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

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

EMERGENCY MOTION OF THE DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS' USE OF CASH COLLATERAL, (II) GRANTING ADEQUATE PROTECTION, (III) MODIFYING THE AUTOMATIC STAY, (IV) SCHEDULING A FINAL HEARING, AND (V) GRANTING RELATED RELIEF

Emergency relief has been requested. Relief is requested not later than 10:00 a.m. (prevailing Central Time) on August 30, 2024.

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 Friday, August 30, 2024, at 10:00 a.m. (prevailing Central Time) in Courtroom 400, 4th Floor, 515 Rusk Avenue, Houston, Texas 77002.

Participation at the hearing will only be permitted by an audio and video connection.

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

[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.

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.

The above-captioned debtors and debtors-in-possession (collectively, the "Debtors") state as follows in support of this motion (this "Motion"):

RELIEF REQUESTED

1. The Debtors seek entry of an interim order (the "Interim Order") and a final order (the "Final Order," and together with the Interim Order, the "Orders"), (a) authorizing the Debtors to use "Cash Collateral," as defined in section 363(a) of the Bankruptcy Code, (b) granting adequate protection to the Prepetition Secured Parties (as defined below), (c) modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms of the Orders, and (d) granting related relief.

2. In addition, the Debtors request that the Court (as defined below) schedule a final hearing 21 days after the commencement of these chapter 11 cases, or as soon thereafter as is convenient for the Court, to consider approval of this Motion on a final basis.

JURISDICTION AND VENUE

3. The United States Bankruptcy Court for the Southern District of Texas (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), to the entry of a final order by the Court.

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

5. The bases for the relief requested herein are sections 105, 361, 362, 363, 503, 506, 507, and 552 of title 11 of the United States Code (the "Bankruptcy Code"), Bankruptcy Rules 2002, 4001, and 9014, and Rules 4001-1, 4002-1, and 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the "Local Rules").

INTRODUCTION

6. The Debtors have an immediate need to use their cash to fund these chapter 11 cases. Access to cash is critical to the Debtors' ability to accomplish a smooth transition into chapter 11. The Debtors collectively hold approximately $2.49 million of cash on hand as of the Petition Date, $244,350.02 of which held at Debtors Rhodium 2.0 LLC, Rhodium Encore LLC, and Rhodium 30MW LLC may be collateralized. This cash, along with proposed debtor-in-possession financing and anticipated revenues to be generated by the Debtors' ordinary course operations, will allow the Debtors to continue to operate their business and administer these chapter 11 cases.

7. The Debtors' ability to continue their operations in chapter 11 in the ordinary course hinges on, among other things, their ability to have full and immediate access to their cash to fund these chapter 11 cases. Securing such access at the outset of these chapter 11 cases will send a strong message to the market and the Debtors' community of critical stakeholders and set the stage for a value-maximizing and successful exit. In the event the Debtors are not authorized to use their Cash Collateral, their estates would suffer immediate and irreparable harm to the detriment of all parties in interest.

8. The Debtors believe that the terms set forth in the Interim Order adequately protect the Debtors' secured creditors, while balancing the Debtors' need to maintain flexibility with

respect to operating during chapter 11. Entry of the Interim Order will permit the Debtors to immediately access liquidity that is critical to preserve their business as a going concern. For these reasons and others set forth herein, the Debtors respectfully request that the Court grant the relief requested herein.

BACKGROUND

9. The Debtors and their affiliates (collectively, the "Company") are a technology company. The Company's main activity involves utilizing proprietary technology to self-mine Bitcoin, with the goal of increasing sustainability and cost-efficiency.

10. On August 24, 2024 and August 29, 2024 (the "Petition Dates"), the Debtors each commenced with this Court a voluntary case under chapter 11 of title 11 of the Bankruptcy Code. The Debtors continue to operate their business and manage their property as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

11. Information regarding the Debtors' business and capital structure and the circumstances leading to the commencement of these chapter 11 cases is set forth in the *Declaration of David M. Dunn in Support of Chapter 11 Petitions and First Day Relief* (the "First Day Declaration"), and the *Declaration of Michael Robinson in Support of Debtor-in-Possession Financing* (the "DIP Declaration"), which have been filed contemporaneously with this Motion and incorporated by reference herein.[2]

[2] Capitalized terms not defined herein shall have the meanings ascribed to such terms in the First Day Declaration.

CONCISE STATEMENT OF THE MATERIAL TERMS OF THE INTERIM ORDER

12. The below chart contains a summary of the material terms of the Interim Order, as required by Bankruptcy Rule 4001(b)(1)(B) and the United States Bankruptcy Court for the Southern District of Texas Procedures for Complex Cases (the "Complex Case Procedures"):[3]

Summary of Material Terms		Location
Parties with an Interest in Cash Collateral Bankruptcy Rule 4001(b)(1)(B)(i)	The Prepetition Secured Parties (as defined herein).	¶ E
Purposes for Use of Cash Collateral Bankruptcy Rule 4001(b)(1)(B)(ii)	Cash Collateral will be used in accordance with the Budget (as defined herein) to (A) permit the orderly continuation of their business, and (B) pay the costs of administration of their estates and satisfy other working capital and general corporate purposes of the Debtors.	¶¶ H, 3
Budget Bankruptcy Rule 4001(b)(1)(B)(ii)	The use of Cash Collateral is subject to the Budget, attached as Exhibit A to the Motion.	¶ H, 3 & Ex. A to Motion
Adequate Protection Bankruptcy Rule 4001(b)(1)(B)(iv)	The adequate protection provided to the Prepetition Secured Parties includes: • Valid, binding, enforceable, and automatically perfected liens on all Adequate Protection Collateral; and • Certain reporting obligations and access to records.	¶¶ G, 4
Modification of Automatic Stay Bankruptcy Rule 4001(b)(1)(B)(iii)	The Interim Order modifies the automatic stay to permit the Debtors to accomplish the transactions contemplated by the Interim Order and effectuate all of the terms and provisions of the Interim Order.	¶ 6

PREPETITION CAPITAL STRUCTURE

13. The Company conducted several capital raises to fund the investment in its Bitcoin mining infrastructure. To fund the development of the Rockdale Site, the Debtors issued equity and debt to several groups of investors. Investors in Rhodium 30MW and Jordan HPC obtained

[3] Any summary of the Interim Order's provisions herein is qualified in its entirety by reference to the Interim Order. The Interim Order will control in the event of any inconsistency between this motion and the Interim Order.

equity and secured debt in those two entities, respectively, but their debt was paid off early. The following summarizes the Debtors' secured and unsecured debts.

14. **Rhodium Encore**. In early 2021, Rhodium Encore issued to various investors secured notes in the aggregate amount of $23,100,000 ("Rhodium Encore Secured Notes"). Rhodium Encore also issued to its investors minority equity interests, which were subsequently exchanged in the Rollup for class A non-voting stock in Rhodium Enterprises. In August 2024, some of the Rhodium Encore noteholders exchanged their notes for new notes of Rhodium Technologies (discussed below).

15. Each Rhodium Encore Secured Note is accompanied by a security agreement ("Rhodium Encore Security Agreement"), which creates a security interest in Rhodium Encore's inventory, equipment, general intangibles, receivables, books and records, all goods and other property, documents of title and insurance certificates, cash, and all products and proceeds of the foregoing (collectively, the "Rhodium Encore Collateral").

16. Currently, approximately $22.155 million of the Rhodium Encore Secured Notes are still outstanding with a current interest rate of 8.00%.

17. **Rhodium 2.0.** In early 2021, Rhodium 2.0 issued to various investors secured notes in the aggregate amount of $31,500,000 ("Rhodium 2.0 Secured Notes"). Rhodium 2.0 also issued to its investors minority equity interests, which were subsequently exchanged for class A non-voting stock in Rhodium Enterprises. In August 2024, some of the Rhodium 2.0 noteholders exchanged their notes for new notes of Rhodium Technologies.

18. Each Rhodium 2.0 Secured Note is accompanied by a security agreement ("Rhodium 2.0 Security Agreement"), which creates a security interest in Rhodium 2.0's inventory, equipment, general intangibles, receivables, books and records, all goods and other

property, documents of title and insurance certificates, cash, and all products and proceeds of the foregoing (collectively, the "Rhodium 2.0 Collateral").

19. Currently, approximately $25.464 million of the Rhodium 2.0 Secured Notes are still outstanding, of which $20.56 million carry a current interest rate of 8.00% and $4.904 carry an interest rate of 2.20%.

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

21. The Rhodium Technologies Secured Notes are not secured by any cash. Instead, they are secured by a pledge by Imperium of certain limited liability company interests in Rhodium Technologies.

22. In July 2024, some of the Rhodium Encore and Rhodium 2.0 noteholders exchanged their notes for approximately $6.4 million of new secured notes of Rhodium Technologies, with collateral consisting of certain assets of Rhodium 30MW (the "Note Exchange"). The Rhodium Technologies' notes issued pursuant to the Note Exchange ("Rhodium Technologies Exchanged Secured Notes") carry an interest rate of 5.50%.

23. Each Rhodium Technologies Exchanged Secured Note is accompanied by a security agreement ("Rhodium Technologies Exchanged Security Agreement"), which creates a security interest in Rhodium 30 MW LLC's inventory, equipment, general intangibles, receivables, books and records, all goods and other property, documents of title and insurance certificates, cash, and all products and proceeds of the foregoing (collectively, the "Rhodium 30MW Collateral").

24. Under the July 2024 Note Exchange together with the September 2022 issuance of secured notes, Rhodium Technologies secured obligations currently amount to $16.899 million.

25. In sum, the Debtors currently have secured debt[4] amounting to approximately $64.518 million, consisting of $16.899 million in secured notes issued by Rhodium Technologies, $25.464 million in secured notes issued by Rhodium 2.0, and $22.155 million in secured notes issued by Rhodium Encore.[5]

26. **Unsecured Claims**. The Debtors have few other unsecured claims outstanding as of the Petition Date, consisting mostly of litigation claims (described in more detail in the First Day Declaration).

27. The Debtors have determined that existing cash, together with cash from debtor-in-possession financing and cash generated from operations, will be sufficient to operate their business, continue paying their ordinary course debts as they come due, and enable the Debtors to pursue a value-maximizing restructuring transaction for the benefit of their stakeholders.

THE DEBTORS' IMMEDIATE NEED FOR THE USE OF CASH COLLATERAL

28. As set forth in the First Day Declaration, and as described herein, the Debtors require immediate access to Cash Collateral to ensure that they are able to continue operating their

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[4] The Rhodium 2.0 Secured Notes, the Rhodium Encore Secured Notes, and the Rhodium Technologies Exchanged Secured Notes are referred to collectively as the "Notes," and the holders of those Notes are referred to collectively as the "Prepetition Secured Parties." The Rhodium 2.0 Collateral, Rhodium Encore Collateral, and Rhodium 30MW Collateral are referred to collectively as the "Prepetition Collateral."

[5] A number of the Noteholders (the Debtors are not disclosing their names in this Motion, but can provide the names to the Court or the United States Trustee upon request) have not filed UCC-1 financing statements, meaning that their liens are unperfected and avoidable under 11 U.S.C. § 544. The Debtors intend to bring an adversary proceeding to avoid those unperfected liens. Moreover, the Debtors assert that the Prepetition Collateral does not include cryptocurrencies, including cryptocurrencies mined postpetition, and intend to bring an adversary proceeding to determine the validity of the Prepetition Secured Parties' interest in the Debtors' cryptocurrencies and/or to avoid such interest as an unperfected lien under 11 U.S.C. § 544(a). And, the Debtors believe that some of the Noteholders security interests in cash may be unperfected, and reserve the right to avoid such unperfected interests. The Court need not answer these questions at this time, because, as discussed below, the Debtors are providing more than sufficient adequate protection even if cash and cryptocurrencies are part of the Prepetition Collateral.

business during these chapter 11 cases, preserve the value of their estates for the benefit of all parties in interest, and pursue a value-maximizing restructuring transaction. The Debtors will use cash on hand, cash flow from operations, and debtor-in-possession financing to fund their working capital needs, capital expenditures, and for other general corporate purposes.

29. The Debtors' ability to satisfy ordinary course obligations as and when due is essential to the Debtors' continued operation of their business during these chapter 11 cases. To do so, however, the Debtors must have access to Cash Collateral. Without prompt access to Cash Collateral, the Debtors would be unable to satisfy payroll and employee benefit obligations, satisfy trade payables incurred in the ordinary course of business, preserve and maximize the value of their estates, and fund the administration of these chapter 11 cases, which would cause immediate and irreparable harm to the value of the Debtors' estates to the detriment of all stakeholders.

30. The Debtors, with the assistance of their advisors, have prepared a 13-week cash flow forecast and budget in connection with the proposed debtor-in-possession financing and for use of Cash Collateral during the interim period (as may be updated from time to time in accordance with the terms of the Orders, the "Budget").[6] The Debtors believe that the Budget establishes that the Debtors will have adequate liquidity during the interim period. The Budget contains line items for cash anticipated to be received and disbursed during the time period covered by the Budget. The Debtors believe that the Budget includes all reasonable, necessary, and foreseeable expenses to be incurred in connection with the operation of the Debtors' business for that period.

[6] The Budget is attached hereto as **Exhibit A**. For the avoidance of doubt, the Budget is the same as the budget attached to the request to approve debtor-in-possession financing.

31. Continued access to Cash Collateral on the terms set forth in the Interim Order will allow the Debtors to responsibly fund these chapter 11 cases, continue their business operations on an uninterrupted basis, and maintain the value of their business as a going concern while pursuing a value-maximizing restructuring transaction.

BASIS FOR RELIEF

I. The Use Of Cash Collateral Is Necessary And Should Be Approved.

32. The Debtors' use of property of their estates, including the Cash Collateral, is governed by section 363(c)(1) of the Bankruptcy Code, which provides in relevant part that:

> If the business of the debtor is authorized to be operated under section . . . 1108 . . . of this title and unless the court orders otherwise, the [debtor] may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

33. Pursuant to section 363(c)(2), the Debtors "may not use, sell, or lease cash collateral under paragraph (1) of this subsection unless—(A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section."

34. The Debtors require immediate access to Cash Collateral to ensure that they are able to continue operating during these chapter 11 cases, preserve the value of their estates for the benefit of all parties in interest, and pursue a value-maximizing restructuring transaction. All, or substantially all, of certain of the Debtors' cash constitutes Cash Collateral of the Prepetition Secured Parties. During these chapter 11 cases, the Debtors will need access to Cash Collateral to satisfy certain payments that are essential for the continued management, operation, and preservation of the Debtors' business. Without immediate access to Cash Collateral, the Debtors would be unable to continue to operate their business on an uninterrupted basis, which would result in immediate and irreparable harm to the Debtors' estates.

35. As described above and in the First Day Declaration, access to Cash Collateral on an interim basis is essential to the continued operation of the Debtors' business and smooth entry into these chapter 11 cases. The use of Cash Collateral on the terms set forth in the Orders is in the best interests of the Debtors' estates and of all of the Debtors' stakeholders, is appropriate under section 363(c)(2) of the Bankruptcy Code, and should be approved.

II. The Debtors' Proposed Grant Of Adequate Protection Is Appropriate.

36. Section 363(e) requires adequate protection of interests in property (on request of an entity that has such an interest) when a debtor uses cash collateral. Further, section 362(d)(1) provides that the lack of adequate protection of an interest in property may constitute cause to lift the automatic stay with respect to such property. While section 361 provides examples of forms of adequate protection, such as granting replacement liens and administrative claims, courts decide what constitutes sufficient adequate protection on a case-by-case basis. *See, e.g., Resol. Tr. Corp. v. Swedeland Dev. Grp., Inc. (In re Swedeland Dev. Grp., Inc.)*, 16 F.3d 552, 564 (3d Cir. 1994); *In re Beker Indus. Corp.*, 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986) (explaining that the application of adequate protection "is left to the vagaries of each case").

37. The concept of adequate protection is designed to shield a secured creditor from diminution in the value of its interest in collateral during the period of a debtor's use. *See, e.g., Beker Indus.*, 58 B.R. at 736 (noting that the focus of adequate protection is the "protection of the secured creditor from diminution in the value of its collateral during the reorganization process"); *In re Carbone Cos.*, 395 B.R. 631, 635 (Bankr. N.D. Ohio 2008) ("The test is whether the secured party's interest is protected from diminution or decrease as a result of the proposed use of cash collateral."). Courts have found that using cash collateral to preserve the value of a secured creditor's collateral is a form of adequate protection in itself. *See, e.g., In re Salem Plaza Assocs.*, 135 B.R. 753, 758 (Bankr. S.D.N.Y. 1992).

38. The Debtors have agreed to provide the Prepetition Secured Parties with certain forms of adequate protection to protect against the postpetition diminution in value of the Cash Collateral resulting from the use, sale, or lease of the Cash Collateral by the Debtors and the imposition of the automatic stay.

39. The Debtors' proposed adequate protection package for the Prepetition Secured Parties comprises: (a) valid, binding, enforceable, and automatically perfected liens on all Adequate Protection Collateral; and (b) certain reporting obligations and access to records.

40. Moreover, the Prepetition Secured Parties are adequately protected by virtue of the Debtors' proposed use of the Cash Collateral, in that the Debtors' use of Cash Collateral to pay necessary expenses will prevent degradation of the value of the Prepetition Collateral that would occur if such amounts were not paid, to the benefit of the Prepetition Secured Parties and all other stakeholders. The use of Cash Collateral to preserve or enhance the value of a secured creditor's collateral can constitute "adequate protection" for Bankruptcy Code purposes. *See, e.g.*, *In re 495 Cent. Park Ave. Corp.*, 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992) (noting that, in determining whether protection is "adequate," courts consider "whether the value of the debtor's property will increase as a result of the" use of collateral); *In re Salem Plaza Assocs*., 135 B.R. 753, 758 (Bankr. S.D.N.Y. 1992) (holding that debtor's use of cash collateral from shopping center to pay operating expenses, thereby "preserv[ing] the base that generates the income stream," provided adequate protection to the secured creditor).

41. The Debtors believe the proposed adequate protection, as set forth in the Interim Order, is necessary to protect against diminution in value, as required by sections 363(c)(2) and 363(e) of the Bankruptcy Code. The Debtors further believe that the provision of the proposed adequate protection is fair and appropriate under the circumstances of these chapter 11 cases to

ensure the Debtors are able to continue using the Cash Collateral, subject to the terms and limitations set forth in the Interim Order, for the benefit of all parties in interest and their estates. Accordingly, the Debtors respectfully submit that the proposed forms of adequate protection should be approved.

III. The Automatic Stay Should Be Modified On A Limited Basis.

42. The relief requested herein contemplates a modification of the automatic stay to the extent necessary to permit the parties to accomplish the transactions contemplated by the Interim Order and effectuate all of the terms and provisions of the Interim Order. Stay modifications of this kind are ordinary and standard features for the use of cash collateral and, in the Debtors' business judgment, are reasonable and fair under the present circumstances.

IV. Interim Relief Should Be Granted.

43. Bankruptcy Rule 4001(b) provides that a final hearing on a motion to use cash collateral under section 363 of the Bankruptcy Code may not be commenced earlier than 14 days after the service of such motion. Upon request, however, the court is empowered to conduct an interim expedited hearing on the motion at which it may authorize a debtor to use cash collateral to the extent necessary to avoid immediate and irreparable harm to a debtor's estate. *See* Fed. R. Bankr. P. 4001(b)(2). Section 363(c)(3) of the Bankruptcy Code authorizes the court to conduct a preliminary hearing and to authorize the use of cash collateral "if there is a reasonable likelihood that the [debtor] will prevail at the final hearing under [section 363(e) of the Bankruptcy Code]." 11 U.S.C. § 363(c)(3). Furthermore, the Complex Case Procedures provide that "[o]n motion by the Debtors, a hearing . . . will routinely be conducted as a first-day hearing to consider . . . cash collateral use." Complex Case Procedures ¶ 5.

44. Pending the final hearing, the Debtors require immediate access to Cash Collateral to satisfy the day-to-day liquidity needs of the Debtors' business operations. The Debtors have an

immediate need for access to liquidity to, among other things, permit the orderly continuation of the operation of their business, maintain business relationships, make payroll, and satisfy other essential working capital and operational needs, all of which are required to preserve and maintain the Debtors' going concern value for the benefit of all parties in interest. The Debtors cannot preserve the value of their estates during the pendency of these chapter 11 cases without access to cash. The Debtors will therefore be unable to proceed with a proposed restructuring, operate their business in the near term, or otherwise fund these chapter 11 cases without access to Cash Collateral, and will suffer immediate and irreparable harm to the detriment of all creditors and other parties in interest in the event the relief requested herein is denied. Finally, the Debtors' compliance with the agreed Budget establishes that the Debtors' use of Cash Collateral will not prejudice the Prepetition Secured Parties.

45. Accordingly, pursuant to section 363(c)(3) of the Bankruptcy Code and Bankruptcy Rule 4001(b), the Debtors request that the Court conduct an expedited hearing on this motion, and enter the Interim Order authorizing the Debtors to use Cash Collateral.

THE REQUIREMENTS OF BANKRUPTCY RULE 6003(B) ARE SATISFIED

46. Pursuant to Bankruptcy Local Rule 9013-1, the Debtors respectfully request emergency consideration of this Motion under Bankruptcy Rule 6003, which provides that the Court may grant relief within the first 21 days after the Petition Date to the extent such relief is necessary to avoid immediate and irreparable harm. As described herein and in the First Day Declaration, the relief requested is essential to avoid the immediate and irreparable harm that would be caused by the Debtors' inability to transition smoothly into chapter 11. Accordingly, the Debtors submit that the requirements of Bankruptcy Rule 6003 are satisfied.

WAIVER OF BANKRUPTCY RULE 6004(A) AND 6004(H)

47. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

RESERVATION OF RIGHTS

48. Except as expressly set forth herein, nothing contained herein is intended to be or shall be deemed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver or limitation of the Debtors' or any party in interest's rights to dispute the amount of, basis for, or validity of any claim, (iii) a waiver of the Debtors' or any party in interest's rights under the Bankruptcy Code or any other applicable nonbankruptcy law, (iv) an agreement or obligation to pay any claims, (v) a waiver of any claims or causes of action which may exist against any creditor or interest holder, or (vi) an admission by the Debtors that any instruments constitute an executory contract. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently.

NOTICE

49. Notice of this Motion will be served on any party entitled to notice pursuant to Bankruptcy Rule 2002 and any other party entitled to notice pursuant to local rule 9013-1(d).

NO PRIOR REQUEST

50. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE the Debtors respectfully request entry of the Proposed Interim Order and Proposed Final Order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Respectfully submitted this 29th day of August, 2024.

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

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Proposed 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 29th day of August, 2024, 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

EXHIBIT A

13-Week Budget

To Come

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

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

INTERIM ORDER (I) AUTHORIZING DEBTORS TO USE CASH COLLATERAL; (II) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES; (III) MODIFYING AUTOMATIC STAY; AND (IV) GRANTING RELATED RELIEF

(Relates to ECF No. ____)

Upon the motion (the "***Motion***")[2] of the above-referenced debtors, as debtors in possession (collectively, the "***Debtors***") in the above-captioned cases (the "***Cases***"), pursuant to sections 105, 361, 362, 363, 503, 506, 507, and 552 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "***Bankruptcy Code***"), Rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the "***Bankruptcy Rules***"), Rules 2002-1, 4001-1, 4002- 1, and 9013-1 of the Bankruptcy Local Rules of the United States Bankruptcy Court for the Southern District of Texas (the "***Local Rules***"), and the Procedures for Complex Chapter 11 Cases in the Southern District of Texas (the "***Complex Case Rules***"), seeking, among other things:

(a) authorization for the Debtors to use "cash collateral" as such term is defined in section 363(a) of the Bankruptcy Code in which the Prepetition Secured Parties (as defined below) have liens or other interests therein ("***Cash Collateral***"), if any, solely in accordance

[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] Each capitalized term that is not defined herein shall have the meaning ascribed to such term in the Motion or the DIP Motion (as defined below), as applicable.

with the terms of this interim order (together with all annexes and exhibits hereto, the "***Interim Order***");

(b) authorization for the Debtors to grant adequate protection to the Prepetition Secured Parties of their Prepetition Notes Liens in the Prepetition Notes Collateral (each as defined below) (including Cash Collateral, if any), in each case solely to the extent of any Diminution in Value of their interests therein, as set forth herein;

(c) modification of the automatic stay imposed by section 362 of the Bankruptcy Code solely to the extent necessary to implement and effectuate the terms and provisions of this Interim Order;

(d) that this Court (as defined herein) schedule a final hearing (the "***Final Hearing***") to be held before this Court within 21 days of entry of the Interim Order to consider entry of a final order granting the relief requested in the Motion on a final basis (the "***Final Order***");

(e) waiver of any applicable stay with respect to the effectiveness and enforceability of this Interim Order (including a waiver pursuant to Bankruptcy Rule 6004(h)); and

(f) granting related relief;

and the interim hearing having been held by the Court on August 30, 2024 (the "***Interim Hearing***"); pursuant to Bankruptcy Rule 4001 and Local Rules 2002-1, 4001-1, and 9013-1, notice of the Motion and the relief sought therein having been given by the Debtors as set forth in this Interim Order; and the Court having considered the *Declaration of David M. Dunn in Support of Chapter 11 Petitions and First Day Relief* (the "***First Day Declaration***"), and the *Declaration of Michael Robinson in Support of Debtor-in-Possession Financing* (the "***DIP Declaration***"), the Approved Budget (as defined herein), offers of proof, evidence adduced, and the statements of counsel at the Interim Hearing; and the Court having considered the interim relief requested in the Motion, and it appearing to the Court that granting the relief sought in the Motion on the terms and conditions herein contained is necessary and essential to enable the Debtors to preserve the value of the Debtors' businesses and assets and that such relief is fair and reasonable and that entry of this Interim Order is in the best interest of the Debtors and their respective estates and creditors; and due deliberation and good cause having been shown to grant the relief sought in the Motion,

IT IS HEREBY FOUND AND DETERMINED THAT:[3]

A. **Petition Date**. On August 24, 2024 (the "***Initial Petition Date***") and August 29, 2024 (the "***Subsequent Petition Date***"),[4] each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Southern District of Texas (the "***Court***").

B. **Debtors in Possession**. Each Debtor has continued with the management and operation of its respective businesses and properties as a debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Cases.

C. **Jurisdiction and Venue**. The Court has jurisdiction over the Motion, these Cases, and the parties and property affected hereby pursuant to 28 U.S.C. § 1334 and the Amended Standing Order of Reference from the United States District Court for the Southern District of Texas, dated May 24, 2012. Venue for these Cases is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The Debtors have confirmed their consent, pursuant to Bankruptcy Rule 7008, to the entry of a final order by the Court in connection with the Motion to the extent that it is later determined that the Court, absent consent of the parties, could not enter final orders or judgments in connection with the Motion consistent with Article III of the United States Constitution. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

D. **Committee**. As of the date hereof, no official committee of unsecured creditors has been appointed in these Cases pursuant to section 1102 of the Bankruptcy Code (any such committee, the "***Committee***").

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[3] Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Bankruptcy Rule 7052

[4] As used herein, "***Petition Date***" means the Initial Petition Date; provided that with respect to the Debtors which commenced their Cases subsequent to August 24, 2024, "***Petition Date***" shall refer to the respective dates on which such Cases were commenced.

E. **Bank Accounts**. The Debtors acknowledge and agree that, as of the applicable Petition Date, none of the Debtors has either opened or maintains any bank accounts other than the accounts listed in the exhibit attached to the Cash Management Motion.[5]

F. **Adequate Protection**. Pursuant to sections 105, 361, 362, and 363 of the Bankruptcy Code, the Prepetition Secured Parties are entitled to adequate protection of their respective security interests in and liens on the Prepetition Notes Collateral (collectively, the "***Prepetition Notes Liens***"), including the Cash Collateral, if any,[6] solely to the extent of any post-petition diminution in value of their respective Prepetition Notes Liens in the Prepetition Notes Collateral resulting from, among other things, the use, sale, or lease of any of the Prepetition Notes Collateral (including the Cash Collateral, if any), the imposition of the automatic stay pursuant to section 362(a) of the Bankruptcy Code, and any other reason for which adequate protection may be granted under the Bankruptcy Code ("***Diminution in Value***"), as set forth in this Interim Order. The foregoing shall not, nor shall any provision of this Interim Order be construed as, a determination or finding that there has been or will be any Diminution in Value of the Prepetition Notes Collateral (including Cash Collateral, if any) and the rights of all parties as to such issues are hereby preserved. Based on the Motion, the First Day Declaration, and the record presented to the Court at the Interim Hearing, the terms of the proposed adequate protection arrangements and of the use of the Prepetition Notes Collateral, including the Cash Collateral, if any, are fair and reasonable and reflect the Debtors' prudent business judgment.

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[5] "***Cash Management Motion***" means the *Emergency Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue Their Existing Cash Management System, (B) Honor Certain Pre-Petition Obligations Related Thereto, and (C) Continue to Perform Intercompany Transactions, (II) Granting Superpriority Administrative Expense Status to Post-Petition Intercompany Balances, and (III) Granting Related Relief*.

[6] The Debtors have asserted that they believe certain of the Prepetition Secured Parties might have unperfected liens, and have reserved the right to avoid any unperfected liens.

G. **Need to Use Cash Collateral**. The Debtors have requested entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(2) and Local Rules 4001-1, 4002-1, and 9013-1 and have an immediate need to obtain use of the Prepetition Notes Collateral, including the Cash Collateral, if any, in compliance with, and subject in all respects to, the Approved Budget (subject in all respects to any Permitted Variances (as defined below)) in order to, among other things, (A) permit the orderly continuation of their businesses, and (B) pay the costs of administration of their estates and satisfy other working capital and general corporate purposes of the Debtors. An immediate and critical need exists for the Debtors to use the Cash Collateral, consistent with the Approved Budget (subject to any Permitted Variances), for working capital purposes, other general corporate purposes of the Debtors, and the satisfaction of costs and expenses of administering the Cases. The ability of the Debtors to obtain liquidity through the use of the Cash Collateral, if any, is vital to the Debtors and their efforts to maximize the value of their estates. Absent entry of this Interim Order, the Debtors' estates and reorganization efforts will be immediately and irreparably harmed.

H. **Notice**. In accordance with Bankruptcy Rules 2002, 4001(b) and (c), and 9014, and the Local Rules 2002-1, 4001-1, and 9013-1, notice of the Interim Hearing and the emergency relief requested in the Motion has been provided by the Debtors. Under the circumstances, the notice given by the Debtors of the Motion, the relief requested herein, and the Interim Hearing complies with Bankruptcy Rules 2002, 4001(b) and (c), and 9014 and the Local Rules 2002-1, 4001-1, and 9013-1.

I. **Relief Essential; Best Interest**. The Debtors have requested entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(2). The relief requested in the Motion (and as provided in this Interim Order) is necessary, essential, and appropriate for the continued operation

of the Debtors' businesses and the management and preservation of the Debtors' assets and the property of their estates. It is in the best interest of the Debtors' estates that the Debtors be allowed to use the Cash Collateral, if any, under the terms hereof. The Debtors have demonstrated good and sufficient cause for the relief granted herein.

Now, therefore, upon the record of the proceedings heretofore held before this Court with respect to the Motion, the evidence adduced at the Interim Hearing, and the statements of counsel thereat, and based upon the foregoing findings and conclusions,

IT IS HEREBY ORDERED THAT:

1. **Motion Granted**. The interim relief sought in the Motion is granted, and the use of Cash Collateral, if any on an interim basis is authorized, subject to the terms of this Interim Order.

2. **Objections Overruled**. Any objections to the Motion with respect to the entry of this Interim Order that have not been withdrawn, waived, or settled and all reservations of rights included therein, are hereby denied and overruled with prejudice.

3. **Authorization to Use Cash Collateral; Budget**.

a. Subject to the terms and conditions of this Interim Order, the Court hereby authorizes the Debtors' use of Cash Collateral, if any, solely and exclusively in a manner consistent with the "Approved Budget" (as defined in the *Emergency Motion of Debtors for Entry of Interim and Final Orders (i) Authorizing the Debtors to Obtain Secured Superpriority Postpetition Financing, (ii) Granting Liens and Providing Claims with Superpriority administrative Expense Status, (iii) Modifying the Automatic Stay, (iv) Scheduling a Final Hearing, and (v) Granting Related Relief* (together with the proposed orders and all exhibits annexed thereto, the "***DIP Motion***")) (the "***Approved Budget***") (subject to any "Permitted Variances" (as defined in the DIP

Motion) (the "***Permitted Variances***"), in accordance with and subject to the terms and conditions of the provisions of the interim and final orders entered by the Court approving the DIP Motion (collectively, the "***DIP Orders***"), and for no other purposes.

b. Notwithstanding anything to the contrary contained in the Motion or herein, any payment to be made hereunder, and any authorization contained herein, shall be subject to and in accordance with the DIP Orders, and, in particular, the Approved Budget (subject to any Permitted Variances), which shall control. To the extent there is any inconsistency between the terms of the DIP Orders (including any Approved Budget) and any approval or action taken or proposed to be taken hereunder, the terms of the DIP Orders shall control. In addition, nothing in the Motion or herein shall be construed as a waiver or consent that conflicts with any agreement or obligation provided for in the DIP Loan Documents (as defined in the DIP Motion).

c. For the avoidance of doubt, except as otherwise set forth in the Approved Budget, Cash Collateral, if any, may not be used (i) by any non-Debtor entity or (ii) to pay any fees, costs, expenses, and/or any other amounts of any non-Debtor entity.

4. **Adequate Protection for the Prepetition Secured Parties**. Subject to the terms of this Interim Order, the Prepetition Secured Parties are entitled, pursuant to sections 361, 362, and 363 of the Bankruptcy Code, and in consideration of the stipulations and consents set forth herein, to adequate protection of their Prepetition Notes Liens in the Prepetition Notes Collateral (including Cash Collateral, if any), in each case solely to the extent of any Diminution in Value of their interests therein, as follows:

a. The Prepetition Secured Parties, are hereby granted, effective and perfected as of the entry of this Interim Order, and without the necessity of the execution, recordation or filing by the Debtors or any of the Prepetition Secured Parties of any pledge, collateral or security

documents, mortgages, deeds of trust, financing statements, notations of certificates of title for titled goods, or any similar document or instrument, or the taking of any other action (including, without limitation, entering into any control agreements or taking possession or control of any Prepetition Notes Collateral), of the Prepetition Notes Liens in the Prepetition Notes Collateral (including Cash Collateral, if any) from and after the applicable Petition Date, valid, binding, enforceable and automatically perfected post-petition liens on and security interests in (the "***Adequate Protection Liens***") all property of the Debtors, whether existing on the applicable Petition Date or thereafter acquired that is not subject to valid, perfected, and non-avoidable liens or perfected after the applicable Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code except for (i) Rhodium Renewables LLC and (ii) all claims and causes of action (and the proceeds thereof) under sections 502(d), 506(c), 544, 545, 547, 548, 549, 550, or 724(a) of the Bankruptcy Code or under any applicable state law (the "***Adequate Protection Collateral***", and together with the Prepetition Notes Collateral, the "***Collateral***"). The Adequate Protection Liens shall be subject only to the Carve Out (as defined in the DIP Motion), as set forth in and subject to the terms and conditions of the DIP Orders, and shall be junior and subordinated to the liens and security interests granted in favor of the DIP Secured Parties (as defined in the DIP Motion) pursuant to the DIP Orders (the "***DIP Liens***") and Prior Permitted Liens,[7] if any, on such assets, and senior to all other liens on such assets.

b. In respect of any Adequate Protection Liens and any Prepetition Notes Liens or otherwise, the Prepetition Secured Parties may not exercise (or seek relief from the Court to exercise) any remedies against the Collateral so long as there any DIP Obligations (as defined in

[7] "***Prior Permitted Liens***" means valid, perfected and non-avoidable senior liens in existence immediately prior to the applicable Petition Date or valid and non-avoidable liens in existence immediately prior to the applicable Petition Date that are perfected subsequent to such Petition Date as permitted by section 546(b) of the Bankruptcy Code. For the avoidance of doubt, Prior Permitted Liens shall not include any Prepetition Notes Liens.

the DIP Motion) outstanding, and any such security interests in and liens on such Collateral shall not be entitled to be credit bid for any such Collateral (and any sale of such Collateral shall be free and clear of the Prepetition Notes Liens and any Adequate Protection Liens (if any) provided that such liens and security interests attach to the cash proceeds, if any, of such sale after the DIP Obligations are Paid in Full (as defined in the DIP Motion).

c. The Debtors shall maintain their cash management arrangements in a manner consistent with this Court's order(s) granting the Debtors' cash management motion.

5. **Access**. Upon five (5) business days' prior written notice (as applicable, including via acknowledged electronic mail), the Debtors shall permit the Prepetition Secured Parties to, during normal business hours and in a manner that does not unreasonably interfere with the ordinary course activities and operations of the Debtors, have reasonable access to and inspect the Debtors' books and records pertaining to the Prepetition Notes Collateral and the Adequate Protection Collateral; it being understood that nothing in this paragraph 5 shall require the Debtors (or any of their advisors) to take any action that would conflict with any applicable requirements of law or any binding agreement, or that would waive any attorney-client or similar privilege.

6. **Modification of Automatic Stay**. The Debtors are authorized and directed to perform all acts and to make, execute, and deliver any and all instruments as may be necessary to implement the terms and conditions of this Interim Order and the transactions contemplated hereby. The stay of section 362 of the Bankruptcy Code is hereby modified to permit the parties to accomplish the transactions contemplated by this Interim Order and effectuate all of the terms and provisions of this Interim Order.

7. **Survival of Interim Order**. The provisions of this Interim Order shall be binding upon any trustee appointed during the Cases or upon a conversion to cases under chapter 7 of the

Bankruptcy Code, and any actions taken pursuant hereto shall survive entry of any order which may be entered converting the Cases to chapter 7 cases, dismissing the Cases under section 1112 of the Bankruptcy Code or otherwise, confirming or consummating any plan(s) of reorganization or liquidation or otherwise, or approving or consummating any sale of any Prepetition Notes Collateral or Adequate Protection Collateral, whether pursuant to section 363 of the Bankruptcy Code or included as part of any plan. The terms and provisions of this Interim Order, as well as the priorities in liens and security interests granted pursuant to this Interim Order shall continue notwithstanding any conversion of the Cases to chapter 7 cases under the Bankruptcy Code, dismissal of the Cases, confirmation or consummation of any plan(s) of reorganization or liquidation, approval or consummation of any sale, or otherwise.

8. **No Third-Party Rights**. Except as explicitly provided for herein, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holder, or any direct, indirect, or incidental beneficiary.

9. **Binding Effect**. The terms of this Interim Order shall be valid and binding upon the Debtors, all creditors of the Debtors, and all other parties in interest from and after the entry of this Interim Order by this Court.

10. **Enforceability; Waiver of Any Applicable Stay**. This Interim Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable nunc pro tunc to the applicable Petition Date immediately upon entry hereof. Notwithstanding Bankruptcy Rule 6004(h), 6006(d), 7062, or 9014 or any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Interim Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Interim Order.

11. **Headings**. The headings in this Interim Order are for purposes of reference only and shall not limit or otherwise affect the meaning of this Interim Order.

12. **Retention of Jurisdiction**. The Court has and will retain jurisdiction to enforce this Interim Order and with respect to all matters arising from or related to the implementation of this Interim Order.

13. **Final Hearing**. A final hearing on the relief requested in the Motion shall be held on [_____], 2024, at __:__ _.m. (prevailing Central time). Any party in interest objecting to the relief sought at the Final Hearing shall file written objections no later than [_____], 2024, at [ ]:[ ] p.m. (prevailing Central time). If no objections to entry of a final order on the Motion are timely received, the Court may enter such final order without need for the final hearing.

Dated: _____, 2024

_____
THE HONORABLE ALFREDO PEREZ
UNITED STATES BANKRUPTCY JUDGE