

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

IN RE: § CHAPTER 11
§
ZACHRY HOLDINGS, INC., *et al.*¹ § CASE NO. 24-90377 (MI)
§
DEBTORS. § (JOINTLY ADMINISTERED)

**INTERNATIONAL BANK OF COMMERCE’S LIMITED OBJECTION TO
DEBTORS’ EMERGENCY MOTION FOR ENTRY OF INTERIM AND FINAL
ORDERS (I) AUTHORIZING THE DEBTORS TO (A) CONTINUE OPERATING THEIR
CASH MANAGEMENT SYSTEM AND MAINTAIN EXISTING BANK ACCOUNTS, (B)
CONTINUE TO PERFORM INTERCOMPANY TRANSACTIONS, (C) MAINTAIN
EXISTING BUSINESS FORMS AND BOOKS AND RECORDS, AND (D) CONTINUE
UTILIZING CORPORATE CREDIT CARD PROGRAMS, AND (II) GRANTING
RELATED RELIEF [ECF NO. 13]**

**TO THE HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE:**

COMES NOW, THE INTERNATIONAL BANK OF COMMERCE (“IBC”), and files this its Limited Objection (the “Limited Objection”) to Debtors’ Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue Operating Their Cash Management System and Maintain Existing Bank Accounts, (B) Continue to Perform Intercompany Transactions, (C) Maintain Existing Business Forms And Books and Records, and (D) Continue Utilizing Corporate Credit Card Programs, and (II) Granting Related Relief (the “Cash Management Motion”) [ECF No. 13], and would respectfully show the Court as follows:

1. The International Bank of Commerce (“IBC”), is the assignee under the terms of an account, per the Assignment of Deposit Account by Zachry Industrial, Inc. (“Zachry Industrial”), and the Letter of Credit in the amount of \$5,000,000.00, issued by IBC on behalf of

¹ The last four digits of Zachry Holdings, Inc.’s tax identification number are 6814. A complete list of each of the Debtors in these chapter 11 cases and the last four digits of their federal tax identification numbers may be obtained on the website of the Debtors’ proposed claims and noticing agent at www.kccllc.net/zhi. The location of the Debtors’ service address in these chapter 11 cases is: P.O. Box 240130, San Antonio, Texas 78224.



Zachry Group, Inc. (“Zachry Group”) as Applicant, and Ace Insurance, et al. as beneficiary, a true and correct copy of which is attached as **Exhibit 1**. In addition, an account agreement between IBC and Zachry Industrial, for Account No. *****6519, evidences an agreement between the parties with respect to the deposit account – confirming a security interest on behalf of IBC in proceeds of the account, a true and correct copy of which is attached as **Exhibit 2**. An Irrevocable Letter of Credit was issued by IBC on December 17, 2001, secured by the Assignment of Deposit Account, and Account Agreement, covering all debts and liabilities arising under the Letter of Credit, effective December 17, 2001, a true and correct copy of which is attached as **Exhibit 3**. IBC as holder of the pledged account and subject to the terms and conditions as set forth within the Assignment of Deposit Account, is secured by account deposits in the amount of Five Million Dollars and 00/10 (\$5,000,000.00), which account is maintained by IBC, subject to the terms set forth within the Letter of Credit.

2. The Letter of Credit is an Irrevocable Standby Letter of Credit, automatically extendable for periods of one (1) year, unless notice in writing is issued at least sixty (60) days prior to the expiration date – entitling the beneficiary to draw upon the Letter of Credit. The Letter of Credit has been renewed and extended, and remains in effect as of the petition date.

3. The Assignment of Deposit Account and the deposit account agreement provides IBC with security interest in the deposit account and proceeds thereof, to compensation for any and all indebtedness, or obligations of Borrower, including Zachary, LLC (or any of them) in any capacity, whether as borrower or guarantor or otherwise, including all costs, fees and expenses, and specifically in relation to any indebtedness resulting by or through the Letter of Credit, dated December 12, 2001, in the original amount of Five Million Dollars (\$5,000,000.00), together with all renewals and extensions thereof.

4. Commensurate with the filing for relief under Chapter 11, Zachry Holdings, et al. requested first day relief, including use cash collateral [ECF No. 24], and request to maintain cash management systems, and maintaining bank accounts [ECF No. 13]. The IBC pledge account and Letter of Credit are not referenced within the cash collateral motion, it appearing that the relief sought, does not seek direct use of the IBC pledged account funds. However, the proposed form of interim order contains all-inclusive language referencing all “deposits maintained by Debtor in any accounts” as “cash collateral” (Interim Order, p. 7, ¶ (i), ECF No. 24), and the interim order authorizing “use of cash collateral” [ECF No. 24, p. 13], without distinguishing what “cash collateral” is to be consumed, and without explanations of how the pledge account could be used, defining “collateral to mean all accounts” of any kind and nature [ECF No. 24-1, p. 16], implying that the IBC deposit funds constitute “cash collateral” and providing adequate protection of “Prepetition Secured Parties” in “Prepetition collateral. . .equal in amount of the diminution in value of the collateral” – apparently suggesting diminution could occur by means other than funding under the Letter of Credit.

5. The Cash Management Motion [ECF No. 13] contains a list of Debtor bank accounts, including the IBC Account No. ***6378 (ECF No. 13, p. 1 ¶ 3 and ECF No. 13 pp. 5-7), labeling such account as an “operating account” and requesting use in the ordinary course, specifically identifying the IBC account as “. . .the account ending in 6378” maintained by IBC holding “5 million of cash collateral in connection with a Letter of Credit related to the Debtors’ legacy workers compensation insurance program.” The attached Exhibit B “Cash Management System Schematic” does not reference the IBC account or reference the use of IBC account within Debtors’ managed operating accounts. The IBC account is not an “operating account,” rather, the account is a deposit account with restricted usage pursuant to the Irrevocable Standby

Letter of Credit – segregating the account from ordinary use by the Debtor.

6. IBC objects to use of IBC “cash collateral.” The intended purpose of the deposit account and pledge is for the unconditional payment of any and all indebtedness, and more particularly any obligations arising under the Letter of Credit, in the event an authorized party draws upon Letter of Credit, pursuant by presentation of drafts issued by an authorized beneficiary. Proceeds of a Letter of Credit are not property of the bankruptcy estate under the Independence Doctrine and 5th Circuit Precedent, and an event resulting in an authorized draw of the Letter of Credit is not subject to the automatic stay under 11 U.S.C. §362. *EOP-Colonnade of Dallas Ltd. P’ship v. Faulkner (In re Stonebridge Technologies, Inc.)*, 430 F.3d 260, 269 (5th Cir. 2005).

7. The Assignment of Deposit Account provides IBC with a fixed lien and security interest in the account, entitling IBC to possession and control over said account, and all proceeds, not subject to any other lender claims, rights or liens. Pledgor has warranted to IBC that the funds deposited within the pledged account are and will remain free and clear of any and all liens, charges or claims of others, and warrants that Pledgor will not make any assignment, pledge hypothetical from or any other transfer of the collateral. IBC is the only perfected security interest holder of the deposit funds under the Assignment of Deposit Account, the Account Agreement and by virtue of IBC’s possession/control over such account. There are no other prior or existing security interests in such account. To the extent the proposed use of cash collateral and security interest in “cash collateral” is provided with the Court’s Order, such ordered provisions should reflect IBC’s singular first lien priority and security interest in the account.

8. IBC hereby requires: (i) a reservation of rights, protecting the interests of IBC with regard to any matters regarding the lien and security interest of IBC to the pledged account; (ii) recognition of the IBC first lien and security interests within the pledged account and deposits; and, (iii) confirmation that “use of cash collateral” as referenced within a final cash collateral order does not anticipate use of the pledged account funds for any purpose other than the use authorized under the terms of the Assignment of Deposit Account and the Irrevocable Standby Letter of Credit; (iv) confirmation that the IBC account is not an “operating account” but rather a deposit/collateral account with restricted usage.

PRAYER

WHEREFORE, PREMISES CONSIDERED, IBC prays that its Limited Objection to use of cash collateral and to the Cash Management Motion, be sustained for the purposes set forth herein, and for such other and further relief, both general and specific, at law or in equity, to which IBC may be justly entitled.

Respectfully submitted,

MARTIN & DROUGHT, P.C.

Weston Centre, 112 East Pecan Street, Suite 1616

San Antonio, Texas 78205

Telephone: (210) 220- 1334

Facsimile: (210) 227-7924

E-Mail: mcolvard@mdtlaw.com

By: /s/Michael G. Colvard

Michael G. Colvard

State Bar No. 04629200

**ATTORNEYS FOR THE INTERNATIONAL
BANK OF COMMERCE**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument was forwarded via the Court’s Electronic Case Filing System and via United States Mail, First Class, postage prepaid, to the parties listed below on June 12, 2024.

Charles Koster
WHITE & CASE LLP
609 Main Street, Suite 2900
Houston, TX 77002
E-Mail: charles.koster@whitecase.com

Bojan Guzina
Andrew F. O'Neill
RJ Szuba
Barrett Lingle
WHITE & CASE LLP
111 South Wacker Drive, Suite 5100
Chicago, Illinois 60606
***E-Mails: bojan.guzina@whitecase.com;
aoneill@whitecase.com; rj.szuba@whitecase.com;
barrett.lingle@whitecase.com***

Andrew Jimenez
Office of United States Trustee
515 Rusk Street, Suite 3516
Houston, TX 77002
Email: andrew.jimenez@usdoj.gov

Jana Smith Whitworth
Office of United States Trustee
515 Rusk Street, Suite 3516
Houston, TX 77002
Email: jana.whitworth@usdoj.gov

Statutory Unsecured Claimholders' Committee
c/o Jason S Brookner
Gray Reed & McGraw LLP
1601 Elm Street
Suite 4600
Dallas, TX 75201
Email: jbrookner@grayreed.com

/s/Michael G. Colvard
MICHAEL G. COLVARD

ASSIGNMENT OF DEPOSIT ACCOUNT (SECURITY AGREEMENT)



International Bank of Commerce

Date	Reference Number	Officer	Initial
12/17/2001	0364	E. Graham Pearson	EGP

Pledgor(s): Zachry Industrial Inc

Lender: International Bank of Commerce

1. **Parties/Collateral:** The undersigned, Pledgor [owner of pledged deposit accounts], whether one or more, for value received, assigns to International Bank of Commerce, International Bank of Commerce, 130 East Travis, San Antonio, Texas 78205 ("Secured Party"), as security for the payment of the Indebtedness (hereinafter defined) and grants to Secured Party a security interest in the following described property (the "Collateral"):

All deposit accounts of Pledgor with International Bank of Commerce, now existing or hereafter established, including, without limitation, the following described deposit accounts:

Account No. 6378

The Collateral shall also include any and all rights and interest of Pledgor in and to any and all renewals, extensions, substitutions, replacements, rearrangements, increases, profits and proceeds of the accounts described above, and all additions and accessions thereto, as well as any future account deposits which are traceable to and/or which represent in whole or in part thereto.

2. **The Indebtedness.** This assignment and grant is made to Secured Party to secure the prompt and unconditional payment of the following indebtedness (collectively, the "Indebtedness"):

Any and all indebtedness, liabilities and/or obligations of Pledgor (or any of them if more than one) and/or Borrower (as hereinafter defined) to Secured Party, jointly and/or severally, and in any capacity, whether as borrower, guarantor, or otherwise, now or hereafter owing, created and/or arising, and regardless of how evidenced or arising, as to outstanding and unpaid principal, accrued and unpaid interest, accrued and unpaid late charges, attorneys' fees, collection costs, and all other sums owing by Pledgor (or any of them if more than one) and/or Borrower to Secured Party including but not limited to the indebtedness evidenced by the following described promissory note(s) (the "Note(s)"):

Letter of Credit dated the 17th day of December, 2001, in the original principal amount of Five Million Dollars and No Cents (\$5,000,000.00), executed by Zachry, LLC and delivered to Lender, together with all renewals, extensions, modifications, refinancing, consolidations and substitutions thereof.

and further without limitation to:

- A. any and all commercial loan or indebtedness;
- B. any and all credit card or other consumer type of loan;
- C. any and all indebtedness relating to checking or savings accounts (overdrafts, fees, etc.);
- D. any and all expenses incurred in the protection or maintenance of the Collateral securing any of the liabilities, loans, and obligations described in this Section 2;
- E. any and all expenses incurred in the collection of any indebtedness and/or obligation of the Pledgor and/or Borrower to Secured Party whether arising out of this Agreement or otherwise;
- F. any and all letters of credit and/or indebtedness arising out of, or advanced to pay, letters of credit transactions;
- G. any and all indebtedness, however evidenced, whether by promissory note, bookkeeping entry, electronic transfer, checks, drafts or other items, or by any other manner or form;
- H. any and all other indebtedness of Pledgor and/or Borrower to any financial institution affiliated with International BancShares Corporation, jointly and/or severally, and in any capacity, whether as borrower, guarantor, or otherwise, now or hereafter owing, created and/or arising, and regardless of how evidenced or arising;
- I. any and all extensions, modifications, substitutions and/or renewals of any of the indebtedness described in this Section 2;
- J. any and all costs incurred by Secured Party to obtain, preserve and enforce this Security Agreement, collect the indebtedness described in this Section 2, and maintain and preserve the Collateral (as hereinafter defined), including without limitation, all taxes, assessments, attorneys' fees and legal expenses, and expenses of sale;
- K. the sale by Pledgor and/or Borrower and the purchase by Secured Party of Accounts (as defined in the Code);
- L. the sale by Pledgor and/or Borrower and the purchase by Secured Party of Chattel Paper (as defined in the Code);
- M. the sale by Pledgor and/or Borrower and the purchase by Secured Party of Payment Intangibles (as defined in the Code);
- N. the sale by Pledgor and/or Borrower and the purchase by Secured Party of Promissory Notes (as defined in the Code); and
- O. any of the foregoing that arises after the filing of a petition in bankruptcy by or against Pledgor or Borrower under the United States Bankruptcy Code, even if the obligations do not accrue because of the automatic stay under Section 362 of the United States Bankruptcy Code or otherwise.

To the extent allowed by law, for purposes hereof it is intended that the Indebtedness include all classes of indebtedness, whether evidenced by notes, open accounts, advances for letter of credit obligations, overdrafts, or otherwise, and whether direct, indirect or contingent, regardless of class, form or purpose and including but not limited to, loans for consumer, agricultural, business or personal purposes.

The foregoing shall under no circumstances be limited to the existence or non-existence of collateral for such

EXHIBIT

tabbies

security interest therein; or

- (k) Pledgor, in Secured Party's opinion, has suffered a material change in financial condition which, in Secured Party's opinion, impairs the ability of Pledgor to repay the Indebtedness or to properly perform Pledgor's obligations under this Agreement or the other Loan Documents; or
- (l) any of the events or conditions described in subsections (d) through (k) of this section above happen to, by or with respect to Borrower (if Borrower and Pledgor are not the same); or
- (m) Secured Party believes, as a result of any material change in condition whether or not described herein, that Secured Party will be adversely affected, that the Indebtedness is inadequately secured, or that the prospect of payment of any of the Indebtedness or performance of any of Pledgor's or Borrower's obligations under the Loan Documents is impaired; or
- (n) to the extent allowed by law, and except as to loans for homestead, homestead equity, home equity lines of credit, and/or household or other consumer goods, as to each Pledgor and/or Borrower with regard to any other credit facility with any other lender, any monetary default and/or any non-monetary default occurs which results in acceleration of the indebtedness by any such other lender; and each Pledgor agrees to notify Secured Party of any such default within fifteen (15) days after the occurrence of the default; or
- (o) the Collateral becomes, in the judgment of Secured Party, unsatisfactory or insufficient in character or value; or
- (p) Pledgor or Borrower, or any of them, or any guarantor of any portion of the indebtedness, fails to timely deliver any and all financial statements, income tax returns, cash flow information, balance sheets, accounts receivable reports, or any other business, tax or financial information requested by Secured Party.

Upon the occurrence of an Event of Default Secured Party shall have, in addition to any other remedies available under the law or any agreement, including without limitation the remedies set forth in Section 6 hereof, the rights and remedies of a secured party under Article 9 of the Code. If the security interest created by this Agreement is given to secure the Indebtedness of a person or persons other than Pledgor, an additional Event of Default shall be the happening of any of the events or conditions described in this Section 5 above to, by or with respect to such other person or persons.

6. Remedies in the Event of Default.

- (a) Upon the happening of an Event of Default, Secured Party may take any or all of the following actions:
 - (i) Accelerate all or any portion the Indebtedness and declare all such sums immediately due and owing.
 - (ii) Receive and possess the Collateral and all income and other proceeds or payments of any kind on all or any part of the Collateral;
 - (iii) Appropriate, set-off, and apply the Collateral toward the payment of the Indebtedness in such order of application as Secured Party may elect; and
 - (iv) Sell in one or more sales, or otherwise dispose of, all or part of the Collateral in Secured Party's possession or control, in such order as Secured Party may elect and any such sale may be made either at public or private sale at Secured Party's place of business or elsewhere, either for cash or upon credit or for future delivery, at such price as Secured Party may deem fair, and Secured Party may be the purchaser of any or all Collateral so sold and hold the same thereafter in its own right free from any claim or right of redemption of Pledgor. No such retention by Secured Party shall be deemed retention by Secured Party in satisfaction of the indebtedness. All demands, notices, advertisements, and the presentment of property at sale, are waived by Pledgor. If, notwithstanding the foregoing provisions, any applicable provisions of the Code or other law requires Secured Party to give reasonable notice of any such sale, disposition, or other action, to Pledgor, it is agreed that ten (10) days written notice thereof shall constitute reasonable notice. Any sale hereunder may be conducted by any officer or agent of Secured Party.

(b) The rights, powers, and remedies of Secured Party hereunder shall be in addition to all rights, powers, and remedies arising by statute or rule of law including, without limitation, the rights, powers, and remedies of a secured party under the Code. Secured Party may exercise any bankers' lien or right of set-off with respect to the Indebtedness in the same manner as if the Indebtedness were unsecured. No forbearance, failure or delay by Secured Party in exercising any right, power, or remedy shall be deemed a waiver thereof or preclude any other or further exercise thereof; and no single or partial exercise of any right, power, or remedy shall preclude any other or further exercise thereof, or the exercise of any other right, power, or remedy.

(c) Pledgor authorizes Secured Party to disclaim or modify any and all warranties set forth in Section 9.610(d) of the Code and stipulates and agrees that such a disclaimer and/or modification will not render the sale commercially unreasonable.

(d) Secured Party may retain all or part of the Collateral in full and/or partial satisfaction of the Indebtedness pursuant to Section 9.620 of the Code.

7. Authorization to Execute Control Agreement. If a financial institution other than the Secured Party is the Depository Bank of the Collateral, Pledgor hereby authorizes and directs Depository Bank, that Secured Party's delivery of a copy of this Agreement to the Depository Bank will effectively notify such Depository Bank of Secured Party's interest in the Collateral and will constitute Pledgor's instructions to Depository Bank to execute the Control Agreement allowing Secured Party to perfect its security interest in the Collateral. Pledgor agrees to take all action necessary and/or required by Secured Party to perfect its security interest in the Collateral.

8. Waiver of Notice. Secured Party shall be under no duty whatsoever to make or give any presentment, demand for performance, notice of non-performance, protest, notice of protest, notice of dishonor, or other notice or demand in connection with the Collateral or the Indebtedness, or to preserve any rights against other parties.

9. Other Rights of Secured Party. Pledgor waives: (a) any right to require Secured Party to proceed against any person, exhaust any other collateral, or pursue any other remedy available to Secured Party; and (b) any and all notice of acceptance of this Agreement or of the creation, modification, renewal, or extension of any of the Indebtedness. Until all of the Indebtedness shall have been paid in full, Pledgor shall have no right to subrogation, nor shall Pledgor have any right to participate in the Collateral or the proceeds thereof. Pledgor authorizes Secured Party, without notice or demand to Pledgor and without affecting Pledgor's liability hereunder from time to time to (i) renew, extend, accelerate, modify, compromise, settle, or release any obligation of Pledgor, Borrower, or any other party with respect to the Indebtedness or the Collateral, (ii) take and hold security, other than the Collateral, for the payment of the Indebtedness and exchange, enforce, waive, and/or release any or all of the Collateral, (iii) apply the Collateral and direct the order or manner of sale

Indebtedness, or the type of collateral covered thereby. The Indebtedness does not include amounts owed pursuant to homestead, homestead equity and/or home equity line of credit loans.

As used herein, (i) the term "Borrower" means Zachry, LLC (or any of them), (ii) the term "Loan Documents" means, collectively, the Note(s) and any other document or instrument executed by Pledgor or Borrower or any guarantor of the Note(s) and delivered to Secured Party in connection with the Note(s), and (iii) the term "Code" means the Uniform Commercial Code (including the Official Comments thereto) of the state where Secured Party is located pursuant to Secured Party's address set out on page 1 hereof.

3. Representations. Pledgor represents and warrants to Secured Party that:

- (a) Pledgor is and at all times shall be the legal and equitable owner and holder of the Collateral, free and clear of all liens, charges and claims of others, except the assignment and first and exclusive security interest granted herein and Pledgor has not made and will not make any assignment, pledge, hypothecation or other transfer of the Collateral or of the proceeds thereof;
- (b) Pledgor has full power, right and authority to pledge the Collateral as provided herein, and Pledgor agrees that Pledgor will defend the Collateral against any and all claims, liens, encumbrances, security interests and other impediments of any nature, however arising; and
- (c) Pledgor understands the Collateral is non-transferable, at least to the extent of the interests transferred herein.

4. Covenants of Pledgor. Pledgor covenants and agrees with Secured Party as follows:

- (a) From time to time to promptly execute and deliver to Secured Party all assignments, certificates, supplemental writings and financing statements and to do all other acts or things, as Secured Party may request, in order to more fully evidence and perfect the security interest herein created;
- (b) To promptly furnish Secured Party with any information or writings which Secured Party may request concerning the Collateral; and
- (c) To promptly pay to Secured Party, after demand, the amount of all reasonable expenses, including reasonable attorney's fees and other legal expenses, incurred by Secured Party in enforcing the rights of Secured Party and the obligations of Pledgor under this instrument.

5. Events Of Default.

The occurrence of any of the following events shall constitute an event of default ("Event of Default") under this Agreement:

- (a) Pledgor or Borrower fails to pay any of the Indebtedness when the same shall become due and payable; or
- (b) Pledgor or Borrower (i) fails to perform any of their respective obligations under this Agreement or the other Loan Documents, or any other event of default or breach occurs under this Agreement or the other Loan Documents, or (ii) to the extent allowed by law, and except as to loans for homestead, homestead equity, home equity lines of credit, and/or household or other consumer goods, fails to perform any of their respective obligations under any other promissory note, security agreement, loan agreement or other agreement between Secured Party, or Custodian, and Pledgor or Borrower or any other event of default or breach occurs thereunder; or
- (c) any (i) statement, representation or warranty made by Pledgor in the other Loan Documents or in any other agreement between Secured Party and Pledgor, or (ii) any information contained in any financial statement or other document delivered to Secured Party by or on behalf of Pledgor contains any untrue statement of a material fact or omits to state a material fact necessary to make the statement, representation or warranty therein not misleading in light of the circumstances in which they were made; or
- (d) Pledgor: (i) dies or becomes physically or mentally incapacitated; or (ii) in the case of a Pledgor who is not a natural person, dissolves, terminates or in any other way ceases to legally exist or has its entity powers or privileges suspended or revoked for any reason; or (iii) makes an assignment for the benefit of creditors, or enters into any composition, marshalling of assets or similar arrangement in respect of its creditors generally; or (iv) becomes insolvent or generally does not pay its debts as such debts become due; or (v) conceals, removes, or permits to be concealed or removed, any part of Pledgor's property, with intent to hinder, delay or defraud its creditors or any of them, or makes or suffers a transfer of any of Pledgor's property which may be fraudulent under any bankruptcy, fraudulent conveyance or similar law, or makes any transfer of Pledgor's property to or for the benefit of a creditor at a time when other creditors similarly situated have not been paid; or
- (e) a trustee, receiver, agent or custodian is appointed or authorized to take charge of any property of Pledgor for the purpose of enforcing a lien against such property or for the purpose of administering such property for the benefit of its creditors; or
- (f) an order (i) for relief as to Pledgor is granted under Title 11 of the United States Code or any similar law, or (ii) declaring Pledgor to be incompetent is entered by any court; or
- (g) Pledgor files any pleading seeking, or authorizes or consents to, any appointment or order described in subsections (e) or (f) of this section above, whether by formal action or by the admission of the material allegations of a pleading or otherwise; or
- (h) application is made for or there is an enforcement of any lien, levy, seizure, garnishment or attachment of any property of the Pledgor for the purposes of collecting a lawful debt; or
- (i) any action or proceeding seeking any appointment or order described in subsections (e) or (f) of this section above is commenced without the authority or consent of Pledgor, and is not dismissed within thirty (30) days after its commencement; or
- (j) Pledgor shall become involved (whether as plaintiff or defendant) in any material litigation (including, without limitation, matrimonial litigation) or arbitral or regulatory proceedings that, if determined adversely to Pledgor, could materially and adversely affect Pledgor's financial position, or could affect Pledgor's ability to repay the indebtedness, or could adversely affect the Collateral or any portion thereof or Secured Party's

thereof as Secured Party in its discretion may determine, and (iv) release or substitute Pledgor, or Borrower or any other party.

10. Notices. Notices and other communications pertaining to this Agreement shall be in writing and shall be effective only if delivered in person or mailed by U.S. certified mail, return receipt requested, postage prepaid, (i) to Secured party if sent to 130 East Travis, San Antonio, Texas 78205, Attention: Michael K. Sohn, and (ii) to Pledgor if sent to Pledgor's address shown below. Except as otherwise required by law, any notice given or made pursuant hereto shall be deemed effectively given on the date of personal delivery or, if mailed, on the date such notice is deposited in the U.S. Mail, if, with respect to Secured Party, actually received. Any party hereto may change its address for notice in the manner set forth in this section.

11. ARBITRATION

**BINDING ARBITRATION AGREEMENT
PLEASE READ THIS CAREFULLY. IT AFFECTS YOUR RIGHTS.**

PLEDGOR AND SECURED PARTY AGREE TO ARBITRATION AS FOLLOWS (hereinafter referred to as the "Arbitration Provisions"):

I. Special Provisions and Definitions applicable to both CONSUMER DISPUTES and BUSINESS DISPUTES:

(a) **Informal Resolution of Customer Concerns.** Most customer concerns can be resolved quickly and to the customer's satisfaction by contacting your account officer, branch manager or by calling the Customer Service Department in your region. The region and numbers are:

1.	Laredo	956-722-7611
2.	Austin	512-397-4506
3.	Brownsville	956-547-1000
4.	Commerce Bank	956-724-1616
5.	Corpus Christi	361-888-4000
6.	Eagle Pass	830-773-2313
7.	Houston	713-526-1211
8.	McAllen	956-686-0263
9.	Oklahoma	405-841-2100
10.	Port Lavaca	361-552-9771
11.	San Antonio	210-518-2500
12.	Zapata	956-765-8361

In the unlikely event that your account officer, branch manager or the customer service department is unable to resolve a complaint to your satisfaction or if the Secured Party has not been able to resolve a dispute it has with you after attempting to do so informally, you and the Secured Party agree to resolve those disputes through binding arbitration or small claims court instead of in courts of general jurisdiction.

(b) **Sending Notice of Dispute.** If either you or the Secured Party intend to seek arbitration, then you or the Secured Party must first send to the other by certified mail, return receipt requested, a written Notice of Dispute. The Notice of Dispute to the Secured Party should be addressed to: Dennis E. Nixon, President, at International Bancshares Corporation, P.O. Drawer 1359, Laredo, Texas 78042-1359 or if by email, ibcchairman@ibc.com. The Notice of Dispute must (a) describe the nature and basis of the claim or dispute; and (b) explain specifically what relief is sought. You may download a copy of the Notice of Dispute at www.ibc.com or you may obtain a copy from your account officer or branch manager.

(c) **If the Dispute is not Informally Resolved.** If you and the Secured Party do not reach an agreement to resolve the claim or dispute within thirty (30) days after the Notice of Dispute is received, you or the Secured Party may commence a binding arbitration proceeding. During the binding arbitration proceeding, any settlement offers made by you or the Secured Party shall not be disclosed to the Arbitrator.

(d) **"DISPUTE(S)".** As used herein, the word "DISPUTE(S)" includes any and all controversies or claims between the PARTIES of whatever type or manner, including without limitation, any and all claims arising out of or relating to this Agreement, compliance with applicable laws and/or regulations, any and all services or products provided by the Secured Party, any and all past, present and/or future loans, lines of credit, letters of credit, credit facilities or other form of indebtedness and/or agreements involving the PARTIES, any and all transactions between or involving the PARTIES, and/or any and all aspects of any past or present relationship of the PARTIES, whether banking or otherwise, specifically including but not limited to any claim founded in contract, tort, fraud, fraudulent inducement, misrepresentation or otherwise, whether based on statute, regulation, common law or equity.

(e) **"CONSUMER DISPUTE" and "BUSINESS DISPUTE".** As used herein, "CONSUMER DISPUTE" means a DISPUTE relating to an account (including a deposit account), agreement, extension of credit, loan, service or product provided by the Secured Party that is primarily for personal, family or household purposes. "BUSINESS DISPUTE" means any DISPUTE that is not a CONSUMER DISPUTE.

(f) **"PARTIES" or "PARTY".** As used in these Arbitration Provisions, the term "PARTIES" or "PARTY" means Pledgor, Secured Party, and each and all persons and entities signing this Agreement or any other agreements between or among any of the PARTIES as part of this transaction. "PARTIES" or "PARTY" shall be broadly construed and include Individuals, beneficiaries, partners, limited partners, limited liability members, shareholders, subsidiaries, parent companies, affiliates, officers, directors, employees, heirs, agents and/or representatives of any party to such documents, any other person or entity claiming by or through one of the foregoing and/or any person or beneficiary who receives products

or services from the Secured Party and shall include any other owner and holder of this Agreement. Throughout these Arbitration Provisions, the term "you" and "your" refer to Pledgor, and the term "Arbitrator" refers to the individual arbitrator or panel of arbitrators, as the case may be, before which the DISPUTE is arbitrated.

- (g) **BINDING ARBITRATION.** The PARTIES agree that any DISPUTE between the PARTIES shall be resolved by mandatory binding arbitration pursuant to these Arbitration Provisions at the election of either PARTY. BY AGREEING TO RESOLVE A DISPUTE IN ARBITRATION, THE PARTIES ARE WAIVING THEIR RIGHT TO A JURY TRIAL OR TO LITIGATE IN COURT (except for matters that may be taken to small claims court for a CONSUMER DISPUTE as provided below).
- (h) **CLASS ACTION WAIVER.** The PARTIES agree that (i) no arbitration proceeding hereunder whether a CONSUMER DISPUTE or a BUSINESS DISPUTE shall be certified as a class action or proceed as a class action, or on a basis involving claims brought in a purported representative capacity on behalf of the general public, other customers or potential customers or persons similarly situated, and (ii) no arbitration proceeding hereunder shall be consolidated with, or joined in any way with, any other arbitration proceeding. THE PARTIES AGREE TO ARBITRATE A CONSUMER DISPUTE OR BUSINESS DISPUTE ON AN INDIVIDUAL BASIS AND EACH WAIVES THE RIGHT TO PARTICIPATE IN A CLASS ACTION.
- (i) **FEDERAL ARBITRATION ACT AND TEXAS LAW.** The PARTIES acknowledge that this Agreement evidences a transaction involving interstate commerce. The Federal Arbitration Act shall govern (i) the interpretation and enforcement of these Arbitration Provisions, and (ii) all arbitration proceedings that take place pursuant to these Arbitration Provisions. THE PARTIES AGREE THAT, EXCEPT AS OTHERWISE EXPRESSLY AGREED TO BY THE PARTIES IN WRITING, OR UNLESS EXPRESSLY PROHIBITED BY LAW, TEXAS SUBSTANTIVE LAW (WITHOUT REGARD TO ANY CONFLICT OF LAWS PRINCIPLES) WILL APPLY IN ANY BINDING ARBITRATION PROCEEDING OR SMALL CLAIMS COURT ACTION REGARDLESS OF WHO INITIATES THE PROCEEDING, WHERE YOU RESIDE OR WHERE THE DISPUTE AROSE.

II. Provisions applicable only to a CONSUMER DISPUTE:

- (a) Any and all CONSUMER DISPUTES shall be resolved by arbitration administered by the American Arbitration Association ("AAA") under the Commercial Arbitration Rules and the Supplemental Procedures for Resolution of Consumer Disputes and Consumer Due Process Protocol (which are incorporated herein for all purposes). It is intended by the PARTIES that these Arbitration Provisions meet and include all fairness standards and principles of the American Arbitration Association's Consumer Due Process Protocol and due process in predispute arbitration. If a CONSUMER DISPUTE is for a claim of actual damages above \$250,000 it shall be administered by the AAA before three neutral arbitrators at the request of any PARTY.
- (b) Instead of proceeding in arbitration, any PARTY hereto may pursue its claim in your local small claims court, if the CONSUMER DISPUTE meets the small claims court's jurisdictional limits. If the small claims court option is chosen, the PARTY pursuing the claim must contact the small claims court directly. The PARTIES agree that the class action waiver provision also applies to any CONSUMER DISPUTE brought in small claims court.
- (c) For any claim for actual damages that does not exceed \$2,500, the Secured Party will pay all arbitration fees and costs provided you submitted a Notice of Dispute with regard to the CONSUMER DISPUTE prior to initiation of arbitration. For any claim for actual damages that does not exceed \$5,000, the Secured Party also agrees to pay your reasonable attorney's fees and reasonable expenses your attorney charges you in connection with the arbitration (even if the Arbitrator does not award those to you) plus an additional \$2,500 if you obtain a favorable arbitration award for your actual damages which is greater than any written settlement offer for your actual damages made by the Secured Party to you prior to the selection of the Arbitrator.
- (d) Under the AAA's Supplemental Procedures for Consumer Disputes, if your claim for actual damages does not exceed \$10,000, you shall only be responsible for paying up to a maximum of \$125 in arbitration fees and costs. If your claim for actual damages exceeds \$10,000 but does not exceed \$75,000, you shall only be responsible for paying up to a maximum of \$375 in arbitration fees and costs. For any claim for actual damages that does not exceed \$75,000, the Secured Party will pay all other arbitrator's fees and costs imposed by the administrator of the arbitration. With regard to a CONSUMER DISPUTE for a claim of actual damages that exceeds \$75,000, or if the claim is a non-monetary claim, the Secured Party agrees to pay all arbitration fees and costs you would otherwise be responsible for that exceed \$1,000. The fees and costs stated above are subject to any amendments to the fee and cost schedules of the AAA. The fee and cost schedule in effect at the time you submit your claim shall apply. The AAA rules also permit you to request a waiver or deferral of the administrative fees and costs of arbitration if paying them would cause you financial hardship.
- (e) Although under some laws, the Secured Party may have a right to an award of attorney's fees and expenses if it prevails in arbitration, the Secured Party agrees that it will not seek such an award in a binding arbitration proceeding with regard to a CONSUMER DISPUTE for a claim of actual damages that does not exceed \$75,000.
- (f) To request information on how to submit an arbitration claim, or to request a copy of the AAA rules or fee schedule, you may contact the AAA at 1-800-778-7879 (toll free) or at www.adr.org.

III. Provisions applicable only to a BUSINESS DISPUTE:

- (a) Any and all BUSINESS DISPUTES between the PARTIES shall be resolved by arbitration in accordance with the Commercial Arbitration Rules of the AAA in effect at the time of filing, as modified by, and subject

to, these Arbitration Provisions. A **BUSINESS DISPUTE** for a claim of actual damages that exceeds \$250,000 shall be administered by AAA before at least three (3) neutral arbitrators at the request of any **PARTY**. In the event the aggregate of all affirmative claims asserted exceeds \$500,000, exclusive of interest and attorney's fees, or upon the written request of any **PARTY**, the arbitration shall be conducted under the AAA Procedures for Large, Complex Commercial Disputes. If the payment of arbitration fees and costs will cause you extreme financial hardship you may request that AAA defer or reduce the administrative fees or request the Secured Party to cover some of the arbitration fees and costs that would be your responsibility.

- (b) The **PARTIES** shall have the right to (i) invoke self-help remedies (such as setoff, notification of account debtors, seizure and/or foreclosure of collateral, and nonjudicial sale of personal property and real property collateral) before, during or after any arbitration, and/or (ii) request ancillary or provisional judicial remedies (such as garnishment, attachment, specific performance, receiver, injunction or restraining order, and sequestration) before or after the commencement of any arbitration proceeding (individually, and not on behalf of a class). The **PARTIES** need not await the outcome of the arbitration proceeding before using self-help remedies. Use of self-help or ancillary and/or provisional judicial remedies shall not operate as a waiver of either **PARTY**'s right to compel arbitration. Any ancillary or provisional judicial remedy which would be available from a court at law shall be available from the Arbitrator. The **PARTIES** agree that the AAA Optional Rules for Emergency Measures of Protection shall apply in an arbitration proceeding where emergency interim relief is requested.
- (c) Except to the extent the recovery of any type or types of damages or penalties may not be waived under applicable law, the Arbitrator shall not have the authority to award either **PARTY** (i) punitive, exemplary, special or indirect damages, (ii) statutory multiple damages, or (iii) penalties, statutory or otherwise.
- (d) The Arbitrator may award attorney's fees and costs including the fees, costs and expenses of arbitration and of the Arbitrator as the Arbitrator deems appropriate to the prevailing **PARTY**. The Arbitrator shall retain jurisdiction over questions of attorney's fees for fourteen (14) days after entry of the decision.

IV. General provisions applicable to both CONSUMER DISPUTES and BUSINESS DISPUTES:

- (a) The Arbitrator is bound by the terms of these Arbitration Provisions. The Arbitrator shall have exclusive authority to resolve any **DISPUTES** relating to the scope or enforceability of these Arbitration Provisions, including (i) all arbitrability questions, and (ii) any claim that all or a part of these Arbitration Provisions are void or voidable (including any claims that they are unconscionable in whole or in part).
- (b) These Arbitration Provisions shall survive any termination, amendment, or expiration of this Agreement, unless all of the **PARTIES** otherwise expressly agree in writing.
- (c) If a **PARTY** initiates legal proceedings, the failure of the initiating **PARTY** to request arbitration pursuant to these Arbitration Provisions within 180 days after the filing of the lawsuit shall be deemed a waiver of the initiating **PARTY**'S right to compel arbitration with respect to the claims asserted in the litigation. The failure of the defending **PARTY** in such litigation to request arbitration pursuant to these Arbitration Provisions within 180 days after the defending **PARTY**'S receipt of service of judicial process, shall be deemed a waiver of the right of the defending **PARTY** to compel arbitration with respect to the claims asserted in the litigation. If a counterclaim, cross-claim or third party action is filed and properly served on a **PARTY** in connection with such litigation, the failure of such **PARTY** to request arbitration pursuant to these Arbitration Provisions within ninety (90) days after such **PARTY**'S receipt of service of the counterclaim, cross-claim or third party claim shall be deemed a waiver of such **PARTY**'S right to compel arbitration with respect to the claims asserted therein. The issue of waiver pursuant to these Arbitration Provisions is an arbitrable dispute. Active participation in any pending litigation described above by a **PARTY** shall not in any event be deemed a waiver of such **PARTY**'S right to compel arbitration. All discovery obtained in the pending litigation may be used in any subsequent arbitration proceeding.
- (d) Any **PARTY** seeking to arbitrate shall serve a written notice of intent to any and all opposing **PARTIES** after a **DISPUTE** has arisen. The **PARTIES** agree a timely written notice of intent to arbitrate by either **PARTY** pursuant to these Arbitration Provisions shall stay and/or abate any and all action in a trial court, save and except a hearing on a motion to compel arbitration and/or the entry of an order compelling arbitration and staying and/or abating the litigation pending the filing of the final award of the Arbitrator.
- (e) Any Arbitrator selected shall be knowledgeable in the subject matter of the **DISPUTE** and be licensed to practice law.
- (f) For a one (1) member arbitration panel, the **PARTIES** are limited to an equal number of strikes in selecting the arbitrator from the AAA neutral list, such that at least one arbitrator remains after the **PARTIES** exercise all of their respective strikes. For a three (3) member arbitration panel, the **PARTIES** are limited to an equal number of strikes in selecting the arbitrators from the AAA neutral list, such that at least three arbitrators remain after the **PARTIES** exercise all of their respective strikes. After exercising all of their allotted respective strikes, the **PARTIES** shall rank those potential arbitrators remaining numerically in order of preference (with "1" designating the most preferred). The AAA shall review the **PARTIES** rankings and assign a score to each potential arbitrator by adding together the ranking given to such potential arbitrator by each **PARTY**. The arbitrator(s) with the lowest score total(s) will be selected. In the event of a tie or ties for lowest score total and if the selection of both or all of such potential arbitrators is not possible due to the required panel size, the AAA shall select the arbitrator(s) it believes to be best qualified.
- (g) The **PARTIES** and the Arbitrator shall treat all aspects of the arbitration proceedings, including, without limitation, any documents exchanged, testimony and other evidence, briefs and the award, as strictly confidential; provided, however, that a written award or order from the Arbitrator may be filed with any court having jurisdiction to confirm and/or enforce such award or order.

- (h) Any statute of limitation which would otherwise be applicable shall apply to any claim asserted in any arbitration proceeding under these Arbitration Provisions, and the commencement of any arbitration proceeding tolls such statute of limitations.
- (i) If the AAA is unable for any reason to provide arbitration services, then the **PARTIES** agree to select another arbitration service provider that has the ability to arbitrate the **DISPUTE** pursuant to and consistent with these Arbitration Provisions. If the **PARTIES** are unable to agree on another arbitration service provider, any **PARTY** may petition a court of competent jurisdiction to appoint an Arbitrator to administer the arbitration proceeding pursuant to and consistent with these Arbitration Provisions.
- (j) The award of the Arbitrator shall be final and Judgment upon any such award may be entered in any court of competent jurisdiction. The arbitration award shall be in the form of a written reasoned decision and shall be based on and consistent with applicable law.
- (k) Unless the **PARTIES** mutually agree to hold the binding arbitration proceeding elsewhere, venue of any arbitration proceeding under these Arbitration Provisions shall be in the county and state where Secured Party is located, which is Secured Party's address set out in the first paragraph on page 1 hereof.
- (l) If any of these Arbitration Provisions are held to be invalid or unenforceable, the remaining provisions shall be enforced without regard to the invalid or unenforceable term or provision.

JURY WAIVER: IF A DISPUTE BETWEEN YOU AND LENDER PROCEEDS IN COURT RATHER THAN THROUGH MANDATORY BINDING ARBITRATION, THEN YOU AND LENDER BOTH WAIVE THE RIGHT TO A JURY TRIAL, AND SUCH DISPUTE WILL BE TRIED BEFORE A JUDGE ONLY.

12. **General.** This Agreement shall also act as an endorsement of the above-described deposit. This Agreement may not be amended (nor may any of its items be waived) except in a written statement duly signed by Secured Party and by Pledgor. Except as the context may otherwise require, any term used herein that is defined in Article 1 or Article 9 of the Code shall have the meaning given therein. If any provision of this Agreement is rendered or declared illegal or unenforceable, Pledgor and Secured Party shall promptly negotiate substitute provisions for those rendered illegal or unenforceable, but all of the remaining provisions shall remain in full force and effect.

13. **Miscellaneous.**

(a) **Security Interest Absolute.** All rights of the Secured Party and the security interests hereunder shall be absolute and unconditional irrespective of:

- (i) any change in the time, manner, amount or place of payment of, or in any other term of, all or any of the Indebtedness, or any other amendment or waiver of or any consent to any departure from the Note(s) or any other Loan Document;
- (ii) any exchange or release or nonperfection of all or any part of the Collateral or any other collateral, or any release from, amendment to, waiver of or consent to departure from any guaranty for all or any of the Indebtedness; or
- (iii) to the fullest extent permitted by law, any other circumstances which might otherwise constitute a defense available to, or a discharge of the Pledgor and/or a third party pledgor.

(b) **Indemnification.** The Pledgor agrees to indemnify and defend the Secured Party and hold the Secured Party harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against the Secured Party in any way relating, or in any way arising out of or in connection with this Security Agreement, the Loan Documents or the transactions contemplated hereby or thereby other than those arising out of the Secured Party's breach, default, negligence or willful misconduct in its obligations under this Security Agreement or the Loan Documents. Without limitation of the foregoing, the Pledgor will reimburse the Secured Party for all expenses (including expenses for legal services of every kind) of, or incidental to, the negotiation of, entering into and enforcement of any of the provisions hereof and of the Indebtedness, and any actual or attempted sale, lease or other disposition of, and any exchange, enforcement, collection, compromise or settlement of any of the Collateral and defending or asserting the rights and claims of the Secured Party in respect thereof, and for the care of the Collateral and defending or asserting the rights and claims of the Secured Party in respect thereof, by litigation or otherwise, including expense of insurance, and all such expenses shall constitute part of the indebtedness.

(c) This Agreement will be governed by, construed and enforced in accordance with federal law and the laws of the state where Secured Party is located pursuant to Secured Party's address set out on page 1 hereof. This Agreement has been accepted by Secured Party in the state where Secured Party is located pursuant to Secured Party's address set out on page 1 hereof.

(d) The parties intend to conform strictly to the applicable federal, state, and local laws as now or hereafter construed by the courts having jurisdiction. All agreements between the parties hereto (or any other party liable with respect to any indebtedness under the Loan Documents) are hereby limited by the provisions of this subsection which shall override and control all such agreements, whether now existing or hereafter arising and whether written or oral. If from a construction of any document related to any agreement between the parties hereto (or any other party liable with respect to the indebtedness), any term(s) or provision(s) of the document is in conflict with, or in violation of, applicable laws, any such construction shall be subject to the provisions of this subsection and such document shall be automatically reformed as to comply with applicable law, without the necessity of execution of any amendment or new document.

(e) Attorney's fees and costs of collection, once liquidated, paid by Secured Party and/or otherwise allowed by law, will bear interest (i) at the rate of interest applied to the matured and past due principal balance of the Note(s) as such rate may change from time to time from date due until repaid, or (ii) if the Note(s) are not described in Section 2 hereof, at the rate of ten percent (10.0%) per annum.

(f) Secured Party, in its sole discretion and without obligation on Secured Party to do so, may advance and pay sums on behalf and for the benefit of Pledgor for costs necessary for the protection and preservation of the Collateral securing the Indebtedness and other costs that may be appropriate, in Secured Party's sole discretion, including but not limited to insurance premiums (including single interest insurance, which provides protection only for Secured Party), ad valorem taxes, and attorney's fees. Any such sums which may be paid by Secured Party for insurance premiums or otherwise, as aforesaid, including the costs, expenses and attorney's fees paid in any suit affecting the Collateral, shall become part of the Indebtedness secured by this Agreement, shall be secured by the Collateral, shall, to the extent allowed by law, bear interest from the dates of such payments until paid at the contractual interest rate applied to the prematurity principal balance of the Note(s) (or if the Note(s) are not described in Section 2 hereof at the rate of ten percent (10.0%) per annum) and shall be due, together with any accrued and unpaid interest thereon, upon demand by Secured Party.

(g) To the extent allowed by law, any and all collateral securing other indebtedness of Pledgor and/or Borrower to Secured Party and all Pledgor's and/or Borrower's accounts with Secured Party and/or any member bank of the International BancShares Corporation, excluding however, all IRA and KEOGH and all trust accounts upon which the grant of a security interest would be prohibited, and any and all repurchase agreements or other non-deposit obligations, also secure the indebtedness.

(h) This Agreement constitutes written notice of a security interest if required by applicable law.

(i) PLEDGOR HAS READ AND UNDERSTOOD ALL OF THE PROVISIONS OF THIS SECURITY AGREEMENT AND AGREED TO ITS TERMS.

14. Swap Transactions. As used in this paragraph, the term "Lender" means Secured Party. Without limiting the generality of any other provisions of this Agreement, Pledgor and Lender agree that the following obligations of Pledgor and/or Borrower are secured by this Agreement and constitute "indebtedness", as that term is used in this Agreement: (i) any and all obligations, contingent or otherwise, whether now existing or hereafter arising, of the Pledgor and/or Borrower to Lender or any Lender Affiliate (as hereinafter defined) arising under or in connection with any Swap Transaction, and (ii) any Swap Related Loss (as defined in the Note) that becomes due and payable in accordance with the terms of the Note. The term "Swap Transaction", as used herein, means (i) any transaction evidenced by one or more agreements now existing or hereafter entered into between Pledgor and/or Borrower and Lender and/or any financial institution affiliated with International BancShares Corporation (a "Lender Affiliate") which is a rate swap, swap option, interest rate option or other financial instrument or interest (including an option with respect to any such transaction), (ii) any type of transaction that is similar to any transaction referred to in clause (i) above that is currently, or in the future becomes, recurrently entered into in the financial markets and which is a forward swap, future, option or other derivative on one or more rates, or any combination of the foregoing transactions, or (iii) any transaction that is similar to any transaction referred to in clause (i) or (ii) above except that it is between Lender or a Lender Affiliate and any party or entity other than Pledgor and/or Borrower and it is entered into by Lender or such Lender Affiliate on account of a corresponding Swap Transaction that is described in clause (i) or (ii) above. The occurrence or existence of any default, event of default or other similar condition or event (however described) on the part of Pledgor and/or Borrower arising under or with respect to any Swap Transaction shall constitute an Event of Default under this Agreement.

15. NO ORAL AGREEMENTS.

THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENT OF THE PARTIES.

THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

This Agreement is effective as of December 17, 2001.

PLEDGOR(S):

Zachry Industrial Inc
A Texas Corporation

By: Charles Ryan Frames
Name: Charles Ryan Frames
Title: Senior Vice President

SECURED PARTY: International Bank of Commerce

By: EDWARD G. PEARSON
Name: E. Graham Pearson
Title: First Vice President

Zachry Industrial Inc. 6378

Revised Signature Card - 07/13/2022

DEPOSITOR'S AGREEMENT

DEPOSITOR				
Zachry Industrial Inc OJO DE AGUA RANCH				
ADDRESS				
527 Logwood Ave San Antonio, Texas 78221				
Account Number	Number of Signatures Required	Opening Date	Opening Deposit Amount	Office/Officer
6378	1	8/24/2017	\$0.00	1/Graham Pearson

IBC BANK
International Bank
of Commerce
130 EAST TRAVIS
San Antonio, Texas 78205
(210) 518-2500 - Member FDIC
"BANK"

The Deposit Account Agreement governing this Account consists of a Depositor's Agreement signature form(s) (and any Addendum thereto), a Deposit Account Agreement booklet, disclosures such as fees schedules and any written agreement for banking services connected with this Account, which documents jointly constitute one single agreement. As used in this Agreement, "Authorized Signatory" means each and every signatory on this Account, including Depositor and each and every Convenience Signer. Bank and each Authorized Signatory agree that to the extent that no other written agreement by, between, and/or among Bank and one or more Authorized Signatory is applicable to an issue, this Agreement will govern their relationship.

Each person who signs for Depositor's Agreement (signature form) (and/or any Deposit Account Agreement Addendum) agrees to the terms and conditions set forth in this Depositor's Agreement signature form, and to the terms and conditions set forth in the Deposit Account Agreement booklet. Each signatory hereto (and/or to each Deposit Account Agreement Addendum) acknowledges receipt of a copy of the Depositor's Agreement signature form, of any addendum thereto, of the Deposit Account Agreement booklet, of the Schedule of Fees and Charges, of the Truth in Savings Disclosure, of the Electronic Funds Transfer and Automated Teller Cards Agreement and Disclosure, of the Funds Availability Policy, of the Consumer Customer Privacy Notice and of the Opt-Out of Privacy Disclosure and agrees that all terms and conditions contained in such documents collectively shall govern the rights, duties, and obligations of Bank and each signatory hereto with respect to this Account. Each person executing the original deposit slip shall be deemed an Authorized Signatory and shall be subject to the terms and conditions contained in the Depositor's Agreement and the Deposit Account Agreement (booklet).

1. X *Kimberly K. Reed* Authorized Signer
DOB: [REDACTED] ID: Passport [REDACTED] SSN: [REDACTED]
2. X *Shedden Reed* Authorized Signer
DOB: [REDACTED] ID: DL Texas [REDACTED] SSN: [REDACTED]
3. X *Charles Franks* Authorized Signer
DOB: [REDACTED] ID: DL Texas [REDACTED] SSN: [REDACTED]
4. X *Gilbert Wistrek* Authorized Signer
DOB: [REDACTED] ID: DL Texas [REDACTED] SSN: [REDACTED]

5. X *John B. Franks* Authorized Signer
DOB: [REDACTED] ID: DL [REDACTED] SSN: [REDACTED]

Opened By	Telephone Number	Business Information
Isabel Ramos	(210) 588-5000	Type of Business: CONSTRUCTION
Deposit Source		Bank Reference:
Account Type		Mailing Address (# different from above)
Commercial Checking		Po Box 240130
Ownership		San Antonio, Texas 78224-0130
Corporation		

Depositor acknowledges that the use of a facsimile signature or other "non-manual" form of signature is solely for Depositor's benefit and convenience. Each Authorized Signatory accepts sole responsibility for maintaining security over any device utilized for affixing each authorized signature on this Account.

Revision reason - removing duplicate name Rye Charles Franks

I request that "Bank" ☒ Mail Correspondence to address provided
☐ Hold Correspondence at "Bank" for pickup at my convenience. (See applicable fee for statement safekeeping)

OWNERSHIP OF ACCOUNT - The following provisions explain the rules applicable to this account depending on the form of ownership. Only the portion corresponding to the form of ownership specified will apply. **Single-Party Account** - The party to the account owns the account. On the death of the party, ownership of the account passes as a part of the party's estate under the party's will or by intestacy. **Multiple Party Account With Right of Survivorship** - The parties to the account own the account in proportion to the parties' net contributions to the account. The financial institution may pay any sum in the account to a party at any time. On the death of a party, the party's ownership of the account passes as a part of the party's estate under the party's will or by intestacy. **Payable on Death (P.O.D.) Account** - If two or more owners create this account, it is a multiple party account with right of survivorship. The named P.O.D. payee will acquire rights to the account only upon the death of all owners, provided the P.O.D. payee is then alive. In the case of two or more surviving P.O.D. payees, the account will become payable equally to such P.O.D. payees as are then surviving. Funds on deposit shall be payable to the personal representative or heirs, as the case may be, of an owner or P.O.D. payee only upon presentation to us of satisfactory proof of said capacity and of certified death certificates of all other owners and P.O.D. payees, as applicable. (The account owner(s) reserve(s) the right at any time to change the P.O.D. payee, account type, and/or account ownership, and to withdraw all or part of the account balance.) **Totten Trust Account** - The parties named as trustees to the account own the account in proportion to the parties' net contributions to the account. A beneficiary may not withdraw funds from the account. A beneficiary may not withdraw funds from the account before all trustees are deceased. On the death of the last surviving trustee, the ownership of the account passes to the beneficiary. The trust account is not a part of a trustee's estate and does not pass under the trustee's will or by intestacy, unless the trustee survives all of the beneficiaries and all other trustees. **Texas Uniform Transfer to Minors Act** - The funds deposited in this account, together with all earnings and additions, constitute an irrevocable gift to the named minor to be administered by the named Custodian under the Texas Uniform Gifts to Minors Act, the terms and provisions of which are incorporated herein by reference. **Fiduciary Account** - The named representative(s) exercise(s) control over these accounts for the benefit of third parties, and the fiduciary relationship is established other than by this agreement. **Organizational Account** - This account is owned by the named organization, which acts through its authorized representatives. The governing body of the organization shall provide us with an authorization, in a form acceptable to us, telling us who is authorized to act in its behalf. We will honor this authorization until we actually receive written notice of a change from the governing body. We are not responsible for any transaction conducted by a previously authorized representative if we have not actually received written notice from the governing body of the organization that the representative is no longer authorized to transact on its behalf. **Correspondence Addressee** - The party to the account owns the account. The assignee to the account may make account transactions for the party. The assignee does not own the account. On the death of the party, ownership of the account passes as a part of the party's estate under the party's will or by intestacy. The financial institution may pay funds in the account to the assignee before the financial institution receives notice of the death of the party. The payment to the assignee does not affect the party's ownership of the account.

Request for Taxpayer Identification Number and Certification

Taxpayer ID Number - My correct taxpayer identification number (TIN) is

683

(Zachry Industrial Inc.)

For Payee's Exempt From Backup Withholding

Certification - Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am asking for a number to be issued to me) and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below), and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification Instructions - You must check out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding. If you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, disposition of debt contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign this certification.

X *[Signature]* Date 7/13/2022

Page 1 of 4

Depositor's Agreement (Business) (rev. 03/25/2022)





ACE INSURANCE OR
INSURANCE COMPANY OF NORTH AMERICA OR
CALIFORNIA UNION INSURANCE COMPANY OR
DELAWARE REINSURANCE COMPANY OR
PACIFIC EMPLOYERS INSURANCE COMPANY OR
ACE AMERICAN INSURANCE OR
BANKERS STANDARD INSURANCE COMPANY OR
INDEMNITY INSURANCE COMPANY OF NORTH AMERICA
1601 CHESTNUT STREET
PHILADELPHIA, PA 19192
ATTN: COLLATERAL MANAGER

DECEMBER 17, 2001

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [REDACTED] 64

ISSUED IN Laredo, Texas ON December 20, 2001.

BENEFICIARY:
ACE INSURANCE OR
INSURANCE COMPANY OF NORTH AMERICA OR
CALIFORNIA UNION INSURANCE COMPANY OR
DELAWARE REINSURANCE COMPANY OR
PACIFIC EMPLOYERS INSURANCE COMPANY OR
ACE AMERICAN INSURANCE OR
BANKERS STANDARD INSURANCE COMPANY OR
INDEMNITY INSURANCE COMPANY OF NORTH AMERICA
1601 CHESTNUT STREET
PHILADELPHIA, PA 19192
ATTN: COLLATERAL MANAGER

APPLICANT:
ZACHRY GROUP, INC.
512 LOGWOOD
P.O. BOX 240130
SAN ANTONIO, TEXAS 78224-0130

Gentlemen:

By order of our client, Zachry Group, Inc., we hereby establish our Irrevocable Standby Letter of Credit No. [REDACTED] 64 in your favor for the amount up to but not exceeding the aggregate sum of Five Million and no 00/100 US Dollars (U.S. \$5,000,000.00). This Standby Letter of Credit shall become effective immediately and shall expire at our counters of International Bank of Commerce in Laredo, Texas on May 1, 2002 unless renewed as hereinafter provided.



Page 2

L/C No. [REDACTED] 864

Documents Required:

- 1.- Funds under this Letter of Credit are available with International Bank of Commerce, Laredo, Texas by presentation of your draft(s) at sight marked " Drawn under Standby Letter of Credit No.SB [REDACTED] 64".
- 2.- Original Letter of Credit and original amendments if any.

Special Conditions:

1. The multiple Beneficiaries set forth above hereby each individually designate Insurance Company of North America, one of the said listed Beneficiaries, as the sole authorized entity having authority to, and any and all rights to, present the "Documents Required" to draw under this Standby Letter of Credit. In doing so each of the remaining of the Multiple Beneficiaries agree that none shall have any right and/or authority to draw under this Letter of Credit.
2. Partial drawings are permitted.
3. It is a condition of this Letter of Credit that it shall be automatically extended for a period of one (1) year from its current expiration date or any extension thereof, unless we send you a notice in writing and by courier service to the above address at least sixty (60) days prior to such expiration date or extension date thereof, that we elect not to extend this letter of credit. Upon receipt of notice you may draw on us hereunder by means of your draft at sight bearing the clause " Drawn under Standby Letter of Credit No. [REDACTED] 64".
4. This Letter of Credit sets forth in full the terms of our undertaking. Such undertaking shall not in any way be modified, amended or amplified by reference to any document or instrument referred to herein or in which this Letter of Credit is referred to or to which this Letter of Credit relates and any such reference shall not be deemed to incorporate herein by reference any document or instrument.
5. The term "Beneficiary" includes any successor by operation of law of the named Beneficiary including, without limitation, any liquidator, rehabilitator, receiver or conservator.
6. All bank charges and commissions incurred in this transaction are for the applicant's account.
7. For information purposes only: This Standby Letter of Credit is issued as a substitute for the existing Letter of Credit # [REDACTED] 75 issued by JPMorgan Chase.
8. All documents must be mailed to International Bank of Commerce, 1200 San Bernardo, 2nd Floor, Laredo, Texas, 78040 Attention: International Letters of Credit Department in one mailing by courier service.

Page 3


L/C No. [REDACTED] 364

Reimbursement Instructions:

Payment to be effected per your instructions against conforming documents presented at our counters.

This Letter of Credit shall be governed by the Uniform Customs and Practice for Documentary Credits (1993 Revision) International Chamber of Commerce (Publication No. 500) and the Laws of the State of Texas. In the event of any conflict, the Laws of the State of Texas will control. If this Letter of Credit expires during an interruption of business as described in Article 17 of International Chamber of Commerce (Publication No. 500), we agree to effect payment if this Letter of Credit is drawn against within 30 days after resumption of business. There shall be no revisions, modifications, additions or alterations to the original underlying documents between applicant and beneficiary which gives rise to this Letter of Credit.

We hereby engage with the drawers, endorsers and bona fide holders of draft(s) drawn under in compliance with the terms of this Letter of Credit will be duly honored, if drawn, and presented for payment with all required documents at this office on or before the Expiration Date of the Letter of Credit. This Letter of Credit must be surrendered to issuer for endorsement with the draft which exhausts it. The obligation of International Bank of Commerce under this Letter of Credit is the individual obligation of International Bank of Commerce, and is no way contingent upon reimbursement with respect thereto.


AUTHORIZED SIGNATURE