

CAUSE NO. **2024CI11484**

**ZACHRY CONSTRUCTION
CORPORATION,**
Plaintiff,

v.

**GUNTERT & ZIMMERMAN CONST.
DIV., INC.,**
Defendant.

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IN THE DISTRICT COURT

____ **JUDICIAL DISTRICT**

BEXAR COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

COMES NOW Zachry Construction Corporation, Plaintiff, complaining of Guntert & Zimmerman Const. Div., Inc., Defendant, and for cause of action would show the Court the following:

I. DISCOVERY CONTROL PLAN

1. Discovery in this case is to be conducted under Level 3, pursuant to the Texas Rules of Civil Procedure.

II. PARTIES

2. Plaintiff Zachry Construction Corporation (Zachry) is a Delaware corporation with its primary place of business in San Antonio, Texas.

3. Defendant Guntert & Zimmerman Const. Div., Inc. (G&Z) is a California corporation with its primary place of business in San Joaquin County, California. G&Z does not maintain a place of regular business in Texas and has no designated agent on whom service of citation may be made in this action. Accordingly, G&Z may be cited by serving Ronald M. Guntert at 222 East Fourth Street Ripon, California 95366.

III. JURISDICTION

4. The damages sought are within the jurisdictional limits of the Court.

5. The parties have irrevocably submitted to the exclusive jurisdiction of Bexar County courts and have waived the defense of inconvenient forum.

6. Pursuant to Tex. R. Civ. P. 47, Plaintiff seeks only monetary relief over \$1,000,000.

IV. VENUE

7. The parties have irrevocably submitted to the exclusive venue of Bexar County courts. Additionally, venue for this action is proper in Bexar County pursuant to Tex. Civ. Prac. & Rem. Code § 15.002(a)(1) as all or a substantial part of the events or omissions giving rise to the claim occurred in Bexar County.

V. FACTS

8. Zachry is a family owned, private enterprise providing services related to heavy civil construction projects.

9. On November 20, 2023, by way of compromise of an outstanding debt, Zachry and Guntert & Zimmerman Const. Div., Inc. (G&Z) entered into four agreements. First, the parties executed a Contract for Sale under which G&Z purchased a G&Z IDBI from Zachry (the Contract).¹ Second, the parties entered into a Promissory Note (the Note) under which G&Z took on an indebtedness to Zachry in the amount of \$985,825.20.² Third, the parties entered into an ACH Authorization (the ACH Authorization) under which G&Z gave Zachry the right to debit payments under the Note from G&Z's account at GBC International Bank.³ Finally, the parties entered into a Security Agreement (the Security Agreement) under which G&Z pledged the IDBI as collateral in connection with the Note.⁴

¹ Ex 1, the Contract, is incorporated as if set forth completely herein.

² Ex 2, the Note, is incorporated as if set forth completely herein.

³ Ex 3, the ACH Authorization, is incorporated as if set forth completely herein.

⁴ Ex 4, the Security Agreement, is incorporated as if set forth completely herein.

10. Under the Note, G&Z is obligated to make monthly payments in the amount of \$59,081.95 on the twentieth day of each month, beginning on February 20, 2024. G&Z has not made any of the payments required under the Note. Furthermore, each month, Zachry has attempted to withdraw payments when due under the ACH Authorization, and on each attempt, Zachry is advised that the account has insufficient funds.

11. On March 19, 2024, Zachry sent a demand letter to G&Z. Therein, Zachry demanded payment of the outstanding amounts within seven days. G&Z did not make the required payments.

12. On May 29, 2024, Zachry sent a second demand letter to G&Z. Therein, Zachry accelerated the indebtedness under the Note and provided notice that the default rate of 18% was being applied from the date the first payment was due.

13. Accordingly, the following amounts are currently due and payable under the Note:

Outstanding Invoices	\$985,825.20
Interest	\$81,559.93
Attorney's fees to date	\$3,000.00
Total Amount Due	\$1,070,385.13

14. As of the date of this filing, G&Z has made no payments under the Note. G&Z has thereby breached the Note.

15. Defendant's failure to pay has forced Zachry to institute this action.

VI. CAUSES OF ACTION

A. Breach of Contract

16. Plaintiff realleges and incorporates herein the facts and allegations as stated above.

17. Defendant's foregoing acts and omissions constitute breach of contract. Defendant materially breached its contractual obligations to Plaintiff under the Contract, Note, ACH Authorization and Security Agreement by, without limitation, failing to make payments Defendant

was obligated to make. Accordingly, Zachry is entitled to recover from and against Defendant its actual, incidental and consequential damages incurred, and attorney's fees.

B. Suit on a Promissory Note

18. Plaintiff realleges and incorporates herein the facts and allegations as stated above.

19. As set out above, G&Z executed and delivered to Zachry the Note and thereby promised to pay Zachry, the principal amount plus accrued interest. As set out above, G&Z has made no payment on the Note.

20. As set out above, Zachry made presentment and formal written demand upon G&Z to pay the Note. Furthermore, as set out in the Note, G&Z has waived

notice of intent to accelerate, notice of acceleration, presentment for payment, protest, notice of protest, notice of default, notice of non-payment, notice of dishonor, demand for payment, diligence in filing suit, and any and all lack of diligence or delays in collection or enforcement of this Note.⁵

21. As set out above, G&Z has failed and refused to make the required payments under the Note.

VII. ATTORNEYS' FEES

22. Pursuant to Tex. Civ. Prac. & Rem. Code § 38.001(b)(8), and the terms of the Note⁶ Plaintiff is entitled to its reasonable and necessary attorney's fees and costs.

VIII. CONDITIONS PRECEDENT

23. All conditions precedent to Plaintiff's claims for relief have been performed, have occurred, have been satisfied or have been waived by Defendant.

⁵ Ex 2, the Note p. 3.

⁶ Ex 2, the Note p. 3.

IX. NOTICE OF USE OF PRODUCED DOCUMENTS

24. Pursuant to Tex. R. Civ. P. 193.7, all parties are hereby notified that Plaintiff will use any and all documents and tangible things produced to the parties in this matter in all pre-trial, trial, and post-trial proceedings in this litigation.

PRAYER

25. For these reasons, Zachry Construction Corporation, Plaintiff, asks that Guntert & Zimmerman Const. Div., Inc., Defendant, be cited to appear and answer and, that Plaintiff have judgment against Defendant, for:

- a. actual damages;
- b. consequential and incidental damages;
- c. reasonable and necessary attorneys' fees and court costs;
- d. pre-judgment and post-judgment interest; and
- e. all other relief to which Plaintiff is entitled.

Respectfully submitted,

The Cole Firm
3515 Clairmont
San Antonio, Texas 78259
(210) 722-6433
(210) 405-2556 (fax)
mgcole@colefirmtx.com

By: 

Matthew G. Cole
State Bar No. 24065061

Attorney for Plaintiff



CONTRACT FOR SALE

Effective Date: November 20, 2023

Seller: Zachry Construction Corporation, a Delaware corporation

Buyer: Guntert & Zimmerman Const. Div., Inc., a California corporation

Equipment: See Attachment 1

Sales Price: See Attachment 1

Delivery Point: Seller's equipment yard in the Dallas-Fort Worth Metroplex

Closing Date: November 20, 2023

AGREEMENT

For good and valuable consideration, Buyer and Seller (each, a "**Party**" and collectively, the "**Parties**") agree that the Seller will sell, and the Buyer will purchase, the Equipment on and subject to the terms and conditions set forth in this Contract for Sale (as amended, modified, or supplemented, this "**Agreement**").

Section 1. **Closing, Delivery, and Shipping.** On the Closing Date:

- (a) Buyer shall:
 - (i) Deliver to Seller duly executed originals of the Security Agreement ("**Security Agreement**") and Promissory Note in substantially the forms attached hereto as Attachment 2 (collectively, the "**Transaction Documents**").
 - (ii) Deliver to Seller a duly executed original of the ACH Authorization in substantially the form attached hereto as Attachment 3.
- (b) Seller shall execute and deliver to Buyer a bill of sale assigning and conveying the Equipment to Buyer subject to Seller's vendor's lien and Seller's liens and rights in the Transaction Documents; provided, however, that Seller's obligations under this Section are conditioned upon actual receipt of (i) duly executed originals of the Transaction Documents listed in Section 1(a)(i), and (ii) the duly executed original ACH Authorization listed in Section (a)(ii). Seller shall retain possession of the Equipment at the Delivery Point in accordance with the terms of the Security Agreement until such time as the Seller has paid and performed in full all of the Secured Obligations, as such term is defined in the Security Agreement.

From and after Seller's delivery of the Equipment to the shipper, Buyer bears all risk of loss and damage to the Equipment.

Section 2. **PROPERTY CONDITION AND FUTURE USE.**

- (a) **BUYER IS TAKING THE EQUIPMENT "AS-IS" WITH ANY AND ALL LATENT AND PATENT DEFECTS, AND THERE IS NO WARRANTY BY SELLER, EXPRESS OR IMPLIED, OF ANY NATURE WHATSOEVER OTHER THAN THE WARRANTY OF TITLE SET FORTH IN THE BILL OF SALE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SELLER HEREBY EXPRESSLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. BUYER ACKNOWLEDGES THAT BUYER IS NOT RELYING UPON ANY REPRESENTATION, STATEMENT, OR OTHER ASSERTION BY SELLER WITH RESPECT TO THE EQUIPMENT.**
- (b) Notwithstanding anything to the contrary in this Agreement, Seller represents and warrants to Buyer that Seller is the sole owner of the Equipment, Seller has all necessary power and authority

to enter into this Agreement, the execution and performance by Seller of this Agreement will not result in a violation or breach of any contract entered into by and between Seller and a third party, and as of the Effective Date, the Equipment is not encumbered by a lien of any third-party.

- (c) **TO THE MAXIMUM EXTENT PERMITTED BY LAW, BUYER SHALL DEFEND, INDEMNIFY AND HOLD SELLER, ITS AFFILIATES, AND THEIR OFFICERS, EMPLOYEES AND AGENTS HARMLESS FROM ANY LOSS, COST OR EXPENSE, CLAIMS OR CAUSES OF ACTION OCCURRING ON OR AFTER THE EFFECTIVE DATE BROUGHT AGAINST THEM BY ANY PERSON OR ENTITY, INCLUDING WITHOUT LIMITATION, DAMAGE TO PROPERTY OR INJURY TO PERSONS (INCLUDING DEATH) ARISING FROM OR RELATED TO THE EQUIPMENT OR ITS PURCHASE AND SALE, WHETHER THE EQUIPMENT IS IN THE CARE, CUSTODY OR CONTROL OF BUYER OR ITS EMPLOYEES, SUBCONTRACTORS, AGENTS, REPRESENTATIVES, OR AUTHORIZED CARRIERS AND REGARDLESS OF CAUSE, INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE OF ANY INDEMNIFIED PARTY), INDEMNITY, STRICT LIABILITY OR OTHERWISE.**

Section 3. **Miscellaneous.**

- (a) Buyer is responsible for all tax, title, and licensing arising out of the purchase and sale of the Equipment, including, without limitation, all applicable Texas sales and use taxes. Buyer shall defend, indemnify, and hold Seller, its affiliates, and their officers, employees and agents harmless from and against all any loss, cost or expense, claims or causes of action brought against them by any person or entity arising Buyer's failure to remit any and all taxes to the appropriate authorities.
- (b) **THIS CONTRACT SHALL BE GOVERNED, CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS REGARDLESS OF ANY APPLICABLE CHOICE OF LAW PROVISIONS. THE SOLE AND EXCLUSIVE VENUE FOR THE ADJUDICATION OF ANY DISPUTE ARISING OUT OF OR RELATING IN ANY WAY TO THIS CONTRACT, INCLUDING WITHOUT LIMITATION BREACH, TERMINATION, OR VALIDITY HEREOF, SHALL BE IN THE STATE OR FEDERAL COURT SITTING IN BEXAR COUNTY, TEXAS. BUYER IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS AND WAIVES THE DEFENSE OF INCONVENIENT FORUM TO THE MAINTENANCE OF ANY SUCH ACTION OR PROCEEDING IN SUCH VENUE.**
- (c) **SELLER AND BUYER HEREBY AGREE TO WAIVE THEIR RIGHTS TO A JURY TRIAL WITH RESPECT TO ANY CLAIM OR CAUSE OF ACTION BASED ON OR ARISING OUT OF THIS CONTRACT. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED REGARDING THE RELATIONSHIP BETWEEN SELLER AND BUYER ARISING OUT OF OR RELATED TO THIS CONTRACT OR THE SALE OF THE EQUIPMENT TO BUYER, INCLUDING WITHOUT LIMITATION CONTRACT CLAIMS, TORT CLAIMS, BREACHES OF DUTY, COMMON LAW, AND STATUTORY CLAIMS.**
- (d) This Contract supersedes any other agreement, whether written or oral, that may have been made or entered into between Buyer and Seller relating to the purchase and sale of the Equipment, and it constitutes the entire agreement between the Parties with respect with respect thereto.
- (e) This Contract may be executed in counterparts, each of which shall be deemed an original, and all of which together constitute one and the same Agreement. The exchange of signed copies of this Contract and signature pages by facsimile or Adobe Sign® (or other similar services) shall constitute effective execution and delivery of this Contract as to the Parties and may be used in lieu of the original of this Contract for all purposes.

SELLER:

ZACHRY CONSTRUCTION CORPORATION,
a Delaware corporation

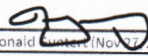
By:  _____
Bryan S. Golla (Nov 28, 2023 09:56 CST)

Name: Bryan S. Golla

Title: Vice President and Controller

BUYER:

GUNTERT & ZIMMERMAN CONST. DIV.,
INC., a California corporation

By:  _____
Ronald M. Guntert, Jr. (Nov 28, 2023 15:22 PST)

Name: Ronald M Guntert, Jr.

Title: President and CEO

Attachment 1
Equipment

Description	Serial Number	Purchase Price
G&Z IDBI	CDBI-C1181-305	\$320,086.20

Attachment 2
Form of Transaction Documents

PROMISSORY NOTE

Effective Date: November 20, 2023

Borrower: Guntert & Zimmerman Const. Div., Inc., a California corporation

Borrower's Mailing Address (including county):

222 East Fourth Street
Ripon, California 95366
San Joaquin County, California

Lender: Zachry Construction Corporation, a Delaware corporation

Place for Payment (including county):

Street Address: Attention: Treasurer
14410 Wurzbach Parkway
Suite 120
San Antonio, Texas 78216
Bexar County, Texas

Mailing Address: Attention: Treasurer
P.O. Box 33240
San Antonio, Texas 78265-3240
Bexar County, Texas

Principal Amount: Nine Hundred Eighty-Five Thousand Eight Hundred Twenty-Five and 20/100 Dollars (\$985,825.20)

Annual Interest Rate on Unpaid Principal: The lesser of eight percent (8.0%) per annum or the Maximum Permitted Rate

Default Rate: The Maximum Permitted Rate, as defined below

Terms of Payment (principal and interest):

1. Seventeen consecutive installments each equal to \$59,081.95, the first payment being due and payable on February 20, 2024; and a payment will be due and payable on the 20th day of each successive month thereafter until and including June 20, 2025;
2. One final payment of the entire unpaid principal and any accrued but unpaid interest due and payable in full on July 20, 2025 (the "**Maturity Date**");
3. All payments of principal and interest will be made in lawful currency of the United States of America in immediately available funds on the due date thereof at such place as the Lender designates in writing;

4. Unless otherwise required by applicable law, all payments will be applied first to interest accruing at the rate then in effect under this Note, then to principal, and then to any unpaid charges due and payable by Borrower hereunder or under the Loan Documents, as defined below; and
5. The entire unpaid principal balance of this Note and all accrued interest thereon (and all other charges due and payable by Borrower hereunder and under the Loan Documents) will be due and payable in full on the maturity of this Note, whether by lapse of time, acceleration, or otherwise.

Borrower promises to pay to the order of Lender at the place for payment (or such other place as designated in writing by Lender to Borrower) and according to the terms of payment the principal amount plus interest at the rates stated in this Note.

Non-Revolving Loan. Borrower may not reborrow any amount repaid or prepaid under this Note.

Prepayment. Borrower may prepay any or all of the amounts due on this Note without premium or penalty.

Evidence of Debt. Lender is authorized to record the loan made to Borrower and each payment or prepayment thereof and the entries made by Lender shall, to the extent permitted by applicable Law, be prima facie evidence of the existence and amounts of the Secured Obligations (as defined in the Security Agreement) therein recorded; provided, however, that the failure of Lender to record such payments or prepayments, or any inaccuracy therein, shall not in any manner affect the obligation of Borrower to repay (with applicable interest) the loan in accordance with the terms of this Note.

Rescission of Payments. If at any time any payment made by Borrower under this Note is rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy or reorganization of Borrower or otherwise, Borrower's obligation to make such payment shall be reinstated as though such payment had not been made.

Dishonored Check Charge. Borrower will pay a processing fee of \$30.00 if any check given by Borrower to Lender as payment on this Note is dishonored.

Security. The payment of this Note is secured by a first priority security interest in the collateral evidenced in a Security Agreement dated of even date herewith between Guntert & Zimmerman Const. Div., Inc. and Lender, as it may be amended, modified, replaced, or supplemented from time to time (the "**Security Agreement**"). This Note, the Security Agreement, and all other documents now or hereafter evidencing, securing, or guaranteeing any of the obligations of either or both Borrowers to the Lender under the Security Agreement or this Note or any present or future security therefor, are referred to herein collectively as the "**Loan Documents**."

Events of Default. It will be an "**Event of Default**" under this Note if (a) Borrower fails to pay any installment of principal and interest (or any part thereof) when due; or (b) any event of default (as defined in any Loan Document) occurs under any Loan Document. Upon the occurrence of an Event of Default, then, the Lender, at the Lender's election, and without notice to any person liable hereunder, may declare the entire unpaid principal balance of this Note, together with all accrued and unpaid interest and other sums and charges due under this Note or any Loan Documents, to be immediately due and payable. Failure to exercise this option will not constitute a waiver of the right to exercise it at any other time when an Event of Default will exist or continue. Upon the occurrence of an Event of Default, the Lender will also have the unconditional right to exercise all remedies provided (1) hereunder, (2) under any Loan Document, and (3) at law or in equity. No delay on the part of the Lender in the exercise of any power or right under this Note, or under any other instrument executed in connection herewith, will operate as a waiver thereof, nor will a single or partial exercise of any power or right preclude other or further exercise thereof or exercise of any other power or right. Enforcement by the Lender of any security for the payment hereof

will not constitute an election by the Lender of remedies so as to preclude the exercise of any other remedy available to the Lender. Upon and after the occurrence of an Event of Default, subject to any applicable cure period provided in the Loan Documents, Borrower hereby authorizes Lender at any time and from time to time, without notice, which is hereby expressly waived by Borrower, and whether or not Lender shall have declared this Note to be due and payable in accordance with the terms hereof, to setoff in accordance with the Loan Documents.

Notwithstanding anything to the contrary set forth in this Note or in the Loan Documents, upon the occurrence and continuance of any Event of Default that is not cured within any applicable cure period provided in the Loan Documents, and as of the date of expiration of any such cure period, the Annual Interest on Unpaid Principal will increase, at Lender's option, to the Default Rate. The Default Rate will continue until the Event of Default is cured to Lender's satisfaction and such rate will apply against all unpaid principal. Unless otherwise provided by applicable law, the Default Rate applies both before and after any judgment or arbitration decision until Lender receives full payment in cash. In no event will the Default Rate exceed the Maximum Permitted Rate.

To the extent that either Chapter 303 or 306, or both, of the Texas Finance Code apply in determining the Maximum Permitted Rate, Lender hereby elects to determine the applicable rate ceiling by using the weekly ceiling from time to time in effect, subject to Lender's right subsequently to change such method in accordance with applicable law, as the same may be amended or modified from time to time.

Waiver. Borrower waives notice of intent to accelerate, notice of acceleration, presentment for payment, protest, notice of protest, notice of default, notice of non-payment, notice of dishonor, demand for payment, diligence in filing suit, and any and all lack of diligence or delays in collection or enforcement of this Note. Without affecting the liability of Borrower under this Note, the Lender may do any of the following: release any of the property described in the Loan Documents; grant any indulgence, forbearance, waiver, adjustment, or extension of any kind; or release any other person or entity now or hereafter liable for the payment or performance of this Note or any obligation under the Loan Documents. To the fullest extent of the law and to the extent not prohibited by applicable law, Borrower further (i) agrees that the Lender, at any time or times, without notice to Borrower or Borrower's consent, may grant extensions of time, without limit as to the number or the aggregate period of such extension, for the payment of any principal or interest due on this Note, or other accommodations with respect to the indebtedness evidenced by this Note; (ii) waives any right to require a marshaling of assets; and (iii) waives the benefit of any law or rule of law intended for its advantage or protection as a debtor or providing for its release or discharge from liability hereon, in whole or in part, on account of any facts or circumstances other than full and complete payment of all amounts due under this Note.

Costs of Collection. From and after the occurrence of any Event of Default under this Note or the Loan Documents, in the event the Lender employs one or more attorneys and/or legal assistants to enforce collection of this obligation, in whole or in part, or to pursue its remedies under the Loan Documents or otherwise available at law or in equity, then Borrower will pay a reasonable fee for all such attorneys' and legal assistants' services and costs, regardless of whether suit is instituted and, if suit or other action or proceeding is instituted, to enforce payment of all or any portion of this obligation, for all administrative, trial, and appellate proceedings, if any. Borrower also agrees to pay (i) all other costs of collection incurred, and (ii) all costs and reasonable attorneys' and legal assistants' fees and costs otherwise incurred by the Lender for all administrative, trial, bankruptcy, insolvency, and appellate proceedings in connection with the enforcement or protection of this obligation and in connection with the enforcement or collection of any judgment.

Usury Savings Clause. Notwithstanding any provision of this Note or any of the other Loan Documents to the contrary, the parties intend that no provision of this Note or the Loan Documents be interpreted, construed, applied, or enforced so as to permit or require the payment or collection of interest in excess of the highest rate of interest (the "**Maximum Permitted Rate**") permitted to be paid or collected by

applicable law with respect to this transaction. Borrower and the Lender each stipulate and agree that it is their common and overriding intent to contract in strict compliance with applicable usury laws. In furtherance thereof, none of the terms of this Note or any of the other Loan Documents will ever be construed to create a contract to pay, as consideration for the use, forbearance, or detention of money, interest at a rate in excess of the maximum rate permitted by applicable laws. Borrower will never be liable for interest in excess of the Maximum Permitted Rate. Therefore (i) in the event that indebtedness evidenced by this Note is prepaid or the maturity of the indebtedness evidenced by this Note is accelerated by reason of an election by the Lender, unearned interest will be cancelled and if theretofore paid, will be either refunded to Borrower or credited on the indebtedness evidenced by this Note, as the Lender may elect; (ii) the aggregate of all interest and other charges constituting interest under applicable laws and contracted for, chargeable, or receivable under the Note and the other Loan Documents or otherwise in connection with the transaction contemplated thereby will never exceed the maximum amount of interest nor produce a rate in excess of the Maximum Permitted Rate; and (iii) if any excess interest is provided for, it will be deemed a mistake, and the same will, at the option of the Lender, either be refunded to Borrower or credited on the unpaid principal amount (if any), and the indebtedness evidenced by this Note will be automatically reformed so as to permit only the collection of the interest at the Maximum Permitted Rate. Furthermore, if any provision of this Note or any of the other Loan Documents is interpreted, construed, applied, or enforced in such a manner as to provide for interest in excess of the Maximum Permitted Rate, then the parties intend that such provision automatically will be deemed reformed *nunc pro tunc* so as to require payment only of interest at the Maximum Permitted Rate. If, for any reason whatsoever, interest paid or received during the full term of the applicable indebtedness produces a rate that exceeds the Maximum Permitted Rate, then the amount of such excess will be deemed credited *nunc pro tunc* in reduction of the then outstanding principal amount of this obligation, together with interest at such Maximum Permitted Rate. The Lender will credit against the principal of such indebtedness (or, if such indebtedness will have been paid in full, will refund to the payor of such interest) such portion of said interest as will be necessary to cause the interest paid to produce a rate equal to the Maximum Permitted Rate. All sums paid or agreed to be paid to the holder of this Note for the use, forbearance, or detention of money will, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread in equal parts throughout the full term of the applicable indebtedness so that the interest rate is uniform throughout the full term of such indebtedness. In connection with all calculations to determine the Maximum Permitted Rate, the parties intend that all charges be excluded to the extent they are properly excludable under applicable usury laws, as they from time to time are determined to apply to this obligation. The provisions of this paragraph will control all agreements, whether now or hereafter existing and whether written or oral, between Borrower and the Lender.

Use of Funds. BORROWER REPRESENTS AND WARRANTS THAT ALL LOANS EVIDENCED BY THIS NOTE ARE FOR BUSINESS AND COMMERCIAL PURPOSES, BEING THE ACQUISITION OF THE COLLATERAL (AS DEFINED IN THE SECURITY AGREEMENT).

Amendments and Waivers. No term of this Note may be waived, modified or amended except by an instrument in writing signed by Borrower and Lender. Any waiver of the terms hereof shall be effective only in the specific instance and for the specific purpose given.

Joint and Several Liability. If this Note is signed by more than one party, then all obligations contained in this Note are the joint and several obligations of each signer.

Governing Law. THIS NOTE AND THE RIGHTS AND OBLIGATIONS OF THE BORROWER AND LENDER SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE SUBSTANTIVE LAWS (BUT NOT THE RULES GOVERNING CONFLICTS OF LAWS) OF THE STATE OF TEXAS. EXCEPT AS PROVIDED BELOW IN THIS NOTE, THE SOLE AND EXCLUSIVE VENUE FOR THE ADJUDICATION OF ANY DISPUTE ARISING OUT OF OR RELATING IN ANY WAY TO THIS NOTE, INCLUDING WITHOUT LIMITATION BREACH, TERMINATION, OR VALIDITY HEREOF SHALL BE IN THE STATE OR FEDERAL COURT SITTING IN BEXAR COUNTY, TEXAS. BORROWER IRREVOCABLY SUBMITS TO

THE EXCLUSIVE JURISDICTION OF SUCH COURTS AND WAIVES THE DEFENSE OF INCONVENIENT FORUM TO THE MAINTENANCE OF ANY SUCH ACTION OR PROCEEDING IN SUCH VENUE.

Waiver of Jury Trial. BORROWER HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL WITH RESPECT TO ANY CLAIM OR CAUSE OF ACTION BASED ON OR ARISING OUT OF THIS NOTE. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED REGARDING THIS NOTE OR ANY OTHER LOAN DOCUMENT, INCLUDING WITHOUT LIMITATION CONTRACT CLAIMS, TORT CLAIMS, BREACHES OF DUTY, COMMON LAW AND STATUTORY CLAIMS.

Severability. In the event that any one or more of the provisions of this Note will for any reason be held to be invalid, illegal, or unenforceable, in whole or in part, or in any respect, or in the event that any one or more of the provisions of this Note will operate, or would prospectively operate, to invalidate this Note, then and in such event, such provision or provisions only will be deemed to be null and void and of no force or effect and will not affect any other provision of this Note, and the remaining provisions of this Note will remain operative and in full force and effect and will in no way be affected, prejudiced, or disturbed thereby.

Variation in Pronouns. All the terms and words used in this Note, regardless of the number and gender in which they are used, will be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine, or neuter, as the context or sense of this Note or any paragraph or clause may require, the same as if such word had been fully and properly written in the correct number and gender.

Headings. The paragraph headings are inserted for convenience of reference only and will in no way affect, modify, or define, or be used in construing the text of such paragraph.

Successors and Assigns. The provisions of this Note bind and are for the benefit of the respective heirs, personal representatives, successors, and assigns of Lender and Borrower; provided that Borrower may not assign or otherwise transfer any of its rights or obligations under this Note without the prior written consent of the Lender. Lender may assign or otherwise transfer any or all of its rights under this Note to any other person or entity without notice or consent.

Execution. The execution and delivery of a signed copy of this Note by facsimile, Adobe Sign® (or other electronic signature service), or electronic email transmission constitutes the effective execution and delivery of this Note as to the Borrower and may be used in lieu of the original of this Note for all purposes.

IN WITNESS WHEREOF, Borrower has executed and delivered this Note the date first stated above.

BORROWER:

GUNTERT & ZIMMERMAN CONST. DIV., INC.,
a California corporation

By: _____

Name: Ronald M Guntert, Jr.

Title: President and CEO

SECURITY AGREEMENT

November 20, 2023

This Security Agreement (together with all amendments, supplements, and other modifications, this "**Agreement**") is entered into as of the date hereof (the "**Effective Date**") by Guntert & Zimmerman Const. Div., Inc., a California corporation ("**Grantor**"), and Zachry Construction Corporation, a Delaware corporation (together with its successors and assigns, "**Lender**"). Grantor and Lender may be referred to in this Agreement collectively as the "**Parties**" and individually as a "**Party**."

RECITALS

1. On the date hereof, the Grantor executed a \$985,825.20 promissory note, as borrower, in favor of the Lender (as amended, supplemented, or otherwise modified from time to time, the "**Note**"), pursuant to which the Lender, subject to the terms and conditions contained therein, is to extend credit to the Grantor.
2. Under the terms of this Agreement, the Grantor desires to grant to the Lender a security interest in the Collateral, as defined herein, to secure any and all Secured Obligations, as defined herein.
3. The purchase price for the Collateral is \$320,086.20, which amount is included in the principal balance Grantor owes to Lender under the Note.
4. Grantor will derive direct and indirect economic benefit from the loan, and other financial accommodations under the Note and other Loan Documents.

NOW THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1. GRANT OF INTEREST.

Grantor hereby grants to Lender a lien on and security interest in all of Grantor's right, title, and interest in the Collateral.

1.1 "**Collateral**" means, collectively, the Equipment and Fixtures described on Schedule A to this Agreement, in which Grantor now has or hereafter acquires any rights, together with all attachments, accessories, replacements, additions, and substitutions therefor (whether now or hereafter installed therein or affixed thereto), wherever located, and whether now existing or hereafter acquired or created; all General Intangibles relating thereto, including, without limitation, software and intellectual property that is embedded therein or integrated therewith; all Chattel Paper describing all or any part of the Equipment described herein; all Documents covering all or any part of the Equipment described herein; all books and records related thereto; and all Proceeds and Products of all or any part of thereof.

1.2 The Collateral secures the full and prompt performance and payment (a) to Lender of any indebtedness under the Note, (b) to Lender and its Affiliates of any and all other Secured Obligations.

ARTICLE 2. REPRESENTATIONS AND WARRANTIES.

Grantor represents and warrants to Lender as follows:

2.1 **Existence.** Grantor's legal name is exactly as set forth in the introductory paragraph of this Agreement. Grantor is a corporation duly organized and in good standing under California law. Grantor's social security number or federal taxpayer identification number is _____ and its state organizational or registration identification number, if any, is _____.

2.2 Location. Grantor's chief executive office is located at 222 East Fourth Street, Ripon, California 95366. Except as set forth in Article 4 below, Lender shall retain possession of all Collateral at its yard in South Carolina (or such other yard as designated to Grantor in writing) until the Secured Obligations have been satisfied in full. If for any reason any Collateral is at any time kept at or located at a location other than one owned or leased by Lender, Lender shall nevertheless have and retain a lien on and security interest therein.

2.3 Ownership. Grantor owns all of the presently existing Collateral, free and clear of any and all adverse claims, assignments, attachments, leases, mortgages, security interests or other liens of any kind or nature ("**Encumbrances**") except those in favor of Lender and those consented to in writing by Lender (collectively, the "**Permitted Encumbrances**"). Each Encumbrance granted to Lender hereby, when duly and properly perfected, must be a first-priority security interest in the Collateral, prior to all Encumbrances, securing the payment and performance of the Secured Obligations. There exists no default under any Collateral consisting of instruments or contracts by any party thereto.

2.4 Authority; No Consent. Grantor has all right, power, and authority to enter into and deliver this Agreement and to grant to Lender the Encumbrances on the Collateral. This Agreement is a valid obligation of Grantor, enforceable in accordance with its terms. No consent, authorization, approval, or other action of any third party is required for the grant by Grantor of the Encumbrances hereunder.

ARTICLE 3. COVENANTS.

3.1 No Transfer or Encumbrance. Grantor must not, without obtaining Lender's prior written consent, (i) sell, offer to sell, assign, lease, transfer or otherwise dispose of all or any part of the Collateral or license any of the Collateral except as otherwise permitted herein, or (ii) grant any Encumbrances in or permit any Collateral to be or become subject to any Encumbrance except for Permitted Encumbrances. Grantor shall comply with all applicable laws, rules, and regulations related to the Collateral. Grantor must join Lender to take all steps necessary to preserve, protect, and defend Lender's security interest in the Collateral, at Grantor's expense, as Lender may from time to time require.

3.2 Insurance. In its sole discretion, Lender will keep the Collateral insured in such amounts and against all risks as determined acceptable to Lender, which policies shall name Lender as the insured and shall contain loss payable clauses in favor of Lender and contain insurer's agreement that any loss thereunder shall be payable to Lender. All such insurance shall be for the sole benefit of Lender; provided, however, that any amounts received by Lender in payment of insurance losses or returned or unearned premiums may be applied to the Secured Obligations (with such allocation as to item and maturity as Lender may deem advisable). Unless and until, pursuant to the terms of this Agreement, Grantor takes possession of the Collateral, or the Collateral is sold to a third-party in the normal course, Grantor will have no obligation to insure the Collateral.

3.3 Inspection. Grantor must at all times keep accurate and complete records of the Collateral. Lender and its agents have the right at all reasonable times to examine and inspect and to make extracts from the books and records related to the Collateral. Grantor hereby waives presentment, demand, notice of dishonor, protest, and notice of protest, and all other related notices.

3.4 Organizational Changes. Grantor must not change its name, identity, jurisdiction of organization, or form of entity in any manner, and it must not change its United States Federal Tax I.D. Number unless, in each case, it has given Lender thirty (30) days' prior written notice and has taken all action reasonably deemed necessary or desirable by Lender to protect Lender's liens as a first priority security interest. It will not change its principal place of business, chief executive office, or the place where it keeps its books and records relating to the Collateral unless it has given Lender thirty (30) days' prior written notice and has taken all action deemed necessary or desirable by Lender to cause Lender's security interest in the Collateral to be perfected as a first priority security interest.

3.5 Merger; Consolidation. Grantor must preserve its existence and must not, in one transaction or in a series of related transactions, merge into or consolidate with any other entity.

3.6 Other Financing Statements and Liens. Grantor must not file, or authorize or permit to be filed or to be on file, and must remove, in any jurisdiction, any financing statement or like instrument with respect to the Collateral (a) in which Lender is not named as the first priority lienholder, or (b) that evidences an Encumbrance is not a Permitted Encumbrance.

3.7 Notice. Grantor must give Lender:

- (a) not less than thirty (30) days' prior written notice of any change in Grantor's name, in the location of its chief executive office or personal residence, or any other information provided under Article 2 or of any other change in circumstances that affects or may affect the continuing efficacy of any financing statement filed by Grantor and Lender, or the continuing status of Lender's security interest as the first priority lien on the Collateral,
- (b) immediate written notice if any third party claims any Encumbrance on any of the Collateral or claims that Grantor's use thereof infringes or unlawfully conflicts with any rights of such party, and
- (c) prompt notice in any event within three (3) days after Grantor obtains knowledge of any condition or event which constitutes an Event of Default under this Agreement or any other Loan Document.

3.8 Maintenance of Business. Take all reasonable action to maintain all rights, privileges and franchises necessary or desirable in the normal conduct of its business, except, in each case, where the failure to do so would not result in a material adverse event.

3.9 Further Assurances. Grantor must execute and deliver from time to time upon request of Lender such other instruments of assignment, conveyance, and transfer and take such other action as Lender may reasonably request for the purpose of perfecting, continuing, amending, protecting, or further evidencing the arrangements contemplated hereby or to enable Lender to exercise and enforce its rights and remedies hereunder. Grantor must, at Grantor's expense, upon each request of Lender (i) file and hereby authorizes Lender to file, from time to time, financing statements or other records in such public offices as Lender may require containing, among other things, (A) a Collateral description as Lender may require, (B) an indication of any statutory liens held by Lender, and (C) Grantor's federal taxpayer identification number, social security number, and/or state organizational number, if any, and any other identifying information as Lender may require, (ii) place a legend on all Chattel Paper indicating that Lender has a security interest in such Chattel Paper, (iii) where the Collateral is in the possession of a third party, join with Lender in notifying the third party of Lender's security interest and obtaining an acknowledgement from the third party that it is holding the Collateral for the benefit of Lender, (iv) if the Collateral is an Instrument or Chattel Paper, deliver such Collateral to Lender and (v) comply with every other requirement deemed necessary by Lender for the perfection of its security interest in the Collateral.

ARTICLE 4. DEFAULT AND REMEDIES.

4.1 Event of Default. Occurrence of any of the following events or conditions will constitute an event of default under this Agreement (each, an "**Event of Default**"):

- (a) If this Agreement or any other Loan Document for any reason without Lender's specific written consent ceases to be in full force and effect, or is declared null and void or unenforceable in whole or in part, or the validity or enforceability of such agreements, in whole or in part, is challenged or denied by any Person other than Lender; or the liens or security interests of Lender in any of the Collateral become unenforceable in whole or in

part, or cease to be first liens, or their validity or enforceability, in whole or in part, is challenged or denied by Grantor.

- (b) If any sale, lease, conveyance, assignment, pledge, encumbrance, or transfer of all or any part of the Collateral or any interest therein, voluntarily or involuntarily, whether by operation of law or otherwise, occurs except (i) the security interest in favor of the Lender created or provided for in this Agreement, (ii) a Permitted Encumbrance, or (iii) a sale of the Collateral in the ordinary course of Grantor's business when the proceeds of the sale or conveyance are paid directly to Lender by the purchaser.
- (c) If Grantor should fail to keep, observe, or perform any obligation or comply or cause compliance with any term, provision or covenant enjoined upon the Grantor by the terms of this Agreement or any other Loan Document or if the Grantor fails to satisfy any debt, obligation, or liability of any kind or character under any agreement between Grantor and Lender or any agreement between Grantor and any Affiliate of Lender.
- (d) If Lender determines that any warranty, representation, or statement made or furnished to the Lender by or on behalf of the Grantor was false or misleading in any material respect when made or furnished.
- (e) A default or event of default occurs under any lien, security interest, or assignment covering any of the Collateral (whether or not Lender has consented to the other lien, security interest, or assignment, and without implying Lender's consent, to any such lien, security interest or assignment) or the holder of any such lien, security interest, or assignment declares a default or institutes foreclosure or other proceedings for the enforcement of its remedies against any Collateral.
- (f) If any levy, seizure, execution, replevin, or attachment should be issued or commenced against the Collateral and remain unsatisfied for a period of fifteen (15) days.
- (g) If an event of default occurs under any other Loan Documents.
- (h) If the Person or Persons that Control Grantor on the Effective Date cease to Control Grantor, or an agreement or letter of intent is executed with respect to any proposed transaction or event or series of transactions or events which, individually or in the aggregate, would result in such Person or Persons ceasing to Control Grantor.
- (i) If any of the following occur:
 - (i) Grantor commences any case, proceeding or other action (A) under any existing or future law relating to bankruptcy, insolvency, reorganization, or other relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it as bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets;
 - (ii) Grantor makes a general assignment for the benefit of its creditors;
 - (iii) there is commenced against Grantor any case, proceeding or other action of a nature referred to in Section 4.1(i)(i) above which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged, or unbonded for a period of sixty (60) days;

- (iv) there is commenced against Grantor any case, proceeding, or other action seeking issuance of a warrant of attachment, execution, or similar process against all or any substantial part of its assets which results in the entry of an order for any such relief that has not been vacated, discharged, or stayed or bonded pending appeal within sixty (60) days from the entry thereof;
 - (v) Grantor takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in Section 4.1(i)(i) through Section 4.1(i)(iv) above; or
 - (vi) Grantor is generally not, or shall be unable to, or admits in writing its inability to, pay its debts as they become due.
- (j) One or more judgments or decrees for amounts greater, individually or in the aggregate, than \$50,000, shall be entered against Grantor and all of such judgments or decrees shall not have been vacated, discharged, stayed or bonded pending appeal within sixty (60) days from the entry thereof.
 - (k) Any of the Loan Documents shall cease to be in full force and effect or any Lien created by or purported to be created by the Collateral Documents or any other Loan Documents ceases to be valid, enforceable, perfected and first priority, except to the extent expressly permitted by the Loan Documents.

4.2 Remedies. If any Event of Default occurs and is continuing, Lender has the right, at its option at any time and from time to time, without waiving any other remedy available at law, in equity, under any Loan Documents, or any other agreement between Grantor and Lender or any Affiliate of Lender, without notice to Grantor to exercise the following rights and remedies which may be exercised simultaneously, subject to the requirements of the UCC:

- (a) Lender shall have full power and right to exercise any and all rights and remedies available at law (including, without limitation, those afforded by the UCC) or in equity to collect, enforce, or satisfy any of the Secured Obligations and exercise any or all of the rights and remedies in respect of the Collateral, including, without limitation, those provided herein or in any other Loan Document.
- (b) Lender may enter any premises where the Collateral is located and take possession of the Collateral or remove the Collateral from such premises. On Lender's demand, Grantor will assemble and make the Collateral available to Lender at such place or places as Lender may reasonably require, all at Grantor's expense.
- (c) Lender may attach, execute, or levy on any of the Collateral.
- (d) Lender may retain, take control of, or manage all or any Collateral.
- (e) Lender shall have the right to sell, transfer or otherwise dispose of all or any of the Collateral at any time, or from time to time. Lender shall give Grantor commercially reasonable prior notice of either the date after which any intended private sale is to be made or the time and place of any intended public sale, provided that Lender need give no such notice in the case of Collateral which Lender determines to be declining speedily in value or which is customarily sold on a recognized market. Grantor waives advertisement of any such sale in the immediately preceding proviso and (except only to the extent notice is specifically required by the next preceding sentence) waives notice of any kind in respect of such sale in the immediately preceding proviso. Lender shall have the right to conduct sales on Grantor's premises, without charge therefor, and sales may be adjourned from time to time in accordance with applicable law without further

requirement of notice to Grantor. At any public sale, Lender may purchase the Collateral or any part thereof free from any right of redemption, which right Grantor hereby waives. After deducting all expenses and attorneys' fees incurred in assembling, taking, repairing, storing and selling and delivering the Collateral or any part thereof, Lender may apply the net proceeds of the sale to the Secured Obligations with such allocation as to item and maturity as Lender in its sole discretion deems advisable, and shall refund the surplus, if any, to Grantor, who shall be liable for any deficiency. Lender may sell or otherwise dispose of the Collateral without giving any warranties as to the Collateral and may specifically disclaim any warranties of title or the like, any or all of which will not be considered adversely to affect the commercial reasonableness of any sale or other disposition of the Collateral. In any foreclosure sale contracts, Grantor permits Lender to disclaim all representations and warranties provided under the UCC.

4.3 Defense and Indemnification. TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, GRANTOR MUST DEFEND, INDEMNIFY, AND HOLD HARMLESS LENDER FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, AND LIABILITIES, ARISING OUT OF THIS AGREEMENT OR GRANTOR'S OWNERSHIP OR USE OF THE COLLATERAL, INCLUDING THOSE ARISING FROM THE ALLEGED NEGLIGENCE OF LENDER OR ITS OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS, EXCEPT CLAIMS, LOSSES, OR LIABILITIES RESULTING FROM LENDER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. Grantor will reimburse Lender, on demand, for any and all fees, costs, and expenses (including, without limitation, reasonable attorneys' fees) incurred by Lender in (a) administration of this Agreement, (b) custody, preservation, sale, use, collection or realization of the Collateral after the occurrence of an Event of Default, (c) protection or enforcement of its rights in the Collateral or under this Agreement or (d) failure of Grantor to perform or observe any provisions hereof. This Agreement, including this Section 4.3, does not require, and shall not be construed to require, Grantor to indemnify, defend, or hold harmless any Lender to the extent prohibited applicable law, and if any provision of this Agreement is interpreted, construed, applied, or enforced by a court, arbitrator, or arbitration panel of competent jurisdiction to require Grantor to defend, indemnify, or hold harmless Lender in violation of applicable law, then the Parties intend that such provision automatically shall be deemed reformed *nunc pro tunc* so as to require Grantor to only indemnify, defend, and hold harmless Lender to the maximum extent permitted by applicable law.

4.4 Lender May Perform. If Grantor fails to perform any agreement or obligation contained herein within thirty (30) days of notice, Lender may itself perform (but is not required to perform) or cause performance of, such obligation or agreement, and any expenses of Lender incurred in connection therewith shall be payable by Grantor upon Lender's demand. If Grantor does not reimburse Lender, such amounts paid will become part of the Secured Obligations and will be secured hereunder. The powers conferred on Lender hereunder are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers.

4.5 Power of Attorney.

- (a) Grantor irrevocably constitutes and appoints the Lender, and any officer or agent of the Lender, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the name of the Grantor or in its own name, to take, when an Event of Default exists, any and all actions and to execute any and all documents and instruments that the Lender, at any time and from time to time, deems necessary or desirable to accomplish the purposes of this Agreement and, without limiting the generality of the foregoing, the Grantor gives the Lender the power and right on behalf of the Grantor and in the Lender's own name to do any of the following when an Event of Default exists, without notice to or the consent of the Grantor:
 - (i) to demand, sue for, collect, or receive, in the name of the Grantor or in the Lender's own name, any money or property at any time payable or receivable on account of or in exchange for any of the Collateral and, in connection therewith,

endorse checks, notes, drafts, acceptances, money orders, documents of title, or any other instruments for the payment of money under the Collateral or any policy of insurance;

- (ii) to pay or discharge taxes, liens, or other encumbrances levied or placed on or threatened against the Collateral;
- (iii) to notify post office authorities to change the address for delivery of mail of the Grantor to an address designated by the Lender and to receive, open, and dispose of mail addressed to the Grantor;
- (iv) (1) to direct account debtors and any other Persons liable for any payment under any of the Collateral to make payment of any and all monies due and to become due under the Collateral directly to the Lender or as the Lender will direct (the Grantor agrees that, if any Proceeds of any Collateral are received by the Grantor while an Event of Default exists, the Grantor will promptly deliver such Proceeds to the Lender with any necessary endorsements, and until such Proceeds are delivered to the Lender, such Proceeds will be held in trust by the Grantor for the benefit of the Lender and will not be commingled with any other funds or property of the Grantor); (2) to receive payment of and receipt for any and all monies, claims, and other amounts due and to become due at any time in respect of or arising out of any Collateral; (3) to sign and endorse any invoices, freight, or express bills, bills of lading, storage or warehouse receipts, drafts against Grantors, assignments, proxies, stock powers, verifications, and notices in connection with accounts and other documents relating to the Collateral; (4) to commence and prosecute any suit, action, or proceeding at law or in equity in any court of competent jurisdiction to collect the Collateral or any part of the Collateral and to enforce any other right in respect of any Collateral; (5) to defend any suit, action, or proceeding brought against the Grantor with respect to any Collateral; (6) to settle, compromise, or adjust any suit, action, or proceeding described above and, in connection therewith, to give such discharges or releases as the Lender may deem appropriate; (7) to exchange any of the Collateral for other property upon any merger, consolidation, reorganization, recapitalization, or other readjustment of the issuer thereof and, in connection therewith, deposit any of the Collateral with any depository, transfer agent, registrar, or other designated agency upon such terms as the Lender may determine; (8) to add or release any guarantor, endorser, surety, or other party to any of the Collateral; (9) to renew, extend, or otherwise change the terms and conditions of any of the Collateral; (10) to make, settle, compromise, or adjust any claims under or pertaining to any of the Collateral (including, without limitation, claims under any policy of insurance); and (11) to sell, transfer, pledge, convey, make any agreement with respect to, or otherwise deal with any of the Collateral as fully and completely as though the Lender were the absolute owner of the Collateral for all purposes, and to do, at the Lender's option and the Grantor's expense, at any time, or from time to time, all acts and things which the Lender deems necessary to protect, preserve, maintain, or realize upon the Collateral and the Lender's security interest therein.

- (b) This power of attorney is a power coupled with an interest and will be irrevocable until termination of this Agreement. Lender will be under no duty to exercise or withhold the exercise of any of the rights, powers, privileges, and options expressly or implicitly granted to the Lender in this Agreement and will not be liable for any failure to do so or any delay in doing so. Neither the Lender nor any Person designated by the Lender will be liable for any act or omission or for any error of judgment or any mistake of fact or

law. This power of attorney is conferred on the Lender solely to protect, preserve, maintain, and realize upon its security interest in the Collateral. Lender will not be responsible for any decline in the value of the Collateral and will not be required to take any steps to preserve rights against prior parties or to protect, preserve, or maintain any lien given to secure the Collateral.

4.6 Possession; Reasonable Care. Lender may, from time to time, in its sole discretion, appoint one or more agents to hold physical custody, for the account of the Lender, of any or all of the Collateral that the Lender has a right to possess. The Lender will be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which the Lender accords its own property, it being understood that the Lender will not have any responsibility for (a) ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders, or other matters relative to any Collateral, whether or not the Lender has or is deemed to have knowledge of such matters, or (b) taking any necessary steps to preserve rights against any Persons with respect to any Collateral. Notwithstanding anything herein to the contrary, Grantor shall bear all risk of loss of the Collateral.

ARTICLE 5. MISCELLANEOUS PROVISIONS

5.1 Notices. Each notice to Grantor shall be in writing and shall be deemed to have been given or made when delivered to Grantor, by certified mail, return receipt requested, or nationally recognized overnight courier service to the address of Grantor set forth herein or at such other address as Grantor may furnish to Lender from time to time. Every notice to Lender shall be effective when delivered to Lender at its mailing address (as listed in the Note) or at such other address as Lender may furnish to Grantor.

5.2 Definitions and Construction.

- (a) As used in this Agreement, the following terms shall have the following meanings specified in this Section below unless the context requires otherwise. All capitalized terms used in this Agreement that are defined under the UCC and not otherwise defined herein, including, without limitation, all terms relating to the Collateral, shall have the meaning as set forth in the UCC. The
- (i) **"Affiliate"** means in relation to Lender: (i) that directly or indirectly controls, or is controlled by, or is under common control with, Lender; or (ii) which directly or indirectly beneficially owns or holds ten percent (10%) or more of any class of voting stock or other equity interests of Lender; or (iii) which has ten percent (10%) or more of any class of voting stock or other equity interests that is directly or indirectly beneficially owned or held by Lender. For purposes of this definition, the word "controls" means possession, directly or indirectly of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or otherwise. The term "Affiliate" includes all direct and indirect subsidiaries and parents of Lender and each of their respective direct and indirect subsidiaries and parents.
 - (ii) **"Control"** means, with respect to Grantor, the power, directly or indirectly, to either (a) vote more than 50% of the securities having ordinary voting power for the election of directors (or persons performing similar functions) of such Person or (b) direct or cause the direction of the management and policies of such Person, whether by contract or otherwise.
 - (iii) **"Loan Document"** means the Note and this Agreement.

- (iv) **"Person"** means any natural person or legal entity. It includes individuals, fiduciaries, receivers, trustees, trusts, corporations, limited liability companies, partnerships, limited partnerships, professional associations, professional corporations, trusts, and all other forms of business organizations that may exist under the laws of Texas or any other state, or the United States.
- (v) **"Secured Obligation"** means, collectively or separately, as the context may require, all of the debts, obligations, and liabilities of every kind and character of Grantor to Lender or any of Lender's Affiliates, now or hereafter existing, however evidenced and whether the same are direct or indirect, with or without recourse, primary or secondary, joint, several, joint and several, certain or contingent, and regardless of whether such present or future debts, obligations and liabilities arose directly in favor of Lender or its Affiliates or may, prior to their acquisition by Lender, be or have been payable to, or be or have been in favor of some other Person or have been acquired by Lender in a transaction with one other than Grantor, including but not limited to the debts, obligations and liabilities which are more fully described as follows:
 - (A) all past, present, and future advances, of whatever type, by Lender or its Affiliates to Grantor, and all extensions, modifications, and renewals thereof, whether or not the note or other evidence of such advances contains specific reference to this Agreement (but excluding those advances made subsequent to this Agreement in which it is expressly agreed in writing that they be unsecured or not secured by this Agreement);
 - (B) all existing and future liabilities of Grantor to Lender or Lender's Affiliates, of whatever type, whether primary or secondary, certain or contingent, and whether such liability be that of Grantor alone or in conjunction with others (whether jointly or severally), and including, but not limited to, liability for overdrafts and as endorser, surety, guarantor, or otherwise, except those incurred subsequent to this Agreement and evidenced by a writing in which it is expressly agreed that they be unsecured or not secured by this Agreement;
 - (C) All costs and expenses incurred by Lender or its Affiliates, including attorney's fees and other legal costs, in connection with the collection of any indebtedness or enforcement of any obligation secured by this Agreement, including, without limitations, costs, expenses and other amounts expended by Lender or its Affiliates for the purposes of preserving, protecting, or realizing upon the value of any lien, security interest, guaranty or other security now or hereafter given for the payment or performance of any Secured Obligation, whether such security is furnished by Grantor or another and whether covenants pertaining thereto are of the Grantor or another;
 - (D) Interest on the above amounts, as agreed between Lender and Grantor, or if there is no such agreement, at the Maximum Permitted Rate (as defined in the Note).

The Secured Obligations as of the date of this Agreement include, but are not limited to all debts, obligations, and liabilities of the Grantor to Lender or its Affiliates under the Note, this Agreement, and any other Loan Document. The Parties expressly contemplate that additional debts, obligations and liabilities of

Grantor to Lender or Lender's Affiliates may from time to time be outstanding and that such future debts, obligations, and liabilities are intended to be secured by this Agreement to the same extent as if the same were specifically described and referenced in this Agreement. Unless otherwise required by applicable law, all payments of principal and interest under the Note, shall first be applied to all non-Purchase money obligations and second to the Purchase-money obligations. As used in this Section, the term "Purchase money obligations" has the meaning set forth in the UCC.

- (vi) **"UCC"** means the Uniform Commercial Code as currently in effect in the jurisdiction where the Collateral is located and as the Uniform Commercial Code may hereafter be amended, adopted, and effective in such jurisdiction.
- (b) As used in this Agreement, the words "include," "includes" and "including" are deemed to be followed by the phrase "without limitation." Unless otherwise expressly provided herein, any contract, agreement, instrument, or statute defined or referred to in this Agreement or any other Loan Document or in any contract, agreement or instrument that is referred to in this Agreement or any other Loan Document means such contract, agreement, instrument, or statute as from time to time amended, modified, or supplemented, including (in the case of contracts, agreements, or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. Any reference to a Person in this Agreement or any other Loan Document refers to such Person and, as applicable, its successors and permitted assigns. The Parties have each been represented by counsel of their choosing in the negotiation, execution, and delivery of this Agreement; and any rule of law where an ambiguity in this Agreement would be construed against this drafter will not apply and is affirmatively waived by each Party.

5.3 General Provisions. No single or partial exercise of any right, power or privilege shall preclude any further or other exercise thereof or of any other right, power, or privilege, as each such right, power, or privilege may be exercised either independently or concurrently with others and as often and in such order as Lender may deem expedient. No course of dealing in respect of, nor any omission or delay in the exercise of, any right, power, or privilege by Lender under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any further or other exercise thereof or of any other right, power or privilege, as each such right, power or privilege may be exercised either independently or concurrently with others and in such order as Lender may deem expedient. The provisions of this Agreement may be modified, altered, or amended only by written agreement signed by Lender and Grantor. Each right, power or privilege is an addition to and not in limitation of any other rights, powers, and privileges that Lender may otherwise have or acquire by operation of law (including, without limitation, the right of offset), by other contract or otherwise.

5.4 Reformation and Severability. If any provision of this Agreement is held to be invalid, unenforceable, or illegal in any jurisdiction under any circumstances for any reason, (a) that provision shall be reformed to the minimum extent necessary to cause such provision to be valid, enforceable, and legal and preserve the original intent of the Parties, or (b) if that provision cannot be so reformed, it shall be severed from this Agreement. The holding shall not affect or impair the validity, enforceability, or legality of the provision in any other jurisdiction or under any other circumstances. Neither the holding nor the reformation or severance shall affect or impair the legality, validity, or enforceability of any other provision of this Agreement to the extent that the other provision is not itself actually in conflict with any applicable law. Upon a determination that any term or provision is invalid, unenforceable, or illegal, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible.

5.5 Assignment. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided that Grantor may not assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the Lender. Lender may assign or otherwise transfer any or all of its rights under this Agreement to any other Person without notice or consent.

5.6 Defeasance. Lender's security interest in the Collateral shall remain in effect in accordance with this Agreement until the Secured Obligations have been fully satisfied and shall not be affected by the lapse of time or by the fact that there may be a time or times when no Secured Obligations are outstanding. If and when Lender's security interest shall have terminated in accordance with the provisions of this Agreement, Grantor agrees to pay to Lender, on demand, an amount equal to all reasonable costs and expenses incurred by Lender in terminating its security interests.

5.7 Entire Agreement. This Agreement constitutes the entire security agreement between the Parties. Neither Party will be bound by any terms, conditions, statements, or representations, oral or written, not contained in this Agreement or the other Loan Documents. Each Party acknowledges that in executing this Agreement it has not been induced, persuaded, or motivated by any promise or representation made by the other Party, unless expressly set forth in this Agreement. All previous negotiations, statements, and preliminary instruments by the Parties or their representatives are merged in this instrument.

5.8 Governing Law; Jurisdiction and Venue. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HERETO SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE SUBSTANTIVE LAWS (BUT NOT THE RULES GOVERNING CONFLICTS OF LAWS) OF THE STATE OF TEXAS. THE PARTIES AGREE THAT SOLE AND EXCLUSIVE VENUE FOR THE ADJUDICATION OF ANY DISPUTE ARISING OUT OF OR RELATING IN ANY WAY TO THIS AGREEMENT INCLUDING WITHOUT LIMITATION BREACH, TERMINATION, OR VALIDITY HEREOF SHALL BE IN THE STATE OR FEDERAL COURT SITTING IN BEXAR COUNTY, TEXAS. THE PARTIES IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS AND WAIVE THE DEFENSE OF INCONVENIENT FORUM TO THE MAINTENANCE OF ANY SUCH ACTION OR PROCEEDING IN SUCH VENUE.

5.9 Waiver of Jury Trial. THE PARTIES HEREBY AGREE TO WAIVE THEIR RIGHTS TO A JURY TRIAL WITH RESPECT TO ANY CLAIM OR CAUSE OF ACTION BASED ON OR ARISING OUT OF THIS AGREEMENT. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED REGARDING THE RELATIONSHIP BETWEEN THE PARTIES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, INCLUDING WITHOUT LIMITATION CONTRACT CLAIMS, TORT CLAIMS, BREACHES OF DUTY, COMMON LAW, AND STATUTORY CLAIMS.

5.10 Execution. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together constitute one and the same Agreement. The exchange of signed copies of this Agreement and signature pages by facsimile or Adobe Sign® (or other similar services) shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original of this Agreement for all purposes.

[Signature pages to follow.]

This Agreement is executed as of the date first written above, with the intent to be legally bound hereby.

GRANTOR:

GUNTERT & ZIMMERMAN CONST. DIV., INC.,
a California corporation

By: _____
Name: Ronald M Guntert, Jr.
Title: President and CEO

Lender:

ZACHRY CONSTRUCTION CORPORATION,
a Delaware corporation,

By: _____

Name:

Title:

Schedule A

SPECIFIC COLLATERAL

Description	Serial Number
G&Z IDBI	CDBI-C1181-305

Attachment 3
Form of ACH Authorization

ACH AUTHORIZATION TO DEBIT ACCOUNT FOR PAYMENT

Effective Date: November 20, 2023

Borrower: Guntert & Zimmerman Const. Div., Inc., a California corporation

Borrower's Mailing Address (including county):

222 East Fourth Street
Rippon, California 95366
San Joaquin County, California

Lender: Zachry Construction Corporation, a Delaware corporation

Lender's Address (including county):

Street Address:

Attention: Treasurer
14410 Wurzbach Parkway
Suite 120
San Antonio, Texas 78216
Bexar County, Texas

Mailing Address:

Attention: Treasurer
P.O. Box 33240
San Antonio, Texas 78265-3240
Bexar County, Texas

Loan:

Loan Date: November 20, 2023

Principal Amount: Nine Hundred Eighty-Five Thousand Eight Hundred Twenty-Five and 20/100 Dollars (\$985,825.20)

Maturity Date: July 20, 2025

Account Holder: _____

LOAN TYPE. The Loan is a fixed rate (8.0%) installment loan for the Principal Amount due on the Maturity Date as evidenced by a Promissory Note executed Borrower in favor of Lender.

AUTHORIZATION. Account Holder authorizes Lender to electronically debit the account described below ("Account") (and, if necessary, electronically credit the account to correct erroneous debits) in connection with the Loan described above and all other amounts that may become due to Lender or any of its affiliates or any of their respective successors or assigns (collectively, the "Obligations").

ACCOUNT. Beginning on Effective Date, and on the payment dates described in the Payment Schedule. Lender is authorized to debit the Account in the amounts shown in the Payment Schedule and for all other Obligations.

Account Type (e.g., Checking): _____

Depository Institution: _____

Routing Number: _____ Account Number: _____

PAYMENT SCHEDULE. Debits will be made according to the following Payment Schedule:

1. Seventeen consecutive installments each equal to \$59,081.95, the first payment being due and payable on February 20, 2024; and a payment will be due and payable on the 20th day of each successive month thereafter until and including June 20, 2025; and
2. One final payment of the entire unpaid principal and any accrued but unpaid interest due and payable in full on July 20, 2025 (the "Maturity Date").

If payments vary in amount, Account Holder has the right to receive notice from Lender ten (10) calendar days prior to the date on which the debit is to be made to the Account, however, Account Holder agrees that such notice will be required only if the debit exceeds any payment amounts under the terms of the Payment Schedule as stated above and as may be modified from time to time.

PAYMENT DUE DATE/INSUFFICIENT FUNDS. If the payment due day falls on a date that Lender does not process payments, the payment will be deducted on the next day that Lender does process payments. If the Account does not have sufficient funds, Lender may attempt, but has no obligation to continue to attempt to deduct the payment from the Account. If the Account has insufficient funds when Lender attempts to deduct a payment, Lender may terminate the automatic deduction of payments upon notice to Borrower and Account Holder. Until such time as payment is made, Borrower shall be responsible to make such payment, and all other payments that may be due on the Obligation.

CANCELLATION. Account Holder understands that this authorization will remain in full force and effect until cancelled by Borrower or Lender upon written notice. If Account Holder or Borrower wish to cancel this Authorization, the party requesting cancellation must notify Lender at least 7 days prior to the next scheduled payment date.

SUCCESSORS AND ASSIGNS. The provisions of this Authorization are for the benefit of the heirs, personal representatives, successors, and assigns of Lender. Lender may assign or otherwise transfer any or all of its rights under this Authorization to any other person or entity without notice or consent. Reference to any person or entity in this Authorization includes the person's or entity's successors and permitted assigns.

EXECUTION. The execution and delivery of a signed copy of this Authorization by facsimile, Adobe Sign® (or other electronic signature service), or electronic email transmission constitutes the effective execution and delivery of this Authorization as to the Account Holder and Borrower and may be used in lieu of the original of this Authorization for all purposes.

GOVERNING LAW. THIS AUTHORIZATION AND THE RIGHTS AND OBLIGATIONS OF THE BORROWER, ACCOUNT HOLDER, AND LENDER SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE SUBSTANTIVE LAWS (BUT NOT THE RULES GOVERNING CONFLICTS OF LAWS) OF THE STATE OF TEXAS. THE SOLE AND EXCLUSIVE VENUE FOR THE ADJUDICATION OF ANY DISPUTE ARISING OUT OF OR RELATING IN ANY WAY TO THIS AUTHORIZATION, INCLUDING WITHOUT LIMITATION BREACH, TERMINATION, OR VALIDITY HEREOF SHALL BE IN THE STATE OR FEDERAL COURT SITTING IN BEXAR COUNTY, TEXAS. ACCOUNT HOLDER AND BORROWER IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS AND WAIVE THE DEFENSE OF INCONVENIENT FORUM TO THE MAINTENANCE OF ANY SUCH ACTION OR PROCEEDING IN SUCH VENUE.

WAIVER OF JURY TRIAL. BORROWER AND ACCOUNT HOLDER HEREBY WAIVE THEIR RIGHTS TO A JURY TRIAL WITH RESPECT TO ANY CLAIM OR CAUSE OF ACTION BASED ON OR ARISING OUT OF THIS AUTHORIZATION. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED REGARDING THIS AUTHORIZATION OR THE LOAN, INCLUDING WITHOUT LIMITATION CONTRACT CLAIMS, TORT CLAIMS, BREACHES OF DUTY, COMMON LAW AND STATUTORY CLAIMS.

Severability. In the event that any one or more of the provisions of this Authorization will for any reason be held to be invalid, illegal, or unenforceable, in whole or in part, or in any respect, or in the event that any one or more of the provisions of this Authorization will operate, or would prospectively operate, to invalidate this Authorization, then and in such event, such provision or provisions only will be deemed to be null and void and of no force or effect and will not affect any other provision of this Authorization, and the remaining provisions of this Authorization will remain operative and in full force and effect and will in no way be affected, prejudiced, or disturbed thereby.

BORROWER AND ACCOUNT HOLDER HAVE READ AND AGREE TO THE TERMS SET FORTH ABOVE AND ACKNOWLEDGE RECEIPT OF AN EXACT COPY OF THIS AUTHORIZATION.

BORROWER:

GUNTERT & ZIMMERMAN CONST. DIV., INC.,
a California corporation

By: _____
Name: Ronald M Guntert, Jr.
Title: President and CEO

ACCOUNT HOLDER:

GUNTERT & ZIMMERMAN CONST. DIV., INC.,
a California corporation

By: _____
Name: Ronald M Guntert, Jr.
Title: President and CEO

2023 -- Contract for Sale with Guntert for DBI

Final Audit Report

2023-11-28

Created:	2023-11-20
By:	Laura Irle (laura.irle@zachrycorp.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAzqZagSlaPZjUOPjbVDTfxpEhRa_khJ0g

"2023 -- Contract for Sale with Guntert for DBI" History

-  Document created by Laura Irle (laura.irle@zachrycorp.com)
2023-11-20 - 10:27:39 PM GMT- IP address: 12.68.242.131
-  Document emailed to Ronald Guntert (rguntert@guntert.com) for signature
2023-11-20 - 10:31:32 PM GMT
-  Email viewed by Ronald Guntert (rguntert@guntert.com)
2023-11-21 - 6:21:09 AM GMT- IP address: 172.226.212.13
-  New document URL requested by Ronald Guntert (rguntert@guntert.com)
2023-11-27 - 11:21:01 PM GMT- IP address: 68.189.90.94
-  Email viewed by Ronald Guntert (rguntert@guntert.com)
2023-11-27 - 11:21:51 PM GMT- IP address: 68.189.90.94
-  Document e-signed by Ronald Guntert (rguntert@guntert.com)
Signature Date: 2023-11-27 - 11:22:13 PM GMT - Time Source: server- IP address: 68.189.90.94
-  Document emailed to bryan.golla@zachrycorp.com for signature
2023-11-27 - 11:22:14 PM GMT
-  Email viewed by bryan.golla@zachrycorp.com
2023-11-27 - 11:22:20 PM GMT- IP address: 52.202.236.132
-  Signer bryan.golla@zachrycorp.com entered name at signing as Bryan S. Golla
2023-11-28 - 3:56:17 PM GMT- IP address: 12.68.242.132
-  Document e-signed by Bryan S. Golla (bryan.golla@zachrycorp.com)
Signature Date: 2023-11-28 - 3:56:19 PM GMT - Time Source: server- IP address: 12.68.242.132
-  Agreement completed.
2023-11-28 - 3:56:19 PM GMT



PROMISSORY NOTE

Effective Date: November 20, 2023

Borrower: Guntert & Zimmerman Const. Div., Inc., a California corporation

Borrower's Mailing Address (including county):

222 East Fourth Street
Ripon, California 95366
San Joaquin County, California

Lender: Zachry Construction Corporation, a Delaware corporation

Place for Payment (including county):

Street Address: Attention: Treasurer
14410 Wurzbach Parkway
Suite 120
San Antonio, Texas 78216
Bexar County, Texas

Mailing Address: Attention: Treasurer
P.O. Box 33240
San Antonio, Texas 78265-3240
Bexar County, Texas

Principal Amount: Nine Hundred Eighty-Five Thousand Eight Hundred Twenty-Five and 20/100 Dollars (\$985,825.20)

Annual Interest Rate on Unpaid Principal: The lesser of eight percent (8.0%) per annum or the Maximum Permitted Rate

Default Rate: The Maximum Permitted Rate, as defined below

Terms of Payment (principal and interest):

1. Seventeen consecutive installments each equal to \$59,081.95, the first payment being due and payable on February 20, 2024; and a payment will be due and payable on the 20th day of each successive month thereafter until and including June 20, 2025;
2. One final payment of the entire unpaid principal and any accrued but unpaid interest due and payable in full on July 20, 2025 (the "**Maturity Date**");
3. All payments of principal and interest will be made in lawful currency of the United States of America in immediately available funds on the due date thereof at such place as the Lender designates in writing;

4. Unless otherwise required by applicable law, all payments will be applied first to interest accruing at the rate then in effect under this Note, then to principal, and then to any unpaid charges due and payable by Borrower hereunder or under the Loan Documents, as defined below; and
5. The entire unpaid principal balance of this Note and all accrued interest thereon (and all other charges due and payable by Borrower hereunder and under the Loan Documents) will be due and payable in full on the maturity of this Note, whether by lapse of time, acceleration, or otherwise.

Borrower promises to pay to the order of Lender at the place for payment (or such other place as designated in writing by Lender to Borrower) and according to the terms of payment the principal amount plus interest at the rates stated in this Note.

Non-Revolver Loan. Borrower may not reborrow any amount repaid or prepaid under this Note.

Prepayment. Borrower may prepay any or all of the amounts due on this Note without premium or penalty.

Evidence of Debt. Lender is authorized to record the loan made to Borrower and each payment or prepayment thereof and the entries made by Lender shall, to the extent permitted by applicable Law, be prima facie evidence of the existence and amounts of the Secured Obligations (as defined in the Security Agreement) therein recorded; provided, however, that the failure of Lender to record such payments or prepayments, or any inaccuracy therein, shall not in any manner affect the obligation of Borrower to repay (with applicable interest) the loan in accordance with the terms of this Note.

Rescission of Payments. If at any time any payment made by Borrower under this Note is rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy or reorganization of Borrower or otherwise, Borrower's obligation to make such payment shall be reinstated as though such payment had not been made.

Dishonored Check Charge. Borrower will pay a processing fee of \$30.00 if any check given by Borrower to Lender as payment on this Note is dishonored.

Security. The payment of this Note is secured by a first priority security interest in the collateral evidenced in a Security Agreement dated of even date herewith between Guntert & Zimmerman Const. Div., Inc. and Lender, as it may be amended, modified, replaced, or supplemented from time to time (the "**Security Agreement**"). This Note, the Security Agreement, and all other documents now or hereafter evidencing, securing, or guaranteeing any of the obligations of either or both Borrowers to the Lender under the Security Agreement or this Note or any present or future security therefor, are referred to herein collectively as the "**Loan Documents**."

Events of Default. It will be an "**Event of Default**" under this Note if (a) Borrower fails to pay any installment of principal and interest (or any part thereof) when due; or (b) any event of default (as defined in any Loan Document) occurs under any Loan Document. Upon the occurrence of an Event of Default, then, the Lender, at the Lender's election, and without notice to any person liable hereunder, may declare the entire unpaid principal balance of this Note, together with all accrued and unpaid interest and other sums and charges due under this Note or any Loan Documents, to be immediately due and payable. Failure to exercise this option will not constitute a waiver of the right to exercise it at any other time when an Event of Default will exist or continue. Upon the occurrence of an Event of Default, the Lender will also have the unconditional right to exercise all remedies provided (1) hereunder, (2) under any Loan Document, and (3) at law or in equity. No delay on the part of the Lender in the exercise of any power or right under this Note, or under any other instrument executed in connection herewith, will operate as a waiver thereof, nor will a single or partial exercise of any power or right preclude other or further exercise thereof or exercise of any other power or right. Enforcement by the Lender of any security for the payment hereof

will not constitute an election by the Lender of remedies so as to preclude the exercise of any other remedy available to the Lender. Upon and after the occurrence of an Event of Default, subject to any applicable cure period provided in the Loan Documents, Borrower hereby authorizes Lender at any time and from time to time, without notice, which is hereby expressly waived by Borrower, and whether or not Lender shall have declared this Note to be due and payable in accordance with the terms hereof, to setoff in accordance with the Loan Documents.

Notwithstanding anything to the contrary set forth in this Note or in the Loan Documents, upon the occurrence and continuance of any Event of Default that is not cured within any applicable cure period provided in the Loan Documents, and as of the date of expiration of any such cure period, the Annual Interest on Unpaid Principal will increase, at Lender's option, to the Default Rate. The Default Rate will continue until the Event of Default is cured to Lender's satisfaction and such rate will apply against all unpaid principal. Unless otherwise provided by applicable law, the Default Rate applies both before and after any judgment or arbitration decision until Lender receives full payment in cash. In no event will the Default Rate exceed the Maximum Permitted Rate.

To the extent that either Chapter 303 or 306, or both, of the Texas Finance Code apply in determining the Maximum Permitted Rate, Lender hereby elects to determine the applicable rate ceiling by using the weekly ceiling from time to time in effect, subject to Lender's right subsequently to change such method in accordance with applicable law, as the same may be amended or modified from time to time.

Waiver. Borrower waives notice of intent to accelerate, notice of acceleration, presentment for payment, protest, notice of protest, notice of default, notice of non-payment, notice of dishonor, demand for payment, diligence in filing suit, and any and all lack of diligence or delays in collection or enforcement of this Note. Without affecting the liability of Borrower under this Note, the Lender may do any of the following: release any of the property described in the Loan Documents; grant any indulgence, forbearance, waiver, adjustment, or extension of any kind; or release any other person or entity now or hereafter liable for the payment or performance of this Note or any obligation under the Loan Documents. To the fullest extent of the law and to the extent not prohibited by applicable law, Borrower further (i) agrees that the Lender, at any time or times, without notice to Borrower or Borrower's consent, may grant extensions of time, without limit as to the number or the aggregate period of such extension, for the payment of any principal or interest due on this Note, or other accommodations with respect to the indebtedness evidenced by this Note; (ii) waives any right to require a marshaling of assets; and (iii) waives the benefit of any law or rule of law intended for its advantage or protection as a debtor or providing for its release or discharge from liability hereon, in whole or in part, on account of any facts or circumstances other than full and complete payment of all amounts due under this Note.

Costs of Collection. From and after the occurrence of any Event of Default under this Note or the Loan Documents, in the event the Lender employs one or more attorneys and/or legal assistants to enforce collection of this obligation, in whole or in part, or to pursue its remedies under the Loan Documents or otherwise available at law or in equity, then Borrower will pay a reasonable fee for all such attorneys' and legal assistants' services and costs, regardless of whether suit is instituted and, if suit or other action or proceeding is instituted, to enforce payment of all or any portion of this obligation, for all administrative, trial, and appellate proceedings, if any. Borrower also agrees to pay (i) all other costs of collection incurred, and (ii) all costs and reasonable attorneys' and legal assistants' fees and costs otherwise incurred by the Lender for all administrative, trial, bankruptcy, insolvency, and appellate proceedings in connection with the enforcement or protection of this obligation and in connection with the enforcement or collection of any judgment.

Usury Savings Clause. Notwithstanding any provision of this Note or any of the other Loan Documents to the contrary, the parties intend that no provision of this Note or the Loan Documents be interpreted, construed, applied, or enforced so as to permit or require the payment or collection of interest in excess of the highest rate of interest (the "**Maximum Permitted Rate**") permitted to be paid or collected by

applicable law with respect to this transaction. Borrower and the Lender each stipulate and agree that it is their common and overriding intent to contract in strict compliance with applicable usury laws. In furtherance thereof, none of the terms of this Note or any of the other Loan Documents will ever be construed to create a contract to pay, as consideration for the use, forbearance, or detention of money, interest at a rate in excess of the maximum rate permitted by applicable laws. Borrower will never be liable for interest in excess of the Maximum Permitted Rate. Therefore (i) in the event that indebtedness evidenced by this Note is prepaid or the maturity of the indebtedness evidenced by this Note is accelerated by reason of an election by the Lender, unearned interest will be cancelled and if theretofore paid, will be either refunded to Borrower or credited on the indebtedness evidenced by this Note, as the Lender may elect; (ii) the aggregate of all interest and other charges constituting interest under applicable laws and contracted for, chargeable, or receivable under the Note and the other Loan Documents or otherwise in connection with the transaction contemplated thereby will never exceed the maximum amount of interest nor produce a rate in excess of the Maximum Permitted Rate; and (iii) if any excess interest is provided for, it will be deemed a mistake, and the same will, at the option of the Lender, either be refunded to Borrower or credited on the unpaid principal amount (if any), and the indebtedness evidenced by this Note will be automatically reformed so as to permit only the collection of the interest at the Maximum Permitted Rate. Furthermore, if any provision of this Note or any of the other Loan Documents is interpreted, construed, applied, or enforced in such a manner as to provide for interest in excess of the Maximum Permitted Rate, then the parties intend that such provision automatically will be deemed reformed *nunc pro tunc* so as to require payment only of interest at the Maximum Permitted Rate. If, for any reason whatsoever, interest paid or received during the full term of the applicable indebtedness produces a rate that exceeds the Maximum Permitted Rate, then the amount of such excess will be deemed credited *nunc pro tunc* in reduction of the then outstanding principal amount of this obligation, together with interest at such Maximum Permitted Rate. The Lender will credit against the principal of such indebtedness (or, if such indebtedness will have been paid in full, will refund to the payor of such interest) such portion of said interest as will be necessary to cause the interest paid to produce a rate equal to the Maximum Permitted Rate. All sums paid or agreed to be paid to the holder of this Note for the use, forbearance, or detention of money will, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread in equal parts throughout the full term of the applicable indebtedness so that the interest rate is uniform throughout the full term of such indebtedness. In connection with all calculations to determine the Maximum Permitted Rate, the parties intend that all charges be excluded to the extent they are properly excludable under applicable usury laws, as they from time to time are determined to apply to this obligation. The provisions of this paragraph will control all agreements, whether now or hereafter existing and whether written or oral, between Borrower and the Lender.

Use of Funds. BORROWER REPRESENTS AND WARRANTS THAT ALL LOANS EVIDENCED BY THIS NOTE ARE FOR BUSINESS AND COMMERCIAL PURPOSES, BEING THE ACQUISITION OF THE COLLATERAL (AS DEFINED IN THE SECURITY AGREEMENT).

Amendments and Waivers. No term of this Note may be waived, modified or amended except by an instrument in writing signed by Borrower and Lender. Any waiver of the terms hereof shall be effective only in the specific instance and for the specific purpose given.

Joint and Several Liability. If this Note is signed by more than one party, then all obligations contained in this Note are the joint and several obligations of each signer.

Governing Law. THIS NOTE AND THE RIGHTS AND OBLIGATIONS OF THE BORROWER AND LENDER SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE SUBSTANTIVE LAWS (BUT NOT THE RULES GOVERNING CONFLICTS OF LAWS) OF THE STATE OF TEXAS. EXCEPT AS PROVIDED BELOW IN THIS NOTE, THE SOLE AND EXCLUSIVE VENUE FOR THE ADJUDICATION OF ANY DISPUTE ARISING OUT OF OR RELATING IN ANY WAY TO THIS NOTE, INCLUDING WITHOUT LIMITATION BREACH, TERMINATION, OR VALIDITY HEREOF SHALL BE IN THE STATE OR FEDERAL COURT SITTING IN BEXAR COUNTY, TEXAS. BORROWER IRREVOCABLY SUBMITS TO

THE EXCLUSIVE JURISDICTION OF SUCH COURTS AND WAIVES THE DEFENSE OF INCONVENIENT FORUM TO THE MAINTENANCE OF ANY SUCH ACTION OR PROCEEDING IN SUCH VENUE.

Waiver of Jury Trial. BORROWER HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL WITH RESPECT TO ANY CLAIM OR CAUSE OF ACTION BASED ON OR ARISING OUT OF THIS NOTE. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED REGARDING THIS NOTE OR ANY OTHER LOAN DOCUMENT, INCLUDING WITHOUT LIMITATION CONTRACT CLAIMS, TORT CLAIMS, BREACHES OF DUTY, COMMON LAW AND STATUTORY CLAIMS.

Severability. In the event that any one or more of the provisions of this Note will for any reason be held to be invalid, illegal, or unenforceable, in whole or in part, or in any respect, or in the event that any one or more of the provisions of this Note will operate, or would prospectively operate, to invalidate this Note, then and in such event, such provision or provisions only will be deemed to be null and void and of no force or effect and will not affect any other provision of this Note, and the remaining provisions of this Note will remain operative and in full force and effect and will in no way be affected, prejudiced, or disturbed thereby.

Variation in Pronouns. All the terms and words used in this Note, regardless of the number and gender in which they are used, will be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine, or neuter, as the context or sense of this Note or any paragraph or clause may require, the same as if such word had been fully and properly written in the correct number and gender.

Headings. The paragraph headings are inserted for convenience of reference only and will in no way affect, modify, or define, or be used in construing the text of such paragraph.

Successors and Assigns. The provisions of this Note bind and are for the benefit of the respective heirs, personal representatives, successors, and assigns of Lender and Borrower; provided that Borrower may not assign or otherwise transfer any of its rights or obligations under this Note without the prior written consent of the Lender. Lender may assign or otherwise transfer any or all of its rights under this Note to any other person or entity without notice or consent.

Execution. The execution and delivery of a signed copy of this Note by facsimile, Adobe Sign® (or other electronic signature service), or electronic email transmission constitutes the effective execution and delivery of this Note as to the Borrower and may be used in lieu of the original of this Note for all purposes.

IN WITNESS WHEREOF, Borrower has executed and delivered this Note the date first stated above.

BORROWER:

GUNTERT & ZIMMERMAN CONST. DIV., INC.,
a California corporation

By:


Ronald M. Guntert (Nov 17, 2023 15:24 PST)

Name: Ronald M Guntert, Jr.

Title: President and CEO

2023 -- Guntert Promissory Note

Final Audit Report

2023-11-27

Created:	2023-11-20
By:	Laura Irle (laura.irl@zachrycorp.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAAdE4ipSD2CbaSgwHplEhHgTRBf8zL4CYM

"2023 -- Guntert Promissory Note" History

-  Document created by Laura Irle (laura.irl@zachrycorp.com)
2023-11-20 - 10:32:38 PM GMT- IP address: 12.68.242.131
-  Document emailed to Ronald Guntert (rguntert@guntert.com) for signature
2023-11-20 - 10:33:19 PM GMT
-  Email viewed by Ronald Guntert (rguntert@guntert.com)
2023-11-21 - 6:21:09 AM GMT- IP address: 172.226.212.13
-  New document URL requested by Ronald Guntert (rguntert@guntert.com)
2023-11-27 - 11:22:49 PM GMT- IP address: 68.189.90.94
-  Email viewed by Ronald Guntert (rguntert@guntert.com)
2023-11-27 - 11:23:41 PM GMT- IP address: 68.189.90.94
-  Document e-signed by Ronald Guntert (rguntert@guntert.com)
Signature Date: 2023-11-27 - 11:24:08 PM GMT - Time Source: server- IP address: 68.189.90.94
-  Agreement completed.
2023-11-27 - 11:24:08 PM GMT



ACH AUTHORIZATION TO DEBIT ACCOUNT FOR PAYMENT

Effective Date: November 20, 2023

Borrower: Guntert & Zimmerman Const. Div., Inc., a California corporation

Borrower's Mailing Address (including county):

222 East Fourth Street
Rippon, California 95366
San Joaquin County, California

Lender: Zachry Construction Corporation, a Delaware corporation

Lender's Address (including county):

Street Address:

Attention: Treasurer
14410 Wurzbach Parkway
Suite 120
San Antonio, Texas 78216
Bexar County, Texas

Mailing Address:

Attention: Treasurer
P.O. Box 33240
San Antonio, Texas 78265-3240
Bexar County, Texas

Loan:

Loan Date: November 20, 2023

Principal Amount: Nine Hundred Eighty-Five Thousand Eight Hundred Twenty-Five and 20/100 Dollars (\$985,825.20)

Maturity Date: July 20, 2025

Account Holder: Guntert & Zimmerman Const. Div., Inc.

LOAN TYPE. The Loan is a fixed rate (8.0%) installment loan for the Principal Amount due on the Maturity Date as evidenced by a Promissory Note executed Borrower in favor of Lender.

AUTHORIZATION. Account Holder authorizes Lender to electronically debit the account described below ("Account") (and, if necessary, electronically credit the account to correct erroneous debits) in connection with the Loan described above and all other amounts that may become due to Lender or any of its affiliates or any of their respective successors or assigns (collectively, the "Obligations").

ACCOUNT. Beginning on Effective Date, and on the payment dates described in the Payment Schedule. Lender is authorized to debit the Account in the amounts shown in the Payment Schedule and for all other Obligations.

Account Type (e.g., Checking): Checking

Depository Institution: GBC International Bank

Routing Number: 122235902

Account Number: 877005402

PAYMENT SCHEDULE. Debits will be made according to the following Payment Schedule:

1. Seventeen consecutive installments each equal to \$59,081.95, the first payment being due and payable on February 20, 2024; and a payment will be due and payable on the 20th day of each successive month thereafter until and including June 20, 2025; and
2. One final payment of the entire unpaid principal and any accrued but unpaid interest due and payable in full on July 20, 2025 (the "Maturity Date").

If payments vary in amount, Account Holder has the right to receive notice from Lender ten (10) calendar days prior to the date on which the debit is to be made to the Account, however, Account Holder agrees that such notice will be required only if the debit exceeds any payment amounts under the terms of the Payment Schedule as stated above and as may be modified from time to time.

PAYMENT DUE DATE/INSUFFICIENT FUNDS. If the payment due day falls on a date that Lender does not process payments, the payment will be deducted on the next day that Lender does process payments. If the Account does not have sufficient funds, Lender may attempt, but has no obligation to continue to attempt to deduct the payment from the Account. If the Account has insufficient funds when Lender attempts to deduct a payment, Lender may terminate the automatic deduction of payments upon notice to Borrower and Account Holder. Until such time as payment is made, Borrower shall be responsible to make such payment, and all other payments that may be due on the Obligation.

CANCELLATION. Account Holder understands that this authorization will remain in full force and effect until cancelled by Borrower or Lender upon written notice. If Account Holder or Borrower wish to cancel this Authorization, the party requesting cancellation must notify Lender at least 7 days prior to the next scheduled payment date.

SUCCESSORS AND ASSIGNS. The provisions of this Authorization are for the benefit of the heirs, personal representatives, successors, and assigns of Lender. Lender may assign or otherwise transfer any or all of its rights under this Authorization to any other person or entity without notice or consent. Reference to any person or entity in this Authorization includes the person's or entity's successors and permitted assigns.

EXECUTION. The execution and delivery of a signed copy of this Authorization by facsimile, Adobe Sign® (or other electronic signature service), or electronic email transmission constitutes the effective execution and delivery of this Authorization as to the Account Holder and Borrower and may be used in lieu of the original of this Authorization for all purposes.

GOVERNING LAW. THIS AUTHORIZATION AND THE RIGHTS AND OBLIGATIONS OF THE BORROWER, ACCOUNT HOLDER, AND LENDER SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE SUBSTANTIVE LAWS (BUT NOT THE RULES GOVERNING CONFLICTS OF LAWS) OF THE STATE OF TEXAS. THE SOLE AND EXCLUSIVE VENUE FOR THE ADJUDICATION OF ANY DISPUTE ARISING OUT OF OR RELATING IN ANY WAY TO THIS AUTHORIZATION, INCLUDING WITHOUT LIMITATION BREACH, TERMINATION, OR VALIDITY HEREOF SHALL BE IN THE STATE OR FEDERAL COURT SITTING IN BEXAR COUNTY, TEXAS. ACCOUNT HOLDER AND BORROWER IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS AND WAIVE THE DEFENSE OF INCONVENIENT FORUM TO THE MAINTENANCE OF ANY SUCH ACTION OR PROCEEDING IN SUCH VENUE.

WAIVER OF JURY TRIAL. BORROWER AND ACCOUNT HOLDER HEREBY WAIVE THEIR RIGHTS TO A JURY TRIAL WITH RESPECT TO ANY CLAIM OR CAUSE OF ACTION BASED ON OR ARISING OUT OF THIS AUTHORIZATION. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED REGARDING THIS AUTHORIZATION OR THE LOAN, INCLUDING WITHOUT LIMITATION CONTRACT CLAIMS, TORT CLAIMS, BREACHES OF DUTY, COMMON LAW AND STATUTORY CLAIMS.

Severability. In the event that any one or more of the provisions of this Authorization will for any reason be held to be invalid, illegal, or unenforceable, in whole or in part, or in any respect, or in the event that any one or more of the provisions of this Authorization will operate, or would prospectively operate, to invalidate this Authorization, then and in such event, such provision or provisions only will be deemed to be null and void and of no force or effect and will not affect any other provision of this Authorization, and the remaining provisions of this Authorization will remain operative and in full force and effect and will in no way be affected, prejudiced, or disturbed thereby.

BORROWER AND ACCOUNT HOLDER HAVE READ AND AGREE TO THE TERMS SET FORTH ABOVE AND ACKNOWLEDGE RECEIPT OF AN EXACT COPY OF THIS AUTHORIZATION.

BORROWER:

GUNTERT & ZIMMERMAN CONST. DIV., INC.,
a California corporation

By: 
Name: Ronald M Guntert, Jr.
Title: President and CEO

ACCOUNT HOLDER:

GUNTERT & ZIMMERMAN CONST. DIV., INC.,
a California corporation

By: 
Name: Ronald M Guntert, Jr.
Title: President and CEO

2023 -- ACH Authorization to Debit Account for Payment by Guntert

Final Audit Report

2023-11-27

Created:	2023-11-20
By:	Laura Irle (laura.irl@zachrycorp.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAACUAH6BiG_sd3t7Q6mqjOa0_iOf88yr-E

"2023 -- ACH Authorization to Debit Account for Payment by Guntert" History

-  Document created by Laura Irle (laura.irl@zachrycorp.com)
2023-11-20 - 10:37:00 PM GMT- IP address: 12.68.242.131
-  Document emailed to Ronald Guntert (rgunt@guntert.com) for signature
2023-11-20 - 10:38:44 PM GMT
-  Email viewed by Ronald Guntert (rgunt@guntert.com)
2023-11-21 - 6:21:00 AM GMT- IP address: 172.226.212.13
-  New document URL requested by Ronald Guntert (rgunt@guntert.com)
2023-11-27 - 11:23:20 PM GMT- IP address: 68.189.90.94
-  Email viewed by Ronald Guntert (rgunt@guntert.com)
2023-11-27 - 11:26:03 PM GMT- IP address: 68.189.90.94
-  Document e-signed by Ronald Guntert (rgunt@guntert.com)
Signature Date: 2023-11-27 - 11:31:49 PM GMT - Time Source: server- IP address: 68.189.90.94
-  Agreement completed.
2023-11-27 - 11:31:49 PM GMT



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SECURITY AGREEMENT

November 20, 2023

This Security Agreement (together with all amendments, supplements, and other modifications, this "**Agreement**") is entered into as of the date hereof (the "**Effective Date**") by Guntert & Zimmerman Const. Div., Inc., a California corporation ("**Grantor**"), and Zachry Construction Corporation, a Delaware corporation (together with its successors and assigns, "**Lender**"). Grantor and Lender may be referred to in this Agreement collectively as the "**Parties**" and individually as a "**Party**."

RECITALS

1. On the date hereof, the Grantor executed a \$985,825.20 promissory note, as borrower, in favor of the Lender (as amended, supplemented, or otherwise modified from time to time, the "**Note**"), pursuant to which the Lender, subject to the terms and conditions contained therein, is to extend credit to the Grantor.
2. Under the terms of this Agreement, the Grantor desires to grant to the Lender a security interest in the Collateral, as defined herein, to secure any and all Secured Obligations, as defined herein.
3. The purchase price for the Collateral is \$320,086.20, which amount is included in the principal balance Grantor owes to Lender under the Note.
4. Grantor will derive direct and indirect economic benefit from the loan, and other financial accommodations under the Note and other Loan Documents.

NOW THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1. GRANT OF INTEREST.

Grantor hereby grants to Lender a lien on and security interest in all of Grantor's right, title, and interest in the Collateral.

1.1 "**Collateral**" means, collectively, the Equipment and Fixtures described on Schedule A to this Agreement, in which Grantor now has or hereafter acquires any rights, together with all attachments, accessories, replacements, additions, and substitutions therefor (whether now or hereafter installed therein or affixed thereto), wherever located, and whether now existing or hereafter acquired or created; all General Intangibles relating thereto, including, without limitation, software and intellectual property that is embedded therein or integrated therewith; all Chattel Paper describing all or any part of the Equipment described herein; all Documents covering all or any part of the Equipment described herein; all books and records related thereto; and all Proceeds and Products of all or any part of thereof.

1.2 The Collateral secures the full and prompt performance and payment (a) to Lender of any indebtedness under the Note, (b) to Lender and its Affiliates of any and all other Secured Obligations.

ARTICLE 2. REPRESENTATIONS AND WARRANTIES.

Grantor represents and warrants to Lender as follows:

2.1 **Existence.** Grantor's legal name is exactly as set forth in the introductory paragraph of this Agreement. Grantor is a corporation duly organized and in good standing under California law. Grantor's social security number or federal taxpayer identification number is rmg and its state organizational or registration identification number, if any, is rmg.

2.2 Location. Grantor's chief executive office is located at 222 East Fourth Street, Ripon, California 95366. Except as set forth in Article 4 below, Lender shall retain possession of all Collateral at its yard in South Carolina (or such other yard as designated to Grantor in writing) until the Secured Obligations have been satisfied in full. If for any reason any Collateral is at any time kept at or located at a location other than one owned or leased by Lender, Lender shall nevertheless have and retain a lien on and security interest therein.

2.3 Ownership. Grantor owns all of the presently existing Collateral, free and clear of any and all adverse claims, assignments, attachments, leases, mortgages, security interests or other liens of any kind or nature ("**Encumbrances**") except those in favor of Lender and those consented to in writing by Lender (collectively, the "**Permitted Encumbrances**"). Each Encumbrance granted to Lender hereby, when duly and properly perfected, must be a first-priority security interest in the Collateral, prior to all Encumbrances, securing the payment and performance of the Secured Obligations. There exists no default under any Collateral consisting of instruments or contracts by any party thereto.

2.4 Authority; No Consent. Grantor has all right, power, and authority to enter into and deliver this Agreement and to grant to Lender the Encumbrances on the Collateral. This Agreement is a valid obligation of Grantor, enforceable in accordance with its terms. No consent, authorization, approval, or other action of any third party is required for the grant by Grantor of the Encumbrances hereunder.

ARTICLE 3. COVENANTS.

3.1 No Transfer or Encumbrance. Grantor must not, without obtaining Lender's prior written consent, (i) sell, offer to sell, assign, lease, transfer or otherwise dispose of all or any part of the Collateral or license any of the Collateral except as otherwise permitted herein, or (ii) grant any Encumbrances in or permit any Collateral to be or become subject to any Encumbrance except for Permitted Encumbrances. Grantor shall comply with all applicable laws, rules, and regulations related to the Collateral. Grantor must join Lender to take all steps necessary to preserve, protect, and defend Lender's security interest in the Collateral, at Grantor's expense, as Lender may from time to time require.

3.2 Insurance. In its sole discretion, Lender will keep the Collateral insured in such amounts and against all risks as determined acceptable to Lender, which policies shall name Lender as the insured and shall contain loss payable clauses in favor of Lender and contain insurer's agreement that any loss thereunder shall be payable to Lender. All such insurance shall be for the sole benefit of Lender; provided, however, that any amounts received by Lender in payment of insurance losses or returned or unearned premiums may be applied to the Secured Obligations (with such allocation as to item and maturity as Lender may deem advisable). Unless and until, pursuant to the terms of this Agreement, Grantor takes possession of the Collateral, or the Collateral is sold to a third-party in the normal course, Grantor will have no obligation to insure the Collateral.

3.3 Inspection. Grantor must at all times keep accurate and complete records of the Collateral. Lender and its agents have the right at all reasonable times to examine and inspect and to make extracts from the books and records related to the Collateral. Grantor hereby waives presentment, demand, notice of dishonor, protest, and notice of protest, and all other related notices.

3.4 Organizational Changes. Grantor must not change its name, identity, jurisdiction of organization, or form of entity in any manner, and it must not change its United States Federal Tax I.D. Number unless, in each case, it has given Lender thirty (30) days' prior written notice and has taken all action reasonably deemed necessary or desirable by Lender to protect Lender's liens as a first priority security interest. It will not change its principal place of business, chief executive office, or the place where it keeps its books and records relating to the Collateral unless it has given Lender thirty (30) days' prior written notice and has taken all action deemed necessary or desirable by Lender to cause Lender's security interest in the Collateral to be perfected as a first priority security interest.

3.5 Merger; Consolidation. Grantor must preserve its existence and must not, in one transaction or in a series of related transactions, merge into or consolidate with any other entity.

3.6 Other Financing Statements and Liens. Grantor must not file, or authorize or permit to be filed or to be on file, and must remove, in any jurisdiction, any financing statement or like instrument with respect to the Collateral (a) in which Lender is not named as the first priority lienholder, or (b) that evidences an Encumbrance is not a Permitted Encumbrance.

3.7 Notice. Grantor must give Lender:

- (a) not less than thirty (30) days' prior written notice of any change in Grantor's name, in the location of its chief executive office or personal residence, or any other information provided under Article 2 or of any other change in circumstances that affects or may affect the continuing efficacy of any financing statement filed by Grantor and Lender, or the continuing status of Lender's security interest as the first priority lien on the Collateral,
- (b) immediate written notice if any third party claims any Encumbrance on any of the Collateral or claims that Grantor's use thereof infringes or unlawfully conflicts with any rights of such party, and
- (c) prompt notice in any event within three (3) days after Grantor obtains knowledge of any condition or event which constitutes an Event of Default under this Agreement or any other Loan Document.

3.8 Maintenance of Business. Take all reasonable action to maintain all rights, privileges and franchises necessary or desirable in the normal conduct of its business, except, in each case, where the failure to do so would not result in a material adverse event.

3.9 Further Assurances. Grantor must execute and deliver from time to time upon request of Lender such other instruments of assignment, conveyance, and transfer and take such other action as Lender may reasonably request for the purpose of perfecting, continuing, amending, protecting, or further evidencing the arrangements contemplated hereby or to enable Lender to exercise and enforce its rights and remedies hereunder. Grantor must, at Grantor's expense, upon each request of Lender (i) file and hereby authorizes Lender to file, from time to time, financing statements or other records in such public offices as Lender may require containing, among other things, (A) a Collateral description as Lender may require, (B) an indication of any statutory liens held by Lender, and (C) Grantor's federal taxpayer identification number, social security number, and/or state organizational number, if any, and any other identifying information as Lender may require, (ii) place a legend on all Chattel Paper indicating that Lender has a security interest in such Chattel Paper, (iii) where the Collateral is in the possession of a third party, join with Lender in notifying the third party of Lender's security interest and obtaining an acknowledgement from the third party that it is holding the Collateral for the benefit of Lender, (iv) if the Collateral is an Instrument or Chattel Paper, deliver such Collateral to Lender and (v) comply with every other requirement deemed necessary by Lender for the perfection of its security interest in the Collateral.

ARTICLE 4. DEFAULT AND REMEDIES.

4.1 Event of Default. Occurrence of any of the following events or conditions will constitute an event of default under this Agreement (each, an "**Event of Default**"):

- (a) If this Agreement or any other Loan Document for any reason without Lender's specific written consent ceases to be in full force and effect, or is declared null and void or unenforceable in whole or in part, or the validity or enforceability of such agreements, in whole or in part, is challenged or denied by any Person other than Lender; or the liens or security interests of Lender in any of the Collateral become unenforceable in whole or in

part, or cease to be first liens, or their validity or enforceability, in whole or in part, is challenged or denied by Grantor.

- (b) If any sale, lease, conveyance, assignment, pledge, encumbrance, or transfer of all or any part of the Collateral or any interest therein, voluntarily or involuntarily, whether by operation of law or otherwise, occurs except (i) the security interest in favor of the Lender created or provided for in this Agreement, (ii) a Permitted Encumbrance, or (iii) a sale of the Collateral in the ordinary course of Grantor's business when the proceeds of the sale or conveyance are paid directly to Lender by the purchaser.
- (c) If Grantor should fail to keep, observe, or perform any obligation or comply or cause compliance with any term, provision or covenant enjoined upon the Grantor by the terms of this Agreement or any other Loan Document or if the Grantor fails to satisfy any debt, obligation, or liability of any kind or character under any agreement between Grantor and Lender or any agreement between Grantor and any Affiliate of Lender.
- (d) If Lender determines that any warranty, representation, or statement made or furnished to the Lender by or on behalf of the Grantor was false or misleading in any material respect when made or furnished.
- (e) A default or event of default occurs under any lien, security interest, or assignment covering any of the Collateral (whether or not Lender has consented to the other lien, security interest, or assignment, and without implying Lender's consent, to any such lien, security interest or assignment) or the holder of any such lien, security interest, or assignment declares a default or institutes foreclosure or other proceedings for the enforcement of its remedies against any Collateral.
- (f) If any levy, seizure, execution, replevin, or attachment should be issued or commenced against the Collateral and remain unsatisfied for a period of fifteen (15) days.
- (g) If an event of default occurs under any other Loan Documents.
- (h) If the Person or Persons that Control Grantor on the Effective Date cease to Control Grantor, or an agreement or letter of intent is executed with respect to any proposed transaction or event or series of transactions or events which, individually or in the aggregate, would result in such Person or Persons ceasing to Control Grantor.
- (i) If any of the following occur:
 - (i) Grantor commences any case, proceeding or other action (A) under any existing or future law relating to bankruptcy, insolvency, reorganization, or other relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it as bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets;
 - (ii) Grantor makes a general assignment for the benefit of its creditors;
 - (iii) there is commenced against Grantor any case, proceeding or other action of a nature referred to in Section 4.1(i)(i) above which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged, or unbonded for a period of sixty (60) days;

- (iv) there is commenced against Grantor any case, proceeding, or other action seeking issuance of a warrant of attachment, execution, or similar process against all or any substantial part of its assets which results in the entry of an order for any such relief that has not been vacated, discharged, or stayed or bonded pending appeal within sixty (60) days from the entry thereof;
 - (v) Grantor takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in Section 4.1(i)(i) through Section 4.1(i)(iv) above; or
 - (vi) Grantor is generally not, or shall be unable to, or admits in writing its inability to, pay its debts as they become due.
- (j) One or more judgments or decrees for amounts greater, individually or in the aggregate, than \$50,000, shall be entered against Grantor and all of such judgments or decrees shall not have been vacated, discharged, stayed or bonded pending appeal within sixty (60) days from the entry thereof.
 - (k) Any of the Loan Documents shall cease to be in full force and effect or any Lien created by or purported to be created by the Collateral Documents or any other Loan Documents ceases to be valid, enforceable, perfected and first priority, except to the extent expressly permitted by the Loan Documents.

4.2 Remedies. If any Event of Default occurs and is continuing, Lender has the right, at its option at any time and from time to time, without waiving any other remedy available at law, in equity, under any Loan Documents, or any other agreement between Grantor and Lender or any Affiliate of Lender, without notice to Grantor to exercise the following rights and remedies which may be exercised simultaneously, subject to the requirements of the UCC:

- (a) Lender shall have full power and right to exercise any and all rights and remedies available at law (including, without limitation, those afforded by the UCC) or in equity to collect, enforce, or satisfy any of the Secured Obligations and exercise any or all of the rights and remedies in respect of the Collateral, including, without limitation, those provided herein or in any other Loan Document.
- (b) Lender may enter any premises where the Collateral is located and take possession of the Collateral or remove the Collateral from such premises. On Lender's demand, Grantor will assemble and make the Collateral available to Lender at such place or places as Lender may reasonably require, all at Grantor's expense.
- (c) Lender may attach, execute, or levy on any of the Collateral.
- (d) Lender may retain, take control of, or manage all or any Collateral.
- (e) Lender shall have the right to sell, transfer or otherwise dispose of all or any of the Collateral at any time, or from time to time. Lender shall give Grantor commercially reasonable prior notice of either the date after which any intended private sale is to be made or the time and place of any intended public sale, provided that Lender need give no such notice in the case of Collateral which Lender determines to be declining speedily in value or which is customarily sold on a recognized market. Grantor waives advertisement of any such sale in the immediately preceding proviso and (except only to the extent notice is specifically required by the next preceding sentence) waives notice of any kind in respect of such sale in the immediately preceding proviso. Lender shall have the right to conduct sales on Grantor's premises, without charge therefor, and sales may be adjourned from time to time in accordance with applicable law without further

requirement of notice to Grantor. At any public sale, Lender may purchase the Collateral or any part thereof free from any right of redemption, which right Grantor hereby waives. After deducting all expenses and attorneys' fees incurred in assembling, taking, repairing, storing and selling and delivering the Collateral or any part thereof, Lender may apply the net proceeds of the sale to the Secured Obligations with such allocation as to item and maturity as Lender in its sole discretion deems advisable, and shall refund the surplus, if any, to Grantor, who shall be liable for any deficiency. Lender may sell or otherwise dispose of the Collateral without giving any warranties as to the Collateral and may specifically disclaim any warranties of title or the like, any or all of which will not be considered adversely to affect the commercial reasonableness of any sale or other disposition of the Collateral. In any foreclosure sale contracts, Grantor permits Lender to disclaim all representations and warranties provided under the UCC.

4.3 Defense and Indemnification. TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, GRANTOR MUST DEFEND, INDEMNIFY, AND HOLD HARMLESS LENDER FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, AND LIABILITIES, ARISING OUT OF THIS AGREEMENT OR GRANTOR'S OWNERSHIP OR USE OF THE COLLATERAL, INCLUDING THOSE ARISING FROM THE ALLEGED NEGLIGENCE OF LENDER OR ITS OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS, EXCEPT CLAIMS, LOSSES, OR LIABILITIES RESULTING FROM LENDER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. Grantor will reimburse Lender, on demand, for any and all fees, costs, and expenses (including, without limitation, reasonable attorneys' fees) incurred by Lender in (a) administration of this Agreement, (b) custody, preservation, sale, use, collection or realization of the Collateral after the occurrence of an Event of Default, (c) protection or enforcement of its rights in the Collateral or under this Agreement or (d) failure of Grantor to perform or observe any provisions hereof. This Agreement, including this Section 4.3, does not require, and shall not be construed to require, Grantor to indemnify, defend, or hold harmless any Lender to the extent prohibited applicable law, and if any provision of this Agreement is interpreted, construed, applied, or enforced by a court, arbitrator, or arbitration panel of competent jurisdiction to require Grantor to defend, indemnify, or hold harmless Lender in violation of applicable law, then the Parties intend that such provision automatically shall be deemed reformed *nunc pro tunc* so as to require Grantor to only indemnify, defend, and hold harmless Lender to the maximum extent permitted by applicable law.

4.4 Lender May Perform. If Grantor fails to perform any agreement or obligation contained herein within thirty (30) days of notice, Lender may itself perform (but is not required to perform) or cause performance of, such obligation or agreement, and any expenses of Lender incurred in connection therewith shall be payable by Grantor upon Lender's demand. If Grantor does not reimburse Lender, such amounts paid will become part of the Secured Obligations and will be secured hereunder. The powers conferred on Lender hereunder are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers.

4.5 Power of Attorney.

- (a) Grantor irrevocably constitutes and appoints the Lender, and any officer or agent of the Lender, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the name of the Grantor or in its own name, to take, when an Event of Default exists, any and all actions and to execute any and all documents and instruments that the Lender, at any time and from time to time, deems necessary or desirable to accomplish the purposes of this Agreement and, without limiting the generality of the foregoing, the Grantor gives the Lender the power and right on behalf of the Grantor and in the Lender's own name to do any of the following when an Event of Default exists, without notice to or the consent of the Grantor:
 - (i) to demand, sue for, collect, or receive, in the name of the Grantor or in the Lender's own name, any money or property at any time payable or receivable on account of or in exchange for any of the Collateral and, in connection therewith,

endorse checks, notes, drafts, acceptances, money orders, documents of title, or any other instruments for the payment of money under the Collateral or any policy of insurance;

- (ii) to pay or discharge taxes, liens, or other encumbrances levied or placed on or threatened against the Collateral;
- (iii) to notify post office authorities to change the address for delivery of mail of the Grantor to an address designated by the Lender and to receive, open, and dispose of mail addressed to the Grantor;
- (iv) (1) to direct account debtors and any other Persons liable for any payment under any of the Collateral to make payment of any and all monies due and to become due under the Collateral directly to the Lender or as the Lender will direct (the Grantor agrees that, if any Proceeds of any Collateral are received by the Grantor while an Event of Default exists, the Grantor will promptly deliver such Proceeds to the Lender with any necessary endorsements, and until such Proceeds are delivered to the Lender, such Proceeds will be held in trust by the Grantor for the benefit of the Lender and will not be commingled with any other funds or property of the Grantor); (2) to receive payment of and receipt for any and all monies, claims, and other amounts due and to become due at any time in respect of or arising out of any Collateral; (3) to sign and endorse any invoices, freight, or express bills, bills of lading, storage or warehouse receipts, drafts against Grants, assignments, proxies, stock powers, verifications, and notices in connection with accounts and other documents relating to the Collateral; (4) to commence and prosecute any suit, action, or proceeding at law or in equity in any court of competent jurisdiction to collect the Collateral or any part of the Collateral and to enforce any other right in respect of any Collateral; (5) to defend any suit, action, or proceeding brought against the Grantor with respect to any Collateral; (6) to settle, compromise, or adjust any suit, action, or proceeding described above and, in connection therewith, to give such discharges or releases as the Lender may deem appropriate; (7) to exchange any of the Collateral for other property upon any merger, consolidation, reorganization, recapitalization, or other readjustment of the issuer thereof and, in connection therewith, deposit any of the Collateral with any depository, transfer agent, registrar, or other designated agency upon such terms as the Lender may determine; (8) to add or release any guarantor, endorser, surety, or other party to any of the Collateral; (9) to renew, extend, or otherwise change the terms and conditions of any of the Collateral; (10) to make, settle, compromise, or adjust any claims under or pertaining to any of the Collateral (including, without limitation, claims under any policy of insurance); and (11) to sell, transfer, pledge, convey, make any agreement with respect to, or otherwise deal with any of the Collateral as fully and completely as though the Lender were the absolute owner of the Collateral for all purposes, and to do, at the Lender's option and the Grantor's expense, at any time, or from time to time, all acts and things which the Lender deems necessary to protect, preserve, maintain, or realize upon the Collateral and the Lender's security interest therein.

- (b) This power of attorney is a power coupled with an interest and will be irrevocable until termination of this Agreement. Lender will be under no duty to exercise or withhold the exercise of any of the rights, powers, privileges, and options expressly or implicitly granted to the Lender in this Agreement and will not be liable for any failure to do so or any delay in doing so. Neither the Lender nor any Person designated by the Lender will be liable for any act or omission or for any error of judgment or any mistake of fact or

law. This power of attorney is conferred on the Lender solely to protect, preserve, maintain, and realize upon its security interest in the Collateral. Lender will not be responsible for any decline in the value of the Collateral and will not be required to take any steps to preserve rights against prior parties or to protect, preserve, or maintain any lien given to secure the Collateral.

4.6 Possession; Reasonable Care. Lender may, from time to time, in its sole discretion, appoint one or more agents to hold physical custody, for the account of the Lender, of any or all of the Collateral that the Lender has a right to possess. The Lender will be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which the Lender accords its own property, it being understood that the Lender will not have any responsibility for (a) ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders, or other matters relative to any Collateral, whether or not the Lender has or is deemed to have knowledge of such matters, or (b) taking any necessary steps to preserve rights against any Persons with respect to any Collateral. Notwithstanding anything herein to the contrary, Grantor shall bear all risk of loss of the Collateral.

ARTICLE 5. MISCELLANEOUS PROVISIONS

5.1 Notices. Each notice to Grantor shall be in writing and shall be deemed to have been given or made when delivered to Grantor, by certified mail, return receipt requested, or nationally recognized overnight courier service to the address of Grantor set forth herein or at such other address as Grantor may furnish to Lender from time to time. Every notice to Lender shall be effective when delivered to Lender at its mailing address (as listed in the Note) or at such other address as Lender may furnish to Grantor.

5.2 Definitions and Construction.

- (a) As used in this Agreement, the following terms shall have the following meanings specified in this Section below unless the context requires otherwise. All capitalized terms used in this Agreement that are defined under the UCC and not otherwise defined herein, including, without limitation, all terms relating to the Collateral, shall have the meaning as set forth in the UCC. The
- (i) **"Affiliate"** means in relation to Lender: (i) that directly or indirectly controls, or is controlled by, or is under common control with, Lender; or (ii) which directly or indirectly beneficially owns or holds ten percent (10%) or more of any class of voting stock or other equity interests of Lender; or (iii) which has ten percent (10%) or more of any class of voting stock or other equity interests that is directly or indirectly beneficially owned or held by Lender. For purposes of this definition, the word "controls" means possession, directly or indirectly of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or otherwise. The term "Affiliate" includes all direct and indirect subsidiaries and parents of Lender and each of their respective direct and indirect subsidiaries and parents.
 - (ii) **"Control"** means, with respect to Grantor, the power, directly or indirectly, to either (a) vote more than 50% of the securities having ordinary voting power for the election of directors (or persons performing similar functions) of such Person or (b) direct or cause the direction of the management and policies of such Person, whether by contract or otherwise.
 - (iii) **"Loan Document"** means the Note and this Agreement.

- (iv) **"Person"** means any natural person or legal entity. It includes individuals, fiduciaries, receivers, trustees, trusts, corporations, limited liability companies, partnerships, limited partnerships, professional associations, professional corporations, trusts, and all other forms of business organizations that may exist under the laws of Texas or any other state, or the United States.
- (v) **"Secured Obligation"** means, collectively or separately, as the context may require, all of the debts, obligations, and liabilities of every kind and character of Grantor to Lender or any of Lender's Affiliates, now or hereafter existing, however evidenced and whether the same are direct or indirect, with or without recourse, primary or secondary, joint, several, joint and several, certain or contingent, and regardless of whether such present or future debts, obligations and liabilities arose directly in favor of Lender or its Affiliates or may, prior to their acquisition by Lender, be or have been payable to, or be or have been in favor of some other Person or have been acquired by Lender in a transaction with one other than Grantor, including but not limited to the debts, obligations and liabilities which are more fully described as follows:
 - (A) all past, present, and future advances, of whatever type, by Lender or its Affiliates to Grantor, and all extensions, modifications, and renewals thereof, whether or not the note or other evidence of such advances contains specific reference to this Agreement (but excluding those advances made subsequent to this Agreement in which it is expressly agreed in writing that they be unsecured or not secured by this Agreement);
 - (B) all existing and future liabilities of Grantor to Lender or Lender's Affiliates, of whatever type, whether primary or secondary, certain or contingent, and whether such liability be that of Grantor alone or in conjunction with others (whether jointly or severally), and including, but not limited to, liability for overdrafts and as endorser, surety, guarantor, or otherwise, except those incurred subsequent to this Agreement and evidenced by a writing in which it is expressly agreed that they be unsecured or not secured by this Agreement;
 - (C) All costs and expenses incurred by Lender or its Affiliates, including attorney's fees and other legal costs, in connection with the collection of any indebtedness or enforcement of any obligation secured by this Agreement, including, without limitations, costs, expenses and other amounts expended by Lender or its Affiliates for the purposes of preserving, protecting, or realizing upon the value of any lien, security interest, guaranty or other security now or hereafter given for the payment or performance of any Secured Obligation, whether such security is furnished by Grantor or another and whether covenants pertaining thereto are of the Grantor or another;
 - (D) Interest on the above amounts, as agreed between Lender and Grantor, or if there is no such agreement, at the Maximum Permitted Rate (as defined in the Note).

The Secured Obligations as of the date of this Agreement include, but are not limited to all debts, obligations, and liabilities of the Grantor to Lender or its Affiliates under the Note, this Agreement, and any other Loan Document. The Parties expressly contemplate that additional debts, obligations and liabilities of

Grantor to Lender or Lender's Affiliates may from time to time be outstanding and that such future debts, obligations, and liabilities are intended to be secured by this Agreement to the same extent as if the same were specifically described and referenced in this Agreement. Unless otherwise required by applicable law, all payments of principal and interest under the Note, shall first be applied to all non-Purchase money obligations and second to the Purchase-money obligations. As used in this Section, the term "Purchase money obligations" has the meaning set forth in the UCC.

- (vi) **"UCC"** means the Uniform Commercial Code as currently in effect in the jurisdiction where the Collateral is located and as the Uniform Commercial Code may hereafter be amended, adopted, and effective in such jurisdiction.
- (b) As used in this Agreement, the words "include," "includes" and "including" are deemed to be followed by the phrase "without limitation." Unless otherwise expressly provided herein, any contract, agreement, instrument, or statute defined or referred to in this Agreement or any other Loan Document or in any contract, agreement or instrument that is referred to in this Agreement or any other Loan Document means such contract, agreement, instrument, or statute as from time to time amended, modified, or supplemented, including (in the case of contracts, agreements, or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. Any reference to a Person in this Agreement or any other Loan Document refers to such Person and, as applicable, its successors and permitted assigns. The Parties have each been represented by counsel of their choosing in the negotiation, execution, and delivery of this Agreement; and any rule of law where an ambiguity in this Agreement would be construed against this drafter will not apply and is affirmatively waived by each Party.

5.3 General Provisions. No single or partial exercise of any right, power or privilege shall preclude any further or other exercise thereof or of any other right, power, or privilege, as each such right, power, or privilege may be exercised either independently or concurrently with others and as often and in such order as Lender may deem expedient. No course of dealing in respect of, nor any omission or delay in the exercise of, any right, power, or privilege by Lender under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any further or other exercise thereof or of any other right, power or privilege, as each such right, power or privilege may be exercised either independently or concurrently with others and in such order as Lender may deem expedient. The provisions of this Agreement may be modified, altered, or amended only by written agreement signed by Lender and Grantor. Each right, power or privilege is an addition to and not in limitation of any other rights, powers, and privileges that Lender may otherwise have or acquire by operation of law (including, without limitation, the right of offset), by other contract or otherwise.

5.4 Reformation and Severability. If any provision of this Agreement is held to be invalid, unenforceable, or illegal in any jurisdiction under any circumstances for any reason, (a) that provision shall be reformed to the minimum extent necessary to cause such provision to be valid, enforceable, and legal and preserve the original intent of the Parties, or (b) if that provision cannot be so reformed, it shall be severed from this Agreement. The holding shall not affect or impair the validity, enforceability, or legality of the provision in any other jurisdiction or under any other circumstances. Neither the holding nor the reformation or severance shall affect or impair the legality, validity, or enforceability of any other provision of this Agreement to the extent that the other provision is not itself actually in conflict with any applicable law. Upon a determination that any term or provision is invalid, unenforceable, or illegal, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible.

5.5 Assignment. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided that Grantor may not assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the Lender. Lender may assign or otherwise transfer any or all of its rights under this Agreement to any other Person without notice or consent.

5.6 Defeasance. Lender's security interest in the Collateral shall remain in effect in accordance with this Agreement until the Secured Obligations have been fully satisfied and shall not be affected by the lapse of time or by the fact that there may be a time or times when no Secured Obligations are outstanding. If and when Lender's security interest shall have terminated in accordance with the provisions of this Agreement, Grantor agrees to pay to Lender, on demand, an amount equal to all reasonable costs and expenses incurred by Lender in terminating its security interests.

5.7 Entire Agreement. This Agreement constitutes the entire security agreement between the Parties. Neither Party will be bound by any terms, conditions, statements, or representations, oral or written, not contained in this Agreement or the other Loan Documents. Each Party acknowledges that in executing this Agreement it has not been induced, persuaded, or motivated by any promise or representation made by the other Party, unless expressly set forth in this Agreement. All previous negotiations, statements, and preliminary instruments by the Parties or their representatives are merged in this instrument.

5.8 Governing Law; Jurisdiction and Venue. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HERETO SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE SUBSTANTIVE LAWS (BUT NOT THE RULES GOVERNING CONFLICTS OF LAWS) OF THE STATE OF TEXAS. THE PARTIES AGREE THAT SOLE AND EXCLUSIVE VENUE FOR THE ADJUDICATION OF ANY DISPUTE ARISING OUT OF OR RELATING IN ANY WAY TO THIS AGREEMENT INCLUDING WITHOUT LIMITATION BREACH, TERMINATION, OR VALIDITY HEREOF SHALL BE IN THE STATE OR FEDERAL COURT SITTING IN BEXAR COUNTY, TEXAS. THE PARTIES IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS AND WAIVE THE DEFENSE OF INCONVENIENT FORUM TO THE MAINTENANCE OF ANY SUCH ACTION OR PROCEEDING IN SUCH VENUE.

5.9 Waiver of Jury Trial. THE PARTIES HEREBY AGREE TO WAIVE THEIR RIGHTS TO A JURY TRIAL WITH RESPECT TO ANY CLAIM OR CAUSE OF ACTION BASED ON OR ARISING OUT OF THIS AGREEMENT. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED REGARDING THE RELATIONSHIP BETWEEN THE PARTIES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, INCLUDING WITHOUT LIMITATION CONTRACT CLAIMS, TORT CLAIMS, BREACHES OF DUTY, COMMON LAW, AND STATUTORY CLAIMS.

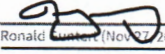
5.10 Execution. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together constitute one and the same Agreement. The exchange of signed copies of this Agreement and signature pages by facsimile or Adobe Sign® (or other similar services) shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original of this Agreement for all purposes.

[Signature pages to follow.]

This Agreement is executed as of the date first written above, with the intent to be legally bound hereby.

GRANTOR:

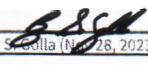
GUNTERT & ZIMMERMAN CONST. DIV., INC.,
a California corporation

By: 
Name: Ronald M Guntert, Jr.
Title: President and CEO

Ronald M Guntert (Nov 27, 2023 15:25 PST)

Lender:

ZACHRY CONSTRUCTION CORPORATION,
a Delaware corporation,

By: 
Bryan S. Golla (Nov 28, 2023 09:58 CST)

Name: Bryan S. Golla

Title: Vice President and Controller

Schedule A

SPECIFIC COLLATERAL

Description	Serial Number
G&Z IDBI	CDBI-C1181-305

2023 -- Security Agreement with Guntert

Final Audit Report

2023-11-28

Created:	2023-11-20
By:	Laura Irle (laura.irl@zachrycorp.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAABV0JP5YJW706J0wseB3G8U241D79yvF0

"2023 -- Security Agreement with Guntert" History

-  Document created by Laura Irle (laura.irl@zachrycorp.com)
2023-11-20 - 10:34:57 PM GMT- IP address: 12.68.242.131
-  Document emailed to Ronald Guntert (rguntert@guntert.com) for signature
2023-11-20 - 10:35:55 PM GMT
-  Email viewed by Ronald Guntert (rguntert@guntert.com)
2023-11-21 - 6:21:09 AM GMT- IP address: 172.226.212.13
-  New document URL requested by Ronald Guntert (rguntert@guntert.com)
2023-11-27 - 11:23:03 PM GMT- IP address: 68.189.90.94
-  Email viewed by Ronald Guntert (rguntert@guntert.com)
2023-11-27 - 11:24:22 PM GMT- IP address: 68.189.90.94
-  Document e-signed by Ronald Guntert (rguntert@guntert.com)
Signature Date: 2023-11-27 - 11:25:49 PM GMT - Time Source: server- IP address: 68.189.90.94
-  Document emailed to bryan.golla@zachrycorp.com for signature
2023-11-27 - 11:25:51 PM GMT
-  Email viewed by bryan.golla@zachrycorp.com
2023-11-27 - 11:26:00 PM GMT- IP address: 3.232.50.116
-  Signer bryan.golla@zachrycorp.com entered name at signing as Bryan S. Golla
2023-11-28 - 3:58:16 PM GMT- IP address: 12.68.242.132
-  Document e-signed by Bryan S. Golla (bryan.golla@zachrycorp.com)
Signature Date: 2023-11-28 - 3:58:18 PM GMT - Time Source: server- IP address: 12.68.242.132
-  Agreement completed.
2023-11-28 - 3:58:18 PM GMT

**ZACHRY CONSTRUCTION
CORPORATION,**
Plaintiff,

v.

**GUNTERT & ZIMMERMAN CONST.
DIV., INC.,**
Defendant.

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IN THE DISTRICT COURT

288th JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

JUDGMENT

On October 15, 2024, the Court heard this cause.

Zachry Construction Corporation (Zachry), Plaintiff, appeared by its attorney of record and announced ready for trial. Guntert & Zimmerman Const. Div., Inc. (G&Z), Defendant, although having been duly and legally cited to appear and answer, failed to appear and answer, and wholly made default.

The Court was requested and does take judicial notice of the file. Citation was served according to law and returned to the clerk where it remained on file for the time required by law. The Court has read the pleadings and the papers on file, and is of the opinion that the allegations in Plaintiff's Original Petition are true, that the cause of action is liquidated and proven by instruments in writing, and that Plaintiff's claim for attorney's fees is unliquidated and, on good and sufficient evidence presented to the Court, finds the following:

1. On November 20, 2023, by way of compromise of an outstanding debt, Zachry and G&Z entered into four agreements. First, the parties executed a Contract for Sale under which G&Z purchased a G&Z IDBI from Zachry (the Contract). Second, the parties entered into a Promissory Note (the Note) under which G&Z took on an indebtedness to Zachry in the amount of \$985,825.20. Third, the parties entered into an ACH Authorization (the ACH Authorization) under which G&Z gave Zachry the right to debit payments under the Note from G&Z's account at GBC International Bank Finally, the

parties entered into a Security Agreement (the Security Agreement) under which G&Z pledged the IDBI as collateral in connection with the Note.

2. Under the Note, G&Z is obligated to make monthly payments in the amount of \$59,081.95 on the twentieth day of each month, beginning on February 20, 2024. G&Z has not made any of the payments required under the Note. Furthermore, each month, Zachry has attempted to withdraw payments when due under the ACH Authorization, and on each attempt, Zachry is advised that the account has insufficient funds.
3. On March 19, 2024, Zachry sent a demand letter to G&Z. Therein, Zachry demanded payment of the outstanding amounts within seven days. G&Z did not make the required payments.
4. On May 29, 2024, Zachry sent a second demand letter to G&Z. Therein, Zachry accelerated the indebtedness under the Note and provided notice that the default rate of 18% was being applied from the date the first payment was due.
5. Accordingly, the following amounts are currently due and payable under the Note:

Outstanding Invoices	\$985,825.20
Interest	\$169,904.69
Attorney's fees to date	\$5,477.10
Total Amount Due	\$1,161,206.99

6. Defendant breached the Note.
7. Defendant is liable to Plaintiff for breach of contract.
8. Defendant is liable to Plaintiff for Plaintiff's reasonable and necessary attorney's fees.
9. Defendant is liable to Plaintiff for interest on overdue amounts at the rate of 18% per year.
10. Defendant is indebted to Plaintiff in the sum of \$985,825.20, plus prejudgment interest in the amount of \$169,904.69, and should recover a reasonable attorney's fee, which the court finds to be \$5,477.10.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that Zachry Construction Corporation, Plaintiff, have and recover of and from Guntert & Zimmerman Const.

Div., Inc., Defendant, the sum of **\$1,161,206.99**, with postjudgment interest thereon at the rate 18% per year from the date of this judgment until paid, together with all costs of Court in this behalf expended.

IT IS, FURTHER ORDERED, ADJUDGED, AND DECREED that Plaintiff is entitled to recover its costs of collecting this judgment, pursuant to the terms of the Note.

IT IS, FURTHER ORDERED, ADJUDGED, AND DECREED that in the event Defendant files a motion for new trial, and such motion is granted, it shall be conditional upon Defendant paying to Plaintiff attorney's fees in the sum of \$2,000.00 within 10 days of such order. The Court finds that such fees are reasonably and necessarily incurred by Plaintiff in obtaining service and for this Default Judgment.

Plaintiff is allowed such writs and processes as may be necessary in the enforcement and collection of this judgment.

All relief requested in this case and not expressly granted is **DENIED**. This Judgment finally disposes of all parties and claims and is appealable.

SIGNED on 10/16/2024, 2024.

Tina Torres
Presiding Judge
407th District Court
Bexar County, Texas

JUDGE PRESIDING

APPROVED AS TO FORM AND ENTRY REQUESTED:



Matthew G. Cole
State Bar No. 24065061
The Cole Firm
3515 Clairmont
San Antonio, Texas 78259
(210) 722-6433
(210) 405-2556 (fax)
mgcole@colefirmtx.com

Counsel for Plaintiff

Gloria A. Martinez

District Clerk



Bexar County

10/16/2024

Guntert & Zimmerman Const. Div. Inc.
222 E 4th ST
Ripon, CA 95366-2761

Rule 239A Official Notice
IN CAUSE NUMBER: 2024CI11484

STYLED: Zachry Construction Corporation VS Guntert & Zimmerman Const. Div., Inc.

A DEFAULT JUDGMENT (RULE 239A) WAS SIGNED BY THE HONORABLE JUDGE TINA TORRES IN THE 288TH DISTRICT COURT ON THIS THE 16TH DAY OF OCTOBER, 2024.

"If you are an individual (not a company), your money or property may be protected from being taken to pay this judgment. Find out more by visiting www.texaslawhelp.org/exempt-property. / Si usted es una persona física (y no una compañía), su dinero o propiedad pudieran estar protegidos de ser embargados como pago de esta deuda decretada en juicio en contra suya. Obtenga mayor información visitando el sitio www.texaslawhelp.org/exempt-property."

A COPY OF THIS DOCUMENT IS AVAILABLE AT THE FOLLOWING ADDRESS:

Bexar County District Clerk's Office
101 W Nueva, Suite B117
San Antonio, Texas 78205



Gloria A. Martinez
DISTRICT CLERK OF BEXAR COUNTY, TEXAS
BEXAR COUNTY COURTHOUSE
101 W. NUEVA, SUITE 217
SAN ANTONIO, TEXAS 78205

By: **Marissa Ugarte**
Marissa Ugarte, Deputy

Gloria A. Martinez

District Clerk



Bexar County

Rule 306A Official Notice

Issue Date: 10/16/2024

MATTHEW G COLE
3515 CLAIRMONT
SAN ANTONIO, TX 78259-2749

Re: Zachry Construction Corporation VS Guntert & Zimmerman Const. Div., Inc.
Cause No. 2024CI11484
In the District Court 288th District Court Judicial District
Bexar County, Texas

IN THE 288th District Court OF BEXAR COUNTY, TEXAS, A JUDGMENT/ORDER/DECREE WAS SIGNED BY
THE HONORABLE TINA TORRES PRESIDING ON THIS THE 16TH DAY OF OCTOBER, 2024.

"If you are an individual (not a company), your money or property may be protected from being taken to pay this judgment. Find out more by visiting www.texaslawhelp.org/exempt-property. / Si usted es una persona física (y no una compañía), su dinero o propiedad pudieran estar protegidos de ser embargados como pago de esta deuda decretada en juicio en contra suya. Obtenga mayor información visitando el sitio www.texaslawhelp.org/exempt-property."

A COPY OF THIS DOCUMENT IS AVAILABLE AT THE FOLLOWING ADDRESS:
Bexar County District Clerk's Office
101 W Nueva, Suite B117
San Antonio, Texas 78205

Gloria A. Martinez
Bexar County District Clerk

By: Marissa Ugarte
Marissa Ugarte, Deputy

Enclosure



CAUSE NO. 2024CI11484

**ZACHRY CONSTRUCTION
CORPORATION,**
Plaintiff,

v.

**GUNTERT & ZIMMERMAN CONST.
DIV., INC.,**
Defendant.

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IN THE DISTRICT COURT

288th JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

STATE OF TEXAS §
BEXAR COUNTY §

DECLARATION OF BRYAN GOLLA

1. "My name is Bryan Golla. I am over 18 years of age, of sound mind, and capable of making this declaration. The facts stated in this declaration are within my personal knowledge and are true and correct.

2. I am an employee and a Vice President of Zachry Construction Corporation (Zachry).

3. All of the facts stated in Zachry's Original Petition are true and correct.

4. Zachry is a privately owned, private enterprise providing services related to heavy civil construction projects.

5. On November 20, 2023, by way of compromise of an outstanding debt, Zachry and Guntert & Zimmerman Const. Div., Inc. (G&Z) entered into four agreements. First, the parties executed a Contract for Sale under which G&Z purchased a G&Z IDBI from Zachry (the Contract). Second, the parties entered into a Promissory Note (the Note) under which G&Z took on an indebtedness to Zachry in the amount of \$985,825.20. Third, the parties entered into an ACH Authorization (the ACH Authorization) under which G&Z gave Zachry the right to debit payments

under the Note from G&Z's account at GBC International Bank. Finally, the parties entered into a Security Agreement (the Security Agreement) under which G&Z pledged the IDBI as collateral in connection with the Note.

6. Under the Note, G&Z is obligated to make monthly payments in the amount of \$59,081.95 on the twentieth day of each month, beginning on February 20, 2024. G&Z has not made any of the payments required under the Note. Furthermore, each month, Zachry has attempted to withdraw payments when due under the ACH Authorization, and on each attempt, Zachry is advised that the account has insufficient funds.

7. On March 19, 2024, Zachry sent a demand letter to G&Z. Therein, Zachry demanded payment of the outstanding amounts within seven days. G&Z did not make the required payments.

8. On May 29, 2024, Zachry sent a second demand letter to G&Z. Therein, Zachry accelerated the indebtedness under the Note and provided notice that the default rate of 18% was being applied from the date the first payment was due.

9. As of the date of this declaration, G&Z has made no payments under the Note.

10. Accordingly, the following amounts are currently due and payable under the Note:

Outstanding Invoices	\$985,825.20
Interest	\$169,904.69
<u>Attorney's fees to date</u>	<u>\$5,477.10</u>
Total Amount Due	\$1,161,206.99

11. "My name is Bryan Golla, my date of birth is July 22, 1975, and my address is 14410 Wurzbach Parkway, Suite 120, San Antonio, TX 78216. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Bexar County, State of Texas, on October 14, 2024."


Bryan Golla



CAUSE NO. 2024CI11484

**ZACHRY CONSTRUCTION
CORPORATION,**
Plaintiff,

v.

**GUNTERT & ZIMMERMAN CONST.
DIV., INC.,**
Defendant.

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IN THE DISTRICT COURT

288th JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

STATE OF TEXAS §
BEXAR COUNTY §

DECLARATION OF MATTHEW G. COLE

1. "My name is Matthew G. Cole. I am over 18 years of age, of sound mind, and capable of making this declaration. The facts stated in this declaration are within my personal knowledge and are true and correct.

2. I am a member in good standing of the State Bar of Texas and am engaged in the private practice of law in San Antonio, Bexar County, Texas. I have been in the practice of law since 2008. My practice has consisted primarily of commercial and business litigation.

3. It was necessary for Plaintiff to retain an attorney to represent them in this matter. Accordingly, Plaintiff retained me to represent them in this matter. I have personal knowledge of this case and the work performed.

4. The novelty and difficulty of the questions involved in this case required me to spend approximately 13 hours investigating claims, drafting pleadings, and taking other necessary actions, in performing my legal services properly.

5. Plaintiff agreed to compensate me on this matter on an hourly basis at the rate of \$450 per hour. Plaintiff also agreed to reimburse me on this matter for any related costs expended.

6. Plaintiff has incurred fees and costs in the amount of \$5,477.10 to date. This amount has been reasonably and necessarily incurred.

7. Because the claim for attorney fees may be included in a suit for breach of a written contract and suit on a note, which are claims listed in Texas Civil Practice & Remedies Code section 38.001, the Court can take judicial notice of the usual and customary attorney fees and the contents of the case file without receiving any further evidence. Tex. Civ. Prac. & Rem. Code § 38.004.

8. Nevertheless, the fees charged in this case are customarily charged in this area for the same or similar services for attorneys with similar experience, reputation, and ability, considering the amount in controversy, the type of controversy, the time limitations imposed, and the results obtained.

9. "My name is Matthew G. Cole, my date of birth is March 22, 1975, and my address is 3515 Clairmont, San Antonio Texas 78259. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Bexar County, State of Texas, on October 14, 2024."


Matthew G. Cole

THE COLE FIRM

FILED
1/30/2025 7:44 AM
Gloria A. Martinez
Bexar County District Clerk
Accepted By: Christina Carreon
Bexar County - 288th District Court

January 30, 2025

Matthew G. Cole

Via e filing

mgcole@colefirmtx.com

210.722.6433

Hon. Gloria A. Martinez
Bexar County District Clerk
100 Dolorosa
San Antonio, TX 78205

Re: *Zachry Construction Corporation v. Guntert & Zimmerman Const. Div., Inc.*; Case No. 2024CI11484 – **Request for Certified Copy of Default Judgment**

Dear Ms. Martinez,

I respectfully request a certified copy of the default judgment entered in the above-referenced matter on October 16, 2024.

Along with this filing, I have paid all necessary fees.

Please mail the certified copy to:

Shook, Hardy & Bacon L.L.P.
c/o Casey Douglas
555 Mission Street, Suite 2300
San Francisco, CA 94105

Thank you for your time and assistance. Please do not hesitate to contact me should you require any further information.

Thank you in advance. Should you require anything of me, please feel free to reach out at any time by phone or email.

Best Regards,



Matthew G. Cole