

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

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

**EMERGENCY MOTION FOR ENTRY OF AN ORDER (I) APPROVING
SETTLEMENT BETWEEN DEBTORS AND WHINSTONE US, INC.; (II)
AUTHORIZING THE USE, SALE, OR LEASE OF CERTAIN PROPERTY
OF THE DEBTORS' ESTATE PURSUANT TO 11 U.S.C. § 363;
AND (III) GRANTING RELATED RELIEF**

Emergency relief has been requested. Relief is requested not later than 9:00 a.m. (Central Prevailing Time) on April 8, 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.

A hearing will be conducted on this matter on April 8, 2025, at 9:00 a.m. (Central Prevailing Time) in Courtroom 400, 4th Floor, 515 Rusk Avenue, Houston, Texas 77002.

Audio communication will be by use of the Court's dial-in facility. You may access the facility at 832-917-1510. Once connected, you will be asked to enter the conference room number. Judge Perez's conference code number is 282694. Video communication will be by use of the GoToMeeting platform. Connect via the free GoToMeeting application or click the link on Judge's home page. The meeting code is "JudgePerez." Click the settings icon in the upper right corner and enter your name under the personal information setting.

Hearing appearances must be made electronically in advance of both electronic and in-person hearings. To make your appearance, click the "Electronic Appearance" link on Judge Perez's home page. Select the case name, complete the required fields and click "Submit" to complete your appearance.

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

Rhodium Encore LLC and its debtor-affiliates (the “Debtors”) hereby file this *Emergency Motion for Entry of an Order (I) Approving Settlement Between Debtors and Whinstone US, Inc.; (II) Authorizing the Use, Sale, or Lease of Certain Property of the Debtors’ Estate Pursuant to 11 U.S.C. § 363; and (III) Granting Related Relief* (the “Motion” or “9019 Motion”). Pursuant to rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), the Debtors seek Court approval of the term sheet (the “Term Sheet”)² entered into on March 21, 2025, by and between the Debtors and Whinstone US, Inc. (“Whinstone,” and together with the Debtors, the “Parties”),³ and containing the terms of a proposed transaction (the “Settlement & Asset Purchase Transaction” or “Transaction”), which (i) provides for the acquisition by Whinstone of the specified assets located at the Rockdale Facility (defined below); and (ii) resolves all disputes between the Debtors and Whinstone. In support of the Motion, the Debtors respectfully state as follows:

PRELIMINARY STATEMENT

1. The Term Sheet resolves longstanding disputes between the Debtors and Whinstone. Following approval by this Court, the Term Sheet will effect a global settlement of all known and unknown claims amongst the Parties and other related parties and bring finality to the otherwise uncertain and burdensome litigation. The Term Sheet also contemplates the sale and transfer of certain of the Debtors’ assets located at Whinstone’s Rockdale facility. As further explained below, the Term Sheet is fair, reasonable, and in the best interest of all Parties and will confer substantial value on the Debtors’ estates. Accordingly, the Debtors respectfully request

² A copy of the Term Sheet is attached hereto as **Exhibit A**.

³ The term “Parties” also includes Imperium Investment Holdings, LLC (“Imperium”), the ultimate parent company of the Debtors, as well as Riot Platforms, Inc. (“Riot”), the company that acquired Whinstone in May 2021.

that the Court grant the Motion and approve the settlement embodied in the Term Sheet, including the sale and transfer of certain of the Debtors' assets.

JURISDICTION AND VENUE

2. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334.

3. This is a core proceeding pursuant to 28 U.S.C. § 157(b). This Court has statutory authority to enter final orders with respect to the relief requested herein. The Debtors confirm their consent, pursuant to rule 7008 of the Bankruptcy Rules, to the entry of a final order by this Court.

4. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

5. The statutory bases for the relief requested herein are sections 105(a) and 363 of title 11 of the United States Code (the "Bankruptcy Code") and Bankruptcy Rules 3007, 6004, 6006, and 9019.

BACKGROUND

I. General Background

6. On August 24 and August 29, 2024 (the "Petition Dates"), the Debtors each commenced a voluntary case under title 11 of the Bankruptcy Code (collectively, the Chapter 11 Cases") in the United States Bankruptcy Court for the Southern District of Texas (the "Court"). The cases are jointly administered.

7. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On November 22, 2024, the U.S. Trustee appointed an official committee of unsecured creditors (the "Creditors' Committee"). No trustee or examiner has been appointed in these Chapter 11 Cases.

8. Further details of the Debtors' business, capital structure, governing bodies, and the circumstances leading to the commencement of these Chapter 11 Cases are set forth in the

Declaration of David M. Dunn in Support of Chapter 11 Petitions and First Day Relief (the “First Day Declaration”) (ECF No. 35).

II. Pending Litigation Between Whinstone and the Debtors

A. Assumption of the Whinstone Contracts

9. On August 24 and 29, 2024, the Debtors filed a motion to assume certain executory contracts (the “Executory Contract[s]”) with Whinstone (the “Motion to Assume”) (ECF Nos. 7 and 32). The Motion to Assume covers (i) all power agreements that certain Debtors and Whinstone entered into between July and November 2020 (the “Power Agreements”); (ii) one profit-sharing agreement between Rhodium JV LLC and Whinstone entered into in December 2020 (the “Rhodium JV Profit Sharing Agreement”); (iii) one Profit Sharing Agreement between Debtor Air HPC LLC and Whinstone entered into in December 2020 (the “Air HPC Profit Sharing Agreement,” and together with the Rhodium JV Profit Sharing Agreement, the “Profit Sharing Agreements”); and (iv) one water supply services agreement that seven Debtors and Whinstone entered into in August 2021 (the “Water Agreement”).

10. On October 28, 2024, the Debtors and Whinstone requested and the Court agreed to bifurcate the issues for hearing on the Motion to Assume into a “Phase 1” and a “Phase 2” (the “Contested Matter”) (ECF No. 351). Specifically, Phase 1 would address (i) whether the assumption of the Executory Contracts was in the Debtors’ sound business judgment; (ii) whether the Profit Sharing Agreements superseded the Power Agreements; (iii) whether Whinstone had validly terminated the Profit Sharing Agreements and the Power Agreements; and (iv) whether the Debtors were in default of the Executory Contracts. On the other hand, Phase 2 would be reserved

for the issues of amounts of damages, offsets, or cure payments due on account of the Executory Contracts.

11. From November 12 to 15, 2024, the parties conducted the Phase 1 hearing on the Debtors' Motion to Assume, and the Court heard evidence and testimony from both sides.

12. On December 16, 2024, the Court issued the *Interim Order on Phase 1 of Motion to Assume Executory Contracts* (the “First Interim Order”) (ECF No. 579). In the First Interim Order, the Court found that (i) all 25 Executory Contracts remain in force and none were superseded; (ii) Whinstone did not terminate any of the Executory Contracts pre-petition, and (iii) the business judgment rule supports the assumption of those contracts. The Court also considered the contract breaches alleged by Whinstone, holding that these claims were not proven, not material, not properly noticed, and/or had been cured.

13. On January 17, 2025, as directed by the Court, Whinstone filed a statement outlining the proposed scope of Phase 2. The Debtors responded on January 22, 2025.

14. On February 10, 2025, the Court issued its Second Interim Order on Phase 1 of Motion to Assume Executory Contracts (ECF No. 763) (the “Second Interim Order”). The Second Interim Order provides that Phase 2 would be limited to a subset of the invoices attached to the Whinstone Claims (defined below). *See* ECF No. 763 at 3, 11-12.

15. Between February 19 and March 18, 2025, the Parties engaged in a mediation relating to the Contested Matter (the “Mediation”) before Judge Mark X. Mullin, United States Bankruptcy Judge for the Northern District of Texas (“Judge Mullin”).

16. On February 22, 2024, the Court entered the *Agreed Order Granting Debtors’ Motion and Supplemental Motion to Assume Certain Executory Contracts With Whinstone Us, Inc.* (the “Agreed Order”). *See* ECF No. 800.

17. The same day, Whinstone filed a notice of appeal for the purpose of appealing before the United States District Court for the Southern District of Texas the following orders: (i) the First Interim Order; (ii) the Second Interim Order; (iii) the Agreed Order; and (iv) all other rulings merged into those orders as stated in Bankruptcy Rule 8003(a)(4). *See* ECF No. 814.

18. Whinstone’s appeal in the Contested Matter (the “Appeal”) is captioned *In re Rhodium Encore LLC, et al.*, Case No, 4:25-cv-00868 (S.D. Tx).

B. The Milam and Tarrant Counties Litigations

19. In May 2023, Whinstone filed suit in Texas state court in Milam County against Debtors Rhodium 30 MW LLC, Rhodium JV LLC, Air HPC LLC, and Jordan HPC LLC (the “Milam County Litigation”). Whinstone asserted breach of contract claims against Rhodium JV and Air HPC for purportedly underpaying the profits due under the Profit Sharing Agreements.

20. In September 2023, the Milam County Court granted Rhodium’s motion to compel arbitration pursuant to the terms of Profit Share Agreements. The arbitration is now stayed.

21. In July 2024, Whinstone filed an action in the District Court of Tarrant County, Texas against (i) Imperium Investment Holdings LLC; (ii) certain Debtors (Rhodium Enterprises Inc. Rhodium Technologies LLC, and Rhodium Renewables LLC); and (iii) certain current and former principals of the Debtors (the “Tarrant County Litigation”). The claims in the Tarrant County Litigation mirrored those that the Milam County Court ordered Whinstone to arbitrate.

22. On August 30, 2024, Whinstone attempted to dismiss the Debtors from the Tarrant County Litigation. It further attempted to block its removal to federal court.

23. On September 6, 2024, the U.S. District Court for the Northern District of Texas denied Whinstone’s motion to remand and transferred the Tarrant County Litigation to this Court, where it was assigned Adversary Proceeding #24-03240.

24. On January 31, 2025, Whinstone filed the *Defendant Whinstone US, Inc.’s Motion to Withdraw the Reference*. See ECF No. 36 in Adversary Proceeding No. 24-03240. Certain Defendants in that action responded on March 7, 2025, *see* ECF No. 40, Whinstone replied, *see* ECF No. 42, and the motion was set for hearing on March 19, 2025.

C. Whinstone’s Proofs of Claim

25. In November 2024, Whinstone filed two proofs of claim against Air HPC and Rhodium JV totaling \$22,385,255.55 (Claim Nos. 95 and 9) (collectively, the “Whinstone Claims”). The Whinstone Claims are unsecured. The Whinstone Claims emanate solely from the Profit Sharing Agreements included in the Motion to Assume.

26. On February 18, 2025, the Debtors objected to the Whinstone Claims, arguing that Whinstone cannot assert a provable claim in connection with executory contracts that the Debtors assumed. *See* ECF No. 784.

D. The Debtors’ Adversary Proceeding

27. On February 11, 2025, certain Debtors initiated an adversary proceeding against Whinstone and its parent company Riot, asserting, among other things, contractual and tort claims against the defendants, and seeking damages and injunctive relief (the “Debtors’ Adversary Proceeding”).

28. On March 17, 2025, Whinstone and Riot each filed separate motions to dismiss the Debtors’ complaint (ECF Nos. 28 and 31, respectively) and separate motions to remove the reference in the Debtors’ Adversary Proceeding (ECF Nos. 29 and 33, respectively). Riot also demanded a jury trial (ECF No. 32).

29. The Debtors’ Adversary Proceeding is ongoing. The Debtors’ responses and/or objections to the motions to dismiss and to remove the reference were due on April 7, 2025.

III. The Term Sheet

30. On March 21, 2025, following good faith, arms-length negotiations between the parties, Debtors and Whinstone executed the Term Sheet whereby all existing litigation including both adversary proceedings and Whinstone's appeal of the Court's orders regarding the Contested Matter would be resolved. The Term Sheet also contemplates the sale by certain debtors of all tangible assets located at the Rockdale facility to Whinstone or its designee.

31. The Debtors have determined in their sound business judgment that the settlement and the sale and transfer of certain of the Debtors' assets at the Rockdale facility on terms reflected in the Term Sheet is in the best interests of the estates because it resolves years of ongoing litigation between the opposing the parties, allowing the Debtors' reorganization process to proceed more efficiently. Proceeds from the settlement will also ensure a full recovery for the estates' creditors as well as a meaningful distribution to its equity holders.

32. As reflected in the Term Sheet, the Debtors and Whinstone have agreed to the following principal terms of the Transaction:⁴

- **Parties.** Rhodium and Whinstone.
- **Mutual Release of All Claims.** Effective upon the Closing, each of the Releasing Parties will release, acquit, and discharge each of the Released Parties from any and all claims, obligations, rights, suits, damages, causes of action, remedies, and liabilities whatsoever arising in connection with the Disputing Parties, including, without limitation, any claims arising under or in connection with (i) all the Power Agreements; (ii) the Rhodium JV Profit Sharing Agreement; (iii) the Air HPC Profit Sharing Agreement; (iv) a redemption agreement between Whinstone, Imperium, and Rhodium JV entered into December 2020; and (v) the Water Agreement, in each case, whether known or unknown, foreseen or unforeseen, matured or unmatured, in law, equity, contract, tort, or otherwise, by statute or otherwise, that such Releasing Parties (whether individually or collectively) ever had, now has,

⁴ Capitalized terms used in this paragraph that are not otherwise defined in the Motion have the meaning ascribed to them in the Term Sheet. This paragraph is for description purposes only and nothing herein shall alter the parties' agreement as reflected in the Term Sheet, including with respect to the meaning of the capitalized terms used in the Term Sheet.

or may have, based on or relating to, or in any manner arising from, in whole or in part, the Disputing Parties in each case, arising on or before the closing of the Settlement & Asset Purchase Transaction.

- ***Dismissal.*** Following the Closing, each of Whinstone and Riot, on the one hand, and Rhodium and Imperium, on the other hand, will dismiss or cause to be dismissed all existing litigation as between any of them and any Released Party,⁵ including any appeals and adversary proceedings, with prejudice, and release any and all future claims not connected to the performance of the Settlement & Asset Purchase Transaction.
- ***Settlement & Asset Purchase Payment.*** Following the Approval, Whinstone will promptly provide to Rhodium \$185 million consisting of the following consideration: (i) \$129.9 million in cash; (ii) \$6.1 million return of power security deposit; and (iii) \$49 million in Riot Stock, which will be priced using the last 10 trading days volume-weighted average price immediately prior to the date of the closing of the Settlement & Asset Purchase Transaction which, for the avoidance of doubt, shall not occur prior to the Closing, and the Riot Stock will not be subject to any transfer restrictions.
- ***Termination of All Agreements.*** At the Closing, all contracts and agreements by and between any of the Parties will be deemed terminated by mutual agreement to be documented prior to the closing of the Settlement & Asset Purchase Transaction.
- ***Transfer of Assets at Rockdale Site.*** The Rhodium entities that own the property at Rockdale will transfer ownership of Transferred Assets, which do not include any of the Retained Assets, to Whinstone (or its designee). Whinstone (or its designee) shall receive a perpetual, personal, non-transferrable, non-assignable, non-exclusive, bare license, without the right to sub-license, and to use only, the intellectual property embodied in any of the Transferred Assets.
- ***Vacate Rhodium Site/Retained Assets.*** Rhodium will vacate the Rockdale facility within three business days following the Closing.

Bankruptcy Court approval. The Settlement & Asset Purchase Transaction will be subject to the approval of this Court pursuant to Bankruptcy Rule 9019 and Bankruptcy Code section 363. The Parties agree to take all reasonable steps necessary to ensure that the order approving the 9019 Motion contains all customary protections under Bankruptcy Code section

⁵ In particular, the Term Sheet contemplates the dismissal of the following adversary proceedings: (i) *Whinstone US Inc. et al v. Imperium Investment Holdings LLC et al.*, Case No. 4:24-ap-03240 (ARP) (Bankr. S.D. Tex.); and (ii) *Rhodium JV LLC et al v. Whinstone US, Inc. et al.*, Case No. 4:25-ap-03047 (ARP) (Bankr. S.D. Tex.).

363, including, but not limited to, a good-faith finding in favor of Whinstone under section 363(m) and the sale free and clear of all liens, claims, and encumbrances of any kind under section 363(f).

- ***Release of Supersedeas Deposit.*** Whinstone will take all steps necessary to effectuate the return to Rhodium of the \$1 million-dollar deposit in lieu of injunction bond in Milam County District Court.
- ***Ordinary Course Operations.*** From date of this term sheet through closing of the Settlement & Asset Purchase Transaction, Rhodium will continue to operate in the ordinary course of its business at the Rockdale Facility and will comply with all applicable contracts, Data Center Rules (subject to the applicable contracts) and government regulations.
- ***Post-Petition Hosting Fees.*** Rhodium will continue to pay all post-petition hosting fees, power charges, or amounts otherwise incurred for hosting, power, and services through termination of Rhodium’s business operations at the Rockdale Facility.
- ***Employee Solicitation.*** On the Closing Date, Whinstone shall have the right, but not the obligation, to solicit existing Rhodium employees at the Rockdale Facility regarding employment by Whinstone following the Closing of the Sale & Asset Purchase Transaction.

BASIS FOR RELIEF

I. The Settlement Term Sheet Satisfies Bankruptcy Rule 9019 and Should Be Approved

33. Pursuant to Bankruptcy Rule 9019(a), a bankruptcy court may, after appropriate notice and a hearing, approve a compromise or settlement so long as the proposed settlement is fair, reasonable, and in the best interest of the estate. *See In re Age Refin. Inc.*, 801 F.3d 530, 540 (5th Cir. 2015). Ultimately, approval of a compromise is within the sound discretion of the bankruptcy court. *See In re AWECO, Inc.*, 725 F.2d 293, 297-98 (5th Cir. 1984). Settlements are considered a “normal part of the process of reorganization” and “a desirable and wise method[] of

bringing to a close proceedings otherwise lengthy, complicated and costly.” *In re Jackson Brewing Co.*, 624 F.2d 599, 602 (5th Cir. 1980) (citations omitted) (decided under the Bankruptcy Act).

34. The Fifth Circuit sets forth a three-factor balancing test under which bankruptcy courts are to analyze proposed settlements. *Id.* The factors the Court considers are: “(1) the probability of success in litigating the claim subject to settlement, with due consideration for the uncertainty in fact and law; (2) the complexity and likely duration of litigation and any attendant expense, inconvenience, and delay, and (3) all other factors bearing on the wisdom of the compromise.” *See Age Refin. Inc.*, 801 F.3d at 540 (internal citations omitted).

35. Under the rubric of the third factor referenced above, the Fifth Circuit interposed two additional factors that bear on the decision to approve a proposed settlement. First, the court should consider “the paramount interest of creditors with proper deference to their reasonable views.” *In re Foster Mortg. Corp.*, 68 F.3d 914, 917 (5th Cir. 1995). Second, the court should consider the “extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion.” *Id.* at 918; *Age Ref. Inc.*, 801 F.3d at 540 (citations omitted).

36. Generally, the role of the bankruptcy court is not to decide the issues in dispute when evaluating a settlement. *See Watts v. Williams*, 154 B.R. 56, 59 (S.D. Tex. 1993). Instead, the court should determine whether the settlement as a whole is fair and equitable. *Protective Comm. for Indep. S’holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968). As courts across the country have noted, a settlement should only fail if it “falls below the lowest point in the range of reasonableness.” *See In re Alice Prop., LLC*, 637 B.R. 465, 477 (Bankr. E.D. La. 2021).

37. The Transaction contemplated in the Term Sheet meets these standards. The Term Sheet was the result of extensive negotiations between the Debtors and Whinstone, each of which

were represented by competent counsel. The Term Sheet followed an 11-hour mediation with Judge Mullin and post-mediation conferences with Judge Mullin. Entry into the Term Sheet and Transaction is fair, reasonable, and in the best interest of the Debtors' estates.

38. The Debtors have already invested significant resources into litigation with Whinstone and anticipate that continuing to litigate will further deplete time and resources. The favorable results achieved so far by the Debtors provided a strong bargaining position for negotiating with Whinstone. However, continuing litigation necessarily carries risk and given those risks and the inherent volatility of the crypto mining industry generally, further litigation may not enhance the Debtors' ability to confirm a plan and create value for the estates' creditors. Further, unfavorable litigation outcomes could risk the Debtors' ability to successfully reorganize and pay its legitimate creditors.

39. The Term Sheet resolves these issues and significantly derisks the Debtors' prospects for paying creditors in full and maximizing shareholder recoveries. As such, the paramount interest of creditors coupled with the weighting of risk versus reward militates in favor of the Court approving the Term Sheet that provides for Whinstone remitting consideration of \$185 million to the Debtors in exchange for the sale and transfer of the Transferred Assets. Accordingly, the Debtors submit that the Term Sheet satisfies Bankruptcy Rule 9019 and should be approved.

II. The Settlement Term Sheet Satisfies Bankruptcy Rule 363 And Should Be Approved

40. Pursuant to the Term Sheet, the Debtors will transfer ownership of certain tangible property, including all furniture, fixtures, and equipment located at the Rockdale Facility to Whinstone or its designee (defined above as the "Transferred Assets"). Transferred Assets shall exclude all cash, cash equivalents, software, intangible and intellectual property, all deposits,

bonds, securities, and all property, real or personal, not currently located at the Rockdale facility (defined above as the “Retained Assets”); provided, however, that Whinstone or its designee, will receive a perpetual, personal, non-transferrable, non-assignable, non-exclusive, bare license, without the right to sub-license, and to use only, any intellectual property of the Debtors embodied in any of the Transferred Assets.

41. Bankruptcy Code section 363 and Bankruptcy Rule 6004(f)(1) authorize a debtor to sell property outside the ordinary course of business by private sale or by auction. Section 363(b) provides: “[t]he [debtor in possession], after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate” 11 U.S.C. § 363(b)(1). Bankruptcy Code section 105(a) empowers bankruptcy courts to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

42. The Debtors’ decision to sell assets must be evaluated under the business judgment standard, which affords considerable deference to the debtor’s business judgment. *In re Asarco, LLC*, 650 F.3d, 593, 601 (5th Cir, 2011). (“Section 363 of the Bankruptcy Code addresses the debtor’s use of property of the estate and incorporates a business judgment standard.”); *In re Cont’l Air Lines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986). “The business judgment standard in section 363 is flexible and encourages discretion.” *Asarco*, 650 F.3d at 601.

43. Here, the Term Sheet and the imbedded sale and transfer of the Transferred Assets should be approved because the terms are reasonable and appropriate and meet or exceed the best interests of the Debtors’ estates. The Debtors have used their business judgment to carefully design a sale and transfer of certain assets that will maximize value received from the consideration

remitted by Whinstone, and to fairly and effectively resolve all outstanding issues and maximize creditor and shareholder recoveries.

III. The Sale of the Transferred Assets Should Be Free And Clear of Free and Clear of Liens, Claims, Encumbrances, and Interests Under Section 363(f) of the Bankruptcy Code

44. Furthermore, the Debtors request that the sale of the Transferred Assets be approved free and clear of any liens and interests under section 363(f) of the Bankruptcy Code. Section 363(f) of the Bankruptcy Code authorizes a debtor to sell assets free and clear of liens, claims, interests, and encumbrances in property of an entity other than the estate if:

- (1) applicable nonbankruptcy law permits a sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

45. Because section 363(f) of the Bankruptcy Code is drafted “in the disjunctive,” satisfaction of any one of its five (5) requirements will suffice to permit the sale of the Assets “free and clear” of liens and interests. *See, e.g., In re Nature Leisure Times, LLC*, 06-41357, 2007 WL 4554276, at *3 (Bankr. E.D. Tex. Dec. 19, 2007); *Michigan Employment Sec. Comm’n v. Wolverine Radio Co. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (stating that Bankruptcy Code section 363(f) is written in the disjunctive; holding that the court may approve the sale “free and clear” provided at least one of the subsections of Bankruptcy Code section 363(f) is met); *In re Dundee Equity Corp.*, No. 89-B-10233, 1992 WL 53743, at *4 (Bankr.

S.D. N.Y. Mar. 6, 1992) (“[S]ection 363(f) is in the disjunctive, such that the sale free of the interest concerned may occur if any one of the conditions of § 363(f) have been met.”).

46. The Court also may authorize the sale of a debtor’s assets free and clear of any liens pursuant to section 105 of the Bankruptcy Code, even if section 363(f) of the Bankruptcy Code did not apply. *See Matter of Selby Farms*, 15 B.R. 372, 375 (Bankr. S.D. Miss. 1981) (“The power of the Bankruptcy Court to sell property free and clear of liens has long been recognized.” (citing *Van Huffel v. Harkelrode*, 284 U.S. 225, 227-28 (1931))); *In re Trans World Airlines, Inc.*, No. 01-0056, 2001 WL 1820325, at *3 (Bankr. D. Del. Mar. 27, 2001) (“Bankruptcy courts have long had the authority to authorize the sale of estate assets free and clear even in the absence of § 363(f).”); *see also Volvo White Truck Corp. v. Chambersberg Beverage, Inc. (In re White Motor Credit Corp.)*, 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987) (“Authority to conduct such sales [free and clear of liens] is within the court’s equitable powers when necessary to carry out the provisions of Title 11.”).

47. Here, with regard to the sale of the Transferred Assets to Whinstone, the Debtors believe that at least one of the tests in section 363(f) will be satisfied. In particular, the Debtors believe that sections 363(f)(2) and (f)(5) will be satisfied because each creditor asserting a lien, claim, or interest in the Transferred Assets has otherwise consented to the Transaction Documents or is deemed to have consented to the Settlement & Asset Purchase Transaction, and even absent such consent, such claimant could be compelled in a legal or equitable proceeding to accept money satisfaction of such lien, claim, or interest. Moreover, as to each creditor asserting a lien, claim, or interest, against the Transferred Assets, the price at which such property is being sold is greater than the aggregate value of all such liens, claims, or interests. Further, the liens of any validly

perfected secured party will attach to the proceeds from the sale of the Transferred Assets to the same extent and priority as such liens exist in the assets.

48. Accordingly, the Debtors respectfully request that the transfer and sale of the Transferred Assets, as contemplated in the Transaction Documents, be approved under section 363(f) of the Bankruptcy Code.

IV. Whinstone is Entitled to Protections as a Good-Faith Purchaser Under Section 363(m) of the Bankruptcy Code

49. Section 363(m) of the Bankruptcy Code provides, in relevant part:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

50. This Court has upheld section 363 purchase agreements “negotiated, proposed, and entered into . . . in good faith, without collusion . . . [resulting from] arm’s-length bargaining with . . . parties represented by independent counsel.” *In re TriDimension Energy, L.P.*, 2010 Bankr. LEXIS 4838, *13 (Bankr. N.D. Tex. Nov. 19, 2010). A sale to a good-faith purchaser cannot be avoided under section 363(m), unless the sale authorization was stayed pending appeal. *See* 11 U.S.C. § 363(m) (“The reversal or modification of an authorization under subsection (b) of this section of a sale . . . does not affect the validity of [the] sale . . . to an entity that purchased . . . the property in good faith.”). However, “[t]he trustee may avoid a sale . . . if the sale price was controlled by an agreement among potential bidders.” *Id.* § 363(n). Additionally, for the sale to be considered in good-faith, consideration must: (1) be fair and reasonable; (2) be the highest and best offer for the property; and (3) constitute reasonably equivalent value, fair value, and fair consideration. *In re TriDimension Energy, L.P.*, 2010 Bankr. LEXIS 4838, at *13.

51. As noted above, the Term Sheet and the sale and transfer of the Transferred Assets are the product of good faith, arms-length negotiations between the parties, Debtors and Whinstone, each of which were represented by competent counsel. Moreover, the Term Sheet and sale therein, followed an extensive and lengthy mediation process with Judge Mullin. As such, the Debtors request that Whinstone, as the purchaser of the Transferred Assets, is entitled to the protections of a good-faith purchaser under section 363(m) of the Bankruptcy Code, and the sale of the Transferred Assets does not constitute an avoidable transaction pursuant to section 363(n).

V. Cause Exists to Eliminate Any Stay Imposed by The Bankruptcy Rules

52. Bankruptcy Rule 6004(h) provides that an “order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). Bankruptcy Rule 6006 provides that an “order authorizing the trustee to assign an executory contract or unexpired lease under section 365(f) is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6006(d).

53. The Debtors request that any order approving this Motion (or authorizing a transaction that is deemed to be a sale of the Transferred Assets) be effective immediately, thereby waiving the 14-day stays imposed by Bankruptcy Rules 6004 and 6006. These waivers or eliminations of the 14-day stays are necessary for the sale to close, and the funding to be received, as expeditiously as possible. The Debtors respectfully submit that it is in the best interest of the estates to close the sale as soon as possible after all closing conditions have been met or waived. Accordingly, the Debtors request that the Court eliminate the 14-day stays imposed by Bankruptcy Rules 6004 and 6006.

NOTICE

54. Notice of this Motion has been provided to: (a) the Office of the United States Trustee; (b) counsel to the Creditors' Committee; (c) any creditor with a lien or interest in the Transferred Assets; (d) the holders of the twenty (20) largest unsecured claims against the Debtors; (e) the Internal Revenue Service; (f) Whinstone; and (g) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

EMERGENCY CONSIDERATION

55. Under Local Rule 9013-1, the Debtors respectfully request emergency consideration of this Motion because relief is necessary to avoid immediate or irreparable harm caused by delaying the approval of the Transaction.

WHEREFORE, the Debtors respectfully request entry of the proposed order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Respectfully submitted this 21st day of March, 2025.

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

/s/ Patricia B. Tomasco

Patricia B. Tomasco (SBN 01797600)

Cameron Kelly (SBN 24120936)

Alain Jaquet (*pro hac vice*)

Rachel Harrington (*pro hac vice*)

700 Louisiana Street, Suite 3900

Houston, Texas 77002

Telephone: 713-221-7000

Facsimile: 713-221-7100

Email: pattytomasco@quinnemanuel.com

Email: cameronkelly@quinnemanuel.com

Email: alainjaquet@quinnemanuel.com

Email: rachelharrington@quinnemanuel.com

- and -

Eric Winston (*pro hac vice*)

Razmig Izakelian (*pro hac vice*)

865 S. Figueroa Street, 10th Floor

Los Angeles, California 90017

Telephone: 213-443-3000

Facsimile: 213-443-3100

Email: ericwinston@quinnemanuel.com

Email: razmigizakelian@quinnemanuel.com

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

Certificate of Accuracy

I certify that the foregoing statements are true and accurate to the best of my knowledge. This statement is being made pursuant to Bankruptcy Local Rule 9013-1(i).

/s/ Patricia B. Tomasco

Patricia B. Tomasco

Certificate of Service

I, Patricia B. Tomasco, hereby certify that on the 21st day of March, 2025, a copy of the foregoing Motion was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Patricia B. Tomasco

Patricia B. Tomasco

NON-BINDING RULE 9019 SETTLEMENT & ASSET PURCHASE TERMS

This non-binding term sheet (this “**Term Sheet**”) contains the terms of a proposed transaction (the “**Settlement & Asset Purchase Transaction**”): 1) providing for the acquisition by Whinstone of the specified assets located at the Rockdale Facility (defined below), and 2) resolving all disputes between Rhodium Encore LLC (together with its affiliates, “**Rhodium**”) and Whinstone US, Inc. (together with its affiliates, “**Whinstone**” and together with Rhodium, the “**Parties**”).

This Term Sheet has been prepared for settlement purposes only and shall not constitute an admission of liability by any party, nor be admissible in any action relating to any of the matters addressed herein. Further, nothing herein shall be an admission of fact or liability or deemed binding on the Parties and shall be subject to negotiation and execution of definitive documentation and approval (the “**Approval**”) of the United States Bankruptcy Court Southern District of Texas (the “**Bankruptcy Court**”) pursuant to a motion to approve settlement under Federal Rule of Bankruptcy Procedure 9019 (the “**9019 Motion**”).

This Term Sheet does not constitute an offer of securities or a solicitation of the acceptance or rejection of a chapter 11 plan within the meaning of sections 1125 or 1126 of the Bankruptcy Code. Any such solicitation will comply with all applicable provisions of the Bankruptcy Code.

<u>Issue</u>	<u>Terms</u>
Parties	Rhodium and Whinstone.
<i>Release of Claims</i>	
Mutual Release of All Claims	Effective upon the Closing, each of Whinstone and Riot Platforms, Inc. (“ <u>Riot</u> ”), on the one hand, and Rhodium and Imperium, on the other hand (collectively, the “ <u>Disputing Parties</u> ”): (a) on behalf of itself and its predecessors, successors and assigns, subsidiaries, affiliates, current and former officers, directors, principals, shareholders, members, partners, employees, agents, advisory board members, financial advisors, investment bankers, consultants, representatives, management companies, insurers, co-insurers, reinsurers, agents, attorneys, accountants, auditors, advisors, and legal representatives, and other professionals, in each case in their capacity as such (collectively, the “ <u>Releasing Parties</u> ”), will expressly and generally release, acquit, and discharge (i) each of the other Disputing Parties, (ii) each of the Disputing Parties’ respective predecessors, successors and assigns, subsidiaries, affiliates, current and former officers, directors, principals, shareholders, members, partners, employees, agents, advisory board members, financial advisors, investment bankers, consultants, representatives, management companies, insurers, co-insurers, reinsurers, agents, attorneys, accountants, auditors, advisors, and legal representatives, and other professionals, in each case in the foregoing, in their capacity as such (collectively, the “ <u>Released Parties</u> ”), from any and all claims, obligations, rights, suits, damages, causes of action,

	remedies, and liabilities whatsoever, including any derivative claims asserted or assertable on behalf of the Disputing Parties, arising in connection with the Disputing Parties, including, without limitation, any claims arising out of the Disputing Parties business relationship and/or under or in connection with any agreements, including (A) the twenty-three power agreements that Rhodium and Whinstone entered into between April and November 2020 covering the premises at Rockdale, Texas (the “Rockdale Facility”); (B) a profit sharing agreement between Rhodium JV LLC and Whinstone entered into in December 2020; (C) a Profit Sharing Agreement between Air HPC LLC and Whinstone entered into in December 2020; a (D) a redemption agreement between Whinstone,” “Imperium” and Rhodium JV LLC entered into December 2020; (E) a hosting agreement entered into between Rhodium JV LLC and Whinstone entered into in January 2021; (E) a water supply services agreement Rhodium and Whinstone entered into in August 2021, in each case, whether known or unknown, foreseen or unforeseen, matured or unmatured, in law, equity, contract, tort, or otherwise, by statute or otherwise, that such Releasing Parties (whether individually or collectively) ever had, now has, or may have, based on or relating to, or in any manner arising from, in whole or in part, the Disputing Parties in each case, arising on or before the closing of the Settlement & Asset Purchase Transaction.
Dismissal	Following the Closing, each of Whinstone and Riot, on the one hand, and Rhodium and Imperium, on the other hand, will dismiss or cause to be dismissed all existing litigation as between any of them and any Released Party, including any appeals and adversary proceedings, with prejudice, and release any and all future claims not connected to the performance of the Settlement & Asset Purchase Transaction.
Settlement & Asset Purchase Payment	Following the Approval, Whinstone will promptly provide to Rhodium \$185 million consisting of the following consideration: • \$129.9 million in cash; • \$6.1 million return of power security deposit; and • \$49 million in Riot stock (the “<u>Riot Stock</u>”), which will be priced using the last 10 trading days volume-weighted average price immediately prior to the date of the closing of the Settlement & Asset Purchase Transaction which, for the avoidance of doubt, shall not occur prior to the Approval (the “<u>Closing</u>”), and the Riot Stock will not be subject to any transfer restrictions.
Termination of All Agreements	At the Closing, all contracts and agreements by and between any of the Parties will be deemed terminated by mutual agreement to be documented prior to closing of the Settlement & Asset Purchase Transaction.

Transfer of Assets at Rockdale Site	The Rhodium entities that own the property at the Rockdale Facility will transfer ownership of all tangible property, including all furniture, fixtures, and equipment located at the Rockdale Facility to Whinstone (or its designee) and, prior to such transfer, Rhodium will not remove any furniture, fixtures, or equipment from the Rockdale Facility (except such personal property of employees as is owned by such employee) (the “Transferred Assets”). Transferred Assets shall exclude all cash, cash equivalents, software, intangible and intellectual property, all deposits, bonds, securities, and all property not currently located at the Rockdale Facility (the “Retained Assets”). Whinstone (or its designee) shall receive a perpetual, personal, non-transferrable, non-assignable, non-exclusive, bare license, without the right to sub-license, and to use only, the intellectual property embodied in any of the Transferred Assets.
Vacate Rhodium Site/Retained Assets	Rhodium will vacate the Rockdale Facility within three (3) business days following the Closing.
Bankruptcy Court Approval	The Settlement & Asset Purchase Transaction will be subject to the approval of the Bankruptcy Court pursuant to Bankruptcy Rule 9019 and Bankruptcy Code section 363. The Parties agree to take all reasonable steps necessary to ensure that the order approving the 9019 Motion contains all customary protections under Bankruptcy Code section 363, including, but not limited to, a good-faith finding in favor of Whinstone under section 363(m) and the sale free and clear of all liens, claims, and encumbrances of any kind under section 363(f).
Release of Supersedeas Deposit	Whinstone will take all steps necessary to effectuate the return to Rhodium of the \$1 million-dollar deposit in lieu of injunction bond in Milam County District Court.
Ordinary Course Operations	From date of this term sheet through closing of the Settlement & Asset Purchase Transaction, Rhodium will continue to operate in the ordinary course of its business at the Rockdale Facility and will comply with all applicable contracts, Data Center Rules (subject to the applicable contracts) and government regulations.
Post-Petition Hosting Fees	Rhodium will continue to pay all post-petition hosting fees, power charges, or amounts otherwise incurred for hosting, power, and services through termination of Rhodium’s business operations at the Rockdale Facility.
Employee Solicitation	On the Closing Date, Whinstone shall have the right, but not the obligation, to solicit existing Rhodium employees at the Rockdale Facility regarding employment by Whinstone following the Closing of the Sale & Asset Purchase Transaction.

[SIGNATURE PAGE TO TERM SHEET]

FOLEY & LARDNER LLP

/s/ Mark C. Moore

Robert T. Slovak (SBN 24013523)
Stephen C. Lockhart (SBN 24036981)
J. Michael Thomas (SBN 24066812)
Mark C. Moore (SBN 24074751)
Brandon C. Marx (SBN 24098046)
Andrew A. Howell (SBN 24072818)
2021 McKinney Avenue, Suite 1600
Dallas, Texas 75201
Telephone 214-999-3000
Facsimile: 214-999-4667
Email: rslovak@foley.com
Email: slockhart@foley.com
Email: jmthomas@foley.com
Email: mmoore@foley.com
Email: bmarx@foley.com
Email: ahowell@foley.com

Counsel to Whinstone US, Inc.

**QUINN EMANUEL URQUHART &
SULLIVAN, LLP**

/s/ Patricia B. Tomasco

Patricia B. Tomasco (SBN 01797600)
Cameron Kelly (SBN 24120936)
Alain Jaquet (*pro hac vice*)
Rachel Harrington (*pro hac vice*)
700 Louisiana Street, Suite 3900
Houston, Texas 77002
Telephone: 713-221-7000
Facsimile: 713-221-7100
Email: pattytomasco@quinnemanuel.com
Email: cameronkelly@quinnemanuel.com
Email: alainjaquet@quinnemanuel.com
Email: rachelharrington@quinnemanuel.com

- and -

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

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

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

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

**ORDER (I) APPROVING EMERGENCY MOTION FOR A SETTLEMENT AND
COMPROMISE BETWEEN DEBTORS AND WHINSTONE US, INC. PURSUANT TO
BANKRUPTCY RULE 9019; (II) AUTHORIZING THE USE, SALE,
OR LEASE OF CERTAIN PROPERTY OF THE DEBTORS' ESTATE
PURSUANT TO 11 U.S.C. § 363 AND (III) GRANTING RELATED RELIEF**
(Relates to ECF No. ____)

Upon consideration of *Emergency Motion for Entry of an Order (I) Approving Settlement Between Debtors and Whinstone US, Inc.; (II) Authorizing the Use, Sale, or Lease of Certain Property of the Debtors' Estate Pursuant to 11 U.S.C. § 363; and (III) Granting Related Relief* (the "Motion");² and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided; and such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and the Court

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

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

having found and determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation thereon; and good and sufficient cause appearing therefor;

THE COURT HEREBY FINDS AND DETERMINES THAT:

A. **Jurisdiction and Venue.** This Court has jurisdiction over this matter and over the property of the Debtors' estates, including the Transferred Assets to be sold, transferred, or conveyed pursuant to the Term Sheet by and between the Debtors and Whinstone US, Inc. ("Whinstone"), and when formalized in one or more binding agreements, a Settlement & Asset Purchase Transaction substantially conforming to the Term Sheet (collectively, the "Transaction Documents"), pursuant to 28 U.S.C. § 1334(b). Without limiting the generality of the foregoing, this Court has exclusive *in rem* jurisdiction over the Transferred Assets pursuant to 28 U.S.C. § 1334(e), as such Transferred Assets are property of the Debtors' chapter 11 estates and, as a result of such jurisdiction, this Court has all necessary power and authority to grant the relief contained herein. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Court may enter a final order hereon under Article III of the United States Constitution. Venue of these Chapter 11 Cases and approval of the Transaction is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

B. **Approval of the Settlement & Asset Purchase Transaction under Fed. R. Bankr. P. 9019.** The Settlement & Asset Purchase Transaction, including, but not limited to, the consensual compromises, settlements, and mutual releases contained therein, is the product of extensive, good faith, arms' length negotiations between the Debtors, Whinstone, and their respective representatives. The Debtors are authorized to enter into, perform, execute, and deliver all documents, and take all actions, necessary to immediately continue and fully implement the

Settlement & Asset Purchase Transaction in accordance with the terms, conditions, and agreements set forth in the Transaction Documents, all of which are hereby approved.

C. **Fed. R. Bankr. P. 7052.** The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such. This Court's findings shall also include any oral findings of fact and conclusions of law made by this Court during or at the conclusion of the Sale Hearing.

D. **Adequate and Reasonable Notice.** As evidenced by the affidavits of service filed with this Court (ECF Nos. ____), (i) due, proper, timely, adequate, and sufficient notice of the Motion has been provided to all parties in interest; (ii) such notice was and is good, sufficient, and appropriate under the circumstances and reasonably calculated to reach and apprise all holders of liens, claims, encumbrances, and other interests, including, without limitation, rights or claims based on any successor, transferee, derivative, or vicarious liabilities of their right to appear and be heard, and was provided in accordance with the applicable requirements of the Bankruptcy Code, the Bankruptcy Rules, and the procedural due process requirements of the United States Constitution; and (iii) no other or further notice of, the opportunity to object to, or other opportunity to be heard regarding the Motion or of the entry of this Order is necessary or shall be required. A reasonable opportunity to object and to be heard with respect to the Sale & Purchase Transaction, the Transaction Documents, and the entry of this Order has been given to all interested Persons.

E. **Sale Hearing.** The Court conducted the Sale Hearing on April 8, 2025, at which time this Court considered the Motion, the evidence and testimony presented, and the statements

and argument of counsel, as applicable, in support of the Motion. Except as otherwise expressly provided in this Order, all objections to the relief requested in the Motion, whether timely or untimely and whether written or made orally at the Sale Hearing, if any, were heard and considered by this Court. All such objections were either overruled by this Court, were resolved by the terms hereof or by separate agreement between the objecting party and the Debtors, were withdrawn as a result of an agreement between the objecting party and the Debtors, or will either (i) be resolved by mutual consent of the parties or (ii) through further hearing of this Court.

F. **Final Order.** This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). To any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, this Court expressly finds that there is no just reason for delay in the implementation of this Order and authorizes the closing of all transactions contemplated hereby without regard to any stay or delay in its implementation.

G. **Good Faith Purchaser.** The Debtors, Whinstone, and their respective principals, counsel and advisors, have negotiated, proposed, and entered into the Settlement & Asset Purchase Transaction in good faith, without collusion, and from arm's-length bargaining positions. Whinstone is a "good faith purchaser" and is acting in good faith within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to all the protections afforded thereby. Whinstone is not an "insider" or "affiliate" of any of the Debtors, as those terms are defined in section 101 of the Bankruptcy Code, and no common identity of incorporators, directors, or controlling stockholders exists between Whinstone and the Debtors.

H. The Settlement & Asset Purchase Transaction, which includes the sale of the Transferred Assets pursuant to the Transaction Documents and mutual releases as between certain

parties as stated therein, and all covenants in and conditions thereto, is an integrated transaction, meaning that each component is an essential part of every other component and that the Transaction Documents can be consummated only if all of the components are consummated. Accordingly, each component of the Transaction Documents is subject to, and is protected by, the provisions of section 363(m) of the Bankruptcy Code.

I. The Debtors have demonstrated good, sufficient, and sound business purposes and justifications for consummation of the Settlement & Asset Purchase Transaction pursuant to the Transaction Documents and all other agreements, instruments, certificates, and other documents to be entered into or delivered by any party in connection with the Settlement & Asset Purchase Transaction, outside of the ordinary course of business and in accordance with the requirements of section 363(b) of the Bankruptcy Code. Consummation of the Settlement & Asset Purchase Transaction pursuant to the Transaction Documents prior to and not as part of a chapter 11 plan is (i) justified under the circumstances, (ii) an appropriate exercise of the Debtors' business judgment, and (iii) in the best interests of the Debtors, their estates, and their creditors.

J. The Debtors' decision to enter into the Settlement & Asset Purchase Transaction pursuant to the Transaction Documents with Whinstone was a due and proper exercise of the Debtors' business judgment. The sale of the Transferred Assets pursuant to sections 105(a) and 363 of the Bankruptcy Code upon the terms and conditions set forth in the Transaction Documents maximizes value for the benefit of the Debtors' estates. The Transaction Documents maximize the value of the Transferred Assets for the benefit of all creditors and parties in interest.

K. **Fair Purchase Price.** The consideration provided by the Whinstone pursuant to the Transaction Documents (i) is fair and adequate; (ii) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any

state, territory, possession, or the District of Columbia (including the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act, and similar laws); and (iii) will provide an equal or greater recovery for the Debtors' stakeholders than would be provided by any other reasonably practicable available alternative. The terms of the Transaction Documents are fair and reasonable under the circumstances of the Debtors' chapter 11 cases, and the Debtors' determination to proceed with such transaction constitutes a valid and sound exercise of the Debtors' business judgment.

L. **Sale Free and Clear under Section 363(f).** The Debtors are authorized to sell the Transferred Assets free and clear of the Liens, Claims, and Interests (as further defined in the Order) (with the Liens, Claims, and Interests attaching to the proceeds with the same nature, validity, priority, extent, perfection, and force and effect that the Liens, Claims, and Interests encumbered the Transferred Assets immediately prior to the entry of this Order) (the "Sale") because, with respect to each creditor or other person or entity asserting a Lien, Claim, or Interest, one or more of the standards set forth in section 363(f)(1)–(5) of the Bankruptcy Code has been satisfied. Each creditor or other person or entity asserting a Lien, Claim, or Interest in the Transferred Assets: (i) has, subject to the terms and conditions of this Order, consented to the Settlement & Asset Purchase Transaction or is deemed to have consented to the Settlement & Asset Purchase Transaction, (ii) could be compelled in a legal or equitable proceeding to accept money in satisfaction of such Lien, Claim, or Interest, or (iii) otherwise falls within the provisions of section 363(f) of the Bankruptcy Code. Specifically, as to each creditor asserting a Lien against the Transferred Assets, the price at which such property is being sold is greater than the aggregate value of all such Liens. Those holders of the Liens, Claims, and Interests who did not object (or who ultimately withdrew their objections, if any) to the Transaction Documents, Settlement &

Asset Purchase Transaction, or the Motion are deemed to have consented to the Transaction Documents, Settlement & Asset Purchase Transaction, and Motion pursuant to section 363(f)(2) of the Bankruptcy Code.

M. Whinstone would not have entered into the Transaction Documents and would not consummate the transactions contemplated thereby, thus adversely affecting the Debtors and their estates and their creditors: (i) if the sale of the Transferred Assets was not free and clear of all Liens, Claims, and Interests, including, without limitation, any rights, Liens, Claims, or Interests based on any successor or transferee liability, or (ii) if Whinstone would, or in the future could, be liable for any Liens, Claims, or Interests, including, without limitation, any rights, Liens, Claims, or Interests based on any successor or transferee liability. Whinstone will not consummate the transactions contemplated by the Transaction Documents unless this Court expressly orders that none of Whinstone, its affiliates, its joint ventures, its present or contemplated members or shareholders, or the Transferred Assets will have any liability whatsoever with respect to, or be required to satisfy in any manner, whether at law or equity, or by payment, setoff, or otherwise, directly or indirectly, any Liens, Claims, and Interests, including rights or claims based on any successor or transferee liability other than as expressly set forth in the Transaction Documents.

N. Not selling the Transferred Assets free and clear of all Liens, Claims, and Interests would adversely impact the Debtors' estates, and the sale of Transferred Assets other than free and clear of all Liens, Claims, and Interests would be of substantially less value to the Debtors' estates.

O. Except with respect to the liens that Whinstone has expressly agreed to permit to survive the Closing pursuant to the express terms of the Transaction Documents (the "Permitted Liens"), the Liens, Claims, and Interests shall attach to the consideration to be received by the Debtors with the same priority and perfection and subject to the same defenses, if any, as before

the Closing of the Settlement & Asset Purchase Transaction pursuant to the Transaction Documents, and Whinstone would not enter into the Transaction Documents to purchase the Transferred Assets or proceed to the Closing otherwise.

P. The transfer of the Transferred Assets to Whinstone free and clear of any Liens, Claims, and Interests will not result in any undue burden or prejudice to any holders of any Liens, Claims, and Interests, because all such Liens, Claims, and Interests of any kind or nature whatsoever, shall attach to the net proceeds of the sale of the Transferred Assets received by the Debtors in the order of their priority, with the same validity, force, perfection and effect which they now have as against the Transferred Assets and subject to any valid claims and defenses the Debtors or other parties may possess with respect thereto. All persons having Liens of any kind or nature whatsoever against or in any of the Debtors or the Transferred Assets shall be forever barred and estopped from pursuing or asserting such Liens (subject to the Permitted Liens that Whinstone has expressly agreed to permit to survive the Closing pursuant to the express terms of the Transaction Documents) against Whinstone, or any of its respective assets, property, successors or assigns, or the Transferred Assets. Whinstone shall have no obligations with respect to any Liens, Claims, and Interests against the Debtors.

Q. **No Successor, Transferee, or Similar Liability.** The Settlement & Asset Purchase Transaction contemplated by the Transaction Documents does not amount to a consolidation, merger, or *de facto* merger of Whinstone, on the one hand, and any of the Debtors and/or their estates, on the other. There is no substantial continuity between Whinstone, on the one hand, and the Debtors, on the other. There is no continuity of enterprise between the Debtors and Whinstone. Whinstone is not a mere continuation of the Debtors or their estates, and Whinstone is not a successor to any of the Debtors or their estates.

R. Whinstone and the Debtors are not entering into the Settlement & Asset Purchase Transaction pursuant to the Transaction Documents for the fraudulent purpose of escaping liability for the Debtors' obligations or to defraud creditors in any way.

S. **No Assumption and Assignment of the Designated Contracts.** Pursuant to the Settlement & Asset Purchase Transaction, Whinstone is not assuming any executory contract. Whinstone shall not assume or become liable for any Liens, Claims, and Interests relating to the Transferred Assets, except as may be expressly set forth in the Transaction Documents.

T. **Order Required by Whinstone.** Entry of this Order approving the Transaction Documents is a requirement of the Transaction Documents and such requirement is an appropriate condition precedent to Whinstone's consummation of the Settlement & Asset Purchase Transaction pursuant to the Transaction Documents.

U. **Transferred Assets Property of the Estates.** The Transferred Assets owned by the Debtors constitute property of the Debtors' estates and title thereto is vested in the selling Debtors' estates within the meaning of section 541(a) of the Bankruptcy Code. The selling Debtors have all title, interest, and/or rights in the Transferred Assets required to transfer and to convey the Transferred Assets to Whinstone, as required by the Transaction Documents.

V. **Corporate Authority.** Subject to the entry of this Order, (i) the Debtors have full corporate power and authority to perform all of their obligations under the Settlement & Asset Purchase Transaction and the Transaction Documents, and the Debtors' prior execution and delivery of, and performance of obligations under, the Settlement & Asset Purchase Transaction and any other Transaction Documents is hereby ratified; (ii) the Debtors have all of the corporate power and authority necessary to consummate the Sale; (iii) the Debtors have taken all corporate actions necessary to authorize, approve, execute, and deliver the Settlement & Asset Purchase

Transaction, and the Transaction Documents to consummate the Sale of the Transferred Assets, except for the closing conditions expressly provided in the Transaction Documents; and (iv) no consents or approvals are required to consummate the Sale of the Transferred Assets or otherwise perform the obligations under the Transaction Documents, except for the closing conditions expressly provided therein.

W. **Settlement and Sale in Best Interests.** The relief requested in the Motion and set forth in this Order is in the best interests of the Debtors, their respective creditors, estates, and all other parties in interest in the Debtors' chapter 11 cases.

X. **Prompt Consummation.** To maximize the value of the Transferred Assets, it is essential that the Settlement & Asset Purchase Transaction occurs as quickly as possible. Time is of the essence in consummating the Settlement & Asset Purchase Transaction, and the Debtors and Whinstone intend to close the Settlement & Asset Purchase Transaction pursuant to the Transaction Documents as soon as possible. Accordingly, there is cause to lift the stays established by Bankruptcy Rules 6004 and 6006 with regards to the Transaction Documents.

NOW, THEREFORE, IT IS ORDERED THAT:

1. **Motion is Granted.** The Motion and the relief requested therein are GRANTED and APPROVED, as set forth herein, and the Transaction Documents and the Settlement & Asset Purchase Transaction contemplated by the Transaction Documents are hereby approved, subject to the terms and conditions contained herein.

2. **Objections Overruled.** Except as stated otherwise herein, all objections to, or reservation of rights regarding, the relief requested in the Motion, the entry of this Order, or the relief granted herein, that have not been withdrawn, waived, settled, or adjourned as provided below or otherwise, or that have not otherwise been resolved pursuant to the terms hereof are

hereby denied and overruled on the merits with prejudice. All persons that failed to timely object, or withdrew their objections, to the Motion or the entry of this Order are deemed to consent to the relief granted herein for all purposes, including, without limitation, pursuant to section 363(f)(2) of the Bankruptcy Code.

3. **Notice.** Notice of the Motion and any hearing thereon was adequate, appropriate, fair and equitable under the circumstances and complied in all respects with section 102(1) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, and 6006, and as such no further or other notice is required.

4. **Approval and Authorization.** The Settlement & Purchase Transaction, including the sale of the Transferred Assets to Whinstone and the settlement, compromise, and release of certain claims and causes of action on the terms and conditions contained in the Transaction Documents, including, without limitation, the Closing of the Transaction Documents, are hereby approved in all respects pursuant to sections 105(a), 363(b) and (f) of the Bankruptcy Code and Bankruptcy Rule 9019. Pursuant to sections 105 and 363 of the Bankruptcy Code, the Debtors are authorized to perform all obligations under and make all payments required by the Transaction Documents as and when due thereunder without further order of this Court. The Debtors, Whinstone, and each of their respective officers, employees, and agents are hereby authorized to (i) execute the Transaction Documents and any transactions contemplated thereby, and any prior execution of such agreements, documents, and instruments, is hereby ratified; (ii) perform all obligations under the Transaction Documents including, without limitation, to consummate any required deeds, assignments, and other instruments of transfer, and to consummate the Settlement & Asset Purchase Transaction, and any prior performance of such obligations or any prior consummation of such Transaction Documents is hereby ratified; and (iii) take all other and further

actions as may be reasonably necessary to consummate and implement the Transaction Documents and to perform all obligations under the Transaction Documents, without any further corporate action or order of this Court.

5. Except as otherwise expressly provided in the Transaction Documents, all persons presently on or after the date of the Closing (the “Closing Date”) in possession of some or all of the Transferred Assets are directed to surrender possession of the Transferred Assets to Whinstone, as applicable, on the Closing or at such time thereafter as Whinstone may request. For the avoidance of doubt, all persons and entities are prohibited and enjoined from taking any action to adversely affect or interfere with the ability of the Debtors to transfer the Transferred Assets to Whinstone in accordance with the Transaction Documents and this Order.

6. **No Sub Rosa Plan.** The Settlement & Asset Purchase Transaction, including the sale of the Transferred Assets pursuant to the Transaction Documents and the settlement, compromise, and release of certain claims and causes of action by the Debtors, outside a chapter 11 plan neither impermissibly restructures the rights of the Debtors’ creditors nor impermissibly dictates the terms of the Debtors’ subsequent chapter 11 plan. The Settlement & Asset Purchase Transaction contemplated by the Transaction Documents does not constitute a sub rosa chapter 11 plan.

7. **Valid Transfer.** As of the Closing Date, the consummation of the Transaction Documents shall effect a legal, valid, and enforceable sale and transfer of the Transferred Assets to Whinstone, and shall vest Whinstone with all legal, equitable, and beneficial right, title, and interest in and to the Transferred Assets free and clear of all Liens, Claims, and Interests of any kind or nature whatsoever. The Transaction Documents are a valid and binding contract between the Debtors and Whinstone and shall be enforceable pursuant to its terms. The Transaction

Documents, and the consummation thereof shall be specifically enforceable against and binding upon (without posting any bond) the Debtors, the Debtors' estates, their creditors, all parties in interest, any chapter 11 trustee appointed in these chapter 11 cases or any chapter 7 trustee appointed upon a conversion of these chapter 11 cases to cases under chapter 7 of the Bankruptcy Code, and shall not be subject to rejection or avoidance by the foregoing parties or any other person.

8. **Free and Clear.** To the fullest extent permitted by law, effective as of the Closing, the transfer of the Transferred Assets to Whinstone, shall constitute a legal, valid, and effective transfer of the Transferred Assets notwithstanding any requirement for approval or consent by any person. The Debtors are authorized to transfer, and upon the Closing shall transfer to Whinstone, all of the Debtors' right, title, and interest in and to, and possession of, the Transferred Assets, which shall be immediately vested in Whinstone, and such title to the Transferred Assets shall be transferred to Whinstone free and clear of the Liens, Claims, and Interests (other than as set forth in the Transaction Documents) pursuant to section 363(f) of the Bankruptcy Code, including:

- (a) liens (including, without limitation, mechanics,' materialmens,' and other consensual and non-consensual liens and statutory liens) mortgages, restrictions, hypothecations, charges of any kind or nature, indentures, loan agreements, instruments, leases, subleases, capital leases, encroachments, licenses, burdens, options, privileges, deeds of trust, security interests, equity interests, conditional sale or other title retention agreements, covenants, pledges, judgments, demands, guarantees, encumbrances, easements, defects in title, servitudes, regulatory violations by any governmental entity, decrees of any court or foreign or domestic governmental entity, and debts arising in any way in connection with any agreements, acts, or failures to act;
- (b) interests, obligations, liabilities, demands, guaranties, options, restrictions, and contractual or other commitments;
- (c) rights, including, without limitation, rights of first refusal, rights of offset (except for offsets exercised prior to the Petition Date), rights of setoff, rights of way, recoupment rights, contract rights, subrogation rights,

exoneration rights, labor rights, equitable rights, employment rights, pension rights, and rights of recovery;

- (d) decrees of any court or foreign or domestic government entity (to the extent permitted by law);
- (e) charges or restrictions of any kind or nature, including, without limitation, any restriction on the use, transfer, receipt of income or other exercise of any attributes of ownership of the Transferred Assets, including, without limitation, consent of any Person to assign or transfer any of the Transferred Assets;
- (f) debts arising in any way in connection with any agreements, acts, or failures to act, of the Debtors or any of the Debtors' predecessors or affiliates;
- (g) claims (as that term is defined in the Bankruptcy Code), including claims for reimbursement, contribution claims, indemnity claims, subrogation claims, exoneration claims, alter-ego claims, products liability claims, environmental claims (including, without limitation, toxic tort claims), labor claims, pension claims, equitable claims, including claims that may be secured or entitled to priority under the Bankruptcy Code, tax claims, reclamation claims, adverse claims of any kind, and pending litigation claims;
- (h) matters of any kind or nature whatsoever, whether at law or in equity and whether known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or un-matured, material or nonmaterial, disputed or undisputed, whether arising prior to or during the Debtors' bankruptcy cases, and whether imposed by agreement, understanding, law, equity, or otherwise, including claims otherwise arising under any theory, law, or doctrine of successor liability or related theories;

in each case, whether in law or in equity, known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, direct or indirect, and whether arising by agreement, understanding, law, equity or otherwise, including claims otherwise arising under any theory, law, or doctrine of successor liability or related theories, and whether occurring or arising before, on or after the Petition Date, or occurring or arising prior to the Closing

(each, a “Lien, Claim, or Interest,” and collectively, the “Liens, Claims, and Interests”). The Liens, Claims, and Interests shall attach to the proceeds of the Sale with the same nature, validity, priority, extent, perfection, and force and effect that such Liens, Claims, and Interests encumbered the Transferred Assets immediately prior to the entry of this Order, subject to any Claims, defenses, and objections, if any, that the Debtors or their estates may possess with respect thereto.

9. Following the Closing Date, no holder of any Liens, Claims, or Interests in the Transferred Assets shall interfere with Whinstone’s enjoyment of the Transferred Assets based on or related to such Liens, Claims, or Interests, or any actions that the Debtors may take in these chapter 11 cases and no person shall take any action to prevent, interfere with or otherwise enjoin consummation of the Settlement & Asset Purchase Transaction contemplated by the Transaction Documents or this Order.

10. The provisions of this Order authorizing the Sale of the Transferred Assets free and clear of any Liens, Claims, and Interests shall be self-executing, and neither the Debtors nor Whinstone shall be required to execute or file releases, termination statements, assignments, consents, or any other instruments to effectuate, consummate, and implement the provisions of this Order. However, the Debtors, Whinstone, and each of their respective officers, employees, attorneys, other retained professionals, and agents are hereby authorized and empowered to take all actions and execute and deliver any and all documents, releases, terminations, and instruments that either the Debtors or Whinstone deem necessary, desirable, or appropriate to implement and effectuate the terms of the Transaction Documents and this Order, including amendments to the Transaction Documents and the release of Liens, Claims, and Interests set forth in this Order.

11. **Release of Liens, Claims, and Interests.** On or before the Closing Date, each of the Debtors’ creditors are authorized and directed to execute such documents, releases, or

terminations, and take all other actions as may be necessary, desirable, or appropriate to release, effective as of the Closing, their respective Liens, Claims, and Interests of any kind against the Transferred Assets, as such Liens, Claims, and Interests may have been recorded or may otherwise exist. If any person or entity that has filed financing statements, mortgages, mechanic's liens, or other documents or agreements evidencing any Liens, Claims, or Interests against or on the Transferred Assets (subject to the Permitted Liens) shall not have delivered to the Debtors on or prior to the Closing Date, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, or releases of all liens and easements, and any other documents necessary, desirable, or appropriate for the purpose of documenting the release of all Liens, Claims, Interests, encumbrances, or liabilities (other than Permitted Liens) that the person or entity has or may assert with respect to the Transferred Assets, the Debtors and Whinstone are hereby authorized to execute and file such statements, instruments, releases, terminations, and other documents on behalf of the person or entity with respect to the Transferred Assets. Whinstone is hereby authorized to file, register, or otherwise record a certified copy of this Order, which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all Liens, Claims, Interests, encumbrances, or liabilities against the Transferred Assets (other than the Permitted Liens). This Order is deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every federal, state, or local government agency, department, or office. Notwithstanding the foregoing, the provisions of this Order authorizing the sale and assignment of the Transferred Assets free and clear of all Liens, Claims, and Interests shall be self-executing, and neither the Debtors nor Whinstone shall be required to execute or file releases, termination statements, assignments, consents, or other instruments in order to effectuate, consummate, and implement the provisions of this Order.

12. This Order: (a) shall be effective as a determination that, as of the Closing, all Liens, Claims, and Interests, except as expressly assumed by Whinstone pursuant to the express terms of the Transaction Documents or the Permitted Liens, have been unconditionally released, discharged and terminated as to Whinstone and the Transferred Assets owned by the Debtors and that the conveyances and transfers described herein have been effected, and (b) is and shall be binding upon and govern the acts of all persons, including all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, county, and local officials and all other persons who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments that reflect that Whinstone is the assignee and owner of the Transferred Assets, and ownership of the Transferred Assets owned by the Debtors is free and clear of any Liens, Claims, and Interests (except the Permitted Liens) or who may be required to report or insure any title or state of title in or to any lease (all such entities being referred to as "Recording Officers"). All Recording Officers are authorized to strike recorded encumbrances and other interests against the Transferred Assets owned by the Debtors recorded prior to the date of this Order. A certified copy of this Order may be filed with the appropriate Recording Officers to evidence cancellation of any recorded encumbrances, Liens, Claims, Interests, pledges, and other interests against the Transferred Assets owned by the Debtors recorded prior to the date of this Order (other than the Permitted Liens). All Recording Officers are hereby authorized to accept for filing any and all of the documents and instruments necessary, advisable, or appropriate to consummate the Settlement & Asset Purchase Transaction contemplated by the Transaction Documents.

13. **Injunction.** All Persons are hereby prohibited and enjoined from taking any action that would adversely affect or interfere with, or that would be inconsistent with, the ability of the Debtors to sell and transfer the Transferred Assets to Whinstone in accordance with the terms of the Transaction Documents and this Order. Except as expressly permitted by the Transaction Documents, all Persons (and their respective successors and assigns) holding Liens, Claims, or Interests of any kind or nature whatsoever (whether known or unknown, legal or equitable, matured or unmatured, contingent or non-contingent, liquidated or unliquidated, asserted or unasserted, whether arising prior to or subsequent to the commencement of the Debtors' chapter 11 cases, whether imposed by agreement, understanding, law, equity, or otherwise), including, without limitation, all holders of claims or interests, lenders, debt security holders, governmental, tax and regulatory authorities, parties to executory contracts and unexpired leases, creditors, contract counterparties, customers, landlords, licensors, employees and former employees, litigation claimants, pension plans, labor unions, or trade creditors, arising under or out of, in connection with, or in any way relating to the Transferred Assets or the transfer of the Transferred Assets to Whinstone (including, without limitation, any rights or claims based on any successor, transferee, derivative, or vicarious liabilities), shall be and hereby are forever barred, estopped, and permanently enjoined from asserting, prosecuting, or otherwise pursuing any Liens, Claims, and Interests against Whinstone or its property, and the Transferred Assets transferred to Whinstone or interests of the Debtors in such Transferred Assets (other than the Permitted Liens). Following the closing of the sale of the Transferred Assets, no holder of an Interest against the Debtors shall interfere with Whinstone's title to or use and enjoyment of the Transferred Assets, including, without limitation, taking any of the following actions with respect to or based on any Interest relating to the Transferred Assets or the transfer of the Transferred Assets to Whinstone

(other than Permitted Liens): (a) commencing or continuing in any manner any action or other proceeding against Whinstone or its successors or assigns, assets or properties; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against Whinstone or its successors or assigns, assets, or properties; (c) creating, perfecting, or enforcing any Interest against Whinstone or its successors or assigns, assets, or properties (including the Transferred Assets), or properties; (d) asserting any Interest as a setoff, right of subrogation, or recoupment of any kind against any obligation due any Whinstone or its successors or assigns; (e) commencing or continuing any action in any manner or place that does not comply or is inconsistent with the provisions of this Order or the agreements or actions contemplated or taken in respect thereof; or (f) interfering with, preventing, restricting, prohibiting, or otherwise enjoining the consummation of the Sale of the Transferred Assets.

14. **No Successor, Transferee, or Similar Liability.** Whinstone is not a “successor” to the Debtors or their estates by reason of any theory of law or equity, and Whinstone shall not assume, or be deemed to assume, or in any way be responsible for any liability or obligation (other than the Permitted Liens) of any of the Debtors and/or their estates. The transfer of the Transferred Assets to Whinstone shall not cause Whinstone or any of its affiliates, to be deemed a successor in any respect to the Debtors’ business or an alter ego, mere continuation, or substantial continuation of the Debtors within the meaning of any foreign, federal, state or local revenue, pension, ERISA (as defined below), the WARN Act (as defined below), tax, labor, employment, environmental, or other law, rule or regulation (including, without limitation, filing requirements under any such laws, rules or regulations), or under any products liability law or doctrine with respect to the Debtors’ liability under such law, rule or regulation or doctrine.

15. Further, the transfer of title and possession of the Transferred Assets shall be free and clear of any Liens, Claims, and Interests pursuant to any successor or successor-in-interest liability theory, and, for the avoidance of doubt, Whinstone, and each of its affiliates, successors, assigns, members, partners, officers, directors, principals, and shareholders shall have no liability whatsoever for any Liens, Claims, and Interests, whether known or unknown as of the Closing, now existing or hereafter arising, whether fixed or contingent, whether liquidated or unliquidated, whether asserted derivatively or vicariously, whether asserted based on Whinstone's status as a transferee, successor, or otherwise, of any kind, nature, or character whatsoever, including Liens, Claims, and Interests based on, relating to, and/or arising under, without limitation: (a) any employment or labor agreement; (b) any pension, welfare, compensation or other employee plan, agreements, practices, and programs, including, without limitation, any pension or employee plan of, or related to, any of the Debtors or any Debtors' affiliates or predecessors or any current or former employees of any of the foregoing; (c) the Debtors' business operations or the cessation thereof; (d) any litigation involving one or more of the Debtors; (e) any employee, workers' compensation, occupational disease or unemployment or temporary disability related law, including, without limitation, any claims, rights, or causes of action that might arise under or pursuant to: (i) the Employee Retirement Income Security Act of 1974, as amended (the "ERISA"), (ii) the Fair Labor Standards Act, (iii) Title VII of the Civil Rights Act of 1964, (iv) the Federal Rehabilitation Act of 1973, (v) the National Labor Relations Act, (vi) the Worker Adjustment and Retraining Notification Act of 1988 (the "WARN Act"), (vii) the Age Discrimination and Employee Act of 1967 and Age Discrimination in Employment Act, as amended, (viii) the Americans with Disabilities Act of 1990, (ix) the Consolidated Omnibus Budget Reconciliation Act of 1985, (x) the Multiemployer Pension Plan Amendments Act of 1980;

(xi) state and local discrimination laws, (xii) state and local unemployment compensation laws or any other similar state and local laws, (xiii) state workers' compensation laws, and/or (xiv) any other state, local, or federal employee benefit laws, regulations or rules or other state, local or federal laws, regulations or rules relating to, wages, benefits, employment, or termination of employment with any or all Debtors or any of their predecessors; (f) any antitrust laws; (g) any product liability or similar laws, whether state, federal, or otherwise; (h) any environmental laws, rules, or regulations, including, without limitation, under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601, et seq., or similar state statutes; (i) Perishable Agricultural Commodities Act; (j) any bulk sales or similar laws; (k) any federal, state, or local tax statutes, rules, regulations, or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended; and (l) any common law doctrine of *de facto* merger, successor, transferee, or vicarious liability, substantial continuity liability, successor-in-interest liability theory, and/or any other theory of or related to successor liability.

16. Other than liabilities Whinstone has expressly agreed to assume pursuant to the express terms of the Transaction Documents, Whinstone is not assuming nor shall it or any affiliate of Whinstone be in any way liable or responsible, as a successor or otherwise, for any liabilities of the Debtors in any way whatsoever, and any liabilities relating to or arising from the Debtors' ownership or use of the Transferred Assets prior to the Closing Date, or any liabilities calculable by reference to the Debtors or their operations or the Transferred Assets, or relating to continuing or other conditions existing on or prior to the Closing Date, all of which liabilities are hereby extinguished insofar as they may give rise to liability, successor or otherwise, against Whinstone or any affiliate of Whinstone.

17. Except as otherwise provided in the Transaction Documents, pursuant to sections 105 and 363 of the Bankruptcy Code, all persons, including, but not limited to, the Debtors, all debt holders, equity security holders, the Debtors' employees or former employees, governmental entities, lenders, parties to or beneficiaries under any benefit plan, trade and other creditors asserting or holding a Lien, Claim, or Interest of any kind or nature whatsoever against, in, or with respect to any of the Debtors or the Transferred Assets, arising under or out of, in connection with, or in any way relating to the Debtors, the Transferred Assets, the operation of the Debtors' businesses prior to the Closing Date, or the transfer of the Transferred Assets to Whinstone in accordance with the Transaction Documents and this Order, shall be forever barred and estopped from asserting, prosecuting, or otherwise pursuing such Lien, Claim, or Interest, including assertion of any right of setoff or subrogation, and enforcement, attachment, or collection of any judgment, award, decree, or order, against Whinstone or any affiliates, successors or assigns thereof and each of their respective current and former members, officers, directors, attorneys, employees, partners, affiliates, financial advisors, and representatives (each of the foregoing in its individual capacity), with respect to the Transferred Assets.

18. Without limiting the generality of the foregoing, Whinstone shall not assume or be obligated to pay, perform, or otherwise discharge any workers' compensation liabilities of the Debtors arising pursuant to state law or otherwise, and this Order is intended to be all inclusive and shall encompass, but not be limited to, workers' compensation Claims or suits of any type, whether now known or unknown, whenever incurred or filed, which have occurred or which arise from work-related injuries, diseases, death, exposures, intentional torts, acts of discrimination, or other incidents, acts, or injuries prior to the Closing Date, including, but not limited to, any and all workers' compensation Claims filed or to be filed, or any reopening of such Claims, by or on

behalf of any of the Debtors' current or former employees, persons on laid-off, inactive or retired status, or their respective dependents, heirs or assigns, as well as any and all premiums, assessments, or other obligations of any nature whatsoever of the Debtors relating in any way to workers' compensation liability.

19. Whinstone has not assumed, or is otherwise not obligated for, any of the Debtors' liabilities, and Whinstone has not purchased any of the Debtors' assets expressly excluded from the Transferred Assets. Consequently, all persons, all holders of liens based upon or arising out of liabilities retained by the Debtors may not take any action against Whinstone or the Transferred Assets to recover on account of any liabilities of the Debtors.

20. **Release, Discharge, and Termination of Liens, Claims, and Interests.** This Order shall be effective as a determination that, on the Closing of the Transaction Documents, all liens, claims, and interests with respect to the Transferred Assets of any kind or nature whatsoever existing prior to the closing of the Transaction Documents have been unconditionally released, discharged, and terminated as to the Transferred Assets, that the conveyances described herein have been effected.

21. **Surrender of Transferred Assets.** All persons that are presently or on the Closing Date may be in possession of some or all of the Transferred Assets are directed to surrender possession of such Transferred Assets to Whinstone as provided in the Transaction Documents.

22. **General Assignment.** As of the Closing of the Settlement & Asset Purchase Transaction, this Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance, and transfer of the Transferred Assets and/or a bill of sale or assignment transferring indefeasible title and interest in the Transferred Assets to Whinstone. Each and every federal, state, and local governmental agency or department is hereby

authorized and directed to accept any and all documents and instruments necessary and appropriate to consummate the Sale of the Transferred Assets and to reflect the effectiveness of the Sale of Transferred Assets.

23. **Good Faith of Whinstone.** Whinstone undertakes the Transaction Documents without collusion and in good faith, as that term is defined in section 363(m) of the Bankruptcy Code and, accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the transactions contemplated by the Transaction Documents shall not affect the validity of the Transaction Documents unless such authorization and consummation of the transactions contemplated by the Transaction Documents are duly and properly stayed pending such appeal. Whinstone is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protections of section 363(m) of the Bankruptcy Code.

24. **No Liability For The Transferred Assets.** Debtors shall have no liability to Whinstone or any other party for any rent, damages, claims, counterclaims, cross-claims, demands, defenses, objections, challenges, offsets or setoff, debts, accounts, contracts, liabilities, remedies, suits, controversies, actions, causes of action, losses, damages, indemnities, reimbursement obligations, attorneys' fees, costs, expenses or judgments, of every kind or nature whatsoever, whether matured or unmatured, known or unknown, asserted or unasserted, suspected or unsuspected, foreseen or unforeseen, accrued or unaccrued, liquidated or unliquidated, fixed or contingent, pending or threatened, arising in law or equity, upon contract or tort, in connection with, arising under or related to the Transferred Assets except as set forth in the Transaction Documents.

25. **No Avoidance of Settlement.** Neither the Debtors nor Whinstone have engaged in any conduct that would cause or permit the Settlement & Asset Purchase Transaction pursuant to the Transaction Documents to be avoided or costs and damages to be imposed under section 363(n) of the Bankruptcy Code. Accordingly, the Settlement & Asset Purchase Transaction pursuant to the Transaction Documents shall not be avoidable under section 363(n) of the Bankruptcy Code, and no party shall be entitled to any damages or other recovery pursuant to section 363(n) of the Bankruptcy Code in respect of the Settlement & Asset Purchase Transaction.

26. **Binding Effect.** This Order and the Transaction Documents shall be binding upon and shall govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state and local officials, and all other Persons who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Transferred Assets. The terms and provisions of the Transaction Documents and this Order shall be binding in all respects upon the Debtors and their respective Affiliates and subsidiaries and such parties' successors and assigns, the Debtors' estates, all creditors thereof (whether known or unknown), all holders of equity interests in any Debtor, holders of liens, claims, and interests in, against, or on all or any portion of the Transferred Assets, Whinstone, and its respective successors and assigns, and any and all third parties, notwithstanding any subsequent appointment of any trustee, examiners, "responsible persons" or other fiduciaries (collectively, the "Trustee") of the Debtors under any chapter of the Bankruptcy Code, as to which Trustee such terms and provisions

likewise shall be binding, and the Transaction Documents shall not be subject to rejection or avoidance under any circumstances.

27. **Subsequent Order and Plan Provisions.** Notwithstanding anything to the contrary contained in any chapter 11 plan confirmed in the Debtors' chapter 11 cases or any subsequent order of this Court, including, without limitation, any order confirming any such chapter 11 plan, any order authorizing the sale of assets of the Debtors pursuant to any section of the Bankruptcy Code, and any order approving the wind-down or dismissal of any Debtor's chapter 11 case or any subsequent chapter 7 case, nothing in such plan or order shall change, supersede, abrogate, nullify, restrict, or conflict with the provisions of the Transaction Documents or this Order, or in any way prevent or interfere with the consummation or performance of the Settlement & Asset Purchase Transaction.

28. **Failure to Specify Provisions.** The failure to specify or include any particular provisions of the Transaction Documents in this Order shall not diminish or impair the effectiveness of such provisions, it being the intent of this Court that the Transaction Documents be authorized and approved in their entirety.

29. **Automatic Stay.** The automatic stay pursuant to section 362 of the Bankruptcy Code is hereby lifted to the extent necessary to (i) allow Whinstone to deliver any notice provided for in the Transaction Documents, and (ii) allow Whinstone to take any and all actions permitted under the Transaction Documents in accordance with the terms and conditions thereof. The automatic stay imposed by section 362 of the Bankruptcy Code shall be modified solely to the extent necessary to implement the preceding sentence, and this Court shall retain exclusive jurisdiction over any and all disputes with respect thereto.

30. **Bankruptcy Rules Satisfied or Waived.** The requirements set forth in Bankruptcy Rules 6004 and 6006 have been satisfied or are otherwise deemed to be waived. As provided by Bankruptcy Rule 9014, the terms of this Order shall be effective and enforceable immediately upon entry, and shall not be subject to stay provisions contained in Bankruptcy Rules 6004(h) and 6004(d). Time is of the essence in closing the Transaction Documents and the Debtors and Whinstone intend to close the Sale as soon as possible.

31. **Conflicts Between Order and Transaction Documents.** To the extent anything contained in this Order conflicts with a provision in the Transaction Documents, this Order shall govern and control. Notwithstanding the foregoing, nothing in this Order shall modify or waive any closing conditions or termination rights in the Transaction Documents, and all such conditions and rights shall remain in full force and effect in accordance with their terms.

32. **Provisions Nonseverable and Mutually Dependent.** The provisions of this Order and the Transaction Documents are non-severable and mutually dependent.

33. **Retention of Jurisdiction.** This Court shall retain exclusive jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of the Transaction Documents and this Order, and each of the agreements executed in connection therewith to which the Debtors are a party or which has been assigned to Whinstone by the Debtors, and to adjudicate, if necessary, any and all disputes concerning or relating in any way to the Settlement & Asset Purchase Transaction. This Court retains jurisdiction to compel delivery of the Transferred Assets, to protect Whinstone and their assets, including the Transferred Assets, against any Liens, Claims, and Interests or successor or transferee liability and to enter orders, as appropriate, pursuant to sections 105(a), 363, or 365 (or other applicable sections) of the Bankruptcy Code necessary to transfer the Transferred Assets to Whinstone. In the event this Court abstains from exercising or

declines to exercise jurisdiction with respect to any matter referenced in this paragraph or is without jurisdiction, such abstention, refusal, or lack of jurisdiction shall have no effect upon and shall not control, prohibit, or limit the exercise of jurisdiction of any other court having competent jurisdiction with respect to any such matter.

34. **Conditions Precedent.** Neither Whinstone nor the Debtors shall have an obligation to close the Settlement & Asset Purchase Transaction until all conditions precedent in the Transaction Documents to each of their respective obligations to close the Settlement & Asset Purchase Transaction have been satisfied or waived in accordance with the terms of the Transaction Documents.

Dated: _____, 2025

ALFREDO R. PEREZ
UNITED STATES BANKRUPTCY JUDGE