

Exhibit 8

Emergency Motion of Golden Pass LNG Terminal LLC for Entry of and
Order Compelling Rejection of EPC Contract; or, in the Alternative
Granting Relief from the Automatic Stay.

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

In re:

ZACHRY HOLDINGS, INC., *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 24-90377 (MI)
)
) (Jointly Administered)
)

**EMERGENCY MOTION OF GOLDEN PASS LNG TERMINAL LLC FOR
ENTRY OF AN ORDER COMPELLING REJECTION OF EPC CONTRACT; OR,
IN THE ALTERNATIVE GRANTING RELIEF FROM THE AUTOMATIC STAY**

Emergency relief has been requested. If the Court considers the motion on an emergency basis, then you will have less than 21 days to answer. If you object to the requested relief or if you believe that the emergency consideration is not warranted, you should file an immediate response.

Golden Pass LNG Terminal LLC (“Golden Pass”) is the owner of a liquefied natural gas (“LNG”) facility consisting of three interconnected natural gas processing facilities, along with integrated utilities, storage facilities, export terminals, and related improvements in various stages of completion, spanning across 750 acres along the Texas Gulf Coast (the “LNG Facility” or the “Project”) in Sabine Pass, Texas. Zachry Industrial, Inc. (“Zachry”)—along with Chiyoda International Corporation and CB&I LLC (the “JV Parties”)—entered into a \$9.25 billion lump sum, turnkey EPC Contract to provide “the detailed engineering, procurement, construction, and commissioning of an LNG Plant” for the Golden Pass LNG Export Project which required Zachry, as the lead construction contractor, to complete Train 1 (of three Trains) by November 30, 2023, and the entire Project by January 31, 2025 (prior to any amendments). It is beyond dispute that

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

Zachry has abandoned the LNG Facility and, in any event, is incapable of performing under the EPC Contract. It is also beyond dispute that Zachry's actions have caused, and continue to cause, immediate and substantial harm that compounds on a daily basis. Accordingly, Golden Pass files this emergency motion requesting entry of an Order compelling Zachry to reject its interest in the EPC Contract and related relief (the "Motion") and respectfully states as follows:

PRELIMINARY STATEMENT

1. Zachry should have formally rejected its interest in the EPC Contract on the first day of this case. Zachry has clearly rejected its responsibilities under the EPC Contract, and abandoned the Project prior to the commencement of the case. Indeed, formal rejection on the first day would have been in the best interests of Zachry's creditors, the estate, hundreds of subcontractors, and thousands of workers terminated as a result of Zachry's abandonment of its obligations under the EPC Contract. If Zachry is not going to perform its obligations under the EPC Contract (which it has not and cannot), then the only responsible step is to reject those obligations so that Golden Pass and the non-debtor JV Parties can begin the work of rehiring as many workers and subcontractors (many of whom cannot afford to be out of work) as possible and stop the damage Zachry's abandonment of the Project continues to inflict upon a multitude of affected parties. Immediate rejection of the EPC Contract will break the logjam caused by Zachry's inaction and allow the Project to progress without this Court predetermining any claims between the parties.

2. The salient facts supporting this Motion are undisputed. Zachry's own first day filings and cash collateral budgets, standing alone, establish that Zachry has neither the intention, nor the ability, to fulfill the EPC Contract in any respect. An order compelling Zachry to immediately reject its interest in the EPC Contract would simply recognize this truth.

3. Most importantly, immediate rejection would stop the ongoing substantial damage to everyone affiliated with the Golden Pass LNG Project, including the many subcontractors, workers, non-debtor joint venture parties to the EPC Contract, and Golden Pass, that Zachry is preventing from doing their job, as well as mitigate the growing harm to other creditors, and, ***by its own admission, to Zachry itself***. This damage (and the additional claims accruing to Zachry's bankruptcy estate) only increases with each day. Therefore, Golden Pass respectfully asks the Court to compel Zachry to immediately reject its interest in the EPC Contract based on the undisputable and compelling facts of this case.

4. ***First***, Zachry has not and cannot credibly contend that any other course, including any further delay in recognizing the reality that Zachry has already rejected the EPC Contract, would be justified or beneficial to anyone, including any contractor, subcontractor, worker, creditor, bank, other Zachry project, the community where the Project is being built, or to Zachry itself and its ability to survive and emerge as quickly and efficiently as possible from bankruptcy. To the contrary, any further delay only increases the substantial harm caused to every person and entity affected by this proceeding. Time is of the essence here: with every passing day, the damage being caused by Zachry—to itself and everyone else—only proliferates and becomes more difficult to remedy. Zachry can offer no legitimate reason to prevent the immediate rejection of the EPC Contract. Only additional harm can come from any further delay.

5. ***Second***, it is beyond dispute that Zachry has stopped performing its obligations under the EPC Contract, fired thousands of workers, stopped paying its subcontractors, and abandoned the Golden Pass LNG Project that it committed to building at a lump sum fixed price.

6. Worse, Zachry has taken purposeful and vindictive steps to harm the Project and interfere with the many others who are trying to fulfill their obligations and do their work. These

harmful actions, which affected the safety, welfare and integrity of the Project, include, for example:

- stopping payment for bus service so that workers can no longer be brought to the Project site;
- stopping payment for ice, water;
- stopping payment for the portable toilets at the site;
- stopping payment for fuel so machinery is not available for work to continue;
- abandoning work on a critical levy with hurricane season looming;
- removing the required tags from existing scaffolding so that workers can no longer use it safely;
- failing to properly put large cranes owned or leased by Zachry in safe position during storm events;
- preventing the maintenance and upkeep of a massive amount of important equipment that will cause the equipment to become unusable and fall into disrepair;
- refusing to pay its subcontractors *hundreds of millions of dollars* with the money advanced for that express purpose by Golden Pass;
- preventing Golden Pass from getting subcontractors back to work on full Project scope (as Golden Pass is authorized to do under the EPC Contract);
- purposely reducing the workforce on the Project from the more than 6,000 workers necessary for construction to a skeletal crew of approximately 140 people;
- firing over four thousand of its own workers and preventing the non-debtor JV Parties to the EPC Contract from hiring these workers and giving them back their jobs;
- terminating these same workers at the same time Zachry was in this Court talking about the purported importance of worker morale.²

² A true and correct copy of WARN Act notices filed by Zachry are attached as **Exhibit A**.

7. Zachry's refusal to reject the EPC Contract has been and continues to be detrimental to the Project and the non-debtor parties trying to do their job. The work permitted under the Court's prior stipulations is limited basic preventive maintenance and is insufficient to prevent further long-term deterioration of the LNG Facility. Only the resumption of full work scope can adequately mitigate harm to the Project that grows every day. The scale and complexity of the LNG Facility components left partially completed and exposed to the elements cannot be understated. Cables and wiring have not been connected to instruments and sensors at the termination points. Piping, including large bore piping at elevation, remains only partially welded, creating an unsafe situation. Incomplete enclosures have left sensitive instrumentation and equipment exposed to the elements. Due to the required installation sequencing of equipment and materials, these circumstances can only be addressed by the immediate resumption of work.

8. **Third**, as is clear from Zachry's own first day filings and the supporting affidavit of Mohsin Y. Meghji, Zachry has no intention, no plan, and no ability to fulfill its obligations under the EPC Contract. Further, on the first day of this matter, Zachry sought approval of a cash collateral budget that excluded its obligations under the EPC Contract. Similarly, Zachry's second budget submitted on June 15th apparently includes expenditures solely for demobilization and contemplates a full exit by the end of July. Zero funds are forecasted to be expended for the Golden Pass Project beginning August 1. The rejection decision has been made.

9. In fact, Zachry's decision to reject its obligations under the EPC Contract predate this bankruptcy. Over a month before the bankruptcy filing, Zachry admitted that it was in the best interest of the Project for Zachry to exit the Project and that it intended to complete its ongoing exit from the Project. On April 12, 2024, Zachry sent an astounding letter that informed Golden Pass and the other non-debtor JV Parties that "the only way for the project to be successfully

completed is for Zachry to exit its role” in the Project. Obviously, this is a remarkable concession for any construction company to make, and a stunning admission by Zachry of the reality of its own failures and the harm it has caused. In fact, according to its own filings, Zachry entered bankruptcy because of its inability or refusal to fulfill its obligations as the primary contractor on the world’s largest LNG construction project, and seeks to shed its obligations under the EPC Contract. Zachry asserts that “[t]he Debtors enter these Chapter 11 cases as a result of the financial distress caused” by the EPC Contract.³ In other words, Zachry came to this Court for the sole purpose of rejecting the Contract it now inexplicably and stubbornly clings to for no legitimate reason, to the detriment of everyone else and itself.

10. While it is in Zachry’s own interest to simply confirm its ultimate intentions and stipulate to the rejection of the EPC Contract without further expenditure of time and resources, Zachry refuses to do so. Instead, Zachry continues to sit idly while preventing other contractors, subcontractors and workers from accessing the site and doing their job. In fact, before filing this motion, Golden Pass attempted (to no avail) to negotiate in good faith with Zachry for many weeks on a path forward, including in a post-petition mediation before Judge Lopez. Zachry’s refusal to formally reject the EPC Contract is preventing everyone from getting back to work, mitigating the damage being caused by Zachry, completing the project that Zachry walked away from, and fulfilling the commitments and responsibilities that Zachry cannot and will not meet.

11. Zachry refuses to work and refuses to get out of the way so everyone else can. Therefore, Golden Pass has no alternative but to seek this important and time-sensitive relief—relief that will allow Golden Pass and the non-debtor JV Parties to continue the Project and benefit the thousands of workers and scores of vendors who continue to be impacted by Zachry’s refusal

³ Meghji Affidavit, Dkt. No. 7, at ¶ 3.

to perform its obligations under the EPC Contract or reject the EPC Contract. It will also streamline and expedite the bankruptcy process, benefitting everyone involved in or impacted by the bankruptcy, and significantly increasing the likelihood of the Debtors' successful and efficient emergence as a going concern.

12. ***Fourth***, in this case, every factor the Court will consider under 11 U.S.C. Section 365(d)(2) powerfully supports an immediate order compelling rejection of Zachry's interest in the EPC Contract. Here, it is undisputed that: (1) Zachry has stopped performing; (2) this non-performance is causing massive damage (which grows significantly with each passing day) to the non-debtor parties to the EPC Contract, but also to the other creditors, the community where the Project is being built and ***to the debtor itself***, in amounts far beyond what will ultimately be available to any of them in this proceeding; (3) the EPC Contract is not by any means Zachry's primary asset, but according to Zachry, its primary liability and that it entered bankruptcy for the precise purpose of shedding its obligations under the EPC Contract; and (4) Zachry has not only had more than enough time to make a decision, a decision has already been made through Zachry's many harmful actions to reject its obligations under the EPC Contract. In other words, Zachry's actual rejection of the EPC Contract is not only inevitable, it has already occurred. There can be no legitimate reason to allow Zachry to continue the harm it is causing to everyone else, and itself, by any further delay, while also preventing these same parties from mitigating the damages Zachry is causing. In fact, courts have placed heightened significance on the harm delaying rejection of a contract will cause the non-debtor party. All of the factors under the applicable legal standard unquestionably support the Court's entry of an order compelling immediate rejection of Zachry's interest in the EPC Contract.

13. Accordingly, Golden Pass respectfully requests an order compelling rejection of Zachry's interest in the EPC Contract and related relief, or, alternatively, relief from the automatic stay—to the extent applicable—to permit Golden Pass to immediately exercise its undisputed rights under the EPC Contract, in coordination with the non-debtor JV Parties to at the very least immediately get back to work and complete the work on Train 1 of LNG Facility (as discussed in detail below) that Zachry has not, will not, and cannot perform. This will also enable Golden Pass to take the additional steps necessary to protect the LNG Facility from further harm caused by Zachry's non-performance.

JURISDICTION, CORE AUTHORITY, AND VENUE

14. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G). Golden Pass confirms its consent, pursuant to Local Rule 9013-1(f), to the entry of a final order or judgment by the Court on the relief requested in the Motion if it is 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. Venue is proper in this district pursuant to 28 U.S.C. § 1409.

REQUEST FOR EXPEDITED CONSIDERATION

15. As set forth herein, rejection of Zachry's interest in the EPC Contract is inevitable (Zachry, in fact, has already made its decision). Yet each day a formal rejection order is delayed causes substantial additional harm to the LNG Facility. This includes, but is not limited to the exposure of the facility to deterioration from typical Gulf Coast elements, damage from wind and storm events, progress delay damages, continued non-payment of vendors, accrual of administrative expense claims, and substantial additional increased costs that will be imposed upon Golden Pass and the non-debtor JV Parties through the loss of workers, vendors, and

subcontractors. Zachry's non-performance and refusal to reject its interest in the EPC Contract now has and will continue to slow (and could stop) continued construction of the LNG Facility. Construction of a project of this magnitude, capable of employing nearly 10,000 workers, cannot be restarted without additional substantial costs and delays, which only become more significant the longer construction is impeded. Zachry's delay and obstruction is resulting in the accrual of additional significant damages that only further adds to the pool of estate liabilities and dilutes possible recoveries for unsecured creditors.

16. Large portions of the LNG Facility that were once supervised and occupied by thousands of workers are now eerily vacant. Hundreds of buses that could be taking workers to and from the Project are parked. Pipes and equipment are exposed to water and weather. Electrical and HVAC systems need to be completed. Siding and roofing needs to be fashioned and repaired. Intricate and highly sensitive equipment and installations need maintenance and protection. The Projects' location on the Gulf Coast, vulnerable to wind and flooding events, only exacerbates the significant harms and risks Zachry's non-performance and delay have inflicted on the Project. Zachry's skeletal crew is grossly inadequate to protect and preserve the LNG Facility, let alone progress the Project. In fact, in several instances, as set forth herein, Zachry has been a hindrance, removing safety tags on scaffolding and failing to adequately secure cranes before wind events, amongst other improper actions.

17. Golden Pass agreed to delay seeking the relief sought by the Motion as part of a standstill agreement requested by the Mediator, notwithstanding the significant costs of that delay, in a good faith effort to give mediation a chance and exhaust all avenues for a consensual resolution. Unfortunately, those efforts were unsuccessful. The Debtors have now had more than ample time prior to this proceeding, and more than three weeks since commencing the bankruptcy

proceeding, to resume performance under the EPC Contract or articulate a rational business justification for any further delay in a rejection decision—the Debtors have not and cannot do either, and no amount of additional time will change these facts.

18. Accordingly, expedited consideration of the Motion as soon as reasonably practicable is necessary. Recognizing the relatively recent formation of the official committee of unsecured creditors, as well as the importance of the relief requested to other parties, including the non-debtor JV Parties and hundreds of vendors and subcontractors, Golden Pass has requested and obtained an emergency status and scheduling conference for this Motion (set for June 26, 2024 at 8:00 AM CDT) to discuss with the Court a hearing date and any related deadlines necessary to obtain an efficient and expedient resolution of the Motion.

BACKGROUND

A. The LNG Facility

19. In January 2019, Golden Pass, as owner, and Zachry, Chiyoda International Corporation (“Chiyoda”) and CB&I LLC (“CB&I,” and with Zachry and Chiyoda, the “JV Parties” or the “CCZJV”), executed the EPC Contract⁴ for construction of the LNG Facility.

20. The LNG Facility spans over 750 acres located in the Sabine Pass, on the Gulf Coast of Texas, and consists primarily of three natural gas processing facilities (Train 1, Train 2, and Train 3), as well as utility infrastructure that powers the processing facilities, storage facilities, and an export terminal.

21. Below is an aerial view of the LNG Facility.

⁴ The principal EPC Contract and referenced attachments and amendments, including November 2022 Settlement Agreement, are attached as **Exhibit B**. Because the EPC Contract and related attachments and amendments contain confidential information, these documents are being filed under seal, along with a motion to seal, contemporaneously with this Motion.



22. As of the Petition Date, after nearly four and half years of planning and construction, the LNG Facility was approximately 65% complete (in terms of physical construction), with Train 1 and the utility and export terminal facilities approximately 83% complete, Train 2 approximately 46% complete, and Train 3 approximately 31% complete.

23. With a fully engaged workforce, and before the delays and impediments caused by Zachry prior to and resulting from its bankruptcy case, Train 1 of the LNG Facility would likely have been completed in approximately one year. Under the EPC Contract (prior to any amendment), Train 1 had to be completed by November 23, 2023 or Zachry would be liable for substantial liquidated damages.

24. At peak construction capacity, the LNG Facility employs over 9,000 workers (across the three JV Parties), and further utilizes the goods and services of approximately 400 contractors, vendors, and suppliers.

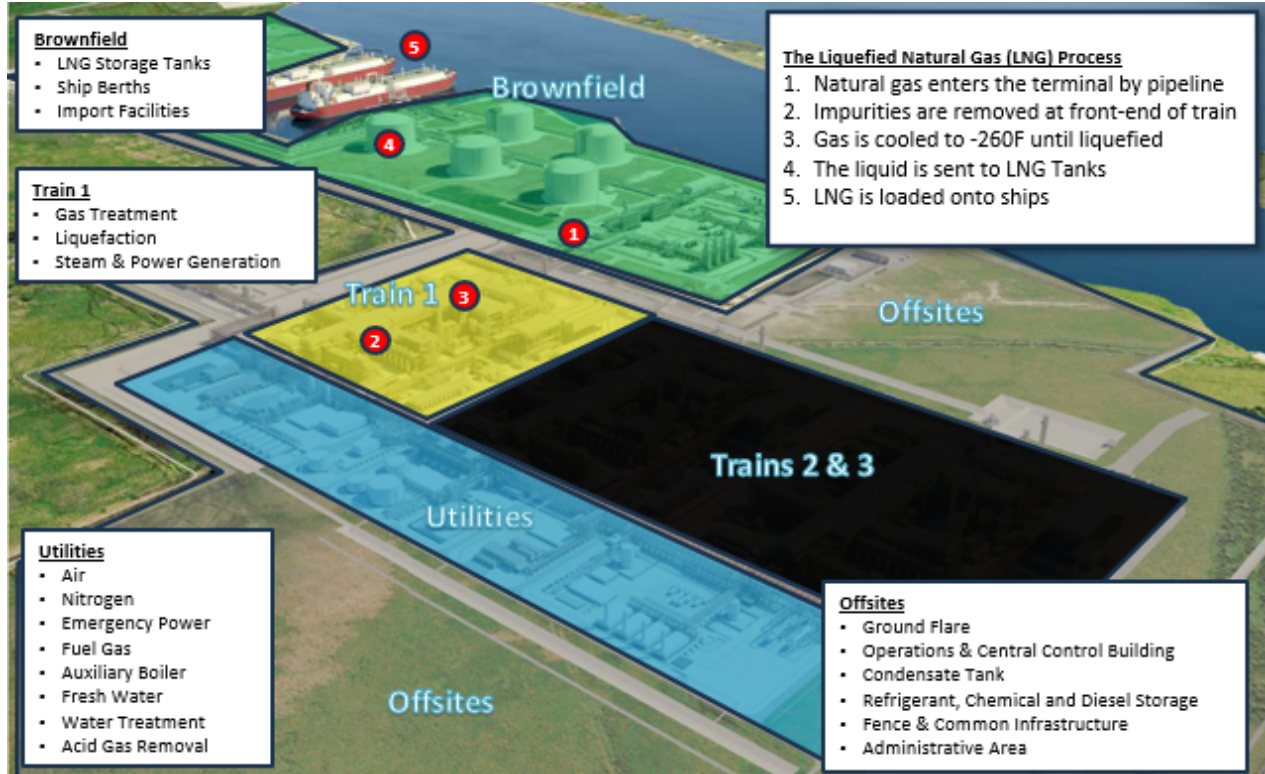
25. The JV Parties divided responsibility for the scope of construction for Train 1 (including the associated utilities, offsites, and existing plant modifications (Brownfield) required for the production and export of LNG from Train 1), Train 2, and Train 3, among Zachry, and the non-debtors—Chiyoda and CB&I—although each of the JV Parties are jointly and severally liable under the EPC Contract.

26. The below chart summarizes the scope of Train 1 work amongst the JV Parties. A similar split of work is applicable to Trains 2 and 3 processing units.

Train 1			
Train 1 LNG Process Unit	Utilities	Offsites	Brownfield
Siteworks	Siteworks	Siteworks	Siteworks
Structural Concrete	Structural Concrete	Structural Concrete	Structural Concrete
Structural Steel	Structural Steel	Structural Steel	Structural Steel
Equipment	Equipment	Equipment	Equipment
Bldgs, Telecoms & Fireproofing	Bldgs, Telecoms & Fireproofing	Bldgs, Telecoms & Fireproofing	Bldgs, Telecoms & Fireproofing
Piping	Piping	Piping	Piping
Electrical	Electrical	Electrical	Electrical
Insulation	Insulation	Insulation	Insulation
Commissioning	Commissioning	Commissioning	Commissioning

Zachry
McDermott
Chiyoda

27. The below picture further describe the Project.



B. Zachry Entered Into a Lump Sum Turnkey Contract Taking Responsibility for All Aspects of the LNG Facility

28. Golden Pass provides a description of the EPC Contract and amendments herein solely for background.

29. The EPC Contract is a lump sum, turnkey contract under which Zachry and the non-debtor JV Parties agreed to construct the LNG Facility pursuant to a fixed timeframe for completion of certain scope and the lump sum price set forth in the EPC Contract, with Zachry taking on primary construction responsibility.

30. Zachry expressly agreed to begin its work promptly and work diligently until completed,⁵ and repeatedly acknowledged that Zachry understood the EPC Contract, the project,

⁵ EPC Contract, at § 2.1.2,

the scope of the work, and its obligations.⁶ Zachry also made express representations that it understood the scope of its obligations, including that:

- Zachry examined the “the location and peculiarities of the PROJECT SITE, [and] the type and magnitude of project management, engineering, procurement and construction services and labor required.”⁷
- Zachry “carefully examined this CONTRACT and has obtained a full understanding and knowledge of the nature, quality and scope of the WORK and of its obligations under this CONTRACT.”⁸
- Zachry agreed that “failure to become knowledgeable about or to discover matters that affect the WORK shall not relieve CONTRACTOR from its obligations under this CONTRACT.”⁹
- Zachry agreed to “accept[] all responsibility for having properly evaluated all costs and contingencies for successfully performing and completing the WORK and for fulfilling all of its obligations under this CONTRACT. Subject to COMPANY’s obligation under this CONTRACT for payment of CONTRACTOR’s invoices.”¹⁰

31. In other words, Zachry accepted all responsibility for completing the work at the Lump Sum Price and on the Schedule set forth in the EPC Contract. And Zachry further warranted under the EPC Contract that it was “financially solvent, able to pay all debts as they mature and possesses sufficient working capital to complete the WORK and perform its obligations” thereunder.¹¹

32. Zachry further contracted that it “shall at all times afford the WORK the highest priority and shall appropriately utilize its efforts and resources to successful completion of the

⁶ *Id.*, at § 2.4.1.

⁷ *Id.*, at § 2.1.4.

⁸ *Id.*, at § 2.4.1.

⁹ *Id.*, at § 2.1.4.

¹⁰ *Id.*, at § 2.4.1.

¹¹ *Id.*, at § 36.1(F).

WORK.”¹² Specifically, Zachry agreed that it would “perform the work in an expeditious manner” in order to achieve the LNG Facility milestones and expressly acknowledged that “time is of the essence” for the completion of each LNG train by the scheduled completion date for each train.¹³

33. The EPC Contract included the following milestones for completing each segment of the LNG Facility and the final completion and turnover of the facility:

- Train 1 COMPLETION—November 30, 2023.¹⁴
- Train 2 COMPLETION—July 30, 2024.¹⁵
- Train 3 COMPLETION—January 31, 2025.¹⁶

34. Zachry agreed that, if it was unable to achieve completion of an LNG train on or before its scheduled completion date, it was obligated to pay liquidated damages for the delay as set forth in the EPC Contract.¹⁷ For example, for LNG Train 1, these damages could amount to 5% of the total portion of the Contract Price applicable to Train 1.¹⁸ Similarly, Liquidated

¹² *Id.*, at § 2.5.1.

¹³ *Id.* § 2.6.2 (“CONTRACTOR shall perform the WORK in an expeditious manner and shall use REASONABLE EFFORTS to achieve each SCHEDULE MILESTONE on or before its SCHEDULE MILESTONE DATE and shall achieve COMPLETION of each LNG TRAIN on or before the SCHEDULED COMPLETION DATE for such LNG TRAIN. CONTRACTOR acknowledges and agrees that time is of the essence for the achievement of COMPLETION of each LNG TRAIN by the SCHEDULED COMPLETION DATE for such LNG TRAIN.”).

¹⁴ *Id.*, at Section E, Appendix C.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at § 2.6.9.

¹⁸ *Id.* at § 2.6.9(A). *See also id.* § 2.6.9(C) (“The PARTIES acknowledge and agree that it would be difficult if not impossible to accurately determine the amount of damages that COMPANY would incur if CONTRACTOR should fail to meet any of the SCHEDULED COMPLETION DATES, and that the liquidated damages set forth in this Article constitute a reasonable approximation of the damages that COMPANY would suffer.”).

Damages are also to be owed by the Contractor for delays to Trains 2 and 3, in amounts up to another 2.5% of the Contract Price applicable to Train 2 and 2.5% for Train 3.¹⁹

35. Zachry also committed to make prompt payment to subcontractors: “CONTRACTOR shall promptly pay and completely satisfy all valid claims for labor, equipment, rentals, and material employed or used by CONTRACTOR in connection with any WORK performed under this CONTRACT when those claims become due and payable, unless such claims are actively being disputed on reasonable grounds.”²⁰ Zachry further agreed to keep Golden Pass’s property free from any vendor liens and immediately discharge any such liens.²¹ Failure to promptly pay its employees, subcontractors, and other invoices constitutes a default, for which Zachry is liable.²²

36. In the event of a default, Zachry agreed that Golden Pass would have a number of contractual remedies, in addition to other legal remedies. Contract remedies include, without limitation, the ability of Golden Pass to:

- draw on the Letter of Credit²³
- “suspend all or part of the WORK;”²⁴
- “terminate all or part of the WORK or this CONTRACT;”²⁵

¹⁹ *Id.* §§ 2.6.9(B), (C).

²⁰ *Id.* § 10.1.2.

²¹ *Id.* § 10.1.3.

²² *Id.* § 21.1.1(D). Section 21.1.1 includes numerous other definitions of default, including insolvency, inability to pay its debts, failure to follow written instructions of Golden Pass, failure to substantially perform under the EPC Contract, or failure to perform any material provision of the EPC Contract.

²³ *See, e.g., Id.* at §9.4.1

²⁴ *Id.*

²⁵ *Id.*

- “seek specific performance or interlocutory mandatory injunctive relief requiring performance of CONTRACTOR’s obligations, it being agreed by CONTRACTOR that such relief may be necessary to avoid irreparable harm to COMPANY;”²⁶
- “exercise any other rights available to COMPANY at law or in equity;”²⁷
- “at its election, and without prejudice to any other remedies available to it, take over and perform or obtain another contractor to take over and perform all or any part of the WORK then remaining unperformed.”²⁸

37. As referenced above, Zachry’s liability under the EPC Contract could be at least \$1.4 billion, plus additional amounts in various instances, including, without limitation:

- “CONTRACTOR’s responsibility related to GROSS NEGLIGENCE or WILLFUL MISCONDUCT of CONTRACTOR;”²⁹
- “CONTRACTOR’s indemnity, defense and hold harmless obligations for claims and liens pursuant to Article 10;”³⁰
- “any payment by CONTRACTOR of liquidated damages for delay pursuant to Article 2.6.9;”³¹ and
- “any payment by CONTRACTOR of liquidated damages for respective LNG TRAIN or FACILITY’s failure to meet the performance guarantee pursuant to EXHIBIT B.”³²

38. The EPC Contract contains an industry standard express integration and merger clause, indicating that its unambiguous terms constituted the entire agreement between the parties

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*, at § 23.1.1. Further, if Golden Pass exercises rights under § 23.1.1, Golden Pass is entitled to offset any additional costs incurred for completing the work, and Zachry’s obligations under the EPC Contract remain.

²⁹ *Id.*, at § 20.16.

³⁰ *Id.*

³¹ *Id.* See also paragraph 30, *supra*, for the percentages for each train, which could total over \$340 million..

³² *Id.*

and that any changes to that agreement must be in writing and approved by duly authorized officers of the parties.³³

39. Finally, the EPC Contract specifies that all parts, supplies, materials, equipment, structures, documents, inventions and intellectual property acquired or created for the purpose of constructing the LNG Facility, including the facilities and improvements constituting the LNG Facility, are Golden Pass's property; the EPC Contract provides for the assignment of vendor and subcontractor contracts and leases to Golden Pass; and the EPC Contract grants Golden Pass a perpetual license to any patents or know-how owned or controlled by Zachry.³⁴

C. The JV Agreement

40. In connection with the EPC Contract, the JV Parties entered into a Hybrid Joint Venture Agreement (the "JV Agreement") that allocated rights, responsibilities, and liabilities between them with respect to the EPC Contract and construction of the LNG Facility, including lead contractor roles for various parts and stages of completion of the Project. While each JV Partner is jointly and severally liable to Golden Pass under the EPC Contract, each JV Partner is separately liable to the JV and each other for obligations and liabilities associated with their specified scope of work under the JV Agreement.

41. As set forth above, Zachry is lead contractor for construction of the LNG Facility and remains solely responsible for substantial portions of the LNG Facility construction.

³³ *Id.*, at § 39 ("ENTIRE AGREEMENT. This CONTRACT and all agreements entered into by the PARTIES pursuant hereto constitute the entire agreement between the PARTIES with respect to the subject matter hereof and supersede all prior negotiations, representations or agreements relating thereto, written or oral, including COMPANY's Invitation to Tender and CONTRACTOR's tender, except to the extent expressly incorporated herein. Unless otherwise provided herein, no changes, alterations or modifications to PRINCIPAL DOCUMENT shall be effective unless in writing and approved in writing by the respective duly authorized officers of the PARTIES hereto. However, changes, alterations, or modifications to the JOB SPECIFICATION shall be effective if approved in writing solely by COMPANY.").

³⁴ *Id.*, at §§ 17.1.1-17.1.3; & 18.1.1-18.1.2.

D. The Parties Entered Into Three Contractual Amendments which provided Zachry with Over \$1.4 Billion in Additional Consideration and Seventeen Additional Months to Fulfill Its Contractual Obligations

42. Prior to the Petition Date, Golden Pass entered into several amendments to the EPC Contract to move the Project forward.

43. In 2022, despite having previously represented that it had fully investigated the Project site and accepted all responsibility for completing its assigned task under a lump sum price, Zachry demanded certain cost and schedule adjustments under the EPC Contract based on claims that had no merit under the EPC Contract or otherwise. Although Zachry was not entitled to any such generous adjustment to the contract terms, in November 2022, Golden Pass entered into a Claims Settlement Agreement with Zachry and the other JV Parties to resolve certain disputes and move the Project forward.³⁵

44. Under the Claims Settlement Agreement, Golden Pass agreed to an upfront *additional* payment of \$240,000,000 to Zachry and its JV Parties, *separate from the payments contained in the EPC Contract*.³⁶ This additional payment included resolution of “all monetary remedies of any kind relating to the Claims other than the Excepted Claims, including but not limited to, equitable adjustments, interest, unpaid portions of Claims that have been invoiced prior to the Effective Date and any other remedies or relief requested or related to the Claims other than the Excepted Claims.”³⁷

³⁵ See Claims Settlement Agreement (Nov. 16, 2022), included within Exhibit B.

³⁶ *Id.* § 3.

³⁷ *Id.* The excepted claims were a limited list set forth in an Exhibit to the Settlement Agreement and not relevant to the Motion.

45. In addition to this upfront payment, Golden Pass amended the EPC Contract to include \$237,000,000 in “Additional Milestone Payments.”³⁸ Golden Pass also *added* \$200,000,000 in schedule incentive milestone payments,³⁹ and a provisional sum of \$60,000,000 for shipping costs.⁴⁰ Golden Pass further eliminated other payment milestones that had not been earned and converted those payments into progress payments, shifting substantial compensation to an earlier timeline.

46. The Claims Settlement Agreement also provided substantial additional relief to Zachry by extending the Project schedule and target milestone dates for each of the Trains by ten months before Liquidated Damages would be imposed as follows:

- The deadline for Train 1 “COMPLETION” was extended to September 30, 2024.
- The deadline for Train 2 “COMPLETION” was extended to May 31, 2025.
- The deadline for Train 3 “COMPLETION” was extended to November 30, 2025.⁴¹

47. As the Claims Settlement Agreement made clear, “[a]lthough there remain various disputes between Golden Pass and Contractor in connection with the Change Order Claims, Golden Pass has collaborated with Contractor to reach a mutually beneficial resolution of the Change Order Claims and any other existing or potential claims of any kind relating to, arising from, or driven by any events, actions, facts or omissions that pre-date the Effective Date (together with the Change Order Claims, the “Claims.”).”⁴² Zachry and the JV Parties broadly released

³⁸ *Id.* § 5.

³⁹ *Id.* § 6.

⁴⁰ *Id.* § 8.

⁴¹ *Id.*, Ex. E.

⁴² Claims Settlement Agreement at 1.

Golden Pass, including for “claims relating to, arising from or driven by any events, actions, facts or omissions that pre-date the Effective Date, including (i) any existing or potential claims, disputes, actions, charges, contractual obligations, complaints, causes of action, rights, demands, debts, damages, or accountings of whatever nature (including claims for delay, disruption, and impact), against Golden Pass or any of its affiliates, whether in contract, in statute, at law or in equity, known or unknown, asserted or not asserted, which Contractor has now or may have in the future, against Golden Pass relating to, arising from or driven by any events, actions, facts or omissions that pre-date the Effective Date.”⁴³

48. This release of Golden Pass specifically included all claims related to Covid-19 or the war in Ukraine.⁴⁴ The agreement further acknowledge that neither constituted a force majeure event.⁴⁵ Zachry also “acknowledge[d] and agree[d] that it shall indemnify Golden Pass and its affiliates from any Claims that might be brought by any of its Joint Venture Parties or any of its subcontractors.”⁴⁶

49. The Claims Settlement Agreement gave Zachry the reset it claimed to need.⁴⁷ And Zachry agreed that the Claims Settlement Agreement broadly settled all disputes and integrated any and all prior discussions pertaining to settlement of the disputes at issue. In fact, the parties acknowledged that they entered the Agreement ***“without reliance upon any statement, representation, promise, inducement, or agreement not expressly contained herein.”***⁴⁸

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.* at § 9(c) & (d).

⁴⁶ *Id.* § 3.

⁴⁷ *See id.* § 9.

⁴⁸ *Id.* § 15 (emphasis added).

50. On January 1, 2023, the parties entered into the First Amendment to the EPC Contract to reflect their agreement.⁴⁹ The First Amendment contained a new integration clause, once again making clear that it encompassed all prior discussions pertaining to settlement of any dispute.⁵⁰ In other words, the unambiguous language of the Claims Settlement Agreement and the resulting First Contract Amendment resolved any existing or potential claim that would have prevented Zachry from completing its work under the initial EPC Contract. In addition, it also expressly stated that “*there are no agreements, understandings, warranties or representations except as set forth herein...*”.⁵¹

E. Golden Pass Provided Additional Relief Through the Second Amendment

51. Almost immediately after the First Amendment was signed, and mere months after the Claims Settlement Agreement was executed, Zachry came back to Golden Pass and *again* represented that it would not comply with its obligations and requested yet more money it was not entitled to under the EPC Contract or the First Amendment.

52. Again, without any obligation to do so, on March 21, 2023 Golden Pass amended the EPC Contract for a second time to provide additional support to Zachry.⁵² Per the Second Amendment’s recitals, Golden Pass’s intent was to “assist CONTRACTOR [Zachry] with cash

⁴⁹ See First Amendment to the Engineering, Procurement & Construction Contract No. GPP-EPC1 (Jan. 1, 2023).

⁵⁰ *Id.* § 4 (“ENTIRE AGREEMENT. This Amendment, the Contract and the Settlement Agreement, and the other documents contemplated by this Amendment, the CONTRACT and the Settlement Agreement, constitute the entire agreement between the Parties with respect to the subject matter hereof and there are no agreements, understandings, warranties or representations except as set forth herein or therein.”).

⁵¹ *Id.* (emphasis added).

⁵² Second Amendment to the Engineering, Procurement & Construction Contract No. GPP-EPC1 (Mar. 21, 2023).

flow challenges.”⁵³ The Second Amendment enabled Golden Pass to more easily advance funds to CCZJV.⁵⁴

53. Once again, the Second Amendment acknowledged that its unambiguous terms consisted of the entire agreement between the parties, could only be changed in a signed written document, and that “there are no agreements, understandings, warranties or representations except as set forth herein or therein.”⁵⁵ Again, it expressly stated that “there are no agreements, understandings, warranties or representations except as set forth herein or therein.” *Id.*

54. In a separate Side Letter Agreement, Zachry agreed that, “[a]s soon as Golden Pass advances any of the funds contemplated by the Second Amendment and this Agreement, Contractor covenants and ***agrees that it shall immediately take all actions necessary to become compliant with its obligations under the EPC Contract***”⁵⁶ Zachry also ***agreed that any advanced funds would be used to advance the project and for no other purposes.***⁵⁷ Once again, the Side Letter contained an Integration Clause making clear that its unambiguous terms constituted the entire agreement between the parties.⁵⁸ And the parties agreed that each of them

⁵³ *Id.* at 1.

⁵⁴ *Id.* at 2(b)

⁵⁵ *Id.* § 4 (“ENTIRE AGREEMENT. This Second Amendment, the Contract and the Settlement Agreement, and the other documents contemplated by this Second Amendment, the CONTRACT and the Settlement Agreement, constitute the entire agreement between the Parties with respect to the subject matter hereof and there are no agreements, understandings, warranties or representations except as set forth herein or therein.”).

⁵⁶ Side Letter to Second Amendment § 1 (Mar. 21, 2023) (emphasis added).

⁵⁷ *Id.* § 2 (emphasis added) (“Contractor covenants and agrees that the funds it receives as advanced payments as described in the Second Amendment shall only be used by Contractor on costs and expenses related to the WORK (as defined in the EPC Contract), and for no other purposes. Contractor further agrees that priority use of such funds shall be placed on Contractor’s obligations included in Section 1 of this Agreement.”).

⁵⁸ *Id.* § 5 (“INTEGRATION. This Agreement is entered into by each of the parties without reliance upon any statement, representation, promise, inducement, or agreement not expressly contained herein. This Agreement constitutes the entire agreement between the parties concerning the aforesaid and release of claims.”).

had “participated in the drafting and negotiation of this Agreement” and that, “[n]o changes, modifications, or amendments in whole or in part, shall be valid except by an instrument in writing signed by both Parties to this Agreement.”⁵⁹

F. Golden Pass Provides Additional Funds in a Third Contract Amendment

55. Despite injecting huge amounts of additional funds and advanced payments on two occasions (and providing schedule relief allowing Zachry to avoid liquidated damages)—based on Zachry’s commitment to complete the LNG Facility on schedule and without the need for additional funding—Zachry soon demanded even more money.

56. On April 5, 2023, CCZJV sent a letter contending that it was facing immediate financial challenges, threatening work stoppages, and requesting more substantial cash support.⁶⁰ Pursuant to its contractual rights, Golden Pass began an audit of Zachry and CCZJV to assess its outstanding invoices from subcontractors and suppliers.⁶¹

57. In response to Zachry’s complaints that it *still* could not meet its contractual obligations, Golden Pass agreed to and amended the EPC contract *for a third time* on December 31, 2023.⁶² The Third Amendment *created \$745,000,000 in new payments going to CCZJV*.⁶³

58. Specifically, the Third Amendment added \$545,000,000 in additional progress payments, \$100,000,000 in market wage rate increases, and \$100,000,000 in subcontract

⁵⁹ *Id.* § 7.

⁶⁰ Letter from CCZJV (April 5, 2023).

⁶¹ Letter from Vincent Yuskiewicz to CCZJV re: Audit Acknowledgment (Aug. 3, 2023), attached as **Exhibit C**. This exhibit contains confidential information and is being filed under seal contemporaneously with this Motion.

⁶² Third Amendment to the Engineering, Procurement & Construction Contract No. GPP-EPC-1 (Dec. 31, 2023).

⁶³ *Id.* at 1.

support.⁶⁴ The \$200,000,000 in scheduling incentives added in the First Amendment was replaced with an additional \$200,000,000 in potential bonus payments specifically tied to the target completion date of the trains.⁶⁵ In addition, the remaining unused Provisional Sums were adjusted such that some were removed and/or converted to the Change Order process. The net effect was to add over \$500 million in additional value of the EPC Contract, plus potentially—at Golden Pass’s discretion—up to \$200 million in possible performance incentives in the Side Letter Agreement to the Third Amendment.

59. The Third Amendment again clearly emphasized Zachry’s obligations to use the funds it receives to advance the LNG Facility. Under the Third Amendment, Zachry “covenants and agrees that the funds it receives . . . shall only be used by CONTRACTOR on costs and expenses related to the WORK (as defined in the EPC Contract), and for no other purposes.”⁶⁶ Zachry also specifically agreed that the “priority use” of funds paid under the contract is to fulfill its obligation to timely pay subcontractors: “CONTRACTOR further agrees that priority use of such funds shall be placed on CONTRACTOR’s obligations to timely pay undisputed invoices for subcontractors and vendors.”⁶⁷

60. The Third Amendment *again* extended the project deadlines—this time by an additional seven months for each of the Trains—as follows:

⁶⁴ *Id.* Ex. A §§ 1.4.4–1.4.6.

⁶⁵ *Id.* Ex. A § 1.4.3; Side Letter to Third Amendment at 1 (“Golden Pass is keenly vested in balancing project execution performance with rewards and incentives that mutually benefit you and Company. Consequently, upon Company’s election to do so (subject to approval by its board) Company shall pay additional schedule incentives that value up to two-hundred million U.S. Dollars (\$200,000,000). Any such incentive with respect to a given LNG TRAIN shall be earned upon COMPLETION (as defined in the EPC Contract). Payments shall be made only after the load-out of first shipment of LNG at the guaranteed quality as per Exhibit-B of the EPC Contract.”).

⁶⁶ Third Amendment Ex. A § 1.4.4.

⁶⁷ *Id.*

- The deadline for Train 1 “COMPLETION” was extended to April 30, 2025.
- The deadline for Train 2 “COMPLETION” was extended to November 30, 2025.
- The deadline for Train 3 “COMPLETION” was extended to April 30, 2026.⁶⁸

61. Finally, an Integration Clause again made clear that the unambiguous terms of the Third Amendment constituted the entire agreement between the parties and that “there are no agreements, understandings, warranties or representations except as set forth herein or therein.”⁶⁹

62. Remarkably, notwithstanding the provision of over \$1.4 billion in additional consideration and the extension of milestone dates described above, Zachry now seeks to avoid these same amendments without any legitimate basis.⁷⁰ Any such claims are not only nonsensical in light of the representations set forth in the amendments and the extraordinary consideration provided under the amendments, including the extension of milestone dates (without which, delay damages at the full amount provided under the contract would have long since accrued, and the milestone dates would have long since passed and constitute an incurable default), but are also irrelevant to the relief requested herein. Any relief sought in the adversary proceeding does not and cannot change the undisputable fact that Zachry is not performing under the EPC Contract, has no ability perform, does not intend to perform, and is continuing to accrue liabilities to the estates and harm a multitude of parties each day rejection is delayed.

⁶⁸ *Id.* Section E, Appendix B.

⁶⁹ *Id.* § 4 (“ENTIRE AGREEMENT. This Third Amendment, the Contract (as previously amended) and the Settlement Agreement, and the other documents contemplated by this Third Amendment, the CONTRACT and the Settlement Agreement, constitute the entire agreement between the Parties with respect to the subject matter hereof and there are no agreements, understandings, warranties or representations except as set forth herein or therein.”).

⁷⁰ Adversary Proceeding 24-03105.

63. Golden Pass reserves all rights with respect to the adversary proceeding and will respond to the claims asserted therein in due course within the adversary proceeding.

G. Zachry Repudiated its Obligations Under the EPC Contract During the Months Prior to the Petition Date

64. As set forth above, Golden Pass provided approximately **\$1.2 billion** in additional payments plus another \$200 million earnable payments to Zachry, advanced over \$270 million in July of 2023 for work that had not yet been performed and therefore had not been earned, and directly paid vendors more than \$93 million.⁷¹

65. Notwithstanding these representations, by March of 2024, Zachry again requested additional cash infusions from Golden Pass. In April 2024, Zachry further demanded immediate payment of up to \$50 million to continue work on the Project for the next two weeks, and represented that it would cease work if such funds were not provided. Zachry indicated that it was at least \$200 million in arrears for vendors and subcontractors, had no more money to pay these vendors and subcontractors, and would not have the necessary cash on hand to make payroll as soon as April 25, 2024.

66. On April 12, 2024, Zachry sent Golden Pass a letter stating that it believed its exit from the Project was in the best interest of the Project and intended to exit the Project.⁷² Zachry informed Golden Pass—and Zachry’s own Parties in CCZJV—that “the only way for the Project to be successfully completed is for Zachry to exit its role” in the project. In other words, according to Zachry, the Project could only be completed if Zachry has no further involvement. Obviously, this is a clear admission by Zachry of the reality of its own failures and the harm it has caused.

⁷¹ \$20 million of this amount was recouped from advance payments.

⁷² A true and correct copy of the letter is attached as **Exhibit D**.

67. On April 24, 2024, Zachry sent Golden Pass an email, notifying Golden Pass that it would not be paying certain critical vendors, including the provider of bus services responsible for transporting thousands of workers to and from the Project each day.

68. On May 8, 2024, Zachry instructed all or substantially all hourly employees and subcontractors to leave the Project and stay home indefinitely.⁷³

69. That same day, Golden Pass transmitted to Zachry and each of the non-debtor JV Parties a notice of default based on, among other defaults, Zachry's failure to timely pay subcontractors and vendors, permitting liens to be imposed on Golden Pass's property, refusing to perform its obligations under the EPC Contract without payment of further funds to which Zachry was not entitled, sending its workforce home indefinitely, failure to perform critical work on the levee protecting the facilities, and other breaches, all of which also separately demonstrated Zachry's repudiation of the EPC Contract.⁷⁴

70. The non-debtor JV Parties also delivered to Zachry a notice of default under the JV Agreement that same day and based on Zachry's defaults under the EPC Contract.⁷⁵

71. On May 13, 2024, Golden Pass sent Zachry another notice, detailing additional defaults, including Zachry's termination of Golden Pass's access to books and records necessary for Golden Pass to audit alleged expenses, charges, and revenue, in contravention of sections 12.1.2 and 12.1.5 of the EPC Contract, the failure to pay yet more vendor and lease obligations, and the failure to address any of the previously noticed numerous defaults.⁷⁶

⁷³ A true and correct copy of the email notice is attached as **Exhibit E**.

⁷⁴ A true and correct copy of the May 8, 2024 default notice is attached as **Exhibit F**.

⁷⁵ A true and correct copy of the JV default notice is attached as **Exhibit G**.

⁷⁶ A true and correct copy of the May 13 notice is attached as **Exhibit H**.

72. On May 14, 2024, Golden Pass sent a further notice to Zachry, informing Zachry that it remained in breach of the EPC Contract, including by failing to maintain a workforce necessary to satisfy Project milestones, satisfy vendor and subcontractor claims and liens, repair the levee, and restore records access.⁷⁷

73. On May 16, 2024, Golden Pass sent Zachry a further notice of continuing defaults, informing Zachry that, as of the letter date, over \$75 million in vendor liens had been placed on Golden Pass's property (an amount that now exceeds \$140 million and continues to increase daily). The notice further requested that Zachry provide a schedule for curing the defaults.⁷⁸

74. Zachry made no effort to address the noticed defaults, but instead simply continued to eliminate its workforce and effectively abandoned the Project. As mentioned above, Zachry's peak work-force⁷⁹ of over 6,000 was reduced to less than 1,000 workers in the weeks leading up to the Petition Date, and then to approximately 140 following the Petition Date. Further, hundreds of vendors and contractors—which Zachry refused to pay—were instructed by Zachry not to return to the Project site.

H. Zachry and its Affiliates File for Bankruptcy, Citing the EPC Contract as the Reason for the Filing, and Further Abandon Their Obligations Under the EPC Contract

75. Zachry and its jointly affiliated debtors (the "Debtors") filed for bankruptcy relief on May 21, 2024 (the "Petition Date").⁸⁰

⁷⁷ A true and correct copy of the May 14 notice is attached as **Exhibit I**.

⁷⁸ A true and correct copy of the May 16 notice is attached as **Exhibit J**.

⁷⁹ CB&I and Chiyoda maintain separate workforces on site for their scope of work, which together has been sustained at around 3000 (around 2,000 workers and around 1,000 vendors and subcontractors).

⁸⁰ Zachry, Golden Pass, and the JV Parties commenced mediation on May 1-2, 2024, in an effort to consensually resolve claims and issues related to the LNG Facility, including a seamless transition of Zachry's scope of work to the non-debtor JV Parties. Discussions with the mediator and between the parties continued through the following weeks. Unfortunately, the mediation was not successful.

76. Consistent with their prepetition representations and conduct, the Debtors make no secret that the intent and purpose of the bankruptcy filing is to reject the Debtors' obligations under the EPC Contract and related JV Agreement. The *Declaration of Moshin Y. Meghji in Support of Debtors' Petitions and Requests for First Day Relief*, Zachry acknowledges that the "distress caused by" their construction obligations under the EPC Contract caused the bankruptcy filings, and that the construction of the LNG Facility requires labor and capital that Zachry does not have.⁸¹

77. The Debtors' cash collateral budget further fails to include any material funds for the LNG Facility. Indeed, notwithstanding the Debtors' admission that they were spending over \$30-40 million a week on the LNG Facility alone prior to the petition date,⁸² their cash collateral budget includes expenditures of only approximately \$50 million for all the Debtors' projects, including projects of similar scope as the LNG Facility.⁸³ The newest budget filed by Zachry in connection with its second interim cash collateral order also forecloses any argument that Zachry can fulfill its contractual obligations.⁸⁴ Indeed, the budget acknowledges that Zachry will only be engaged in continued demobilization efforts rather than actively fulfilling any of Zachry's obligations under the EPC Contract between now and August 1, by which date, Zachry apparently intends to have fully exited the Project.⁸⁵

78. Yet, remarkably, the Debtors' first-day pleadings did not include a motion to reject the EPC Contract and related JV Agreement, notwithstanding Zachry's clear and expressed intent

⁸¹ Dkt. No. 7, at ¶¶ 3, 5, & 8.

⁸² *Id.*, at ¶ 8.

⁸³ Dkt. No. 59.

⁸⁴ Dkt. No. 281-1.

⁸⁵ *See Id.* (forecasting \$0 expenditures for the Golden Pass Project after the week ending July 28).

to reject the agreements; notwithstanding Zachry's inability to cure its defaults and otherwise satisfy the Project milestones; notwithstanding the thousands of workers and hundreds of vendors and subcontractors that continue to not be paid; notwithstanding Zachry's assertions (both prepetition and in its bankruptcy pleadings) that the EPC Contract has cost Zachry hundreds of millions of dollars and is an overwhelming burden that Zachry and its estate cannot bear; and notwithstanding the daily accrual of additional liabilities to Zachry and its estate with each passing day that Zachry remains in breach and default of the EPC Contract it refuses to reject.

79. Despite not seeking to reject the EPC Contract, Zachry has effectively demobilized from the LNG Facility. Zachry terminated all hourly workers, of which there were more than 4,000 on the Petition Date. Only a skeleton crew of approximately 140 workers remain on site, essentially working only on demobilizing rather than progressing work required under the EPC Contract. Nor is Zachry paying any of the vendors and subcontractors that Zachry hired to supply or otherwise provide equipment, goods, and services necessary for Zachry to perform under the EPC Contract.

80. Indeed, Golden Pass was required to obtain an emergency stipulation and agreed order simply to ensure that Golden Pass could pay vendors performing critical safety, health, and environmental protection services—vendors that remain *Zachry's vendors*, and *Zachry's* responsibility to pay pending a rejection decision, but that Zachry refuses to pay.

81. Even with Golden Pass's payment of these vendors, Zachry failed to perform critical services, including dewatering services, resulting in, among other issues, property flooding.

82. Not only did Zachry fail to perform its work, but Zachry also actively interfered with and disrupted Golden Pass and the non-debtor JV Parties ability to perform their work. Zachry removed scaffolding tags (containing critical safety information necessary for workers to

use the scaffolding). Zachry denied internet and database access (including site personnel tracking critical for security and project management). Lighting towers, IT hardware, and other equipment was removed. Bathroom facilities were not maintained. Facilities, equipment, and protective coverings were not maintained or protected from storm events. For example, cranes have been left with booms erect, posing an unacceptable risk to personnel and property.

83. Accordingly, Golden Pass was required, with the help of the Mediator, to obtain a second stipulation transferring critical asset protection and preservation, safety, environmental, health, and hurricane preparedness services to Golden Pass and the non-debtor JV Parties.⁸⁶

84. While this second stipulation enabled Golden Pass to address some critical issues, this second stipulation was a half-measure at best. Zachry was unwilling to transfer all services necessary to fully and adequately protect and preserve the Project site as was requested by Golden Pass and the non-debtor JV Parties, including roofing and siding work necessary to protect the facility from the elements, electrical and HVAC work, and basic piping, mechanical, and utilities work necessary to enable the non-debtor JV Parties to complete their work. Due to the required installation sequencing of equipment and materials, these circumstances can only be addressed by the resumption of work.

85. Further, the services provided for under the two stipulations are limited to basic maintenance, protection, safety, environmental, and welfare services necessary to protect the Project and personnel on site. These services do not progress construction of the Project. And, unfortunately, to date, Zachry continues to attempt to hold the EPC Contract hostage rather than agree to transfer any progressive scope of work (that it is not performing and cannot perform)

⁸⁶ Dkt. No. 183.

necessary for the non-debtor JV Parties to complete their own scopes of work, and start the process of bringing back thousands of workers and scores of vendors and subcontractors.

BASIS FOR RELIEF

A. Bankruptcy Code Section 365(d)(2) Authorizes Immediate Rejection

86. Section 365(d)(2) of the Bankruptcy Code generally allows a trustee or debtor-in-possession to assume or reject any executory contract or unexpired lease until confirmation of a chapter 11 plan. 11 U.S.C. § 365(d)(2).

87. Section 365(d)(2) also authorizes the Court to require an earlier assumption or rejection of the contract, based on the facts and circumstances of the case. 11 U.S.C. § 365(d)(2) (“the court, on the request of any party to such contract or lease, may order the trustee to determine within a specified period of time whether to assume or reject such contract or lease”); *In re Panaco, Inc.*, 2002 Bankr. LEXIS 2084, at *11 (Bankr. S.D. Tex. Dec. 9, 2002) (an early assumption or rejection determination may be necessary “for the other party to take actions either to perform its end of the contract or to mitigate its damages”).

88. When determining a reasonable time for an assumption or rejection determination, courts consider, among other factors: (i) whether the debtor is performing under the contract; (ii) whether the debtor’s non-performance could damage the non-debtor party beyond compensation available under the Bankruptcy Code; (iii) whether the contract is the debtor’s primary asset; and (iv) whether the debtor has had a sufficient time to make an assumption or rejection decision. *Id.*, at *12. When evaluating these factors, courts further balance the relative harms between the debtor and non-debtor movant. *In re Hawker Beechcraft, Inc.*, 483 B.R. 424, 429 (Bankr. S.D.N.Y. 2012).

89. Courts have placed heightened significance on the harm delay in assumption or rejection may cause the non-debtor counterparty. *See, e.g., In re UTEX Commc'ns Corp.*, 457 B.R. 549, 569-70 (Bankr. W.D. Tex. 2011) (granting motion compelling debtor to assume or reject

contract by specified date to avoid harm); *In re HP Distrib., LLP*, No. 09-12310, 2011 Bankr. LEXIS 251, at *20 (Bankr. D. Kan. Jan. 25, 2011) (same); *In re EnCAPGolf Holdings, LLC*, Case No. 08-18581 (NLW), 2008 WL 5955350, at *5 (Bankr. D.N.J. Dec. 24, 2008) (same); *Zion Credit Corp. v. Rebel Rents, Inc. (In re Rebel Rents, Inc.)*, 291 B.R. 520, 531 (Bankr. C.D. Cal. 2003) (same); *In re Adelphia Commc'ns Corp.*, 291 B.R. 283, 295-300 (Bankr. S.D.N.Y. 2003) (same); *Panaco*, 2002 Bankr. LEXIS 2084, at *13 (same); *In re Shalom Hospitality, Inc.*, No. 02-00276, 2002 Bankr. LEXIS 541, at *6-8 (Bankr. N.D. Iowa May 9, 2002) (same); *In re Enron Corp.*, 279 B.R. 695, 704 (Bankr. S.D.N.Y. 2002) (same).

90. Moreover, courts recognize that when it is inevitable that the debtor will ultimately seek a particular form of relief with respect to an executory contract (i.e., assumption or, alternatively, rejection), there is no legitimate reason for allowing the debtor to delay such action. *See, e.g., Rebel Rents*, 291 B.R. at 530-31 (compelling debtor to make prompt decision where it was inevitable that debtor would ultimately seek to assume contract at issue); *In re Res. Tech. Corp.*, 254 B.R. 215, 227 (Bankr. N.D. Ill. 2000) (same); *Hawker Beechcraft*, 483 B.R. at 431 (expressing skepticism about debtor's purported doubts as to whether it would ultimately assume intellectual property license, compelling debtor to file motion to assume).

B. There is Substantial and Compelling Cause for Immediate Rejection of the EPC Contract

91. The facts of this case indisputably support immediate rejection of the EPC Contract.

92. Zachry is not performing any work under the EPC Contract, has not performed material work for some time, does not intend to perform any further work, and has demobilized from the Project. Zachry has abandoned the LNG Facility, its workers, and all the vendors and subcontractors serving the facility that Zachry has failed to pay. Zachry terminated over 4,000 workers from the Project and filed this case without any use of cash collateral to meet its post-

petition obligations under the EPC Contract. Moreover, Zachry's prepetition defaults are uncurable, and only growing larger each day rejection of the EPC Contract is delayed.

i. ***Zachry Is Not Performing Any Work Under the EPC Contract***

93. As set forth above, Zachry repeatedly reduced its work-force leading up to the Petition Date, and, as of the date of this Motion, has approximately 140 employees on site, which is woefully insufficient to meet Zachry's ongoing obligations under the EPC Contract, completely undermining Zachry's ability to meet the required milestone dates.

94. Zachry does not and cannot dispute that it can no longer perform under the EPC Contract. As set forth in the *Declaration of Moshin Y. Meghji in Support of Debtors' Petitions and Requests for First Day Relief*, Zachry acknowledges that the "distress caused by" their construction obligations under the EPC Contract caused the bankruptcy filings, and that the construction of the LNG Facility requires labor and capital that Zachry does not have.⁸⁷

95. Zachry's cash collateral and critical vendor budgets are woefully inadequate to complete the Project. By Zachry's own admission, Project construction costs are \$30-40 million a week, at minimum.⁸⁸ If construction commenced at full capacity, construction costs could exceed \$40 million per week. Yet the Debtors' proposed cash collateral budget includes no more than \$40 million in payroll a week for project costs, *across all of the Debtors' projects*,⁸⁹ including an LNG project of similar scale as the Golden Pass LNG Facility described in the first-day declaration as the "PLNG Project," and only \$5-\$7 million per week in critical vendor payments.⁹⁰

⁸⁷ Dkt. No. 7, at ¶¶ 3, 5, & 8.

⁸⁸ *Id.* at ¶ 8.

⁸⁹ Dkt. No. 24-1.

⁹⁰ Dkt. No. 7, at ¶ 40.

96. Based on Zachry's failure to pay any vendors for the LNG Facility since the Petition Date, reduction in work-force to less than 140 workers, and termination of all hourly employees for the LNG Facilities, it is clear that no material amounts have been reserved for the LNG Facility under the cash collateral budget, and certainly not in any amount sufficient to continue performance post-petition under the EPC Contract.

97. Zachry's motion to pay critical vendors further evidences no intent to perform any further obligations under the EPC Contract.⁹¹ As set forth above, as of the Petition Date, outstanding vendor claims for the LNG Facility may exceed \$300 million. That amount has only risen since the filing. Yet Zachry's proposed critical vendor budget provides for payment of no more than \$4.5 million on an interim basis, and \$69 million on a final basis, for critical vendors, again, across all of its projects.⁹²

98. Of this amount, nominal, if any, amounts are reserved for the LNG Facility vendors.

99. Indeed, Golden Pass was required to obtain emergency relief in order to ensure that Golden Pass could directly pay vendors providing services, equipment, and goods necessary to maintain the safety and health of the workers remaining on site (primarily, employees of the non-debtor JV Parties), secure the site, and provide transportation to and from the site for workers (collectively, the "Life Support Vendors") that Zachry refused to pay, both before and after the Petition Date.

100. Each of these Life-Support Vendors is a vendor of Zachry, providing services, goods, and/or equipment Zachry is obligated to provide under the EPC Contract that Zachry has—for reasons unknown and inexplicable—not yet rejected. Yet, post-petition, Golden Pass has

⁹¹ Dkt. No. 8.

⁹² *Id.*, at ¶ 13.

already paid more than \$20 million for these Life Support Vendors with additional payments of millions of dollars in progress that Zachry has refused to pay. As further set forth above, Golden Pass was also required to obtain approval to transfer critical asset preservation and maintenance, health, environmental, and hurricane preparedness services to the non-debtor JV Parties that Zachry was not performing and can no longer perform given its layoffs.

101. Finally, as set forth above, the budget attached to the Debtors' second interim cash collateral Order now acknowledges that Zachry had budgeted no more than \$800,000/week for the Golden Pass Project in June, and further acknowledges that Zachry will exit the Project site by August 1, and, apparently, will be focused only on completing its demobilization efforts in the interim.⁹³

102. Zachry made clear its intent to exit the EPC Contract at least as early as April 12, 2024, and Zachry's actions since that date have only confirmed its intent.

ii. ***Zachry Cannot Cure its Defaults***

103. An executory contract cannot be assumed without the cure of all existing defaults under the contract. 11 U.S.C. § 365(b)(1).

104. Zachry's defaults under the EPC Contract are numerous and incurable, including:

- a) Failure to promptly pay for labor, equipment, and/or materials (in an amount no less than ***\$300 million***;
- b) Permitting and failing to remove liens on Golden Pass's property in an outstanding amount of no less than ***\$140 million***, which such amount increases daily; and
- c) Failure to complete work for which Zachry has been paid through prior advance payments, in an amount of no less than ***\$99 million***;
- d) Failure to timely pay vendors and contractors, resulting in Golden Pass paying vendors no less than ***\$94 million*** prior to the Petition

⁹³ Dkt. No. 281-1.

Date, and more than **\$20 million** following the Petition Date, with such amount increasing daily;

- e) Failure to progress critical levee work;
- f) Failure to timely progress construction of the LNG Facility and afford the work Zachry's highest priority, such that even the extended Milestone Dates are woefully out of reach with Zachry's current approach;
- g) Failure to use funds received only on LNG Facility costs and to pay vendors; and
- h) Damages caused by Zachry's failure to meet progress and Milestone Dates.

105. The total damages caused by Zachry's breaches exceed **\$2 billion**, when including liquidated damages for delay, warranty claims, performance guarantees, and additional costs Zachry is imposing on Golden Pass. Zachry has not and is incapable of curing these defaults. Golden Pass intends to recover these claims, which continue to grow daily, from Zachry.

106. Separate from the monetary defaults that cannot be cured, Zachry also has multiple performance defaults that it also cannot cure.

107. Zachry was required to complete the levee no later than June 1, 2024, less than two weeks before the Petition Date. Yet, even today, and even after Golden Pass obtained relief necessary to contract with CB&I to complete the levee work Zachry abandoned, the levee repair likely will take at least several additional months to complete.

108. The Milestone Dates, even as extended by amendment, are equally incurable by Zachry. Again, Train 1 is scheduled to be completed in the first half of 2025. Yet, Zachry now has completely stopped performing any material work and is further prohibiting Golden Pass and the other non-debtor JV Parties from performing work by failing to complete work within Zachry's current scope that must be completed to allow the other JV Parties to complete their scope of work.

109. Completion of Train 1 by the April 2025 Milestone Date will be jeopardized by Zachry's non-performance, even if Golden Pass and the other non-debtor JV Parties immediately were permitted to take over the entirety of the Train 1 work.

110. Moreover, the time to completion will be delayed further if Zachry continues to impede progress. Because of Zachry's actions, workers and vendors are already leaving, or have left, the Project and will be difficult to replace. With each passing day, it is harder to get them back on site. The non-debtor JV Parties may be required to demobilize. The LNG Facility is not a project that can sit idle without significant consequences to the Project, the community, and local subcontractors and vendors reliant on cash flow from the Project for their very survival.

iii. ***Zachry Cannot Provide Adequate Assurance of Future Performance Under the EPC Contract***

111. Completion of the remainder of Train 1 alone is estimated to require no less than 4,500 workers for Zachry's scope, yet Zachry now has eliminated substantially all of the workforce that was dedicated to the LNG Facility and is no longer paying subcontractors or vendors.

112. As Zachry admits, resumption of construction is likely to cost at least \$30-40 million per week; yet Zachry's budget provides no discernable funds for the LNG Facility.

113. As evidenced by its own lack of performance, and in direct contradiction to the express representations it repeatedly made in the EPC Contract and Amendments, Zachry apparently did not have the experience, resources, or capital to complete the LNG Facility pursuant to the terms of the EPC Contract. Zachry's termination of workers and demobilizing of equipment from the LNG Facility only further renders Zachry's future performance under the terms of the EPC Contract impossible.

iv. ***Zachry Admits that The EPC Contract is a Material Burden on the Estates***

114. Both before the Petition Date, and in Zachry's first-day pleadings, Zachry repeatedly has represented that the EPC Contract and its terms are uneconomical and have resulted in hundreds of millions of dollars of losses. Although additional progress payments theoretically could be earned under the contract, any such payments would be subject to offsets exceeding any amounts provided under the contract. Under Zachry's view, the costs that Zachry would incur to earn additional progress payments exceed any expected remaining payments (even if any such payments were not offset by prior advance payments that were not earned and damages from existing and continuing breaches).

115. Further, as addressed above, any cure amount would be no less than \$500 million, and increases daily pending Zachry's rejection, as additional vendors remain unpaid, and the Project continues to be delayed.

116. There is no conceivable reasoned business justification for not rejecting a contract that, by Zachry's own admissions, has cost it hundreds of millions of dollars, will continue to cost it hundreds of millions of dollars more to perform, and would require payment of cure amounts in the hundreds of millions of dollars only to continue losing money.

v. ***Further Delay Causes Immediate, Continuing, and Substantial Harm***

117. Every day rejection is delayed causes substantial harm to the LNG Facility, Golden Pass and the non-debtor JV Parties, and the thousands of workers and vendors that could be fully employed and paid if Golden Pass and the remaining non-debtor JV Parties were permitted to complete their work without Zachry's continued interference.

118. Zachry, through the JV Agreement and as lead construction contractor, without rejection of the contract, maintains responsibility for significant construction on Trains 1, 2 and 3.

Without rejection or relief from the stay to assign this work to other CCZJV parties from the court, Zachry is preventing this core and critical construction activity from continuing by any party.

119. Further, CB&I may be required to demobilize significant portions of its workforce if Golden Pass and the other non-debtor JV Parties are not permitted to resume Train 1 construction.

120. Golden Pass estimates that if the EPC Contract were rejected, such that Golden Pass and the remaining JV Parties could proceed with the Project, the Project would be able to employ approximately **4,500 direct and indirect workers**, just with respect to the Train 1 Scope.

121. If the EPC Contract were rejected, Golden Pass further estimates that Golden Pass, along with the non-debtor JV Parties, would also commence paying hundreds of millions of dollars to vendors and subcontractors that have gone unpaid due to Zachry's breaches and defaults.

122. These workers, vendors, and subcontractors were loyal to the project, and deserve to have a job and be paid. Zachry is callously and wrongfully standing in everyone's way.

123. Delay in rejection also causes substantial harm to Golden Pass.

124. The LNG Facility is subject to a plethora of federal and state public safety, health, and environmental regulations, including regulations governing erosion, site dewatering, storm water pollution prevention control plans, dust controls, management and disposal of hazardous wastes, oil spill response readiness, wildlife protection and relocation, and various data and permitting requirements.

125. The LNG Facility requires certain basic electricity, water, lubrication, and similar services to maintain the facilities and equipment within the facilities, including compressors, generators, and hazardous material storage.

126. The LNG Facility further includes over 700 acres of infrastructure in various stages of completion and exposure to the elements, as well as suppliers and equipment that must be preserved and protected.

127. Many services critical for maintaining the integrity and safety of the LNG Facility are provided by vendors and subcontractors that Golden Pass now has the authority to directly pay, and certain related support facilities have now been transferred to Golden Pass and the non-debtor JV Parties pursuant to the Stipulations and Agreed Orders entered by the Court. However, significant additional services remain within Zachry's scope.

128. Finally, as set forth above, every day of delay causes compounding damages associated with delayed completion of the LNG Facility, and the loss of critical workers, subcontractors, and vendors that cannot be easily replaced. The Project is already behind schedule due to Zachry's breaches. Each additional day that resumption of construction on the LNG Facility is delayed only magnifies the liabilities accruing to the bankruptcy estate.

129. As set forth above, the LNG Facility is a massive and highly complex project that, at full construction capacity, can employ and host more than 9,000 workers a day. Zachry's abandonment has turned large segments of the Project dark, and continued delay risks a near complete shut-down at the Project site. A project of this size and complexity simply cannot be shuttered for any amount of time without substantial negative consequences.

C. Assumption and Rejection of Project Contracts

130. Zachry has multiple contracts and leases with subcontractors, vendors, and other third-parties critical for construction and maintenance of the LNG Facilities (the "Project Contracts").

131. Zachry is obligated to assign certain of the Project Contracts to Golden Pass upon a breach or termination of Zachry's work under the EPC Contract.⁹⁴

132. There is no basis to delay a rejection or assignment decision for the Project Contracts upon rejection of the EPC Contract.

133. Golden Pass, therefore, respectfully requests that the Court set a deadline of five (5) business days following the entry of an order approving the requested relief, for Zachry and its affiliated Debtors to make a rejection or assumption decision for the Project Contracts.

D. Alternatively, Relief From the Stay Should be Granted to Permit Golden Pass to Immediately Exercise its Default Rights under the EPC Contract

134. If the Court determines that immediate rejection is not warranted, or the automatic stay otherwise would prohibit Golden Pass's right to control and direct construction of the LNG Facility after rejection, relief from the automatic stay should be ordered to allow Golden Pass to protect its interests.

135. There is no rigid test for determining when "cause" exists for relief from the stay. *Reitnauer v. Tex. Exotic Feline Found., Inc. (In re Reitnauer)*, 152 F.3d 341, 343 n.4 (5th Cir. 1998); *In re Mosher*, 578 B.R. 765, 772 (Bankr. S.D. Tex. 2017); *In re Continental Airlines, Inc.*, 152 B.R. 420, 424 (D. Del. 1993). Rather, cause is a "flexible concept, determined on a case-by-case basis." *In re F-Squared Inv. Mgmt., LLC*, 546 B.R. 538, 548 (Bankr. D. Del. 2016). Whether cause exists to lift the automatic stay is "based on the totality of the circumstances in each particular case." *Baldino v. Wilson (In re Wilson)*, 116 F.3d 87, 90 (3d Cir. 1997); *see also In re In re Kao*, 2015 WL 9412744, at *2 (Bankr. S.D. Tex. Dec. 21, 2015); *The SCO Grp., Inc.*, 395 B.R. 852, 856 (Bankr. D. Del. 2007) ("[C]ourts often conduct a fact intensive, case-by-case

⁹⁴ EPC Contract, at § 25.1.5.

balancing test, examining the totality of the circumstances to determine whether sufficient cause exists to lift the stay.”).

136. The Court “has the flexibility and the discretion to fashion the relief to the circumstances of the particular matter.” *In re Patriot Contracting Corp.*, Case No. 05-33190 (DHS), 2006 WL 4457346, 2006 Bankr. LEXIS 4133, at *6 (Bankr. D.N.J. May 31, 2006); *see also Maintainco, Inc. v. Mitsubishi Caterpillar Forklift Am., Inc. (In re Mid-Atlantic Handling Sys., LLC)*, 304 B.R. 111, 130 (Bankr. D.N.J. 2003) (“A bankruptcy court is granted wide discretion to determine whether to lift an automatic stay for cause.”).

137. To demonstrate that cause exists under section 362(d)(1), “the party seeking relief from the stay must show that ‘the balance of hardships from not obtaining relief tips significantly in its favor.’” *In re Am. Classic Voyages, Co.*, 298 B.R. 222, 225 (D. Del. 2003) (quoting *In re FRG*, 115 B.R. 72, 74 (E.D. Pa. 1990)); *see also In re Mosher*, 578 B.R. 765, 772 (Bankr. S.D. Tex. 2017) (balancing (i) interference with the bankruptcy, (ii) good or bad faith of the debtor, (iii) injury to the debtor and other creditors if the stay is modified, (iv) injury to the movant if the stay is not modified, and (v) the proportionality of the harms from modifying or continuing the stay).

138. Courts have consistently held that where, as in this case, a debtor is unable to meet the requirements of Section 365, and therefore unable to assume an executory contract, cause exists to lift the automatic stay to allow the non-debtor to terminate the contract or exercise other default rights. *See In re Trump Ent. Resorts, Inc.*, 526 B.R. 116, 127 (Bankr. D. Del. 2015) (citing *In re West Elecs. Inc.*, 852 F.2d 79, 82–84 (3d Cir.1988)); *In re Chapman*, No. 17-32878-JDA, 2020 WL 2071476, at *5 (Bankr. E.D. Mich. Apr. 29, 2020) (citing *In re Future Growth Enterprises*,

Inc., 61 B.R. 469, 472 (Bankr. E.D. Pa. 1986)) (“cause” for relief from the automatic stay where debtor was significantly in default and debtor failed to demonstrate adequate assurance).⁹⁵

139. It is undisputed that Zachry is not performing under the EPC Contract and cannot assume the EPC Contract. The EPC Contract has no value to Zachry’s estate; rather, according to Zachry, it is a continued, and substantial, burden and liability. Conversely, further delaying Golden Pass’s ability to take possession and control over the LNG Facility and resume construction directly and/or through the non-debtor JV Parties continues to cause substantial harm, and the accrual of additional liabilities to Zachry’s bankruptcy estate.

140. Accordingly, at the very least, Golden Pass should be granted immediate relief from the stay to exercise rights under the EPC Contract necessary to protect the LNG Facility, including the right to:

- (a) Immediately issue change orders to the non-debtor JV Parties to perform construction work and related services with respect to the LNG Facility, including construction of the Train 1 Facility and the associated utilities, offsites, and existing plant modifications (Brownfield) required for the production of LNG from Train 1 (the “Train 1 Scope”), and pay the non-debtor JV Parties for any such work directly and through a bank account that is not property of Zachry or any of the Debtors’ estates;⁹⁶
- (b) Hire furloughed and/or former employees of Zachry to complete the Train 1 Scope, notwithstanding any non-compete or similar provisions under the EPC Contract or JV Agreement;⁹⁷
- (c) With or without the consent of Zachry, pay, contract with, exercise step-in rights under the EPC Contract, or otherwise communicate with any vendors or subcontractors in connection with performance of the Train 1 Scope.⁹⁸

⁹⁵ See also *In re Ward*, No. 12-60662-13, 2012 WL 2501182, at *4 (Bankr. D. Mont. June 28, 2012); *In re Burch*, 401 B.R. 153, 160 (Bankr. E.D. Pa. 2008).

⁹⁶ See EPC Contract, at § 7.2; 21.2.1.

⁹⁷ See Third Amendment, at § 2.8.1-2.8.2; JV Agreement, at 13.1

⁹⁸ Third Amendment, at § 2.8.1.

WAIVER OF STAY UNDER BANKRUPTCY RULE 4001(a)(3)

141. Pursuant to Bankruptcy Rule 4001(a)(3), an order granting relief from the automatic stay is “stayed until the expiration of fourteen (14) days after the entry of the order, unless the Court orders otherwise.” Fed. R. Bankr. P. 4001(a)(3). Given the nature of the relief requested herein, to the extent applicable, Golden Pass submits that it is appropriate that the 14-day stay under Bankruptcy Rule 4001(a)(3) be waived.

CONCLUSION

142. WHEREFORE, Golden Pass respectfully request that the Court grant the relief requested herein and grant such other and further relief as the Court may deem just and proper, at law or in equity.

Dated: June 18, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 18, 2024, 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/ Bob Bruner

Bob Bruner

CERTIFICATE OF ACCURACY

I hereby certify that the facts and circumstances described in the above pleading giving rise to the emergency request for relief are true and correct to the best of my knowledge, information, and belief.

/s/ Bob B. Bruner

Bob B. Bruner