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RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
2004 MAY 11
A 9:42
Phone: 956/727-2122
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E-mail: campaign@henrycuellar.com
Web site: www.henrycuellar.com

April 26, 2004

Office of the General Counsel
Federal Election Commission
999 E. Street, NW
Washington, DC 20463

RE: MUR5422

Dear Sirs:

Per your letter of March 10, 2004, please accept this letter and its attachments as evidence that no action should be taken against Texans for Henry Cuellar Campaign. Since its inception the Texans for Henry Cuellar Campaign has used reputable and widely accepted software vendors and accepted "best effort" practices to file compliance forms with the FEC electronically in order to ensure both timely and accuracy in reporting.

Unfortunately, as the use of electronic filing is new technology on both the side of the FEC and the software vendors that supply applications for the purpose of filing financial filing forms, there remains the constant possibility of undetected "failure to file" certain forms at certain times. We have continued to strive to meet our responsibilities in regard to proper procedure, but have met with difficulties, from time to time, because of the following issues:

- 1) Changes in FEC filing software versions;
- 2) Conflicting definitions and rulings regarding FEC filing requirements and software experience;
- 3) A changes in software vendor and application in order to better meet the responsibility placed on the campaign committee to file in a timely and accurate fashion;
- 4) Failure of the FEC filing software to recognize and warn of the missing Schedule C-1 form within its file validation process;
- 5) An unusual failure of the FEC electronic notification system to inform our software vendor of an impending FEC software version change.

Regarding the specific complaint, MUR5422, outlined in your letter of March 10, 2004, we appreciate your agreement to extend our opportunity to address this complaint by April 26, 2004. We do not believe that any action need be taken against Texans for Henry Cuellar Congressional Campaign, or against its treasurer, for the following reasons:

- 1) The omission of the C-1 did not constitute any attempt to violate the FEC Act, but was rather due to an omission as a result of an unidentified software application error;
- 2) The omission of the C-1 was not an attempt to conceal or misrepresent financial information as the loan (without Schedule C-1 backup) was listed on the Schedule C as a "secured" loan and included in the Summary Pages;
- 3) The failure to include the C-1 form within the F3 - Pre-Primary Report was not noted in the FEC filing software as an "error, warning or omission"; in addition, the FEC filing software validated the report, and allowed the report to be uploaded to the "test filing site," leading our software vendor and staff to believe that the report was in fact valid and complete;
- 4) The FEC failed to inform our software vendor (AmeriCan GOTV Enterprises, LLC) of changes to the filing format as of Jan. 15th, thus causing the filing software failure; The vendor software was tested successfully to the FEC test site; an issue that was corrected and updated by the FEC filing process at a later date;
- 5) Due to a change in campaign management and filing software, dating back to the 2nd Quarter Report, filing amendments were required for the periods 2nd Quarter 2003, 3rd Quarter 2003, Year End 2003, Pre-Primary

2004, and 1st Quarter 2004; when discussing these amendments between the software vendor's Art Murray and Cuellar's FEC analyst, it was understood by Mr. Murray, that it was necessary to file these amendments on or about April 15th, 2004 for the Year End 2003 and the Pre-Primary, 2004 and meet the filing requirement for the 1st Quarter 2004; it was understood that these reports would not be correct and would subsequently require amendments, due to the lingering mistakes in Column C entries from the Year End Report in 2002. These issues were both discussed and acknowledged by the FEC analyst. Since amendments to these reports would need to be filed, attention was turned to making these corrections from the past and moving forward with corrected amendments, rather focussing efforts on filing "knowingly incorrect" amendments; the missing Schedule C-1 was overlooked. When it was noted as missing, it was believed that it would be corrected in due course as the corrected amendments were filed, which admittedly has taken a longer time frame than originally thought, due to circumstances outlined below;

- 6) It was believed that this strategy and procedure had been agreed upon between our software vendor representative and the FEC analyst; unfortunately, this agreement failed to recognize the need to address the complaint MUR5422 as a separate issue.

We believe that no action need be taken, and implore you to consider and note on our behalf, the unfortunate and unusual circumstances that surround our recent election campaigning events. Since the Primary of March 9, 2004, we have been involved in a difficult set of circumstances, including but not limited to:

- 1) a Primary Election night loss due to an incorrect vote count;
- 2) loss of staff and management personnel after the announcement of the Primary night loss,
- 3) the stress of the application and approval of a manual re-count with limited staff;
- 4) the supervision of the manual re-count of the eleven (11) counties within District 28;
- 5) a reversal of the loss due to re-count;
- 6) subsequent legal challenges regarding the announced results of the re-count;
- 7) the inability to salvage the original staff after the six week delay in declaring the Primary victory;
- 8) the difficulty in replacing lost staff with capable replacements in a timely fashion, resulting in consistency.

We enclose a signed copy of the Schedule C-1 and corresponding agreement documents. We enclose a letter of explanation from our software vendor indicating the circumstances leading to this complaint and their continuing support in correcting the shortfall.

In addition, we will be filing an amendment to the Pre-Primary Report, including the missing C-1 Schedule, which to our knowledge, brings the Texans for Henry Cuellar Campaign into full compliance to date.

If you have any questions regarding this communication, please feel free to call upon me at (956) 724-1212.

Sincerely,



Rosendo Carranco, Treasurer
Texans for Henry Cuellar Congressional Campaign

AmeriCan

GOTV Enterprises, LLC

Political Campaign Management Products

Web Site: www.AmeriCanGOTV.com
 Email: info@AmeriCanGOTV.com
 Tel (828) 693-3844
 Fax: (828) 697-9747

April 26, 2004

Office of the General Counsel
 Federal Election Commission
 999 E. Street, NW
 Washington, DC 20463

RE: MUR5422

Dear Sirs

We are the software vendor that presently services the Texans for Henry Cuellar Congressional Campaign. We have been informed of the complaint filed and referenced as MUR5422.

Regarding the complaint itself, we do not believe that any further action should be taken against the Texans for Henry Cuellar Congressional Campaign, for the following reasons:

- 1) Filing forms were created by our software application in accordance with the Version 5 that was considered acceptable at the time of filing;
- 2) Due to circumstances not yet explained by the Electronic Filing Office, we were not informed of the FEC's intention to stop acceptance of Version 5 file format on or about January 15th, 2004;
- 3) Despite this failure to inform, testing of all formats continued against the FEC's live-test site in order to assure that electronic forms met validation requirements;
- 4) On or about Feb. 18th, 2004, the Cuellar campaign filed their Pre-Primary Report. It was rejected due to the failed file format of Version 5. It was only then that it was noted that the FEC had narrowed acceptance to Version 5.1 only. We had not been informed of this intention and were forced to immediately switch to a 'beta' version of our product in order to meet the immediate filing requirement. This beta version had been tested against the FEC's live-test site with success.
- 5) We attach a copy of an email sent from Ken Lally, indicating and apologizing for the oversight regarding the live-site test. The live-test site continued to accept and validate Version 5 tests, despite the change to the real-time environment. This failure, allowed our firm to continue to test our product against the live-test site successfully, when in fact, the filing would fail in the real-time environment.
- 6) In our rush to correct and implement the Version 5.1 in the Cuellar installation, a software glitch went undetected. It was this glitch that caused the failure of the report to produce the Schedule C-1 report.

Since the software did not produce the C-1 report, the client assumed that it was not necessary, or that it had been filed in a previous report. We apologize for our part, resulting in this complaint. However, we assert that no further action should be taken against the Texans for Henry Cuellar Congressional Campaign regarding this complaint, as it was a result of a software glitch stemming from a shortfall in the FEC Electronic Filing Office itself.

If any clarification is required, please contact the writer at your convenience

Yours truly,

Art Murray
 Director of Software Development

Head Office:
 1625 Howard Gap Loop Road
 Flat Rock, North Carolina
 U.S.A. 28731

Washington Office:
 6407 May Boulevard
 Alexandria, Virginia
 U.S.A. 22310-2823

Canadian Office:
 1235 Fairview Street, Suite 218
 Burlington, Ontario
 L7S 2K9 Canada

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SCHEDULE C-1 (FEC Form 3)

LOANS AND LINES OF CREDIT FROM LENDING INSTITUTIONS

Federal Election Commission, Washington, D.C. 20463

Supplementary for
Information found on
Page ____ of Schedule C

NAME OF COMMITTEE (In Full) Texans for Henry Cuellar Congressional Campaign (Loan to: Enrique R. Cuellar, Individually)		FEC IDENTIFICATION NUMBER <div style="border: 1px solid black; padding: 2px; display: inline-block;">C 0 0 3 7 1 3 0 2</div>	
LENDING INSTITUTION (LENDER) Full Name International Bank of Commerce	Amount of Loan <div style="border: 1px solid black; padding: 2px; display: inline-block;">2 0 0 0 0 0 0 0</div>	Interest Rate (APR) <div style="border: 1px solid black; padding: 2px; display: inline-block;">6.00 %</div>	
Mailing Address 1200 San Bernardo		Date Incurred or Established <div style="display: flex; justify-content: space-between;"><div>02 / 03 / 2004</div><div>08 / 03 / 2004</div></div>	
City Laredo	State Tx	Zip Code 78042	
A Has loan been restructured? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes If yes, date originally incurred <div style="border: 1px solid black; padding: 2px; display: inline-block;"></div>			
B If line of credit, Amount of this Draw <div style="border: 1px solid black; padding: 2px; display: inline-block;"></div>		Total Outstanding Balance <div style="border: 1px solid black; padding: 2px; display: inline-block;"></div>	
C Are other parties secondarily liable for the debt incurred? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes (Endorsers and guarantors must be reported on Schedule C)			
D Are any of the following pledged as collateral for the loan real estate, personal property, goods, negotiable instruments, certificates of deposit, chattel papers, stocks, accounts receivable, cash on deposit, or other similar traditional collateral? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes If yes, specify <u>Real Estate, Accounts and Accounts Receivable</u>		What is the value of this collateral? <div style="border: 1px solid black; padding: 2px; display: inline-block;">2,659,380.00</div> *value assigned to real estate only Does the lender have a perfected security interest in it? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	
E Are any future contributions or future receipts of interest income, pledged as collateral for the loan? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes If yes, specify _____		What is the estimated value? <div style="border: 1px solid black; padding: 2px; display: inline-block;"></div>	
A depository account must be established pursuant to 11 CFR 100.82(e)(2) and 100.142(e)(2) Date account established <div style="display: flex; justify-content: space-between;"><div>07 / 09 / 2003</div><div></div></div>		Location of account <u>Commerce Bank</u> <u>2120 E. Saunders</u> Address <u>Laredo, Texas 78041</u> City, State, Zip	
F If neither of the types of collateral described above was pledged for this loan, or if the amount pledged does not equal or exceed the loan amount, state the basis upon which this loan was made and the basis on which it assures repayment			
G COMMITTEE TREASURER Typed Name <u>Rosendo Carranco</u> Signature <u>Rosendo A Carranco</u>		DATE <div style="display: flex; justify-content: space-between;"><div>04 / 27 / 2004</div><div></div></div>	
H Attach a signed copy of the loan agreement			
I TO BE SIGNED BY THE LENDING INSTITUTION I To the best of this institution's knowledge, the terms of the loan and other information regarding the extension of the loan are accurate as stated above II The loan was made on terms and conditions (including interest rate) no more favorable at the time than those imposed for similar extensions of credit to other borrowers of comparable credit worthiness III This institution is aware of the requirement that a loan must be made on a basis which assures repayment, and has complied with the requirements set forth at 11 CFR 100.82 and 100.142 in making this loan			
AUTHORIZED REPRESENTATIVE Typed Name <u>Ruben Lopez, Jr.</u> Signature <u>[Signature]</u>		DATE <div style="display: flex; justify-content: space-between;"><div>04 / 27 / 2004</div><div></div></div>	
Title <u>Vice President</u>			

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REAL ESTATE LIEN NOTE

Amount \$ 200,000.00

Date February 3, 2004

For value received, the receipt of which is hereby acknowledged, the undersigned, jointly and severally, (hereinafter "Borrower", whether one or more) promise to pay to the order of INTERNATIONAL BANK OF COMMERCE (hereinafter "Lender"), at 1200 San Bernardo, Laredo, Webb County, Texas, the sum of TWO HUNDRED THOUSAND AND NO/100 -----

Dollars (\$ 200,000.00), in legal and lawful money of the United States of America, with interest as it accrues on the outstanding principal balance from date of advance of such principal until paid

The interest rate shall be _____ percent per annum, or

X The interest rate shall be floating at one (1%) percent per annum above the International Bank of Commerce Prime Rate ("Prime Rate") (described below) as it fluctuates from time to time, provided, [6%] however, that in no event shall the rate of interest (plus said amount in excess thereof, if any) to be paid on the unpaid principal of this Note be less than six and one-half percent (6 1/2%) per annum, nor more than the maximum legal rate allowed by applicable law. The starting interest rate on this Note shall be six (6%) percent per annum. The rate of interest due hereunder shall be recomputed as of the date of any change in the Prime Rate

X The INTERNATIONAL BANK OF COMMERCE PRIME RATE shall mean the annual lending rate of interest announced from time to time by Lender, as its prime rate

The NEW YORK PRIME RATE shall mean the annual lending rate of interest announced from time to time by JP Morgan Chase & Co., New York, New York, as its prime rate. If the New York Prime Rate has been selected as the Prime Rate and if, thereafter, a prime rate is not announced by JP Morgan Chase & Co., New York, New York, then the International Bank of Commerce Prime Rate, minus one percent (1%) shall be the Prime Rate

Use of either of said Prime Rates is not to be construed as a warranty or representation that such rates are more favorable than another rate or index, that rates on other loans or credit facilities may not be based on other indices or that rates on loans to others may not be made below such prime rate

The interest is calculated on a 360-day factor applied on a 365-day year, or a 366-day year, in the event that the year is a leap year, on the unpaid principal to the date of each installment paid and the payment made credited first to the discharge of the interest accrued and the balance to the reduction of the principal. Provided, however, that in the event the interest rate reaches the maximum rate allowed by applicable law, said maximum legal rate shall be computed on a full calendar year 365/365 days basis or on a 366/366 days basis, in the event that the year is a leap year. The interest charged and herein contracted for will not exceed the maximum allowed by law

Matured unpaid amounts will bear interest computed on a full calendar year 365/365 days basis or on a 366/366 days basis, in the event that the year is a leap year, at the highest legal rate of interest allowed by Texas law, unless Federal law allows a higher interest rate, in which case, Borrower agrees to pay the rate allowed by Federal law. If applicable law does not set a maximum rate of interest for matured unpaid amounts, then Borrower agrees that the maximum rate for such amounts shall be eighteen percent (18%) per annum

To the extent allowed by law, as the late payment charge under this Agreement, Bank may in its sole discretion (i) increase the interest on the principal portion of any payment amount that is not received by the payment due date to the maximum rate allowed by law, computed on a full calendar year basis from the payment due date until paid, or (u), should any payment not be made within ten (10) days of the due date, require Borrower to pay a one time "late charge" per late payment equal to five percent (5%) of the amount of the past due principal and interest of such payment, with a minimum of \$10.00 and a maximum of \$1,500.00 per late payment. The "late charge" may be assessed without notice, and shall be immediately due and payable. This provision is inapplicable if the outstanding indebtedness under the Note is accelerated. No late charge will be assessed on any payment when the only delinquency is due to late charges assessed on earlier payment and the payment is otherwise a full payment

The outstanding and unpaid principal of this Note and all accrued and unpaid interest are payable as follows

Number of Payments	Frequency	Amount of Payments	When Payments are Due
<u>5 payments of accrued interest shall be due and payable monthly beginning March 3, 2004; and 1 final payment for all unpaid principal and all unpaid accrued interest shall be due and payable on or before August 3, 2004.</u>			

Final Maturity Date August 3, 2004

Lender may, at its discretion, adjust the amount of periodic payments described above to assure that the remaining payments will fully amortize the principal of this note on the stated maturity without any "Balloon" or unequal payment

THIS OBLIGATION HAS THE FOLLOWING DEMAND FEATURE

At any time, and from time to time, whether or not prior to and/or during said schedule payment dates, Lender may, in its sole and absolute discretion, reschedule, rearrange and/or accelerate, in whole or in part, the outstanding and unpaid principal balance, and all accrued and unpaid interest under this Note. Borrower agrees and promises to pay Lender all accelerated principal and all accrued and unpaid interest on such principal. No notice of intent to accelerate shall be required of Lender and Borrower expressly waives any right to notice of Lender's intent to accelerate. The foregoing right to make demand for immediate payment of this Note, in whole or in part, may be exercised by Lender for any reason whatsoever, whether or not Borrower is in default hereunder and in advance of its scheduled maturity

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The failure of Borrower to pay any of the above-stated payment(s) of principal or any interest thereon, when the same is due and payable, shall permit Lender at its option, to accelerate the maturity, without notice to Borrower, of all, or any portion, of the remaining unpaid principal balance outstanding and all accrued and unpaid interest of this Note, whereupon the same shall be due and payable immediately

Lender, at its discretion, may declare all sums owing by Borrower (including endorser and/or guarantors) immediately due and payable upon deeming itself to be adversely affected and/or insecure by reason of any material change in any of Borrower's (including any endorser and/or guarantors) net worth, or by reason of any other material change of condition whether or not described herein

Borrower and Lender intend that the loan evidenced by this Note (the "Loan") shall be in strict compliance with applicable usury laws. If at any time any interest contracted for, charged or received under this Note or otherwise in connection with the Loan would be usurious under applicable law, then regardless of the provisions of this Note or the documents and instruments evidencing, securing or otherwise executed in connection with the Loan or any action or event (including, without limitation, prepayment of principal hereunder or acceleration of maturity by the Lender) which may occur with respect to this Note or the Loan, it is agreed that all sums determined to be usurious shall be immediately credited by the Lender as a payment of principal hereunder, or if this Note has already been paid, immediately refunded to the Borrower. All compensation which constitutes interest under applicable law in connection with the Loan shall be amortized, prorated, allocated and spread over the full period of time any indebtedness is owing by Borrower, to the greatest extent permissible without exceeding the applicable maximum rate allowed by applicable law in effect from time to time during such period.

In no event shall the provisions of Chapter 346 of the Texas Finance Code, (which regulates certain revolving loan accounts and revolving tri-party accounts) apply to the Loan.

IN THE EVENT ANY ITEM, ITEMS, TERMS OR PROVISIONS CONTAINED IN THIS INSTRUMENT ARE IN CONFLICT WITH THE LAWS OF THE STATE OF TEXAS, OR FEDERAL LAW, THIS INSTRUMENT SHALL BE AFFECTED ONLY AS TO ITS APPLICATION TO SUCH ITEM, ITEMS, TERMS OR PROVISIONS, AND SHALL IN ALL OTHER RESPECTS REMAIN IN FULL FORCE AND EFFECT. IT IS UNDERSTOOD AND AGREED THAT IN NO EVENT AND UPON NO CONTINGENCY SHALL THE BORROWER OR ANY PARTY LIABLE HEREON, OR HEREOF, BE REQUIRED TO PAY INTEREST IN EXCESS OF THE RATE ALLOWED BY THE LAWS OF THE STATE OF TEXAS OR FEDERAL LAW, IF SUCH LAW PERMITS A GREATER RATE OF INTEREST. THE INTENTION OF THE PARTIES BEING TO CONFORM STRICTLY TO THE USURY LAWS AS NOW OR HEREINAFTER CONSTRUED BY THE COURTS HAVING JURISDICTION.

THE BORROWER, ENDORSERS, SURETIES, GUARANTORS AND ALL PERSONS TO BECOME LIABLE ON THIS NOTE (THE "OBLIGORS") HEREBY, JOINTLY AND SEVERALLY, WAIVE EXPRESSLY ALL NOTICES OF OVERDUE INSTALLMENT PAYMENTS, AND DEMANDS FOR PAYMENT THEREOF, NOTICES OF INTENTION TO ACCELERATE MATURITY, NOTICES OF ACTUAL ACCELERATION OF MATURITY, PRESENTMENT, DEMAND FOR PAYMENT, NOTICES OF DISHONOR, PROTEST, NOTICES OF PROTEST, AND DILIGENCE IN COLLECTION HEREOF. EACH OBLIGOR CONSENTS THAT THE LENDER OR OTHER HOLDER OF THIS NOTE MAY AT ANY TIME, AND FROM TIME TO TIME, UPON REQUEST OF OR BY AGREEMENT WITH ANY OF THEM, RENEW THIS NOTE AND/OR EXTEND THE DATE OF MATURITY HEREOF OR CHANGE THE TIME OR METHOD OF PAYMENTS WITHOUT NOTICE TO ANY OF THE OTHER OBLIGORS, MAKERS, SURETIES OR ENDORSERS, WHO SHALL REMAIN BOUND FOR THE PAYMENT HEREOF. OBLIGORS WAIVE EXPRESSLY THE LATE FILING OR ANY SUIT OR CAUSE OF ACTION HEREOF, OR ANY DELAY IN THE HANDLING OF ANY COLLATERAL. OBLIGORS AGREE THAT HOLDER'S ACCEPTANCE OF PARTIAL OF DELINQUENT PAYMENTS OR FAILURE OF HOLDER TO EXERCISE ANY RIGHT OR REMEDY CONTAINED HEREIN OR IN ANY INSTRUMENT GIVEN AS SECURITY FOR THE PAYMENT OF THIS NOTE SHALL NOT BE A WAIVER OF ANY OBLIGATION OF THE OBLIGORS OR CONSTITUTE WAIVER OF ANY PRIOR OR SUBSEQUENT DEFAULT. THE HOLDER MAY REMEDY ANY DEFAULT WITHOUT WAIVING THE DEFAULT REMEDIED AND MAY WAIVE ANY DEFAULT WITHOUT WAIVING ANY OTHER PRIOR OR SUBSEQUENT DEFAULT.

As security for this Note, and all other indebtedness which may at any time be owing by Borrower (and any endorser and/or guarantors hereof) to Lender or other Lender hereof, Borrower (and any endorser and/or guarantors hereof), gives to Lender or other Holder hereof a security interest, a lien and contractual right of set-off in and to all of the Borrower's (and any endorser and/or guarantors hereof) money, credits, deposit accounts, accounts and/or other property now in, or at any time hereafter coming within, the custody or control of Lender or other Holder hereof, or any member bank or branch bank of International Bancshares Corporation, whether held in general or special account or deposit, or for safekeeping or otherwise. Every such security interest and right of set-off may be exercised without demand or notice to Borrower (and any endorser and/or guarantors hereof). No security interest or right of set-off to enforce such security interest shall be deemed to have been waived by any act or conduct on the part of the Lender, or by any failure to exercise such right of set-off or to enforce such security interest, or by any delay in so doing. Every right of set-off and security interest shall continue in full force and effect until such right of set-off or security interest is specifically waived or released by an instrument in writing executed by Lender. The foregoing is in addition to and not in lieu of any rights of set-off allowed by law.

In connection with any transaction between Borrower and Lender at any time in the past, present or future, in the event Borrower individually or jointly with others, has granted or grants Lender a lien on any real and/or personal property, Borrower agrees that the lien on such real and/or personal property to the extent of Borrower's interest shall also secure the indebtedness of Borrower to Lender evidenced by this Note and all renewals, extensions and modifications hereof.

Financing Statements. At Lender's request Debtor will promptly sign all other documents, including financing statements and certificates of title, to perfect, protect, and continue Lender's security interest in the Collateral at the sole cost of Borrower. Debtor hereby authorizes Lender to file a Financing Statement, an Amended Financing Statement and a Continuation financing Statement (collectively referred to as the "Financing Statement") describing the Collateral. Where Collateral is in the possession of a third party Debtor will join with Lender in notifying the third party of Lender's security interest and obtaining a Control Agreement from the third party that it is holding the collateral for the benefit of Lender.

If this Note or any part hereof is not paid according to its terms is placed in the hands of an attorney for collection or is collected through Probate, Bankruptcy or other judicial or non-judicial proceedings whether matured by expiration of time or by the exercise of

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the option given to the Lender to mature it, the Borrower and all parties now or hereafter personally liable hereon now agree to and shall pay an additional amount equal to reasonable and necessary attorney's fees and associated costs for collection. Said attorney's fees and costs of collection, once liquidated and paid by Lender or otherwise allowed by law, will bear interest at the rate of interest applied to the matured and past-due principal balance of this Note as such rate may change from time to time from the date due until repaid.

In the event any legal action or proceeding, by arbitration or otherwise, is commenced in connection with the enforcement of, or declaration of rights under this Note and/or any instrument or written agreement required or delivered under or pursuant to the terms of this Note, and/or any controversy or claim, whether sounding in contract, tort or statute, legal or equitable, involving in any way the financing or the transaction(s), the subject of this Note, or any other proposed or actual loan or extension of credit, the prevailing party shall be entitled to recover reasonable and necessary attorney's fees, paralegal costs (including allocated costs for in-house legal services), costs, expenses, expert witness fees and costs, and other necessary disbursements made in connection with any such action or proceeding, in the amount determined by the fact-finder.

Lender, in its sole discretion and without obligation on Lender to do so, may advance and pay sums on behalf and for the benefit of Borrower for costs necessary for the protection and preservation of the collateral securing this Note and other costs that may be appropriate, in Lender's sole discretion, including but not limited to insurance premiums, ad valorem taxes, and attorney's fees. Any sums which may be so paid out by Lender and all sums paid for insurance premiums, as aforesaid, including the costs, expenses and attorney's fees paid in any suit affecting said property when necessary to protect the lien hereof shall bear interest from the dates of such payments at the interest rate applied to the matured and past-due principal balance of this Note and shall be paid by Borrower to Lender upon demand, at the same place at which this Note is payable, and shall be deemed a part of the debt and recoverable as such in all aspects.

Borrower reserves the right to prepay, prior to maturity, all or any part of the principal of this Note without penalty, and interest shall immediately cease on any amount so prepaid. All prepayments shall be applied to the last maturing installments of principal, without interrupting the regular installment payments.

Any assumption, if permitted by Lender, by any other person, partnership, corporation, organization or any other entity without the express written consent of Lender, shall not release the liability of Borrower for the payment of this Note.

In the event that the hereinafter described real property is sold, conveyed, or otherwise disposed of without the prior written consent of the Lender, the maturity of this Note may, at the option of the Lender, be accelerated and Lender may immediately demand payment of the then outstanding principal sum together with all accrued and unpaid interest due thereon.

Borrower and Lender hereby expressly acknowledge and agree that in the event of a default under this Note or under any document executed by Borrower in connection with, or to secure the payment of, this Note (1) Lender shall not be required to comply with Subsection 3.05(d) of the Texas Revised Partnership Act and (2) Lender shall not be required to proceed against or exhaust the assets of Borrower before pursuing any remedy directly against one or more of the partners of Borrower or the property of such partners.

ARBITRATION.

BORROWER AND LENDER FURTHER AGREE AS FOLLOWS:

- (a) ANY AND ALL CONTROVERSIES BETWEEN THE PARTIES, EXCEPT SUCH CLAIMS AND CONTROVERSIES WHICH ARE CONSUMER RELATED AND INVOLVE AN AGGREGATE AMOUNT IN CONTROVERSY OF LESS THAN TEN THOUSAND DOLLARS (\$10,000.00), SHALL BE RESOLVED BY ARBITRATION IN ACCORDANCE WITH THE COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION IN EFFECT AT THE TIME OF FILING, UNLESS THE COMMERCIAL ARBITRATION RULES CONFLICT WITH THIS PROVISION, AND IN SUCH EVENT THE TERMS OF THIS PROVISION SHALL CONTROL TO THE EXTENT OF THE CONFLICT. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, SAVE AND EXCEPT SUBPARAGRAPHS (k), (m), (o), (p), AND (s) HEREIN, THOSE CONSUMER RELATED CLAIMS AND CONTROVERSIES INVOLVING AN AGGREGATE AMOUNT OF LESS THAN TEN THOUSAND DOLLARS (\$10,000.00) SHALL BE CONDUCTED IN ACCORDANCE WITH THE AMERICAN ARBITRATION ASSOCIATION RULES FOR THE RESOLUTION OF CONSUMER-RELATED DISPUTES OF LESS THAN TEN THOUSAND DOLLARS. ANY ARBITRATION HEREUNDER SHALL BE BEFORE AT LEAST THREE NEUTRAL ARBITRATORS ASSOCIATED WITH THE AMERICAN ARBITRATION ASSOCIATION AND SELECTED IN ACCORDANCE WITH THE COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION. FAILURE OF ANY ARBITRATOR TO DISCLOSE ALL FACTS WHICH MIGHT TO AN OBJECTIVE OBSERVER CREATE A REASONABLE IMPRESSION OF THE ARBITRATOR'S PARTIALITY, AND/OR MATERIAL ERRORS OF LAW SHALL BE GROUNDS [IN ADDITION TO ALL OTHERS] FOR VACATUR OF AN AWARD RENDERED PURSUANT TO THIS AGREEMENT.
- (b) THE AWARD OF THE ARBITRATORS, OR A MAJORITY OF THEM, SHALL BE FINAL, AND JUDGMENT UPON THE AWARD RENDERED MAY BE ENTERED IN ANY COURT, STATE OR FEDERAL, HAVING JURISDICTION. THE ARBITRATION AWARD SHALL BE IN WRITING AND SPECIFY THE FACTUAL AND LEGAL BASES FOR THE AWARD. UPON THE REQUEST OF ANY PARTY, THE AWARD SHALL INCLUDE FINDINGS OF FACT AND CONCLUSIONS OF LAW.
- (c) ARBITRABLE DISPUTES INCLUDE ANY AND ALL CONTROVERSIES OR CLAIMS BETWEEN THE PARTIES OF WHATEVER TYPE OR MANNER, INCLUDING WITHOUT LIMITATION, ANY CLAIM ARISING OUT OF OR RELATING TO THIS NOTE, ALL PAST, PRESENT AND/OR FUTURE CREDIT FACILITIES AND AGREEMENTS INVOLVING THE PARTIES, ANY TRANSACTIONS BETWEEN OR INVOLVING THE PARTIES, AND/OR ANY ASPECT OF ANY PAST OR PRESENT RELATIONSHIP OF THE PARTIES, WHETHER BANKING OR OTHERWISE, SPECIFICALLY INCLUDING ANY ALLEGED TORT COMMITTED BY ANY PARTY.

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- (d) THE PARTIES SHALL ALLOW AND PARTICIPATE IN DISCOVERY IN ACCORDANCE WITH THE FEDERAL RULES OF CIVIL PROCEDURE FOR A PERIOD OF ONE HUNDRED TWENTY (120) DAYS AFTER THE FILING OF THE ORIGINAL RESPONSIVE PLEADING. DISCOVERY MAY CONTINUE THEREAFTER AS AGREED BY THE PARTIES OR AS ALLOWED BY THE ARBITRATORS. UNRESOLVED DISCOVERY DISPUTES SHALL BE BROUGHT TO THE ATTENTION OF THE ARBITRATORS BY WRITTEN MOTION FOR PROPER DISPOSITION, INCLUDING RULING ON ANY ASSERTED OBJECTIONS, PRIVILEGES, AND PROTECTIVE ORDER REQUESTS AND AWARDING REASONABLE ATTORNEY'S FEES TO THE PREVAILING PARTY.
- (e) IN THE EVENT THE AGGREGATE OF ALL AFFIRMATIVE CLAIMS ASSERTED EXCEED \$500,000.00, EXCLUSIVE OF INTEREST AND ATTORNEY'S FEES, OR UPON THE WRITTEN REQUEST OF ANY PARTY, (1) PRIOR TO THE DISSEMINATION OF A LIST OF POTENTIAL ARBITRATORS, THE AMERICAN ARBITRATION ASSOCIATION SHALL CONDUCT AN IN PERSON ADMINISTRATIVE CONFERENCE WITH THE PARTIES AND THEIR ATTORNEYS FOR THE FOLLOWING PURPOSES AND FOR SUCH ADDITIONAL PURPOSES AS THE PARTIES OR THE AMERICAN ARBITRATION ASSOCIATION MAY DEEM APPROPRIATE, (A) TO OBTAIN ADDITIONAL INFORMATION ABOUT THE NATURE AND MAGNITUDE OF THE DISPUTE AND THE ANTICIPATED LENGTH OF HEARINGS AND SCHEDULING; (B) TO DISCUSS THE VIEW OF THE PARTIES ABOUT ANY TECHNICAL AND/OR OTHER SPECIAL QUALIFICATIONS OF THE ARBITRATORS; AND (C) TO CONSIDER, WHETHER MEDIATION OR OTHER METHODS OF DISPUTE RESOLUTION MIGHT BE APPROPRIATE, AND (2) AS PROMPTLY AS PRACTICABLE AFTER THE SELECTION OF THE ARBITRATORS, A PRELIMINARY HEARING SHALL BE HELD AMONG THE PARTIES, THEIR ATTORNEYS AND THE ARBITRATORS. WITH THE AGREEMENT OF THE ARBITRATORS AND THE PARTIES, THE PRELIMINARY HEARING MAY BE CONDUCTED BY TELEPHONE CONFERENCE CALL RATHER THAN IN PERSON. AT THE PRELIMINARY HEARING THE MATTERS THAT MAY BE CONSIDERED SHALL INCLUDE, WITHOUT LIMITATION, A PREHEARING SCHEDULING ORDER ADDRESSING (A) EACH PARTY'S DUTY TO SUBMIT A DETAILED STATEMENT OF CLAIMS, DAMAGES AND/OR DEFENSES, A STATEMENT OF THE ISSUES ASSERTED BY EACH PARTY AND ANY LEGAL AUTHORITIES THE PARTIES MAY WISH TO BRING TO THE ATTENTION OF THE ARBITRATORS; (B) RESPONSES AND/OR REPLIES TO THE PLEADINGS FILED IN COMPLIANCE WITH SUBPART 2(A); (C) STIPULATIONS REGARDING ANY UNCONTESTED FACTS; (D) EXCHANGE AND PREMARKING OF ALL DOCUMENTS WHICH EACH PARTY BELIEVES MAY BE OFFERED AT THE FINAL ARBITRATION HEARING; (E) THE IDENTIFICATION AND AVAILABILITY OF WITNESSES, INCLUDING EXPERTS, AND SUCH ADDITIONAL MATTERS REGARDING WITNESSES INCLUDING THEIR BIOGRAPHIES AND A SHORT SUMMARY OF THEIR EXPECTED TESTIMONY, (F) WHETHER A STENOGRAPHIC OR OTHER OFFICIAL RECORD OF THE PROCEEDINGS SHALL BE MAINTAINED; AND (G) THE POSSIBILITY OF UTILIZING MEDIATION OR OTHER ALTERNATIVE METHODS OF DISPUTE RESOLUTION.
- (f) FOR PURPOSES OF THIS PROVISION, "THE PARTIES" MEANS BORROWER AND LENDER, AND EACH AND ALL PERSONS AND ENTITIES SIGNING THIS AGREEMENT OR ANY OTHER AGREEMENTS BETWEEN OR AMONG ANY OF THE PARTIES AS PART OF THIS TRANSACTION. "THE PARTIES" SHALL ALSO INCLUDE INDIVIDUAL PARTNERS, AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND/OR REPRESENTATIVES OF ANY PARTY TO SUCH DOCUMENTS, AND SHALL INCLUDE ANY OTHER OWNER AND HOLDER OF THIS AGREEMENT.
- (g) THE PARTIES SHALL HAVE THE RIGHT TO INVOKE SELF- HELP REMEDIES (SUCH AS SET-OFF, NOTIFICATION OF ACCOUNT DEBTORS, SEIZURE AND/OR FORECLOSURE OF COLLATERAL, AND NON-JUDICIAL SALE OF PERSONAL PROPERTY AND REAL PROPERTY COLLATERAL) BEFORE, DURING OR AFTER ANY ARBITRATION AND/OR REQUEST ANCILLARY OR PROVISIONAL JUDICIAL REMEDIES (SUCH AS GARNISHMENT, ATTACHMENT, SPECIFIC PERFORMANCE, RECEIVER, INJUNCTION OR RESTRAINING ORDER, AND SEQUESTRATION) BEFORE OR AFTER ANY ARBITRATION. THE PARTIES NEED NOT WAIT THE OUTCOME OF THE ARBITRATION BEFORE USING SELF-HELP REMEDIES. USE OF SELF-HELP OR ANCILLARY AND/OR PROVISIONAL JUDICIAL REMEDIES SHALL NOT OPERATE AS A WAIVER OF EITHER PARTY'S RIGHT TO COMPEL ARBITRATION. ANY ANCILLARY OR PROVISIONAL REMEDY WHICH WOULD BE AVAILABLE FROM A COURT AT LAW SHALL BE AVAILABLE FROM THE ARBITRATORS.
- (h) THE PARTIES AGREE THAT ANY ACTION REGARDING ANY CONTROVERSY BETWEEN THE PARTIES SHALL EITHER BE BROUGHT BY ARBITRATION, AS DESCRIBED HEREIN, OR BY JUDICIAL PROCEEDINGS, BUT SHALL NOT BE PURSUED SIMULTANEOUSLY IN DIFFERENT OR ALTERNATIVE FORMS. A TIMELY WRITTEN NOTICE OF INTENT TO ARBITRATE PURSUANT TO THIS AGREEMENT STAYS AND/OR ABATES ANY AND ALL ACTION IN A TRIAL COURT, SAVE AND EXCEPT A HEARING ON A MOTION TO COMPEL ARBITRATION AND/OR THE ENTRY OF AN ORDER COMPELLING ARBITRATION AND STAYING AND/OR ABATING THE LITIGATION PENDING THE FILING OF THE FINAL AWARD OF THE ARBITRATORS. ALL REASONABLE AND NECESSARY ATTORNEY'S FEES AND ALL TRAVEL COSTS SHALL BE AWARDED TO THE PREVAILING PARTY ON ANY MOTION TO COMPEL ARBITRATION AND MUST BE PAID TO SUCH PARTY WITHIN TEN (10) DAYS OF THE SIGNING OF THE ORDER COMPELLING ARBITRATION

ANY PARTY SHALL SERVE A WRITTEN NOTICE OF INTENT TO ARBITRATE TO ANY AND ALL OPPOSING PARTIES WITHIN 360 DAYS AFTER DISPUTE HAS ARISEN. A DISPUTE IS DEFINED TO HAVE ARISEN ONLY UPON RECEIPT OF SERVICE OF JUDICIAL PROCESS, INCLUDING SERVICE OF A COUNTERCLAIM, FAILURE TO SERVE A WRITTEN NOTICE OF INTENT TO ARBITRATE WITHIN THE TIME SPECIFIED ABOVE SHALL BE DEEMED A WAIVER OF THE AGGRIEVED PARTY'S RIGHT TO COMPEL ARBITRATION OF SUCH CLAIM. THE ISSUE OF WAIVER PURSUANT TO THIS AGREEMENT IS AN ARBITRABLE DISPUTE.

EXHIBIT "A" TO REAL ESTATE LIEN NOTE DATED FEBRUARY
_____, 2004 EXECUTED BY ENRIQUE R. CUELLAR AND PAYABLE
TO THE ORDER OF INTERNATIONAL BANK OF COMMERCE

TRACT I

Situated in Webb County, Texas and being the West One-Half of Lot Number Six (6) and the West One-Half of Lot Number Eight (8), in Block Number One Hundred Sixty-Nine (169), Western Division of the City of Laredo

TRACT II

An undivided 67.87% interest in and to the North 33.345 feet of the North 66.69 feet of Lot Number Twelve (12) in Block Number Three Hundred Twenty-One (321) situated in the Eastern Division of the City of Laredo, Webb County, Texas, as per the Dryden Replat of the South half of said Block.

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- (j) ACTIVE PARTICIPATION IN PENDING LITIGATION DURING THE 360 DAY NOTICE PERIOD, WHETHER AS PLAINTIFF OR DEFENDANT, IS NOT A WAIVER OF THE RIGHT TO COMPEL ARBITRATION. ALL DISCOVERY OBTAINED IN THE PENDING LITIGATION MAY BE USED IN ANY SUBSEQUENT ARBITRATION PROCEEDING.
- (k) THE PARTIES FURTHER AGREE THAT (i) NO ARBITRATION PROCEEDING HEREUNDER SHALL BE CERTIFIED AS A CLASS ACTION OR PROCEED AS A CLASS ACTION, OR ON A BASIS INVOLVING CLAIMS BROUGHT IN A PURPORTED REPRESENTATIVE CAPACITY ON BEHALF OF THE GENERAL PUBLIC, OTHER CUSTOMERS OR POTENTIAL CUSTOMERS OR PERSONS SIMILARLY SITUATED AND (ii) NO ARBITRATION PROCEEDING HEREUNDER SHALL BE CONSOLIDATED WITH, OR JOINED IN ANY WAY WITH, ANY OTHER ARBITRATION PROCEEDING.
- (l) ANY ARBITRATOR SELECTED SHALL BE KNOWLEDGEABLE IN THE SUBJECT MATTER OF THE DISPUTE. EACH OF THE PARTIES SHALL PAY AN EQUAL SHARE OF THE ARBITRATION COSTS, FEES, EXPENSES, AND OF THE ARBITRATORS' FEES, COSTS AND EXPENSES.
- (m) ALL STATUTES OF LIMITATIONS WHICH WOULD OTHERWISE BE APPLICABLE SHALL APPLY TO ANY AND ALL CLAIMS ASSERTED IN ANY ARBITRATION PROCEEDING HEREUNDER AND THE COMMENCEMENT OF ANY ARBITRATION PROCEEDING TOLLS SUCH STATUTES OF LIMITATIONS.
- (n) IN ANY ARBITRATION PROCEEDING SUBJECT TO THIS PROVISION, THE ARBITRATORS, OR MAJORITY OF THEM, ARE SPECIFICALLY EMPOWERED TO DECIDE (BY DOCUMENTS ONLY, OR WITH A HEARING, AT THE ARBITRATORS' SOLE DISCRETION) PRE-HEARING MOTIONS WHICH ARE SUBSTANTIALLY SIMILAR TO PRE-HEARING MOTIONS TO DISMISS AND MOTIONS FOR SUMMARY ADJUDICATION.
- (o) THIS ARBITRATION PROVISION SHALL SURVIVE ANY TERMINATION, AMENDMENT, OR EXPIRATION OF THE AGREEMENT IN WHICH THIS PROVISION IS CONTAINED, UNLESS ALL OF THE PARTIES OTHERWISE EXPRESSLY AGREE IN WRITING.
- (p) THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT EVIDENCES A TRANSACTION INVOLVING INTERSTATE COMMERCE. THE FEDERAL ARBITRATION ACT SHALL GOVERN THE INTERPRETATION, ENFORCEMENT, AND PROCEEDINGS PURSUANT TO THE ARBITRATION CLAUSE OF THIS AGREEMENT.
- (q) THE ARBITRATORS, OR A MAJORITY OF THEM, SHALL AWARD ATTORNEY'S FEES AND COSTS TO THE PREVAILING PARTY PURSUANT TO THE TERMS OF THIS AGREEMENT.
- (r) NEITHER THE PARTIES NOR THE ARBITRATORS MAY DISCLOSE THE EXISTENCE, CONTENT, OR RESULTS OF ANY ARBITRATION HEREUNDER WITHOUT PRIOR WRITTEN CONSENT OF ALL PARTIES AND/OR COURT ORDER.
- (s) VENUE OF ANY ARBITRATION PROCEEDING HEREUNDER SHALL BE IN WEBB COUNTY, TEXAS.

THE TERM LENDER INCLUDES ANY OTHER OWNER AND HOLDER OF THIS NOTE AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS THIS NOTE IS GOVERNED BY APPLICABLE TEXAS LAW, EXCEPT TO THE EXTENT THE USURY LAWS OF TEXAS ARE PRE-EMPTED BY FEDERAL LAW, IN WHICH CASE, SUCH FEDERAL LAW SHALL APPLY VENUE OF ALL ACTIONS ON THIS NOTE, SHALL LIE IN WEBB COUNTY, TEXAS, AND ALL OBLIGATIONS REQUIRED HEREIN ARE PERFORMABLE IN WEBB COUNTY, TEXAS

If loan proceeds are to be used primarily for personal, family or household use, the following notice shall apply

NOTICE TO CONSUMERS- UNDER TEXAS LAW IF YOU CONSENT TO THIS AGREEMENT YOU MAY BE SUBJECT TO A FUTURE RATE AS HIGH AS 24% ANNUAL PERCENTAGE RATE, OR THE STATE USURY CEILING, WHICHEVER IS LESS

If this Note is to be secured by a lien on a dwelling located on the hereinafter described property, then the following notice shall apply

THE MAXIMUM INTEREST RATE SHALL NOT EXCEED TWENTY-FOUR PERCENT (24%) PER ANNUM, OR THE USURY CEILING, WHICHEVER IS LESS

Payment hereof is secured by a ~~valid and legal lien and first priority mortgage~~ Deed of Trust, Security Agreement and Financing Statement of even date herewith, executed by the Borrower and/or Grantors thereof to
RUBEN LOPEZ, JR., Trustee, upon the following described real property

See Exhibit "A" attached hereto.

NO ORAL AGREEMENTS

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

THERE ARE NO WRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

"Borrower"	<u>Enrique R. Cuellar</u>	"Borrower"	_____
By	<u>ENRIQUE R. CUELLAR</u>	By	_____
Typed Name	_____	Typed Name	_____
Title	_____	Title	_____
Address		Address	
<u>Laredo, Texas 78041</u>		_____	
_____		_____	
"Borrower"	_____	"Borrower"	_____
By	_____	By	_____
Typed Name	_____	Typed Name	_____
Title	_____	Title	_____
Address		Address	
_____		_____	
_____		_____	

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