

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

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

**DEBTORS’ EMERGENCY SUPPLEMENTAL APPLICATION  
FOR ENTRY OF AN ORDER AUTHORIZING AND APPROVING  
AN AMENDMENT TO THE RETENTION AND EMPLOYMENT OF  
LAZARD FRÈRES & CO. LLC AS INVESTMENT BANKER FOR THE DEBTORS**

Emergency relief has been requested. Relief is requested not later than 9:00 a.m. (prevailing Central Time) on January 22, 2025.

If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set, or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

A hearing will be conducted on this matter on January 22, 2025 at 9:00 a.m. (prevailing Central Time) in Courtroom 404, 4th floor, 515 Rusk, Houston, Texas 77002. Participation at the hearing will only be permitted by an audio and video connection.

Audio communication will be by use of the Court’s dial-in facility. You may access the facility at (832) 917-1510. Once connected, you will be asked to enter the conference room number. Judge Isgur’s conference room number is 954554. Video communication will be by use of the GoToMeeting platform. Connect via the free GoToMeeting application or click the link on Judge Isgur’s home page. The meeting code is “JudgeIsgur.” Click the settings icon in the upper right corner and enter your name under the personal information setting.

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) respectfully state as follows in support of this supplemental application (the “**Supplemental Application**”).

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



### **Preliminary Statement**

1. The Debtors retained Lazard Frères & Co. LLC (“**Lazard**”) in September 2024 to provide targeted investment banking services in connection with the Debtors’ efforts to raise junior exit capital (the “**Financing**”). Lazard has led those efforts for the past several months, but, to date, the Debtors have not received a Financing proposal that is acceptable to all relevant parties. The additional time required to obtain committed Financing on terms that are acceptable to both the estates and existing senior lenders is untenable. The Debtors are therefore now focused on a stand-alone plan of reorganization that is not premised upon raising junior debt (the “**Modified Plan**”). The Debtors need additional investment banking services in connection with developing and confirming the Modified Plan. Lazard is best positioned to provide this advice based on its familiarity with the Debtors and these chapter 11 cases, as well as its general restructuring expertise.

2. These additional services are beyond the scope of Lazard’s approved engagement terms, which are limited to supporting the Financing process. The Debtors and Lazard have negotiated amended engagement terms outlining the additional services the Debtors now require from Lazard, and the Debtors respectfully request approval of the amended engagement terms on an emergency basis. The Debtors aim to file and confirm the Modified Plan as soon as possible in order to preserve and maximize value, support existing projects, and earn new business. Time is of the essence, and the Debtors need Lazard’s assistance to develop the Modified Plan and support the confirmation case. Lazard has commenced the additional work necessary to develop and confirm the Modified Plan and understandably requires assurance that the Debtors will be able to honor the new compensation terms. The services are necessary and the new engagement terms are eminently reasonable. The Court should approve them without delay.

**Relief Requested**

3. The Debtors seek entry of an order (the “**Order**”), substantially in the form attached hereto, (a) authorizing the Debtors to (i) expand the scope of Lazard’s engagement by entering into the amended and restated engagement letter attached as **Exhibit 1** to the Order (the “**Amended Engagement Letter**”), (ii) readopt the terms of Lazard’s indemnification by entering into the readopted indemnification letter attached as **Exhibit 2** to the Order (the “**Readopted Indemnification Letter**”) as modified by the Order, and (iii) modify certain of Lazard’s time-keeping requirements as set forth in the Amended Engagement Letter, and (b) granting related relief.

4. In support of this Supplemental Application, the Debtors submit the *Declaration of Mohsin Y. Meghji in Support of Debtors’ Emergency Supplemental Application for Entry of an Order Authorizing and Approving an Amendment to the Retention and Employment of Lazard Frères & Co. LLC as Investment Banker for the Debtors*, annexed hereto as **Exhibit A** (the “**Meghji Declaration**”), and the *Declaration of Jason New in Support of Debtors’ Emergency Supplemental Application for Entry of an Order Authorizing and Approving an Amendment to the Retention and Employment of Lazard Frères & Co. LLC as Investment Banker for the Debtors*, annexed hereto as **Exhibit B** (the “**New Declaration**”).

**Jurisdiction, Venue, and Predicates for Relief**

5. The United States Bankruptcy Court for the Southern District of Texas (the “**Court**”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference from the United States District Court for the Southern District of Texas*, dated May 24, 2012. This matter is a core proceeding under 28 U.S.C. § 157(b). The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy

Procedure (the “**Bankruptcy Rules**”) to the entry of a final order by the Court in connection with this Supplemental Application to the extent it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

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

7. The predicates for the relief requested herein are sections 327(a), 328(a), 330 and 331 of title 11 of the United States Code (the “**Bankruptcy Code**”), Bankruptcy Rules 2014 and 2016, and rules 2014-1, 2016-1, and 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “**Bankruptcy Local Rules**”), and the *Procedures for Complex Chapter 11 Cases in the Southern District of Texas* (the “**Complex Case Procedures**”).

#### **Background**

8. On May 21, 2024 (the “**Petition Date**”), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code commencing these chapter 11 cases. The Debtors continue to operate their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The chapter 11 cases are being jointly administered pursuant to Bankruptcy Rule 1015(b). On June 4, 2024, the United States Trustee for the Southern District of Texas (the “**U.S. Trustee**”) appointed the Official Committee of Unsecured Creditors pursuant to sections 1102(a)(1) and 1102(b)(1) of the Bankruptcy Code (the “**Committee**”) [Docket No. 176]. No trustee or examiner has been appointed in these chapter 11 cases.

9. A detailed description of the Debtors and their businesses, including the facts and circumstances giving rise to these chapter 11 cases, is set forth in the *Declaration of Mohsin Y. Meghji in Support of Debtors’ Petitions and Requests for First Day Relief* [Docket No. 7].

10. On October 8, 2024, the Debtors filed the *Debtors' Emergency Application for Entry of an Order Authorizing the Retention and Employment of Lazard Frères & Co. LLC As Investment Banker for the Debtors* [Docket No. 1102] (the “**Application**”), and on October 15, 2024, the Court entered the *Order Authorizing the Retention and Employment of Lazard Frères & Co. LLC as Investment Banker for the Debtors* [Docket No. 1159] (the “**Original Order**”). Lazard has since conducted a comprehensive process to obtain Financing on terms acceptable to the estates and existing senior lenders.

11. The Debtors recently concluded that the process is unlikely to result in an actionable commitment, in a time necessary, to facilitate the Debtors' emergence goals. The Debtors now intend to file the Modified Plan and a related disclosure statement that contemplate restructuring their obligations (a “**Restructuring**”) without the Financing. The Debtors require the services of an experienced investment banker to assist in the development and confirmation of such Modified Plan. Lazard has substantial knowledge of the Debtors' businesses based on its work to date, and the Debtors believe that it is a sound exercise of their business judgment to expand Lazard's current mandate to include the additional services the estates require at this time. On January 9, 2025, after good faith, arm's-length discussions and negotiations regarding the amended and restated engagement and compensation terms, the Debtors and Lazard agreed to the terms set forth in the Amended Engagement Letter and Readopted Indemnification Letter.

### **Lazard's Qualifications**

12. The Debtors require a qualified and experienced investment banker with the resources, capabilities, and experience of Lazard. An investment banker, such as Lazard, fulfills a critical role in the development and confirmation of a plan of reorganization, complementing the services provided by the Debtors' other professionals. The Debtors believe that Lazard and its

senior professionals possess the requisite strategic and financial expertise, restructuring experience and knowledge, and deep understanding of the Debtors' business to work expertly and efficiently to help the Debtors develop the Modified Plan and facilitate an expeditious emergence from chapter 11. The Debtors have determined in their business judgment that expanding Lazard's scope as their investment banker is in the best interests of their estates and creditors. In addition to its extensive experience in similar restructurings and its world-class reputation, Lazard is intimately involved in these cases and knows the Debtors and their businesses extremely well.

13. As set forth in the New Declaration and the Application, Lazard and its senior professionals have extensive experience in the reorganization and restructuring of troubled companies, both out-of-court and in chapter 11 cases. Lazard's employees have advised debtors, creditors, equity holders, and government agencies in complex reorganizations across numerous industries, including healthcare, transportation, retail, metals & mining, power & energy, financial services, telecommunications, media, and automotive. Since 1990, Lazard's professionals have been involved in over 500 restructurings involving more than \$1 trillion in assets. Lazard's professionals have been retained as investment bankers in a number of chapter 11 restructurings, including, among others, the following cases, in addition to already being retained in the present case: *In re Air Methods Corp.*, No. 23-90886 (MI) (Bankr. S.D. Tex. 2023); *In re Bed Bath & Beyond Inc.*, No. 23-13359 (VFP) (Bankr. D. N.J. 2023); *In re National CineMedia, LLC*, No. 23-90291 (DRJ) (Bankr. S.D. Tex. 2023); *In re Belk, Inc.*, No. 21-30630 (MI) (Bankr. S.D. Tex. 2021); *In re Basic Energy Services, Inc.*, No. 21-90002 (DRJ) (Bankr. S.D. Tex. 2021); *In re Hi-Crush Proppants LLC*, No. 20-33505 (DRJ) (Bankr. S.D. Tex. 2020); *In re FTS Int'l, Inc.*, No. 20-34622 (DRJ) (Bankr. S.D. Tex. 2020); *In re 24 Hour Fitness Worldwide, Inc.*, No. 20-11558 (KBO) (Bankr. D. Del. 2020); *In re Chinos Holdings, Inc.*, No. 20-32181 (KLP) (Bankr. E.D. Va.

2020), *In re J.C. Penney Co.*, No. 20-20182 (DRJ) (Bankr. S.D. Tex. 2020); *In re Neiman Marcus Group Ltd.*, No. 20-32519 (DRJ) (Bankr. S.D. Tex. 2020); *In re Gavilan Resources, LLC*, No. 20-32656 (DRJ) (Bankr. S.D. Tex. 2020); *In re Valaris PLC*, No. 20-34114 (MI) (S.D. Tex. 2020); *In re Forever21*, No. 19- 12122 (KG) (Bankr. D. Del. 2019); *In re Weatherford Int'l PLC*, No. 19-33694 (DRJ) (Bankr. S.D. Tex. 2019); *In re Sears Holdings Corp.*, No. 18-23538 (RDD) (Bankr. S.D.N.Y. 2018); *In re Claire's Stores, Inc.*, No. 18-10584 (MFW) (Bankr. D. Del. 2018); *In re Stone Energy Corp.*, No. 16-36390 (MI) (Bankr. S.D. Tex. 2017); *In re RCS Capital Corp.*, No. 16-10223 (MFW) (Bankr. D. Del. 2016); *In re LINN Energy, LLC*, No. 16-60040 (Bankr. S.D. Tex. 2016). Lazard has significant relevant experience and expertise that will enable it to provide the additional investment banking services needed by the Debtors in these chapter 11 cases.

#### **Expanded Services to be Provided**

14. The Debtors and Lazard negotiated the terms of the Amended Engagement Letter at arm's-length and in good faith. Subject to the direction of the Debtors and further order and authorization of this Court, as set forth in the Amended Engagement Letter, Lazard will provide the following investment banking services to the Debtors (the "**Expanded Services**"):

- (a) Reviewing and analyzing the Company's business, operations and financial projections;
- (b) Evaluating the Company's potential debt capacity in light of its projected cash flows;
- (c) Assisting in the determination of a capital structure for the Company;
- (d) Assisting in the determination of a range of values for the Company on a going concern basis;
- (e) Advising the Company on tactics and strategies for negotiating with stakeholders;

- (f) Rendering financial advice to the Company and participating in meetings or negotiations with stakeholders and/or rating agencies or other appropriate parties in connection with any Financing<sup>2</sup> or Restructuring;<sup>3</sup>
- (g) Advising the Company on the timing, nature, and terms of new securities, other consideration or other inducements to be offered pursuant to any Financing or Restructuring;
- (h) Advising and assisting the Company in evaluating any potential Financing transaction by the Company, and, on behalf of the Company, contacting potential sources of capital as the Company may designate and assisting the Company in implementing such Financing;
- (i) Assisting the Company in preparing documentation required in connection with any Financing or Restructuring;
- (j) Attending meetings of the Board of Directors of Zachry with respect to matters on which Lazard is engaged; and
- (k) Providing testimony, as necessary, with respect to matters on which Lazard is engaged.

15. The Debtors require qualified investment banking professionals to render these services. Lazard is amply familiar with the Debtors, their businesses and these chapter 11 cases based on its current role. Accordingly, the Debtors submit that Lazard is well-qualified and well-suited to perform the Expanded Services, and the Court should authorize the Debtors to enter into

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<sup>2</sup> As used in the Amended Engagement Letter, the term “Financing” means any transaction or series of transactions involving the public or private issuance, sale, or placement of newly-issued (including securities held in treasury) equity, equity-linked or debt securities, instruments, or obligations of the Company, and including any debtor-in-possession financing or exit financing in connection with the Chapter 11 Cases. For the avoidance of doubt, (a) any reinstatement, modification or amendment to the terms of the Company’s outstanding indebtedness (including, without limitation, any bank debt, bond debt, preferred stock, and other on and off balance sheet indebtedness of the Company) and (b) any equity transaction involving the Company’s existing equityholders shall not be deemed to be a Financing.

<sup>3</sup> As used in the Amended Engagement Letter and in the sections herein describing the terms of the Amended Engagement Letter, the term “Restructuring” means any restructuring, reorganization (whether or not pursuant to Chapter 11 of the United States Bankruptcy Code) and/or recapitalization of all or a portion of the Company’s outstanding indebtedness (including bank debt, bond debt, and other on and off balance sheet indebtedness), trade claims, leases (both on and off balance sheet), and other litigation-related claims and obligations, unfunded pension and retiree medical liabilities, or other liabilities (collectively, the “Existing Obligations”) that is achieved, without limitation, through a solicitation of waivers and consents from the holders of Existing Obligations (collectively, the “Stakeholders”); rescheduling of the maturities of Existing Obligations; a change in interest rates, repurchase, settlement or forgiveness of Existing Obligations; conversion of Existing Obligations into equity or other securities; an exchange offer involving the issuance of new securities in exchange for Existing Obligations; the issuance of new securities, sale of debt or equity securities or other interests; or other similar transaction or series of transactions.



the amended and restated engagement terms so Lazard can continue its work and facilitate the Debtors' emergence from bankruptcy for the benefit of all stakeholders.

**Terms of Retention**

**A. Adjusted Compensation**

16. As consideration for the Expanded Services to be provided, the Debtors have agreed to pay Lazard the following fees:

- (a) A monthly fee of \$150,000 (the "**Monthly Fee**"), payable on execution of the Amended Engagement Letter and on the first (1st) day of each month thereafter until the earlier of the completion of the Restructuring or the termination of Lazard's engagement pursuant to Section 10. One hundred percent (100%) of all Monthly Fees paid in respect of any months following the third (3rd) Monthly Fee payment shall be credited (without duplication) against any Restructuring Fee or Financing Fee (each as defined below) payable to Lazard; *provided* that such credit shall only apply to the extent that such fees are approved in their entirety by this Court, if applicable.
- (b) A fee equal to \$4,400,000, payable upon the consummation of a Restructuring (the "**Restructuring Fee**"); *provided* that if Lazard provides any testimony in deposition or in court in connection with these chapter 11 cases (but not including any affidavit or other filing in support of any Restructuring), the Restructuring Fee shall be \$4,650,000.
- (c) A fee, payable upon consummation of any Financing (each, a "**Financing Fee**"), equal to 2.25% of the gross proceeds of such Financing; *provided* that the Financing Fee will only be payable in connection with one Financing (or series of related Financings).
- (d) For the avoidance of any doubt, only the greater of the Restructuring Fee or the Financing Fee shall be payable to Lazard.

17. The Debtors have also agreed to reimburse Lazard promptly when invoiced for all reasonable and documented out-of-pocket expenses, and request the approval of Lazard's expenses based on the following procedures:

- (a) In addition to any fees that may be payable to Lazard and, regardless of whether any transaction occurs, the Company shall promptly reimburse Lazard for all reasonable expenses incurred by Lazard (including travel and lodging, data processing and communications charges, courier services and other expenditures) and the reasonable fees and expenses of counsel, if any,

retained by Lazard (other than legal fees associated with the negotiation of this Agreement or any amendment or modification hereof). Lazard will request prior authorization from the Company for any out-of-pocket costs and expenses higher than \$50,000 in the aggregate (the “**Expense Cap**”), and such pre-approval shall not be unreasonably denied or withheld by the Company; *provided* that the Company agrees to negotiate with Lazard, in good faith, an increase in the Expense Cap at such time as the expenses exceed 75% of the Expense Cap.

**B. Indemnification**

18. Pursuant to the Readopted Indemnification Letter, the Debtors have agreed to, among other things, indemnify, hold harmless, and provide contribution and reimbursement to Lazard and its affiliates and any of their respective members, partners, officers, directors, advisors, representatives, employees, agents, affiliates, or controlling persons under certain circumstances.

19. The Debtors believe that the indemnification obligations are customary and reasonable for investment banking engagements, both out of court and in chapter 11 cases, and reflect the qualifications and limitations on indemnification provisions that are customary in this district and other jurisdictions.

20. The terms and conditions of the Readopted Indemnification Letter were negotiated by the Debtors and Lazard at arm’s-length and in good faith. The indemnification obligations, viewed in conjunction with the other terms of Lazard’s proposed retention, are reasonable and consistent with market precedent. The Debtors request that the Court approve the Readopted Indemnification Letter.

**The Fees and Expenses Payable to Lazard Are Appropriate and Reasonable and Should Be Approved Under Section 328(a) of the Bankruptcy Code**

21. The proposed fee structure is reasonable, market-based, and designed to fairly compensate Lazard for its work in these chapter 11 cases. The Debtors believe that the fees and expenses payable to Lazard for the Expanded Services are comparable to those generally charged

by investment banks in similar engagements. They are also consistent with Lazard's (and other investment banks') typical fee structure.

22. The ultimate benefit provided by Lazard cannot be measured by the number of hours it spends on the engagement. That said, the Debtors agreed to the fee structure in part due to the substantial commitment of professional time and effort that will be required of Lazard.

23. Lazard has not shared or agreed to share any compensation to be paid by the Debtors with any other person, other than principals and employees of Lazard, in accordance with section 504 of the Bankruptcy Code.

24. In light of the foregoing and given the numerous issues that Lazard may be required to address in the performance of its services, Lazard's commitment to the variable level of time and effort necessary to address all such issues as they arise, and the market prices for Lazard's services for engagements of this nature both in the in- and out-of-court contexts, the Debtors believe that the fees and expenses are fair and reasonable and market-based under the standards set forth in section 328(a) of the Bankruptcy Code.

**Modification of Compliance with Requirements Regarding Time Entry Detail**

25. Consistent with its ordinary practice and the practice of investment bankers in other chapter 11 cases whose fee arrangements are typically not hours-based, Lazard does not ordinarily maintain contemporaneous time records in one-tenth (0.1) hour increments (similar to those customarily kept by attorneys) or provide or conform to a schedule of hourly rates for its professionals. Accordingly, consistent with the Original Order, Lazard requests that it continue to be excused from such requirements. Instead, notwithstanding that Lazard does not charge for its services on an hourly basis, Lazard will maintain records (in summary format with half-hour (0.5) increments) of its services rendered for the Debtors, including descriptions of those services, the

time expended in providing those services, and the individuals who provided those services, and will present such records together with its fee applications filed with the Court. In addition, Lazard will maintain records in support of any actual, necessary costs and expenses incurred in connection with the rendering of its services. Lazard's applications for compensation and expenses will be paid by the Debtors upon approval by this Court.

**No Duplication of Services**

26. Lazard understands that the Debtors have retained other professionals, and may retain additional professionals, during the term of its engagement, and will work cooperatively with such professionals to integrate any respective work conducted by the professionals on behalf of the Debtors. The services provided by Lazard will complement, and not duplicate, the services rendered by any other professional retained in these chapter 11 cases. The Debtors will use reasonable efforts to coordinate with Lazard and the Debtors' other professionals to avoid the unnecessary duplication of services.

**Lazard's Disinterestedness**

27. To the best of the Debtors' knowledge and except to the extent disclosed herein and in the New Declaration, Lazard is a "disinterested person" within the meaning of section 101(14) of the Bankruptcy Code, as required by section 327(a) of the Bankruptcy Code, and does not hold or represent any interest materially adverse to the Debtors' estates with respect to the matters upon which it is to be employed.

28. As set forth in further detail in the New Declaration, Lazard has certain connections with creditors, equity security holders, and other parties in interest in these chapter 11 cases. All of these matters, however, are unrelated to these chapter 11 cases. Neither the Debtors nor Lazard

believe that any of these matters represent any interest materially adverse to the Debtors' estates or otherwise create a conflict of interest regarding the Debtors or these chapter 11 cases.

29. To the extent that any new relevant facts or relationships bearing on the matters described herein during the period of Lazard's retention are discovered or arise, Lazard will use reasonable efforts to file promptly a supplemental declaration, as required by Bankruptcy Rule 2014(a).

### **Supporting Authority**

30. Section 327(a) of the Bankruptcy Code provides that a debtor, subject to court approval: "May employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist . . . in carrying out . . . duties under [the Bankruptcy Code]." 11 U.S.C. § 327(a).

31. The Debtors also seek approval of the terms of the Amended Engagement Letter and Readopted Indemnification Letter, including, without limitation, the fees and expenses and the indemnification, contribution, and related obligations, pursuant to section 328(a) of the Bankruptcy Code, which provides, in relevant part, that the Debtors "with the court's approval, may employ or authorize the employment of a professional person under section 327 . . . on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis." 11 U.S.C. § 328(a). Section 328 of the Bankruptcy Code permits the compensation of professionals, including investment bankers, on more flexible terms that reflect the nature of their services and market conditions. As the United States Court of Appeals for the Fifth Circuit recognized in *Donaldson Lufkin & Jenrette Sec. Corp. v. Nat'l Gypsum Co. (In re Nat'l Gypsum Co.)*:

Prior to 1978 the most able professionals were often unwilling to work for bankruptcy estates where their compensation would be subject to the uncertainties of what a judge thought the work was worth after it had been done. That uncertainty continues under the present § 330 of the Bankruptcy Code, which provides that the court award to professional consultants “reasonable compensation” based on relevant factors of time and comparable costs, etc. Under present § 328 the professional may avoid that uncertainty by obtaining court approval of compensation agreed to with the trustee (or debtor or committee).

123 F. 3d 861 (5th Cir. 1997).

32. Furthermore, in 2005, Congress amended section 328(a) of the Bankruptcy Code as follows:

The trustee, or a committee appointed under section 1102 of this title, with the court’s approval, may employ or authorize the employment of a professional person under section 327 or 1103 of this title, as the case may be, on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, *on a fixed or percentage fee basis*, or on a contingent fee basis.

11 U.S.C. § 328(a) (emphasis added). This change makes clear that the Debtors may retain, with Court approval, a professional on a fixed or percentage fee basis such as the fees and expense provisions proposed in the Amended Engagement Letter.

33. The Amended Engagement Letter appropriately reflects (a) the nature and scope of services to be provided by Lazard, (b) Lazard’s substantial experience with respect to investment banking services, and (c) the fee structures typically utilized by Lazard and other leading investment bankers that do not bill their clients on an hourly basis.

34. The Debtors believe that the expansion of Lazard’s scope on the terms and conditions set forth in the Amended Engagement Letter and as proposed herein is appropriate.

#### **Emergency Consideration**

35. Pursuant to the Complex Case Procedures and Bankruptcy Local Rule 9013-1, the Debtors respectfully request emergency consideration of this Supplemental Application. The

Debtors seek to file and confirm the Modified Plan as quickly as possible to preserve and maximize the value of their estates. Lazard will play a critically important role in these efforts. Any delay in Lazard's work may delay emergence, hinder business opportunities, and further impair stakeholder recoveries.

**Notice**

36. The Debtors will provide notice of this Supplemental Application to: (a) the United States Trustee for the Southern District of Texas; (b) counsel to the Committee; (c) Lazard; (d) the United States Attorney's Office for the Southern District of Texas; (f) the state attorneys general for the states in which the Debtors operate; (g) the Internal Revenue Service; (h) the United States Securities and Exchange Commission; and (i) any party that has requested notice pursuant to Bankruptcy Rule 2002 and Bankruptcy Local Rule 9013-1(d). In light of the nature of the relief requested, no other or further notice need be provided.

*[Remainder of Page Intentionally Left Blank]*

The Debtors request that the Court enter the Order granting the relief requested in this Supplemental Application and such other and further relief as the Court deems appropriate.

Dated: January 11, 2025  
Houston, Texas

/s/ Charles R. Koster

**WHITE & CASE LLP**

Charles R. Koster (Texas Bar No. 24128278)  
609 Main Street, Suite 2900  
Houston, Texas 77002  
Telephone: (713) 496-9700  
Facsimile: (713) 496-9701  
Email: charles.koster@whitecase.com

Bojan Guzina (admitted *pro hac vice*)  
Andrew F. O'Neill (admitted *pro hac vice*)  
Fan He (admitted *pro hac vice*)  
Barrett Lingle (admitted *pro hac vice*)  
Adam Swingle (admitted *pro hac vice*)

111 South Wacker Drive, Suite 5100  
Chicago, Illinois 60606  
Telephone: (312) 881-5400  
Email: bojan.guzina@whitecase.com  
aoneill@whitecase.com  
fhe@whitecase.com  
adam.swingle@whitecase.com  
barrett.lingle@whitecase.com

*Counsel to the Debtors and  
Debtors in Possession*



**Certificate of Service**

I certify that on January 11, 2025, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

*/s/ Charles R. Koster*  
\_\_\_\_\_  
Charles R. Koster

**Certificate of Accuracy**

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

*/s/ Charles R. Koster*  
\_\_\_\_\_  
Charles R. Koster

**EXHIBIT A**

**Meghji Declaration**

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

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

**DECLARATION OF MOHSIN Y. MEGHJI IN SUPPORT OF DEBTORS’  
EMERGENCY SUPPLEMENTAL APPLICATION FOR ENTRY OF AN ORDER  
AUTHORIZING AND APPROVING AN AMENDMENT TO THE RETENTION AND  
EMPLOYMENT OF LAZARD FRÉRES & CO. LLC AS INVESTMENT BANKER FOR  
THE DEBTORS**

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I, Mohsin Y. Meghji, the Chief Restructuring Officer of Zachry Holdings, Inc. (“**ZHI**”), declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am the Chief Restructuring Officer (“**CRO**”) of each of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) as well as a Managing Partner at M3 Advisory Partners, LP (“**M3**”). I submit this declaration (the “**Declaration**”) in support of the *Debtors’ Emergency Supplemental Application for Entry of an Order Authorizing and Approving an Amendment to the Retention and Employment of Lazard Frères & Co. LLC As Investment Banker for the Debtors* (the “**Supplemental Application**”) to retain Lazard Frères & Co. LLC (“**Lazard**”) to provide investment banking services to the Debtors.<sup>2</sup>

2. I have reviewed the Supplemental Application, the amended and restated engagement letter between the Debtors and Lazard (the “**Amended Engagement Letter**”), the

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

<sup>2</sup> Capitalized terms used but not otherwise herein defined shall have the meanings ascribed to such terms in the Supplemental Application.

readopted indemnification letter between the Debtors and Lazard (the “**Readopted Indemnification Letter**”), and relevant documents identified in each of the foregoing.

3. Except as otherwise noted, the facts set forth in this Declaration are based upon my personal knowledge, information provided to me by the Debtors’ attorneys and advisors, or my opinion based upon knowledge and experience as CRO of the Debtors.

4. As CRO, I am primarily responsible for leading the efforts of the Debtors and their professionals to develop and implement restructuring plans and other strategic alternatives. At this stage in these chapter 11 cases, the Debtors continue to consider all possible strategic alternatives for a value-maximizing reorganization. As contemplated by the Amended Engagement Letter, I believe that viable restructuring alternatives may include a stand-alone Restructuring of the Debtors’ existing obligations. To implement a successful Restructuring, the Debtors will require the support of an investment banker with Lazard’s capabilities and expertise as well as the in-depth knowledge of the Debtors’ business Lazard has acquired since its retention.

5. Lazard is well-positioned to assist the Debtors with their reorganization process, whether that be pursuant to the Financing or a Restructuring, or a combination of the two, given its position as one of the most sophisticated and experienced restructuring investment banks and its experience working with the Debtors in these chapter 11 cases.

#### **The Debtors’ Selection of Lazard**

6. Lazard is an internationally recognized investment banking and financial advisory firm. Lazard is a leader in providing such services to debtors, unsecured and secured creditors, acquirers, and other parties in interest involved with financially troubled companies both in and outside of bankruptcy. Lazard has been, and is, involved in some of the largest restructurings in the United States, both out of court and in chapter 11 cases.

7. When the Debtors made the initial determination to engage an investment banker to assist in securing exit financing that may become necessary to facilitate their efficient reorganization, they conducted a search for appropriate investment bankers with experience and capabilities suitable to aid the Debtors in their reorganization. The Debtors identified and interviewed four competitive investment banking and financial advisory firms. After careful consideration, the Debtors concluded through this arm's-length selection process that Lazard is ultimately the best choice and is well-equipped to provide necessary services to the Debtors.

**Fee and Expense Structure**

8. Before seeking approval of Lazard's fees and expenses under section 328 of the Bankruptcy Code, the Debtors compared the fees and expense reimbursement provisions proposed by Lazard to those negotiated by Lazard in its prior engagements and by other investment bankers in recent comparable engagements. Based on this analysis, the Debtors determined that the fees, expenses, indemnification, contribution, and related terms contemplated by the Amended Engagement Letter and the Readopted Indemnification Letter were reasonable and consistent with other debtor-side bankruptcy engagements of investment banks.

Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: January 11, 2025

/s/ Mohsin Y. Meghji  
Mohsin Y. Meghji

**EXHIBIT B**

**New Declaration**

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

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

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**DECLARATION OF JASON NEW IN SUPPORT OF DEBTORS’ EMERGENCY  
SUPPLEMENTAL APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING AND  
APPROVING AN AMENDMENT TO THE RETENTION AND EMPLOYMENT OF  
LAZARD FRÈRES & CO. LLC AS INVESTMENT BANKER FOR THE DEBTORS**

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I, Jason New, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am a Vice Chairman of Investment Banking and a Managing Director at Lazard Frères & Co. LLC (“**Lazard**”), the primary U.S. operating subsidiary of a preeminent international financial advisory and asset management firm founded in 1848, which has its principal office at 30 Rockefeller Plaza, New York, New York 10012. I am authorized to execute this declaration (the “**Declaration**”) on behalf of Lazard and in support of the *Debtors’ Emergency Supplemental Application for Entry of an Order Authorizing and Approving an Amendment to the Retention and Employment of Lazard Frères & Co. LLC As Investment Banker for the Debtors* (the “**Supplemental Application**”) of the Debtors for authority to retain and employ Lazard as their investment banker in these chapter 11 cases, as of September 17, 2024. Unless otherwise stated in this Declaration, I have personal knowledge of the facts set forth herein.<sup>2</sup> Lazard, together with

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

<sup>2</sup> Certain disclosures herein relate to matters within the personal knowledge of other professionals at Lazard and are based on information provided by them.

its predecessors and affiliates, has been advising clients around the world for over 150 years. Lazard has dedicated professionals who provide restructuring services to its clients.

2. The current managing directors, directors, vice presidents, associates, and analysts of Lazard have extensive experience working with financially troubled companies and creditors thereof in complex financial restructurings, both out-of-court and in chapter 11 proceedings. Lazard and its principals have been involved as advisors to debtors, creditors, equity constituencies and government agencies in numerous reorganization cases. Since 1990, Lazard's professionals have been involved in more than 500 restructurings, representing over \$1 trillion in debtors' assets.

3. Notably, Lazard's professionals have been retained as investment bankers in a number of chapter 11 restructurings, including, in addition to the present case, the following cases: *In re Air Methods Corp.*, No. 23-90886 (MI) (Bankr. S.D. Tex. 2023); *In re Bed Bath & Beyond Inc.*, No. 23-13359 (VFP) (Bankr. D.N.J. 2023); *In re National CineMedia, LLC*, No.23-90291 (DRJ) (Bankr. S.D. Tex. 2023); *In re Belk, Inc.*, No. 21-30630 (MI) (Bankr. S.D. Tex. 2021); *In re Basic Energy Services, Inc.*, No. 21-90002 (DRJ) (Bankr. S.D. Tex. 2021); *In re Hi-Crush Proppants LLC*, No. 20-33505 (DRJ) (Bankr. S.D. Tex. 2020); *In re FTS Int'l, Inc.*, No. 20-34622 (DRJ) (Bankr. S.D. Tex. 2020); *In re 24 Hour Fitness Worldwide, Inc.*, No. 20-11558 (KBO) (Bankr. D. Del. 2020); *In re Chinos Holdings, Inc.*, No. 20-32181 (KLP) (Bankr. E.D. Va. 2020), *In re J.C. Penney Co.*, No. 20-20182 (DRJ) (Bankr. S.D. Tex. 2020); *In re Neiman Marcus Group Ltd.*, No. 20-32519 (DRJ) (Bankr. S.D. Tex. 2020); *In re Gavilan Resources, LLC*, No. 20-32656 (DRJ) (Bankr. S.D. Tex. 2020); *In re Valaris PLC*, No. 20-34114 (MI) (S.D. Tex. 2020); *In re Forever21*, No. 19- 12122 (KG) (Bankr. D. Del. 2019); *In re Weatherford Int'l PLC*, No. 19-33694 (DRJ) (Bankr. S.D. Tex. 2019); *In re Sears Holdings Corp.*, No. 18-23538 (RDD) (Bankr. S.D.N.Y. 2018); *In re Claire's Stores, Inc.*, No. 18-10584 (MFW) (Bankr. D. Del. 2018); *In re*



*Stone Energy Corp.*, No. 16-36390 (MI) (Bankr. S.D. Tex. 2017); *In re RCS Capital Corp.*, No. 16-10223 (MFW) (Bankr. D. Del. 2016); *In re LINN Energy, LLC*, No. 16-60040 (Bankr. S.D. Tex. 2016). Accordingly, Lazard has developed significant relevant experience and expertise that will enable Lazard and its professionals to provide necessary investment banking services to the Debtors in these chapter 11 cases.

#### **Lazard's Disinterestedness**

4. I submit this Declaration in support of the Supplemental Application,<sup>3</sup> and to supplement the *Declaration of Jason New in Support of Debtors' Emergency Application for Entry of an Order Authorizing the Retention and Employment of Lazard Frères & Co. LLC as Investment Banker for the Debtors*, attached as Exhibit B to the Application (the "**First Declaration**").

5. Unless otherwise stated in this Declaration, I have personal knowledge of the facts set forth herein.<sup>4</sup> To the extent any information disclosed herein requires amendment or modification as additional information becomes available to Lazard, a supplemental declaration will be submitted to this Court reflecting such amended or modified information.

6. If any new relevant facts or relationships are discovered or arise, Lazard will use reasonable efforts to identify such developments and will promptly file a supplemental declaration, to the extent required by Bankruptcy Rule 2014(a).

#### **Potential Parties in Interest**

7. In connection with the First Declaration, Lazard obtained from the Debtors and their advisors the names of individuals and entities that may be parties in interest in these chapter 11 cases (the "**Potential Parties in Interest**"), and such parties are listed in Schedule 1 attached

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<sup>3</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Supplemental Application.

<sup>4</sup> Certain disclosures herein relate to matters within the personal knowledge of other professionals at Lazard and are based on information provided by them.

to the First Declaration (the “**Potential Parties in Interest List**”). The First Declaration made disclosures with respect to connections to the Potential Parties in Interest. Paragraphs 4 through 12 of the First Declaration remain true and accurate to the best of my knowledge and are incorporated herein by reference.

**Affirmative Statement of Disinterestedness**

8. Based upon the foregoing, I believe that Lazard is a “disinterested person” within the meaning of section 101(14) of the Bankruptcy Code and does not hold or represent an interest adverse to the Debtors’ estates with respect to the matters upon which it is to be employed.

**Record Keeping and Applications for Compensation**

9. Lazard has in place compliance procedures to ensure that (i) no third-party confidential or non-public information received by Lazard and/or the Financial Advisory Affiliates has been or will be available to employees of the Asset Management Affiliates and (ii) no third-party confidential or non-public information received by the Asset Management Affiliates has been or will be available to employees of Lazard and/or the Financial Advisory Affiliates. These procedures consist of, among other things:

- (a) no shared or common spaces between Lazard and the Financial Advisory Affiliates, on the one hand, and the Asset Management Affiliates, on the other hand;
- (b) keycard restricted access between Lazard and Financial Advisory Affiliates spaces, on the one hand, and Asset Management Affiliates spaces, on the other hand; and
- (c) system-administered email and file restrictions that (i) generally prevent emails and sharing of files between employees of Lazard and the Financial Advisory Affiliates, on the one hand, and Asset Management Affiliates employees, on the other hand, and (ii) capture emails that are transmitted between those groups for review by Lazard’s legal and compliance department.

10. Lazard and all of its direct and indirect affiliates, including the Financial Advisory Affiliates and Asset Management Affiliates, are ultimately owned directly or indirectly by the

Parent Entities. However, the Asset Management Affiliates are operated separately from Lazard and the Financial Advisory Affiliates. Additionally, other than members of certain “control groups” such as compliance, legal, and IT, and members of senior management, who are tasked with, among other things, general management responsibilities or supervising and monitoring the various businesses’ compliance with the aforementioned information barriers and/or other policies and procedures of Lazard, no officer, director, or employee of Lazard, on the one hand, is an officer, director, or employee of the operating entities in the Asset Management Affiliates, on the other hand.

11. In addition to the procedures described in paragraph 9 above regarding the separation of Lazard and the Financial Advisory Affiliates, on the one hand, and the Asset Management Affiliates, on the other hand, policies applicable to employees of Lazard and the Financial Advisory Affiliates include a “need to know” policy regarding the handling of sensitive information. Lazard professionals receive training with respect to such information barrier procedures and are required to periodically re-affirm their knowledge of and compliance with such policies and procedures.

12. Lazard has not shared or agreed to share any compensation to be paid by the Debtors with any other person, other than principals and employees of Lazard, in accordance with section 504 of the Bankruptcy Code.

13. The Readopted Indemnification Letter includes standard and customary terms contained in Lazard’s engagement letters both in and outside of bankruptcy cases. Based on my experience in the market for investment banking services, the Readopted Indemnification Letter is similar to the indemnification provisions in engagement letters of other similarly situated investment banking firms in engagements both in and outside of bankruptcy.

14. In connection with these chapter 11 cases, Lazard will file applications with this Court, which will include time records setting forth, in a summary format, a description of the services rendered by each professional and the amount of time spent on each date by each such individual in rendering services on behalf of the Debtors. Lazard does not ordinarily maintain contemporaneous time records in one-tenth-hour (0.10) increments or provide or conform to a schedule of hourly rates for its professionals. Lazard proposes to file time records in half-hour (0.50) increments. Lazard also will maintain detailed records of any actual and necessary costs and expenses incurred in connection with the services discussed above.

Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: January 11, 2025  
New York, New York

LAZARD FRÈRES & CO. LLC

/s/ Jason New  
Jason New  
Vice Chairman of Investment Banking  
Managing Director

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

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

**ORDER AUTHORIZING AND APPROVING AN AMENDMENT TO  
THE RETENTION AND EMPLOYMENT OF LAZARD FRÈRES & CO.  
LLC AS INVESTMENT BANKER FOR THE DEBTORS**

Upon the supplemental application (the “**Supplemental Application**”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) for entry of an order (this “**Order**”), authorizing the retention and employment of Lazard Frères & Co. LLC (“**Lazard**”) effective as of September 17, 2024 (the “**Engagement Execution Date**”), to provide the Expanded Services described therein in accordance with the terms and conditions set forth in the Amended Engagement Letter attached as **Exhibit 1**, all as more fully set forth in the Supplemental Application; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and due, sufficient, and proper notice of the Supplemental Application having been provided under the circumstances and in accordance with the Bankruptcy Rules and the

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

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Application.

Bankruptcy Local Rules, and it appearing that no other or further notice need be provided; and upon consideration of the Supplemental Application, the Meghji Declaration, the New Declaration, and all proceedings had before the Court; and this Court having found and determined that Lazard is a “disinterested person” as that term is defined under section 101(14) of the Bankruptcy Code, and does not hold or represent any interest materially adverse to the Debtors’ estates with respect to the matters upon which it is to be employed, that Lazard’s employment is necessary and in the best interests of the Debtors, their estates, their creditors, their stakeholders, and all other parties in interest, and this Court having found that the Debtors’ notice of the Supplemental Application and an opportunity for a hearing on the Supplemental Application were appropriate and no other notice need be provided; and this Court having reviewed the Supplemental Application and having heard the statements in support of the relief requested therein at a hearing before this Court (the “**Hearing**”); and this Court having determined that the legal and factual bases set forth in support of the Supplemental Application and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, IT IS HEREBY ORDERED THAT:

1. The Debtors are authorized, pursuant to sections 327 and 328(a) of the Bankruptcy Code, Bankruptcy Rules 2014 and 2016, and Bankruptcy Local Rules 2014-1 and 2016-1, to employ and retain Lazard as their investment banker in accordance with the terms and conditions set forth in the Amended Engagement Letter, as modified by this Order, effective as of the Engagement Execution Date and to pay fees and reimburse expenses to Lazard on the terms and at the times specified in the Amended Engagement Letter, as limited or modified by this Order.

2. The provisions set forth in the Amended Engagement Letter and the Readopted Indemnification Letter are approved in all respects except as limited or modified by this Order. Notwithstanding anything else in this Order, the Amended Engagement Letter or the Readopted Indemnification Letter, the Debtors' and Lazard's rights and obligations accrued under the engagement terms approved by the Court on October 15, 2024 concerning indemnification shall remain in full force and effect.

3. The terms of Lazard's compensation set forth in the Amended Engagement Letter and the Readopted Indemnification Letter, as modified by this Order, including, without limitation, the fees and expenses and the indemnification, contribution, and related obligations are approved pursuant to section 328(a) of the Bankruptcy Code, and Lazard shall be compensated, reimbursed, and indemnified pursuant to section 328(a) of the Bankruptcy Code in accordance with the terms of, and at the times specified in, the Amended Engagement Letter and the Readopted Indemnification Letter, as modified by this Order, subject to the procedures set forth in the Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy Local Rules, the Complex Case Procedures (except as otherwise set forth herein), and any other applicable orders of this Court.

4. None of the fees payable to Lazard shall constitute a "bonus" or fee enhancement under applicable law.

5. Notwithstanding anything to the contrary in the Supplemental Application, Amended Engagement Letter, or the New Declaration, to the extent the Debtors wish to expand the scope of Lazard's services beyond those services set forth in the Supplemental Application, Amended Engagement Letter, or the New Declaration, such other services shall be subject to separate application and approval by Court order.

6. Lazard shall file interim and final fee applications for the allowance of compensation for services rendered and reimbursement of expenses incurred in accordance with sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy Local Rules, and any applicable orders of this Court; *provided* that Lazard shall be compensated and reimbursed pursuant to section 328(a) of the Bankruptcy Code, and Lazard's fees and expenses shall not be subject to review under the standard set forth in section 330 of the Bankruptcy Code.

7. Notwithstanding any provision to the contrary in this Order, the Supplemental Application, or the Amended Engagement Letter, the U.S. Trustee shall have the right to object to Lazard's request(s) for interim and final applications for compensation based on the standard provided in section 330 of the Bankruptcy Code. This Order and the record relating to the Court's consideration of the Supplemental Application shall not prejudice or otherwise affect the rights of the U.S. Trustee to challenge the reasonableness of Lazard's fees under the standard set forth in the preceding sentence. Accordingly, nothing in this Order or the record shall constitute a finding of fact or conclusion of law binding the U.S. Trustee, on appeal or otherwise, with respect to the reasonableness of Lazard's fees.

8. Lazard shall include in its monthly, interim, and final fee applications, among other things, reasonably detailed time records setting forth, in a summary format by project category, a description of the services rendered by each professional and the amount of time spent on each date by each such individual in rendering services on behalf of the Debtors in half-hour (0.5) increments, but Lazard shall be excused from keeping time in tenth-hour (0.1) increments.

9. Notwithstanding anything to the contrary in the Supplemental Application, the Amended Engagement Letter, or the New Declaration, to the extent that Lazard uses the services of independent or third-party contractors or subcontractors (the "**Contractors**") in these cases and



Lazard seeks to pass through the fees and/or costs of the Contractors to the Debtors, Lazard shall (a) pass through the fees of such Contractors to the Debtors at the same rate that Lazard pays such Contractors; and (b) seek reimbursement for actual costs of the Contractors only. In addition, the Debtors shall ensure that the Contractors perform substantially similar conflict checks as are required for Lazard and file or cause to be filed such disclosures as required by Bankruptcy Rule 2014.

10. In the event that, during the pendency of these chapter 11 cases, Lazard seeks reimbursement for any attorneys' fees and/or expenses pursuant to the Amended Engagement Letter, the invoices and supporting time records from such attorneys (which may be redacted for privilege) shall be included in Lazard's fee applications and such invoices and time records shall be in (a) subject to the guidelines promulgated by the U.S. Trustee for compensation and reimbursement of expenses and (b) in compliance with the Bankruptcy Local Rules and approval of the Court under the standards of sections 330 and 331 of the Bankruptcy Code, without regard to whether such attorney has been retained pursuant to section 327 of the Bankruptcy Code and without regard to whether such attorney's services satisfy section 330(a)(3)(C) of the Bankruptcy Code. Notwithstanding the foregoing, Lazard shall only be reimbursed for any legal fees incurred in connection with these chapter 11 cases to the extent permitted under applicable law and the decisions of this Court.

11. The Debtors shall be bound by the indemnification, contribution, reimbursement and other provisions of the Amended Engagement Letter and the Readopted Indemnification Letter and will indemnify and hold harmless Lazard and each other Indemnified Person<sup>3</sup> pursuant to the

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<sup>3</sup> Lazard Frères & Co. LLC or any of its current or future affiliates, or any of its or their respective directors, officers, members, employees, agents or controlling persons, if any (each of the foregoing, including Lazard Frères & Co. LLC, being an "**Indemnified Person**").

Amended Engagement Letter and Readopted Indemnification Letter, subject during the pendency of these chapter 11 cases to the following:

- (a) Subject to the provisions of subparagraphs (b) and (c) below, the Debtors are authorized to indemnify, and to provide contribution and reimbursement to, the Indemnified Persons in accordance with the Readopted Indemnification Letter for any claim arising from, related to, or in connection with the services provided for in the Amended Engagement Letter as modified by this Order;
- (b) Notwithstanding subparagraph (a) above or any provisions of the Amended Engagement Letter or Readopted Indemnification Letter to the contrary, the Debtors shall have no obligation to indemnify or provide contribution or reimbursement to an Indemnified Person (i) for any claim or expense that is judicially determined (the determination having become final) to have arisen from such Indemnified Person's fraud, bad faith, self-dealing, breach of fiduciary duty (if any), gross negligence, or willful misconduct, (ii) for a contractual dispute in which the Debtors allege the breach of Lazard's contractual obligations if the Court determines that indemnification, contribution, or reimbursement would not be permissible as a result of *In re United Artists Theatre Co.*, 315 F.3d 217 (3d Cir. 2003), or (iii) for any claim or expense that is settled prior to a judicial determination as to the exclusions set forth in clauses (i) and (ii) above, but determined by this Court, after notice and a hearing pursuant to subparagraph (c) *infra*, to be a claim or expense for which such Indemnified Person should not receive indemnity, contribution, or reimbursement under the terms of the Amended Engagement Letter and Readopted Indemnification Letter, as modified by this Order; and
- (c) If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in the Debtors' cases (that order having become a final order no longer subject to appeal), and (ii) the entry of an order closing the Debtors' chapter 11 cases, Lazard believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution, and/or reimbursement obligations under the Indemnification Agreement, as modified by this Order, Lazard must file an application therefore in this Court, and the Debtors may not pay any such amounts to Lazard before the entry of an order by this Court approving such payment. This subparagraph (c) is intended only to specify the period during which the Court shall have jurisdiction over any request by Lazard for indemnification, contribution, or reimbursement and is not a provision limiting the duration of the Debtors' obligation to indemnify.

12. The Debtors shall use reasonable efforts to avoid any duplication of services provided by Lazard and any of the Debtors' other retained professionals in these chapter 11 cases.

13. If Lazard discovers any new or currently unknown conflict with a party in interest pursuant to Schedule 1 or otherwise provided by the Debtors, Lazard will promptly file a supplemental declaration, as required by Fed. R. Bankr. P. 2014(a).

14. To the extent that this Order is inconsistent with the Original Order, the Supplemental Application, the New Declaration, the Amended Engagement Letter, or the Readopted Indemnification Letter, the terms of this Order shall govern.

15. Notice of the Supplemental Application satisfies the requirements of Bankruptcy Rule 6004(a) and the Bankruptcy Local Rules are satisfied by such notice.

16. Notwithstanding any Bankruptcy Rule to the contrary, the terms and conditions of this Order are immediately effective and enforceable upon its entry.

17. The Debtors and Lazard are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Supplemental Application.

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

Dated: \_\_\_\_\_, 2025  
Houston, Texas

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THE HON. MARVIN P. ISGUR  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT 1**

**Amended Engagement Letter**

# LAZARD

Lazard Frères & Co. LLC

30 Rockefeller Plaza  
New York, NY 10112

January 9, 2025

Zachry Holdings, Inc.  
527 Logwood Avenue  
San Antonio, TX 78224

Attention: Mr. John Zachry  
Chairman and Chief Executive Officer

Dear Ladies and Gentlemen:

This amended and restated letter agreement (the “Agreement”) confirms the understanding and agreement between Lazard Frères & Co. LLC (“Lazard”) and Zachry Holdings, Inc. (“Zachry”) and its controlled subsidiaries that are debtors in the Chapter 11 Cases<sup>1</sup> (collectively with any entity formed or used for the purposes set forth herein, the “Company”). This Agreement amends and restates in its entirety that certain letter agreement among Lazard and the Company dated as of September 17, 2024 (the “September Engagement Letter”), which is replaced and superseded in its entirety by this Agreement.

Assignment Scope:

The Company hereby retains Lazard as its investment banker to provide the Company with general restructuring advice and to advise it in connection with any Restructuring and/or Financing (each as defined below) on the terms and conditions set forth herein. As used in this Agreement, the term “Restructuring” shall mean, collectively, any restructuring, reorganization (whether or not pursuant to Chapter 11 of the United States Bankruptcy Code) and/or recapitalization of all or a portion of the Company’s outstanding indebtedness (including bank debt, bond debt, and other on and off balance sheet indebtedness), trade claims, leases (both on and off balance sheet), and other litigation-related claims and obligations, unfunded pension and retiree medical liabilities, or other liabilities (collectively, the “Existing Obligations”) that is achieved, without limitation, through a solicitation of waivers and consents from the holders of Existing Obligations (collectively, the “Stakeholders”); rescheduling of the maturities of Existing Obligations; a change in interest rates, repurchase, settlement or forgiveness of Existing Obligations; conversion of Existing Obligations into equity or other securities; an exchange offer involving the issuance of new securities in exchange for Existing Obligations; the issuance of new securities, sale of debt or equity securities or other interests, or other similar transaction or series of transactions. By signing

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<sup>1</sup> As used in this Agreement, the term “Chapter 11 Cases” means the chapter 11 cases of Zachry and its debtor subsidiaries pending in the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”) and jointly administered under Case No. 24-90377.

this Agreement, we hereby accept our appointment as investment banker under the terms hereof.

Description of Services:

1. Lazard agrees, in consideration of the compensation provided in Section 2 below, to perform such of the following investment banking services as the Company may reasonably request, including:

- (a) Reviewing and analyzing the Company's business, operations and financial projections;
- (b) Evaluating the Company's potential debt capacity in light of its projected cash flows;
- (c) Assisting in the determination of a capital structure for the Company;
- (d) Assisting in the determination of a range of values for the Company on a going concern basis;
- (e) Advising the Company on tactics and strategies for negotiating with the Stakeholders;
- (f) Rendering financial advice to the Company and participating in meetings or negotiations with the Stakeholders and/or rating agencies or other appropriate parties in connection with any Financing or Restructuring;
- (g) Advising the Company on the timing, nature, and terms of new securities, other consideration or other inducements to be offered pursuant to any Financing or Restructuring;
- (h) Advising and assisting the Company in evaluating any potential Financing<sup>2</sup> transaction by the Company, and, on behalf of the Company, contacting potential sources of capital as the Company may designate and assisting the Company in implementing such Financing;
- (i) Assisting the Company in preparing documentation within our area of expertise that is required in connection with any Financing or Restructuring;

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<sup>2</sup> As used in this Agreement, the term "Financing" means any transaction or series of transactions involving the public or private issuance, sale, or placement of newly-issued (including securities held in treasury) equity, equity-linked or debt securities, instruments, or obligations of the Company, and including any debtor-in-possession financing or exit financing in connection with the Chapter 11 Cases. For the avoidance of doubt, (a) any reinstatement, modification or amendment to the terms of the Company's outstanding indebtedness (including, without limitation, any bank debt, bond debt, preferred stock, and other on and off balance sheet indebtedness of the Company) and (b) any equity transaction involving the Company's existing equityholders shall not be deemed to be a Financing.

- (j) Attending meetings of the Board of Directors of Zachry with respect to matters on which we have been engaged to advise hereunder; and
- (k) Providing testimony, as necessary, with respect to matters on which we have been engaged to advise hereunder in the Chapter 11 Cases.

Fees:

2. As consideration for the services to be provided, the Company shall pay Lazard the following fees:

- (a) A monthly fee of \$150,000 (the “Monthly Fee”), payable on execution of this Agreement and on the first (1st) day of each month thereafter until the earlier of the completion of the Restructuring or the termination of Lazard’s engagement pursuant to Section 10. One hundred percent (100%) of all Monthly Fees paid in respect of any months following the third (3rd) month of this engagement shall be credited (without duplication) against any Restructuring Fee or Financing Fee payable to Lazard; provided that such credit shall only apply to the extent that such fees are approved in entirety by the Bankruptcy Court, if applicable.
- (b) A fee equal to \$4,400,000, payable upon the consummation of a Restructuring (the “Restructuring Fee”); provided, however, that if Lazard provides any testimony in deposition or in court in connection with the Chapter 11 Cases (but not including any affidavit or other filing in support of any Restructuring), the Restructuring Fee shall be \$4,650,000.
- (c) A fee, payable upon consummation of any Financing (each, a “Financing Fee”), equal to 2.25% of the gross proceeds of such Financing; provided, however, that the Financing Fee will only be payable in connection with one Financing (or series of related Financings).
- (d) For the avoidance of any doubt, only the greater of the Restructuring Fee or the Financing Fee shall be payable pursuant to each of clauses (b) and (c) above.
- (e) In addition to any fees that may be payable to Lazard and, regardless of whether any transaction occurs, the Company shall promptly reimburse Lazard for all reasonable expenses incurred by Lazard (including travel and lodging, data processing and communications charges, courier services and other expenditures) and the reasonable fees and expenses of counsel, if any, retained by Lazard (other than legal fees associated with the negotiation of this Agreement or any amendment or modification hereof). Lazard will request prior authorization from the Company for any out-of-pocket costs and expenses higher than \$50,000 in the aggregate (the “Expense Cap”), and such pre-approval shall not be unreasonably denied or withheld by the Company; provided that the Company agrees to negotiate with Lazard, in good faith, an increase in the Expense Cap at such time as the expenses

exceed 75% of the Expense Cap. Nothing in this paragraph shall in any way affect or limit the obligations of the Company as set forth in Addendum A attached hereto.

- (f) As part of the compensation payable to Lazard hereunder, the Company has agreed to the indemnification, reimbursement, contribution and other provisions (the "Indemnification Letter") attached to this Agreement as Addendum A and incorporated herein in their entirety.
- (g) All amounts referenced hereunder reflect United States currency and shall be paid promptly in cash after such amounts accrue hereunder.

For the avoidance of doubt, nothing herein shall in any way affect or limit any expenses payable to Lazard pursuant to the September Engagement Letter that have been accrued but not yet paid as of the date hereof, which accrued expenses shall be paid in accordance with the September Engagement Letter.

Lazard's investment banking services shall not include serving as a dealer-manager in connection with any debt exchange. Any provision of dealer-manager services would be subject to Lazard's agreement to so act and to the execution of a separate agreement between the parties or an amendment to this agreement, in either case containing terms and conditions to be mutually agreed by the parties addressing such services, including an additional dealer-manager fee.

Retention in Chapter 11 Proceedings:

3. The Company agrees that it will use best efforts to obtain prompt authorization from the Bankruptcy Court to retain Lazard on the terms and conditions set forth in this Agreement under the provisions of Section 328(a) of the Bankruptcy Code. Subject to being so retained, Lazard agrees that during the pendency of any such proceedings, it shall continue to perform its obligations under this Agreement and that it shall file interim and final applications for allowance of the fees and expenses payable to it under the terms of this Agreement pursuant to the applicable Federal Rules of Bankruptcy Procedure, and the local rules and order of the Bankruptcy Court. The Company shall supply Lazard with a draft of the application and proposed retention order authorizing Lazard's retention sufficiently in advance of the filing of such application and proposed order to enable Lazard and its counsel to review and comment thereon. Lazard shall be under no obligation to provide any services under this Agreement in the event that the Bankruptcy Court declines to approve Lazard's retention under section 328(a) of the Bankruptcy Code by final order of the Bankruptcy Court, which order is acceptable to Lazard. The retention application shall note that in so agreeing to seek Lazard's retention under Section 328(a) of the Bankruptcy Code, the Company acknowledges that it believes that Lazard's general restructuring experience and expertise and its knowledge of the capital markets will inure to the benefit of the Company in pursuing any Restructuring or Financing, that the value to the Company of Lazard's services hereunder derives in substantial part from that expertise and experience and that, accordingly, the structure and amount of the deferred fees, including the Restructuring Fee and Financing Fee is reasonable regardless of the number of hours to be expended by Lazard's professionals in the performance of the services to be provided hereunder, and that the deferred fees shall not be considered to be "bonuses" or fee enhancements under applicable law.



Other:

4. No fee payable to any third party, by the Company or any other person or entity, shall reduce or otherwise affect any fee payable hereunder to us.

5. The Company will furnish or cause to be furnished to Lazard such current and historical financial information and other information regarding the business of the Company as Lazard may request in connection with this engagement. The Company represents and warrants to Lazard that all of the foregoing information will be accurate and complete at the time it is furnished, and agrees to keep Lazard advised of all developments materially affecting the Company or its financial position. In performing its services pursuant to this Agreement, Lazard shall be entitled to rely upon information furnished to it by the Company or any third party and information that is publicly available, may assume the accuracy and completeness of such information and shall not assume any responsibility for independent verification of any such information. Lazard will not, as part of its engagement, undertake any appraisal of any of the assets or liabilities of the Company or of any third party.

6. In performing its services pursuant to this Agreement, Lazard is not assuming any responsibility for the decision of the Company or any other party to pursue (or not to pursue) any business strategy or to effect (or not to effect) any Restructuring, Financing or other transaction. Lazard shall not have any obligation or responsibility to provide "crisis management" for or business consultant services to the Company, and shall have no responsibility for designing or implementing operating, organizational, administrative, cash management or liquidity improvements; nor shall Lazard be responsible for providing or deemed to have provided any tax, accounting, actuarial, legal or other specialist advice.

7. It is understood and agreed that nothing contained in this Agreement shall constitute an express or implied commitment by Lazard or any of our affiliates to underwrite, place or purchase any securities in a financing or otherwise, which commitment shall only be set forth in a separate underwriting, placement agency or purchase agreement, as applicable, relating to the financing.

8. Simultaneously herewith, the parties hereto are entering into the Indemnification Letter. The Indemnification Letter shall survive any termination or expiration of our engagement hereunder.

9. In order to coordinate our efforts on behalf of the Company during the period of our engagement hereunder, the Company will promptly inform Lazard of any discussions, negotiations, or inquiries regarding a potential transaction, including any such discussions or inquiries that have occurred during the six month period prior to the date of this Agreement. In the event that Lazard receives an inquiry concerning any transaction, we will promptly inform the Company of such inquiry.

10. Our engagement hereunder will automatically expire on consummation of a Restructuring and may be earlier terminated by Zachry or us only upon written notice by the Company or us to the other party at any time (and, for the avoidance of doubt, not by any other action, conduct or event), without liability or continuing obligation to the Company or us following any termination or expiration, except that (a) following any termination or expiration of our engagement we shall remain entitled to any fees accrued pursuant to Section 2 but not yet paid

prior to such termination or expiration, as the case may be, and to reimbursement of expenses incurred prior to such termination or expiration, as the case may be (subject to the Expense Cap), and (b) in the case of termination by Zachry or any expiration of our engagement, we shall remain entitled to full payment of all fees contemplated by Section 2 hereof in respect of any Restructuring and any Financing announced or resulting from negotiations occurring during the period from the date hereof until one year following such termination or expiration, as the case may be.

11. Lazard has been retained under this Agreement as an independent contractor to Zachry, and nothing herein is intended to confer any rights or remedies as against Lazard upon any person (including the management, Board of Directors, employees, securityholders and creditors of the Company) other than Zachry. In addition, it is understood and agreed that this Agreement and our engagement do not create a fiduciary relationship between Lazard and any person, including the Company or its management, Board of Directors, employees, securityholders and creditors. No one, other than senior management or the Board of Directors of Zachry (in their capacities as such) is authorized to rely upon the Company's engagement of Lazard or any statements, advice, opinions or conduct by Lazard. Without limiting the foregoing, any advice, written or oral, rendered in the course of the Company's engagement of Lazard are solely for the purpose of assisting senior management or the Board of Directors of Zachry (in their capacities as such) in evaluating the relevant Restructuring or Financing and does not constitute a recommendation to any stakeholder of the Company that such stakeholder might or should take in connection with any Restructuring or Financing. The Company agrees that, notwithstanding any termination or expiration of our engagement, any advice, written or oral, rendered by Lazard and the terms of our engagement hereunder may not be disclosed publicly or made available to third parties without the prior written consent of Lazard. Notwithstanding the foregoing, nothing herein shall prohibit the Company from disclosing to any and all persons the tax treatment and tax structure of any transaction and the portions of any materials that relate to such tax treatment or tax structure.

12. In connection with the services to be provided hereunder, Lazard may employ the services of its affiliates and may share with any such entity any information concerning the Company, subject to the terms of paragraph 14 below. Any such entity so employed shall be entitled to all of the benefits afforded to Lazard hereunder and under the Indemnification Letter and shall be entitled to be reimbursed for its expenses on the same basis as Lazard.

13. Lazard understands that certain work provided by Lazard will be done at the direction of White & Case LLP ("White & Case") to assist White & Case in rendering legal advice, and that communications and correspondence from Lazard, and work product and analyses prepared by Lazard for the Company in connection with this matter, will be considered, at the direction of White & Case, privileged and protected by the attorney work product privilege, attorney client privilege, and any other applicable privilege doctrine available under applicable law. Lazard will use reasonable efforts to mark all material written work product, both in draft and in final, as "PRIVILEGED AND CONFIDENTIAL: ATTORNEY-CLIENT COMMUNICATION ATTORNEY WORK PRODUCT, PREPARED AT REQUEST OF COUNSEL" or other language to similar effect.

14. With respect to any information that is provided to Lazard by or on behalf of the Company in connection with Lazard's engagement hereunder ("Confidential Information"), Lazard agrees as follows:

- (a) Except as required by applicable law, rule or regulation or governmental, legal or regulatory process, Lazard shall not disclose any Confidential Information to any third party unless authorized by the Company; provided, that Lazard may disclose any such information to Lazard's affiliates and its and their respective directors, officers, employees, representatives and other agents, in each case who are subject to an obligation of confidentiality with respect thereto (any of such persons, "Agents").
- (b) Upon written request by the Company, all Confidential Information will, at Lazard's election, either be destroyed or returned to the Company; provided, that the foregoing will not require the destruction or return of materials that are required to be retained by Lazard's or its Agents' internal processes adopted pursuant to applicable law, rule or regulation and will not require Lazard or its Agents to search archived electronic files accessible only to IT and legal/compliance personnel for Confidential Information in order to purge that material from such files; provided, further, that any Confidential Information retained pursuant to the foregoing proviso shall remain subject to the terms of this paragraph 14.
- (c) Confidential Information does not include any information that (i) is published or otherwise becomes available to the public other than as a result of a disclosure by Lazard or any of its Agents in violation of this paragraph 14; (ii) was in Lazard's possession at the time of its disclosure by or on behalf of the Company; (iii) is acquired from a third party that is not known to Lazard to be prohibited from disclosing such information by an obligation of confidentiality to the Company with respect thereto; or (iv) is developed without reference to any of the information so disclosed.
- (d) If Lazard or any of its Agents are requested or required to disclose any Confidential Information by law, rule or regulation or by legal, governmental or regulatory process, Lazard agrees, to the extent practicable and permitted by law, rule, regulation and any relevant legal, governmental and regulatory (including self-regulatory) bodies, to provide the Company with prompt written notice (email will suffice) of any such request or requirement (provided, that no notice will be in connection with any disclosures pursuant to regulatory (including self-regulatory) or judicial requests or requirements that are not specifically targeted at the Company or any potential Transaction).
- (e) This paragraph 14 shall survive the expiration or termination of Lazard's engagement hereunder until the later of (i) the closing of the Company's Chapter 11 Cases and (ii) the date that is one year from the date hereof, and shall then expire.

15. The provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the Company, Lazard and any other person entitled to indemnity under the Indemnification Letter. The Company's obligations pursuant to this Agreement shall be joint and

several. This Agreement and the related Indemnification Letter embody the entire agreement and understanding among the parties hereto and supersede any and all prior agreements, arrangements, and understandings, related to the matters provided for herein. No waiver, amendment or other modification of this agreement shall be effective unless in writing and signed by each party to be bound thereby.

16. This Agreement and any claim related directly or indirectly to this Agreement (including any claim concerning advice provided pursuant to our engagement hereunder) shall be governed by and construed in accordance with the laws of the State of New York without regard to the principles of conflicts of law. No such claim shall be commenced, prosecuted or continued in any forum other than the courts of the State of New York located in the City and County of New York or the United States District Court for the Southern District of New York, and each of the parties hereby submits to the jurisdiction of such courts. The Company hereby waives on behalf of itself and its successors and assigns any and all right to argue that the choice of forum provision is or has become unreasonable in any legal proceeding. The Company waives all right to trial by jury in any action, proceeding or counterclaim (whether based upon contract, tort or otherwise) related to or arising out of this Agreement or the engagement of Lazard pursuant to, or the performance by Lazard of the services contemplated by, this Agreement. Notwithstanding the foregoing, the parties hereby irrevocably consent to the exclusive jurisdiction of the Bankruptcy Court over any action or proceeding arising out of or relating to this Agreement while the Chapter 11 Cases remain pending, and the parties hereby irrevocably agree that all claims in respect of such action or proceeding may be heard in Bankruptcy Court while the Chapter 11 Cases remain pending.

If the foregoing Agreement is in accordance with your understanding of the terms of our engagement, please sign and return to us the enclosed duplicate hereof.

Very truly yours,

LAZARD FRERES & CO. LLC

By: 

\_\_\_\_\_  
Jason New  
Vice Chairman

AGREED TO AND ACCEPTED  
as of the date first written above:

ZACHRY HOLDINGS, INC., on behalf of itself  
and its controlled debtor subsidiaries

By: 

\_\_\_\_\_  
Jay Old  
General Counsel

**Addendum A**

**Indemnification Letter**

*See attached.*

**EXHIBIT 2**

**Readopted Indemnification Letter**

# LAZARD

Indemnification Letter

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September 17, 2024

Zachry Holdings, Inc.  
527 Logwood Avenue  
San Antonio, TX 78224

Attention: John Zachry  
Chairman and Chief Executive Officer

Gentlemen:

In connection with our engagement to advise and assist Zachry Holdings, Inc. and its controlled debtor subsidiaries (collectively, “you” or the “Company”) with the matters set forth in the engagement letter of even date herewith, you and we are entering into this letter agreement. It is understood and agreed that in the event that Lazard Frères & Co. LLC or any of our current or future affiliates, or any of our or their respective directors, officers, members, employees, agents or controlling persons, if any (each of the foregoing, including Lazard Frères & Co. LLC, being an “Indemnified Person”), become involved in any capacity in any action, claim, proceeding or investigation brought or threatened by or against any person, including your securityholders, related to, arising out of or in connection with our engagement, you will promptly reimburse each such Indemnified Person for its reasonable, documented and out-of-pocket legal and other expenses (including the reasonable cost of any investigation and preparation) as and when they are incurred in connection therewith. You will indemnify and hold harmless each Indemnified Person from and against any losses, claims, damages, liabilities or expenses to which any Indemnified Person may become subject under any applicable federal or state law, or otherwise, related to, arising out of or in connection with our engagement, whether or not any pending or threatened action, claim, proceeding or investigation giving rise to such losses, claims, damages, liabilities or expenses is initiated or brought by you or on your behalf and whether or not in connection with any action, claim, proceeding or investigation in which you or any such Indemnified Person are a party, except to the extent that any such loss, claim, damage, liability or expense is found by a court of competent jurisdiction in a judgment which has become final in that it is no longer subject to appeal or review to have resulted primarily from such Indemnified Person’s bad faith, gross negligence, or willful misconduct. Each Indemnified Person shall promptly remit to the Company any amounts paid to such Indemnified Person under this Agreement in respect of losses, claims, damages, liabilities or expense that are found by a court of competent jurisdiction in a judgment which has become final in that it is no longer subject to appeal or review to have resulted from such Indemnified Person’s gross negligence, bad faith or willful misconduct. You also agree that no Indemnified Person shall have any liability (whether direct or indirect, in contract or tort or otherwise) to you or your securityholders or creditors related to, arising out of or in connection with our engagement except to the extent that any loss, claim, damage or liability is found by a court of competent jurisdiction in a judgment which has become final in that it is no longer subject to appeal or review to have resulted primarily from such Indemnified Person’s bad faith or gross negligence.



## LAZARD

Indemnification Letter

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If for any reason the foregoing indemnification is held unenforceable or is otherwise unavailable, then you shall contribute to the loss, claim, damage, liability or expense for which such indemnification is held unenforceable in such proportion as is appropriate to reflect the relative benefits received, or sought to be received, by you and your securityholders and creditors on the one hand and the Indemnified Persons on the other hand in the matters contemplated by our engagement as well as the relative fault of yourselves and such persons with respect to such loss, claim, damage, liability or expense and any other relevant equitable considerations. You agree that for the purposes hereof the relative benefits received, or sought to be received, by you and your securityholders and creditors and the Indemnified Persons shall be deemed to be in the same proportion as (i) the total value paid or proposed to be paid by or to you and your securityholders and creditors, as the case may be, pursuant to any transaction (whether or not consummated) for which we have been engaged to perform investment banking services bears to (ii) the fees paid or proposed to be paid to us in connection with such engagement; provided, however, that, to the extent permitted by applicable law, in no event shall we or any other Indemnified Person be required to contribute an aggregate amount in excess of the aggregate fees actually paid to us for such investment banking services. Your reimbursement, indemnity and contribution obligations under this agreement shall be joint and several, shall be in addition to any liability which you may otherwise have, shall not be limited by any rights we or any other Indemnified Person may otherwise have and shall be binding upon and inure to the benefit of any successors, assigns, heirs and personal representatives of yourselves, ourselves, and any other Indemnified Persons.

No Indemnified Person may, without the Company's prior written consent (which will not be unreasonably withheld), settle, compromise or consent to the entry of any judgment in any pending or threatened claim, action, proceeding or investigation in respect of which indemnification or contribution will be sought hereunder. You agree that, without our prior written consent (which will not be unreasonably withheld), you will not settle, compromise or consent to the entry of any judgment in any pending or threatened claim, action, proceeding or investigation in respect of which indemnification or contribution could be sought hereunder (whether or not we or any other Indemnified Persons are an actual or potential party to such claim, action, proceeding or investigation), unless such settlement, compromise or consent includes an unconditional release of each Indemnified Person from all liability arising out of such claim, action, proceeding or investigation. No waiver, amendment or other modification of this agreement shall be effective unless in writing and signed by each party to be bound thereby. This agreement and any claim related directly or indirectly to this agreement shall be governed and construed in accordance with the laws of the State of New York (without giving regard to the conflicts of law provisions thereof). No such claim shall be commenced, prosecuted or continued in any forum other than the courts of the State of New York located in the City and County of New York or the United States District Court for the Southern District of New York, and each of us hereby submits to the jurisdiction of such courts. The Company hereby waives on behalf of itself and its successors and assigns any and all right to argue that the choice of forum provision is or has become unreasonable in any legal proceeding. You (on your own behalf and, to the extent permitted by applicable law, on behalf of your securityholders and creditors) waive all right to trial by jury in any action, proceeding or counterclaim (whether based upon contract, tort or otherwise) related to, arising out of or in connection with this Agreement or our engagement. Notwithstanding the foregoing, Lazard and the Company hereby irrevocably consent to the exclusive jurisdiction of the Bankruptcy Court over

LAZARD

Indemnification Letter

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any claim related directly or indirectly to this Agreement and while the Chapter 11 Cases involving the Company remain pending, the parties hereby irrevocably agree that all claims in respect of such action or proceeding may be heard in such Bankruptcy Court while the Chapter 11 Cases remain pending.

This agreement shall remain in effect indefinitely, notwithstanding any termination or expiration of our engagement.

Very truly yours,

LAZARD FRERES & CO. LLC

By

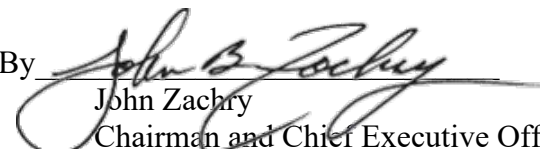
  
\_\_\_\_\_  
Jason New  
Vice Chairman

AGREED TO AND ACCEPTED

as of the date first  
above written:

ZACHRY HOLDINGS, INC., on behalf of itself  
and its controlled debtor subsidiaries

By

  
\_\_\_\_\_  
John Zachry  
Chairman and Chief Executive Officer