here.

Our friends from the ad hoc group have said that they think that this is a post hoc success fee grab that would result in a windfall to LKC. And that's not our intention at all. That's not what we think we're doing here.

What we think we're doing is honoring the deal that has been in place with LKC from day one, when they were retained over two years ago, when Rhodium was facing potential annihilation from claims by Whinstone, where they agreed to provide significant fee discounts, take on substantial risk in exchange -- pardon me, for a contingency fee.

There has been no substantive change to the LKC contingency in the two years that have passed. The updated

presided over the trial, presided over the many discovery disputes. I mean, it was a hard-fought litigation. I think we can all agree.

It would have been in nobody's interest, not the debtor's interest, not any of the other stakeholders' interests, I guess maybe in Whinstone's interest, for the debtors to put all of the specifics about the LKC contingency out there publicly. And this is just a, you know, a screenshot from the engagement letter.

Rightly or wrongly, Whinstone could have looked particularly at B and C here and inferred information about how we viewed our claims, how we thought one claim might have stacked up versus another claim. There are dollar amounts in here. I mean, we were -- it would not have been an appropriate thing for your litigation adversary to see at that time.

So debtors' counsel made what, in my view, is a totally reasonable judgment call regarding what to disclose in the original retention application. And the conclusion was disclose the existence of the contingency fee 11 times. Make it very clear that the contingency fee exists.

And, you know, it seems, I think today, that remains a reasonable judgment call that was made. And at the time, nobody said a word about it. There was no objection. Nobody showed up and said, now wait a second, we're concerned that we don't have enough information about the details of the

contingency fee. Had they done that, we could have figured out a way to resolve the problem then. Nobody did that.

The order, the retention order was approved. And, indeed, nobody said anything for about five months. And I'll get back to that.

But before I do, I just want to say one word about the order on their amended -- or sorry, on original retention application. And that should be -- that's at ECF Number 263.

Our friends from the ad hoc group have said the order, the retention order, would preclude LKC receiving any contingency fee in this case. I think that would be an inappropriately kind of wooden and restrictive reading of the order. I've highlighted the relevant language. It says that LKC can be retained as contemplated by the application.

And so I think that it would be appropriate to read this order as saying the compensation that was set forth in the application is the compensation that's approved by the order. But just a note on that.

Now we're in February of 2025, approximately five months later. The SAFE ad hoc group raises a concern about the LKC contingency for the first time.

Now, what has happened by February 2025? Well, LKC has worked for another five months providing the hourly discounts. Those hourly discounts are reflected in its fee statements. And indeed, the contingency fee is actually

your declaration. And Mr. Stokes asked you about this. You said that you --

A Have it open, yep.

Q Okay. And you understood this declaration when you signed it, right? Let's take a look at the --

A Yes.

Q Yeah. So you signed that's on Page 5. You understood by signing this declaration that you were signing it under oath. Did you understand that?

A Yes.

Q Just like you're under oath right now?

A That's right.

Q Okay. Let's look at Paragraph 7 of the declaration. This is your declaration. And if you look at the second sentence, you say it was not in Rhodium's interest to disclose to Whinstone the details of Rhodium's agreement with LKC. Do you see that, sir?

A Yes.

Q Okay. And the final sentence of Paragraph 7 of your sworn declaration says, the retention application did not, however, disclose the specific details of the success fee. Did I read that correctly?

A Yes.

Q Okay. And the omission of the letter and the details from the application was deliberate, right?

A Yes, I believe that, yes, that -- that would be one way of looking at it.

Q Yeah, LKC actually had prepared a submission, a draft retention application that actually disclosed all of the details of the LKC contingent fee, right?

A It did -- I'm not sure -- I don't recall exactly what it disclosed, but it did disclose the -- the components of the success fee.

Q Let me direct you to the first sentence of Paragraph 7 of your declaration, sir, and tell me if I read this right: After Rhodium filed for bankruptcy, on September 14th, 2024, Jonathan Cohn prepared a draft LKC retention application that set forth the specific terms of the May 2023 engagement letter, including the rate discounts and specific components of the potential success fee. Did I read that right?

A Yes, right.

Q Okay.

MR. STOKES: Your Honor, I'm going to object to him just reading the declaration to the witness. We had a whole colloquy yesterday and today about how we couldn't just admit the declaration. If he wants to ask the witness questions, I mean, that wasn't impeachment, but I think reading the declaration is not really a good use of --

MR. HURLEY: Your Honor, if I could respond, what I'm doing is contrasting the sworn declaration with the testimony

Q And it's to Will Thompson. That's a lawyer at the LKC firm, right?
A Yes.
Q Copies Patty Tomasco who's another Quinn Emanuel lawyer, yeah?
A That's right.
Q Okay. And Barbara Howell -- sorry, back up. The subject line is Rhodium retention application. See that?
A Yes.
Q And Barbara Howell says, sorry, are you going to redact this document also, thanks. You can see that Mr. Thompson replies in a email that's redacted and what you can see is it says yes, Chuck's question was. Do you see that?
A Yes.
Q Okay. And if we could just turn to Tab 6, let me know when you're there.
A Okay. I have it.
Q And you're aware that at the SAFE AHG's request, we asked for the production of an unredacted version of this email and it was provided to us earlier this week?
A I -- I'm not sure if I'm aware, but I -- I see that it -- it's here.
Q You see that it's unredacted here, right?
A Yes.
Q Okay. And so what Mr. Thompson writes back to Barbara

Howell is, yes, Chuck's question was whether we could just delete those details; if not, then he'd like to redact all mentions of them, assuming that's allowed. Do you see that?

A Yes.

Q Okay. And you see Patty Tomasco writes back same day, September 22nd, yes, just delete. Do you also see that?

A I do.

Q Okay. With respect to Mr. Thompson's reference to Chuck's question, you're the Chuck he's referring to, right, sir?

A I -- I assume so.

Q Are you aware of any other Chucks that were involved in preparing the retention application for LKC?

A No.

Q Okay. Pretty safe inference that you're the Chuck he's referring to, right?

A Yes.

Q Okay. These are -- these emails are dated September 22nd and later that say day, the debtors filed their application to retain LKC, right?

A Yes, that's my recollection.

Q And that application, again, deleted Paragraph 52 which previously had included details related to the contingent fee agreement, correct?

A Yes.

Q I want to come back to your assertion that it was -- that

but decided to delete. Isn't that right?

MR. STOKES: Objection. Asked and answered. Several times we've gone through this. I think we get the point.

THE COURT: I'm going to let him answer, just answer the question.

THE WITNESS: The -- can you -- I'm sorry, what's the question?

BY MR. HURLEY:

Q The debtors considered filing a redacted version that included details of the contingent fee, but the debtors decided not to and just deleted it instead, right?

A Yes.

Q So I want to ask you some questions now, sir, about when your understanding about the sufficiency of the motion may have changed, and let's just go to your declaration, if you would. That's Tab 1. And for the record, the declaration -- I don't think I said this before. Tab 1 is SAFE AHG Exhibit 10.

A I have it open.

Q Okay. Okay. And if you look at Paragraph 8, you say it was my understanding at the time that the initial retention application -- that the initial application was filed that its description of the partial contingency fee based upon the outcome of litigation was sufficient to inform creditors and other interested parties about the existence of the success fee, period. This continued to be my understanding at least

TAB B

LEHOTSKY KELLER COHN LLP
Jonathan F. Cohn
Partner
200 Massachusetts Ave. NW
Washington, DC 20001

~~May 16~~March 4, ~~2023~~2025

Cameron Blackmon
~~4146 W US Highway 79~~

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

Dear Cameron:

Thank you for selecting Lehotsky Keller Cohn LLP to represent the Rhodium ~~30MW LLC, Rhodium JV LLC, Air HPC LLC, and Jordan HPC LLC~~ entities listed below[1] ("you" or "Client") in *Whinstone US Inc. v. Rhodium 30MW LLC, ~~Rhodium JV LLC, Air HPC LLC, and Jordan HPC LLC~~* (*et al.*, No. CV41873, filed in Milam County, Texas; in *Rhodium JV, LLC, et al. v. Whinstone US, Inc.*, No. 01-0005-7116, filed with the American Arbitration Association, and in *In re Rhodium Encore LLC*, No. 4:24-bk-90448 filed in Southern District of Texas Bankruptcy Court (collectively, "this Matter").

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

~~Jonathan F. Cohn~~

/s/ Jonathan F. Cohn

Jonathan F. Cohn

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

~~Rhodium JV LLC~~By:
~~Air HPC LLC~~

Cameron Blackmon

Title: ~~Authorized Signatory~~

Date: ~~5/16/2023~~ _____