

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

In re: § **Chapter 11**
§
ZACHRY HOLDINGS, INC., et al. § **Case No. 24-90377 (MI)**
§
Debtors.¹ § **(Jointly Administered)**

**JOINT RESPONSE OF CHIYODA INTERNATIONAL CORPORATION AND
CB&I LLC TO DEBTORS' EMERGENCY MOTION TO INTERPRET
AND ENFORCE THE GOLDEN PASS SETTLEMENT AGREEMENT
(Related To Docket No. 792)**

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, may be obtained on the website of the Debtors' claims and noticing agent at <https://veritaglobal.net/zhi>. The Debtors' service address in these chapter 11 cases is: P.O. Box 240130, San Antonio, Texas 78224.



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Chiyoda International Corporation (“CIC”) and CB&I LLC (“CB&I” and with CIC, “Respondents”) hereby file this joint response (the “Response”) to the *Debtors’ Motion to Interpret and Enforce the Golden Pass Settlement Agreement* [Docket No. 792] (the “Motion”), and in support thereof represent as follows:

PRELIMINARY STATEMENT²

1. Zachry voluntarily withdrew from the CCZJV, rejected the JV Agreement, and broadly released Respondents, all while receiving corresponding releases from Respondents of hundreds of millions of dollars in potential claims against Zachry. The Term Sheet provided Zachry’s withdrawal from the CCZJV was effective on July 25, 2024, and the Court further approved these actions in the Final Order.

2. In the Term Sheet, Zachry “immediately agree[d] that it shall have no . . . further right to participate in any profits or proceeds [of the CCZJV] . . . immediately upon entry of the Interim Order.”³ Upon entry of the Final Order, Zachry was “withdrawn as a member of CCZJV on a final basis” and granted a full release to the CCZJV and Respondents.⁴ Zachry therefore unambiguously agreed that it has no further claim against or interest in the CCZJV or its former joint venture partners, and today, Respondents are the only parties in the CCZJV. Despite this agreement, Zachry now argues that Respondents, on behalf of the CCZJV, are obligated to pay Zachry a portion of the JV Funds (approximately \$1.7 million) and certain portions of the Levee Insurance Proceeds (up to approximately \$8.2 million). But this property belongs to the CCZJV. The Term Sheet Releases did not carve out or otherwise preserve any dispute regarding this

² Capitalized terms used but not defined in this Preliminary Statement are defined herein.

³ Docket No. 625, pp. 15–16 of 25.

⁴ *Id.* at p. 15 of 25; Docket No. 744.

property. The Term Sheet and related documentation stand on their own and unequivocally shut the door on Zachry's ability to take any further value out of the CCZJV.

3. This dispute is narrow. The first issue is whether the Term Sheet is ambiguous. The parties agree it is not.⁵ And rightly so. The parties negotiated the Term Sheet for weeks through sophisticated counsel. Everyone understood the *quid pro quo* for the Term Sheet. Indeed, Zachry's stated goal has always been for a global settlement that effectuated a clean break from the GPX Project.⁶

4. The second issue is whether the Court should award Zachry two specific buckets of CCZJV property: the JV Funds and the Levee Insurance Proceeds. Zachry's belated claim to this CCZJV property fails for two independent reasons. One, the Term Sheet clauses cited above—wherein Zachry relinquished any “right to participate in any profits or proceeds” of the CCZJV, wherein Zachry is withdrawn from the CCZJV, and wherein Zachry granted Respondents and the CCZJV a fulsome release—resolves all issues in Respondents' favor. Two, Zachry failed to schedule its interest in this CCZJV property in its Schedules and Statements. This failure judicially estops Zachry under clear Fifth Circuit law that, standing alone, bars Zachry from pursuing the JV Funds and the Levee Insurance Proceeds. With respect to the JV funds, the inquiry ends there.

5. With respect to the Levee Insurance Proceeds, the Term Sheet and related settlement documentation provides that the settlement does “not modify or otherwise affect the

⁵ *Infra* ¶ 39.

⁶ *E.g., Emergency Motion for Interim and Final Order (I) Approving the Settlement by and Among the Debtors, Golden Pass LNG Terminal LLC, CB&I LLC, Chiyoda International Corporation, CCZJV, (II) Authorizing the Parties to Perform Any and All Obligations Contemplated by the Settlement, (III) Scheduling a Final Hearing, and (IV) Granting Related Relief* [Docket No. 587] (the “Settlement Motion”) (seeking approval of “a proposed global settlement of GPX Project-related issues *that would resolve all of the issues* in the adversary proceeding and contested matters.”) [Docket No. 587, ¶ 5 (emphasis added)]; July 24, 2024 Hr'g Tr. 29:3–4 (Debtors' counsel stated, “We'll have a global settlement.”).

Debtors' entitlement to insurance coverage provided by any insurance carrier with respect to any claims made or related to the time period prior to rejection."⁷ Notably, this provision preserves the *Debtors'* right to *insurance coverage* for claims arising prior to Zachry's rejection of the JV Agreement. This provision does not preserve the Debtors' right to any insurance proceeds flowing into the CCZJV. Respondents do not seek to withhold funds in violation of this provision. As set forth below, the Levee Insurance Proceeds arise out of a first party insurance claim the CCZJV filed, and such proceeds rightfully belong to the CCZJV. Nothing in the Term Sheet or any other document alters those rights. Moreover, the CCZJV previously advanced funds to Zachry in contemplation of receiving potential insurance proceeds. Allowing Zachry to recover the Levee Insurance Proceeds would mean that Zachry is over-recovering while depriving the CCZJV of an asset it rightfully owns. Such a result is wholly inequitable, especially considering the many benefits to the Debtors' estates of the global settlement approved by the Court.

6. For these reasons and the reasons set forth below, Respondents respectfully request the Court to deny the Motion and confirm under the Term Sheet that Zachry unequivocally released any right to the JV Funds and the Levee Insurance Proceeds (or any other CCZJV property).

BACKGROUND⁸

I. The disputes begin with the JV Agreement, which created a Texas general partnership among the JV Parties.

7. These disputes arise from Zachry Industrial, Inc.'s ("Zachry") exit from the unincorporated joint venture (the "CCZJV") created pursuant to the Hybrid Joint Venture

⁷ Docket No. 625, p. 15 of 25.

⁸ Respondents stipulate and agree to the Motion's background section paragraphs 11–15 (except for the last sentence of ¶ 12), 17, and 19–21, solely for purposes of this dispute and the related hearing. Respondents reserve all rights regarding the interpretation of the MOU and the settlement documents' treatment of the JV Funds and Levee Insurance Proceeds (as such terms are defined herein).

Agreement, dated January 30, 2019 (as amended, the “JV Agreement”), among Zachry (with its affiliated debtors, the “Debtors”), CB&I, and CIC (together, the “JV Parties”).⁹ The JV Parties created the CCZJV to provide engineering, procurement, and construction services (the “EPC Services”) for a liquified natural gas facility in Sabine Pass, Texas (the “GPX Project”) pursuant to Contract No. GPP-EPC1 dated January 30, 2019, between Golden Pass LNG Terminal LLC (the “GPX Owner”) and the CCZJV (as amended, the “EPC Contract”).

8. Texas law governs the JV Agreement.¹⁰ Under Texas law, the CCZJV is treated as a general partnership.¹¹ Even if the contract purports to disclaim the partnership (like the JV Agreement § 2.6), general partnership law still applies.¹²

A. Zachry’s rights to participate in the CCZJV terminated on July 25, 2024.

9. On July 25, 2024 (the “Interim Order Date”), the Court entered its *Interim Order (I) Approving the Settlement by and Among the Debtors, Golden Pass LNG Terminal LLC, CB&I LLC, Chiyoda International Corporation, and CCZJV, (II) Authorizing the Parties to Perform Any and All Obligations Contemplated by the Settlement, (III) Scheduling a Final Hearing, and (IV) Granting Related Relief* [Docket No. 625] (the “Interim Order”). The Interim Order approved the attached settlement term sheet (the “Term Sheet”).

10. The Term Sheet’s extinguishment of Zachry’s interest in the CCZJV is unequivocal:

⁹ A true and correct copy of the JV Agreement, excluding the exhibits, is attached as Exhibit 1 to the *Declaration of Greg Stachurski in Support of the Debtors’ Emergency Motion to Interpret and Enforce the Golden Pass Settlement Agreement* [Docket No. 793] (“Stachurski Decl.”).

¹⁰ JV Agreement § 33.

¹¹ TEX. BUS. & ORG. CODE § 152.051(b) (“[A]n association of two or more persons to carry on a business of profit as owners creates a partnership, regardless of whether: (1) the persons intend to create a partnership; or (2) the association is called a ‘partnership,’ ‘joint venture,’ or other name.”).

¹² *Ingram v. Deere*, 288 S.W.3d 886, 895–96 (Tex. 2009).

Zachry shall conditionally withdraw as a member of CCZJV, with Zachry immediately agreeing that it *shall have no further Project Directorate member, and have no further right to participate in profits or proceeds*, make a claim or object to any action taken by the Project Directorate, Project Sponsors, Steering Committee or Financial Committee (as such terms are defined in the HJVA), [or] in the management of CCZJV, effective immediately upon entry of the Interim Order.

[Docket No. 625, pp. 15–16 of 25 (emphasis added)]. Zachry’s withdrawal from the CCZJV became final upon entry of the Final Order (defined below).

B. Zachry broadly released CB&I and CIC from all claims related to the JV Agreement.

11. The Term Sheet also requires each of CB&I and CIC—upon entry of the Final Order—to broadly and mutually release the Debtors “from any and all claims and causes of action, known, unknown, now existing or hereafter arising, related to or arising from the EPC Contract, the HJVA, or the GPX Project” [Docket No. 625, pp. 20–21] (the “Term Sheet Releases”). The Term Sheet Releases contain just a single carveout: for *CB&I and CIC* to pursue “recovery from any applicable insurance carrier related to warranty claims against the Debtors.” [*Id.* at p. 21]. The Term Sheet Releases do not include any carveouts for the Debtors as it relates to the JV Funds and the Levee Insurance Proceeds. While the Final Order acknowledges that the Court may hear these issues at a future date, the relevant language in no way limits the mutual release of all claims, which are intended to be and are comprehensive.

12. Thus, the Term Sheet’s plain language requires Zachry to walk away from the CCZJV in its entirety. Now, Zachry refuses to acknowledge this reality. To avoid the uncertainty of delaying entry of the Final Order and the Settlement Agreement, CB&I and CIC agreed to defer resolution of Zachry’s misplaced claims to the JV Funds and the Levee Insurance Proceeds and present them to the Court for resolution. Importantly—contrary to Zachry’s assertion—in so

agreeing, Respondents did not concede that Zachry's claims were proper or otherwise carved out of the Term Sheet Releases.

C. In its Final Order, the Court approved the Term Sheet, which is the operative document, subject to exceptions that do not impact Zachry's full release and waiver of any right to the CCZJV's profits and proceeds.

13. On August 12, 2024, the Court entered its *Final Order (I) Approving the Settlement by and Among the Debtors, Golden Pass LNG Terminal LLC, CB&I LLC, Chiyoda International Corporation, and CCZJV (II) Authorizing the Parties to Perform Any and All Obligations Contemplated by the Settlement, and (III) Granting Related Relief* [Docket No. 744] (the "Final Order"). The Final Order approved on a final basis the (i) Term Sheet and (ii) Confidential Settlement Agreement and Release in Connection with Settlement Term Sheet (the "Settlement Agreement").¹³

14. The Final Order states, "to the extent of any conflict between the terms of the Settlement Agreement and the Settlement Term Sheet, ***the Settlement Term Sheet shall govern, except as otherwise set forth in the Settlement Agreement.***" [Docket No. 744, n.2 (emphasis added)]. The Settlement Agreement incorporates the Term Sheet "for all purposes." [Docket No. 739-1 ¶ 2]. "To the extent of any conflict between the [Settlement] Agreement and the Settlement Term Sheet, the terms of paragraphs 6, 7, 11, 12, 13, 14, and 15 of this [Settlement] Agreement shall govern, and the terms of the Settlement Term Sheet shall govern with respect to all other provisions." [*Id.* at ¶ 2].

15. Paragraphs 12 and 13 of the Settlement Agreement state that Zachry is not entitled to the JV Funds or the Levee Insurance Proceeds (as defined below) except as "agreed among Zachry, CB&I, and Chiyoda or as ordered by this Court; *provided* that this sentence shall not be

¹³ The Settlement Agreement is at Docket Number 739-1.

construed against any Party or its entitlement to (i) any relief or (ii) assert any claims or defenses regarding the matters set forth in this paragraph.” Settlement Agreement ¶¶ 12–13; *see also* Final Order ¶¶ 10–11. This language gives Zachry no new rights—instead, it merely contemplated that the Court may consider at a future date whatever rights Zachry had (or did not have) under the Term Sheet.

II. The CCZJV property relevant to the dispute.

A. The CCZJV’s receiving account.

16. In the ordinary course of business, the CCZJV invoices the GPX Owner pursuant to the “Compensation, Invoicing and Payment” procedures in the EPC Contract.¹⁴ The GPX Owner reviews the invoices and pays the CCZJV the undisputed portions of each invoice.¹⁵ The CCZJV receives the GPX Owner’s payments into a Bank of America account ending with xx6655 (the “Receiving Account.”). The JV Agreement, in turn, provides that “payments received by the Joint Venture under the EPC Contract shall be Joint Venture property.”¹⁶ The JV Parties agree that when the Debtors filed these bankruptcy cases, the JV Receiving Account had a balance of approximately \$2,260,458.00 (the “JV Funds”).¹⁷

17. The CCZJV may then disburse JV Funds to the joint venture parties if (i) there are “Available JV Funds” and (ii) the Financial Committee (as defined therein) approves the disbursement.¹⁸ The JV Agreement defines “Available JV Funds” as “all amounts in the Joint Venture bank accounts, with the exception of funds required to meet any disbursements that might

¹⁴ EPC Contract § 8.

¹⁵ *Id.* at § 8.3.1.

¹⁶ JV Agreement § 7.1.

¹⁷ Mot. ¶ 21.

¹⁸ JV Agreement § 19.1.

arise or are expected to arise during the period of the foregoing advance.”¹⁹ The Financial Committee did not approve any disbursements of the JV Funds in the Receiving Account prior to the bankruptcy cases. And they haven’t since. Moreover, the operation of the Receiving Account requires “unanimous authorization among the Parties.”²⁰ The CCZJV did not unanimously authorize any disbursements of the JV Funds from the Receiving Account prior to, or after, the bankruptcy cases.

18. Zachry argues the CCZJV is obligated to pay Zachry approximately \$1,737,378.00 from the JV Funds. As explained herein, Zachry is wrong.

B. The Levee insurance proceeds.

19. As part of the EPC Services, the CCZJV constructed a levee that surrounds the GPX Project. Later, issues with the levee arose that required remediation.²¹

20. To obtain reimbursement for the remediation work, the CCZJV submitted a claim (the “Levee Insurance Claim”) under the Professional Liability Insurance Policy Issued by Allied World Surplus Lines Insurance Company, Policy No. 0311-9289 (the “Policy”).²² The CCZJV is the “First Named Insured” under the Policy.²³

¹⁹ *Id.*

²⁰ *Id.* at § 18.

²¹ CIC strongly rejects any implication that it is responsible for any issues with the levee.

²² *Declaration of Darren Green in Support of the Joint Response of Chiyoda International Corporation and CB&I LLC to Debtors’ Emergency Motion to Interpret and Enforce the Golden Pass Settlement Agreement*, filed contemporaneously herewith (the “Green Decl.”), ¶¶ 9–11.

²³ *Id.* at ¶ 10.

21. The CCZJV made the Levee Insurance Claim under the Policy’s “Endorsement No. 4” entitled “Rectification Endorsement.”²⁴ The relevant part of the Rectification Endorsement is reproduced below:²⁵

ENDORSEMENT NO. 4

RECTIFICATION ENDORSEMENT

This Endorsement, effective at 12:01 a.m. on July 1, 2019, forms part of

Policy No.	0311-9289
Issued to	CCZJV-GPX
Issued by	Allied World Surplus Lines Insurance Company

In consideration of the premium charged, it is hereby agreed that:

In addition to the coverage granted under Coverage A. of this Policy, but subject to the same Limits of Liability and with the Company’s prior written approval, the Company agrees to indemnify the First Named Insured for the Named Insured’s actual cost incurred in rectifying a Wrongful Act in any part of the construction works or engineering works for any project upon which the Named Insured is providing design/build services provided:

22. In March 2024, the CCZJV participated in mediation to resolve the Levee Insurance Claim. On March 6, 2024, the CCZJV submitted a mediation statement to mediator, Steve Nelson, with Markel / Suretec (the “Mediation Statement”).²⁶ In the Mediation Statement, the CCZJV asserts that the Levee Insurance Claim arises from Rectification Endorsement.

23. The CCZJV has not resolved the Levee Insurance Claim with its insurer and has not received any insurance proceeds (the “Levee Insurance Proceeds”). The CCZJV’s receipt of the Levee Insurance Proceeds remains uncertain. Under the JV Agreement, however, any insurance proceeds are the CCZJV’s property.²⁷ Indeed, as stated above, the CCZJV is the “First

²⁴ *Id.* at ¶ 11.

²⁵ *Id.* at Exhibit A, p. 16 of 34 (highlighting added).

²⁶ *Id.* at Exhibit B (filed under seal).

²⁷ JV Agreement § 21.1 (stating that the CCZJV’s revenue includes “all monetary amounts and assets actually received by or accrued to the Joint Venture or any of the Parties hereto in connection with the EPC Contract including, but not limited to . . . insurance proceeds . . .”).

Named Insured” under the Policy. In other words, the Levee Insurance Proceeds, if any, are CCZJV property *first* and only are distributed to JV Parties as may be approved among the JV Parties. As it stands today, Zachry is not a JV Party and the current JV Parties have not approved any such distribution (nor did the JV Parties ever approve any such distribution of Levee Insurance Proceeds actually received prior to Zachry’s exit).

24. To fill the gap while waiting for the Levee Insurance Claim to process, the JV Parties entered into the Memorandum of Understanding for MOC Settlement, dated February 28, 2022 (the “MOU”).²⁸ The MOU established the terms under which the CCZJV would “make provisional payments” for remediating the levee by distributing amounts from the “Joint Venture Common Pool bank account” to each of CIC, CB&I, and Zachry.²⁹ The MOU states, “the Levee failure reconciliation shall be . . . finalized in concurrence with the related insurance claims settlement amounts and such other applicable adjustments.”³⁰ There was never any contemplation that the Levee Insurance Proceeds would ever go directly to another party other than the CCZJV since they originate from a CCZJV insurance policy. Any further distributions of Levee Insurance Proceeds would be determined at the time received, just like any other cash held by the CCZJV—there is not a special agreement that exists as it relates to these funds, as distinct from any other funds held by the CCZJV.

25. Zachry argues that the CCZJV must pay Zachry a portion of the Levee Insurance Proceeds before the CCZJV retains any amounts, including amounts to repay the provisional

²⁸ A true and correct copy of the MOU, excluding exhibits, is attached as Exhibit 2 to Stachurski Decl.

²⁹ MOU pp. 1–2 (“[T]he Parties have submitted insurance claims for levee failure remediation costs,” but such claims “have not yet been resolved. Therefore, the Parties agree to make provisional payments from the Joint Venture Common Pool bank account to each Party, pending resolution of such insurance claims.”).

³⁰ *Id.* at p. 3.

payments made pursuant to the MOU. There was never a contemplation that the Levee Insurance Proceeds would be anything other than CCZJV property and there can be no other answer based on the relevant documents. No party other than the CCZJV has any direct right to these insurance proceeds. Thus, the CCZJV is entitled to use the Levee Insurance Proceeds as it sees fit, including to reimburse itself for the provisional pre-payments the CCZJV made or otherwise, before paying a single dollar to the JV Parties. Any Levee Insurance Proceeds belong to the CCZJV alone. Nothing obligates the CCZJV to pay Zachry—who caused significant and extensive damage to the CCZJV, rejected the JV Agreement, and then withdrew—any of the Levee Insurance Proceeds.

III. The Debtors’ Schedules and Statements fail to assert any interest in the JV Funds or the Levee Insurance Proceeds.

26. On July 16, 2024, Zachry filed its Schedules of Assets and Liabilities [Docket No. 518] (the “Schedules”) and Statement of Financial Affairs [Docket No. 539] (the “Statements”).

27. At the Section 341 Meeting of Creditors held on August 15, 2024, the Debtors testified that in preparing the Schedules and Statements, they worked “very closely” with their counsel, senior management, and “a large team of people which gathered financial information, contracts, other liabilities, contingent obligations.” Preparing the Schedules and Statements “was a very, very extensive process over a period of many weeks.”³¹ Put simply, the Debtors were meticulous in preparing their Schedules and Statements.

28. The global notes to the Schedules and Statements provide that: “Amount[s] presented in Schedule A/B Part 1 exclude certain accounts related to the Debtors’ joint ventures (‘JV Accounts’). The Debtors have an interest in the JV Accounts but do not maintain unilateral control over the funds deposited in them.” [Docket No. 518, p. 11 of 226; Docket No. 539, p. 11

³¹ Aug. 15, 2024 341 Mt’g Audio at 9:57–10:48.

of 149]. Despite this reservation, Zachry has made explicit demands to Respondents that it is entitled to portions of the JV Funds and Insurance Levee Proceeds. Yet Zachry entirely failed to assert a contingent interest to the JV Funds in its Schedules and Statements. With respect to the Levee Insurance Proceeds, Zachry states it has no interest in insurance policies, as shown below (snip from the Schedules, p. 32 of 226).

73. Interests in insurance policies or annuities

73.1 None

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RESPONSE AND ARGUMENT³²

29. Respondents respectfully request the Court confirm that, under the Term Sheet, Zachry unequivocally released any right to the JV Funds and the Levee Insurance Proceeds (or any other CCZJV property). In the alternative, the Court should hold that Zachry is judicially estopped from asserting an interest in the JV Funds or the Levee Insurance Proceeds because it failed to schedule such interests.

I. Point of Error #1: Zachry states that “the Final Order does not alter the Debtors’ contractual entitlement to the Levee Insurance Proceeds or Receiving Account Funds,” but Zachry released all rights to the CCZJV’s profits and proceeds on the Interim Order Date.

A. The Final Order preserved Zachry’s rights to the JV Funds and Levee Insurance Proceeds, solely to the extent those rights remained under the Term Sheet (which they do not).

30. Acknowledging the weakness of their arguments based on Term Sheet’s plain language, the Debtors appear to try to create a carve out from the Term Sheet Releases for the JV Funds and Levee Insurance Proceeds. But no such carveout exists, and the Court should reject this attempt to redraft the settlement documents.

³² Texas law governs the contractual-interpretation issues in the Motion and this Response. These are pure questions of law.

31. Specifically, the Debtors argue that they “have not waived any rights with respect to the levee repair insurance proceeds” or “the funds in the Receiving Account.” Mot. ¶¶ 23–24. In support, they cite the “release of CB&I and Chiyoda by the Debtors,” which preserves the Debtors right “to proceeds of applicable existing insurance policies or funds held in the CCZJV accounts, *to the extent set forth in paragraphs 12 and 13 of this Settlement Agreement.*” Mot. ¶ 23 (emphasis added).

32. This selectively quoted language is not a carveout of the Term Sheet Releases. Instead, the reservation relies on Settlement Agreement paragraphs 12 and 13, which each state that the Debtors “shall not be entitled” to the JV Funds or the Levee Insurance Proceeds “unless agreed among Zachry, CB&I and Chiyoda or ordered by the Bankruptcy Court.” [Docket No. 739-1 ¶¶ 12–13].³³ Moreover, these paragraphs state that they should not be construed “against any Party or its entitlement to [] any relief.” [*Id.*]. Paragraphs 12 and 13 did not grant the Debtors any new rights. Instead, they only contemplated that the Court may rule at a future date on the Debtors’ rights to these assets under the Term Sheet (of which there are none) after entry of the Final Order.

B. The Term Sheet is the operative document for these disputes and provides that Zachry released its rights to the JV Funds and the Levee Insurance Proceeds.

33. The JV Parties agreed that the Term Sheet is dispositive. The Final Order approved the Settlement Agreement and Term Sheet on a final basis. It states that the Term Sheet governs in the event of a conflict, unless an exceptions applies. And no exception applies to either of the Debtors’ decisions to (i) withdraw from the CCZJV (which has occurred on a final basis) and (ii) relinquish their rights to the CCZJV’s profits and proceeds as of the Interim Order Date.

³³ For the avoidance of doubt, the JV Parties have not reached any agreement with respect to these funds.

34. The Interim Order, Term Sheet, Final Order, and Settlement Agreement are all consistent on the Debtors' withdrawal of their right to participate in the CCZJV as of the Interim Order Date and complete withdrawal as of the Final Order, as explained in more detail below. Accordingly, because there is no conflict, under the Final Order, the Term Sheet governs on this issue.

C. Interpreting the MOU is outside the scope of this dispute.

35. In the Motion, the Debtors imply that they seek an advisory opinion from the Court regarding the meaning of the MOU. *E.g.*, Mot. ¶ 23 (“The Settlement does nothing to undermine the Debtors’ entitlement to participate in the reconciliation related to the levee repair costs and advances, as set forth in the MOU.”); ¶ 28 (“As set forth in the MOU, the parties agreed to use these proceeds to compensate for additional costs and lost profits The Settlement does not modify or even reference the MOU”); ¶ 32 (“The Court can consider parol evidence to determine the parties’ intent, including the MOU.”). Consideration and interpretation of the MOU is improper for several reasons.

36. As explained below, the parties agree the applicable settlement documents are not ambiguous, and it is blackletter law that extrinsic evidence is not permitted under such circumstances. *Infra* ¶ 40. From a procedural standpoint, the Debtors have not requested the Court issue a declaratory judgment interpreting the MOU through the appropriate procedural vehicle. *See* 28 U.S.C. § 2201 (permitting declaratory judgments “upon the filing of an appropriate pleading”). Indeed, the Debtors’ Motion is styled as a motion to “interpret enforce the Golden Pass Settlement Agreement”—not the MOU.

37. Moreover, the Debtors seek to use the MOU to show that they are entitled to first dollars out from any recoupment of the Levee Insurance Proceeds. Mot. ¶ 3 (arguing the Debtors are entitled to about \$8.2 million of the Levee Insurance Proceeds); Stachurski Decl. ¶ 11 (same).

The MOU—which was signed over two years ago—does not speak to the disposition of the Levee Insurance Proceeds at all. It merely states that the JV Parties will agree to a reconciliation if the CCZJV receives such amounts.³⁴ Thus, any argument that the MOU can be supplemented by oral evidence on the JV Parties’ purported agreement to distribute first dollars of the Levee Insurance Proceeds to Zachry violates the Statute of Frauds, which provides that an agreement (under these circumstances) must be in writing. TEX. BUS. & COM. CODE § 26.01(a), (b)(6) (providing that an agreement must be in writing if it is “an agreement which is not to be performed within one year from the date of making the agreement”).

38. Finally, the MOU is inapplicable to this dispute. The Term Sheet is the operative document. Under the Term Sheet, the Debtors have no entitlement to the Levee Insurance Proceeds based on the Debtors’ withdrawal from the CCZJV, release of CIC and CB&I, and relinquishment of their interests in the CCZJV’s profits and proceeds, all as explained herein.

II. Point of Error #2: Zachry states “the Debtors’ entitlement to levee insurance proceeds is unambiguous, and the Court can infer the Debtors’ rights to funds in the receiving account,” but Zachry (i) waived its rights to such property in the Term Sheet, and (ii) is judicially estopped from asserting any claim.

A. The Term Sheet and Settlement Agreement are not ambiguous.

39. Respondents and Zachry agree that the Term Sheet is not ambiguous. Zachry states repeatedly that there is “no ambiguity” in such documents. Mot. ¶ 32 (“There is no ambiguity with respect to the Debtors’ right to receive insurance proceeds related to the levee repair claim.”); (“Even if there were any ambiguity (there is not)”); ¶ 33 (“To the extent that the Settlement Agreement’s silence with respect to funds in the Receiving Account creates ambiguity (it does

³⁴ MOU ¶ 2(b) (“[T]he Parties agree that these provisional payment amounts are subject to reconciliation upon finalization of the final insurance claims, settlement amounts and other applicable adjustments.”).

not)”); p. 14, heading (“The Debtors’ Entitlement to Levee Insurance Proceeds is Unambiguous”).

40. Because the Term Sheet and Settlement Agreement are unambiguous, the Court should not admit any extrinsic evidence. *Northstar Offshore Grp., LLC v. A&B Valve & Piping Sys, LLC (In re Northstar Offshore Grp., LLC)*, Adv. No. 17-03406, 2018 Bankr. LEXIS 3554, at *16 (Bankr. S.D. Tex., Nov. 5, 2018) (Isgur, J.) (“Contract interpretation first requires examining the ‘four corners’ of the contract and only considers extrinsic evidence if the contract is ambiguous.”). Instead, the Court should interpret and enforce the plain language of these contracts as a matter of law. Mot. ¶ 30 (citing controlling Texas authorities).

B. The Term Sheet clearly records Zachry’s intentional and unequivocal release of any claim to the JV Funds and the Levee Insurance Proceeds.

i. Zachry released any rights to the JV Funds.

41. The Term Sheet states that, as of the Interim Order Date, Zachry no longer had any right to participate in the CCZJV (which became final on entry of the Final Order). And Zachry voluntarily relinquished its right to “participate in profits or proceeds” of the CCZJV. [Docket No. 625, pp. 15 of 25]. “Proceeds” means “(1) the total amount brought in or (2) the net amount received (as for a check or from an insurance settlement) after deduction of any discount or charges.”³⁵

42. GPX paid the JV Funds to the CCZJV as compensation for providing the EPC Services. The JV Funds are unequivocally the CCZJV’s proceeds. The Term Sheet provides that Zachry released *any right* to the CCZJV’s proceeds, which includes the JV Funds. Moreover,

³⁵ *Proceeds*, MERRIAM-WEBSTER (last visited Aug. 27, 2024), <https://www.merriam-webster.com/dictionary/proceeds>; *Proceeds*, BLACK’S LAW DICTIONARY (12th ed. 2024) (“Money, checks, and the like are termed cash proceeds.”).

Zachry has now withdrawn from the CCZJV, so Zachry has no right to any assets held by the CCZJV as it stands today. Zachry also provided a full release of all claims it has or could have against the CCZJV and Respondents. This issue is settled.

ii. Zachry released any rights to the Levee Insurance Proceeds.

43. The Term Sheet distinguishes between Zachry’s entitlement to insurance proceeds and insurance coverage. Zachry released its claim to insurance proceeds flowing into the CCZJV but retained its right to coverage for itself.

44. First, just like it released its interest in the JV Funds, Zachry also released its interest in the Levee Insurance Proceeds under the Term Sheet. Respondents fully adopt the arguments in Section II.B(i) above with respect to the Levee Insurance Proceeds.

45. Second, the Term Sheet provides that the “Debtors’ rejection of their interests in the EPC Contract and the HJVA shall not modify or otherwise affect the *Debtors’* entitlement to insurance coverage provided by any insurance carrier with respect to any claims made or related to the time period prior to rejection.” [Docket No. 625, p. 15 of 25].

46. The Term Sheet’s use of the word “Debtors” here is critical. The CCZJV—not the Debtors—pursued recovery of the Levee Insurance Proceeds under insurance coverage available only to the CCZJV, not the Debtors. *Supra* ¶¶ 20–22. Specifically, the Levee Insurance Proceeds flow from a claim the CCZJV made against the Policy, and the CCZJV is the “First Named Insured.”³⁶

47. Moreover, the Levee Insurance Claim arises from the Policy’s Rectification Endorsement. *Supra* ¶ 21. As the Rectification Endorsement makes clear, it is an indemnification provision in favor of only the “First Named Insured,” which the Policy defines as the CCZJV. In

³⁶ Green Decl. ¶ 10.

the Mediation Statement, the CCZJV—which at the time included Zachry—repeatedly states that the Levee Insurance Claim arises under the Rectification Endorsement.³⁷

48. The Debtors never had any rights whatsoever to make any claim under the Policy’s Rectification Endorsement, nor have they made any such claim. Thus, it is the CCZJV’s insurance coverage—not the Debtors’—that is at issue. If the Debtors have their own insurance coverage for the levee remediation issues, they are certainly free to pursue it. But the Levee Insurance Proceeds—if they ever materialize—will be based on a claim asserted by the CCZJV under the Policy’s Rectification Endorsement, which is only available to the CCZJV. Thus, any proceeds from such claim are the CCZJV’s property. And nothing in the Term Sheet created a right for the Debtors to recover insurance proceeds that belong to the CCZJV.

49. Prior to entry of the Final Order, Respondents were willing to discuss providing excess insurance proceeds to Zachry in an agreed proportion following reimbursement of amounts already paid pursuant to the MOU (even though such an outcome is not required since the Levee Insurance Proceeds are the CCZJV’s asset). But Zachry is attempting to recover the first dollar of such proceeds. This outcome would leave the CCZJV unreimbursed for amounts paid out specifically in contemplation of receiving its own insurance proceeds. This result would be wholly inequitable.

iii. The parties heavily negotiated the Term Sheet, and the Debtors’ claims they overlooked these issues is unpersuasive.

50. Again acknowledging the weakness of their textual argument, the Debtors shockingly contend that they were so focused on resolving “several gating issues” with the GPX

³⁷ *Id.* at Ex. B (filed under seal). The CCZJV made the Mediation Statement through the CCZJV’s agent (its attorney) at a time that Zachry was still part of the CCZJV. Therefore, under Federal Rule of Evidence 801(d)(2)(D), the admissions therein relative to the background about the Levee Insurance Proceeds are admissible as an admission of a party opponent against Zachry.

Owner that they did not “focus on intra-joint venture issues” in the settlement documents and decided to let the Court “decide these matters.” Mot. ¶ 2. Translated to plain English: “We were too busy and just missed it.”

51. Respondents disagree. The parties heavily negotiated the Term Sheet and the other settlement documents for many weeks, spending millions of dollars on professional fees in the process. The Term Sheet is an all-encompassing, global resolution. But, at the eleventh hour, the Debtors raised these disputes with Respondents. Respondents agreed to have this dispute following entry of the Interim Order because this dispute does not alter terms of the global settlement; it simply enforces the terms of the settlement already agreed.

52. At the interim hearing, the Debtors’ counsel stated, “We’ll have a global settlement.”³⁸ In the Settlement Motion, the Debtors represented that the settlement was “a proposed global settlement of GPX Project-related issues *that would resolve all of the issues* in the adversary proceeding and contested matters.” [Docket No. 587 ¶ 5 (emphasis added)]. The Debtors continued: “The Settlement will resolve *all disputes, controversies, claims, and causes of action* arising out of or otherwise related to the GPX Project, the EPC Contract, and the HJVA, including the GPX Litigation and *the Contested Matters*.” [*Id.* at ¶ 32 (emphasis added)]. The Debtors’ definition of “Contested Matters” includes the JV Partner Motion (defined below). [*Id.* at ¶ 31]. Under the JV Partner Motion, Respondents sought relief from the stay to exercise their remedies under the JV Agreement to remove Zachry from the CCZJV, which would have stopped Zachry from making the claims it now asserts in the Motion. All parties intended the settlement to cover all disputes, including the intra-joint venture issues regarding the JV Funds and the Levee Insurance Proceeds.

³⁸ July 24, 2024 Hr’g Tr. 29:3–4.

53. At the interim hearing, the Court gave all parties an opportunity to affirm that the Term Sheet “binds everybody” so that the Court “would not have the right to change the term sheet, but [the Court] would have the right . . . to take the term sheet and if there’s a disagreement, say no, this is the answer to how we’re implementing the term sheet. The deal remains.”³⁹ The Court expressed continued concern that the deal was done after entry into the Term Sheet, addressing the Debtors:

I don’t know that I’m going to let you make that significant step unless I know that the whole deal is a done deal I don’t think I could in good conscience approve this, if it then had the possibility of blowing up where somebody could say no, no deal, we’re walking away. And I want to know that nobody can walk away ***[W]hat my order means is that you are acquiescing that the Court enforces the term sheet come hell or high water. The deal is done and we’re not going to revisit whether it’s done. I can’t change the term sheet, but I can enforce it. [Is] that your client’s consent?***⁴⁰

In response, each JV Party consented to the Court’s terms of approving the settlement.⁴¹

54. It simply cannot be that the Debtors did not “focus on intra-joint venture issues.” The Term Sheet plainly says the Debtors (i) would have “no further rights to participate in profits and proceeds” of the CCZJV and (ii) broadly released Respondents from any claims related to the “EPC Contract, the HJVA, or the GPX Project.” [Docket No. 625, pp. 15, 20–21 of 25]. And if the Debtors are to be believed, then the Debtors should bear the burden of their failure to “focus on intra-joint venture issues” while negotiating the Term Sheet, not Respondents.

55. In sum, the Term Sheet, which is the operative document here, addressed all of the “Contested Matters,” which included settling all of the joint venture disputes at issue here.

³⁹ July 24, 2024 Hr’g Tr. at 31:23–32:4.

⁴⁰ *Id.* at 32:16–33:6 (emphasis added).

⁴¹ Debtors: “Yes, it is.” (*Id.* at 33:7); CB&I: “I would confirm the same for CB&I.” (*Id.* at 36:11); CIC: “Chiyoda confirms that it is supportive of the term sheet and the Court’s authority to enforce the terms of the term sheet.” (*Id.* at 37:16–18).

C. Zachry is judicially estopped from asserting claims to the CCZJV property.

56. Schedule A/B requires a debtor to disclose “all property” including property “in which the debtor has any other legal, equitable, or future interests.” *E.g.*, Schedules, p. 22 of 226. “It goes without saying that the Bankruptcy Code and Rules impose upon bankruptcy debtors an express, affirmative duty to disclose all assets, *including contingent and unliquidated claims.*” *In re Coastal Plains, Inc.*, 179 F.3d 197, 207–08 (5th Cir. 1999) (emphasis in original). “Viewed against the backdrop of the bankruptcy system and the ends it seeks to achieve, the importance of this disclosure duty cannot be overemphasized.” *Id.* at 208. The Fifth Circuit Court of Appeals has adopted the principle that “[t]he interests of both the creditors . . . and the bankruptcy court . . . are impaired when the disclosure provided by the debtor is incomplete.” *Id.* (quoting *Rosenshein v. Kleban*, 918 F. Supp. 98, 104 (S.D.N.Y. 1996)). In applying this principle, in *In re Coastal Plains, Inc.*, the Fifth Circuit held that by omitting “the claims from its schedules . . . [the debtor] represented that none existed.” *Id.* at 210. The Fifth Circuit further held that to apply “judicial estoppel for bankruptcy cases, the debtor’s failure to satisfy its statutory duty is ‘inadvertent’ only when, in general, the debtor either lacks knowledge of the undisclosed claims or has no motive for their concealment.” *Id.*; *Dahlin v. Dahlin (In re Dahlin)*, Adv. No. 17-03425, 2018 WL 2670501, at *5 (Bankr. S.D. Tex. May 16, 2018) (Isgur, J.) (citing *In re Coastal* and explaining debtor has burden to show judicial estoppel does not apply).

57. Other than a global notes reservation, Zachry did not schedule its interests in the JV Funds or the Levee Insurance Proceeds. *Supra* ¶ 28. If Zachry believed it had a contingent interest in this CCZJV property, it was required by law to include that interest in its Schedules and Statements. Zachry’s failure to do so is a representation that it has no claim to the JV Funds or the Levee Insurance Proceeds. Unless Zachry can satisfy its burden “to prevent the application of

estoppel,” the Court should find that Zachry is judicially estopped from asserting this interest now. *Dahlin*, 2018 WL 2670501, at *5.

III. Point of Error #3: The Debtors argue the settlement documents are silent as to the JV Funds, but this reading leads to an absurd result that undermines the entire settlement.

58. The Debtors argue that the settlement documents are silent “with respect to funds in the Receiving Account” and that the silence should not be construed as a waiver. Mot. ¶¶ 4, 33. The Debtors ask the Court to “infer the parties’ intent from other provisions” in which the parties “knew how to draft an exclusion where they intended.” *Id.* ¶ 33. This request is absurd.

59. First, the Debtors gave Respondents the Term Sheet Releases when the Final Order was entered. Specifically, the Term Sheet reads:

Upon entry of the Final Order, each of CB&I and Chiyoda shall execute mutual releases with the Debtors (and each other’s respective affiliates, parents, representatives, members, member parents, and member parent affiliates, along with their shareholders, related parties, officers, directors, employees, agents, professionals, successors, and assigns) *from any and all claims* and causes of action, known, unknown, now existing or hereafter arising, *related to or arising from the EPC Contract, the HJVA, or the GPX Project*. For the avoidance of any doubt, the foregoing mutual releases shall include any claims arising under or in connection with parent company guarantees provided in connection with the HJVA. The foregoing releases shall not prevent CB&I or Chiyoda from pursuing recovery from any applicable insurance carrier related to warranty claims against the Debtors, at no expense to the Debtors, with which the Debtors will reasonably cooperate.

Term Sheet, Docket No. 625, pp. 20–21 of 25 (emphasis added).

60. Tellingly, the last sentence includes a carve out for Respondents’ benefit, showing the Debtors knew “how to draft an exclusion.” Thus, nothing stopped the JV Parties from agreeing—if they so chose—from including an exclusion for the JV Funds (and Levee Insurance Proceeds) in the Term Sheet’s releases. But the JV Parties did not so agree; each JV Party consented to the language quoted above.

61. Second, the Term Sheet is not silent regarding the JV Funds. The Term Sheet states the Debtors waived their right to participate in the CCZJV’s “profits and proceeds.” As provided above, the JV Funds are proceeds under the most basic definition of the term.

62. Third, extending the Debtors’ argument to its logical conclusion undermines the entire settlement. The Debtors argue that Respondents’ failure to include specific releases of the Debtors’ claims to the JV Funds in the Term Sheet means the Debtors’ rights to the JV Funds survive the Term Sheet Releases. But if true, this argument renders every release agreement completely meaningless unless it explicitly states every single claim and right subject to the release with granular specificity. Such a reading of release agreements is absurd. *Hamman v. Lyle (In re Houston Bluebonnet, L.L.C.)*, Adv. No. 16-3251, 2021 WL 4562255, at *10 (Bankr. S.D. Tex. Oct. 5, 2021) (Isgur, J.) (“[C]ontract interpretation should be a utilitarian endeavor that does not lead to absurd results.”) (citations omitted).

63. Such an exercise in this case—involving what the Court correctly observed is “one of the major construction projects in the world right now”—would have taken months or years.⁴² An agreement listing every single, specific claim the JV Parties were releasing among themselves on a project the size of the GPX Project, and then verifying and agreeing to each such claim, would have run hundreds, if not thousands, of pages. That is why parties generally, and the JV Parties specifically, used broad and general release language like the Term Sheet Releases.

64. Finally, the Debtors’ “not specifically listed” argument would undermine the entire settlement. If a claim must be specifically listed to be released, and the Term Sheet lacks such a comprehensive list, then vast, unresolved disputes of hundreds of millions of dollars remain among

⁴² July 24, 2024 Hr’g Tr. at 52:16–17.

the JV Parties. Of course this outcome is not the case, and the Court should reject the Debtors' argument.

IV. Point of Error #4: The Debtors argue they are “entitled to levee insurance proceeds and receiving account funds under applicable law,” but they waived their rights under the Term Sheet, and the JV Agreement does not require such payment to the Debtors.

65. Respondents agree with Zachry that under Texas partnership law, a “breach of a joint venture or partnership agreement does not result in the forfeiture of the breaching partner’s interest.” Mot. ¶ 34. A partners’ right to any interest of the joint venture, however, is limited to how the governing documents distribute the interests to the partners, to which the Debtors concede. Mot. ¶ 34 (“[A] joint venture agreement governs the rights of the parties to the agreement.”).

66. The Debtors incorrectly state that, despite a material breach of the JV Agreement, under the JV Agreement, they are “entitled to payment for [their] Own Work for which the joint venture has received payment from the owner.” Mot. ¶ 35. In support, the Debtors cite *a portion* of JV Agreement § 13.1.A. The Debtors omit the entirety of this section, which reads:

Unless otherwise agreed in writing by the Project Sponsors, said Defaulting Party’s right to receive any distribution of profits, proceeds and other distributions of or payments from the Joint Venture, *except for payments for Defaulting Party’s completed Own Work for which the JV has received payment from Owner, as provided in this Agreement*, shall be and remain assigned and suspended until reinstated as set forth in Article 14 (Repayment on Demand) of this Agreement.

JV Agreement § 13.1.A (emphasis added).

67. Thus, the defaulting party (i.e., Zachry) can receive payment for “Own Work . . . as provided in this Agreement.” *Id.* And under the JV Agreement, the JV Funds are disbursed to the joint venture partners only if (i) there are Available JV Funds and (ii) the Financial Committee has approved the disbursement. *Supra* ¶ 17. These conditions were not met prior to the bankruptcy cases or the Interim Order Date. Thus, even under the JV Agreement, the Debtors are not entitled to Levee Insurance Proceeds or the JV Funds.

68. Perhaps most importantly, the Term Sheet modified the Debtors' right to any of the CCZJV's property, regardless of the JV Agreement. As of the Interim Order Date, Zachry conditionally withdrew as a member of the CCZJV, released all rights to the CCZJV's profits and proceeds, and as of the Final Order, rejected all of their interests in the JV Agreement. [Docket No. 625, p. 15 of 25; Docket No. 744 ¶ 4]. Upon entry of the Final Order, Zachry was completely withdrawn from the CCZJV. Thus, the Debtors cannot now rely on the JV Agreement to recover property from the CCZJV. *Lauter v. Citgo Pet. Corp.*, Civ. A. No. H-17-2028, 2018 WL 801601, at *15 (S.D. Tex. Feb. 8, 2018) (“[The debtor’s] rejection of the [Agreement] not only relieved the estate of its post-petition performance obligations, but also relieved the estate of its ability to assert claims for post-petition breaches thereof.”).

V. Point of Error #5: Zachry argues that “depriving the Debtors of insurance proceeds and receiving account funds would unjustly enrich CB&I and Chiyoda,” but in exchange for the settlement, Zachry received releases for over \$1 billion in claims and now has a path to exit bankruptcy.

69. In a last-gasp attempt to seize the CCZJV's property, Zachry claims Respondents will be unjustly enriched if the Court validates their ownership of the JV Funds and the Levee Insurance Proceeds. Mot. ¶¶ 36–39. Respondents do not dispute Zachry's recitation of the law that unjust enrichment requires “the unjust retention of a benefit to the loss of another” Mot. ¶ 37.

70. The Debtors' unjust enrichment argument, however, is just a bit too rich. The Debtors entirely ignore the extraordinary benefits they received under the settlement—well over a billion of dollars in value—which transformed these bankruptcy cases from hopeless causes into a viable restructuring.

71. Specifically, in exchange for the settlement, (i) the GPX Owner released the Debtors for liabilities that “could be at least \$1.4 billion”⁴³ and (ii) Respondents, on behalf of the CCZJV, released the Debtors from approximately \$93 million in liability.⁴⁴ At the hearing to consider entry of the Final Order, the Court observed: “As best I can tell, everybody left an awful lot on the field in this one in order to get a deal done. And even for great big companies, there was a lot of money that was left on the field *on all sides* And now we have a Zachry that is poised to return.”⁴⁵ Respondents agree.

72. Seemingly, the Debtors do, too. In the Settlement Motion, the Debtors state the many benefits of the settlement including it, “breaks an impasse that has plagued the Debtors for years. It puts an end to the massive cost of litigating. It puts people back to work. It is a key step in a successful restructuring for a business that will return to profitability immediately. It is a favorable result for the estates” [Docket No. 587 ¶ 7].

73. The Debtors drove all parties to participate in the settlement and ultimately got what the Debtors wanted—complete resolution of “complex commercial disputes” and “a path to emergence from chapter 11 through a plan of reorganization.” [Docket No. 587 ¶ 38]. For the Debtors to now invoke unjust enrichment is, at best, insincere.

RESERVATION OF RIGHTS

74. Nothing contained herein is or should be construed as: (i) an admission as to the validity of any of the Debtors’ claims against Respondents or the CCZJV; (ii) a waiver of

⁴³ *Emergency Motion of Golden Pass LNG Terminal LLC for Entry of an Order Compelling Rejection of EPC Contract; or, in the Alternative Granting Relief from the Automatic Stay* [Docket No. 299, ¶ 37].

⁴⁴ *Joint Emergency Motion of Chiyoda International Corporation and CB&I LLC for Entry of an Order (I) Granting Relief from the Automatic Stay, (II) Waiving the Requirements of Bankruptcy Rule 4001(a)(3), and (III) Granting Related Relief* [Docket No. 350, ¶ 33] (the “JV Partner Motion”).

⁴⁵ Aug. 12 Hr’g Tr. 17:20–28:2 (emphasis added).

Respondents' rights to dispute the Motion on any grounds; or (iii) an implication or admission to any of the Debtors' allegations in the Motion.

[Remainder of page left intentionally blank.]

CONCLUSION

WHEREFORE, Respondents respectfully request that this Court enter an order denying the relief sought in the Motion, finding that under the Term Sheet, the Debtors released their right to the JV Funds and the Levee Insurance Proceeds, and granting Respondents such other and further relief as the Court may deem just and proper.

Respectfully submitted this 27th day of August 2024.

/s/ Charles A. Beckham, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that on August 27, 2024, the foregoing document was served via electronic mail by the Court's ECF system to all parties authorized to receive electronic notice in this case.

/s/ Charles A. Beckham, Jr.
Charles A. Beckham, Jr.

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

In re:	§	Chapter 11
	§	
ZACHRY HOLDINGS, INC., et al.	§	Case No. 24-90377 (MI)
	§	
Debtors. ¹	§	(Jointly Administered)

**ORDER REGARDING DEBTORS' EMERGENCY MOTION TO INTERPRET
AND ENFORCE THE GOLDEN PASS SETTLEMENT AGREEMENT**
(Related To Docket No. 792)

On this day came on for consideration the motion (the "Motion") filed by the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an order (this "Order") enforcing the Term Sheet and the *Joint Response of Chiyoda International Corporation and CB&I LLC to Debtors' Emergency Motion to Interpret and Enforce the Golden Pass Settlement Agreement* (the "Response")²; and this Court having jurisdiction to decide the Motion and to enter this Order pursuant to 28 U.S.C. § 1334; and consideration of the Motion and the relief requested being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper in the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided; and such notice being adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and this Court having reviewed the Motion and the Response; and this Court having determined, after notice and a hearing, as defined in section 102 of the Bankruptcy Code, that the legal and factual bases set forth in the Motion, the Response, and in the record establish just cause for entry of this Order; and upon all the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, may be obtained on the website of the Debtors' claims and noticing agent at <https://veritaglobal.net/zhi>. The Debtors' service address in these chapter 11 cases is: P.O. Box 240130, San Antonio, Texas 78224.

² Capitalized terms used but not defined in this Order have the meanings ascribed to them in the Response.

proceedings had before this Court and after due deliberation and sufficient cause appearing therefor, **IT IS HEREBY ORDERED THAT**

1. Under the Term Sheet, the Debtors released any right to the CCZJV's property, including the JV Funds and the Levee Insurance Proceeds.

2. The Debtors are estopped from asserting an interest in the CCZJV's property, including the JV Funds and the Levee Insurance Proceeds.

3. The Debtors' Motion is denied in its entirety, and Debtors shall receive no portion of the JV Funds or the Levee Insurance Proceeds.

4. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Signed: _____, 2024
Houston, Texas

THE HONORABLE MARVIN P. ISGUR
UNITED STATES BANKRUPTCY JUDGE