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

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| In re: | ) | Chapter 11 |
| ASCEND ELEMENTS, INC., *et al.*,[1] | ) | Case No. 26-90440 (CML) |
| Debtors. | ) | (Jointly Administered) |

**DEBTORS' EMERGENCY MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO (A) OBTAIN SENIOR SECURED SUPERPRIORITY POSTPETITION FINANCING AND (B) UTILIZE CASH COLLATERAL, (II) GRANTING LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, (III) GRANTING ADEQUATE PROTECTION TO THE PREPETITION SECURED PARTIES, (IV) MODIFYING THE AUTOMATIC STAY, (V) SCHEDULING A FINAL HEARING, AND (VI) GRANTING RELATED RELIEF**

**Emergency relief has been requested. Relief is requested not later than on 5:00 p.m. (prevailing Central Time) on May 12, 2026.**

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

The above-captioned debtors and debtors in possession (collectively, the "Debtors") state the following in support of this emergency motion (this "**Motion**"):[2]

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Ascend Elements, Inc. (2893) and Ascend Elements US, LLC (8309). The location of the Debtors' service address is: 133 Flanders Road, Westborough, MA 01581.

[2] Capitalized terms that are not defined in the Motion shall have the meanings ascribed to them in the Declarations.



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## Relief Requested

1. The Debtors seek entry of an interim order, substantially in the form attached hereto (the "Interim Order") and a final order (the "Final Order," and together with the Interim Order, the "DIP Orders"):[3]

a. authorizing Ascend Elements, Inc. (the "Parent Borrower") and Ascend Elements US, LLC (together with the Parent Borrower, the "Borrowers" and individually, each a "Borrower") to obtain postpetition financing on a superpriority priming senior secured basis (the "DIP Facility") in an aggregate principal amount of up to $30.0 million in term loan commitments, which cash funding shall be available upon entry of the Interim Order (the "Borrowing"), and authorizing each Guarantor (as defined in the DIP Loan Agreement) to guarantee the Borrowers' obligations thereunder on a joint and several basis, subject to the terms of the DIP Loan Agreement, which DIP Facility shall be a debtor-in-possession financing facility on the terms substantially in the form annexed to the Interim Order as **Exhibit A** (as amended, restated, amended and restated, supplemented, waived, extended, or otherwise modified from time to time, the "DIP Loan Agreement" and, together with all related agreements and documents, including the Interim Order and the Final Order (when entered), collectively, the "DIP Loan Documents"), by and among the Borrowers, the Guarantors, and Bluegrass Infrastructure Partners Holdings, LLC, as lender (together with its permitted successors and assigns, the "DIP Lender"), with amounts available as term loans (the "DIP Loans") upon satisfaction of the conditions set forth therein;

b. authorizing the Debtors to execute, deliver, and enter into the DIP Loan Agreement and to perform all of the Debtors' respective obligations thereunder, and such other and further acts as may be necessary or desirable in connection with the DIP Loan Documents;

c. authorizing the Debtors, immediately upon entry of the Interim Order, to use proceeds of the DIP Facility solely for the purposes permitted under the DIP Loan Documents and solely in accordance with the Interim Order and the applicable Initial Budget (as defined in the Interim Order), subject to permitted variances and other exclusions set forth in the DIP Loan Documents;

d. authorizing and directing the Debtors to pay the principal, interest, fees, expenses and other amounts payable to the DIP Lender pursuant to the DIP

[3] To the extent of any conflict between the descriptions and definitions in this Motion, on the one hand, and the DIP Orders, the DIP Loan Agreement, or the DIP Loan Documents, on the other hand, then the DIP Orders, the DIP Loan Agreement, or the DIP Loan Documents, as applicable, will control. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the DIP Loan Documents or the Interim Order, as applicable.

Loan Documents, including, without limitation, all loans, advances debts, liabilities and obligations for the performance of covenants, tasks or duties or for payment of monetary amounts (whether or not such performance is then required or contingent, or such amounts are liquidated or determinable) owing by Borrowers to the DIP Lender arising under the DIP Loan Documents, and all covenants and duties regarding such amounts, of any kind or nature, present or future, arising under the DIP Loan Documents, including all principal, interest, fees, charges, expenses, reasonable and documented attorneys' fees and any other sum chargeable to Borrowers under the DIP Loan Documents (such obligations, the "DIP Obligations");

e. granting the DIP Lender superpriority administrative expense claim status in each of the debtors' chapter 11 cases (the "Chapter 11 Cases") pursuant to sections 364(c)(1), 503(b)(1), and 507(b) of the Bankruptcy Code in respect of all DIP Obligations, subject only to the Carve-Out (as defined below);

f. granting the DIP Lender valid, enforceable, non-avoidable, automatically and fully perfected DIP Liens (as defined below) in all DIP Collateral (as defined below) to secure the DIP Obligations pursuant to sections 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, which DIP Liens shall be subject and subordinate to the Carve-Out and Permitted Priority Encumbrances (as defined in the DIP Loan Agreement);

g. authorizing the Debtors to use the proceeds of the DIP Facility, the DIP Collateral and the Prepetition Collateral, including Cash Collateral, in accordance with the terms and conditions set forth in the Interim Order and DIP Loan Documents, including the Initial Budget, subject to any variances expressly permitted under the DIP Loan Documents;

h. granting adequate protection, as and to the extent set forth in the Interim Order, to the Prepetition Secured Parties for any diminution in value of their interests in the applicable Prepetition Collateral (including Cash Collateral) from and after the Petition Date to the fullest extent set forth in the Bankruptcy Code and other applicable law ("Diminution in Value") to the extent such Diminution in Value occurs on account of the Debtors' sale, lease, or use of the Prepetition Collateral (including Cash Collateral), the imposition and enforcement of the automatic stay pursuant to section 362 of the Bankruptcy Code, and the priming of the Prepetition Secured Parties' respective interests in the Prepetition Collateral;

i. modifying the automatic stay imposed by section 362 of the Bankruptcy Code solely to the extent necessary to implement and effectuate the terms and provisions of the DIP Loan Documents and the DIP Orders;

j. waiving the Debtors' rights under sections 506(c) and 552(b) of the Bankruptcy Code with respect to the DIP Collateral and Prepetition Collateral;

k. waiving any applicable stay and providing for immediate effectiveness of the Interim Order;

l. scheduling a final hearing (the "Final Hearing") to consider entry of the Final Order and approving the form of notice with respect to such Final Hearing, which order shall be in form and substance and on terms and conditions acceptable in all respects to the DIP Lender; and

m. granting related relief.

2. In support of the Motion, the Debtors rely on the (a) *Declaration of Linh Austin in Support of the Debtors' Chapter 11 Petitions and First Day Motions* (the "First Day Declaration"), (b) the Declaration of Adam Titus, in support hereof ("Titus Declaration"), (c) the Declaration of Michael O'Hara, in support hereof (the "O'Hara Declaration" and together with the Titus Declaration, "DIP Declarations", and together with the First Day Declaration, the "Declarations"), (d) the exhibits attached hereto, and (e) the DIP Loan Documents. Each of the Declarations is incorporated herein by reference.

**Jurisdiction and Venue**

3. The United States Bankruptcy Court for the Southern District of Texas (the "Court") has jurisdiction over this matter and the parties and property affected hereby pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The Debtors confirm their consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

4. Venue for the Chapter 11 Cases is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

5. The bases for the relief requested herein are sections 105, 361, 362, 363, 364, 506, 507 and 552 of title 11 of the United States Code (the "Bankruptcy Code"), Bankruptcy Rules

2002, 4001, 6003, 6004, and 9014, Local Rules 2002-1, 4002-1, 4004-1(b), and 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the "Bankruptcy Local Rules"), and the Procedures for Complex Cases in the Southern District of Texas (the "Complex Case Procedures").

**Preliminary Statement**

6. When the Debtors commenced these Chapter 11 Cases, they did so under severe liquidity constraints and with insufficient unencumbered cash to maintain their operations. The Debtors immediately requested and then obtained this Court's approval for the consensual use of cash collateral for an interim period to fund reduced but essential operations and pay expenses necessary to preserve the value of the Debtors' assets, maintaining the integrity of the Debtors' facilities, safeguarding the health and safety of employees and public, and addressing site security needs. This allowed the Debtors to stabilize their business in the near-term and provided the breathing room necessary to consummate the sale process on an expedited timeline. The Debtors' efforts to secure debtor-in-possession financing have now come to fruition.

7. The proposed DIP Facility is the result of extensive and hard-fought negotiations between the Debtors, the DIP Lender, the Senior Secured Noteholders and the Junior Secured Noteholders. It provides additional incremental liquidity at a critical juncture to allow the Debtors to continue funding their operations and the ongoing administrative costs of these Chapter 11 Cases while the Debtors pursue their goal of a value maximizing transaction for the benefit of all their stakeholders. With this financing, the Debtors will be afforded greater certainty in consummating a sale transaction and better positioned to maximize value of their estates. In connection with the proposed DIP Facility, the Debtors and DIP Lender have negotiated an asset purchase agreement pursuant to which the DIP Lender will serve as a stalking horse bidder for the

purchase of substantially all the Debtors' assets. On May 2, 2026, the Court entered the order approving the bidding procedures [Docket No. 120] (the "Bidding Procedures Order"). In addition, with the proceeds of the DIP Facility, the Debtors will have the funding necessary to exercise an option on behalf of non-Debtor subsidiary Ascend Elements 2 SP Z.O.O. (the "JV"), to acquire land in connection with the JV's Polish operations. Executing the option will preserve a critical asset for the benefit of the Debtors' estates. It also enhances the go-forward value of the Company by sending a strong signal of confidence to potential buyers and the Polish government, which has committed hundreds of millions to support the Company's development of the Apex 2 facility in Poland.

8. Moreover, the DIP Facility is the only financing available to the Debtors. No lender within the Debtors' existing capital structure submitted a proposal following a prepetition and postpetition marketing process conducted by Jefferies. The DIP Lender was the sole third-party lender willing to provide financing, and is only willing to do so on a priming basis. In addition, the requisite Secured Noteholders Parties (as defined below) have consented to the priming of their liens in exchange for the adequate protection set forth in the DIP Orders. As of the filing of this Motion, the Debtors understand that other secured creditors – statutory lien claimants and mortgagees that assert liens against the Debtors' real property located in the City of Hopkinsville, Kentucky, where the Debtors' Apex 1 facility is located – are unwilling to consent to the priming of their respective liens by the DIP Liens. These non-consenting creditors are nevertheless adequately protected because the DIP Facility will affirmatively preserve and enhance the value of the collateral securing their claims — which has severely limited liquidation value absent a funded, going-concern sale process. The Debtors are providing a robust adequate protection package to protect against any decrease in the value of secured parties' respective interest, if any,

in the Prepetition Collateral resulting from (A) the use, sale, or lease by the Debtors of the Prepetition Collateral during the pendency of the Chapter 11 Cases; (B) the DIP Liens and the Carve-Out pursuant to the Interim Order and the DIP Loan Documents; and (C) the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code (such actual diminution, collectively, "Diminution in Value"). For these reasons, as set forth in greater detail below, the Court should approve the DIP Facility on the terms proposed.

## Background

### I. Overview

9. The Debtors are in the business of recovering critical minerals from used lithium-ion batteries to create Black Mass – a valuable intermediate generated during the battery recycling process – and then using it to produce other materials, namely high-performance precursor cathode active material (pCAM) and lithium carbonate, both of which are crucial to the fast-growing battery industry. A detailed description of the Debtors and their businesses, including the facts and circumstances giving rise to the Debtors' Chapter 11 Cases, is set forth in the First Day Declaration, filed on April 9, 2026 (the "Petition Date").

10. On the Petition Date, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. On April 10, 2026, this Court entered an order directing joint administration of these Chapter 11 Cases pursuant to Bankruptcy Rule 1015(b) and Bankruptcy Local Rule 1015-1 [Docket No. 26]. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these Chapter 11 Cases.

11. On April 13, 2026, the Court entered the *Interim Order (I) Authorizing the Debtors to Use Cash Collateral; (II) Granting Adequate Protection to Prepetition Secured Parties; (III)*

*Modifying Automatic Stay; (IV) Scheduling a Final Hearing; and (V) Granting Related Relief* (the "Interim Cash Collateral Order") [Docket No. 74]. Pursuant to the Interim Cash Collateral Order, the Court authorized the Debtors to use Cash Collateral on a consensual basis in exchange for certain adequate protection to the Prepetition Secured Parties (each as defined therein). The Debtors, DIP Lender, and Secured Noteholder Parties intend for the DIP Orders to incorporate certain terms of the Interim Cash Collateral Order but the Debtors and Secured Noteholder Parties intend to seek entry of a separate order approving usage of cash collateral on a final basis.

12. On April 26, 2026, the Office of the United States Trustee appointed the official committee of unsecured creditors (the "Committee").

## II. Overview of the Debtors' Prepetition Capital Structure[4]

### A. Convertible Notes

*a. Senior Secured Convertible Notes*

13. Debtor Ascend Elements is a party to that certain Senior Secured Convertible Note and Warrant Purchase Agreement, dated December 22, 2025, (as amended, restated, amended and restated supplemented or otherwise modified from time to time, the "Senior Notes Agreement") pursuant to which it agreed to sell and issue (i) convertible promissory notes (collectively, the "Senior Secured Convertible Notes") to certain identified Investors therein (the "Senior Secured Noteholders") in an aggregate principal amount not to exceed $39,999,950, and (ii) warrants to purchase 27,925,000 shares of the Company's common stock (the "Warrants") to certain identified Investors (the "Warrantholders") at an exercise price of .01 per share. The Senior Secured Convertible Notes mature on June 12, 2027 and are secured by first priority, senior liens and

[4] The Debtors reserve the right to assert that any of the debt described herein is not secured due to invalidly perfected liens or otherwise, subject to the terms of any interim or final cash collateral order and the DIP Orders.

security interests (the "Senior Secured Liens") in substantially all of the Debtors' personal property, including cash and cash equivalents (the "Prepetition SSN Collateral"). The Warrants will expire on the earlier of (i) the 10th anniversary of the issuance or (ii) a Deemed Liquidation Event or IPO (as defined in and as further set forth in the Warrants).

14. The Senior Secured Noteholders' liens are evidenced by certain security documents, including that certain Security Agreement, dated as of December 22, 2025 (the "Senior Security Agreement" and together with the Senior Notes Agreement, the "Prepetition SSN Documents") by and between Debtor Ascend Elements, Inc., the Investors (as defined therein), and Alter Domus (US), LLC as collateral agent for the Investors (in such capacity, the "SSN Collateral Agent" and together with the Senior Secured Noteholders, the "Senior Secured Noteholder Parties").

15. As of the Petition Date, approximately $20.0 million, excluding accrued and unpaid interest thereon, remains outstanding on account of the Senior Secured Convertible Notes.

*b. Junior Secured Convertible Notes*

16. Debtor Ascend Elements is a party to that certain Subordinated Secured Convertible Note Purchase Agreement, dated as of June 13, 2025 (as amended, restated, amended and restated supplemented or otherwise modified from time to time, the "Junior Notes Agreement"), pursuant to which it agreed to sell and issue convertible promissory notes (collectively, the "Junior Secured Convertible Notes" and together with the Senior Secured Convertible Notes, the "Notes") to certain Investors identified therein (the "Junior Secured Noteholders" and together with the Senior Secured Noteholders, the "Secured Noteholders") in an aggregate principal amount not to exceed $150,000,000. The Junior Secured Convertible Notes mature on June 12, 2027 and are secured by second priority liens and security interests ("Junior Secured Liens" and together with the Senior

Secured Liens, the "Prepetition Liens") in substantially all of the Debtors' personal property, including cash and cash equivalents (the "Prepetition JN Collateral" and together with Prepetition SSN Collateral, the "Prepetition Noteholder Collateral").

17. The Junior Secured Noteholders' liens are evidenced by certain security documents, including that certain Security Agreement, dated as of June 13, 2025 (the "Junior Security Agreement" and together with the Junior Note Purchase Agreement, the "Prepetition JN Documents" and together with the Prepetition SSN Documents, the "Prepetition Notes Documents") by and between Debtor Ascend Elements, Inc., the Investors (as defined therein), and Alter Domus (US), LLC as collateral agent for the Investors (in such capacity, the "JN Collateral Agent" and together with the Junior Secured Noteholders, the "Junior Secured Noteholder Parties," and together with the Senior Secured Noteholder Parties, the "Secured Noteholder Parties").

18. As of the Petition Date, approximately $83.1 million, excluding accrued and unpaid interest thereon, remains outstanding on account of the Junior Secured Convertible Notes.

19. In connection with the Senior Notes Agreement, the Junior Secured Noteholders and Senior Secured Noteholders entered into that certain Subordination Agreement, dated December 22, 2025, and acknowledged and agreed by the Debtors, whereby the parties to the Subordination Agreement agreed and acknowledged that the payment and lien priority of the Senior Secured Noteholders with respect to the Notes and the Collateral securing the Notes are governed by the terms and conditions set forth therein, as well as their respective rights in connection with certain bankruptcy matters, such as the provision of adequate protection.

**B. Other Secured Obligations**

20. The following is a summary of the Debtors' other secured obligations (together with the Secured Noteholder Parties, such parties, the "Prepetition Secured Parties"):

a. Hopkinsville Industrial Foundation, Inc. In connection with that certain Amended and Restated Purchase and Sale Agreement, dated as of November 16, 2022 (as amended, restated, amended and restated supplemented or otherwise modified from time to time), Debtor Ascend Elements, Inc., as borrower, executed that certain Commercial Term Promissory Note, dated as of November 16, 2022, in favor of Planter's Bank/Hopkinsville Industrial Foundation, Inc., a Kentucky non-profit corporation in the original principal amount of $2.9 million, secured by a mortgage on certain real property located in the City of Hopkinsville, Kentucky, where the Debtors' Apex 1 facility is located. As of the Petition Date, the aggregate principal amount outstanding under the Commercial Term Promissory Note was approximately $0.4 million.

b. City of Hopkinsville. Pursuant to that certain Grant Agreement, dated as of November 15, 2022, Debtor Ascend Elements, Inc., as grantee, was granted the sum of $1 million and certain real property located in the City of Hopkinsville, Kentucky, where the Debtors' Apex 1 facility is located, by the City of Hopkinsville, secured by a mortgage with respect to that property in the maximum stated amount of approximately $3.46 million.

c. Statutory Lien Claims. As of the Petition Date, certain contractors, subcontractors, materialmen, and various suppliers (collectively, the "M&M Lienholders") had recorded or noticed mechanics, warehouse, and materialman's liens (collectively, and solely to the extent such liens are valid, enforceable and perfected, the "M&M Liens") against real property or other assets of the Debtors arising from the provision of services, material, and other types of work and materials the M&M Lienholders claim to have provided for construction of the Debtor's Apex 0 and Apex 1 facilities in an aggregate amount exceeding approximately $145 million.[5]

## III. Concise Statement Pursuant to Bankruptcy Rule 4001 and Complex Case Procedures

21. In accordance with Bankruptcy Rules 4001(b)-(d) and the Complex Case Procedures, the Debtors submit the following concise statement of the material terms of the DIP Facility:[6]

[5] The statutory lien claims against the Debtors are comprised primarily of an approximately $140 million lien claim by the prime contractor for the Apex 1 facility as well as lien claims by its various subcontracts and suppliers. Accordingly, the amount of such claims substantially exceeds the Debtors' alleged liability for the work, goods, and services allegedly provided.

[6] This concise statement is qualified in its entirety by, and subject to, the DIP Loan Documents. To the extent there is any conflict between this concise statement and the DIP Loan Documents, the terms of the DIP Loan Documents shall control.

| Summary of Material Terms | |
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| **Parties to the Proposed DIP Facility**<br><br>Bankruptcy Rule 4001(c)(1)(B) | Borrowers: Ascend Elements, Inc. (the "Parent Borrower") and Ascend Elements US, LLC (together with the Parent Borrower, the "DIP Borrowers" and individually, each a "Borrower").<br><br>Guarantors: Battery Resourcers LLC; Ascend Elements UK, Ltd.; Ascend Elements Poland SP Z O.O.; Ascend Elements Poland Holdings SP. Z O.O.; and Ascend Elements Poland 2 SP Z O.O.<br>DIP Lender: Bluegrass Infrastructure Partners Holdings, LLC in its capacity as a lender under the DIP Facility, together with its permitted successors assigns in such capacity.<br><br>*See* DIP Loan Agreement, Preamble. |
| **DIP Facility**<br><br>Bankruptcy Rule 4001(c)(1)(B) | The DIP Facility consists of debtor-in-possession superpriority priming new-money term loan in the aggregate amount of $30.0 million in cash funding, with $30.0 million available upon entry of the Interim Order.<br>*See* Interim Order ¶ 1.2(a); DIP Loan Agreement § 1. |
| **Interest Rates**<br><br>Bankruptcy Rule 4001(c)(1)(B) | DIP Term Loans: The DIP Loans will bear interest at 8.00% per annum, compounded daily and payable in kind monthly in arrears and on the maturity date.<br><br>Event of Default: During the continuance of an Event of Default, all outstanding amounts under the DIP facility shall bear interest, to the fullest extent permitted by law, with respect to loans, at the interest rate otherwise applicable to such loans described above, plus 2.00% per annum and shall be payable on demand.<br><br>*See* DIP Loan Agreement § 4 (a), (d). |
| **Use of DIP Facility Proceeds and Cash Collateral**<br><br>Bankruptcy Rule 4001(c)(1)(B) | The Debtors may use the proceeds of the DIP Facility and Cash Collateral to pay: (i) chapter 11 case costs and professional fees (including to fund a Carve-Out), (ii) amounts authorized by first day orders, and any adequate protection, (iii) interest, premiums, fees and expenses payable to the DIP Lender as provided under the DIP Orders, and (iv) and general corporate and working capital needs.<br><br>Use of cash collateral and DIP proceeds to be subject to an agreed budget, which shall be subject to budget and variance testing, acceptable to the DIP Lender and the Senior Secured Noteholders. In each case consistent with the approved budget (including a 20% permitted variance); DIP proceeds may not be used for restricted payments.<br><br>The DIP documents contain customary limitations on the use of Cash Collateral and proceeds of the DIP Facility.<br><br>$18.8 million the DIP proceeds shall be used to execute Ascend Elements Poland 2 SP. Z O.O.'s (an indirect subsidiary of Parent) option to acquire the Polish land in connection with the Company's Polish operations, which shall be transferred as part of the Asset Sale. |

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| | *See* Interim Order ¶ 1.2(b); DIP Loan Agreement § 1(d). |
| **Entities with Interests in Cash Collateral**<br>Bankruptcy Rule 4001(b)(l)(B)(i) | The Prepetition Secured Parties.<br>*See* Interim Order ¶ F. |
| **Maturity Date**<br><br>Bankruptcy Rule 4001(c)(1)(B) | All DIP Obligations (including interest and fees) must be repaid in full in cash, and commitments terminate, on the earliest to occur of: (i) 12 weeks after the Petition Date; (ii) 34 days after the date of filing of the motion to approve the DIP Facility if no Final DIP Order has been entered; (iii) the closing of a section 363 sale; (iv) the plan effective date; (v) any dismissal or conversion to chapter 7; and (vi) any acceleration after an event of default.<br>*See* DIP Loan Agreement §§ 5, 18. |
| **Events of Default**<br><br>Bankruptcy Rule 4001(c)(1)(B) | Section 16 of the DIP Loan Agreement defines and lists "Events of Default." |
| **Liens and Priority Granted for New Credit**<br><br>Bankruptcy Rule 4001(c)(1)(B)(i) | To secure the performance and payment when due (whether at stated maturity, by acceleration or otherwise) of any and all DIP Obligations, effective immediately upon entry of the Interim Order, pursuant to sections 361, 362, 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, the DIP Lender is hereby granted valid, binding, continuing, enforceable, non-avoidable, and automatically and properly perfected security interests in and liens (collectively, the "DIP Liens") in and upon on the following ("DIP Collateral"), subject only to Permitted Priority Encumbrances (as defined in the DIP Loan Agreement), the Carve-Out, and the rankings and priority set forth in section 2.6(b) of the Interim Order:<br>(a) all property and assets comprising Prepetition Collateral; and<br>(b) all other property and assets of the Debtors, including any property or assets consisting of "Excluded Property" under any of the documents entered into in connection with the Prepetition CLN Obligations, (collectively hereinafter referred to as the "**DIP Collateral**" which, for avoidance of doubt, shall (subject to the entry of the Final Order) include, the proceeds (the "**Avoidance Proceeds**") of any claim or cause of action arising under or pursuant to chapter 5 of the Bankruptcy Code or under any other similar provisions of applicable state, federal, or foreign law (including any other avoidance actions under the Bankruptcy Code) (collectively, the "**Avoidance Actions**")).<br><br>*See* Interim Order ¶¶ G(vi), 2.1(a)-(e). |
| **Superpriority Administrative Expense Claims for New Credit**<br><br>Bankruptcy Rule 4001(c)(1)(B)(i) | Subject to the Carve-Out, on account of all DIP Obligations now existing or hereafter arising pursuant to this Interim Order, the DIP Loan Documents, or otherwise, the DIP Lender is granted allowed superpriority administrative expense claims pursuant to section 364(c)(1) of the Bankruptcy Code, having priority in right of payment over any and all other obligations, liabilities, and indebtedness of the Debtors, whether now in existence or hereafter incurred by the Debtors, and over any and all administrative expenses or priority claims |

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| | of the kind specified in, or ordered pursuant to, *inter alia*, sections 105, 326, 328, 330, 331, 364(c)(1), 365, 503(b), 507(a), 507(b), 546(c), 1113, or 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy, or attachment, which allowed superpriority administrative claim shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof (including, subject to entry of the Final Order, proceeds of Avoidance Actions) (such superpriority administrative expense claim, the "DIP Superpriority Claim").<br><br>*See* Interim Order ¶ 2.2. |
| **Liens on Avoidance Actions**<br><br>Bankruptcy Rule 4001(c)(1)(B)(xi) | The DIP Lender shall be granted DIP Liens on the proceeds of all claims and causes of action, including all commercial tort claims and all claims and causes of action arising under sections 502(d), 542, 544, 545, 547, 548, 549, 550, 551, 553(b) and 724(a) of the Bankruptcy Code.<br><br>*See* Interim Order ¶ (G)(vi). |
| **Adequate Protection**<br><br>Bankruptcy Rules 4001(b)(1)(B)(iv) | Adequate protection in accordance with the Interim Order.<br><br>*See* Interim Order ¶¶ 2.5(a)-(d), 2.6(a)-(b). |
| **Carve-Out**<br><br>Bankruptcy Rule 4001(c)(1)(B) | "Carve-Out" means the collective sum of: (i) all fees required to be paid to the Clerk of the Court and to the U.S. Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below) (collectively, the "Statutory Fees"); plus the sum of (ii) all reasonable and documented fees and expenses up to $50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below) (the "Chapter 7 Trustee Carve-Out"); (iii) to the extent allowed at any time, whether by final order, interim order, procedural order, or otherwise, subject to the Approved Budget, all unpaid fees, costs and expenses (including any success or transaction fees then earned and payable) costs, disbursements and expenses prior to or after delivery of a Carve Out Trigger Notice (defined below) (the "Allowed Professional Fees") incurred or earned by persons or firms retained by the Debtors pursuant to sections 327, 328, or 363 of the Bankruptcy Code (the "Debtor Professionals") or the Committee pursuant to sections 327, 328 or 1103 of the Bankruptcy Code (the "Committee Professionals" and, together with the Debtor Professionals, the "Professional Persons") at any time before or on the first business day following delivery by the DIP Lender of a Carve-Out Trigger Notice (as defined below), whether allowed by the Court prior to, on or after delivery of a Carve-Out Trigger Notice (the "Pre-Trigger Carve-Out Cap"); and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed $500,000 (inclusive of any prepetition retainer held by the applicable Professional Person to the extent not previously applied or returned) incurred after the first business day following delivery by the DIP Lender of the Carve-Out Trigger Notice (such date, the "Trigger Date"), to the extent allowed at any time, whether by final order, interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the "Post-Carve-Out Trigger Notice C**ap**" and such amounts set forth in clauses (i) through (iv), the "Carve-Out Cap"); *provided that*, nothing herein |

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| | shall be construed to impair any party's ability to object to court approval of the fees, expenses, reimbursement of expenses or compensation of any Professional Person. For purposes of the foregoing, "Carve-Out Trigger Notice" shall mean a written notice delivered by email by the DIP Lender to the Debtors, their lead restructuring counsel, the U.S. Trustee, and counsel to the Committee, if any (collectively, the "Carve-Out Trigger Notice Parties"), which notice may be delivered following the occurrence and during the continuation of a DIP Termination Event (as defined below), and shall describe in reasonable detail such DIP Termination Event that is alleged to have occurred and be continuing and stating that the Post-Carve-Out Trigger Notice Cap has been invoked. The DIP Lender shall not be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person incurred in connection with the Chapter 11 Cases or any Successor Cases under any chapter of the Bankruptcy Code, other than payment or reimbursement of any fees or disbursements from proceeds of DIP Collateral to the extent of the Carve-Out. Nothing in this Interim Order or otherwise shall be construed to obligate the DIP Lender, in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.<br><br>*See* Interim Order ¶ 2.3. |
| **Budget**<br><br>Bankruptcy Rule 4001(c)(1)(B) | The Debtors will use the proceeds of the DIP Facility and Cash Collateral in accordance with the Approved Budget (subject to Permitted Variances), attached to the Interim Order as Exhibit B and as Exhibit A to the DIP Loan Agreement, and each subsequent Approved Budget.<br><br>*See* DIP Loan Agreement, Exhibit A; Interim Order ¶¶ (G)(iv); Exhibit B. |
| **Borrowing Conditions**<br><br>Bankruptcy Rule 4001(c)(1)(B) | The DIP Loan Documents include conditions to closing and borrowings that are customary and appropriate for similar debtor-in-possession financings of this type.<br><br>*See* DIP Loan Agreement § 2. |
| **Covenants**<br><br>Bankruptcy Rule 4001(c)(1)(B) | The DIP Loan Documents include affirmative covenants made by the Borrowers that are customary and appropriate for similar debtor-in-possession financings of this type.<br><br>*See* DIP Loan Agreement § 14. |
| **DIP Fees and Expenses**<br><br>Bankruptcy Rule 4001(c)(1)(B) | **Fees:** Upfront Fee: 5.0% (paid-in-kind) of (i) the portion of the DIP commitments available upon entry of the Interim DIP Order, which shall be fully earned and payable in kind on the date of entry of the Interim DIP Order, and (ii) the remaining portion of the DIP commitments which shall be fully earned and payable in kind on the date of entry of the Final DIP Order.<br><br>**Expenses**: The DIP Loan Documents require payment of all reasonable and documented out of pocket fees and expenses, including attorney's fees, costs, and disbursements, incurred by the DIP Lender in connection with the Chapter 11 Cases on a monthly basis. |

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| | *See* DIP Loan Agreement §§ 8, 21(b). |
| **Releases**<br><br>Bankruptcy Rule 4001(c)(1)(B)(viii) | The Debtor, their estates and the Secured Noteholder Parties will release the DIP Lender from any and all claims or causes of action arising under or in connection with the DIP Facility, the DIP Term Loan Agreement, and the DIP Loan Documents, including for "lender liability" claims, any and all "claims" as defined under the Bankruptcy Code, and any and all offsets, defenses, claims, counterclaims, set off rights, objections, challenges, causes of action and/or choses in action.<br><br>*See* Interim Order ¶ 5.17. |
| **Indemnification**<br><br>Bankruptcy Rule 4001(c)(1)(B)(ix) | The Debtors shall indemnify and hold harmless the DIP Lender, and, each Indemnified Person, defined as the DIP Lender and each of its affiliates, and each such Person's respective officers, directors, employees, equityholders, attorneys, agents, and representatives.<br><br>*See* DIP Loan Agreement § 9; Interim Order § 1.4. |
| **Stipulations as to Prepetition Claims and Liens**<br><br>Bankruptcy Rule 4001(c)(1)(B)(iii) | Subject to the rights of all parties in interest (including any Committee), other than the Debtors, set forth in paragraph (F)(i)-(iii) of the Interim Order, the Interim Order provides for customary stipulations regarding the Senior Secured Noteholder Parties, including stipulations as to the amount asserted under the Prepetition Collateral Documents and asserted Senior Secured Liens as well as the Secured Noteholder Parties' asserted interests in the Prepetition Collateral Collateral.<br><br>*See* Interim Order ¶¶ (F)(i). |
| **Challenge Period**<br>Bankruptcy Rule 4001(c)(1)(B)(iii), (viii) | Prior to the end of the Challenge Period, a party in interest with the requisite standing may commence an appropriate proceeding or contested matter challenging any of the Debtors' stipulations and all other admissions, agreements, and releases contained in the Interim Order.<br><br>The "Challenge Period" shall mean: (i) the date which is 60 calendar days after entry of the Interim Order or (ii) such later date as set by an order of the Court for cause shown; *provided* that if a chapter 11 trustee is appointed or the Chapter 11 Cases are converted to cases under chapter 7 prior to the expiration of the Challenge Period, the chapter 11 or chapter 7 trustee, as applicable, shall have until the later of (1) the expiration of the Challenge Period, and (2) the thirtieth (30th) day after the appointment of the chapter 11 trustee or conversion of the Chapter 11 Cases to cases under chapter 7, as applicable, to commence a Challenge; *provided further*, if any adversary proceeding or contested matter is timely filed and is pending on the date, if any, on which any of the Chapter 11 Cases are converted to chapter 7, the chapter 7 trustee may continue to prosecute such adversary proceeding or contested matter on behalf of the Debtors' estates, without any further authorization or order of the Court.<br><br>*See* Interim Order ¶ 4.1. |

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| **Waiver or Modification of the Automatic Stay**<br><br>Bankruptcy Rule 4001(c)(1)(B)(iv) | Pursuant to the DIP Orders, the automatic stay imposed under section 362(a)(2) of the Bankruptcy Code is modified as necessary to effectuate all of the terms and provisions of the DIP Orders and the DIP Loan Documents.<br><br>*See* Interim Order ¶ 3.4. |
| **Waiver of Modification of Nonbankruptcy Law Regarding Lien Perfection or Enforcement**<br><br>Bankruptcy Rule 4001(c)(1)(B)(vii) | The Interim Order contains customary provisions providing that entry of the Interim Order shall be sufficient and conclusive evidence of the creation, validity, perfection, and priority of all liens granted therein, including the DIP Liens and the Prepetition Secured Parties Adequate Protection Liens, without the necessity of any filings or recordings under non-bankruptcy law.<br><br>*See* Interim Order ¶ 2.1(c). |
| **Milestones**<br>Bankruptcy Rule 4001(c)(1)(B)(vi) | The DIP Loan Agreement contains the following chapter 11 milestones:<br>(a) **May 5, 2026:** Debtors shall file a DIP financing motion (Interim and Final) acceptable to the DIP Lender.<br>(b) **May 5, 2026:** Debtors shall execute the Stalking Horse Purchase Agreement, pursuant to which Newco will serve as the Stalking Horse Bidder (as defined in the Bidding Procedures Order), subject to Court approval and acceptable to the DIP Lender.<br>(c) **May 5, 2026**: Debtors file a stalking horse notice proposing the bid protections for the Stalking Horse Purchase Agreement with the DIP Lender.<br>(d) **May 9, 2026**: the bid deadline under the Bidding Procedures Order shall have occurred.<br>(e) **May 12, 2026:** The Interim Order approving the Loan Agreement and the other DIP Documents shall be entered by the Bankruptcy Court in form and substance satisfactory to the DIP Lender and the Bankruptcy Court shall have entered an order designating Purchaser as the stalking horse bidder and approving the bid protection;<br>(f) **May 13, 2026:** The Borrowers shall have conducted an auction (or cancelled the auction and named Purchaser the winning bidder) for substantially all of the Loan Parties' assets, if required, in accordance with the Bidding Procedures Order;<br>(g) **May 21, 2026**: The Final Order approving the Loan Agreement and the other DIP Documents shall be entered by the Bankruptcy Court in form and substance satisfactory to the DIP Lender and the Bankruptcy Court shall have entered an order approving the sale of the Acquired Assets to Purchaser and authorizing the assignment of the Assigned Contracts to Purchaser, in form and substance acceptable to the DIP Lender, or an order approving for an alternative sale of all or substantially all of the Loan Parties' assets that results in payment of the Obligations in full in cash prior to the Maturity Date; and |

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| | (h) **June 5, 2026:** The sale of the Acquired Assets to Purchaser or other winning bidder approved by the Bankruptcy Court shall have been consummated in full.<br><br>*See* Interim Order ¶¶ (G)(v)-(vi); DIP Loan Agreement § 14(g). |

## IV. Statement Regarding Significant Provisions

22. The DIP Loan Agreement or Interim Order contain provisions (the "Significant Provisions") identified in Section C, paragraph 8 of the Complex Case Procedures that are summarized below:[7]

| DIP Facility Term | Relief Requested |
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| **Milestones**<br><br>Complex Case Procedures ¶ 8(a) | The Interim Order provides for the following chapter 11 milestones:<br><br>The DIP Loan Agreement contains the following chapter 11 milestones:<br><br>(a) **May 5, 2026:** Debtors shall file a DIP financing motion (Interim and Final) acceptable to the DIP Lender.<br><br>(b) **May 5, 2026:** Debtors shall execute the Stalking Horse Purchase Agreement, pursuant to which Newco will serve as the Stalking Horse Bidder (as defined in the Bidding Procedures Order), subject to Court approval and acceptable to the DIP Lender.<br><br>(c) **May 5, 2026**: Debtors file a stalking horse notice proposing the bid protections for the Stalking Horse Purchase Agreement with the DIP Lender.<br><br>(i) **May 5, 2026**: the bid deadline under the Bidding Procedures Order shall have occurred.<br><br>(d) **May 12, 2026:** The Interim Order approving the Loan Agreement and the other DIP Documents shall be entered by the Bankruptcy Court in form and substance satisfactory to the DIP Lender and the Bankruptcy Court shall have entered an order designating Purchaser as the stalking horse bidder and approving the bid protection; |

[7] Significant Provisions refer to those provisions that contain: (a) sale or plan confirmation milestones; (b) cross-collateralization; (c) roll ups; (d) liens on avoidance actions or proceeds of avoidance actions; (e) default provisions and remedies that are self-executing or preclude court oversight, including (i) provisions terminating the automatic stay without further order, (ii) provisions waiving rights to challenge Lender' ability to exercise post-default remedies, and (iii) provisions limiting required proof or altering the burden of proof at post-default hearings; (f) releases of claims; (g) limitations on the use of cash collateral or DIP proceeds (other than general "carve-outs") to pay approved fees and expenses of advisors to official committees or future trustees; (h) nonconsensual priming liens; or (i) any other provision that limits the ability of estate fiduciaries to fulfill their duties under the Bankruptcy Code and applicable law. The following summary of the Significant Provisions is qualified in its entirety by, and subject to, the DIP Loan Documents. To the extent there is any conflict between this summary of terms and the DIP Loan Documents, the terms of the DIP Loan Documents shall control.

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| | (e) **May 13, 2026:** The Borrowers shall have conducted an auction (or cancelled the auction and named Purchaser the winning bidder) for substantially all of the Loan Parties' assets, if required, in accordance with the Bidding Procedures Order;<br><br>(f) **May 21, 2026**: The Final Order approving the Loan Agreement and the other DIP Documents shall be entered by the Bankruptcy Court in form and substance satisfactory to the DIP Lender and the Bankruptcy Court shall have entered an order approving the sale of the Acquired Assets to Purchaser and authorizing the assignment of the Assigned Contracts to Purchaser, in form and substance acceptable to the DIP Lender, or an order approving for an alternative sale of all or substantially all of the Loan Parties' assets that results in payment of the Obligations in full in cash prior to the Maturity Date; and<br><br>(g) **June 5, 2026:** The sale of the Acquired Assets to Purchaser or other winning bidder approved by the Bankruptcy Court shall have been consummated in full.<br><br>*See* Interim Order ¶¶ (G)(v)-(vi); DIP Loan Agreement § 14(g).<br><br>Justification: These milestones were negotiated and agreed upon between the Debtors and the DIP Lender at arm's length and in good faith and are required by the DIP Lender to provide for efficient administration of these Chapter 11 Cases given the Debtors' strained liquidity position. The Debtors believe the milestones should be approved because they are reasonable, achievable, and appropriately tailored to the circumstances of these Chapter 11 Cases. The Debtors understand the DIP Lender would not have otherwise provided the DIP Loans. |
| **Cross-Collateralization**<br><br>Complex Case Procedures ¶ 8(b) | The DIP Orders do not provide for cross-collateralization. |
| **Roll-Up Loans**<br><br>Complex Case Procedures ¶ 8(c) | None. |
| **Liens on Avoidance Actions or Proceeds of Avoidance Actions**<br><br>Complex Case Procedures ¶ 8(d) | The Interim Order does not provide for granting any liens on Avoidance Actions; however, the Interim Order provides that the DIP Liens shall attach to the proceeds of Avoidance Actions subject to entry of the Final Order. *See* Interim Order ¶ (G)(vi).<br><br>Justification: The inclusion of proceeds of Avoidance Actions as DIP Collateral is appropriate under the circumstances to secure repayment of the DIP Obligations and is subject to the entry of the Final Order, so parties in interest will have sufficient notice and an opportunity to object. |
| **Default Provisions and Remedies**<br><br>Complex Case Procedures ¶ 8(e) | Each of the following shall constitute a "DIP Termination Event" and trigger the exercise of rights and remedies by the DIP Lender:<br>(i) the occurrence of any "Event of Default" as that term is defined in the DIP Loan Agreement; |

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| | (ii) any failure to meet or satisfy any Milestone in accordance with the applicable DIP Loan Documents;<br><br>(iii) the occurrence of the "Maturity Date" as defined in the DIP Loan Agreement;<br><br>(iv) any material violation, breach, or default by any Debtor with respect to any of its obligations under this Interim Order or the DIP Loan Documents;<br><br>(v) the termination of the DIP Loan Documents, or the modification of this Interim Order in a manner adverse to the DIP Lender without prior written consent;<br><br>(vi) entry of an order authorizing and/or directing the reclamation of goods pursuant to section 546(c) of the Bankruptcy Code in excess of $500,000;<br><br>(vii) the entry of an order granting relief from the automatic stay allow any creditor (other than the DIP Lender) to execute upon or enforce a lien on any collateral except with respect to Permitted Encumbrances (as defined in the DIP Loan Agreement) arising prior to the Petition Date in an aggregate amount not to exceed $1,000,000;<br><br>(viii) conversion of any Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code;<br><br>(ix) a trustee is appointed or elected in any Chapter 11 Case, or an examiner with the power to operate the Debtors' businesses is appointed in any case;<br><br>(x) if a Final Order is not entered in form and substance acceptable to the DIP Lender by May 21, 2026;<br><br>(xi) the date of the Final Hearing, if this Interim Order is modified at the Final Hearing in a manner unacceptable to the DIP Lender;<br><br>(xii) the Debtors shall withdraw the Bidding Procedures Motion and/or propose an Alternative Transaction (as defined in the Stalking Horse Purchase Agreement) that, in any case, does not provide for the repayment in full, in cash, of the DIP Obligations directly from the proceeds of such Alternative Transaction and upon the initial closing of such Alternative Transaction;<br><br>(xiii) any modification, amendment, vacatur or stay of this Interim Order in any manner not consented to in writing by the DIP Lender;<br><br>(xiv) any failure of the grant awarded to the Company by the Republic of Poland to remain in good standing and in full force and effect, with no event of default, termination, revocation, or material modification thereof having occurred; |

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| | (xv) any failure to execute the JV's option to acquire land in Poland in connection with the JV before entry of the Final Order;<br><br>(xvi) a valid termination of the Asset Purchase Agreement by and among the purchaser, the Parent Borrower and the other parties from time to time thereto; and<br><br>(xvii) any of the additional events of default set forth in the Interim Order.<br><br>*See* Interim Order ¶ 3.1.<br><br>The rights and remedies that may be taken by the DIP Lender upon the occurrence of an Event of Default or DIP Termination Event include but are not limited to:<br><br>(i) declaring all DIP Obligations owing under the DIP Loan Documents to be immediately due and payable;<br><br>(ii) terminating, reducing, or restricting any commitment to extend additional credit to the Debtors to the extent any such commitment remains;<br><br>(iii) terminating the DIP Facility and any DIP Document as to any future liability or obligation of the DIP Lender;<br><br>(iv) invoking the right to charge interest at the default rate under the DIP Loan Documents; and/or<br><br>(v) ceasing further lending.<br><br>*See* Interim Order ¶ 3.3.<br><br>Justification: As voluntary postpetition creditor of the estate, who was under no obligation to provide critical DIP financing, the DIP Lender should not be subject to the requirements that would be applicable to the exercise of remedies on prepetition claims. In addition, the DIP Lender has agreed to a customary 5 business day notice period, in writing, before exercising certain rights or remedies, which will afford any official committee of unsecured creditors (the "Committee") or any other party in interest an opportunity to be heard on the issue of whether an Event of Default under the DIP Facility has actually occurred before exercising any rights or remedies. The Debtors respectfully submit that the Events of Default appropriately balance the DIP Lender's need for protection and the DIP Loan Parties' need to ensure continued access to Cash Collateral and access to the DIP Facility. |
| **Releases of Claims**<br><br>Complex Case Procedures ¶ 8(f) | Subject to and effective upon the Interim Order and subject to paragraph 5.18 of the Interim Order, the Debtors will provide customary releases to the DIP Lender with respect to the DIP Loan Documents, and any transactions contemplated or arising thereby. *See* Interim Order ¶ 5.17.<br><br>Justification: The releases and stipulations are a material inducement to the DIP Lender to provide the DIP Facility and are being provided in exchange |

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| | for consideration in the form of the DIP Facility to the Debtors' use of Cash Collateral, which is essential to the Debtors' ability to stabilize their operations in chapter 11. The releases are also tailored to the circumstances and consistent with releases provided to similar postpetition lenders in other matters. The releases comply with the requirements of paragraph 9 of the Complex Case Procedures because they are subject to the Challenge Period. |
| **Limitations on the Use of DIP Proceeds and Cash Collateral**<br><br>Complex Case Procedures ¶ 8(g) | The Interim Order provides that no proceeds of the DIP Facility, the Carve-Out, the DIP Collateral, or any Cash Collateral may be used:<br><br>(a) to finance any investigation (including discovery proceedings), initiation, or prosecution of any adversary action, suit, arbitration, proceeding, application, motion, or other litigation of any type adverse to the DIP Lender, or their respective rights and remedies under or in respect of the DIP Facility, or any interim or final order with respect to the DIP Facility, except as otherwise provided in the DIP Documents;<br>(b) in connection with challenging, invalidating, disallowing, recharacterizing, setting aside, avoiding, subordinating, in whole or in part, or taking or attempting to take any other action to render unenforceable, the liens, claims, interests, and adequate protection of the DIP Lender, including for the avoidance of doubt, (i) objecting to or contesting the validity, extent, amount, perfection, priority, or enforceability of the DIP Obligations or the DIP Liens, or (ii) objecting to or contesting the validity, extent, amount, perfection, priority, or enforceability of the obligations and liens under the facilities provided under the Prepetition Documents;<br><br>(c) for any purpose that is prohibited under the Bankruptcy Code, the Interim Order, the Final Order, or the DIP Documents; and<br><br>(d) to make any payment, in settlement of any claim, action or proceeding, before any court, arbitrator or other governmental body, or to pay any costs or expenses incurred in connection with any such claim, action, or proceeding, in each case which payment is not provided for in the Approved Budget (subject to the Permitted Variances), without the prior written consent of the DIP Lender;<br><br>*provided*, however, up to $25,000 shall be made available to the Committee (if any) solely for investigation costs to pursue any investigation rights during the Challenge Period. *See* Interim Order ¶ 5.4.<br><br>Justification: The requirements to use DIP Facility proceeds and Cash Collateral in accordance with the Approved Budget (subject to Permitted Variances), and the limitation on ability to use such funds to take actions adverse to the DIP Lender, are customary and reasonable safeguards given the facts and circumstances of these Chapter 11 Cases. |
| **Priming Liens** | Pursuant to sections 364(c)(3) and 364(d)(1) of the Bankruptcy Code, the DIP Liens shall be valid, binding, continuing, enforceable, non-avoidable, fully and automatically perfected liens and security interests in and upon all DIP |

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| Complex Case Procedures ¶ 8(h) | Collateral, which DIP Liens shall be subject and subordinate only to the Carve-Out and Permitted Priority Encumbrances and the rankings and priority set forth in section 2.6(b) of the Interim Order.<br><br>*See* Interim Order ¶¶ 2.1, 2.5. |
| **No Provisions that Limit the Ability of Estate Fiduciaries to Fulfill Their Duties**<br><br>Complex Case Procedures ¶ 8(i) | None. |

23. The DIP Facility is the best and only postpetition financing alternative available to the Debtors. Without the inclusion of the Significant Provisions summarized above, the DIP Lender, which is not a prepetition creditor of the Debtors, would not have agreed to provide such financing. In light of the foregoing, the Debtors respectfully submit that the Significant Provisions are appropriate under the facts and circumstances of these Chapter 11 Cases and should be approved.

## V. The Debtors' Immediate Need for the DIP Facility and Use of Cash Collateral

24. The Debtors have an urgent and critical need for DIP financing and the authority to use Cash Collateral to preserve the value of their assets and fund ongoing operations while the Debtors continue to pursue a value maximizing transaction for the benefit of all the Debtors' stakeholders. O'Hara Decl. ¶ 26. That need is immediate. Among other things, the Debtors require the proceeds of the DIP Facility to fund an option on behalf of non-Debtor subsidiary Ascend Elements Poland 2 SP Z O.O. to acquire land in connection with the Company's Polish operations — a condition to the DIP Facility, the failure of which constitutes a DIP Termination Event. The option must be exercised by the entry of the Final Order. Executing the option will preserve a critical asset for the benefit of the Debtors' estates and is essential to maintaining the confidence of potential buyers and the Polish government, which has committed hundreds of millions of

dollars to support development of the Apex 2 facility. The DIP Facility proceeds are the only available source of funding for this payment.

25. Although the Court approved the Debtors' use of Cash Collateral shortly after the Petition Date, that approval was subject to a strict budget providing for payment of only the most essential and necessary expenses during the interim period. As reflected in the cash collateral budget, the Debtors' unrestricted cash was projected to decline from approximately $12.5 million at the outset of the cases to approximately $1.75 million by the end of the six-week budget period — a critically thin cash position that provides no cushion for unanticipated expenditures, the Polish option payment, or the further costs required to sustain operations through the anticipated sale closing. The cash collateral budget did not contemplate and cannot fund these additional amounts. Accordingly, the Debtors do not have sufficient liquidity to continue operating and pursuing the sale through its anticipated closing date without the DIP Facility.

26. The DIP Facility and Cash Collateral will provide incremental liquidity to facilitate the smooth administration of these Chapter 11 Cases through the anticipated closing of the sale. Specifically, the DIP Facility will allow the Debtors to: (i) fund the Polish option payment; (ii) continue limited operations, including payroll and vendor payments necessary to protect the health and safety of employees and the public; (iii) maintain the integrity of the Debtors' facilities; (iv) satisfy other working capital needs; and (v) support and complete the ongoing sale process on the timeline currently contemplated, with a closing of May 22, 2026. Titus Decl. ¶¶ 21-24. Without such liquidity, the Debtors will be forced to cease operations, terminate all staff, and abandon their assets, resulting in significant harm to creditors and other stakeholders and a near-complete destruction of estate value.

27. Approval of the DIP Facility is also independently necessary because the financing structure is inextricably tied to the ongoing sale process. The DIP Lender, the Senior Secured Noteholders, and the Junior Secured Noteholders will submit a joint bid for the Debtors' assets through Newco, a newly formed entity managed or controlled by the DIP Lender. Newco will serve as the stalking horse bidder and submit an initial purchase price consisting of a credit bid of all accrued obligations under the DIP Facility, all accrued obligations under the Senior Notes Agreement, and $30 million of accrued obligations under the Junior Notes Agreement. This structure locks in a committed buyer for substantially all of the Debtors' assets by the May 6 stalking horse designation deadline and establishes a meaningful floor for the upcoming auction, for the benefit of the estates and all stakeholders. Without approval of the DIP Facility, the stalking horse designation falls away and the Debtors are left without a committed bidder or a value floor for the auction.

28. The Debtors, in consultation with Alvarez & Marsal North America LLC ("A&M"), have developed the Initial Budget reflecting the reasonable, necessary, and foreseeable expenses over the budget period, including the Polish option payment, ongoing operational costs, and administrative expenses through the anticipated sale closing. The expenses in the Initial Budget are limited to those necessary to preserve asset value and maintain health, safety, environmental, and site security needs while the Debtors pursue a transaction for the benefit of all stakeholders. The Debtors believe the Initial Budget is an accurate reflection of their operating requirements and the anticipated administrative costs of these Chapter 11 Cases during the identified period.

## VI. The Debtors' Efforts to Obtain Postpetition Financing

29. Prior to the Petition Date, Jefferies, LLC ("Jefferies") solicited proposals for postpetition financing from ninety (90) different investors who were evaluating the opportunity to provide debtor-in-possession financing, as well as from each of the existing stakeholders within the Debtors' capital structure. O'Hara Decl. ¶ 15. That effort has continued postpetition. *Id.* ¶ 16. None of the lenders within the Debtors' existing capital structure contacted by Jefferies were willing to submit a proposal to provide debtor-in-possession financing. *Id.* ¶ 15. Instead, the Debtors received only one proposal from a third-party lender, the proposal from the DIP Lender. *Id*. ¶ 16.

30. The DIP Facility provides $30 million in new-money term loan financing, of which approximately $18 million is specifically earmarked for the exercise of the Polish land option — the most immediate and time-critical use of DIP proceeds. In connection with providing the DIP Facility, Kinterra, the Senior Secured Noteholders, and the Junior Secured Noteholders have agreed to submit a joint bid through Newco to serve as the stalking horse bidder for substantially all of the Debtors' assets. This dual structure — DIP lender and stalking horse — provides a critical benefit to the estates, locking in a committed buyer and establishing a floor for the upcoming auction. Accordingly, the DIP Facility is the best and only available source of postpetition financing available to the Debtors. Therefore, the relief sought herein should be granted.

## Basis for Relief

## I. The Debtors Should be Authorized to Obtain Postpetition Financing

### A. Entering Into the DIP Facility Is a Sound Exercise of the Debtors' Business Judgment.

31. The Court should authorize the Debtors, as an exercise of their sound business judgment, to enter into the DIP Loan Documents, obtain access to the DIP Facility, and continue

their use of Cash Collateral. Section 364 of the Bankruptcy Code authorizes a debtor to obtain secured or superpriority credit under certain circumstances discussed in detail below. *See generally* 11 U.S.C. § 364. Courts generally defer to a debtor-in-possession's business judgment in obtaining postpetition secured credit, so long as the agreement to obtain such credit does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code. *See, e.g., In re Estrada,* Case No. 16-80003 (LZP), 2016 WL 745536, at *3 (Bankr. S.D. Tex. Feb. 24, 2016) ("In determining whether to approve a motion to obtain credit, courts generally permit debtors in possession to exercise their basic business judgment consistent with their fiduciary duties."); *In re EXCO Res., Inc.*, No. 18-30155 [Docket No. 348] (Bankr. S.D. Tex. Feb. 22, 2018) (order approving postpetition financing as exercise of debtors' business judgment); *In re N. Bay Gen. Hosp., Inc.*, No. 08-20368 [Docket No. 54] (Bankr. S.D. Tex. July 29, 2008) (order approving postpetition financing as exercise of debtors' business judgment); *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) ("[C]ases consistently reflect that the court's discretion under section 364 [of the Bankruptcy Code] is to be utilized on grounds that permit [a debtor's] reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest.").

32. The Fifth Circuit has described the business judgment standard as a flexible one, which will be satisfied if a debtor articulates a business justification and the decision furthers the interests of the debtor and other parties in interest. *See ASARCO, Inc. v. Elliott Mgmt. (In re ASARCO, L.L.C.)*, 650 F.3d 593, 601 (5th Cir. 2011) (in the context of section 363 of the Bankruptcy Code); *see also Institutional Creditors of Cont'l Air Lines, Inc. v. Cont'l Air Lines, Inc. (In re Cont'l Air Lines, Inc.)*, 780 F.2d 1223, 1226 (5th Cir. 1986). To determine whether the

business judgment standard is met, courts need only "examine whether a reasonable business person would make a similar decision under similar circumstances." *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006); *see also In re Curlew Valley Assocs.*, 14 B.R. 506, 513–14 (Bankr. D. Utah 1981) (noting that courts should not second guess a debtor's business decision when that decision "involves a business judgment made in good faith, upon a reasonable basis, and within the scope of [the debtor's] authority under the [Bankruptcy] Code"). Furthermore, in considering whether the terms of postpetition financing are fair and reasonable, courts evaluate the terms in light of the relative circumstances of both the debtor and the potential lender. *See In re Farmland Indus., Inc.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003). This includes the recognition that a debtor may have to strike "hard bargains" to acquire funds for its reorganization. *In re Ellingsen MacLean Oil Co., Inc.*, 65 B.R. 358, 365 n.7 (W.D. Mich. 1986).

33. The Debtors require immediate access to postpetition financing to preserve the value of their assets, pay for critical expenses, and continue funding the costs of administering the Chapter 11 Cases, in order to pursue a going-concern sale to maximize the value of their estates for the benefit of all stakeholders. The Debtors' decision to move forward with the DIP Facility is an exercise of their sound business judgment for the following reasons.

34. *First*, the proposed DIP Facility is the only viable financing option available to the Debtors. O'Hara Decl. ¶ 17. Without immediate access to the DIP Facility, the Debtors will be unable to fund the exercise of the Polish land option — a payment of approximately $18 million that must be made before entry of the Final Order and the failure of which constitutes a DIP Termination Event. Titus Decl. ¶ 21. The loss of the Polish land option would irreparably impair the value of a critical asset and eliminate a key driver of going-concern value in the ongoing sale process. More broadly, without the DIP Facility, the Debtors will have insufficient funding to pay

ongoing operating expenses necessary to sustain their operations and carry the estates through the anticipated sale closing, which would irreparably impair the value of the Debtors' estates during the restructuring process. *Id.* ¶ 22.

35. *Second*, the DIP Facility is inextricably linked to the Debtors' sale process in a manner that creates direct and immediate value for the estates. In connection with providing the DIP Facility, the DIP Lender, the Senior Secured Noteholders, and the Junior Secured Noteholders have agreed, that Newco will serve as the stalking horse bidder for substantially all of the Debtors' assets. Newco's stalking horse bid consists of a credit bid of (i) all accrued obligations under the DIP Financing, (ii) all accrued obligations under the Senior Notes Agreement, and (iii) $30 million of accrued obligations under the Junior Notes Agreement. Without approval of the DIP Facility, the stalking horse designation falls away, leaving the Debtors without a committed buyer and eliminating the bid floor established by the credit bid for the benefit of all stakeholders. O'Hara Decl. ¶ 22. Approval of the DIP Facility is accordingly a necessary predicate to the stalking horse structure and the competitive auction process that will follow.

36. *Third*, the Debtors believe that the proposed terms set forth in the DIP Loan Agreement, including the principal economic terms such as the pricing, fees, interest rate, and default rate, are reflective of market terms for financings of this type, appropriate and necessary under the totality of the circumstances, and will position the Debtors to maximize the value of their estates. *Id*. ¶ 19. The DIP Facility provides $30 million in new-money financing at an interest rate of 8.00% per annum, paid in kind, with a 5.0% upfront fee — terms the Debtors believe represent the most favorable financing available under the circumstances. *Id*.

37. *Fourth*, the Debtors negotiated the DIP Facility and the DIP Loan Documents with the DIP Lender in good faith, at arm's-length, and with the assistance of their advisors, while

recognizing the lack of alternative financing options. *Id*. ¶ 25. Under the circumstances, the Debtors submit that the terms of the DIP Facility represent the most favorable terms on which such financing can be obtained. *Id*. Accordingly, the Court should authorize the Debtors' entry into the DIP Facility as a reasonable exercise of the Debtors' business judgment.

### B. The Debtors Should Be Authorized to Grant Priming Liens and Superpriority Claims.

38. The Debtors propose to secure the DIP Facility by providing security interests and liens as set forth in the DIP Loan Documents pursuant to sections 364(c) and 364(d)(1) of the Bankruptcy Code. Specifically, the Debtors propose to grant the DIP Lender continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition security interests in and priming liens on the DIP Collateral, subject to the Carve-Out. The Debtors also seek authority to grant the DIP Lender superpriority claims. As set forth in greater detail in the DIP Declarations, the priming liens and superpriority claims were a necessary feature of the proposed DIP Facility that the DIP Lender required as a condition to providing financing. O'Hara Decl. ¶ 21.

39. Section 364(c) of the Bankruptcy Code authorizes a debtor that is unable to obtain unsecured credit allowable as an administrative expense under section 503(b)(1) to obtain postpetition credit (a) with priority over any or all administrative expenses of the kind specified in sections 503(b) or 507(b), (b) secured by a lien on unencumbered property, or (c) secured by a junior lien on encumbered property. 11 U.S.C. § 364(c). *See In re Crouse Grp., Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987) (secured credit under section 364(c) of the Bankruptcy Code is authorized, after notice and hearing, upon showing that unsecured credit cannot be obtained).

40. Courts have articulated a three-part test to determine whether a debtor is entitled to financing under section 364(c) of the Bankruptcy Code. Specifically, courts consider whether:

*c.* the debtor is unable to obtain unsecured credit under section 364(b) of the Bankruptcy Code, i.e., by allowing a lender only an administrative claim;

*d.* the credit transaction is necessary to preserve the assets of the estate;

*e.* the terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and proposed lender;

*See, e.g., In re L.A. Dodgers LLC,* 457 B.R. 308 (Bankr. D. Del. 2011); *In re Ames Dep't Stores*, 115 B.R. 34, 37–40 (Bankr. S.D.N.Y. 1990); *see also In re St. Mary Hosp.*, 86 B.R. 393, 401–02 (Bankr. E.D. Pa. 1988); *Crouse Grp.,* 71 B.R. at 549.

41. All three elements are satisfied here. No lender was willing to provide postpetition DIP financing on an unsecured, *pari passu*, or junior lien basis. O'Hara Decl. ¶ 21. Notwithstanding the marketing process conducted by Jefferies, which solicited proposals from investors who routinely provide debtor-in-possession financings and existing stakeholders within the Debtors' capital structure, the Debtors received only one proposal: the DIP Facility from the DIP Lender. *Id.* ¶ 16. Without access to the DIP Facility, the Debtors lack sufficient funds through the contemplated closing of a sale to continue operations, paying their obligations as they come due, and cover the continued administrative costs of these Chapter 11 Cases. Titus Decl. ¶ 34. As of the filing of this Motion, the Debtors had approximately $5 million in unrestricted cash—an amount that is encumbered by the prepetition liens of the Secured Noteholders, meaning the Debtors cannot access even these limited funds without both the DIP Facility and authority to use Cash Collateral. *Id.* ¶ 20. Moreover, the Debtors are not expected to generate sufficient revenue to satisfy their anticipated cash needs during the Chapter 11 Cases and lack sufficient unencumbered cash to fund working capital, payroll, critical vendor payments, and professional fees necessary to administer the cases and pursue a sale process. *Id.* ¶ 21. The DIP Facility is thus the Debtors' only available source of postpetition funding and is critical to preserving enterprise value and positioning the Debtors to execute on a value-maximizing sale. O'Hara Decl. ¶ 21.

42. Because the Debtors are unable to obtain unsecured credit, approving a superpriority administrative expense claim in favor of the DIP Lender pursuant to section 364(c) of the Bankruptcy Code is reasonable and appropriate under the circumstances**.**

43. Further, section 364(d) of the Bankruptcy Code authorizes a debtor to obtain credit secured by a senior or equal lien on property of the estate already subject to a lien, after notice and a hearing, where the debtor is "unable to obtain such credit otherwise" and "there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted." 11 U.S.C. § 364(d)(1). The Debtors may incur such "priming" liens under the DIP Facility if either (a) the prepetition lender has consented or (b) the prepetition lender's interests in collateral are adequately protected. *See Anchor Savs. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 122 (N.D. Ga. 1989) ("[B]y tacitly consenting to the superpriority lien, those [undersecured] creditors relieved the debtor of having to demonstrate that they were adequately protected."). Consent by secured creditors to priming obviates the need to show adequate protection. *See id*. ("[B]y tacitly consenting to the superpriority lien, those [undersecured] creditors relieved the debtor of having to demonstrate that they were adequately protected.").

44. Here, the Senior Secured Noteholder Parties consent, and the Junior Secured Noteholder Parties have been deemed to consent, to the priming of their respective liens.

45. The Debtors submit that the priming of the remaining Prepetition Secured Parties' liens by the DIP Liens should be approved by the Court because both elements of section 364(d)(1) are satisfied here. With respect to the first element — the inability to obtain credit otherwise — as described above, the Debtors' marketing process, conducted with the assistance of Jefferies, confirmed that no lender was willing to provide postpetition financing on an unsecured, junior, or *pari passu* basis. Substantially all of the Debtors' assets are encumbered by the prepetition liens

of the Secured Noteholders, leaving little or no unencumbered collateral to support a junior or unsecured financing facility, and absent the priming financing, the Debtors do not have access to sufficient unencumbered collateral to obtain the liquidity required to maintain operations. Titus Decl. ¶ 29. Jefferies conducted a thorough market check, contacting both existing stakeholders and third-party capital providers, and none of the existing stakeholders submitted an actionable DIP proposal. O'Hara Decl. ¶ 15. Only one third party, the DIP Lender, submitted an actionable proposal; after several rounds of negotiation, the Debtors determined it was the best and only actionable financing alternative reasonably available. *Id.* The DIP Lender, which is not a prepetition creditor of the Debtors, was unwilling to extend $30 million in new capital — including the approximately $18.8 million required to fund the time-sensitive Polish land option — without the benefit of priming liens on all DIP Collateral. *Id.* ¶ 21. This element is accordingly satisfied.

46. The Debtors further submit that the second element of section 364(d)(1) is likewise satisfied. In the context of section 364(d), adequate protection "should provide the pre-petition secured creditor with the same level of protection it would have had if there had not been post-petition superpriority financing." *Resolution Trust Corp. v. Swedeland Dev. Grp., Inc.*, 16 F.3d 552, 564 (3d Cir. 1994); *accord In re First South Sav. Ass'n*, 820 F.2d 700, 710 (5th Cir. 1987). Whether protection is adequate "depends directly on how effectively it compensates the secured creditor for loss of value" caused by the superpriority given to the postpetition lender. *Swedeland*, 16 F.3d at 564. Critically, there is no mechanical test for determining what constitutes sufficient adequate protection; the inquiry is inherently fact-specific and must be conducted on a case-by-case basis. *See In re Columbia Gas Sys., Inc.*, 1992 WL 79323, at *2 (Bankr. D. Del. Feb. 18, 1992); *In re O'Connor*, 808 F.2d 1393, 1396 (10th Cir. 1987); *In re Martin,* 761 F.2d 472 (8th Cir. 1985). The touchstone of the inquiry is whether the secured creditor is protected against diminution

in the value of its interest in the collateral during the period of use. *See Swedeland*, 16 F.3d at 564. Section 361 expressly permits adequate protection through additional or replacement liens, periodic cash payments, or "such other relief" as constitutes the "indubitable equivalent" of the secured creditor's interest. 11 U.S.C. § 361.

47. A necessary corollary to that inquiry is that a prepetition secured creditor must hold a cognizable, value-bearing interest in the collateral in order to be entitled to adequate protection at all. Where a creditor is rendered wholly unsecured by virtue of its relative priority and the liquidation value of the collateral — that is, where there is no value for the priming to "take" from it — no adequate protection is required because there is no value to protect against diminution. *In re Dunckle Assocs., Inc.*, 19 B.R. 481, 485 n.10 (Bankr. W.D. Pa. 1982) ("Adequate protection need not be afforded to subordinated junior lienholders in all instances. The law is well settled that valueless junior secured positions or unsecured deficiency claims are not entitled to adequate protection."). The inclusion of the adequate protection requirement in section 364(d) was designed explicitly to ensure that prepetition secured creditors were not "deprived of the benefit of their bargain." *See* H.R. Rep. No. 95-595 (1977).

48. The adequate protection afforded to a non-consenting prepetition lienholder must constitute relief "as will result in the realization by such entity of the indubitable equivalent of such entity's interest." 11 U.S.C. § 361. Where the creditor has no meaningful remaining interest in the collateral absent the DIP Facility, providing more than its indubitable equivalent — which is effectively zero — is unnecessary. *See In re Levitt & Sons, LLC*, 384 B.R. 630, 642 (Bankr. S.D. Fla. 2008) ("Since the junior lienholders would receive nothing had there not been post-petition superpriority financing, they are not entitled to adequate protection.").

49. Regardless of whether the Court concludes that any adequate protection is required to the non-consenting Prepetition Secured Parties, the Debtors' proposed adequate protection package more than satisfies the requirements of section 364(d)(1). The DIP Facility is the only vehicle by which the value of the Apex 1 facility – the only property encumbered by the non-consenting Prepetition Secured Parties' asserted liens – can be preserved and enhanced. Absent the DIP Facility, the Debtors would face immediate and irreparable harm, including the inability to maintain operations, pay employees and critical vendors, and implement an orderly sale process, and would be forced into an unplanned curtailment or a chapter 7 conversion, each resulting in material destruction of value. *See* Titus Decl. ¶ 34. Without the DIP Facility, the Debtors would risk severe and potentially irreversible destruction of enterprise value and would be forced to almost immediately cease operations and terminate staff. *Id.* A substantial portion of the near-term liquidity needs relate to critical vendor payments necessary for site safety, environmental compliance, maintenance, and operational continuity, and any disruption to payroll would create a material risk of employee attrition at a time when continuity is essential to safe operations and value preservation. *Id*. ¶ 24. By enabling the Debtors to continue limited operations, fund payroll, maintain the integrity of their facilities, and execute upon a value-maximizing going-concern sale, the DIP Facility affirmatively enhances the value of the Apex 1 facility relative to what it would be worth in an immediate liquidation.

50. Courts have authorized priming DIP financing in similar circumstances — to avoid imminent liquidation and where the value of the debtors' assets will increase as a result of the proposed financing. *See In re Prospect Medical Holdings, Inc.*, Case No. 25-80002 (SGJ) (Bankr. N.D. Tex. Jan. 14, 2025) (Dkt. No. 57) (approving priming DIP liens on an interim basis where debtors argued that "[t]he preservation, maintenance, and enhancement of the going-concern value

of the Debtors that will result from the optionality provided by the DIP ABL Financing will inure to the benefit" of the primed lenders); *In re 495 Central Park Avenue Corp.*, 136 B.R. 626 (Bankr. S.D.N.Y. 1992) (finding secured creditor adequately protected because renovations funded by the proposed DIP financing would increase the value of the debtor's property); *In re Aqua Assoc.*, 123 B.R. 192 (Bankr. E.D. Pa. 1991) (foregoing a valuation analysis in favor of a holistic approach to adequate protection and finding priming justified because the DIP loan would enhance the value of the debtor's sole asset). The Debtors submit that the value-preserving and value-enhancing character of the DIP Facility constitutes adequate protection under the circumstances present here.

51. The value-preserving character of the DIP Facility extends beyond the Debtors' domestic operations. The Polish land option payment funded by the DIP Facility will preserve the Debtors' rights in connection with their Polish joint venture — rights that include assets of the Borrowers, are included among the Acquired Assets to be transferred to Newco, and are a material driver of the going-concern value being marketed in the sale process. Preserving these assets directly inures to the benefit of all secured creditors, including the non-consenting Prepetition Secured Parties as it relates to a going concern sale of the entire enterprise.

52. With respect to the Secured Noteholder Parties, the DIP Orders provide for adequate protection on the same terms set forth in the Interim Cash Collateral Order (the "Cash Collateral Order Adequate Protection Liens"). As additional adequate protection for any Diminution in Value of their respective interests in the Prepetition Collateral (including Cash Collateral) as set forth in the Cash Collateral Order and the Interim Order, each collateral agent, for the benefit of itself and the Secured Noteholder Parties, will receive (i) the Cash Collateral Order Adequate Protection Liens (as defined in the Interim Order), (ii) superpriority administrative expense claims to the extent of any Diminution in Value, which claims are senior to any and all

other administrative expense claims in the Chapter 11 Cases, junior only to the Carve-Out, the DIP Liens, and the DIP Superpriority Claim (the "Adequate Protection Superpriority Claims"), and (iii) the payment of the reasonable professional fees, expenses and disbursements of the advisors to the Senior Secured Noteholders and the collateral agents, as further detailed in the Interim Order. The Cash Collateral Order Adequate Protection Liens and the Adequate Protection Superpriority Claims are subordinate to the Carve-Out, the DIP Liens, the DIP Superpriority Claim, and the Permitted Priority Encumbrances, as more fully set out in the Interim Order. The Senior Secured Noteholders and Junior Secured Noteholders have consented, or have deemed to consent, to the priming of their liens and such subordination in exchange for the adequate protection provided under the Cash Collateral Order and the DIP Orders. With respect to the M&M Lienholders, the Debtors submit that they are adequately protected by the DIP Facility, which will provide the Debtors with the liquidity necessary to preserve the going-concern value of the Debtors' business and assets, including the property subject to the M&M Liens, and that no further adequate protection is required to be provided to the M&M Lienholders at this time. Approval of the DIP Facility is critical to preserving the Debtors' enterprise value and gives the Debtors the runway needed to execute upon an orderly and competitive sale process for the benefit of all parties in interest, including the existing secured creditors, and the DIP Facility was negotiated at arm's-length and in good faith with no comparable alternative financing reasonably available on more favorable terms. *See* O'Hara Decl. ¶ 25.

53. For these reasons, the Debtors satisfy the requirements of section 364(c)(1) and (d)(1) of the Bankruptcy Code, and the Court should authorize the Debtors to grant the DIP Lender priming liens on all DIP Collateral and superpriority administrative expense claims with respect to all DIP Obligations. To the extent the Court requires additional support for any of the foregoing

findings, the Debtors submit that the testimony to be adduced at the hearing on the Motion (including the DIP Declarations) will further establish each of the requisite elements under section 364(c)(1) and (d)(1), including the Debtors' inability to obtain credit on less onerous terms, the necessity of the priming liens, and the adequacy of the proposed adequate protection package.

### C. No Comparable Alternatives to the DIP Facility are Reasonably Available on More Favorable Terms

54. A debtor need only demonstrate "by a good faith effort that credit was not available without" the protections afforded to a potential lender by section 364 of the Bankruptcy Code. *In re Snowshoe Co., Inc.*, 789 F.2d 1085, 1088 (4th Cir. 1986); *see also In re Plabell Rubber Prods., Inc.*, 137 B.R. 897, 900 (Bankr. N.D. Ohio 1992). Moreover, in circumstances where only a few lenders likely can or will extend the necessary credit to a debtor, "it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing." *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff'd sub nom. Anchor Sav. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n.4 (N.D. Ga. 1989); *see also Snowshoe Co.*, 789 F.2d at 1088 (demonstrating that credit was unavailable absent the senior lien by establishment of unsuccessful contact with other financial institutions in the geographic area); *In re Stanley Hotel, Inc.*, 15 B.R. 660, 663 (D. Colo. 1981) (bankruptcy court's finding that two national banks refused to grant unsecured loans was sufficient to support conclusion that section 364 requirement was met); *In re Ames Dep't Stores*, 115 B.R. at 37–39 (debtor must show that it made reasonable efforts to seek other sources of financing under section 364(a) and (b)).

55. As noted above, the Debtors do not believe that more favorable alternative DIP financing is reasonably available due to the realities of the Debtor's existing capital structure. The Debtors' solicitation of DIP financing proposals confirmed that the only available and actionable option is the DIP Facility, which provides the Debtors with the liquidity they need to fund the

Chapter 11 Cases and pursue a value-maximizing transaction. Moreover, the DIP Facility is the only financing that provides the Debtors with both the new-money liquidity needed to fund the Polish land option and the stalking horse commitment that establishes a floor for the upcoming auction — a combination of benefits that no alternative financing proposal could replicate. Therefore, the Debtors submit that the requirement of section 364 of the Bankruptcy Code that alternative credit on more favorable terms be unavailable to the Debtors is satisfied.

## II. The Debtors Should Be Authorized to Continue to Use Cash Collateral and Provide Adequate Protection.

56. Section 363 of the Bankruptcy Code generally governs the use of estate property. Section 363(c)(2) conditions use of Cash Collateral upon (a) obtaining consent of each party that has an interest in the Cash Collateral; or (b) "the court, after notice and a hearing, authoriz[ing] such use, sale, or lease in accordance with the provisions of this section."

57. Section 363(e) of the Bankruptcy Code provides that, "on request of an entity that has an interest in property used . . . or proposed to be used by a debtor in possession, the court . . . shall prohibit or condition such use . . . as is necessary to provide adequate protection of such interest." 11 U.S.C. § 363(e).

58. The threshold requirement of section 363(c)(2) is satisfied here because the requisite Senior Secured Noteholder Parties have consented (and the Junior Secured Noteholder Parties have been deemed to consent) to the Debtors' use of Cash Collateral. Prior to the filing of their cash collateral motion, the Debtors and their advisors engaged in good-faith discussions with the Senior Secured Noteholder Parties regarding the Debtors' anticipated need to use Cash Collateral. As a result of those discussions, the Senior Secured Noteholder Parties agreed to the Debtors' use of Cash Collateral on the terms and conditions set forth in the Interim Cash Collateral Order, which this Court entered on April 13, 2026 [Docket No. 74]. Following entry of the Cash

Collateral Order, the DIP Lender engaged in good-faith discussions with the Senior Secured Noteholder Parties as well as the Junior Secured Noteholder Parties and agreed to the Debtors' use of cash collateral on the terms and conditions set forth in the Interim Order. The Senior Secured Noteholder Parties and the Junior Secured Noteholder Parties' consent satisfies section 363(c)(2)(A) as to the holders of the first-priority Prepetition Liens in the Prepetition Noteholder Collateral.

59. Here, access to Cash Collateral will allow the Debtors to continue limited operations and preserve and maintain the value of their assets — the substantial majority of which constitute Prepetition Noteholder Collateral pledged to the Secured Noteholder Parties. Importantly, the Senior Secured Noteholder Parties have already accepted the adequate protection framework reflected in the Interim Cash Collateral Order. The DIP Orders provide for a transition from the Interim Cash Collateral Order budget — which was designed solely to fund essential near-term operations — to the Initial Budget, which provides the additional liquidity required to fund the Polish land option payment, sustain operations through the anticipated sale closing, and cover the full costs of administering the Chapter 11 Cases through that date. Nonetheless, the Secured Noteholder Parties remain protected by the budgetary constraints on the Debtors' use of Cash Collateral under both the Interim Cash Collateral Order and the DIP Orders.

60. For these reasons, the Debtors submit that the proposed adequate protection package is sufficient to protect the Prepetition Secured Parties from any Diminution in Value of the Cash Collateral and Prepetition Noteholder Collateral, and the Court should authorize the Debtors' continued use of Cash Collateral on the terms set forth in the DIP Orders.

## III. The Debtors Should Be Authorized to Pay the Fees Required by the DIP Loan Documents.

61. The DIP Lender has committed substantial capital to ensure successful execution of the DIP Facility and these Chapter 11 Cases. Under the DIP Loan Documents, the Debtors have agreed, subject to Court approval, to pay the DIP Lender certain fees as noted above and set forth in the DIP Loan Agreement in exchange for their agreement to provide the financing under the DIP Facility. It is understood and agreed by all parties, including the Debtors, that this compensation is an integral component of the overall terms of the DIP Facility, and was required by the DIP Lender as consideration for the extension of postpetition financing.

62. The Debtors believe the DIP Lender agreed to provide the DIP Loans with the specific intent to both fully fund the Debtors' Chapter 11 Cases while simultaneously keeping the postpetition financing narrowly tailored to meet the Debtors' restructuring needs. The DIP Lender and the Debtors, along with their advisors, extensively negotiated at arm's-length the terms of the proposed DIP Facility. *See* O'Hara Decl. ¶ 25. Such negotiations included numerous drafts of key documents, including the proposed Interim Order and the DIP Loan Agreement, and term sheets and various discussions both amongst the Debtors, the DIP Lender, and their respective advisors. *Id*. The Debtors believe that the terms of the proposed DIP Facility, including the fees and conditions contained therein, represent the best available terms for the Debtors. *Id*. ¶ 19. Accordingly, the Court should authorize the Debtors to incur such obligations under the DIP Loan Documents in connection with entering into those agreements.

## IV. The Carve-Out Is Appropriate and Should Be Approved.

63. The Interim Order provides that the DIP Liens are subject to the Carve-Out (as described above). Without the Carve-Out, the Debtors and other parties in interest may be deprived of certain rights and powers because the services for which professionals may be

compensated in these Chapter 11 Cases would be restricted. *See In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 38 (Bankr. S.D.N.Y. 1990) (observing that courts insist on carve-outs for professionals representing parties in interest because "[a]bsent such protection, the collective rights and expectations of all parties-in-interest are sorely prejudiced"). The Carve-Out does not directly or indirectly deprive the Debtors' estates or other parties in interest of possible rights and powers. Additionally, the Carve-Out protects against administrative insolvency during the course of these Chapter 11 Cases by ensuring that assets remain for the payment of amounts to the Clerk of the Court or U.S. Trustee fees, and fees incurred by estate professionals and allowed by an order of the Court. Accordingly, the Debtors submit that the Carve-Out, as set forth in the DIP Orders, is appropriate and should be approved.

## V. The DIP Lender Should Be Deemed A Good-Faith Lender Under Section 364(e) of the Bankruptcy Code.

64. Section 364(e) of the Bankruptcy Code protects a good-faith lender's right to collect on loans extended to a debtor, and its right in any lien securing those loans, even if the authority of the debtor to obtain such loans or grant such liens is later reversed or modified on appeal. Specifically, section 364(e) of the Bankruptcy Code provides that:

> The reversal or modification on appeal of an authorization under this section [364 of the Bankruptcy Code] to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal

65. As explained herein, in the First Day Declaration and in the DIP Declarations, the terms of the DIP Facility are the result of (a) the Debtors' reasonable and informed determination that the DIP Lender offered the most favorable terms on which to obtain vital postpetition financing, and (b) extensive arm's-length, good-faith negotiations between the Debtors, the DIP

Lender, the Senior Secured Noteholder Parties and the Junior Secured Noteholder Parties. *See* O'Hara Decl. ¶¶ 25-26. Those negotiations yielded a comprehensive transaction structure in which Kinterra serves simultaneously as DIP Lender and, through Newco, as stalking horse bidder — a structure that the Debtors, with the advice of their advisors, determined represents the best available outcome for the estates under the circumstances. *Id*. ¶ 19. The Debtors submit that the terms and conditions of the DIP Facility are reasonable and appropriate under the circumstances, and the proceeds of the DIP Facility will be used only for purposes that are permissible under the Bankruptcy Code and in accordance with the DIP Orders and the DIP Loan Documents (including the Initial Budget). Further, no consideration is being provided to the DIP Lender other than as described herein. Accordingly, the Court should find that the DIP Lender is a "good-faith" lender within the meaning of section 364(e) of the Bankruptcy Code and are entitled to all of the protections afforded by that section.

## VI. Modification of the Automatic Stay on a Limited Basis is Warranted

66. The proposed Interim Order provides that the automatic stay provisions of section 362 of the Bankruptcy Code will be modified to the extent necessary to allow the DIP Lender to file any financing statements, security agreements, notices of liens, and other similar instruments and documents in order to validate and perfect the liens and security interests granted to them under the DIP Orders. The DIP Orders further provide that the automatic stay is modified to the extent necessary to permit the Debtors to grant the DIP Liens to the DIP Lender and to incur all liabilities and obligations set forth in the DIP Orders. Finally, the DIP Orders provide that, following the occurrence of an Event of Default, the automatic stay shall be vacated and modified to the extent necessary to permit the DIP Lender to exercise all rights and remedies in accordance with the DIP Loan Documents, or applicable law following five business days' notice to the

Debtors, the Committee (if any), and the U.S. Trustee, during which time the Debtors may seek injunctive relief.

67. The Debtors note that two of the DIP Termination Events are directly tied to the time-sensitive circumstances described above: (i) any failure to execute the Polish land option before entry of the Final Order, and (ii) termination of the stalking horse APA with Newco. These Termination Events reflect the DIP Lender's reasonable requirement that the two most critical conditions to the value of the DIP Facility — the Polish land option and the stalking horse commitment — remain intact for the duration of the financing, and the Debtors believe the corresponding stay modifications are appropriate and necessary given the facts and circumstances of these Chapter 11 Cases.

68. These provisions were part of the negotiations over the terms and conditions of the DIP Facility (including use of Cash Collateral). Notably, the exercise of remedies will be subject to five business days' written notice (or otherwise extended by the Court) to allow the Debtors to seek other relief. Stay modifications of this kind are an ordinary and standard feature of debtor-in possession financing arrangements and, under these circumstances, the Debtors believe that the extent of the modifications to the automatic stay under the DIP Orders is reasonable and should be approved. *See, e.g., In re Air Methods Corp.,* No. 23-90886 (MI) (Bankr S.D. Tex. Nov. 14, 2023), ECF No. 225 (modifying automatic stay as necessary to effectuate the terms of the order); In re Core Scientific, Inc., No. 22-90341 (CML) (Bankr S.D. Tex. Mar. 1, 2023) (Docket No. 608) (same); *In re Cineworld Grp. Plc*, No. 22-90618 (MI) (Bankr. S.D. Tex. Sept. 9, 2022) (Docket No. 173) (same).

## VII. Immediate Access to Cash Collateral and the DIP Facility on an Interim Basis Is Necessary to Avoid Immediate and Irreparable Harm

69. Bankruptcy Rules 4001(b) and 4001(c) provide that a final hearing on a motion to obtain credit pursuant to section 364 of the Bankruptcy Code or to use cash collateral pursuant to section 363 of the Bankruptcy Code may not be commenced earlier than fourteen days after the service of such motion. However, section 363(c)(3) of the Bankruptcy Code and Bankruptcy Rules 4001(b)(2) and (c)(2) allow the Court to (a) hold a preliminary expedited hearing on the motion and authorize the obtaining of credit and use of cash collateral if so requested, and (b) authorize, to the extent necessary to avoid immediate and irreparable harm to the estate, the use of cash collateral or the obtaining of credit. Furthermore, the Complex Case Procedures provide that "on motion by the debtors, a hearing will routinely be conducted as a first day hearing to consider either cash collateral and/or interim debtor-in-possession financing." Complex Case Procedures ¶ 5.

70. The Debtors request that the Court hold a hearing to consider entry of the Interim Order authorizing the Debtors—in the period from and after entry of the Interim Order until the Final Hearing—to borrow and withdraw funds under the DIP Facility in accordance with the Initial Budget.

71. The Initial Budget was developed by the Debtors and their professionals, together with the DIP Lender, to ensure that the Debtors have sufficient funds to operate their business in the ordinary course while running a value-maximizing sale process and paying their administrative expenses through the anticipated closing of the sale on May 22, 2026. Of particular importance, the Initial Budget provides for payment of the Polish land option payment from the proceeds of the Interim DIP Loan. That payment must be made as a condition to the DIP Facility and before entry of the Final Order, and which therefore cannot wait for final approval of the DIP Facility.

Further, the Initial Budget contemplates that in the period from and after entry of the Interim Order until the Final Hearing, the Debtors will use only those funds necessary to avoid immediate and irreparable harm. The requested relief is necessary for the Debtors to preserve and maximize value and, therefore, to avoid immediate and irreparable harm and prejudice to the Debtors' estates and all parties in interest.

**Emergency Consideration**

72. Bankruptcy Rules 4001(b) and 4001(c) provide that a final hearing on a motion to obtain credit pursuant to section 364 of the Bankruptcy Code or to use cash collateral pursuant to section 363 of the Bankruptcy Code may not be commenced earlier than 14 days after the service of such motion. Upon request, however, the Court may conduct a preliminary, expedited hearing on the motion and authorize the obtaining of credit and use of cash collateral to the extent necessary to avoid immediate and irreparable harm to a debtor's estate. For the reasons stated above, the Debtors have satisfied the "immediate and irreparable harm" standard and request that the Court approve the Motion on an emergency basis.

**Request for Final Hearing**

73. Pursuant to Bankruptcy Rule 4001(c)(2), the Debtors request that the Court set a date for the Final Hearing that is as soon as practicable, and in no event later than May 12, 2026, and fix the time and date prior to the Final Hearing for parties to file objections to the Motion.

**Waiver of Bankruptcy Rule 4001(a)(3)**

74. Bankruptcy Rule 4001(a)(3) provides that an "order granting a motion for relief from an automatic stay made in accordance with Rule 4001(a)(1) is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." As explained herein, access to the DIP Facility is essential to prevent irreparable damage to the Debtors' estates.

75. Accordingly, ample cause exists to justify the waiver of the 14-day stay imposed by Bankruptcy Rule 4001(a)(3), and the Debtors request waiver of the stay, to the extent such stay applies.

**Waiver of Bankruptcy Rules 6004(a) and 6004(h)**

76. The Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the fourteen-day stay period under Bankruptcy Rule 6004(h).

**Reservation of Rights**

77. Nothing contained herein or any actions taken pursuant to such relief requested is intended or shall be construed as: (a) an admission by the Debtors as to the amount of, basis for, or validity of any claim against any Debtor under the Bankruptcy Code or other applicable law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion or any order granting the relief requested by this Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission by the Debtors as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates (and the rights of all parties in interest are expressly reserved with respect to such liens); or (g) a waiver or limitation of the Debtors', the DIP Lender's or any other party in interest's, rights under the Bankruptcy Code, the DIP Loan Documents, or any other applicable law, including, without limitation, rights to seek adequate protection and/or additional or different adequate protection, to seek relief from the automatic stay,

to seek an injunction, to oppose any request for use of Cash Collateral or granting of any interest in the DIP Collateral, or priority in favor of any other party, to object to any sale of assets, and to object to applications for allowance and/or payment of compensation of professionals or other parties seeking compensation or reimbursement from the estates.

78. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' or any other party in interest's rights to subsequently dispute such claim.

**Notice**

79. The Debtors have provided notice of this Motion to the following parties or their respective counsel: (a) the U.S. Trustee; (b) counsel to the Committee; (c) counsel to the DIP Lender; (d) counsel to the Senior Secured Noteholders and Junior Secured Noteholders; (e) counsel to the M&M Lienholders; (f) counsel to the Hopkinsville Industrial Foundation, Inc; (g) counsel to the City of Hopkinsville; (h) any party known after a reasonable inquiry to have asserted a lien against the Debtors' assets; (i) the United States Attorney's Office for the Southern District of Texas; (j) the Internal Revenue Service; (k) the state attorneys general for states in which the Debtors conduct business; (l) other regulatory agencies having a regulatory or statutory interest in these cases; and (m) any party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the "Notice Parties"). In light of the nature of the relief requested, the Debtors submit that no other or further notice is required.

*[Remainder of Page Intentionally Left Blank]*

The Debtors request that the Court enter the Interim Order, substantially in the form attached hereto, and subsequently the Final Order, granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Houston, Texas
Dated: May 6, 2026

Respectfully submitted,

**NORTON ROSE FULBRIGHT US LLP**

By: */s/ Ryan Manns*

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***Proposed Counsel to the Debtors and Debtors in Possession***

**Certificate of Accuracy**

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

*/s/ Ryan Manns*
Ryan E. Manns

**Certificate of Service**

I certify that on May 6, 2026, 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/ Ryan Manns*
Ryan E. Manns

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

| | | |
|---|---|---|
| In re: | ) | Chapter 11 |
| ASCEND ELEMENTS, INC., *et al.*,[1] | ) | Case No. 26-90440 (CML) |
| Debtors. | ) | Jointly Administered |

**INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO (A) OBTAIN SENIOR SECURED SUPERPRIORITY POSTPETITION FINANCING AND (B) UTILIZE CASH COLLATERAL, (II) GRANTING LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS AND (III) GRANTING ADEQUATE PROTECTION TO THE PREPETITION SECURED PARTIES; (IV) MODIFYING THE AUTOMATIC STAY, (V) SCHEDULING A FINAL HEARING AND (VI) GRANTING RELATED RELIEF**

Upon the *Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Senior Secured Superpriority Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protection to the Prepetition Secured Parties, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* (the "**Motion**")[2] of the above-captioned debtors and debtors-in-possession (collectively, the "**Debtors**") in the above-captioned chapter 11 cases (collectively, the "**Chapter 11 Cases**"), for entry of an interim order and a final order, pursuant to sections 105, 361, 362, 363, 364, 503, 506, and 507 of Title 11 of the United States Code (the "**Bankruptcy Code**"), Rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and Rules 2002-1, 4001-

[1] The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number, are: Ascend Elements, Inc. (2893) and Ascend Elements US, LLC (8309). The location of the Debtors' service address is: 133 Flanders Road, Westborough, MA 01581.

[2] Each capitalized term used but not defined herein shall have the meaning ascribed to it in the *Declaration of Linh Austin in Support of Chapter 11 Petitions and Emergency First-Day Motions* [Docket No. 11] (the "**First Day Declaration**") or DIP Loan Documents (as defined below), as applicable.

1(b), 4002-1, and 9013-1 of the Bankruptcy Local Rules for the United States Bankruptcy Court for the Southern District of Texas (the "**Local Rules**") and the Procedures for Complex Cases in the Southern District of Texas (the "**Complex Case Procedures**") promulgated by the United States Bankruptcy Court for the Southern District of Texas, Houston Division (this "**Court**") seeking entry of an interim order (together with all exhibits hereto, this "**Interim Order**"):

(i) authorizing Ascend Elements, Inc. (the "**Parent Borrower**") and Ascend Elements US, LLC (together with the Parent Borrower, the "**Borrowers**" and individually, each a "**Borrower**") to obtain postpetition financing pursuant to the DIP Facility[3] in an aggregate principal amount of up to $30.0 million in term loan commitments, which shall be available upon entry of this Interim Order (the "**Borrowing**"), and authorizing each Guarantor (as defined in the DIP Loan Agreement) to guarantee the Borrowers' obligations thereunder on a joint and several basis, subject to the terms of the DIP Loan Agreement, which DIP Facility shall be a senior secured superpriority debtor-in-possession financing facility on the terms substantially in the form annexed hereto as **Exhibit A** (as amended, restated, supplemented, or otherwise modified from time to time, the "**DIP Loan Agreement**" and, together with all related agreements and documents, including this Interim Order and the Final Order (when entered), collectively, the "**DIP Loan Documents**"), by and among the Borrowers, the Guarantors, and Bluegrass Infrastructure Partners Holdings, LLC, as lender (together with its permitted successors and assigns, the "**DIP Lender**"), with amounts available as term loans (the "**DIP Loans**") upon satisfaction of the conditions set forth therein;

(ii) authorizing the Debtors to execute, deliver, and enter into the DIP Loan Documents and to perform all of the Debtors' respective obligations thereunder, and such other and further acts as may be required in connection with the DIP Loan Documents;

(iii) authorizing the Debtors to pay the principal, interest, fees, expenses and other amounts payable to the DIP Lender pursuant to the DIP Loan Documents, including, without limitation, all loans, advances, debts, liabilities and obligations for the performance of covenants, tasks or duties or for payment of monetary amounts (whether or not such performance is then required or contingent, or such amounts are liquidated or determinable) owing by Borrowers to the DIP Lender arising under the DIP Loan

[3] "**DIP Facility**" means the senior secured superpriority debtor-in-possession term loan credit facility in an aggregate principal amount not to exceed $30 million, made available to the Debtors pursuant to the terms and conditions of the DIP Loan Agreement and the other DIP Loan Documents, as authorized and approved pursuant to this Interim Order.

Documents, and all covenants and duties regarding such amounts, of any kind or nature, present or future, arising under the DIP Loan Documents, including all principal, interest, fees, charges, expenses, reasonable and documented attorneys' fees and any other sum chargeable to Borrowers under the DIP Loan Documents (such obligations, the "**DIP Obligations**");

(iv) authorizing the Debtors, immediately upon entry of this Interim Order, to use proceeds of the DIP Facility solely for the purposes permitted under the DIP Loan Documents and solely in accordance with this Interim Order and the applicable Approved Budget (as defined below), subject to permitted variances and other exclusions set forth in the DIP Loan Documents;

(v) granting the DIP Lender superpriority administrative expense claim status pursuant to sections 364(c)(1), 503(b)(1), and 507(b) of the Bankruptcy Code in respect of all DIP Obligations, subject only to the Carve-Out (as defined below);

(vi) granting the DIP Lender valid, enforceable, non-avoidable, automatically and fully perfected DIP Liens (as defined below) in all DIP Collateral (as defined below) to secure the DIP Obligations, which DIP Liens shall be subject and subordinate to the Carve-Out and Permitted Priority Encumbrances (as defined in the DIP Loan Agreement);

(vii) authorizing the Debtors to use, solely in accordance with the Approved Budget (subject to permitted variances and other exclusions set forth in the DIP Loan Documents) and the limitations provided herein and in the DIP Loan Documents, any Cash Collateral in which any of the Senior Secured Noteholders and the Junior Secured Noteholders (each as defined below) may have an interest, and the granting of adequate protection solely to the extent of any diminution in the value of their respective interests in the Prepetition Noteholder Collateral, including, without limitation, the Cash Collateral, as a result of (i) the incurrence of the DIP Obligations, (ii) the Debtors' use of Cash Collateral, (iii) the subordination of the Prepetition CLN Obligations to the DIP Obligations and the Carve-Out, (iv) the subordination of the M&M Obligations to the DIP Obligations and the Carve-Out, (v) any other diminution in value of the Prepetition Collateral arising from the Debtors' use, sale, or disposition of such Prepetition Collateral or the proceeds thereof, (vi) the priming of the Prepetition Liens and the M&M Liens by the DIP Liens, and (vii) the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code;

(viii) modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of this Interim Order and the other DIP Loan Documents;

(ix) waiving the Debtors' rights under sections 506(c) and 552(b) of the Bankruptcy Code with respect to the DIP Collateral and Prepetition Collateral;

(x) waiving any applicable stay and providing for immediate effectiveness of this Interim Order;

(xi) scheduling a final hearing (the "**Final Hearing**") to consider entry of a final order (the "**Final Order**") and approving the form of notice with respect thereto; and

(xii) granting related relief.

The Court having considered the interim relief requested in the Motion, the exhibits attached thereto, the First Day Declaration, the *Declaration of Michael O'Hara in Support of Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Senior Secured Superpriority Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims (III) Granting Adequate Protection to the Prepetition Secured Parties, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* and the *Declaration of Adam Titus in Support of Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Senior Secured Superpriority Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Priming Liens and Superpriority Administrative Expense Claims, (III) Adequate Protection to the Prepetition Secured Parties, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* (collectively, the "**DIP Declarations**"), the DIP Loan Documents, and the evidence submitted and arguments made at the interim hearing held on [●], 2026 (the "**Interim Hearing**"); and due and sufficient notice of the Interim Hearing having been given in accordance with Bankruptcy Rules 2002 and 4001(b), (c), and (d), all applicable Local Rules, and the Complex Case Procedures; and the Interim Hearing having been held and concluded; and all objections to the interim relief requested in the Motion

having been withdrawn, resolved, or overruled by the Court; and it appearing that the interim relief requested in the Motion is fair and reasonable and in the best interests of the Debtors and their estates, necessary to avoid immediate and irreparable harm to the Debtors and their estates, and essential for the continued operation of the Debtors' businesses and the preservation of the value of the Debtors' assets; and it appearing that the Debtors' entry into the DIP Loan Documents is a sound exercise of the Debtors' business judgment; and after due deliberation and consideration, and good and sufficient cause appearing therefor.

**BASED UPON THE RECORD ESTABLISHED AT THE INTERIM HEARING, THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW**:[4]

(A) Petition Date. On April 9, 2026 (the "**Petition Date**"), each Debtor filed a voluntary petition for relief (each, a "**Petition**") under chapter 11 of the Bankruptcy Code.

(B) Debtors in Possession. The Debtors continue to operate and maintain their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No chapter 11 trustee or examiner has been appointed in any of the Chapter 11 Cases.

(C) Jurisdiction and Venue. The Court has jurisdiction over the Chapter 11 Cases, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue for the Chapter 11 Cases and proceedings on the Motion is proper in this district pursuant to 28 U.S.C. § 1408. The statutory and other predicates for the relief sought herein are sections 105, 361, 362, 363, 364, 506, 507, and 552 of the

[4] The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6003, 6004, and 9014, and Local Rules 2002-1, 4001-1(b), 4002-1, and 9013-1, and the Complex Case Procedures.

(D) Committee Formation. On April 26, 2026, the U.S. Trustee appointed an official committee of unsecured creditors [Docket No. 139] in these Chapter 11 Cases under section 1102 of the Bankruptcy Code (the "**Committee**").

(E) Notice. The Interim Hearing was held pursuant to Bankruptcy Rule 4001(b)(2) and (c)(2). Proper, timely, appropriate, and sufficient notice of the Motion has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, and no other or further notice of the Motion or the entry of this Interim Order shall be required. The interim relief granted herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing.

(F) Parties' Acknowledgments, Agreements, and Stipulations. In requesting the DIP Facility and use of Cash Collateral, and as a material inducement to the DIP Lender to provide the DIP Facility and the Senior Secured Noteholders and Junior Secured Noteholders to consent to the subordination of the Prepetition Liens (as defined below) to the DIP Obligations and Carve-Out, the subordination of the adequate protection liens granted under the Cash Collateral Order to the DIP Liens, and the use of Cash Collateral as provided herein, and subject to the rights of parties in interest (other than the Debtors) set forth in Section [4.1] of this Interim Order, the Debtors admit, stipulate, acknowledge, and agree as follows:

(i) Prepetition CLN Obligations.

(a) Ascend Elements, Inc., as borrower, and certain Noteholders party thereto (collectively, the "**Senior Secured Noteholders**") are parties to that certain Senior Secured Convertible Note and Warrant Purchase Agreement, dated as of December 22, 2025 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "**Senior Note Purchase**

**Agreement**"). Pursuant to the Senior Note Purchase Agreement, the Senior Secured Noteholders purchased certain notes with an aggregate principal amount of $20,000,000.00 (the "**Senior Notes**"). The Senior Notes are secured by first priority security interests in and liens on the collateral as further set forth in the Senior Note Purchase Agreement and related security documents.

(b) Ascend Elements, Inc., and as borrower, and certain Noteholders party thereto (collectively, the "**Junior Secured Noteholders**" and together with the Senior Secured Noteholders and any collateral agents under the Senior Notes as well as the Junior Notes, the "**Secured Noteholder Parties**"), are parties to that certain Subordinated Secured Convertible Note Purchase Agreement dated June 13, 2025 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "**Junior Note Purchase Agreement**"). Pursuant to the Junior Note Purchase Agreement, the Junior Secured Noteholders purchased certain notes with an aggregate principal amount of $83,120,777.96 (the "**Junior Notes**"). The Junior Secured Noteholders are secured by second priority security interests in and liens on the collateral as further set forth in the Junior Note Purchase Agreement and related security documents. The amounts outstanding under the Senior Notes, the Junior Notes, collectively, including interest, fees, and expenses, the "**Prepetition CLN Obligations**."

(ii) Prepetition Collateral. The Secured Noteholder Parties have, as security for the Debtors' various obligations, collateral pursuant to the relevant agreements and liens as described in Section [F(i)] of this Interim Order (collectively with the collateral securing the liens of all the Secured Noteholder Parties and the other Prepetition Secured Parties (as defined below), the "**Prepetition Collateral**" and any such liens and security interests on such Prepetition Collateral, the "**Prepetition Liens**"). To secure the Senior Notes and the Junior Notes, the Debtors entered into certain guaranty and collateral agreements and certain other security documents governing the Senior Secured Noteholders' and Junior Secured Noteholders' security interests in the Prepetition Collateral (such agreements, as amended, restated, amended and restated, supplemented or otherwise modified from time to time, and together with any ancillary collateral

documents, including, without limitation, any related mortgages and deeds of trust, the "**Prepetition Collateral Documents**").

(iii) Prepetition Obligations. The Prepetition CLN Obligations owing to the Secured Noteholder Parties constitute legal, valid, and binding obligations of the Debtors, enforceable against them in accordance with their respective terms (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), and no portion of the Prepetition CLN Obligations owing to the Secured Noteholder Parties is subject to avoidance, recharacterization, reduction, set-off, offset, counterclaim, cross-claim, recoupment, defenses, disallowance, impairment, recovery, subordination, or any other challenges pursuant to the Bankruptcy Code or applicable non-bankruptcy law or regulation by any person or entity, including in any Successor Cases (as defined below).

(iv) Prepetition Liens. The Prepetition Liens granted to the Secured Noteholder Parties constitute legal, valid, binding, enforceable (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), and perfected security interests in and liens on the Prepetition Collateral, were granted to, or for the benefit of, the Secured Noteholder Parties for fair consideration and reasonably equivalent value, and are not subject to defense, counterclaim, recharacterization, subordination, avoidance, or recovery pursuant to the Bankruptcy Code or applicable non-bankruptcy law or regulation by any person or entity.

(v) No Challenges/Claims. No offsets, challenges, objections, defenses, claims or counterclaims of any kind or nature to any of the Prepetition Liens or Prepetition CLN Obligations exist, and no portion of the Prepetition Liens or Prepetition CLN Obligations is subject to any challenge or defense including, without limitation, avoidance, disallowance, disgorgement, recharacterization, or subordination (equitable or otherwise) pursuant to the Bankruptcy Code or

applicable non-bankruptcy law. The Debtors and their estates have no valid Claims (as such term is defined in section 101(5) of the Bankruptcy Code) objections, challenges, causes of action, and/or choses in action against any of the Secured Noteholder Parties or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors or employees with respect to the Prepetition CLN Obligations, the Prepetition Liens, or otherwise, whether arising at law or at equity, including, without limitation, any challenge, recharacterization, subordination, avoidance, recovery, disallowance, reduction, or other claims arising under or pursuant to sections 105, 502, 510, 541, 542 through 553, inclusive, or 558 of the Bankruptcy Code or applicable state law equivalents. The Prepetition CLN Obligations constitute allowed secured claims within the meaning of sections 502 and 506 of the Bankruptcy Code.

(vi) Indemnity. The DIP Lender has acted in good faith, and without negligence or violation of public policy or law, in respect of all actions taken by it in connection with or related in any way to negotiating, implementing, documenting, or obtaining the requisite approvals of the DIP Facility and the use of Cash Collateral, including in respect of the granting of the DIP Liens and the Prepetition Secured Parties Adequate Protection Liens (as defined below), any challenges or objections to the DIP Facility or the use of Cash Collateral, and all documents related to any and all transactions contemplated by the foregoing. Accordingly, the DIP Lender shall be and hereby is indemnified and held harmless by the Debtors in respect of any claim or liability incurred in respect thereof or in any way related thereto in accordance with and as set forth in the DIP Loan Documents, *provided that* (i) the DIP Lender will not be indemnified for any cost, expense, or liability to the extent determined in a final, non-appealable judgment of a court of competent jurisdiction to have resulted solely from such parties' actual fraud, gross negligence, or willful misconduct, (ii) no indemnification shall be required to the extent arising from a material breach

of any obligation by the DIP Lender under the DIP Loan Documents as determined by a court of competent jurisdiction in a final, non-appealable judgment], and (iii) this paragraph [(F)(vi)] shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, or expenses arising from any non-Tax claim. No exception or defense exists in contract, law, or equity as to any obligation set forth, as the case may be, in this paragraph [(F)(vi)], or in the DIP Loan Documents, to the Debtors' obligation to indemnify and/or hold harmless the DIP Lender, as the case may be.

(vii) Release. Each of the Debtors, their estates, and the Secured Noteholder Parties, on their own behalf and on behalf of each of their past, present and future predecessors, successors, heirs, subsidiaries, and assigns have agreed to provide releases to each of the Released Parties (as defined below) as provided in Section 5.17 of this Interim Order.

(viii) Cash Collateral. The Debtors admit, stipulate, acknowledge, and agree that, in each case, except for any and all proceeds of the DIP Loans, all other cash of the Debtors, wherever located, and all cash equivalents, including cash in deposit accounts of the Debtors, as income, proceeds, products, rents or profits of other Prepetition Collateral, or otherwise, constitutes "cash collateral" of the Secured Noteholder Parties within the meaning of section 363(a) of the Bankruptcy Code (the "**Cash Collateral**"). On April 13, 2026, the Court entered the *Interim Order (I) Authorizing the Debtors to Use Cash Collateral; (II) Granting Adequate Protection to Prepetition Secured Parties; (III) Modifying Automatic Stay; (IV) Scheduling a Final Hearing; and (V) Granting Related Relief* [Docket No. 74] (the "**Cash Collateral Order**").

(G) Findings Regarding the Postpetition Financing and Use of Cash Collateral.

(i) Request for Postpetition Financing. The Debtors have requested from the DIP Lender, and the DIP Lender is willing, subject to the terms of this Interim Order and satisfaction of the conditions set forth in the DIP Loan Documents, to extend the DIP Loans on the terms and conditions set forth in this Interim Order and the DIP Loan Documents, respectively.

(ii) Immediate Need for Postpetition Financing and Use of Cash Collateral. The Debtors do not have sufficient liquidity, including Cash Collateral, without the financing requested in the Motion. The Debtors' ability to fund their operations and other efforts and activities is essential to the Debtors' continued viability as the Debtors seek to maximize the value of the assets of the estates for the benefit of all creditors of the Debtors. The ability of the Debtors to obtain sufficient working capital and liquidity through the proposed postpetition financing arrangements with the DIP Lender and the use of Cash Collateral as set forth in this Interim Order, the DIP Loan Agreement and the other DIP Loan Documents, as applicable, is vital to the preservation, maximization, and maintenance of the going concern value of each Debtor. Accordingly, the Debtors have an immediate need to obtain the postpetition financing and to use Cash Collateral as set forth in this Interim Order to, among other things, preserve and protect collateral value during these Chapter 11 Cases through the continuation of site safety, environmental compliance, and maintenance activities, which itself supports the adequacy of the protection being provided to all secured parties. The DIP Facility will enable the Debtors to consummate the sale of substantially all of their assets pursuant to the Court-approved marketing and sale process, thereby preserving and maximizing the value of the Debtors' estates for the benefit of all creditors.

(iii) No Credit Available on More Favorable Terms. As evidenced in the First Day Declaration and the DIP Declarations, given their current financial condition, and capital

structure, and the circumstances of the Chapter 11 Cases as demonstrated at the Interim Hearing, the Debtors are unable to obtain financing from sources other than the DIP Lender on terms more favorable than the DIP Facility. The Debtors are unable to procure financing (x) in the form of unsecured credit allowable as an administrative expense under sections 364(a), 364(b), or 503(b)(1) of the Bankruptcy Code, (y) in exchange for the grant of a superpriority administrative expense under section 364(c)(1) of the Bankruptcy Code, or (z) in exchange for the grant of liens on property of the estates pursuant to sections 364(c)(2) or 364(c)(3) of the Bankruptcy Code. In light of the foregoing, and considering all other alternatives, the Debtors have reasonably and properly concluded, in the exercise of their sound business judgment, that the DIP Facility represents the best financing available to the Debtors at this time, and is in the best interests of the Debtors, their estates, and all of their stakeholders.

(iv) Budget. The Debtors have prepared and delivered to the DIP Lender an initial budget (the "**Initial Budget**"), a copy of which is attached hereto as **Exhibit B**. The Initial Budget reflects the Debtors' projected receipts, disbursements (excluding any restructuring activities, net cash flow, liquidity and loans for each calendar week during the period from the date of entry of this Interim Order through and including the end of the fifth (5th) calendar week thereafter (the Initial Budget and each subsequent budget approved by the DIP Lender in its sole discretion and then in effect, the "**Approved Budget**"), in each case, subject to (i) with respect to any (A) for the first three variance testing dates (which shall be each Friday of each week after the date hereof) commencing with the first full week after the date hereof, the period commencing on the date of entry of this Interim Order and ending on such variance testing date and (B) thereafter, the two-week period ending on such variance testing date (the "**Variance Testing Period**"), in respect of the aggregate amount of Actual Disbursement Amounts (as defined in the DIP Loan

Agreement), 20% for such Variance Testing Period ("**Permitted Variances**"); and (ii) other exclusions set forth in the DIP Loan Documents. The Debtors believe that the Initial Budget is reasonable under the facts and circumstances. The DIP Lender is relying upon the Debtors' agreement to comply with the terms set forth in the DIP Loan Agreement, the other DIP Loan Documents, and this Interim Order, and with the Approved Budget, in determining to enter into the postpetition financing arrangements provided for herein and to consent to the Debtors' use of Cash Collateral as set forth herein. The Debtors shall provide the DIP Lender a revised proposed budget every other Friday commencing with the second Friday after the date hereof and continuing each one-week period thereafter (each, a "**Proposed Budget**"). If a Proposed Budget is approved by the DIP Lender in writing, it shall become the Approved Budget.

(v) Sale Process. The DIP Lender's willingness to make the DIP Loans and the Senior Secured Noteholders' and Junior Secured Noteholders' willingness to consent to the use of Cash Collateral was predicated upon (i) the entry of the Bidding Procedures Order (as defined below) approving bidding procedures and (ii) the entry of an order designating Bluegrass Infrastructure Partners Holdings, LLC as the stalking horse bidder and approving the Break-Up Fee and the Expense Reimbursement (each as defined in the Stalking Horse Purchase Agreement or as defined in the DIP Loan Agreement) in the form attached as Exhibit A to the Stalking Horse Purchase Agreement and otherwise in form and substance acceptable to DIP Lender (the "**Stalking Horse Order**"), and (iii) the Debtors' agreement to the Milestones as set forth in the DIP Loan Agreement. On May 2, 2026, the Court entered the order approving bidding procedures [Docket No. 120] (the "**Bidding Procedures Order**"). The Debtors have filed a notice seeking entry of the Stalking Horse Order. Absent such arrangements, the DIP Lender would not have agreed to make the DIP Loans and the Senior Secured Noteholders and Junior Secured Noteholders would not

have agreed to consent to the priming of their existing liens and the use of Cash Collateral as provided in the DIP Loan Documents and this Interim Order.

(vi) Certain Conditions to DIP Facility. The DIP Lender's willingness to make the DIP Loans is conditioned upon, among other conditions set forth in the DIP Loan Agreement: (a) the Debtors obtaining Court approval to enter into the DIP Loan Documents and to incur all of the obligations thereunder, and to confer upon the DIP Lender all applicable rights, powers, and remedies thereunder in each case as modified by this Interim Order; (b) the Debtors obtaining Court approval of and compliance with the "Milestones" set forth in the DIP Loan Agreement, which are hereby approved in all respects; and (c) the DIP Lender being granted, as security for the prompt payment of the DIP Facility and all other obligations of the Debtors under the DIP Loan Documents, perfected superpriority security interests in and liens upon all property and assets of the Debtors, including, but not limited to, a valid and perfected security interest in and liens upon all of the following now existing or hereafter arising or acquired property and assets, subject to the Carve-Out (as defined below): (i) all property and assets comprising Prepetition Collateral and (ii) all other property and assets of the Debtors, including any property or assets consisting of "Excluded Property" under any of the documents entered into in connection with the Prepetition CLN Obligations (collectively hereinafter referred to as the "**DIP Collateral**" which, for avoidance of doubt, shall (subject to the entry of the Final Order) include, the proceeds (the "**Avoidance Proceeds**") of any claim or cause of action arising under or pursuant to chapter 5 of the Bankruptcy Code or under any other similar provisions of applicable state, federal, or foreign law (including any other avoidance actions under the Bankruptcy Code) (collectively, the "**Avoidance Actions**")).

(vii) Business Judgment and Good Faith Pursuant to Sections 363(m) and 364(e). Any credit extended, loans made, and other financial accommodations extended to the Debtors by the DIP Lender, including, without limitation, pursuant to this Interim Order, has been extended, issued, or made, as the case may be, in "good faith" within the meaning of section 364(e) of the Bankruptcy Code and in express reliance upon the protections offered by sections 363(m) and 364(e) of the Bankruptcy Code, and the DIP Facility, the DIP Liens, and the DIP Superpriority Claim (as defined below) shall be entitled to the full protection of sections 363(m) and 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed, or modified, on appeal or otherwise.

(viii) Sections 506(c) and 552(b). The Debtors have agreed as a condition to obtaining financing under the DIP Facility and the use of Cash Collateral as set forth in this Interim Order that as a material inducement to the DIP Lender to agree to provide the DIP Facility and the Senior Secured Noteholders' and Junior Secured Noteholders' consent to the priming by the DIP Facility and to the use of Cash Collateral as set forth in this Interim Order, and in exchange for (a) the DIP Lender's willingness to provide the DIP Facility to the extent set forth herein, (b) the DIP Lender's and the Senior Secured Noteholders' and Junior Secured Noteholders' agreement to subordinate their liens and superpriority claims to the Carve-Out, and (c) the consensual use of Cash Collateral consistent with the Approved Budget, the terms of the DIP Loan Agreement, and the terms of this Interim Order, the DIP Lender and each of the Senior Secured Noteholders and Junior Secured Noteholders are entitled to receive (1) a waiver of any equities of the case exceptions or claims under section 552(b) of the Bankruptcy Code, and (2) a waiver of the provisions of section 506(c) of the Bankruptcy Code.

(ix) M&M Obligations. Certain parties (collectively, the "**M&M Lienholders**") may hold or assert mechanic's, materialmen's, or similar statutory liens (collectively, and solely to the extent such liens are valid, enforceable, and perfected, the "**M&M Liens**") against real property or other assets of the Debtors arising from the provision of labor, services, or materials to the Debtors prior to the Petition Date. The obligations secured by the M&M Liens are referred to herein as the "**M&M Obligations**." Nothing in this Interim Order shall constitute a finding or ruling that any M&M Lien is valid, enforceable, or perfected, and all rights of the Debtors and other parties in interest to challenge or object to the validity, enforceability, perfection, extent, or priority of any asserted M&M Lien or M&M Obligation are expressly reserved.

(x) Adequate Protection. The Secured Noteholder Parties, as well as all other parties holding valid property perfected liens as of the Petition Date (collectively, the "**Prepetition Secured Parties**"), are entitled, pursuant to sections 105, 361, 362, 363 and 364 of the Bankruptcy Code, to receive adequate protection, to the extent of any Diminution in Value of their respective interests in the Prepetition Collateral (including Cash Collateral) as set forth in the Cash Collateral Order and this Interim Order. The priming of the security interests in and liens on the Prepetition Collateral (including the M&M Liens) and any other interests of the Debtors in property pursuant to section 364(d) of the Bankruptcy Code, as contemplated by this Interim Order and the DIP Loan Documents and as further described below, is in the best interest of the Debtors and their estates, and is a necessary condition to the Debtors obtaining the DIP Facility which is required for the Debtors to continue to operate their business and maximize value for the benefit of their estates and creditors, including the Secured Noteholder Parties and M&M Lienholders, and the Debtors would not be able to obtain postpetition financing in a sufficient amount without granting such priming liens. Consistent with the requirements of section 364(d) of the Bankruptcy Code, and

without waiving the Debtors' or any other parties' right to assert any and all challenges, causes of action, and claims against the Secured Noteholder Parties or the M&M Lienholders, Prepetition Secured Parties shall receive adequate protection as set forth in this Interim Order, pursuant to sections 105, 361, 363, and 364 of the Bankruptcy Code, solely to the extent of any decrease in the value of its respective interest, if any, in the Prepetition Collateral resulting from (A) the use, sale, or lease by the Debtors of the Prepetition Collateral during the pendency of the Chapter 11 Cases; (B) the DIP Liens and the Carve-Out pursuant to this Interim Order and the DIP Loan Documents; and (C) the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code (such actual diminution, collectively, "**Diminution in Value**"). The Court finds that the M&M Lienholders are adequately protected by the DIP Facility, which will provide the Debtors with the liquidity necessary to preserve the going-concern value of the Debtors' business and assets, including the property subject to the M&M Liens, and that no further adequate protection is required to be provided to the M&M Lienholders at this time. The foregoing shall not, nor shall any provision of this Interim Order be construed as, a determination or finding that there has been or will be any Diminution in Value of the Prepetition Collateral (including Cash Collateral) or the property subject to the M&M Liens and the rights of all parties as to such issues are hereby preserved.

(xi) Good Cause. Good cause has been shown for the entry of this Interim Order. The relief requested in the Motion is necessary, essential, and appropriate under the circumstances as its implementation will, among other things, provide the Debtors with the necessary liquidity to (1) consummate a sale process, (2) preserve and maximize the value of the Debtors' estates for the benefit of all the Debtors' creditors, and (3) avoid immediate and irreparable harm to the Debtors, their creditors, and their assets. The terms of the DIP Facility and

this Interim Order are fair and reasonable, reflect each Debtor's exercise of its business judgment, and are supported by reasonably equivalent value and fair consideration. The DIP Facility and this Interim Order are the product of reasonable, arm's length, good faith negotiations between the Debtors, the DIP Lender, the Senior Secured Noteholders and Junior Secured Noteholders.

(xii) Immediate Entry. Sufficient cause exists for immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(c)(2). Any objections that were made (to the extent such objections have not been withdrawn, waived, resolved, or settled) are hereby overruled on the merits.

(xiii) Interim Hearing. Notice of the Interim Hearing and the relief requested in the Motion has been provided by the Debtors, whether by facsimile, electronic mail, overnight courier or hand delivery, to the (a) the U.S. Trustee; (b) counsel to the Committee; (c) counsel to the DIP Lender; (d) counsel to the Senior Secured Noteholders and Junior Secured Noteholders; (e) counsel to the M&M Lienholders; (f) counsel to the Hopkinsville Industrial Foundation, Inc. and Planters' Bank; (g) counsel to the City of Hopkinsville; (h) any party known after a reasonable inquiry to have asserted a lien against the Debtors' assets; (i) the United States Attorney's Office for the Southern District of Texas; (j) the Internal Revenue Service; (k) the state attorneys general for states in which the Debtors conduct business; (l) other regulatory agencies having a regulatory or statutory interest in these cases; and (m) any party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the "**Notice Parties**"), and this Court finding that in light of the nature of the relief requested, no other or further notice is required.

Based upon the foregoing, and upon the record made before the Court at the Interim Hearing and after due consideration and good cause appearing therefor:

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT**:

Section 1. Authorization and Conditions to Financing and Use of Cash Collateral.

1.1 Motion Granted. The Motion is granted on an interim basis solely to the extent provided in this Interim Order. Any objections to the entry of this Interim Order that have not been withdrawn, waived, resolved, or settled, are hereby denied and overruled on the merits.

1.2 Authorization of DIP Financing and Use of Cash Collateral

(a) The Debtors are hereby authorized to immediately borrow, incur, and guarantee (as applicable) the DIP Loans, pursuant to the terms and conditions of the DIP Loan Documents, this Interim Order and the Approved Budget, in an aggregate principal amount not to exceed $30.0 million, with such Borrowing to be made upon entry of this Interim Order and satisfaction of other conditions set forth in the DIP Loan Documents and in accordance with the Approved Budget.

(b) The Debtors are hereby authorized to (i) borrow under the DIP Facility and use Cash Collateral during the period (the "**Interim Financing Period**") commencing on the date of this Interim Order through and including the earlier to occur of (x) the date of entry of the Final Order or (y) the occurrence of a DIP Termination Event (as defined below) solely in accordance with, and for the purposes permitted by, the DIP Loan Documents, this Interim Order and the Approved Budget and (ii) pay all interest, costs, fees, and other amounts and obligations accrued or accruing under the DIP Loan Agreement and other DIP Loan Documents, all pursuant to the terms and conditions of this Interim Order, the Approved Budget, the DIP Loan Agreement, and the other DIP Loan Documents. The Initial Budget is hereby approved in all respects.

(a) Reporting. The Debtors shall timely provide the DIP Lender with (x) reasonable access to the Debtors' facilities, management, books, and records and (y) copies of

all financial reporting, each as required pursuant to the DIP Loan Documents. The Debtors shall provide a copy of each executed Trade Agreement (as defined in the *Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Pay Certain Prepetition Claims of Critical Vendors and (II) Granting Related Relief* [Docket No. 16]) to the DIP Lender. To the extent any order entered pursuant to the first day motions requires the maintenance and provision of a matrix or schedule of payments, the Debtors shall provide a copy of such matrix or schedule to counsel to the DIP Lender concurrently with the provision of such matrix or schedule to the U.S. Trustee.

1.3 Financing Documents.

(a) Authorization. The Debtors are hereby authorized to enter into, execute, deliver, and perform all obligations under the DIP Loan Documents. No obligation, payment, transfer, or grant of security hereunder or under the DIP Loan Documents shall be stayed, restrained, voidable, avoidable, or recoverable under the Bankruptcy Code or under any applicable state, federal, or foreign law (including, without limitation, under chapter 5 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute or foreign law), or be subject to any defense, reduction, setoff, counterclaim, recoupment, offset, recharacterization, subordination (whether equitable, contractual or otherwise), cross-claims, or any other challenge under the Bankruptcy Code or any applicable law, rule, or regulation by any person or entity. For the avoidance of doubt, the Debtors are hereby authorized to take any actions necessary to effectuate any intercompany transfers necessary to execute the option to acquire land in Poland in connection with Ascend Elements Poland 2 SP z.o.o's (the "**JV**").

(b) Approval; Evidence of Borrowing Arrangements. The DIP Loan Documents and DIP Obligations shall be valid, binding, and enforceable against the Debtors, their estates, and any successors thereto, including, without limitation, any trustee appointed in any of these Chapter 11 Cases or any case under chapter 7 of the Bankruptcy Code upon the conversion of any of these Chapter 11 Cases (collectively, the "**Successor Cases**"), and their creditors and other parties in interest, in each case, in accordance with the terms of this Interim Order and the DIP Loan Documents.

(c) Payment of DIP Fees and Other Expenses. Any and all fees and expenses payable pursuant to the DIP Loan Documents (collectively, any and all such fees and expenses, the "**DIP Fees**") are hereby approved and the Debtors are hereby authorized to pay, in cash and on a current basis, all reasonable and documented out-of-pocket costs, disbursements, and expenses the DIP Lender incurred at any time, as provided by the DIP Loan Documents and this Interim Order in accordance with Section 5.15 hereof upon the presentment to the Office of the U.S. Trustee, counsel for the Committee, and the Debtors of its fee and expense statements or invoices, in summary form, which shall not be required to contain time entries but shall include the number of hours billed by the applicable professional and a summary statement of services provided and the expenses incurred (redacted if necessary for privileged, confidential or otherwise sensitive information), to the extent available in the Approved Budget and in accordance with the DIP Loan Agreement. For the avoidance of doubt, the professionals to the DIP Lender shall not be required to file an application seeking compensation for services or reimbursement of expenses with the Court or comply with the U.S. Trustee fee guidelines. Within ten (10) calendar days of presentment of such statements, if no written objection to the reasonableness of the fees and expenses charged in any such invoice (or portion thereof) is made by the U.S. Trustee, the Committee, or the Debtors,

the Debtors shall pay in cash all such fees and expenses of the DIP Lender, and its advisors and professionals. Any such objection to the payment of such fees or expenses shall specify in writing the amount of the contested fees and expenses and the detailed basis for such objection. To the extent such an objection only contests a portion of an invoice, the undisputed portion thereof shall be promptly paid. If any such objection to payment of an invoice (or any portion thereof) is not otherwise resolved between the objecting party and the issuer of the invoice, either party may submit such dispute to the Court for a determination as to the reasonableness of the relevant disputed fees and expenses set forth in the invoice. This Court shall resolve any dispute as to the reasonableness of any fees and expenses hereof. Except as otherwise provided in this Interim Order, the DIP Fees shall not be subject to any offset, defense, claim, counterclaim, or diminution of any type, kind, or nature whatsoever.

(d) Amendments to DIP Loan Documents. Subject to the terms and conditions of the applicable DIP Loan Documents, the Debtors and the DIP Lender may make amendments, modifications, or supplements to any DIP Loan Document, and the DIP Lender may waive any provisions in the DIP Loan Documents, without further approval of the Court; *provided that* any amendments, modifications, or supplements to any DIP Loan Documents that operate to increase the aggregate commitments, the rate of interest payable thereunder, or existing fees, or to add new fees thereunder (excluding, for the avoidance of doubt, any amendment, consent or waiver fee) other than as currently provided in the DIP Loan Documents (collectively, the "**Material DIP Amendments**"), shall be filed with the Court, and the Debtors shall provide not less than five (5) Business Days prior written notice of any Material DIP Amendment and the proposed effective date thereof to (i) counsel to the Committee and (ii) the U.S. Trustee; *provided*, *further*, *that* the consent of the foregoing parties will not be necessary to effectuate any such amendment,

modification or supplement, except that any Material DIP Amendment that is subject to an objection filed and served on the DIP Lender and the Debtors within five (5) Business Days following receipt of such Material DIP Amendment must be approved by the Court prior to becoming effective.

1.4 Indemnification. The Debtors are authorized to indemnify and hold harmless the DIP Lender, and, each Indemnified Person (as defined in the DIP Loan Documents), in accordance with, and as set forth in, the DIP Loan Documents.

Section 2. Postpetition Lien; Superpriority Administrative Claim Status.

2.1 Postpetition Lien.

(a) Postpetition DIP Lien Granting. To secure performance and payment when due (whether at the stated maturity, by acceleration or otherwise) of any and all DIP Obligations of the Debtors to the DIP Lender of whatever kind, nature, or description, whether absolute or contingent, now existing or hereafter arising, the DIP Lender shall have and is hereby granted, effective as of the Petition Date, continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected security interests in and liens (collectively, the "**DIP Liens**") in and upon all DIP Collateral, subject and subordinate to the Carve-Out and Permitted Priority Encumbrances and the rankings and priority set forth in Section 2.6(b) below.

(b) DIP Lien Priority in DIP Collateral. The DIP Liens on the DIP Collateral securing the DIP Obligations shall be first and senior in priority to all other interests and liens of every kind, nature, and description, whether created consensually, by an order of the Court or otherwise, including, without limitation, liens or security interests granted in favor of third parties in conjunction with sections 363, 364, or any other section of the Bankruptcy Code or other applicable law. For the avoidance of doubt, the DIP Liens shall prime and be senior to (i) the

Prepetition Liens of the Secured Noteholder Parties on the Prepetition Collateral, (ii) the M&M Liens, and (iii) the Cash Collateral Order Adequate Protection Liens (as defined below) and shall be subject to the Carve-Out.

(c) Postpetition Lien Perfection. This Interim Order shall be sufficient and conclusive evidence of the priority, perfection, and validity of the DIP Liens, the Prepetition Secured Parties Adequate Protection Liens, and the other security interests granted herein, effective as of the Petition Date, without any further act and without regard to any other federal, state, or local requirements or law requiring notice, filing, registration, recording, or possession of the DIP Collateral, or other act to validate or perfect such security interest or lien, including, without limitation, control agreements with any financial institution(s) party to a control agreement or other depository account consisting of DIP Collateral, requirement to register liens on any certificates of title, or the filing or recordation of any mortgage, deed of trust, fixture filing, or other instrument with respect to any real property constituting DIP Collateral (a "**Perfection Act**"). Notwithstanding the foregoing, if the DIP Lender, in its sole discretion, elects for any reason to file, record, or otherwise effectuate any Perfection Act, then the DIP Lender is authorized to perform such act, and the Debtors are authorized and directed to perform such act to the extent necessary or required by the DIP Loan Documents and this Interim Order, which act or acts shall be deemed to have been accomplished as of the date and time of entry of this Interim Order notwithstanding the date and time actually accomplished, and, in such event, the subject filing or recording office is authorized to accept, file, or record any document in regard to such act in accordance with applicable law. The DIP Lender may choose to file, record, or present a certified copy of this Interim Order in the same manner as a Perfection Act, which shall be tantamount to a Perfection Act, and, in such event, the subject filing or recording office is authorized to accept,

file, or record such certified copy of this Interim Order in accordance with applicable law. Should the DIP Lender so choose and attempt to file, record, or perform a Perfection Act, no defect or failure in connection with such attempt shall in any way limit, waive, or alter the validity, enforceability, attachment, priority, or perfection of the postpetition liens and security interests granted herein by virtue of the entry of this Interim Order.

(d) To the extent that any applicable non-bankruptcy law otherwise would restrict the granting, scope, enforceability, attachment, or perfection of any liens and security interests granted and created by this Interim Order (including the DIP Liens and the Prepetition Secured Parties Adequate Protection Liens) or otherwise would impose filing or registration requirements with respect to such liens and security interests, such law is hereby preempted to the maximum extent permitted by the Bankruptcy Code, applicable federal or foreign law, and the judicial power and authority of this Court; *provided*, *however*, *that* nothing herein shall excuse the Debtors from payment of any local fees, if any, required in connection with such liens. By virtue of the terms of this Interim Order, to the extent that the DIP Lender has filed Uniform Commercial Code financing statements, mortgages, deeds of trust, or other security or perfection documents under the names of any of the Debtors (including all Guarantors), such filings shall be deemed to properly perfect its liens and security interests granted and confirmed by this Interim Order without further action by the DIP Lender. For the avoidance of doubt, the failure of the DIP Lender to file any of such financing statements, mortgages, deeds of trust, or other security or perfection documents shall not in any way limit, waive, or otherwise impair the validity, enforceability, attachment, or perfection of the liens and security interests granted to the DIP Lender pursuant to this Interim Order or the Bankruptcy Code.

(e) Except as provided in this Interim Order, the DIP Liens, the DIP Superpriority Claim, and the Prepetition Secured Parties Adequate Protection Liens (i) shall not be made subject to or *pari passu* with (A) any lien, security interest, or claim heretofore or hereinafter granted in any of these Chapter 11 Cases or any Successor Cases and shall be valid and enforceable against the Debtors, their estates, any trustee, or any other estate representative appointed or elected in these Chapter 11 Cases or any Successor Cases and/or upon the dismissal of any of these Chapter 11 Cases or any Successor Cases; (B) any lien that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or otherwise; and (C) any intercompany or affiliate lien or claim; and (ii) shall not be subject to sections 510, 549, 550, or 551 of the Bankruptcy Code.

2.2 Superpriority Administrative Expenses.

(a) DIP Loans. Subject to the Carve-Out, on account of all DIP Obligations now existing or hereafter arising pursuant to this Interim Order, the DIP Loan Documents, or otherwise, the DIP Lender is granted allowed superpriority administrative expense claims pursuant to section 364(c)(1) of the Bankruptcy Code, having priority in right of payment over any and all other obligations, liabilities, and indebtedness of the Debtors, whether now in existence or hereafter incurred by the Debtors, and over any and all administrative expenses or priority claims of the kind specified in, or ordered pursuant to, *inter alia*, sections 105, 326, 328, 330, 331, 364(c)(1), 365, 503(b), 507(a), 507(b), 546(c), 1113, or 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy, or attachment, which allowed superpriority administrative claim shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof

(including, subject to entry of the Final Order, proceeds of Avoidance Actions) (such superpriority administrative expense claim, the "**DIP Superpriority Claim**").

2.3 Carve-Out. For purposes of this Interim Order, "**Carve-Out**" means the collective sum of: (i) all fees required to be paid to the Clerk of the Court and to the U.S. Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below) (collectively, the "**Statutory Fees**"); plus the sum of (ii) all reasonable and documented fees and expenses up to $50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below) (the "**Chapter 7 Trustee Carve-Out**"); (iii) to the extent allowed at any time, whether by final order, interim order, procedural order, or otherwise, subject to the Approved Budget, all unpaid fees, costs and expenses (including any success or transaction fees then earned and payable) costs, disbursements and expenses prior to or after delivery of a Carve Out Trigger Notice (defined below) (the "**Allowed Professional Fees**") incurred or earned by persons or firms retained by the Debtors pursuant to sections 327, 328, or 363 of the Bankruptcy Code (the "**Debtor Professionals**") or the Committee pursuant to sections 327, 328 or 1103 of the Bankruptcy Code (the "**Committee Professionals**" and, together with the Debtor Professionals, the "**Professional Persons**") at any time before or on the first business day following delivery by the DIP Lender of a Carve-Out Trigger Notice (as defined below), whether allowed by the Court prior to, on or after delivery of a Carve-Out Trigger Notice (the "**Pre-Trigger Carve-Out Cap**"); and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed $500,000 (inclusive of any prepetition retainer held by the applicable Professional Person to the extent not previously applied or returned) incurred after the first business day following delivery by the DIP Lender of the Carve-Out Trigger Notice (such date, the "**Trigger Date**"), to the extent allowed at

any time, whether by final order, interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the "**Post-Carve-Out Trigger Notice Cap**" and such amounts set forth in clauses (i) through (iv), the "**Carve-Out Cap**"); *provided that*, nothing herein shall be construed to impair any party's ability to object to court approval of the fees, expenses, reimbursement of expenses or compensation of any Professional Person. For purposes of the foregoing, "**Carve-Out Trigger Notice**" shall mean a written notice delivered by email by the DIP Lender to the Debtors, their lead restructuring counsel, the U.S. Trustee, and counsel to the Committee, if any (collectively, the "**Carve-Out Trigger Notice Parties**"), which notice may be delivered following the occurrence and during the continuation of a DIP Termination Event (as defined below), and shall describe in reasonable detail such DIP Termination Event that is alleged to have occurred and be continuing and stating that the Post-Carve-Out Trigger Notice Cap has been invoked. The DIP Lender shall not be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person incurred in connection with the Chapter 11 Cases or any Successor Cases under any chapter of the Bankruptcy Code, other than payment or reimbursement of any fees or disbursements from proceeds of DIP Collateral to the extent of the Carve-Out. Nothing in this Interim Order or otherwise shall be construed to obligate the DIP Lender, in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

2.4 Professional Fees Escrow Account. The Debtors are authorized to open a new bank account or designate an existing bank account that shall function as a segregated account held in trust for and exclusively available for the payment of fees and expenses of Professional Persons pursuant to this Interim Order (the "**Professional Fees Escrow Account**") in the amount equal to, but not to exceed, the Allowed Professional Fees budgeted for Professional Persons, if any (the

"**Budgeted Professional Expenses**"). Except for funding the Carve-Out from the DIP Collateral, the DIP Lender shall have no responsibility, liability, or obligation whatsoever to fund, direct payment or reimbursement of any fees or disbursements, or otherwise ensure that the Debtors fund the Professional Fees Escrow Account or that the Professional Fees Escrow Account has funds equal to the aggregate amount of the Budgeted Professional Expenses for any applicable period. The Debtors are authorized and directed to fund the Professional Fees Escrow Account on a weekly basis in an amount up to, but not to exceed, the Budgeted Professional Expenses for that week. Such funds shall be held in an identifiable segregated account for the benefit of the Professional Persons to be applied to the Allowed Professional Fees of the Professional Persons that are approved for payment pursuant to one or more orders of this Court. Any Allowed Professional Fees payable to the Professional Persons shall be paid first out of the Professional Fees Escrow Account. Any excess amounts in the Professional Fees Escrow Account after payment of the Professional Fees shall be subject in all respects to the DIP Liens. The funds in the Professional Fees Escrow Account shall remain DIP Collateral (subject to the Carve-Out) unless and until such funds are paid to the Professional Persons.

2.5 Re-Affirmation of Adequate Protection Under the Cash Collateral Order.[5] The Court hereby re-affirms the adequate protection granted to the Prepetition Secured Parties pursuant to the Cash Collateral Order, which adequate protection included the following:

(a) Adequate Protection Liens. Pursuant to Bankruptcy Code sections 361(2) and 363(c)(2), effective as of the Petition Date and perfected without the necessity of any further filings or other actions, each Collateral Agent, for the benefit of itself and the Prepetition Secured

[5] Terms used in this Section 2.5 but not otherwise defined herein shall have the meaning ascribed to them in the Cash Collateral Order.

Parties, was granted valid, binding, continuing, enforceable, fully perfected, nonavoidable, first-priority senior (with respect to the Prepetition Senior Secured Parties) and second-priority senior (with respect to the Prepetition Junior Secured Parties), additional, and replacement security interests in and liens on all of the Debtors' now-owned and hereafter-acquired real and personal property, assets and rights (the "**Cash Collateral Order Adequate Protection Liens**"), subject only to the Prepetition Permitted Liens and the Carve Out (as defined in the Cash Collateral Order).

(b) Adequate Protection Superpriority Claims. Pursuant to sections 503(b) and 507(b) of the Bankruptcy Code, the Prepetition Secured Parties were granted allowed superpriority administrative expense claims to the extent of any Diminution in Value (as defined in the Cash Collateral Order), which claims are senior to any and all other administrative expense claims in the Chapter 11 Cases, junior only to the Carve Out (as defined in the Cash Collateral Order).

(c) Adequate Protection Payments. The Debtors were authorized and directed to pay the reasonable professional fees, expenses and disbursements of (i) the Senior Secured Holder Advisors and (ii) the Collateral Agents, in each case incurred prior to or after the Petition Date, with such fees and expenses to be paid within five (5) business days of receipt of invoices therefor, without the need for Court approval or compliance with the U.S. Trustee guidelines.

(d) The foregoing adequate protection granted pursuant to the Cash Collateral Order shall remain in full force and effect; *provided that* the Cash Collateral Order Adequate Protection Liens and Adequate Protection Superpriority Claims (as defined in the Cash Collateral Order) are hereby made subject and subordinate to the Carve-Out, the DIP Liens, the DIP Superpriority Claim, and the Permitted Priority Encumbrances, as more fully set forth in this Order. The Senior Secured Noteholders and Junior Secured Noteholders have consented to such

subordination in exchange for the adequate protection provided under the Cash Collateral Order and this Order.

2.6 Prepetition Secured Parties Adequate Protection Claims and Liens. Subject to the Carve-Out and the terms of this Interim Order, pursuant to sections 105, 361, 362, 363(e), 364(d)(1), 503(b), 507(a), and 507(b) of the Bankruptcy Code, as adequate protection of their respective interests in their respective collateral, including any Cash Collateral, in an amount equal to the aggregate Diminution in Value of their interests in such collateral from and after the Petition Date. On account of such adequate protection, the interests of the Prepetition Secured Parties are hereby granted the following, in each case subject to the DIP Liens and the Carve-Out (collectively, the "**Adequate Protection**"):

(a) Adequate Protection Liens. Subject to Section 4.1, the Prepetition Secured Parties are hereby granted, effective and perfected as of the date of this Interim Order and without the necessity of any Perfection Act, valid and perfected postpetition replacement security interests in and liens upon the DIP Collateral which comprised their respective collateral as of the Petition Date (the "**Prepetition Secured Parties Adequate Protection Liens**"). The Prepetition Secured Parties Adequate Protection Liens shall be subject and subordinate to the Carve-Out, the DIP Liens, the DIP Superpriority Claim, and the Permitted Priority Encumbrances; *provided that*, with respect to one another, the Prepetition Secured Parties Adequate Protection Liens of each of the Senior Secured Noteholders, the Junior Secured Noteholders, and all other Prepetition Secured Parties shall have the same relative priority as to each asset that constitute their collateral that existed among their respective liens attaching to such asset on the Petition Date; *provided, further, that*, with respect to all other DIP Collateral that did not constitute Prepetition Collateral of any Prepetition Secured Party, the Adequate Protection Liens shall be pari passu with one another,

without preference or priority among them; *provided, further, that*, the Prepetition Secured Parties Adequate Protection Liens granted hereunder are in addition to, and not in lieu of, the Adequate Protection Liens granted under the Cash Collateral Order, and to the extent of any conflict between this Interim Order and the Cash Collateral Order with respect to the Adequate Protection Liens, this Interim Order shall control. The Prepetition Secured Parties Adequate Protection Liens (x) shall be senior to all other security interests in, liens on, or claims against any DIP Collateral, except as otherwise expressly provided herein (including with respect to the pari passu treatment among the Prepetition Secured Parties set forth in the preceding proviso), and (y) shall not be subject to or pari passu with any lien or security interest heretofore or hereinafter granted in the Chapter 11 Cases or any Successor Cases (other than as expressly set forth in the preceding proviso as among the Secured Noteholder Parties themselves), shall be valid and enforceable against any trustee appointed in the Chapter 11 Cases or any Successor Cases, and shall not be subject to sections 510, 549, or 550 of the Bankruptcy Code.

(b) Adequate Protection Superpriority Claims. As further adequate protection, and to the extent provided by sections 503(b) and 507(b) of the Bankruptcy Code, the Debtors are authorized to grant, and hereby are deemed to have granted effective as of the Petition Date, to the Collateral Agents (as defined in the Cash Collateral Order) and the Prepetition Secured Parties, allowed superpriority administrative expense claims in the Chapter 11 Cases ahead of and senior to any and all other administrative expense claims in the Chapter 11 Cases to the extent of any Diminution in Value (the "**Prepetition Secured Parties Adequate Protection Superpriority Claims**"), junior only to the Carve-Out, the DIP Liens, and the DIP Superpriority Claim. Subject to the Carve-Out, the DIP Liens, and the DIP Superpriority Claim, the Prepetition Secured Parties Adequate Protection Superpriority Claims shall not be junior or pari passu to any other

administrative claims against the Debtors and shall have priority over all now or hereinafter incurred administrative expense claims against the Debtors, including, without limitation, administrative expense claims of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1113, and 1114 of the Bankruptcy Code; *provided, that* any recovery from or against Avoidance Proceeds shall be subject to entry of a Final Order.

Section 3. DIP Termination Events; Waivers; Rights and Remedies; Relief from Stay.

3.2 DIP Termination Events. Each of the following shall constitute a "DIP Termination Event" unless waived in writing by the DIP Lender and in accordance with the applicable DIP Loan Documents: (i) the occurrence of any "Event of Default" as that term is defined in the DIP Loan Agreement; (ii) any failure to meet or satisfy any Milestone in accordance with the applicable DIP Loan Documents; (iii) the occurrence of the "Maturity Date" as defined in the DIP Loan Agreement; (iv) any material violation, breach, or default by any Debtor with respect to any of its obligations under this Interim Order or the DIP Loan Documents; (v) the termination of the DIP Loan Documents, or the modification of this Interim Order in a manner adverse to the DIP Lender without prior written consent; (vi) entry of an order authorizing and/or directing the reclamation of goods pursuant to section 546(c) of the Bankruptcy Code in excess of $500,000; (vii) the entry of an order granting relief from the automatic stay allow any creditor (other than the DIP Lender) to execute upon or enforce a lien on any collateral except with respect to Permitted Encumbrances (as defined in the DIP Loan Agreement) arising prior to the Petition Date in an aggregate amount not to exceed $1,000,000; (viii) conversion of any Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code; (ix) a trustee is appointed or elected in any Chapter 11 Case, or an examiner with the power to

operate the Debtors' businesses is appointed in any case; (x) if a Final Order is not entered in form and substance acceptable to the DIP Lender by May 21, 2026; (xi) the date of the Final Hearing, if this Interim Order is modified at the Final Hearing in a manner unacceptable to the DIP Lender; (xii) the Debtors shall withdraw the Bidding Procedures Motion and/or propose an Alternative Transaction (as defined in the Stalking Horse Purchase Agreement) that, in any case, does not provide for the repayment in full, in cash, of the DIP Obligations directly from the proceeds of such Alternative Transaction and upon the initial closing of such Alternative Transaction; (xiii) any modification, amendment, vacatur or stay of this Interim Order in any manner not consented to in writing by the DIP Lender; (xiv) any failure of the grant awarded to the Company by the Republic of Poland to remain in good standing and in full force and effect, with no event of default, termination, revocation, or material modification thereof having occurred; (xv) any failure to execute the JV's option to acquire land in Poland in connection with the JV before entry of the Final Order; and (xvi) a valid termination of the Asset Purchase Agreement by and among the purchaser, the Parent Borrower and the other parties from time to time thereto.

3.3 Additional DIP Termination Events.

(a) Prior to the payment in full in cash of all DIP Obligations, any request by the Debtors with respect to the following shall also constitute a DIP Termination Event: (i) to obtain postpetition loans or other financial accommodations pursuant to section 364(c) or 364(d) of the Bankruptcy Code that does not provide for the repayment in full in cash of the DIP Obligations at the initial closing of such transaction, other than as provided in this Interim Order or as may be otherwise permitted pursuant to the DIP Loan Documents; (ii) to challenge the application of any payments authorized by this Interim Order pursuant to section 506(b) of the

Bankruptcy Code; (iii) to propose or support any challenge pursuant to Section 4.1 of this Interim Order, or any challenge by any party in interest seeking to limit or prevent the DIP Lender from exercising their credit bid rights in connection with the sale of any assets of the Debtors; *provided*, *that* the Debtors' response to any information request by a party in interest shall not constitute "support" of a challenge; or (iv) to seek relief under the Bankruptcy Code, including, without limitation, under section 105 of the Bankruptcy Code, to the extent any such relief would interfere with or modify (A) the rights and remedies of the DIP Lender against the Debtors as provided in this Interim Order or any of the DIP Loan Documents, or (B) the exercise of such rights or remedies by the DIP Lender against the Debtors in accordance with the DIP Loan Documents or this Interim Order; *provided*, *however*, that the DIP Lender may otherwise consent in writing, but no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Lender.

(b) It shall also be a DIP Termination Event if the Debtors propose or support any chapter 11 plan or the sale of all or substantially all of the Debtors' assets (other than pursuant to the Sale Procedures Motion and the Sale Motion), or seek entry of an order confirming a chapter 11 plan or approving such non-conforming sale, that is not conditioned upon the payment of the DIP Obligations, in full in cash, directly from the proceeds of such transaction and upon the initial closing of such transaction, without the written consent of the DIP Lender.

3.4 Rights and Remedies upon a DIP Termination Event. Upon the expiration of five (5) business days following the delivery of a written notice by the DIP Lender of the occurrence of and during the continuance of a DIP Termination Event (such five (5) business day period, the "**Remedies Notice Period**"), (a) the DIP Lender shall be entitled to take any act or exercise any right or remedy as provided in this Interim Order or any DIP Loan Document, as applicable, including, without limitation, (i) declare all DIP Obligations owing under the DIP

Loan Documents to be immediately due and payable; (ii) terminate, reduce, or restrict any commitment to extend additional credit to the Debtors to the extent any such commitment remains; (iii) terminate the DIP Facility and any DIP Loan Document as to any future liability or obligation of the DIP Lender, but without affecting any of the DIP Obligations or the DIP Liens securing the DIP Obligations; (iv) invoke the right to charge interest at the default rate under the DIP Loan Documents; and/or (v) stop lending. For the avoidance of doubt, notwithstanding the foregoing, during the Remedies Notice Period, the Debtors may use Cash Collateral to fund the Carve-Out and in amounts necessary to avoid immediate and irreparable harm to the Debtors' estates all in accordance with this Interim Order and the Approved Budget, or that have otherwise been approved in advance in writing by the DIP Lender.

3.5 Modification of Automatic Stay. The automatic stay provisions of section 362 of the Bankruptcy Code and any other restriction imposed by an order of the Court or applicable law are hereby modified without further notice, application, or order of the Court to the extent necessary to permit the DIP Lender to perform any act authorized or permitted under or by virtue of this Interim Order, the DIP Loan Agreement, or the other DIP Loan Documents, as applicable, including, without limitation, (i) to implement the postpetition financing arrangements authorized by this Interim Order, (ii) to take any act to create, validate, evidence, attach or perfect any lien, security interest, right or claim in the DIP Collateral, (iii) to assess, charge, collect, advance, deduct and receive payments with respect to the DIP Obligations (or any portion thereof), including, without limitation, all interests, fees, costs, and expenses permitted under any of the DIP Loan Documents, and (iv) subject to the Remedies Notice Period, and *provided that* the Debtors or any party in interest with requisite standing has not obtained an order from this Court to the contrary prior to the expiration of the Remedies Notice

Period, to take any action and exercise all rights and remedies provided to it by this Interim Order, the DIP Loan Documents, or applicable law.

3.6 Following the occurrence of any "Event of Default" as that term is defined in the DIP Loan Agreement, the DIP Lender shall be required to file a motion with the Court seeking emergency relief (a "**Stay Relief Motion**" and the hearing on such motion, the "**Stay Relief Hearing**") of not less than five (5) business days' notice (the "**Stay Relief Notice Period**") for a further order of the Court modifying the automatic stay to permit the DIP Lender to exercise any other right or remedy permitted under the DIP Loan Documents. In the event the Court determines at the Stay Relief Hearing that an Event of Default has occurred, the Court may fashion an appropriate remedy, which remedy may include the exercise of any and all rights available to the applicable DIP Lender. Notwithstanding the foregoing, the DIP Lender shall not be obligated to provide any loans or advances at any time an Event of Default has occurred and is continuing, including during the Stay Relief Notice Period.

Section 4. Representations and Covenants.

4.1 Reservation of Third-Party Challenge Rights. The stipulations, releases, agreements, and admissions contained in this Interim Order, including, without limitation, paragraph E hereof, and the releases contained in clause (vii) thereof, and paragraph 5.17 hereof (collectively, the "**Prepetition Lien and Claim Matters**"), shall be binding on the Debtors, any subsequent trustee, responsible person, examiner with expanded powers, any other estate representative and all creditors and parties-in-interest, and all of their successors in interest and assigns, including without limitation the Committee, unless, and solely to the extent that (a) a party-in-interest has sought standing and requisite authority to commence a Challenge (as defined below) (other than the Debtors, as to which the ability to commence any Challenge is

irrevocably waived and relinquished) by timely filing an appropriate pleading (which shall include as an attachment or exhibit any applicable adversary complaint) under the Bankruptcy Code and Bankruptcy Rules, including, without limitation, as required pursuant to Part VII of the Bankruptcy Rules (in each case subject to the limitations set forth in this Section 4.1) challenging all or any portion of the Prepetition Lien and Claim Matters (each such proceeding or appropriate pleading commencing an adversary proceeding or other contested matter, a "**Challenge**") by no later than (i) the date which is 60 calendar days after entry of this Interim Order or (ii) such later date as set by an order of the Court for cause shown (such time period established by the foregoing clauses, the "**Challenge Period**"); *provided that* if a chapter 11 trustee is appointed or the Chapter 11 Cases are converted to cases under chapter 7 prior to the expiration of the Challenge Period, the chapter 11 or chapter 7 trustee, as applicable, shall have until the later of (1) the expiration of the Challenge Period, and (2) the thirtieth (30th) day after the appointment of the chapter 11 trustee or conversion of the Chapter 11 Cases to cases under chapter 7, as applicable, to commence a Challenge; *provided further*, if any adversary proceeding or contested matter is timely filed and is pending on the date, if any, on which any of the Chapter 11 Cases are converted to chapter 7, the chapter 7 trustee may continue to prosecute such adversary proceeding or contested matter on behalf of the Debtors' estates, without any further authorization or order of the Court.

4.2 Binding Effect. To the extent no Challenge is timely commenced by the expiration of the Challenge Period, or to the extent such proceeding does not result in a final non-appealable judgment or order of this Court that is inconsistent with the Prepetition Lien and Claim Matters, then, without further notice, motion or application to, or order of or hearing before this Court, and without the need or requirement to file any proof of claim, the Prepetition

Lien and Claim Matters shall become binding, conclusive and final on any person, entity or party-in-interest in the Chapter 11 Cases and their successors and assigns, and in any Successor case for all purposes, and shall not be subject to any challenge or objection by any party-in-interest, including, without limitation, a trustee, responsible individual, examiner with expanded powers or other representative of the Debtors' estates. Notwithstanding the foregoing, if any Challenge Proceeding is timely commenced, Prepetition Lien and Claims Matters shall nonetheless remain binding and preclusive (as provided in this paragraph) on the Debtors, the Committee, and any other person, entity or party-in-interest, except as to any such findings and admissions that were expressly and successfully challenged in such Challenge Proceeding as set forth in a final, non-appealable order of a court of competent jurisdiction. Nothing in this Interim Order vests or confers on any Person (as defined in the Bankruptcy Code), including the Committee, standing or authority to pursue any cause of action belonging to the Debtors or their estates.

Section 5. Other Rights and DIP Obligations.

5.1 No Modification or Stay of this Interim Order. The DIP Lender has acted in good faith in connection with the DIP Facility and with this Interim Order, and their reliance on this Interim Order is in good faith, and the DIP Lender is entitled to the protections of sections 363(m) and 364(e) of the Bankruptcy Code.

5.2 Rights of Access and Information. The Debtors shall comply with the rights of access and information afforded to the DIP Lender under the DIP Loan Documents.

5.3 Power to Waive Rights; Duties to Third Parties.

(a) Subject to the terms of the DIP Loan Documents, the DIP Lender shall have the right to waive any of the terms, rights, and remedies provided or acknowledged in this Interim

Order that are in favor of the DIP Lender (the "**DIP Lender Rights**"), and shall have no obligation or duty to any other party with respect to the exercise or enforcement, or failure to exercise or enforce, any DIP Lender Rights. Any waiver by the DIP Lender of any DIP Lender Rights shall not be nor shall it constitute a continuing waiver unless otherwise expressly provided therein. Any delay in or failure to exercise or enforce any DIP Lender Right shall neither constitute a waiver of such DIP Lender Right, subject the DIP Lender to any liability to any other party, nor cause or enable any party other than the Debtors to rely upon or in any way seek to assert as a defense to any obligation owed by the Debtors to the DIP Lender.

5.4 No Unauthorized Disposition of Collateral; Use of Cash Collateral; Investigation Budget.

(a) The Debtors shall not sell, transfer, lease, encumber, use, or otherwise dispose of any portion of the DIP Collateral (including receivables and Cash Collateral), other than pursuant to the terms of this Interim Order or as permitted by the DIP Loan Documents, and the Debtors are authorized to use Cash Collateral solely in a manner consistent with this Interim Order, the Approved Budget and the DIP Loan Documents (including permitted variances and exclusions to the Approved Budget permitted thereunder).

(b) Notwithstanding anything herein to the contrary, no portion of the proceeds of the DIP Facility or the DIP Collateral, including Cash Collateral, may be used for the payment of professional fees, disbursements, costs, or expenses incurred by any person in connection with (i) preventing, hindering, impeding, or delaying any of the DIP Lender's enforcement or realization upon, or exercise of rights in respect of, any of the DIP Collateral, other than to seek (based on a good faith assertion) a determination that a DIP Termination Event (as defined below) has not occurred or is not continuing or in connection with a remedies hearing, (ii) seeking to

amend or modify any of the rights or interests granted to the DIP Lender under this Interim Order or the DIP Loan Documents, including seeking to use Cash Collateral on a contested basis, (iii) asserting, commencing, or prosecuting any claims or causes of action, including, without limitation, any Challenge or any other actions under chapter 5 of the Bankruptcy Code (or any similar law), against the DIP Lender, or any of its respective affiliates, agents, attorneys, advisors, professionals, officers, directors, or employees, or (iv) asserting, joining, commencing, supporting, investigating, or prosecuting any Challenge, or any other action for any claim, counterclaim, action, cause of action, proceeding, application, motion, objection, defense, or other contested matter seeking any order, judgment, determination, or similar relief against, or adverse to the material interests of the DIP Lender, arising out of, in connection with, or relating to the DIP Loan Documents, or the transactions contemplated thereunder, including, without limitation, (A) any action arising under the Bankruptcy Code, (B) any so-called "lender liability" claims and causes of action, (C) any action with respect to the validity and extent of the DIP Obligations or the validity, extent, perfection and priority of the DIP Liens, (D) any action seeking to invalidate, set aside, avoid, reduce, set off, offset, re-characterize, subordinate (whether equitable, contractual, or otherwise), recoup against, disallow, impair, raise any defenses, cross-claims, or counterclaims, or raise any other challenges under the Bankruptcy Code or any other applicable domestic or foreign law or regulation against, or with respect to, the DIP Liens, in whole or in part, or (E) appeal or otherwise challenge this Interim Order or the Final Order. Notwithstanding the foregoing, no more than $25,000 in the aggregate of proceeds of the DIP Facility, DIP Collateral, or Cash Collateral may be used by any Committee in connection with the investigation or litigation of any potential Challenge.

(c) The Debtors shall consult with the DIP Lender regarding, and provide not less than five (5) business days' advance written notice of any material changes to the following: (i) any policies or obligations to or payment of employees (including, but not limited to, payment of any bonuses to insiders or payments of any prepetition claims on account of accrued PTO that exceeds the priority amounts set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code); and (ii) insurance policies, surety bonds, letters of credit, premium financing agreements.

(d) To the extent the Debtors make a payment regarding any taxes and fees for the prepetition portion of any "straddle" amount and the Court later determines such amount was not entitled to priority or administrative treatment under the Bankruptcy Code resulting in the return of such amounts, any such amounts refunded to the Debtors shall constitute cash collateral and shall be subject to the DIP Lender's liens, security interests, and other protections pursuant to this Interim Order to the same extent as if such amounts had never been disbursed. Any settlement of taxes and fees in excess of $50,000 in value shall require the prior written consent of the DIP Lender.

(e) The Debtors shall regularly consult with the advisors to the DIP Lender with respect to any material audit that (a) could have a material effect on the sale of the Debtors' assets, or (b) could reasonably be anticipated to result in an obligation, liability, or claim for at least $2 million (a "**Covered Audit**"). The Debtors shall use commercially reasonable efforts to respond to any reasonably diligence requests regarding a Covered Audit. The Debtors shall not settle or pay any Covered Audit without the prior written consent of the DIP Lender.

(f) The Debtors shall obtain prior written consent of the DIP Lender before opening or closing any bank accounts. Any new bank accounts opened by the Debtors shall be subject to deposit control agreements in favor of, and reasonably acceptable to, the DIP Lender;

*provided*, *however*, that notwithstanding the foregoing, even if no deposit account control agreement has been formally entered into with respect to any such new bank account, the DIP Lender shall be deemed to have a perfected security interest in such new bank account and all amounts on deposit therein pursuant to the DIP Order. All Intercompany Transactions (as defined in the *Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue to Operate Their Existing Cash Management System; (B) Maintain Their Existing Bank Accounts; (C) Pay Related Prepetition Obligations; and (D) Continue to Perform Intercompany Transactions; and (II) Granting Related Relief* [Docket No. 7]) shall be made in compliance with the DIP Loan Documents. For the avoidance of doubt, the Debtors shall not make any investments, loans, or other non-ordinary course transfers to any non-Debtor affiliates without the prior written consent of the DIP Lender.

(g) Any funds resulting from a reduction of the Adequate Assurance Deposit (as defined in the *Debtors' Emergency Motion for Entry of an Order (I) Approving the Debtors' Proposed Adequate Assurance of Payment for Future Utility Services, (II) Approving Adequate Assurance Procedures, (III) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Service, and (IV) Granting Related Relief* [Docket No. 15]), shall remain DIP Collateral and be deposited into an account subject to the DIP Liens.

(h) Notwithstanding anything to the contrary contained in any order entered pursuant to the first day motions or any other prior order of the Court, any payment to be made and authorization contained in such orders shall be subject to this Interim Order. To the extent there is any inconsistency between the terms of the aforementioned orders entered pursuant to the first day motions and this Interim Order, the terms of this Interim Order shall control.

5.5 No Waiver. The failure of the DIP Lender, as applicable, to seek relief or otherwise exercise their rights and remedies under the DIP Loan Documents, the DIP Facility, or this Interim Order, as applicable, shall not constitute a waiver of any of the DIP Lender's rights hereunder, thereunder, or otherwise. Notwithstanding anything herein, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair the rights of the DIP Lender under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the rights of the DIP Lender to: (a) request conversion of the Chapter 11 Cases to cases under chapter 7, dismissal of the Chapter 11 Cases, or the appointment of a trustee in the Chapter 11 Cases; (b) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a plan; or (c) exercise any of the rights, claims, or privileges (whether legal, equitable, or otherwise) of the DIP Lender.

5.6 Maintenance of Collateral. Unless the DIP Lender otherwise consents in writing, until (i) the payment in full in cash or otherwise acceptable satisfaction of all DIP Obligations and (ii) the termination of the DIP Lender's obligations to extend credit under the DIP Facility, the Debtors shall comply with the covenants contained in the DIP Loan Documents regarding the maintenance and insurance of the DIP Collateral. Upon entry of this Interim Order and to the fullest extent provided by applicable law, the DIP Lender shall be, and shall be deemed to be, without any further action or notice, named as an additional insured and loss payee on each insurance policy maintained by the Debtors that in any way relates to the DIP Collateral.

5.7 Reservation of Rights. The terms, conditions, and provisions of this Interim Order are in addition to and without prejudice to the rights of the DIP Lender to pursue any and all rights and remedies under the Bankruptcy Code, the DIP Loan Documents, or any other applicable agreement or law, including, without limitation, rights to seek adequate protection

and/or additional or different adequate protection, to seek relief from the automatic stay, to seek an injunction, to oppose any request for use of Cash Collateral or granting of any interest in the DIP Collateral, or priority in favor of any other party, to object to any sale of assets, and to object to applications for allowance and/or payment of compensation of professionals or other parties seeking compensation or reimbursement from the estates.

5.8 Binding Effect.

(a) All of the provisions of this Interim Order and the DIP Loan Documents, the DIP Obligations, all liens, and claims granted hereunder in favor of the DIP Lender and each of the Secured Noteholder Parties, and any and all rights, remedies, privileges, immunities and benefits in favor of the DIP Lender and each of the Secured Noteholder Parties set forth herein, including, without limitation, the parties' acknowledgements, stipulations, and agreements in Paragraph E of this Interim Order, subject to Section 4.1 hereof (without each of which the DIP Lender would not have entered into or provided funds under the DIP Loan Documents and the Senior Secured Noteholders and Junior Secured Noteholders would not have consented to the priming of the Prepetition Liens as set forth herein, and the Senior Secured Noteholders and Junior Secured Noteholders would not have consented to the use of Cash Collateral provided for hereunder) provided or acknowledged in this Interim Order, and any actions taken pursuant thereto, shall be effective and enforceable as of the Petition Date immediately upon entry of this Interim Order and not subject to any stay of execution or effectiveness (all of which are hereby waived), notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062, and 9024, or any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, shall continue in full force and effect, and shall survive entry of any other order or action, including, without limitation, any order which may be entered confirming any chapter 11 plan providing for the

refinancing, repayment, or replacement of the DIP Obligations, converting one or more of the Chapter 11 Cases to any other chapter under the Bankruptcy Code, dismissing one or more of the Chapter 11 Cases, approving any sale of any or all of the DIP Collateral or vacating, terminating, reconsidering, revoking, or otherwise modifying this Interim Order or any provision hereof; *provided that*, in the event a Final Order is entered, the terms and conditions of such Final Order shall control over this Interim Order; *provided further that* such Final Order must affirm each of the provisions, protections, grants, statements, stipulations, and agreements in this Interim Order in order for such provisions, protections, grants, statements, stipulations, and agreements to remain in effect after entry of the Final Order. The notice requirements of Bankruptcy Rule 6004(a) and the fourteen-day stay provisions of Bankruptcy Rules 6004(h) and 4001(a)(3) are hereby waived with respect to the effectiveness and enforceability of this Interim Order.

(b) Nothing in these Chapter 11 Cases may impair the DIP Superpriority Claim and the DIP Lender's liens on and security interests in the DIP Collateral and all other claims, liens, adequate protections, and other rights granted pursuant to the terms of this Interim Order, which shall continue in full force and effect notwithstanding any dismissal of one or more of the Chapter 11 Cases until the DIP Obligations are indefeasibly paid and satisfied in full. Notwithstanding any such dismissal, this Court shall retain jurisdiction for the purposes of enforcing all such claims, liens, protections, and rights referenced in this paragraph and otherwise in this Interim Order.

(c) Except as set forth in this Interim Order, in the event this Court modifies, reverses, vacates, or stays any of the provisions of this Interim Order or any of the DIP Loan Documents, such modifications, reversals, vacatur, or stays shall not affect the (i) validity, priority, or enforceability of any DIP Obligations incurred prior to the actual receipt of written notice by

the DIP Lender of the effective date of such modification, reversal, vacatur, or stay, (ii) validity, priority, or enforceability of the DIP Liens, DIP Superpriority Claim, the Prepetition Secured Parties Adequate Protection Liens and the Prepetition Secured Parties Adequate Protection Claims, or (iii) rights or priorities of the DIP Lender or any CLN Secured Party pursuant to this Interim Order with respect to the DIP Collateral or any portion of the DIP Obligations. All such liens, security interests, claims and other benefits shall be governed in all respects by the original provisions of this Interim Order, and the DIP Lender and the Secured Noteholder Parties shall be entitled to all the rights, remedies, privileges and benefits arising under sections 363(m) and 364(e) of the Bankruptcy Code.

(d) This Interim Order shall be binding upon the Debtors, all parties in interest in the Chapter 11 Cases, and their respective successors and assigns, including, without limitation, (i) any trustee or other fiduciary appointed in the Chapter 11 Cases or any subsequently converted bankruptcy case(s) of any Debtor and (ii) any liquidator, receiver, administrator, or similar such person or entity appointed in any jurisdiction or under any applicable law. This Interim Order shall also inure to the benefit of the Debtors, DIP Lender, and each of their respective successors and assigns.

5.9 No Discharge. The DIP Obligations shall not be discharged by the entry of an order confirming any plan of reorganization in any of these Chapter 11 Cases, notwithstanding the provisions of section 1141(d) of the Bankruptcy Code, unless such obligations have been indefeasibly paid in full in cash, on or before the effective date of such confirmed plan of reorganization, or the DIP Lender has otherwise agreed in writing.

5.10 No Priming of DIP Obligations. Notwithstanding anything to the contrary herein, from and after the entry of this Interim Order, absent the express written consent of the

DIP Lender, no Debtor shall seek authorization from this Court to obtain or incur any indebtedness or enter into an alternative financing facility other than the DIP Facility (a "**Competing DIP Facility**") seeking to impose liens on any DIP Collateral ranking on a *pari passu* or priming basis with respect to the DIP Liens held by the DIP Lender; *provided*, *however*, that nothing herein shall preclude the Debtors from seeking authorization to incur any indebtedness or enter into any Competing DIP Facility that provides for the payment in full in cash of the DIP Obligations at the initial closing of such Competing DIP Facility.

5.11 Section 506(c) Waiver. No costs or expenses of administration which have been or may be incurred in these Chapter 11 Cases at any time (including, without limitation, any costs and expenses incurred in connection with the preservation, protection, or enhancement of value by the DIP Lender upon the DIP Collateral) shall be charged against the DIP Lender, or any of the DIP Obligations or the DIP Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code or otherwise without the prior express written consent of the affected DIP Lender, in its sole discretion, and no such consent shall be implied, directly or indirectly, from any other action, inaction, or acquiescence by any such agents or creditors (including, without limitation, consent to the Carve-Out or the approval of any budget hereunder).

5.12 Section 552(b) Waiver. The DIP Lender shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, to the extent applicable, and the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to the DIP Lender, or the Secured Noteholder Parties, with respect to proceeds, products, offspring, or profits of any of the DIP Collateral or the Prepetition Collateral, as applicable.

5.13 No Marshaling/Application of Proceeds.

(a) In no event shall the DIP Lender be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the DIP Collateral and all proceeds shall be received and applied in accordance with the DIP Loan Documents.

(b) Notwithstanding anything to the contrary in this Interim Order, the respective DIP Obligations shall be satisfied from the proceeds of DIP Collateral; *provided* that the DIP Lender shall use commercially reasonable efforts to satisfy the DIP Obligations from DIP Collateral other than the proceeds of Avoidance Actions, where available.

5.14 Right to Credit Bid. The Debtors acknowledge and agree that, pursuant to section 363(k) of the Bankruptcy Code, the DIP Lender shall have the right to credit bid the full amount of the DIP Obligations in connection with this Interim Order and any sale of the Debtors' assets pursuant to the Bidding Procedures Order or otherwise.

5.15 Payment of DIP Lender Fees and Expenses. The Debtors shall pay (i) the fees and expenses of the DIP Lender, including its counsel and other advisors, in connection with the Chapter 11 Cases included to the extent reimbursable under the DIP Facility, the DIP Loan Agreement, or the other DIP Loan Documents, as applicable, whether incurred before or after the Petition Date and (ii) all out-of-pocket costs and expenses of the DIP Lender incurred in connection with the Chapter 11 Cases, including, without limitation, fees and disbursements of counsel in connection with the enforcement or preservation of any rights under the DIP Facility, the DIP Loan Agreement, or the other DIP Loan Documents.

5.16 Limits on Lender Liability.

(a) Solely as a result of making any loan under the DIP Loan Agreement, authorizing the use of Cash Collateral or in exercising any rights or remedies as and when

permitted pursuant to this Interim Order or the DIP Loan Documents, the DIP Lender shall not be deemed to (i) be in control of the operations of the Debtors or to be acting as a "controlling person," "responsible person," or "owner or operator" with respect to the operation or management of the Debtors, have authority to determine the manner in which any of the Debtors' operations are conducted, or be a control person or insider of any of the Debtors, so long as such party's actions do not constitute, within the meaning of 42 U.S.C. § 9601(20)(F), actual participation in the management or operational affairs of a facility owned or operated by a Debtor, or otherwise cause liability to arise to the federal or state government or the status of responsible person or managing agent to exist under applicable law (as such terms, or any similar terms, are used in the Internal Revenue Code, WARN Act, the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.*, as amended, or any similar federal or state statute) or (ii) owe any fiduciary duty to any of the Debtors, their creditors, shareholders, or estates. Furthermore, nothing in this Interim Order shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Lender of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtors and their respective affiliates (as defined in section 101(2) of the Bankruptcy Code). The DIP Lender does not control (and has not in the past controlled) any of the Debtors or their properties or operations by virtue of any of the actions taken with respect to, in connection with, related to, or arising from the DIP Loan Documents or this Interim Order.

(b) Subject to entry of the Final Order, as to the United States, its agencies, departments, or agents, nothing in this Interim Order or the DIP Loan Documents shall discharge, release or otherwise preclude any valid right of setoff or recoupment that any such entity may have.

5.17 Release. Each of the Debtors and their estates, on their own behalf and on behalf of each of their past, present and future predecessors, successors, heirs, subsidiaries, and assigns, hereby forever, unconditionally, permanently, and irrevocably release, discharge, and acquit the DIP Lender, and each of the Senior Secured Noteholders and Junior Secured Noteholders, and (in such capacity) each of their, respective successors, assigns, affiliates, parents, subsidiaries, partners, controlling persons, representatives, agents, attorneys, advisors, financial advisors, consultants, professionals, officers, directors, members, managers, shareholders, and employees, past, present and future, and their respective heirs, predecessors, successors and assigns (collectively, the "**Released Parties**") of and from any and all claims, controversies, disputes, liabilities, obligations, demands, damages, expenses (including, without limitation, attorneys' fees), debts, liens, actions, and causes of action of any and every nature whatsoever, whether arising in law or otherwise, and whether known or unknown, matured or contingent, arising under, in connection with, or relating to (i) the DIP Facility, (ii) the DIP Loan Documents, (iii) the Senior Note Purchase Agreement, or (iv) the Junior Note Purchase Agreement] as applicable, including, without limitation, (a) any so-called "lender liability" or equitable subordination claims or defenses, (b) any and all "claims" (as defined in the Bankruptcy Code) and causes of action arising under the Bankruptcy Code, and (c) any and all offsets, defenses, claims, counterclaims, set off rights, objections, challenges, causes of action, and/or choses in action of any kind or nature whatsoever, whether arising at law or in equity, including any recharacterization, recoupment, subordination, avoidance, or other claim or cause of action arising under or pursuant to section 105 or chapter 5 of the Bankruptcy Code or under any other similar provisions of applicable state, federal, or foreign law, including, without limitation, any right to assert any disgorgement or recovery, in each case, with respect to the

extent, amount, validity, enforceability, priority, security, and perfection of any of the Senior Notes, Junior Notes,] the DIP Obligations and the DIP Loan Documents, or the DIP Liens, and further waive and release any defense, right of counterclaim, right of setoff, or deduction to the payment of the DIP Obligations that the Debtors now have or may claim to have against the Released Parties, arising under, in connection with, based upon, or related to any and all acts, omissions, conduct undertaken, or events occurring prior to entry of this Interim Order. The Debtors are authorized in any payoff letter or similar agreement into which they enter upon payment in full of any DIP Obligations to provide a waiver and release substantially similar to the waiver and release set forth in this Section 5.17 of the DIP Lender and their related parties.

5.18 Survival. The provisions of this Interim Order, the validity, priority, and enforceability of the DIP Liens, the DIP Superpriority Claim, the Prepetition Secured Parties Adequate Protection Liens, the Prepetition Secured Parties Adequate Protection Claims, and any actions taken pursuant hereto shall survive, and shall not be modified, impaired or discharged by, entry of any order that may be entered (a) confirming any plan of reorganization in any of these Chapter 11 Cases, (b) converting any or all of these Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code, (c) dismissing any or all of these Chapter 11 Cases, (d) terminating the joint administration of these Chapter 11 Cases or any other act or omission, (e) approving the sale of any DIP Collateral pursuant to section 363(b) of the Bankruptcy Code (except to the extent permitted by the DIP Loan Documents), or (f) pursuant to which the Court abstains from hearing any of these Chapter 11 Cases. The terms and provisions of this Interim Order, including the claims, liens, security interests, and other protections (as applicable) granted to the DIP Lender and the Secured Noteholder Parties pursuant to this Interim Order, notwithstanding the entry of any such order, shall continue in any of these Chapter 11 Cases,

following dismissal of any of these Chapter 11 Cases or any Successor Cases, and shall maintain their priority as provided by this Interim Order until (i) in respect of the DIP Facility, all of the DIP Obligations, pursuant to the DIP Loan Documents and this Interim Order, have been indefeasibly paid in full in cash (such payment being without prejudice to any terms or provisions contained in the DIP Facility which survive such discharge by their terms) and all commitments to extend credit under the DIP Facility are terminated.

5.19 Proofs of Claim. The DIP Lender and the Secured Noteholder Parties shall not be required to file a proof of claim in any of the Chapter 11 Cases or any Successor Cases with respect to, as applicable, the DIP Obligations, the DIP Liens, the DIP Superpriority Claim, or any other claims or liens granted hereunder or created by this Interim Order of the DIP Loan Documents.

5.20 No Third-Party Rights. Except as specifically provided for herein, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holders, or any direct, indirect, or incidental beneficiary.

5.21 No Avoidance. No obligations incurred or payments or other transfers made by or on behalf of the Debtors on account of the DIP Facility shall be avoidable or recoverable from the DIP Lender under any section of the Bankruptcy Code, or any other federal, state, or other applicable law.

5.22 Reliance on Order. All postpetition advances under the DIP Loan Documents are made in reliance on this Interim Order.

5.23 Payments Free and Clear. Subject to Section 4.1, any and all payments or proceeds remitted to the DIP Lender, pursuant to the provisions of this Interim Order, any subsequent order of this Court or the DIP Loan Documents, shall, subject to the terms of this

Section 5.23, be irrevocable, received free and clear of any claims, charge, assessment, or other liability, including, without limitation, any such claim or charge arising out of or based on, directly or indirectly, section 506(c) of the Bankruptcy Code or section 552(b) of the Bankruptcy Code, whether asserted or assessed by, through or on behalf of the Debtors, and in the case of payments made or proceeds remitted after the delivery of a Trigger Notice, subject to the Carve-Out in all respects.

5.24 No Direct Obligation To Pay Allowed Professional Fees. The DIP Lender shall not be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person incurred in connection with the Chapter 11 Cases or any successor cases under any chapter of the Bankruptcy Code. Nothing in this Interim Order or otherwise shall be construed to obligate the DIP Lender, in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

5.25 Payments Held in Trust. Except as expressly permitted in this Interim Order or the DIP Loan Documents, and subject to the Carve-Out, in the event that any person or entity receives any payment on account of a security interest in DIP Collateral, receives any DIP Collateral or any proceeds of DIP Collateral prior to all DIP Obligations being indefeasibly paid in full in cash, such person or entity shall be deemed to have received, and shall hold, any such payment or proceeds of DIP Collateral in trust for the benefit of the DIP Lender and shall immediately turn over such proceeds to the DIP Lender, or as otherwise instructed by this Court, for application in accordance with this Interim Order and the DIP Loan Documents.

5.26 Limited Effect. In the event of a conflict between the terms and provisions of any of the DIP Loan Documents and this Interim Order, the terms and provisions of this Interim Order shall govern.

5.27 Headings. Section headings used herein are for convenience only and are not to affect the construction of or to be taken into consideration in interpreting this Interim Order.

5.28 Bankruptcy Rules. The requirements of Bankruptcy Rules 4001, 6003, and 6004, the Local Rules, and the Complex Case Procedures, in each case to the extent applicable, are satisfied by the contents of the Motion.

5.29 General Authorization. The Debtors, the DIP Lender, and the Secured Noteholder Parties are authorized to take any and all actions necessary to effectuate the relief granted in this Interim Order.

5.30 Retention of Exclusive Jurisdiction. This Court shall retain exclusive jurisdiction and power with respect to all matters arising from or related to the implementation or interpretation of this Interim Order, the DIP Loan Agreement, and the other DIP Loan Documents.

5.31 Final Hearing and Response Dates. The Final Hearing on the Motion pursuant to Bankruptcy Rule 4001(c)(2) will be held on _____, 2026, at ____ [a./p.]m. (prevailing Central Time). The Debtors shall promptly mail copies of this Interim Order to the Notice Parties, and to any other party that has filed a request for notices with this Court. The Debtors may serve the Motion and this Interim Order without the exhibits attached thereto as such exhibits are voluminous and available, free of charge, at the Debtors' claims and noticing agent's website: https://www.veritaglobal.net/ascend, and such notice is deemed good and sufficient and no further notice need be given. Any party in interest objecting to the relief

sought at the Final Hearing shall serve and file written objections, which objections shall be served upon the Notice Parties and shall be filed with the Clerk of the Court, in each case, to allow actual receipt of the foregoing no later than 4:00 p.m. (prevailing Central Time), on _____, 2026.

5.32 The requirements set forth in Bankruptcy Rule 6003(b) are satisfied. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion under the circumstances, and the requirements of Bankruptcy Rule 6004(a), the Local Rules, and the Complex Case Procedures are satisfied by such notice.

5.33 Notwithstanding the applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order shall be immediately effective and enforceable upon its entry.

5.34 All time periods set forth in this Interim Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

# EXHIBIT A

(DIP Loan Agreement)

# DEBTOR IN POSSESSION SECURED TERM LOAN AGREEMENT

$30,000,000

New York, New York
May 5, 2026

On April 9, 2026 (the "Petition Date"), Ascend Elements, Inc., a Delaware corporation (the "Parent Borrower"), and Ascend Elements US, LLC, a Texas limited liability company (together with the Parent Borrower, the "Borrowers" and individually, each a "Borrower") commenced Chapter 11 cases, which cases are being jointly administered under Chapter 11 Case No. 26-90440 (each a "Chapter 11 Case" and collectively, the "Chapter 11 Cases"), by filing separate voluntary petitions for reorganization relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"), with the United States Bankruptcy Court for the Southern District of Texas (Houston Division) (the "Bankruptcy Court"). The Loan Parties (as defined herein) continue to operate their respective businesses and manage their respective properties as debtors and debtors in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. The Borrowers have requested that Bluegrass Infrastructure Partners Holdings, LLC (together with its permitted successor and assigns, the "DIP Lender") under this Debtor in Possession Secured Term Loan Agreement (as amended, restated, amended and restated, supplemented, waived, extended, or otherwise modified from time to time, this "Loan Agreement"), make super priority term loans (the "Term Loans") from time to time evidenced by this Loan Agreement. Certain affiliates of the Borrowers who wish to guaranty the Obligations under this Loan Agreement (collectively with the Borrowers (other than with respect to their own obligations), the "Guarantors") are simultaneously executing guarantees pursuant to the Guaranty in favor of the DIP Lender. Capitalized terms used herein and not otherwise defined herein shall have the meanings provided in Section 18 of this Loan Agreement, provided that each term defined in the Uniform Commercial Code and not defined in this Loan Agreement shall have the meaning specified therein.

1. Term Loans.

(a) Subject to the terms and conditions hereof including the DIP Lender's receipt of a Borrowing Request (as defined below), the DIP Lender agrees to provide the Borrowers with Term Loans in the aggregate principal amount of $30,000,000 (the "Term Loans"), which shall be available upon the Bankruptcy Court's entry of the Interim Order; provided that the Term Loans shall be drawn only in accordance with the Approved Budget. Any Borrower may request the Term Loans pursuant to written notice (which may be by email) (a "Borrowing Request") delivered to the DIP Lender by a Responsible Officer no later than 12:00 p.m. New York City time two (2) Business Days prior to the proposed borrowing date of the Term Loans (or such shorter period as the DIP Lender may agree). The Borrowing Request shall be in the form of Exhibit B attached hereto or otherwise in a form reasonably satisfactory to the DIP Lender and shall specify (i) the applicable Borrower, (ii) the principal amount of the proposed Term Loan and (iii) the proposed borrowing date, which must be a Business Day. The DIP Lender shall provide each Term Loan in an aggregate amount not to exceed its Commitment with respect to such Term Loan and in accordance with the Approved Budget. Upon receipt of a Borrowing Request with respect to any Term Loan, subject to the satisfaction (or waiver) of the conditions set forth in Section 2(a) hereof, the DIP Lender shall make the proceeds of such Term Loan available to the applicable Borrower (or such other person in accordance with the proviso in Section 1(d) below) on the applicable date of funding of the Term Loan by transferring immediately available funds equal to such proceeds to the account specified in the Borrowing Request (or such account of such person in accordance with Section 1(d) below). The Commitment of the DIP Lender shall be permanently reduced upon the making of the relevant Term Loan in an amount equal to such Term Loan advanced by the DIP Lender. Any principal amount of the Term Loan that is repaid or prepaid may not be reborrowed.

(b) The aggregate principal amount of Term Loans outstanding, excluding any PIK Amount, shall not exceed $30,000,000, subject to any limitation of credit extensions under this Loan Agreement and the Financing Orders (the "Maximum Amount").

(c) The DIP Lender shall be entitled to rely upon, and shall be fully protected in relying upon, any Borrowing Request or similar notice believed by the DIP Lender to be genuine. The DIP Lender may assume that each Person executing and/or delivering any such notice was duly authorized, unless the responsible individual acting thereon for the DIP Lender has actual knowledge to the contrary.

(d) The Borrowers shall utilize the proceeds of Term Loans to (i) pay costs and professional fees of the Chapter 11 Cases of the Loan Parties (including to fund a carve-out), (ii) pay amounts authorized by acceptable first day orders, and any adequate protection as described in the Financing Orders, (iii) pay interest, premiums, fees and expenses payable hereunder to the DIP Lender as provided under the Financing Orders and (iv) fund general corporate needs of the Loan Parties, including working capital and other needs of the Loan Parties, in each case subject to the Financing Orders, the Approved Budget, subject to any Permitted Variances, this Loan Agreement, the Bankruptcy Code; provided that a portion of the Term Loans in an amount equal to the greater of (1) the applicable amount reflected in the Approved Budget and (2) the amount required to be paid pursuant to the grant documentation shall be used solely for the purpose of exercising the option of Ascend Elements Poland 2 sp. z o.o., an indirect subsidiary of the Parent Borrower, to acquire the real property located at Opole, Poland covered by land and mortgage registers under numbers: OP1O/00164138/8, OP1O/00171892/3 and OP1O/00165182/8 (the "Opole Property") pursuant to grant documentation (the "Opole Option"). For the avoidance of doubt, the proceeds of the Term Loans may not be used by any Loan Party to make a Restricted Payment.

2. Certain Conditions to Making Term Loans.

(a) The effectiveness of this Loan Agreement and the obligation of the DIP Lender to fund the Term Loans (including pursuant to each Borrowing Request) requested to be made by it shall be subject to the prior or concurrent satisfaction (or waiver by the DIP Lender) of each of the conditions precedent set forth in this clause (a):

(1) the Borrowers shall have paid any payment obligations based on delivered invoices then payable hereunder (including the reasonable and documented out-of-pocket fees and expenses of the DIP Lender, including, without limitation, those of counsel for the DIP Lender) or under any other applicable DIP Document;

(2) (A) the Borrowers and each Polish Loan Party shall have delivered formalities certificates, resolutions of the governing body and shareholder resolutions of each Borrower and each Polish Loan Party, as applicable, incumbency certificates and similar documents, in form and substance reasonably satisfactory to the DIP Lender with respect to this Loan Agreement and the other applicable DIP Documents and the transactions contemplated hereby and thereby and (B) each Polish Loan Party shall have delivered (i) an up-to-date (issued no earlier than 15 days before the Closing Date) certificate from the register of registered pledges regarding the absence of any prior registration of a registered pledge established on any assets of any Polish Loan Party; (ii) an up-to-date (issued no earlier than 15 days before the Closing Date) certificate from the register of registered pledges regarding the absence of any prior registration of a registered pledge established on any shares in any Polish Loan Party; (iii) a copy of the up-to-date constitutional documents of each Polish Loan Party; and (iv) the original of an excerpt of each

Polish Loan Party's entry in the Polish National Court Register, issued for each such entity no earlier than 10 days before the Closing Date;

(3) the Loan Parties shall have delivered (i) guarantees of each of the Guarantors, each in form and substance reasonably satisfactory to the DIP Lender with respect to this Loan Agreement and the other DIP Documents and the transactions contemplated hereby and thereby (provided that in the case of the French Subsidiary shall execute the Guaranty solely for the purpose of certain covenants as set forth therein) and (ii) the Closing Collateral Documents, each in form and substance reasonably satisfactory to the DIP Lender;

(4) the holders of the notes issued pursuant to the Senior Secured Convertible Note and Warrant Purchase Agreement, dated as of December 22, 2025, shall have consented to the priority of the DIP Lender's Liens as set forth in Section 11 hereto;

(5) all Equity Interests directly owned by any Borrower or any Guarantor, in each case as of the Closing Date, shall have been pledged pursuant to the Closing Collateral Documents;

(6) any representation or warranty by any Loan Party contained herein or in any other DIP Document shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of such date, except to the extent that such representation or warranty expressly relates to an earlier date;

(7) the Loan Parties shall have commenced the Chapter 11 Case and all of the "first day motions," "first day orders" and all related pleadings entered at the time of the Petition Date shall have been made available to the DIP Lender in advance, and shall be satisfactory in form and substance to the DIP Lender;

(8) the Bankruptcy Court shall have entered the Interim Order and the Interim Order shall not have been stayed, vacated, reversed, modified or amended without the DIP Lender's consent;

(9) no Default or Event of Default shall have occurred and be continuing or would result after giving effect to the Term Loans and the transactions contemplated herein;

(10) after giving effect to the making of the Term Loans, the aggregate principal amount of all Term Loans made hereunder would not exceed the Maximum Amount;

(11) the DIP Lender shall have received and approved the Initial Approved Budget in accordance with this Loan Agreement and the Financing Orders;

(12) the Chapter 11 Case shall not have been dismissed or converted to a case under chapter 7 of the Bankruptcy Code, and no trustee or examiner shall have been appointed in the Chapter 11 Cases;

(13) the Bankruptcy Court shall have entered an order, in form and substance reasonably acceptable to the DIP Lender, authorizing the Loan Parties to use Cash Collateral in a manner consistent with the Approved Budget;

(14) Purchaser and the Parent Borrower shall have entered into the Stalking Horse Purchase Agreement in form and substance acceptable to the DIP Lender;

(15) the Bankruptcy Court shall have entered an order, in form and substance reasonably acceptable to the DIP Lender, approving of the Purchaser as the stalking horse purchaser and the bid protections set forth in the Stalking Horse Purchase Agreement;

(16) with respect to the Term Loans made on the Closing Date, the Borrower shall have paid, or caused to be paid, at least $2,600,000.00 in legal expenses to Latham & Watkins LLP (subject to any requirements in the Interim Order); and

(17) the grant awarded by the Republic of Poland for the Apex 2 development project shall be in good standing and in full force and effect, with no event of default, termination, revocation, or material modification thereof having occurred.

Upon receipt of the Borrowing Request, satisfaction of the conditions set forth in Section 2(a), the DIP Lender shall promptly disburse funds to the applicable Borrower on the funding date set forth in the applicable Borrowing Request.

Each Borrowing Request shall be deemed to constitute, as of the date of such request and the date of the related funding, a representation and warranty by the Borrowers that the conditions in Section 2(a) have been satisfied.

3. Payment of Principal. FOR VALUE RECEIVED, the Borrowers promise to pay to the DIP Lender the sum of the unpaid principal amount of all Term Loans, on the Maturity Date, plus (ii) PIK Amounts plus (iii) all accrued and unpaid interest, fees and expenses to the extent required by this Loan Agreement.

4. Payment of Interest.

(a) Subject to the terms of this Loan Agreement, the Term Loans or any portion thereof shall bear interest on the principal amount thereof from time to time outstanding, from the date of the Term Loan until repaid, at a rate per annum equal to 8.0% per annum, compounded daily, which shall be payable in kind.

(b) Interest on the Term Loans shall be payable in kind monthly, in arrears, on the last Business Day of each month and on the Maturity Date (each an "Interest Payment Date"), commencing on the last Business Day of the month in which the applicable Term Loan is made. If any payment of any of the Obligations becomes due and payable on a day other than a Business Day, the maturity thereof will be extended to the next succeeding Business Day and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension. On each Interest Payment Date, the Borrowers shall pay interest by increasing the principal amount of this Loan Agreement (such amounts the "PIK Amounts"). Following an increase in the principal amount of this Loan Agreement as a result of a payment of a PIK Amount, this Loan Agreement will accrue interest on such increased principal amount from and after the applicable Interest Payment Date. References herein to the "principal amount" of this Loan Agreement include all increases in the principal amount of this Loan Agreement as a result of a payment of PIK Amounts.

(c) All interest hereunder shall be computed on the basis of a year of 365 or 366 days, as applicable, and in each case shall be payable for the actual number of days elapsed

(including the first day but excluding the last day), with daily compounding applied to the outstanding principal balance. Each determination by the DIP Lender of an interest rate hereunder shall be final, binding and conclusive on the Borrowers (absent manifest error).

(d) So long as an Event of Default shall have occurred and be continuing, and at the election of the DIP Lender, the interest rate applicable to the Obligations shall be increased by two percentage points (2.00%) per annum above the rate of interest otherwise applicable hereunder (the "Default Rate"), and all outstanding Obligations shall bear interest at the Default Rate applicable to such Obligations. Interest at the Default Rate shall accrue from the date of such Event of Default until such Event of Default is cured or waived (notwithstanding when the election by the DIP Lender was made) and shall be payable upon demand.

(e) It is the intention of the parties hereto that the DIP Lender shall conform strictly to usury laws applicable to it. Accordingly, if the transactions contemplated hereby or by any other DIP Document would be usurious as to the DIP Lender under laws applicable to it (including the laws of the United States of America and the State of New York or any other jurisdiction whose laws may be mandatorily applicable to the DIP Lender notwithstanding the other provisions of this Loan Agreement), then, in that event, notwithstanding anything to the contrary in this Loan Agreement or any other DIP Document or any agreement entered into in connection with or as security for the Obligations, it is agreed that the aggregate of all consideration which constitutes interest under law applicable to the DIP Lender that is contracted for, taken, reserved, charged or received by the DIP Lender under this Loan Agreement or any other DIP Document or agreements or otherwise in connection with the Obligations shall under no circumstances exceed the maximum amount allowed by such applicable law, any excess shall be canceled automatically and if theretofore paid shall be credited by the DIP Lender on the principal amount of the Obligations (or, to the extent that the principal amount of the Obligations shall have been or would thereby be paid in full, refunded by the DIP Lender to the Borrowers). If at any time and from time to time (i) the amount of interest payable to the DIP Lender on any date shall be computed at the highest lawful rate applicable to the DIP Lender pursuant to this Section 4(e) and (ii) in respect of any subsequent interest computation period the amount of interest otherwise payable to the DIP Lender would be less than the amount of interest payable to the DIP Lender computed at the highest lawful rate applicable to the DIP Lender, then the amount of interest payable to the DIP Lender in respect of such subsequent interest computation period shall continue to be computed at the highest lawful rate applicable to the DIP Lender until the total amount of interest payable to the DIP Lender shall equal the total amount of interest which would have been payable to the DIP Lender if the total amount of interest had been computed without giving effect to this Section 4(e).

(f) If, after the date hereof, the DIP Lender reasonably determines that any Change In Law has the effect of reducing the return on the DIP Lender's or such holding company's capital as a consequence of the DIP Lender's Term Loans hereunder to a level below that which the DIP Lender or such holding company could have achieved but for such Change in Law (taking into consideration the DIP Lender's or such holding company's then existing policies with respect to capital adequacy and assuming the full utilization of such entity's capital) by any amount reasonably deemed by the DIP Lender to be material, then the DIP Lender may notify the Borrowers thereof. Following receipt of such notice, the Borrowers agree to pay the DIP Lender on demand the amount of such reduction of return of capital as and when such reduction is determined, payable promptly (but in no event later than ten (10) days) after presentation by the DIP Lender to the Borrowers of a statement in the amount and setting forth in reasonable detail the DIP Lender's calculation thereof and the assumptions upon which such calculation was based (which statement shall be deemed true and correct absent manifest error). In determining such amount, the DIP Lender may use any reasonable averaging and attribution methods.

5. Payments. All cash payments of principal, interest and all other Obligations in respect of this Loan Agreement shall be made in lawful money of the United States of America in same day funds to the DIP Lender at the account as shall be designated in a written notice delivered by the DIP Lender to the Borrowers. Each payment made hereunder shall be credited first to fees and expenses then due and payable, second to interest then due and payable and the remainder of such payment shall be credited to principal, and interest shall thereupon cease to accrue upon the principal so repaid. The Borrower shall make each payment required under this Loan Agreement prior to 3:00 p.m. New York City time on the date when due, in immediately available funds. Any amounts received after such time on any date may, in the sole discretion of the DIP Lender, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. Notwithstanding the foregoing, at the sole election of the DIP Lender, up to the full amount of the Obligations outstanding on the Maturity Date or the date of any prepayment in full may be applied against the purchase price to be paid by the DIP Lender (or its affiliates, successors or assignees) under the Stalking Horse Purchase Agreement (or such other sale of the Acquired Assets to the DIP Lender (or its affiliates, successors or assignees) as approved by the Bankruptcy Court).

6. Reserved.

7. Mandatory Prepayments.

(a) In each case, subject to the terms and conditions of the Financing Orders, Stalking Horse Purchase Agreement and the Approved Budget:

i. No later than three (3) Business Days following receipt by any Loan Party of cash proceeds of (x) any asset Disposition (other than Dispositions permitted by Section 15(f)) or (y) any Disposition of all or a portion of the Acquired Assets, unless the DIP Lender agrees otherwise, the Borrower shall prepay the Term Loans in an amount equal to all such proceeds, net of (x) commissions and other reasonable and customary transaction costs, fees and expenses properly attributable to such transaction and payable by the Borrower or any Loan Party in connection therewith (in each case, paid to non-affiliates), and (y) with respect to proceeds from the Disposition of assets securing obligations owed to a third party, which Lien is senior to the Liens securing the Obligations under this Loan Agreement, the amount of such proceeds required by an order of the Bankruptcy Court to repay such third party obligations.

ii. No later than one (1) Business Day following receipt by any Loan Party of cash proceeds of any debt securities or other indebtedness not permitted under this Loan Agreement, the Borrower shall prepay the Term Loans in an amount equal to all such proceeds, net of underwriting discounts and commissions and other reasonable costs or fees paid to non-affiliates in connection therewith.

(b) Nothing in this Section 7 shall be construed to constitute the DIP Lender's consent to any transaction that is not permitted by other provisions of the Financing Orders, the Stalking Horse Purchase Agreement, this Loan Agreement or the other DIP Documents.

8. Fees. As consideration for DIP Lender making available the Term Loans on the Closing Date, the Borrowers shall pay to the DIP Lender a funding fee (the "Funding Fee") in an aggregate amount equal to 5.00% of the principal amount of the Lender's commitment to make the Term Loans. The entire amount of the Funding Fee shall be fully earned, and shall be due and payable in kind, upon the Bankruptcy Court's entry of the Interim Order.

9. Indemnity. The Borrowers shall indemnify and hold harmless the DIP Lender and each of its affiliates, and each such Person's respective officers, directors, employees, equityholders, attorneys, agents and representatives (each, an "Indemnified Person"), from and against any and all suits, actions, proceedings, claims, damages, losses, liabilities and reasonable and documented out-of-pocket expenses

(including reasonable and documented out-of-pocket attorneys' fees and expenses limited to the reasonable and documented out-of-pocket fees and expenses of one primary outside counsel to the Indemnified Persons taken as a whole (and, if necessary, one local counsel in each relevant jurisdiction) and in the event of an actual or perceived conflict, one outside conflicts counsel to all similarly affected indemnified persons taken as a whole in each applicable jurisdiction) that may be instituted or asserted against or incurred by any such Indemnified Person as the result of credit having been extended, suspended or terminated under this Loan Agreement and the other DIP Documents and the administration of such credit, and in connection with or arising out of the transactions contemplated hereunder and thereunder and any actions or failures to act in connection therewith, and legal costs and expenses arising out of or incurred in connection with disputes between the DIP Lender on the one hand and the Loan Parties on the other hand; provided, that (i) the Borrowers shall not be liable for any indemnification to an Indemnified Person to the extent that any such suit, action, proceeding, claim, damage, loss, liability or expense results solely from that Indemnified Person's actual fraud, gross negligence or willful misconduct as determined in a final non-appealable judgment by a court of competent jurisdiction, (ii) no indemnification shall be required to the extent arising from a material breach of any obligation by the DIP Lender under the DIP Documents as determined by a court of competent jurisdiction in a final, non-appealable judgement and (iii) this Section 9 shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

**NONE OF THE DIP LENDER, EACH OF ITS AFFILIATES, AND EACH SUCH PERSON'S RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, EQUITYHOLDERS, ATTORNEYS, AGENTS AND REPRESENTATIVES SHALL BE RESPONSIBLE OR LIABLE TO ANY OTHER PARTY TO ANY DIP DOCUMENT, ANY SUCCESSOR, ASSIGNEE OR THIRD PARTY BENEFICIARY OF SUCH PERSON OR ANY OTHER PERSON ASSERTING CLAIMS DERIVATIVELY THROUGH SUCH PARTY, FOR INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES THAT MAY BE ALLEGED AS A RESULT OF CREDIT HAVING BEEN EXTENDED, SUSPENDED OR TERMINATED UNDER ANY DIP DOCUMENT OR AS A RESULT OF ANY OTHER TRANSACTION CONTEMPLATED HEREUNDER OR THEREUNDER.**

10. Adjustments for Withholding, Capital Adequacy Etc.

(a) All payments to the DIP Lender by the Loan Parties under this Loan Agreement shall be made free and clear of and without deduction or withholding for any and all present or future taxes, duties, levies, imposts, deductions, assessments, fees or other charges or withholdings and all related liabilities, including any interest, additions to tax or penalties applicable thereto (all such taxes, duties, levies, imposts, deductions, charges, withholdings and liabilities being referred to as "Taxes") imposed by the United States of America or any other nation or jurisdiction (or any political subdivision or taxing authority of either thereof), unless such Taxes are required by applicable law to be deducted or withheld. If any Loan Party shall be required by applicable law to deduct or withhold any such Taxes from or in respect of any amount payable under this Loan Agreement, then (A) if such Tax is an Indemnified Tax, the amount payable shall be increased as may be necessary so that after making all required deductions or withholdings, (including deductions or withholdings applicable to any additional amounts paid under this Loan Agreement) the DIP Lender receives an amount equal to the amount it would have received if no such deduction or withholding had been made, (B) such Loan Party shall make such deductions or withholdings, and (C) such Loan Party shall timely pay the full amount deducted or withheld to the relevant governmental entity in accordance with applicable law.

(b) If the effect of the adoption, effectiveness, phase-in or applicability after the date hereof of any law, rule or regulation (including without limitation any Tax, duty, charge or withholding on or from payments due from any Loan Party (but excluding Indemnified Taxes, Excluded Taxes, and

Connection Income Taxes)), or any change therein or in the interpretation or administration thereof by any governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, is to reduce the rate of return on the capital of the DIP Lender with respect to this Loan Agreement or to increase the cost to the DIP Lender of making or maintaining amounts available under this Loan Agreement, such Loan Party agrees to pay to the DIP Lender such additional amount or amounts as will compensate the DIP Lender on an after-tax basis for such reduction or increase.

(c) Each Loan Party agrees to timely pay any present or future stamp, court or documentary, intangible, recording, filing or similar Taxes (all such Taxes being referred to as "Other Taxes") which arise from any payment made by such Loan Party under this Loan Agreement or from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, this Loan Agreement.

(d) The Loan Parties shall indemnify the DIP Lender for the full amount of Indemnified Taxes (including, without limitation, any Indemnified Taxes imposed by any jurisdiction on amounts payable hereunder) paid or payable by the DIP Lender and any reasonable expenses arising from or with respect to such Indemnified Taxes, whether or not they were correctly or legally asserted. Payment under this indemnification shall be made within ten (10) days from receipt of written demand specifying in reasonable detail the nature and amount of such Indemnified Taxes or expenses. A certificate as to the amount of such Indemnified Taxes submitted to the Borrowers by the DIP Lender shall be conclusive evidence, absent manifest error, of the amount due from the Borrowers to the DIP Lender.

(e) The Loan Parties shall furnish to the DIP Lender the original or a certified copy of a receipt evidencing any payment of Taxes made by the Loan Parties pursuant to this Section 10 within ten (10) days after the date of any such payment. If any Recipient becomes aware that it has received a refund of any Taxes with respect to which any Loan Parties has paid any amount pursuant to this Section 10, such Recipient shall pay the amount of such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such Recipient and without interest (other than any interest received from the relevant governmental authority with respect thereto), to such Loan Party promptly after receipt thereof. Notwithstanding anything to the contrary in this paragraph (e), in no event will the Recipient be required to pay any amount to any Loan Party pursuant to this paragraph (e) the payment of which would place the Recipient in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any Recipient to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the Loan Parties or any other Person.

(f) (i) Any Recipient of a payment hereunder shall, to the extent it is legally entitled to do so, deliver to the Borrowers and the DIP Lender on or prior to the date hereof (and from time to time thereafter upon the reasonable request of any Borrower or the DIP Lender), two properly completed and executed copies of IRS Forms W-8 or W-9 and properly completed and executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding tax, together with such supplementary documentation as may be prescribed by applicable law to permit the applicable Borrower or the DIP Lender to determine the withholding or deduction (if any) required to be made. In addition, any such Recipient, if reasonably requested by the Borrowers or the DIP Lender, shall deliver such other documentation prescribed by applicable law or reasonably requested by the applicable Borrower or the DIP Lender as will enable such Borrower or the DIP Lender to determine whether or not such Recipient is subject to backup withholding or information reporting requirements. Each Recipient agrees that if any form or certification it previously delivered expires or becomes obsolete or

inaccurate in any respect, it shall timely update such form or certification or promptly notify the applicable Borrower and the DIP Lender in writing of its legal inability to do so. Notwithstanding anything to the contrary in the preceding three sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 10(f)(ii)(A), (B) and (D)) shall not be required if in the Recipient's reasonable judgment such completion, execution or submission would subject such Recipient to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Recipient.

(ii) Without limiting the generality of the foregoing,

(A) any DIP Lender that is a U.S. Person shall deliver to the Borrowers on or prior to the date on which such DIP Lender becomes a DIP Lender under this Loan Agreement (and from time to time thereafter upon the reasonable request of the Borrowers), executed copies of IRS Form W-9 certifying that such DIP Lender is exempt from U.S. federal backup withholding tax;

(B) any DIP Lender that is not a U.S. Person (a "Foreign Lender") shall, to the extent it is legally entitled to do so, deliver to the Borrowers (in such number of copies as shall be reasonably requested by the recipient) on or prior to the date on which such Foreign Lender becomes a DIP Lender under this Loan Agreement (and from time to time thereafter upon the reasonable request of the Borrowers), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any DIP Document, executed copies of IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any DIP Document, IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) executed copies of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Internal Revenue Code, (x) a certificate substantially in the form of Exhibit C-1 hereto to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, a "10 percent shareholder" of the Parent Borrower within the meaning of Section 881(c)(3)(B) of the Internal Revenue Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Internal Revenue Code (a "U.S. Tax Compliance Certificate") and (y) executed copies of IRS Form W-8BEN or W-8BEN-E; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit C-2 or Exhibit C-3, IRS Form W-9, or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit C-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrowers (in such number of copies as shall be reasonably requested by the recipient) on or prior to the date on which such Foreign Lender becomes a DIP Lender under this Loan Agreement (and from time to time thereafter upon the reasonable request of the Borrowers), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the applicable Borrower to determine the withholding or deduction required to be made; and

(D) if a payment made to a DIP Lender under any DIP Document would be subject to U.S. federal withholding Tax imposed by FATCA if such DIP Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Internal Revenue Code, as applicable), the DIP Lender shall deliver to the applicable Borrower at the time or times prescribed by law and at such time or times reasonably requested by such Borrower such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Internal Revenue Code) and such additional documentation reasonably requested by such Borrower as may be necessary for such Borrower to comply with their obligations under FATCA and to determine that the DIP Lender has complied with the DIP Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Loan Agreement.

The DIP Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrowers in writing of its legal inability to do so.

(g) Each party's obligations under this Section 10 shall survive the assignment of rights by, or the replacement of, a DIP Lender, the termination of the Commitments, and the repayment, satisfaction or discharge of all obligations under any DIP Document.

11. Priority of Obligations and DIP Lender's Liens.

(a) To secure all of the Obligations now existing or hereafter arising, the DIP Lender is granted (i) a super-priority administrative claim against each of the Borrowers pursuant to Section 364(c)(1) of the Bankruptcy Code, and except as set forth in the Financing Orders, having a priority over all other costs and expenses of administration of any kind, including those specified in, or ordered pursuant to, sections 105, 326, 328, 330, 331, 363, 364, 503, 506, 507, 546, 726, 1113 or 1114 or any other provision of the Bankruptcy Code or otherwise (whether incurred in these Chapter 11 Cases and any Successor Case), and, except as set forth in the Financing Orders, shall at all times be senior to the rights of the Loan Parties or any domestic or foreign Subsidiary of the Loan Parties, any successor trustee or estate representative, or any other creditor or party in interest in the Chapter 11 Cases or any Successor Case, and (ii) pursuant to Sections 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code and subject to clause (b) below, Liens on, and security interests in, the Collateral, except as set forth in the Financing Orders. The security interests and Liens granted to the DIP Lender hereunder pursuant to Sections 364(c)(2) shall not be (i) subject to any Lien or security interest that is avoided and preserved for the benefit of the Loan Parties' estate under Section 551 of the Bankruptcy Code, or (ii) except as set forth in the Financing Orders, subordinated to or made pari passu with any other Lien or security interest under Section 364(d) of the Bankruptcy Code or otherwise.

(b) The priority of the DIP Lender's Liens on the Collateral shall be as set

forth in the Financing Orders.

(c) Notwithstanding anything herein to the contrary, all proceeds received by the DIP Lender from the Collateral subject to the Liens granted in this Section 11 and in each other DIP Document and by the Financing Orders shall be subject to the priorities set forth in the Financing Orders.

(d) Each of the Loan Parties agrees for itself that the Obligations of such Person shall constitute allowed administrative expenses in the Chapter 11 Cases, having priority over all administrative expenses of and unsecured claims against such Person now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, all administrative expenses of the kind specified in, or arising or ordered under, Sections 105, 326, 327, 328, 330, 331, 361, 362, 363, 364, 365, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 726, 1113 and 1114 of the Bankruptcy Code, except as set forth in the Financing Orders.

12. Further Assurances. Each Borrower agrees that it shall, at such Borrower's expense and upon the reasonable request of the DIP Lender, duly execute and deliver or cause to be duly executed and delivered, to the DIP Lender, as the DIP Lender shall direct such Borrower such further instruments and do and cause to be done such further acts as may be necessary, advisable or proper in the reasonable opinion of the DIP Lender to carry out more effectively the provisions and purposes of this Loan Agreement or any other DIP Document, including, upon the written request of the DIP Lender and in form and substance reasonably satisfactory to the DIP Lender, security agreements (including any security agreements and related filings related to Intellectual Property), UCC-l financing statements and other Collateral Documents confirming and perfecting the granting to the DIP Lender of the Liens (subject to the Financing Orders) in the Collateral to secure the Obligations and, in each case, the equivalent foreign security documents for each foreign Loan Party.

13. [Reserved.]

14. Affirmative Covenants. The Borrowers agree that until the Commitments shall have expired or been terminated and the Obligations payable under the DIP Documents shall have been paid in full in cash:

(a) Upon reasonable request of the DIP Lender, the Loan Parties will permit any officer, employee, attorney or accountant or agent of the DIP Lender to audit, review, make extracts from or copy, at the Borrowers' expense, any and all corporate and financial and other books and records of the Loan Parties at all times during ordinary business hours and upon reasonable advance notice, to discuss the Loan Parties' affairs with any of their directors, officers, employees or accountants, so long as a Responsible Officer of a Loan Party is invited to attend such discussions. The Borrowers will permit the DIP Lender, or any of its officers, employees, accountants, attorneys or agent, upon reasonable prior notice, to examine and inspect any Collateral or any other property of the Loan Parties at any time during ordinary business hours; for the avoidance of doubt, such inspection rights extend to any Collateral or other property located in a foreign jurisdiction. Notwithstanding the foregoing, none of the Loan Parties will be required to disclose information to the DIP Lender (or any agent or representative thereof) that is prohibited by applicable law or is subject to attorney-client or similar privilege or constitutes attorney work product.

(b) (i) The Loan Parties and their Subsidiaries will comply with all requirements of applicable law and (ii) the Loan Parties and their Subsidiaries will obtain, maintain in effect and comply with all permits, licenses and similar approvals necessary for the operation of

its business as now or hereafter conducted other than to the extent contemplated by the Approved Budget or the Financing Orders. Without limiting the generality of the foregoing, the Loan Parties and their Subsidiaries shall (A) ensure that all permits, licenses and similar approvals referred to in clause (ii) above remain in good standing at all times, (B) maintain in good standing all water rights, water permits and related entitlements held by any Loan Party or any of its Subsidiaries in connection with the operation of its business, and (C) maintain all zoning classifications and land use designations applicable to real property owned, leased or operated by any Loan Party or any of its Subsidiaries.

(c) The Loan Parties and their Subsidiaries will pay or discharge, before delinquency, (i) all Taxes, assessments and governmental charges levied or imposed upon it or upon its income or profits, upon any properties of the Loan Parties and their Subsidiaries (including, without limitation, the Collateral) or upon or against the creation, perfection or continuance of the security interest, prior to the date on which penalties attach thereto, except in each case (1) where the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by such Loan Party or such Subsidiary, (2) Taxes the nonpayment of which is permitted or required by the Bankruptcy Code or this Loan Agreement or (3) [reserved], (ii) all federal, state and local Taxes required to be withheld by it, and (iii) all lawful claims for labor, materials and supplies which, if unpaid, might by law become a lien or charge upon any properties of the Loan Parties and their Subsidiaries.

(d) (i) The Loan Parties and each of their Subsidiaries will keep and maintain the Collateral and all of its other properties necessary or useful in its business in good condition, repair and working order (normal wear and tear excepted) other than to the extent contemplated by the Approved Budget or the Financing Orders or as otherwise permitted hereunder, (ii) the Loan Parties and each of their Subsidiaries will defend the Collateral against all claims or demands of all Persons (other than Permitted Encumbrances) claiming the Collateral or any interest therein, and (iii) the Loan Parties and each of their Subsidiaries will keep all Collateral free and clear of all security interests, liens and encumbrances, except Permitted Encumbrances and liens otherwise permitted by the Financing Orders and this Loan Agreement.

(e) The Loan Parties and their Subsidiaries will maintain insurance with responsible and reputable insurance companies or associations (including, without limitation, commercial general liability, worker's compensation and business interruption insurance) with respect to the Collateral and its other properties (including all real property leased or owned by it) and business, in such amounts and covering such risks as is (i) carried generally in accordance with sound business practice by companies in similar businesses similarly situated, (ii) required by any law or regulation, and (iii) required by any material contract. All property and commercial general liability/hazard policies covering the Collateral are to be made payable to the DIP Lender as a lender loss payee/mortgagee, other than proceeds required by an order of the Bankruptcy Court to be applied to the repayment of debt secured by a Lien on the related assets that is senior to the Liens securing the Obligations under this Loan Agreement, and are to contain such other provisions as the DIP Lender may reasonably require to fully protect its interest in the Collateral and to any payments to be made under such policies. On the date the Term Loans are funded (or such later date as may be agreed by the DIP Lender in its sole discretion), all certificates of insurance are to be delivered to the DIP Lender and the policies are to be premium prepaid with the lenders' loss payee and additional insured endorsement in favor of the DIP Lender, and shall provide for not less than 30 days' (ten (10) days' in the case of non-payment) prior written notice to the DIP Lender of the exercise of any right of cancellation. If any Loan Party or any of its Subsidiaries fails to maintain such insurance, the DIP Lender may arrange for such insurance, but at the Borrowers' expense and without any responsibility on the DIP Lender's part for obtaining the insurance, the solvency of the

insurance companies, the adequacy of the coverage, or the collection of claims. Upon the occurrence and during the continuance of an Event of Default, the DIP Lender shall have the sole right, in the name of the DIP Lender, any Loan Party and its Subsidiaries, to file claims under any insurance policies, to receive, receipt and give acquittance for any payments that may be payable thereunder, and to execute any and all endorsements, receipts, releases, assignments, reassignments or other documents that may be necessary to effect the collection, compromise or settlement of any claims under any such insurance policies. The Loan Parties may settle, adjust or compromise any insurance claim on terms reasonably acceptable to the DIP Lender, as long as the proceeds are delivered to the DIP Lender pursuant to this Loan Agreement and the Financing Orders.

(f) The Loan Parties and their Subsidiaries will preserve and maintain their existence and all of their rights, privileges and franchises necessary or desirable in the normal conduct of its business, except to the extent contemplated by the Approved Budget or the Financing Orders or as permitted hereunder.

(g) The Loan Parties and their Subsidiaries each agree that they shall take all actions necessary to cause each of the following to occur (each a "Milestone"):

(1) on May 5, 2026, the Debtors shall enter into the Stalking Horse Purchase Agreement, pursuant to which Purchaser will serve as the Stalking Horse Bidder (as defined in the Bidding Procedures Order);

(2) no later than May 5, 2026, the Debtors shall file a stalking horse notice proposing the bid protections for the Stalking Horse Purchase Agreement with the DIP Lender;

(3) on May 5, 2026, the Debtors shall file a motion seeking approval of the Interim Order, the Final Order and an order approving, among other things, the DIP Lender as a stalking horse bidder, the Bidding Procedures, the Break-Up Fee, and the Expense Reimbursement (each as defined in the Stalking Horse Purchase Agreement) and otherwise in form and substance acceptable to the DIP Lender (the "Bidding Procedures Order");

(4) no later than May 9, 2026, the bid deadline established pursuant to the Bidding Procedures Order shall have occurred;

(5) no later than May 12, 2026, (i) the Interim Order approving this Loan Agreement and the other DIP Documents shall be entered by the Bankruptcy Court in form and substance satisfactory to the DIP Lender and (ii) the Bankruptcy Court shall have entered an order designating Purchaser as the stalking horse bidder and approving the bid protections;

(6) no later than May 13, 2026, the Borrowers shall have conducted an auction (or cancelled the auction and named Purchaser the winning bidder) for substantially all of the Loan Parties' assets, if required, in accordance with the Bidding Procedures Order;

(7) no later than May 21, 2026, (i) the Final Order approving this Loan Agreement and the other DIP Documents shall be entered by the Bankruptcy Court in form and substance satisfactory to the DIP Lender and (ii) the Bankruptcy Court shall have entered an order approving the sale of the Acquired Assets to Purchaser and authorizing the assignment of the Assigned Contracts to Purchaser, in form and substance acceptable to the DIP Lender, or an order approving for an alternative sale of all or substantially all of the Loan Parties' assets that results in payment of the Obligations in full in cash prior to the Maturity Date; and

(8) no later than June 5, 2026, the sale of the Acquired Assets to Purchaser or other winning bidder approved by the Bankruptcy Court shall have been consummated in full.

(h) The Loan Parties and their Subsidiaries will deliver (which delivery may be made by electronic communication (including email)) to the DIP Lender each of the reports and other items set forth on Schedule I attached hereto no later than the times specified therein (or such later time as the DIP Lender may agree). No less than once per week, the Parent Borrower shall make its senior management and its advisors available at reasonable times and upon reasonable notice to the DIP Lender to discuss the financial position, cash flows, variances, operations, sale process, the Hopkinsville Land Option (as defined below), the Opole Option and general case status of the Loan Parties.

(i) The Loan Parties and their Subsidiaries shall use their best efforts to negotiate and secure a renewed option agreement to enable the Debtors, or a transferee of such rights, to acquire approximately 165 acres of land adjacent to the Loan Parties' Hopkinsville, Kentucky manufacturing facility on terms acceptable to the DIP Lender (the "Hopkinsville Land Option"); *provided* that nothing shall require the Debtors to spend any cash to obtain the option.

(j) Each Loan Party and each of its Subsidiaries shall (i) comply, and cause all lessees and other Persons operating or occupying its properties to comply, with all applicable Environmental Laws and Environmental Permits; (ii) obtain, maintain and renew all Environmental Permits necessary for its operations and properties; (iii) conduct any investigation, study, sampling and testing, and undertake any remedial action or other corrective action necessary to address any known or suspected non-compliance, release or threatened release of Materials of Environmental Concern at, on, under or from any property owned, leased or operated by it in accordance with the requirements of all Environmental Laws, and (iv) make an appropriate response to any Environmental Claim, or any investigation or notice asserting Environmental Liability, against any Loan Party or any of its Subsidiaries and discharge any obligations it may have to any Person thereunder.

(k) The Loan Parties and their Subsidiaries shall (i) maintain in full force and effect all registrations, filings and renewals necessary to preserve and protect all Intellectual Property owned by any Loan Party or any of its Subsidiaries, including the timely payment of all maintenance fees, renewal fees, annuities and other charges required by any Governmental Authority or intellectual property office in connection therewith, (ii) maintain in full force and effect, comply with all terms of and make all required payments under any Intellectual Property licenses to which any Loan Party or any of its Subsidiaries is party or other agreements pursuant to which any Loan Party or any of its Subsidiaries is granted the right to use any Intellectual Property, (iii) prosecute, defend and enforce all Intellectual Property against infringement, misappropriation, dilution or other violation by any Person, (iv) not permit any Intellectual Property to lapse, be abandoned or be dedicated to the public, except where the Loan Parties reasonably determine in good faith that such Intellectual Property is no longer material to the conduct of their business, (v) take all actions necessary to ensure that all Intellectual Property conceived, created, developed or reduced to practice by any current or former officer, director, employee, consultant or independent contractor of any Loan Party or any of its Subsidiaries in the course of such Person's employment or engagement has been duly and validly assigned to, and is owned exclusively by, the applicable Loan Party or Subsidiary, including by obtaining and maintaining executed written assignment agreements from all such Persons in form and substance reasonably satisfactory to the DIP Lender and (vi) promptly notify the DIP Lender in writing of any adverse development with respect to any Intellectual Property of any Loan Party or any of its Subsidiaries, including any claim, action or

proceeding by or against any Person concerning the ownership, validity, enforceability or use of any Intellectual Property or any infringement or misappropriation thereof. The Loan Parties shall, upon reasonable request of the DIP Lender, deliver to the DIP Lender copies of all intellectual property assignment agreements, registration certificates, file histories and such other documentation evidencing ownership and good standing of Intellectual Property as the DIP Lender may request.

(l) The Loan Parties shall use best efforts to procure that: (i) the existing feedstock supply agreements and offtake agreements entered into in connection with the operations of AE Elemental sp. z o.o. are maintained in full force and effect; (ii) AE Elemental sp. z o.o. continues to duly perform its obligations under the feedstock supply agreements and offtake agreements, and to take all actions reasonably necessary to secure proper performance under such agreements; and (iii) AE Elemental sp. z o.o. maintain adequate commercial resources, relationships and operational capabilities to support the procurement of feedstock and the sale of products under the feedstock supply agreements and offtake agreements, in each case in a manner consistent with past practice.

(m) The Loan Parties shall use best efforts not to permit AE Elemental sp. z o.o. (the "JV") to be, or become, in default of any of its obligations under the joint venture agreement dated 8 April 2024 between the Parent Borrower and Elemental Strategic Metals sp. z o.o. (the **"**JV Agreement**"**), and each of them shall duly and timely perform all of its obligations thereunder, including, without limitation, any obligation to provide equity or debt financing to the JV in accordance with the schedule and on the terms set forth in the JV Agreement.

(n) The Loan Parties and their Subsidiaries shall procure that all equity and debt financing required to be provided to the JV pursuant to the JV Agreement is provided within the timeframes and on the terms expressly set out therein, and shall promptly notify the Lender in writing if it becomes aware of any circumstance which may result in a failure or delay in meeting any such financing obligation.

(o) The Loan Parties and their Subsidiaries shall use best efforts to obtain, or procure the obtaining of, all consents, approvals and waivers required in connection with any change of control over the JV, including any such consents as may be required: (i) under the JV Agreement; and (ii) under the articles of association of the JV, and shall ensure that all such consents, approvals and waivers are obtained prior to, or simultaneously with, the occurrence of any such change of control, and in any event in accordance with any applicable timeframes prescribed thereunder.

(p) The Loan Parties and their Subsidiaries will ensure that Ascend Elements Poland 2 sp. z o.o. consummates the acquisition of the Opole Property (including payment in full of the purchase price for the Opole Property) by no later than the earlier of (x) three Business Days after the Closing Date and (y) May 28, 2026.

(q) The Loan Parties and their Subsidiaries will ensure that Ascend Elements Poland 2 sp. z o.o. (i) executes a mortgage declaration establishing a mortgage over the Opole Property (the "Mortgage Declaration") and (ii) procures that an application for the registration of such mortgage is filed with the relevant land and mortgage register, in each case within 2 Business Days after completion of the acquisition of the Opole Property, to the benefit of the DIP Lender and up to 200% of the aggregate principal amount of the Term Loans

(r) The Loan Parties shall procure that, within 3 months of the date of the Mortgage Declaration, the DIP Lender receives an extract from the relevant land and mortgage register evidencing the registration of such mortgage

(s) The Loan Parties and their Subsidiaries will ensure that Ascend Elements Poland 2 sp. z o.o. conducts adequate due diligence regarding good title, utilities (e.g., power, water), permits and other matters for the acquisition of the Opole Property and shares this information with the DIP Lender

(t) The Loan Parties and their Subsidiaries shall promptly notify the Lender upon becoming aware of: (i) any actual or anticipated default or breach by any party under the JV Agreement; (ii) any actual or anticipated failure to obtain any consent, approval or waiver referred to in paragraph (c) above; or (iii) any amendment, termination, rescission or waiver of any provision of the JV Agreement which could reasonably be expected to have an adverse effect on the Parent Borrower's or the JV's ability to comply with their respective obligations thereunder.

(u) The Loan Parties and their Subsidiaries will use their best efforts to obtain the allocation of 96 megawatts of power from Pennyrile Electric and the Tennessee Valley Authority and will use their best efforts to obtain confirmation from Pennyrile Electric and the Tennessee Valley Authority that such allocation will be maintained.

(v) The Loan Parties and their Subsidiaries shall timely make, or cause to be timely made, all payments of principal, interest, fees, escrows and other amounts due and payable under any mortgage (including the Hopkinsville Mortgages), deed of trust or other financing arrangement secured by or relating to the real property located at or near the Loan Parties' Hopkinsville, Kentucky manufacturing facility (collectively, the "Hopkinsville Mortgage Obligations"), in each case to the extent authorized to be paid by order of the Bankruptcy Court. The Loan Parties shall (i) maintain all Hopkinsville Mortgage Obligations in good standing and not permit any default or event of default to occur thereunder, (ii) comply with all covenants, conditions and obligations imposed on the Loan Parties or any of their Subsidiaries under any agreement, instrument or document governing the Hopkinsville Mortgage Obligations, (iii) not amend, modify, waive, supplement, terminate or refinance any Hopkinsville Mortgage Obligation without the prior written consent of the DIP Lender, and (iv) promptly notify the DIP Lender of (a) any default, event of default or alleged default under any Hopkinsville Mortgage Obligation, (b) any notice received from any holder, servicer or trustee under any Hopkinsville Mortgage Obligation asserting a breach, acceleration or foreclosure right, or (c) any other event or circumstance that could reasonably be expected to impair the Loan Parties' rights in or to the real property securing the Hopkinsville Mortgage Obligations or the DIP Lender's interest therein.

(w) The Loan Parties and their Subsidiaries will promptly deliver, or cause to be delivered, to all applicable Governmental Authorities any and all notices, filings, reports or other communications required to be made or submitted under any permits, licenses, approvals or applicable law as a result of, or triggered by, the commencement or pendency of the Chapter 11 Cases, the filing of the petitions commencing the Chapter 11 Cases or any other event arising in connection with the Chapter 11 Cases, in each case within the time periods required by such permits, licenses, approvals or applicable law. The Loan Parties shall promptly provide the DIP Lender with copies of all such notices, filings, reports or other communications delivered to any Governmental Authority pursuant to this clause (w), and shall promptly notify the DIP Lender of any material response or correspondence received from any Governmental Authority in connection therewith.

(x) The Loan Parties shall use reasonable best efforts cause the grant awarded to Ascend Elements Poland sp. z o.o. by the Republic of Poland to be in good standing and in full force and effect, with no event of default, termination, revocation, or material modification thereof having occurred.

(y) The Loan Parties shall ensure that the grant awarded to Ascend Elements Poland sp. z o.o. by the Republic of Poland is transferred to Ascend Elements Poland 2 sp. z o.o. no later than one (1) month after the Closing Date or, if the appropriate Polish governing authority does not consent to such transfer, use reasonable best efforts to ensure that the investment is implemented by Ascend Elements Poland sp. z o.o. or another Acquired Entity (to be defined in the Stalking Horse Purchase Agreement), including the acquisition by that entity of rights to the Opole Property.

(z) the Loan Parties and their Subsidiaries will use reasonable best efforts to obtain a confirmation from the European Bank for Reconstruction and Development of its continued interest in providing financing to Ascend Elements Poland 2 sp. z o.o., as set out in the mandate letter dated 17 December 2025 (the "EBRD Mandate Letter"), notwithstanding the envisaged change of sponsor described in the heads of terms attached to the EBRD Mandate Letter.

(aa) The Loan Parties and their Subsidiaries shall take the actions, enter into the agreements or deliver the documents set forth on Schedule IV (in each case, in form and substance reasonably satisfactory to the DIP Lender) prior to the deadlines set forth thereon.

15. Negative Covenants. So long as the DIP Lender shall have any Commitment hereunder, or any Term Loan or other Obligation hereunder shall remain unpaid or unsatisfied, the Loan Parties shall not, nor shall they permit any Subsidiary to, without the prior written consent of the DIP Lender:

(a) Neither the Loan Parties nor any of their Subsidiaries shall directly or indirectly, by operation of law or otherwise, (i) form or acquire any Subsidiary, or (ii) merge with, consolidate with, acquire all or substantially all of the assets or Equity Interests of, or otherwise combine with or acquire, any Person, except in the case of this clause (ii), with respect to existing Subsidiaries to the extent consented to by the DIP Lender (which consent shall not be unreasonably withheld), other than, in each case, any such action approved by an order of the Bankruptcy Court.

(b) Neither the Loan Parties nor any of their Subsidiaries shall create, incur, assume or permit to exist any Indebtedness, except (without duplication), to the extent not prohibited by the Financing Orders, Permitted Indebtedness.

(c) Neither the Loan Parties nor any of their Subsidiaries shall create, incur, assume or permit to exist any Lien on or with respect to any of its properties or assets (whether now owned or hereafter acquired) except for Permitted Encumbrances.

(d) Neither the Loan Parties nor any of their Subsidiaries shall make any Restricted Payment, except dividends and distributions by Subsidiaries of the Loan Parties paid to the Parent Borrower. Except for claims of employees for unpaid wages, bonuses, accrued vacation and sick leave time, business expenses and contributions to employee benefit plans for the period immediately preceding the Petition Date and prepetition severance obligations, in each case to the extent permitted to be paid by order of the Bankruptcy Court, neither the Loan Parties nor any of their Subsidiaries shall make any payment in respect of, or repurchase, redeem, retire or defease any, prepetition Indebtedness, except for other payments consented to by the DIP Lender in writing; *provided*, that, nothing in this subsection (d) shall prohibit the Borrowers from paying prepetition

ordinary course obligations that are the subject of typical first day relief and as set forth in the budget or otherwise approved by the Bankruptcy Court.

(e) Neither the Loan Parties nor any of their Subsidiaries will assume, guarantee, endorse or otherwise become directly or contingently liable in connection with any obligations of any other Person (other than the Loan Parties or any of their Subsidiaries).

(f) Neither the Loan Parties nor any of their Subsidiaries will Dispose of any of its property, business or assets, whether now owned or hereinafter acquired other than (i) the sale of inventory and other assets held for sale in the ordinary course of business and consistent with past practice, (ii) the Disposition of obsolete, damaged, unusable, immaterial, uneconomical, surplus or worn out property or equipment, (iii) the sale of other property on terms acceptable to the DIP Lender, (iv) leasing or subleasing assets in the ordinary course of business and consistent with past practice and the termination or cancellation of any lease or sublease in the ordinary course of business and consistent with past practice, (v) any involuntary loss, damage or destruction of property or involuntary condemnation, seizure by taking, exercise of the power of eminent domain or otherwise, or confiscation or requisition of use of property, (vi) so long as such Disposition would not be otherwise prohibited hereunder, the transfer of assets from any Loan Party to another Loan Party, (vii) dispositions of property subject to casualty events and (viii) Dispositions that are Permitted Encumbrances.

(g) Neither the Loan Parties nor any of their Subsidiaries shall consent to any amendment, supplement or other modification of any of the terms or provisions contained in, or applicable to, (i) the Financing Orders or (ii) the Prepetition Obligations.

(h) Neither the Loan Parties nor any of their Subsidiaries shall make any investment in, or make loans or advances of money to, any Person (other than another Loan Party), through the direct or indirect lending of money, holding of securities or otherwise.

(i) Neither the Loan Parties nor any of their Subsidiaries shall change its fiscal year.

(j) As of each Variance Testing Date, the Borrowers shall not permit: the aggregate amount of Actual Disbursement Amounts to exceed the aggregate amount of Budgeted Disbursement Amounts (each calculated on a cumulative basis as opposed to on a line by line basis), in each case, for such Variance Testing Period, by more than the Permitted Variance.

(k) Neither the Loan Parties nor any of their Subsidiaries shall, directly or knowingly indirectly, use the Term Loans or the proceeds of the Term Loans, or lend, contribute or otherwise make available the Term Loans or the proceeds of the Term Loans to any Person, to fund any activities of or business with any Person, or in any Designated Jurisdiction, that, at the time of such funding, is the subject of Sanctions, in violation of Sanctions applicable to any party hereto, or in any other manner that will result in a violation by any Person (including any Person participating in the transaction, whether as DIP Lender or otherwise) of Sanctions.

(l) Neither the Loan Parties nor any of their Subsidiaries shall apply, use, distribute or otherwise direct any Extraordinary Receipts for any purpose not contemplated by the Approved Budget without the prior written consent of the DIP Lender.

16. Events of Default; Rights and Remedies. Notwithstanding the provisions of Section 362 of the Bankruptcy Code and without application or motion to the Bankruptcy Court, the occurrence of any one

or more of the following events (regardless of the reason therefor) shall constitute an "Event of Default" hereunder:

(a) The Borrowers (i) shall fail to make any payment of principal of, or interest on, or fees owing in respect of, the Term Loans or any of the other Obligations when due and payable, or (ii) shall fail to pay or reimburse the DIP Lender for any expense reimbursable hereunder or under any other DIP Document within three (3) Business Days following the DIP Lender's written demands for such reimbursement or payment and the passage of any notice period required in the Financing Orders.

(b) Any Loan Party shall fail to comply with any of the provisions of Section 14 (other than Section 14(g)) of this Loan Agreement and such failure shall remain unremedied for two (2) Business Days after the earlier of the date (i) a senior officer of any Loan Party becomes aware of such failure and (ii) the date written notice of such default shall have been given by the DIP Lender to such Loan Party.

(c) Any Loan Party shall fail to comply with any of the provisions of Section 1(d) or 15 of this Loan Agreement.

(d) Any Loan Party shall fail to comply with any other provision of this Loan Agreement or any of the other DIP Documents (other than any provision embodied in or covered by any other clause of this Section 16) and the same, if capable of being remedied, shall remain unremedied for fifteen (15) days after the earlier of the date (i) a senior officer of any Loan Party becomes aware of such failure and (ii) the date written notice of such default shall have been given by the DIP Lender to such Loan Party.

(e) Except for defaults occasioned by the filing of the Chapter 11 Cases and defaults resulting from obligations with respect to which the Bankruptcy Code prohibits any Loan Party or any Subsidiary from complying or permits any Loan Party or any Subsidiary not to comply, a default or breach shall occur under any agreement, document or instrument to which any Loan Party or any Subsidiary is a party (other than agreements, documents and instruments evidencing Prepetition Obligations) that is not cured within any applicable grace period therefor, and such default or breach (i) involves the failure to make any payment when due in respect of any Indebtedness (other than the Obligations) of any Loan Party or any Subsidiary in excess of $1,000,000 in the aggregate, or (ii) causes, or permits any holder of such Indebtedness or a trustee to cause, Indebtedness or a portion thereof in excess of $1,000,000 in the aggregate to become due prior to its stated maturity or prior to its regularly scheduled dates of payment, regardless of whether such default is waived, or such right is exercised, by such holder or trustee.

(f) Any representation or warranty herein or in any other DIP Document or in any written statement, report, financial statement or certificate made or delivered to DIP Lender by any Loan Party is untrue or incorrect in any material respect (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of the date when made or deemed made.

(g) Any Loan Party or any Subsidiary shall bring a motion in any Chapter 11 Case: (i) to obtain financing from any Person other than the DIP Lender under Section 364(c) or 364(d) of the Bankruptcy Code, except to the extent the proceeds of such financing would be used to repay in full in cash all of the Obligations under this Loan Agreement; (ii) to grant any Lien other than Permitted Encumbrances upon or affecting any Collateral, except to the extent the proceeds of any such financing secured by such Lien would be used to repay in full all of the

Obligations under this Loan Agreement; or (iii) to authorize any other action or actions materially adverse to the DIP Lender, or the DIP Lender's rights and remedies hereunder or their interests in the Collateral.

(h) The entry of an order in any of the Chapter 11 Cases confirming a plan or plans of reorganization that does not contain a provision for the termination of the DIP Lender's commitment to make Term Loans and the repayment in full in cash of all the Obligations under this Loan Agreement on or before the effective date of such plan or plans.

(i) The filing of any motion by any Borrower or any Loan Party or any Subsidiary against the DIP Lender seeking, or the entry of any order in the Chapter 11 Cases in respect of, any claim or claims under Section 506(c) of the Bankruptcy Code against or with respect to any Collateral.

(j) The sale, without the DIP Lender's consent, of all or substantially all of the Loan Parties' assets or the Acquired Assets either through a sale under Section 363 of the Bankruptcy Code, through a confirmed plan of reorganization in the Chapter 11 Cases, or otherwise, that does not provide for payment in full in cash of the Obligations directly from the proceeds and on the date of closing of such sale and termination of the DIP Lender's commitment to make Term Loans.

(k) The entry by the Bankruptcy Court of an order authorizing the appointment of an interim or permanent trustee in the Chapter 11 Cases or the appointment of an examiner in the Chapter 11 Cases with expanded powers to operate or manage the financial affairs, business, or reorganization of any Loan Party or any Subsidiary.

(l) The Chapter 11 Cases, or any of them, shall be dismissed or converted from cases under Chapter 11 to cases under Chapter 7 of the Bankruptcy Code prior to the payment in full in cash of the Obligations and terminations of the DIP Lender's commitment to make Term Loans.

(m) The entry of an order in any Chapter 11 Case avoiding or requiring repayment of any portion of the payments made on account of the Obligations owing under this Loan Agreement or the other DIP Documents.

(n) The entry of an order in any Chapter 11 Case granting any other super-priority administrative claim or Lien equal to or superior to that granted to the DIP Lender (other than any such claim or Lien permitted by the Financing Orders), unless (i) consented to by the DIP Lender or (ii) the Obligations are paid in full in cash and the DIP Lender's commitment to make Term Loans is terminated.

(o) The entry of an order by the Bankruptcy Court granting relief from or modifying the automatic stay of Section 362 of the Bankruptcy Code to allow any creditor (other than the DIP Lender) to execute upon or enforce a Lien on any Collateral except with respect to Permitted Encumbrances arising prior to the Petition Date in an aggregate amount not to exceed $1,000,000.

(p) The Financing Orders (or either of them) shall be stayed, amended, modified, reversed or revoked in any respect without the DIP Lender's prior written consent.

(q) There shall commence any suit or action against the DIP Lender by or on

behalf of (i) any Loan Party or any Subsidiary or (ii) any official committee in the Chapter 11 Cases (other than a motion for standing to commence a suit or action), in each case, that asserts a claim or seeks a legal or equitable remedy that would have the effect of subordinating the claim or Lien of the DIP Lender and, if such suit or action is commenced by any Person other than a Loan Party or any Subsidiary, officer, or employee of any Borrower, such suit or action shall not have been dismissed or stayed within 10 days after service thereof on the DIP Lender and, if stayed, such stay shall have been lifted.

(r) Any provision of any DIP Document shall for any reason cease to be valid, binding and enforceable in accordance with its terms (or any Loan Party or any Subsidiary shall challenge the enforceability of any DIP Document or shall assert in writing, or engage in any action or inaction based on any such assertion, that any provision of any DIP Document has ceased to be or otherwise is not valid, binding and enforceable in accordance with its terms), or any Lien created under any DIP Document shall cease to be a valid and perfected first priority Lien (except as otherwise permitted herein or in the Financing Orders) in any of the Collateral purported to be covered thereby.

(s) The occurrence of a DIP Termination Event (as defined in the Financing Orders).

(t) A breach by any Loan Party or any Subsidiary of the terms of the Financing Orders.

(u) The Bidding Procedures Order, or any provision thereof, (i) shall fail to be in full force and effect or binding upon and enforceable against any Loan Party or any Subsidiary or any other party thereto in accordance with its terms, (ii) has been amended or modified without the consent of the DIP Lender, or (iii) has been breached due to the action or inaction of any Loan Party or any Subsidiary or any other party thereto.

(v) Entry of an order authorizing and/or directing the reclamation of goods pursuant to section 546(c) of the Bankruptcy Code in excess of $500,000.

(w) The failure to comply with a Milestone set forth in Section 14(g) on the date specified therein, for the avoidance of doubt, without the requirement for notice or an opportunity to cure the failure to comply with a Milestone if such Milestone is not satisfied on the date set forth in Section 14(g).

(x) Any Borrower breaches the Stalking Horse Purchase Agreement and such breach shall remain unremedied for five (5) Business Days after the earlier of the date (i) a senior officer of any Loan Party becomes aware of such failure and (ii) the date written notice of such default shall have been given by Purchaser to such Loan Party.

(y) A valid termination of the Stalking Horse Purchase Agreement by the Purchaser.

(z) The voluntary or involuntary entry by any Subsidiary (other than a Borrower) into any bankruptcy, insolvency, debtor relief or other similar proceeding in the relevant jurisdiction, including, for the avoidance of doubt, (i) any creditor's process (including seeking issuance of a warrant of attachment, execution or similar process against all or any substantial part of its assets which results in the entry of an order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within two (2) days from the entry

thereof); (ii) the existence of insolvency status and (iii) in respect of any Subsidiary incorporated under French law, without limitation, such person becoming insolvent or unable to pay its debts or failing or admitting in writing its inability generally to pay its debts as they become due, any mandat ad hoc, conciliation, sauvegarde, sauvegarde accélérée, redressement judiciaire or liquidation judiciaire under French law.

(aa) Any Action is brought, initiated or asserted against any Loan Party, Subsidiary or joint venture of the foregoing, or any assets held by any such Loan Party, Subsidiary, or joint venture to which a Loan Party, Subsidiary or joint venture of the foregoing is a party, asserting that any Governmental Authority is entitled to remedies, relief or interests under or pursuant to the False Claims Act or any similar applicable Law with respect to any such Loan Party, Subsidiary or joint venture.

(bb) if by May 12, 2026, Purchaser has not entered into a definitive agreement with each of the holders of the Senior CLNs (as defined in the Stalking Horse Purchase Agreement) and Junior CLNs (as defined in the Stalking Horse Purchase Agreement) to provide for the Senior CLNs Credit Bid Amount (as defined in the Stalking Horse Purchase Agreement) and Junior CLNs Credit Bid Amount (as defined in the Stalking Horse Purchase Agreement) as described in Section 2.1(a) of the Stalking Horse Purchase Agreement.

If any Event of Default shall have occurred and be continuing, then the DIP Lender may, upon written notice to the Borrowers and subject to the terms of the Financing Orders: (i) terminate the Commitment of the DIP Lender with respect to further Term Loans; (ii) declare all or any portion of the Obligations, including all or any portion of any Term Loan, to be forthwith due and payable; (iii) revoke the Borrowers' rights to use Cash Collateral in which the DIP Lender has an interest; and (iv) exercise any rights and remedies under the DIP Documents or at law or in equity, all in accordance with the Financing Orders. Upon the occurrence of an Event of Default and the exercise by the DIP Lender of its rights and remedies under this Loan Agreement and the other DIP Documents pursuant to clause (iv) above and subject to the Financing Orders, each Loan Party shall assist the DIP Lender in effecting a Disposition of the Collateral upon such terms as are designed to maximize the proceeds obtainable from such Disposition.

Except as otherwise provided for in this Loan Agreement, the Financing Orders or by applicable law, the Borrowers waive: (a) presentment, demand and protest and notice of presentment, dishonor, notice of intent to accelerate, notice of acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all commercial paper, accounts, contract rights, documents, instruments, chattel paper and guaranties at any time held by the DIP Lender on which any Borrower may in any way be liable, and hereby ratifies and confirms whatever the DIP Lender may do in this regard; (b) all rights to notice and a hearing prior to the DIP Lender taking possession or control of, or the DIP Lender's replevy, attachment or levy upon, the Collateral or any bond or security that might be required by any court prior to allowing the DIP Lender to exercise any of its remedies; and (c) the benefit of all valuation, appraisal, marshaling and exemption laws.

To the extent permitted by law and subject in all respects to the terms of the Financing Orders, the DIP Lender's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, under section 9-207 of the Uniform Commercial Code or otherwise, shall be to deal with it in the same manner as the DIP Lender deals with similar securities and property for its own account, the DIP Lender's duty of care with respect to Collateral in the custody or possession of a bailee or other third person shall be deemed fulfilled if the DIP Lender exercises reasonable care in the selection of the bailee or other third person, and the DIP Lender need not otherwise preserve, protect, insure or care for any Collateral, and the DIP Lender shall not be obligated to preserve any rights any Loan Party may have against prior parties.

Any amount or payment received by the DIP Lender from any Loan Party or from the proceeds of Collateral (subject to the terms of the Financing Orders) following (i) any acceleration of the Obligations under this Loan Agreement or (ii) at the direction of the DIP Lender after any Event of Default, shall be applied to the Obligations as determined by the DIP Lender in its sole discretion and once paid in full, any excess shall be paid to the Borrowers or as otherwise required by applicable law.

17. Reference Agreements. This Loan Agreement evidences the Term Loans that may be made to Borrowers from time to time in the aggregate principal amount outstanding of up to the Maximum Amount and is issued pursuant to and entitled to the benefits of the Financing Orders, to which reference is hereby made for a more complete statement of the terms and conditions under which the Term Loans evidenced by this Loan Agreement are made and are to be repaid.

18. Definitions; Certain Terms.

(a) Definitions. The following terms used in this Loan Agreement shall have the following meanings (and any of such terms may, unless the context otherwise requires, be used in the singular or the plural depending on the reference):

"Acquired Assets" shall mean the "Acquired Assets" as defined in the Stalking Horse Purchase Agreement.

"Action" means any action, suit, claim, charge, inspection, inquiry, litigation, arbitration, mediation, audit, proceeding (including any civil, criminal, administrative, public, private, arbitral, investigative or appellate proceeding), prosecution of any kind whatsoever whether sounding in contract or tort, or whether at law or in equity, or otherwise under any legal or equitable theory, and any subpoena, request for information, notice of violation, deficiency notice, or similar enforcement or investigative communication, commenced, brought, conducted or heard by or before any Governmental Authority.

"Actual Cash Receipts" shall mean with respect to any period, the actual amount that corresponds to the line item "Total Receipts" in the Approved Budget as then in effect.

"Actual Disbursement Amounts" shall mean with respect to any period, the actual amount that corresponds to the line items "Total Operating Disbursements" and "Total Non-Operating Disbursements", but excluding any "Restructuring Professionals" in the Approved Budget as then in effect.

"Affected Financial Institution" means (a) any EEA Financial Institution or (b) any UK Financial Institution.

"Approved Budget" shall mean a rolling five (5) week forecast of projected receipts, disbursements, net cash flow, liquidity and loans for the immediately following consecutive five (5) weeks after the date of delivery, which shall be in substantially the form of the Initial Approved Budget attached hereto as Exhibit A or otherwise in form and substance acceptable to the DIP Lender and shall be approved by the DIP Lender, in the DIP Lender's sole discretion.

"Approved Budget Variance Report" shall mean a report provided by the Parent Borrower to the DIP Lender (a) showing, in each case, on a line item by line item and a cumulative basis, the Actual Disbursement Amounts and the Actual Cash Receipts, in each case as of the last day of the Variance Testing Period then most recently ended, noting therein (i) all variances, on a cumulative basis, from the Budgeted Disbursement Amounts and the Budgeted Cash Receipts, as applicable for such period as set forth in the Approved Budget as in effect for such period and (ii) containing an indication as to whether each variance is temporary or permanent and analysis and explanations for all material variances, (iii) certifying

compliance or non-compliance in such Variance Testing Period with the Permitted Variances and (iv) including explanations for all material variances and violations, if any, of such covenant and if any such violation exists, setting forth the actions which the Borrower has taken or intend to take with respect thereto and (b) which such reports shall contain supporting information, satisfactory to the DIP Lender in its sole discretion.

"Article 9 Collateral" shall mean: (a) all Accounts; (b) all Chattel Paper; (c) all money, cash, Cash Equivalents, Deposit Accounts, Securities Accounts and Commodities Accounts; (d) all Documents; (e) all Equipment; (f) all General Intangibles, including all Intellectual Property; (g) all Instruments; (h) all Inventory; (i) all other Goods and fixtures; (j) all Investment Property; (k) all Letters of Credit and Letter-of-Credit Rights; (l) all Supporting Obligations; (m) all Commercial Tort Claims; (n) all proceeds of leases of real property; (o) Security Entitlements in any or all of the foregoing; (p) all books and records pertaining to the Article 9 Collateral; (q) all actions brought under section 549 of the Bankruptcy Code to recover any post-petition transfer of Article 9 Collateral; (r) subject to entry of the Final Order (other than with respect to the proceeds of actions brought pursuant to section 549 of the Bankruptcy Code, which shall constitute Article 9 Collateral upon entry of the Interim Order), the proceeds of any avoidance actions brought pursuant to Chapter 5 of the Bankruptcy Code or applicable state law equivalents; (s) subject to entry of the Final Order, proceeds of the Loan Parties' rights under sections 506(c) (solely to the extent such rights result from the use of the DIP Facility (as defined in the Interim Order) or the DIP Collateral (as defined in the Interim Order) and are, therefore, enforceable against parties other than the DIP Lender or the Prepetition Secured Parties (as defined in the Interim Order) and 550 of the Bankruptcy Code; (t) all DIP Collateral (as defined in the Interim Order or the Final Order, as applicable); and (u) to the extent not otherwise included, all other personal property of such Loan Party, whether tangible or intangible, and all Proceeds and products of any and all of the foregoing and all accessions to, substitutions and replacements for, and rents, profits and products of, each of the foregoing, any and all Proceeds of any insurance, indemnity, warranty or guaranty payable to such Loan Party from time to time with respect to any of the foregoing. For purposes of this definition, all terms not otherwise defined herein or as specified are as defined in the UCC (and if defined in more than one article of the UCC shall have the meaning specified in Article 9 thereof).

"Article 55 BRRD" means Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms.

"Ascend Elements France" means a French *société par actions simplifiée*, having its registered office at 14 avenue de l'Opéra, 75001 Paris, and registered under number 925 396 996 RCS Paris.

"Assigned Contracts" shall mean the "Assigned Contracts" as defined in the Stalking Horse Purchase Agreement.

"Bail-In Legislation" means, (a) with respect to any EEA Member Country which has implemented, or which at any time implements Article 55 BRRD, the implementing law, rule, regulation or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule from time to time, and (b) in relation to the United Kingdom, the UK Bail-In Legislation and (c) in relation to any state other than such an EEA Member Country and the United Kingdom, any analogous law or regulation from time to time which requires contractual recognition of any Write –down and Conversion Powers contained in that law or regulation.

"Bankruptcy Code" shall have the meaning given such term in the recital to this Loan Agreement.

"Bankruptcy Court" shall have the meaning given such term in the recital to this Loan Agreement.

"Bidding Procedures Order" shall have the meaning given such term in Section 14(g)(1) of this Loan Agreement.

"Borrower" and "Borrowers" each, shall have the meaning given such term in the recital to this Loan Agreement.

"Borrowing Request" shall have the meaning given such term in Section 1(a) of this Loan Agreement.

"Budgeted Cash Receipts" shall mean with respect to any period, the amount that corresponds to the line item "Total Receipts" in the Approved Budget as then in effect.

"Budgeted Disbursement Amounts" shall mean with respect to any period, the amount that corresponds to the line items "Total Operating Disbursements" and "Total Non-Operating Disbursements", but excluding any "Restructuring Professionals" in the Approved Budget as then in effect.

"Business Day" shall mean any day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required to close.

"Cash Collateral" shall have the meaning given to such term in the Financing Orders.

"Change In Law" shall mean the occurrence, after the date of this Loan Agreement, of any of the following:

(a) the adoption or taking effect of any law, rule, regulation or treaty (excluding the taking effect after the date of this Loan Agreement of a law, rule, regulation or treaty adopted prior to the date of this Loan Agreement);

(b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority; or

(c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority.

It is understood and agreed that (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203, H.R. 4173), all Laws relating thereto, all interpretations and applications thereof and any compliance by a DIP Lender with any and all requests, rules, guidelines, requirements and directives thereunder or issued in connection therewith or in implementation thereof or relating thereto and (ii) all requests, rules, guidelines, requirements or directives issued by any United States or foreign regulatory authority in connection with the implementation of the recommendations of the Bank for International Settlements or the Basel Committee on Banking Regulations and Supervisory Practices (or any successor or similar authority) in each case pursuant to Basel III, shall, for the purposes of this Loan Agreement, be deemed to be adopted subsequent to the date hereof and a Change in Law regardless of the date enacted, adopted, issued, promulgated or implemented.

"Chapter 11 Case" and "Chapter 11 Cases" shall have the respective meanings given such terms in the recital to this Loan Agreement.

"City of Hopkinsville Mortgage" means that certain Real Estate Mortgage, dated as of December 14, 2022, executed by Ascend Elements, Inc. for the benefit of the City of Hopkinsville, Kentucky, and recorded on December 15, 2022, in the Christian County, Kentucky Clerk's Office, encumbering Lot 1 of the Division Plat of Hopkinsville Industrial Foundation, Inc. Property, recorded in Plat Cabinet 12, Slide 519 in the Christian County, Kentucky Clerk's Records (being Parcel 1 of the property conveyed to the Borrower by General Warranty Deed dated November 16, 2022 and recorded in Deed Book 797, Page 420, Christian County, Kentucky Clerk's Office), securing the Borrower's obligations under that certain Grant Agreement with the City of Hopkinsville dated as of November 15, 2022.

"Closing Collateral Documents" shall mean the Polish First Stage Security Agreements.

"Closing Date" shall mean the first Business Day when each of the conditions applicable to the funding of the Term Loans and listed in Section 2(a) of this Loan Agreement shall have been satisfied or waived in a manner satisfactory to the DIP Lender.

"Collateral" shall mean all assets, real or personal, of any Loan Party, wherever located and now owned or at any time hereafter acquired by such Loan Party or in which such Loan Party now has or at any time in the future may acquire any right, title or interest, including all Article 9 Collateral and all Pledged Collateral and subject to entry of the Final Order, proceeds of claims and causes of action under Bankruptcy Code §§ 502(d), 542, 544, 545, 547, 548, 549, 550, 551, 553(b), and 724(a), and any other Bankruptcy Code or state-law avoidance actions.

"Collateral Documents" shall mean (i) the Closing Collateral Documents; (ii) the Post-Closing Collateral Documents; and (iii) each other agreement entered into pursuant to Section 12 hereof and all similar agreements entered into guaranteeing payment of, or granting a Lien upon property as security for payment of, the Obligations and the Guaranteed Obligations, including the Financing Orders and the Guaranty.

"Commitment" shall mean the commitment of the DIP Lender to make the Term Loans to the Borrowers as the same may be terminated or reduced from time to time in accordance with the terms of this Loan Agreement.

"Connection Income Taxes" shall mean Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

"Debtors" shall have the meaning given to such term in the Financing Orders.

"Default" shall mean an event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

"Default Rate" shall have the meaning given such term in Section 4(d) of this Loan Agreement.

"Designated Jurisdiction" shall mean any country or territory that is the target of comprehensive Sanctions (as of the date of this Loan Agreement, Cuba, Iran, North Korea, the Crimea region of Ukraine, the so-called Donetsk People's Republic, and the so-called Luhansk People's Republic).

"DIP Documents" shall mean this Loan Agreement, the Collateral Documents, the Guaranty, the Financing Orders and all other agreements, instruments, documents and certificates executed and delivered to, or in favor of the DIP Lender in connection with this Loan Agreement. Any reference in

this Loan Agreement or any other DIP Document to a DIP Document shall include, to the extent any such document is material, all appendices, exhibits or schedules thereto, and all amendments, restatements, amendments and restatements supplements or other modifications thereto, and shall refer to such DIP Document as the same may be in effect at any and all times such reference becomes operative.

"DIP Lender" shall have the meaning given such term in the recital to this Loan Agreement.

"Dispose" or "Disposition" shall mean any transaction, or series of related transactions, pursuant to which any Person or any of its Subsidiaries sells, assigns, transfers, leases, licenses (as licensor) or otherwise disposes of any property or assets (whether now owned or hereafter acquired) (excluding Liens) to any other Person, in each case, whether or not the consideration therefor consists of cash, securities or other assets owned by the acquiring Person. For purposes of clarification, "Disposition" shall include (a) the sale or other disposition for value of any contracts, (b) any disposition of property through a "plan of division" under the Delaware Limited Liability Company Act or any comparable transaction under any similar law, and (c) the early termination or modification of any contract resulting in the receipt by any Loan Party of a cash payment or other consideration in exchange for such event (other than payments in the ordinary course for accrued and unpaid amounts due through the date of termination or modification). Notwithstanding anything to the contrary herein, the disposition of assets in connection with court-approved bid and sale procedures requested pursuant to the Bidding Procedures Order shall in no event constitute a "Disposition" hereunder or under any DIP Document.

"Dollars" or "$" shall mean lawful currency of the United States of America.

"EBRD Mandate Letter" shall have the meaning given such term in Section 14(z) of this Loan Agreement.

"EEA Financial Institution" means (a) any credit institution or investment firm established in any EEA Member Country or the United Kingdom which is subject to the supervision of a Resolution Authority, (b) any entity established in an EEA Member Country or the United Kingdom which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country or the United Kingdom which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"EEA Member Country" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"Environmental Laws" shall mean any and all laws, rules, orders, regulations, statutes, ordinances, guidelines, codes, decrees, or other legally binding requirements (including, without limitation, principles of common law) of any Governmental Authority, regulating, relating to or imposing liability or standards of conduct concerning pollution or the preservation or protection of the environment, natural resources or human health (including employee health and safety), including those pertaining to Remedial Action, the generation, manufacture, processing, use, labeling, treatment, storage, handling, transportation, distribution, and Release, or threatened Release of, or exposure to, Materials of Environmental Concern, as has been, is now, or may at any time hereafter be, in effect.

"Environmental Permits" shall mean any and all permits, licenses, approvals, registrations, notifications, exemptions and other authorizations required under or issued pursuant to any Environmental Law.

"Equity Interests" shall mean, for any Person, any and all shares, interests, participations, or other equivalents, including membership or limited liability company interests (however designated,

whether voting or non-voting) of equity of the Person, including, if the Person is a partnership, partnership interests (whether general or limited) or any other interest or participation that confers on a holder the right to receive a share of the profits and losses of, or distributions of assets of, the partnership, but not including debt securities convertible or exchangeable into equity unless and until actually converted or exchanged.

"ESM" shall have the meaning given such term in Section 16 of this Loan Agreement.

"Event of Default" shall have the meaning given such term in Section 16 of this Loan Agreement.

"Excluded Taxes" shall mean any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized or incorporated under the laws of, or having its principal office or, in the case of the DIP Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of the DIP Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of the DIP Lender with respect to an applicable interest in Term Loans or Commitment pursuant to a law in effect on the date on which (i) the DIP Lender acquires such interest in the Term Loans or Commitment or (ii) the DIP Lender changes its lending office, except in each case to the extent that, pursuant to Section 10, amounts with respect to such Taxes were payable either to the DIP Lender's assignor immediately before the DIP Lender became a party hereto or to the DIP Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient's failure to provide the Borrowers with the tax documentation described in Section 10 hereof and (d) any withholding Taxes imposed under FATCA.

"Extraordinary Receipts" shall mean any cash received by the Loan Parties or any of their Subsidiaries not in the ordinary course of business (and not consisting of proceeds described in Sections 7(a)(i) and 7(a)(ii) hereof), in excess of $1,000,000, from (i) foreign, United States, state or local tax refunds, (ii) pension plan reversions, (iii) proceeds of insurance (other than to the extent such insurance proceeds are immediately payable to a Person that is not a Loan Party or any of their Subsidiaries) and including, for the avoidance of doubt, any director and officer insurance policies, (iv) judgments, proceeds of settlements or other consideration of any kind in connection with any cause of action, (v) condemnation awards (and payments in lieu thereof), (vi) indemnity payments (other than to the extent such payments described in the foregoing clauses (iv) and (v) are immediately payable to a Person that is not an affiliate of a Loan Party or any of their Subsidiaries) and (vii) any purchase price adjustment received in connection with any purchase agreement.

"FATCA" shall mean Sections 1471 through 1474 of the Internal Revenue Code, as of the date of this Loan Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among governmental authorities and implementing such Sections of the Internal Revenue Code.

"FCA Matter" shall mean the matter described on Schedule III hereto.

"Final Order" shall mean the order of the Bankruptcy Court entered in the Chapter 11 Cases after a final hearing pursuant to Sections 105, 326, 363, 364, 503 and 507 of the Bankruptcy Code and Bankruptcy Rule 4001, in form and substance satisfactory to the DIP Lender, together with all extensions, modifications and amendments thereto, authorizing Borrowers to obtain credit, incur Indebtedness, and

grant Liens under this Loan Agreement and/or certain financing documentation, all as set forth in such order.

"Financing Orders" shall mean, collectively, the Interim Order and the Final Order, as applicable.

"Foreign Lender" shall have the meaning given such term in Section 10(f)(ii)(B).

"French Security Documents" shall mean the French law financial securities account agreement entered into by the Parent Borrower as pledgor and the DIP Lender as beneficiary, and the related statement of pledge entered into by the Parent Borrower, each in relation to the financial securities account opened in the books of the French Subsidiary in which all securities of the French Subsidiary held by the Parent Borrower at any time are registered.

"French Subsidiary" shall mean Ascend Elements France.

"Funding Fee" shall have the meaning given such term in Section 8 of this Loan Agreement.

"GAAP" shall mean generally accepted accounting principles in the United States of America.

"Governmental Authority" shall mean the government of the United States or any other nation, or of any political subdivision thereof, whether federal, state, provincial or local, and any quasi-governmental entity, agency, branch, department, official, entity, authority, instrumentality, regulatory body, court, tribunal, arbitral body, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"Government Contract" shall mean any Contract (including any purchase, delivery, or task order, basic ordering agreement, pricing agreement, letter contract, grant, cooperative agreement, other transactional authority agreement, or change order) between any Loan Party, on the one hand, and any Governmental Authority or any prime contractor or subcontractor (at any tier) of any Governmental Authority, on the other hand.

"Guaranteed Obligations" shall mean the obligations to be guaranteed by each Guarantor pursuant to the terms of the Guaranty.

"Guarantor" shall have the meaning given such term in the recital to this Loan Agreement.

"Guaranty" shall mean the Guaranty, dated as of the date hereof, made by the Guarantors in favor of the DIP Lender.

"Hopkinsville Land Option" shall have the meaning given such term in Section 14(i).

"Hopkinsville Mortgage Obligations" shall have the meaning given such term in Section 14(v).

"Hopkinsville Mortgages" means, collectively, the City of Hopkinsville Mortgage and the Kentucky Seller Mortgage.

"Indebtedness" shall mean, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business and consistent with past practice, (d) all obligations of such Person under leases which are or should be, in accordance with GAAP, recorded as capital leases in respect of which such Person is liable (or, if GAAP is revised so that capital leases no longer are categorized as capital leases, that would be recorded as capital leases under GAAP as in effect prior to such revision), (e) all unconditional obligations of such Person to purchase, redeem, retire, defease or otherwise acquire for value any capital stock or other equity interests of such Person or any warrants, rights or options to acquire such capital stock or other equity interests, (f) all deferred obligations of such Person to reimburse any bank or other Person in respect of amounts paid or advanced under a letter of credit or other similar instrument, (g) all Indebtedness of the kind described in clauses (a) through (f) of others secured by a Lien on any asset of such Person, whether or not such Debt is assumed by such Person, (h) all guaranteed obligations of such Person in respect of obligations of the kind referred to in clauses (a) through (f) above, and (i) obligations in respect of any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement or other similar agreements or arrangements which is designed to protect against fluctuations in interest rates.

"Indemnified Person" shall have the meaning given such term in Section 9 of this Loan Agreement.

"Indemnified Taxes" shall mean (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any DIP Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

"Initial Approved Budget" shall mean the Approved Budget delivered on or prior to the Closing Date that is acceptable to the DIP Lender.

"Intellectual Property" shall mean the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under United States of America, state, multinational or foreign laws or otherwise, including, without limitation, copyrights, copyright licenses, patents, patent licenses, trademarks, trademark licenses, service-marks, technology, know-how and processes, recipes, formulas, trade secrets, and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

"Interest Payment Date" shall have the meaning given such term in Section 4(b) of this Loan Agreement.

"Interim Order" shall mean the interim order of the Bankruptcy Court entered in the Chapter 11 Cases after an interim hearing (assuming satisfaction of the standards prescribed in Sections 105, 326, 363, 364, 503 and 507 of the Bankruptcy Code and Bankruptcy Rule 4001 and other applicable law), together with all extensions, modifications and amendments thereto, satisfactory in form and substance to the DIP Lender, authorizing, on an interim basis, the Borrowers to execute and perform under the terms of this Loan Agreement and the other DIP Documents.

"Junior Encumbrances" shall mean the Liens existing on the Petition Date (to the extent valid, enforceable, perfected and not subject to avoidance as of the Petition Date or perfected after the Petition Date pursuant to section 546(b) of the Bankruptcy Code).

"JV" shall have the meaning given such term in Section 14(m) of this Loan Agreement.

"JV Agreement" shall have the meaning given such term in Section 14(m) of this Loan Agreement.

"Kentucky Seller Mortgage" means that certain Commercial Real Estate Mortgage and Assignment of Leases, dated as of November 16, 2022, executed by Ascend Elements, Inc. for the benefit of Hopkinsville Industrial Foundation, Inc., recorded in the Christian County, Kentucky Clerk's Office under Doc No. 10038904, at Book 1763 Page 419–431, encumbering Lot 2 of the Division Plat of Hopkinsville Industrial Foundation, Inc. Property (Plat Cabinet 12, Slide 519), together with all buildings, improvements, easements, fixtures, and appurtenances belonging thereto, as collaterally assigned by Hopkinsville Industrial Foundation, Inc. to Planters Bank, Inc. pursuant to that certain Collateral Assignment of Mortgage recorded in the Christian County, Kentucky Clerk's Office under Doc No. 10038905, at Book 1763 Page 432–435.

"Laws" shall mean, collectively, all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities and executive orders, including the binding interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority.

"Lien" shall mean any mortgage or deed of trust, pledge, hypothecation, assignment by way of security, deposit arrangement, lien (statutory or other), charge, claim, security interest, easement or encumbrance, or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, lease or any financing lease having substantially the same economic effect as any of the foregoing, and the filing of, or agreement to give, any financing statement perfecting a security interest under the Uniform Commercial Code or comparable law of any jurisdiction).

"Loan Party" shall mean the Borrowers and any Guarantor.

"Materials of Environmental Concern" shall mean any material, substance or waste that is listed, regulated, or otherwise defined as hazardous, toxic, radioactive, a pollutant or a contaminant (or words of similar regulatory intent or meaning) under applicable Environmental Law, or which could give rise to liability under any Environmental Law, including but not limited to petroleum (including crude oil or any fraction thereof), petroleum by-products, toxic mold, polychlorinated biphenyls, per- and polyfluoroalkyl substances, greenhouse gases, asbestos or asbestos-containing material, flammable or explosive substances, or pesticides.

"Maturity Date" shall mean the earliest to occur of (i) eighty-four days after the Petition Date, or if such date is not a Business Day the immediately following Business Day, (ii) thirty-four days after the date of the filing of the motion to approve the DIP Financing, if the Final Order has not been entered by the Bankruptcy Court on or prior to such date, or if such date is not a Business Day the immediately following Business Day, (iii) the sale of all or substantially all of the Loan Parties' assets or the Acquired Assets pursuant to a sale under Section 363 of the Bankruptcy Code; (iv) the substantial consummation of a plan of reorganization filed in the Chapter 11 Cases that is confirmed pursuant to an order of the Bankruptcy Court, (v) any dismissal of the Chapter 11 Cases and/or conversion to a case under Chapter 7 of the Bankruptcy Code or (vi) the date on which the Term Loans are accelerated pursuant to Section 16.

"Maximum Amount" shall have the meaning given such term in Section 1 of this Loan Agreement.

"Milestone" shall have the meaning given such term in Section 14(g) of this Loan Agreement.

"Loan Agreement" shall have the meaning given such term in the recital to this Loan Agreement.

"Obligations" shall mean all loans, advances, debts, liabilities and obligations for the performance of covenants, tasks or duties or for payment of monetary amounts (whether or not such performance is then required or contingent, or such amounts are liquidated or determinable) owing by Loan Parties to the DIP Lender arising under this Loan Agreement or any of the other DIP Documents, and all covenants and duties regarding such amounts, of any kind or nature, present or future, arising under this Loan Agreement or any of the other DIP Documents. This term includes all principal, interest, fees, charges, expenses, reasonable and documented attorneys' fees and any other sum chargeable to the Loan Parties under this Loan Agreement or any of the other DIP Documents.

"OFAC" shall mean the Office of Foreign Assets Control of the United States Department of the Treasury.

"Opole Option" shall have the meaning given such term in Section 1(d) of this Loan Agreement.

"Opole Property" shall have the meaning given such term in Section 1(d) of this Loan Agreement.

"Other Connection Taxes" shall mean, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any DIP Document, or sold or assigned an interest in any Term Loan or DIP Document).

"Other Taxes" shall have the meaning given such term in Section 10 of this Loan Agreement.

"Payment Office" shall mean such account, office or offices of the DIP Lender as may be designated in writing from time to time by the DIP Lender to the Borrowers.

"Permitted Encumbrances" shall mean, collectively, the Permitted Priority Encumbrances, the DIP Lender's Liens, Liens granted pursuant to the Financing Orders, and the Junior Encumbrances.

"Permitted Priority Encumbrances" shall mean the following encumbrances: (a) Liens for taxes or assessments or other governmental charges not yet due or that remain payable without penalty, the nonpayment of which is permitted or required by the Bankruptcy Code; (b) pledges or deposits of money securing statutory obligations under workmen's compensation, unemployment insurance, social security or public liability laws or similar legislation (excluding Liens under Title IV of the Employee Retirement Income Security Act of 1974); (c) zoning restrictions, easements, rights of way, encroachments, covenants, conditions, reservations, licenses, or other restrictions on the use of any real estate or other minor irregularities in title (including leasehold title) thereto so long as the same do not materially impair the use

or value of such real estate, (d) any interest or title of a lessor under any operating lease or operating sublease entered into by any Borrower or any Guarantor in the ordinary course of its business and other statutory and common law landlords' liens under such leases and subleases and (e) the Hopkinsville Mortgages.

"Permitted Indebtedness" shall mean: (a) Indebtedness arising under this Loan Agreement and the other DIP Documents; (b) Prepetition Obligations; (c) deferred taxes; (d) any Indebtedness existing on the Petition Date; and (e) administrative expenses of Borrowers for which the Bankruptcy Court has not directed payment.

"Permitted Variances" shall mean, with respect to any Variance Testing Period, in respect of the aggregate amount of Actual Disbursement Amounts, 20% for such Variance Testing Period.

"Person" shall mean any individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, limited liability company, institution, public benefit corporation, other entity or government (whether federal, state, county, city, municipal, local, foreign, or otherwise, including any instrumentality, division, agency, body or department thereof).

"Petition Date" shall have the meaning given such term in the recital to this Loan Agreement.

"Pledged Collateral" shall mean each Loan Party's right, title and interest in, to and under (a)(i) the shares of capital stock and other Equity Interests now owned or at any time hereafter acquired by such Loan Party; and (ii) all certificates and any other instruments representing all such Equity Interests; (b) the debt securities, promissory notes and all other instruments now owned or at any time hereafter acquired by such Loan Party; (c) all payments of principal or interest, dividends, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of, in exchange for or upon the conversion of, and all other Proceeds received in respect of the foregoing; (d) all rights and privileges of such Loan Party with respect to the securities and other property referred to in clauses (a), (b) and (c), including all management rights, all voting rights, any interest in any capital account related thereto, all rights as and to become a member or partner in the relevant entity, and all rights of the Loan Party under any shareholder or voting trust agreement or similar agreement; and (e) all Proceeds of any of the foregoing.

"Polish First Stage Security Agreements" shall mean: (i) a Polish law governed registered pledge agreement over the shares in Ascend Elements Poland 2 sp. z o.o., between the DIP Lender as pledgee and Ascend Elements Poland Holdings sp. z o.o. as pledgor; (ii) a Polish law governed registered pledge agreement over the shares in Ascend Elements Poland sp. z o.o., between the DIP Lender as pledgee and the Parent Borrower as pledgor; (iii) a Polish law governed registered pledge agreement over the shares in Ascend Elements Poland Holdings sp. z o.o., between the DIP Lender as pledgee and the Parent Borrower as pledgor; (iv) a Polish law governed registered pledge agreement over a collection of movable assets and property rights, between the DIP Lender as pledgee and Ascend Elements Poland 2 sp. z o.o. as pledgor; (v) a Polish law governed registered pledge agreement over a collection of movable assets and property rights, between the DIP Lender as pledgee and Ascend Elements Poland Holdings sp. z o.o. as pledgor; (vi) a Polish law governed registered pledge agreement over a collection of movable assets and property rights, between the DIP Lender as pledgee and Ascend Elements Poland sp. z o.o. as pledgor; (vii) a Polish law governed registered pledge agreement over bank accounts, between the DIP Lender as pledgee and Ascend Elements Poland 2 sp. z o.o. as pledgor; (viii) a Polish law governed registered pledge agreement over bank accounts, between the DIP Lender as pledgee and Ascend Elements Poland Holdings sp. z o.o. as pledgor; and (ix) a Polish law governed registered pledge agreement over bank accounts, between the DIP Lender as pledgee and Ascend Elements Poland sp. z o.o. as pledgor.

"Post-Closing Collateral Documents" shall mean (i) the French Security Documents; (ii)

those documents listed under the heading "Poland" on Schedule IV hereto; (iii) those documents listed under the heading "United Kingdom" on Schedule IV hereto and (iv) those documents listed under the heading "United States" on Schedule IV hereto.

"Prepetition Obligations" shall have the meaning given to the term "Prepetition CLN Obligations" in the Financing Orders.

"Purchaser" shall have the meaning given to such term in the Stalking Horse Purchase Agreement.

"Recipient" shall mean the DIP Lender.

"Related Fund" shall mean, with respect to any Person, an affiliate of such Person, or a fund or account managed by such Person or an affiliate of such Person.

"Release" shall mean, with respect to Materials of Environmental Concern, any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration into or through the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Materials of Environmental Concern).

"Remedial Action" shall mean any action (a) to correct, mitigate, or address any actual, alleged or threatened violation of or non-compliance with any Environmental Law or Environmental Permit, or (b) to clean up, remove, remediate, mitigate, abate, contain, treat, monitor, assess, evaluate, investigate, prevent, minimize or in any other way address any environmental condition or the actual, alleged or threatened presence, Release or threatened Release of any Materials of Environmental Concern (including the performance of pre-remedial studies and investigations and post-remedial operation and maintenance activities).

"Resolution Authority" means any body which has authority to exercise any Write-down and Conversion Powers.

"Restricted Payment" shall mean any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of any Person or any of its Subsidiaries, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such capital stock or other Equity Interest, or on account of any return of capital to any Person's stockholders, partners or members (or the equivalent of any thereof), or any option, warrant or other right to acquire any such dividend or other distribution or payment.

"Responsible Officer" shall mean the chief executive officer, chief financial officer, chief operating officer, chief administration officer, general counsel or chief restructuring officer of any Borrower.

"Sanctions" shall mean any economic or financial sanctions or trade embargoes administered or enforced by the United States Government (including OFAC and the U.S. State Department), the United Nations Security Council, the European Union, any European Union member state, or the United Kingdom.

"Stalking Horse Purchase Agreement" shall mean that certain Asset Purchase Agreement by and among Purchaser, the Parent Borrower and the other parties from time to time party thereto in the

form filed with the Bankruptcy Court or as otherwise agreed by the DIP Lender in its sole discretion.

"Subsidiary" of a Person shall mean a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of each of the Loan Parties.

"Successor Case" shall have the meaning given such term in the Financing Orders.

"Taxes" shall have the meaning given such term in Section 10 of this Loan Agreement.

"Term Loans" shall have the meaning given such term in Section 1 of this Loan Agreement.

"UK" or "United Kingdom" means the United Kingdom of Great Britain and Northern Ireland.

"UK Bail-In Legislation" means (to the extent that the United Kingdom is not an EEA Member Country which has implemented, or implements, Article 55 BRRD) Part I of the UK Banking Act 2009 and any other law or regulation applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (otherwise than through liquidation, administration or other insolvency proceedings).

"UK Companies Act" means the Companies Act 2006 enacted in the United Kingdom as such act may be amended, varied, supplemented or replaced from time to time.

"UK Financial Institution" means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person subject to IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"Uniform Commercial Code" shall mean the Uniform Commercial Code as in effect from time to time in the State of New York or any other state the laws.

"U.S. Person" shall mean any Person that is a "United States Person" as defined in Section 7701(a)(30) of the Internal Revenue Code.

"Variance Testing Date" shall mean commencing with the first full week after the date hereof, (i) for each of the first three full weeks, the Friday of such week and (ii) thereafter, every other Friday.

"Variance Testing Period" shall mean (i) for the first three Variance Testing Dates, the period commencing on date of entry of the Interim Order and ending on such Variance Testing Date and (ii) thereafter, the 2-week period ending on such Variance Testing Date.

"Write-Down and Conversion Powers" means:

(a) in relation to the UK Bail-In Legislation, any powers under that UK Bail-In Legislation to cancel,

reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.; and

(b) in relation to any other applicable Bail-In Legislation, (i) any powers under that Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers and (ii) any similar or analogous powers under that Bail-In Legislation.

19. Representations and Warranties. Each Borrower and each of the other Loan Parties represents as follows:

(a) each Borrower and each of the Loan Parties are duly formed and/or organized or incorporated and validly existing under the laws of their jurisdictions of incorporation or formation;

(b) upon entry of the Financing Orders, the execution and delivery of this Loan Agreement and the other DIP Documents and the performance by each Borrower of such Borrower's obligations hereunder and under the other DIP Documents (i) are within its corporate powers, (ii) have been duly authorized by all necessary corporate action of such Borrower, (iii) have received all necessary bankruptcy, insolvency or governmental approvals, and (iv) do not contravene or conflict with any provisions of (A) applicable material law, (B) such Borrower's corporate charter or by-laws or (C) of any agreements binding upon or applicable to the Loan Parties or any of their Subsidiaries or any of their properties;

(c) the Chapter 11 Cases have been duly authorized by all necessary legal and corporate action by or on behalf of each Loan Party and have been duly and properly commenced;

(d) upon entry of the Financing Orders, this Loan Agreement and each other DIP Document is a legal, valid and binding obligation, enforceable against the Borrower in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally, including the entry of the Financing Orders and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law;

(e) other than as a result of the Chapter 11 Cases or this Loan Agreement and subject to any necessary orders or authorization of the Bankruptcy Court, the Borrowers and the Loan Parties have good and marketable title to, or valid leasehold interests in, all of its material property and assets; none of the properties and assets of the Loan Parties and their Subsidiaries are subject to any Liens other than Permitted Encumbrances;

(f) no written statement furnished by or on behalf of the Loan Parties and their Subsidiaries to the DIP Lender pursuant to the terms of this Loan Agreement (other than any

projections, the Approved Budget, estimates and information of a general economic nature or general industry nature, each of which shall be reasonably believed to be trued and correct), when taken as a whole, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not materially misleading in light of all of the circumstances under which they were made;

(g) except for proceedings in or related to the Chapter 11 Cases, no action, claim, lawsuit, demand, investigation, creditors' process or legal proceeding is now pending or, to the knowledge of any Borrower, threatened in writing (or by any other means) against the Loan Parties or their Subsidiaries before any governmental authority or before any arbitrator or panel of arbitrators that challenges the rights or powers of the Loan Parties or their Subsidiaries to enter into or perform any of its obligations under the DIP Documents to which it is a party, or the validity or enforceability of any DIP Document or any action taken thereunder;

(h) each Loan Party is in compliance in all material respects with the requirements of all laws and regulations and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which such requirement of law or regulation or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted;

(i) none of the Loan Parties is an "investment company", "affiliated person", "promoter" of, or "principal underwriter" of or for, an "investment company", as such terms are defined in the Investment Company Act of 1940, as amended;

(j) no Loan Party, nor, to the knowledge of the Loan Parties, any director, officer, employee, agent, affiliate or representative thereof, is an individual or entity that is, or is 50% or more owned or controlled by, or acting for or on behalf of, any individual or entity that is, (i) currently the subject or target of any Sanctions or (ii) located, organized or resident in a Designated Jurisdiction;

(k) since the Petition Date, there has been no event or circumstance that has had or would reasonably be expected to have a Material Adverse Effect;

(l) the Loan Parties and their Subsidiaries have filed all federal, state and other tax returns and reports required to be filed, and have paid all material federal, state and other Taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable other than those not yet delinquent, that are being contested in good faith by appropriate proceedings and those that are set forth on Schedule II hereto;

(m) no Loan Party or Subsidiary of a Loan Party nor any of their Principals (as that term is defined by 48 C.F.R. § 2.101), employees, or, to the knowledge of the Loan Parties, other Persons acting on their behalf, is or has been suspended or debarred, proposed for debarment or suspension, declared ineligible or determined non-responsible from holding, performing or bidding on any Government Contract, and no proceeding regarding suspension, debarment, ineligibility or non-responsibility has been commenced or threatened in writing;

(n) no Governmental Authority, prime contractor or subcontractor has notified in writing (nor to the knowledge of the Loan Parties, orally) any Loan Party or Subsidiary of any material breach or material violation of any applicable Law relating to such Government Contract;

(o) no Loan Party or Subsidiary has received any written (or, to the knowledge of the Loan parties, oral) notice of (A) termination for default or cause, cure notice, or show cause notice relating to such Government Contract, (B) any audit (other than routine audits in the ordinary course of business) or investigation by any Governmental Authority relating to such Government Contract, or (C) any other claim or other dispute relating to such Government Contract;

(p) except as set forth on Schedule III, no Loan Party or Subsidiary has conducted any internal investigation or made any voluntary or mandatory disclosure to any Governmental Authority, with respect to any misstatement, overpayment, or actual, alleged or potential material violation of law relating to such Government Contract;

(q) no Loan Party or Subsidiary has received any written civil investigative demand or subpoena relating to any Government Contract;

(r) except with respect to the FCA Matter disclosed on Schedule III, the Seller, the Loan Parties and their Subsidiaries have complied, in all material respects, with all laws applicable to such Government Contracts and the terms and conditions of (including all representations and certifications relating to) such Government Contract;

(s) no Loan Party or Subsidiary has ever applied for or received a loan under either the Paycheck Protection Program or COVID-19 Economic Injury Disaster Loan program administered by the United States Small Business Administration;

(t) none of the execution, delivery, or performance of this Loan Agreement will require: (i) the novation or (ii) assignment of any current Government Contract, or (iii) consent of any counterparty to any current Government Contract; or (iv) any notice, disclosure or approval of any foreign ownership, control, or influence; and

(u) for the purposes of Regulation (EU) 2015/848 of 20 May 2015 on insolvency proceedings (recast) (the "Regulation"), its centre of main interest (as that term is used in Article 3(1) of the Regulation) is situated in the jurisdiction under whose laws that Loan Party is incorporated in as at the date of this Agreement and it has no "establishment" (as that term is used in Article 2(10) of the Regulation) in any other jurisdiction.

20. *Acknowledgement and Consent to Bail-In of Affected Financial Institutions.* Notwithstanding anything to the contrary in any DIP Documents or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any DIP Lender that is an Affected Financial Institution arising under any DIP Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto to any DIP Lender that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

i. a reduction in full or in part or cancellation of any such liability;

ii. a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other DIP Document; or

iii. the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

21. Miscellaneous.

(a) All notices and other communications provided for hereunder shall be in writing (including facsimile communication) and mailed, emailed or delivered as follows:

| | |
|---|---|
| If to Borrowers: | Ascend Elements, Inc.<br>133 Flanders Road<br>Westborough, MA 01581<br>Attention: Chief Financial Officer<br>Email: aallouache@ascendelements.com |
| with copies to (which shall not constitute notice): | Ascend Elements, Inc.<br>133 Flanders Road<br>Westborough, MA 01581<br>Attention: Chief Restructuring Officer<br>Email: atitus@ascendelements.com<br><br>and<br><br>Norton Rose Fulbright US LLP<br>2200 Ross Avenue, Suite 3600<br>Dallas, Texas 75201<br>Attention: Ryan Manns<br>Email: ryan.manns@nortonrosefulbright.com |
| If to the DIP Lender: | Bluegrass Infrastructure Partners Holdings, LLC<br>Bay Adelaide – East Tower<br>22 Adelaide Street West, Suite 3930<br>Toronto, ON, M5H 4E3<br>Attn: Corporate Secretary<br>Email: notifications@kinterracapital.com |
| with copies to: | Latham & Watkins LLP<br>1271 Avenue of the Americas<br>New York, New York 10022<br>Attn: Adam J. Goldberg<br>Daniel Mun<br>Victor Ludwig |

Email: adam.goldberg@lw.com
daniel.mun@lw.com
victor.ludwig@lw.com

All such notices and communications shall, when mailed or sent by overnight courier, be effective when deposited in the mails or delivered to the overnight courier, as the case may be, or when sent by email be effective when confirmation is received.

(b) The Borrowers shall reimburse the DIP Lender monthly, in arrears, for all reasonable and documented out-of-pocket fees and expenses incurred in connection with the negotiation and preparation of the DIP Documents and the obtaining of approval of the DIP Documents by the Bankruptcy Court, including fees, costs and expenses of financial and other advisors (*provided*, that, with respect to legal fees and expenses, limited to the legal fees, costs and expenses of one legal counsel and one local counsel in each relevant jurisdiction), including fees, costs and expenses of financial and other advisors, in connection with:

(1) any amendment, modification or waiver of, consent with respect to, or termination or enforcement of, any of the DIP Documents or advice in connection with the administration of the Term Loans made pursuant hereto or its rights hereunder or thereunder;

(2) the review of pleadings and documents related to the Chapter 11 Cases and any subsequent Chapter 7 case, attendance at meetings related to the Chapter 11 Cases and any subsequent Chapter 7 case, and general monitoring of the Chapter 11 Cases and any subsequent Chapter 7 case;

(3) any litigation, contest, dispute, suit, proceeding or action (whether instituted by the DIP Lender, the Borrowers or any other Person, and whether as a party, witness or otherwise) in any way relating to the Collateral, any of the DIP Documents or any other agreement to be executed or delivered in connection herewith or therewith, including any litigation, contest, dispute, suit, case, proceeding or action, and any appeal or review thereof, in connection with a case commenced by or against Borrower or any other Person that may be obligated to the DIP Lender by virtue of the DIP Documents, including any such litigation, contest, dispute, suit, proceeding or action arising in connection with any work-out or restructuring of the Term Loans during the pendency of one or more Events of Default;

(4) any attempt to enforce any remedies of the DIP Lender against any or all of the Borrowers or any other Person that may be obligated to the DIP Lender by virtue of any of the DIP Documents, including any such attempt to enforce any such remedies in the course of any work-out or restructuring of the Term Loans during the pendency of one or more Events of Default;

(5) any work-out or restructuring of the Term Loans during the pendency of one or more Events of Default; and

(6) any efforts to (A) monitor the Term Loans or any of the other Obligations, (B) evaluate, observe or assess any of the Borrower or their respective affairs, (C) verify, protect, evaluate, assess, appraise, collect, sell, liquidate or otherwise Dispose of any of the Collateral and (D) monitor any sales;

to the extent the invoiced and, subject to the Financing Orders, such amounts will be payable within ten (10) Business Days of the Parent Borrower's receipt of an invoice. Without limiting the generality of the

foregoing, such expenses, costs, charges and fees may include: fees, costs and expenses of accountants, appraisers, investment bankers, management and other consultants and paralegals; court costs and expenses; photocopying and duplication expenses; court reporter fees, costs and expenses; long distance telephone charges; air express charges; and expenses for travel, lodging and food paid or incurred in connection with the performance of such legal or other advisory services. All expenses incurred by the DIP Lender shall receive super-priority administrative expense status per Section 364 of the Bankruptcy Code (subject to the Financing Orders). On or prior to the earlier of the Maturity Date and any prepayment of all the outstanding Term Loans, the Borrowers shall pay, or caused to be paid, to Latham & Watkins LLP an amount (if any) equal to (A) the Budgeted Disbursement Amounts less (B) the Actual Disbursement Amounts without reduction of amounts set forth in the line items in the Approved Budget (including amounts that are identified in the Approved Budget for estate professionals or that have been placed into escrow for the Professional Fees Escrow Account (as defined in the Financing Orders)); *provided*, such amount shall not be in excess of the amount invoiced by Latham & Watkins and not yet paid.

(c) No failure or delay on the part of the DIP Lender or any other holder of this Loan Agreement to exercise any right, power or privilege under this Loan Agreement and no course of dealing between Borrowers and the DIP Lender shall impair such right, power or privilege or operate as a waiver of any default or an acquiescence therein, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies expressly provided in this Loan Agreement are cumulative to, and not exclusive of, any rights or remedies that the DIP Lender would otherwise have. No notice to or demand on the Borrowers in any case shall entitle the Borrowers to any other or further notice or demand in similar or other circumstances or constitute a waiver of the right of the DIP Lender to any other or further action in any circumstances without notice or demand.

(d) Borrowers and any endorser of this Loan Agreement hereby consent to renewals and extensions of time at or after the maturity hereof without notice, and hereby waive diligence, presentment, protest, demand and notice of every kind and, to the full extent permitted by law, the right to plead any statute of limitations as a defense to any demand hereunder.

(e) If any provision in or obligation under this Loan Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

(f) **THIS LOAN AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE BORROWER AND THE DIP LENDER HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK (INCLUDING WITHOUT LIMITATION SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK), WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES AND, TO THE EXTENT APPLICABLE, THE BANKRUPTCY CODE.**

(g) Each party hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the Bankruptcy Court and, if the Bankruptcy Court does not have (or abstains from) jurisdiction, the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Loan Agreement or any DIP Document, and each of the parties hereto hereby irrevocably

and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court.

(h) **THE BORROWERS AND, BY THEIR ACCEPTANCE OF THIS LOAN AGREEMENT, THE DIP LENDER, AND ANY SUBSEQUENT HOLDER OF THIS LOAN AGREEMENT, HEREBY IRREVOCABLY AGREE TO WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS LOAN AGREEMENT OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS LOAN AGREEMENT AND THE LENDER/BORROWER RELATIONSHIP THAT IS BEING ESTABLISHED**. The scope of this waiver is intended to be all-encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this transaction, including without limitation contract claims, tort claims, breach of duty claims and all other common law and statutory claims. Each Borrower and, by their acceptance of this Loan Agreement, the DIP Lender, and any subsequent holder of this Loan Agreement, each (i) acknowledges that this waiver is a material inducement to enter into a business relationship, that each has already relied on this waiver in entering into this relationship, and that each will continue to rely on this waiver in their related future dealings and (ii) further warrants and represents that each has reviewed this waiver with its legal counsel and that each knowingly and voluntarily waives its jury trial rights following consultation with legal counsel. **THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING) THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS OF THIS LOAN AGREEMENT**. In the event of litigation, this provision may be filed as a written consent to a trial by the court.

(i) The Borrowers shall not have the right to assign their obligations or liabilities under this Loan Agreement without the prior written consent of the DIP Lender. The DIP Lender may without any notice to, or consent of the Borrowers (or any other Loan Party), assign or participate to one or more entities all or any part of the amounts outstanding hereunder, the Term Loans, the commitments to make loans hereunder, the Liens granted hereunder and any other rights or obligations under this Loan Agreement or any other DIP Document To the extent of any such assignment or participation (unless otherwise stated therein) the assignee or participant shall have the same rights and benefits hereunder as it would have if it were a DIP Lender hereunder.

(j) No provision of this Loan Agreement may be amended or waived unless such amendment or waiver is in writing and is signed by the Borrowers and the DIP Lender; provided that any such amendments, modifications or supplements hereto must be made in accordance with the applicable requirements of the Interim Order.

(k) This Loan Agreement may be executed and delivered in any number of counterparts, and by different parties hereto on separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute one and the same instrument. Execution of this Loan Agreement via facsimile or electronic mail shall be effective, and signatures received via facsimile or electronic mail shall be binding upon the parties hereto and shall be effective as originals. The parties hereto irrevocably and unreservedly agree that this Loan Agreement may be executed by way of electronic signatures and the parties agree that neither this Loan Agreement, nor any part hereof, shall be challenged or denied any legal effect, validity and/or enforceability solely on the ground that it is in the form of an electronic record.

(l) This Loan Agreement, the other DIP Documents, and all Liens created hereby or pursuant to the Collateral Documents or any other DIP Document shall be binding upon the Borrowers and each other Loan Party, the estates of the Borrowers, and any trustee or successor in interest of the Borrowers and each other Loan Party in the Chapter 11 Case or any subsequent case commenced under Chapter 7 of the Bankruptcy Code, and shall not be subject to Section 365 of the Bankruptcy Code. This Loan Agreement and the other DIP Documents and the Financing Orders shall be binding upon, and inure to the benefit of, the successors of the DIP Lender and each of its respective permitted assigns, transferees and endorsees. Each Loan Party which has granted Liens created under the French Security Documents expressly agrees and confirms that any such Lien and its obligations under the French Security Documents and this Loan Agreement shall be maintained and will continue in full force and effect in favor of any successors of the DIP Lender and each of its respective permitted assigns, transferees and endorsees. The Liens created by this Loan Agreement, and the other DIP Documents shall be and remain valid and perfected in the event of the substantive consolidation or conversion of the Chapter 11 Case or any other bankruptcy case of any Loan Party to a case under chapter 7 of the Bankruptcy Code or in the event of dismissal of the Chapter 11 Case or the release of any Collateral from the jurisdiction of the Bankruptcy Court for any reason, without the necessity that the DIP Lender file financing statements or otherwise perfect its security interests or Liens under applicable law.

(m) In the event of any inconsistency between the terms and conditions of this Loan Agreement and the Financing Orders, the provisions of the Financing Orders shall govern and control.

(n) THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES, AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

(o) The Loan Parties and their Subsidiaries will pay or discharge, before delinquency, (i) all material Taxes, assessments and governmental charges levied or imposed upon it or upon its income or profits, upon any properties of the Loan Parties and their Subsidiaries (including, without limitation, the Collateral) or upon or against the creation, perfection or continuance of the security interest, prior to the date on which penalties attach thereto, except in each case (1) where the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by such Loan Party or such Subsidiary, (2) Taxes the nonpayment of which is permitted or required by the Bankruptcy Code or this Loan Agreement or (3) [reserved], (ii) all federal, state and local Taxes required to be withheld by it, and (iii) all lawful claims for labor, materials and supplies which, if unpaid, might by law become a lien or charge upon any properties of the Loan Parties and their Subsidiaries.

* * * * *

IN WITNESS WHEREOF, the Borrowers have caused this Loan Agreement to be executed and delivered by its duly authorized officer as of the day and year and at the place first above written.

**ASCEND ELEMENTS, INC.,** as Parent Borrower, Debtor and Debtor in Possession

By: _____
Name:
Title

**ASCEND ELEMENTS US, LLC**, as a Borrower

By: _____
Name:
Title

DIP LENDER:

**BLUEGRASS INFRASTRUCTURE PARTNERS HOLDINGS, LLC**

By: _____
Name:
Title:

**Schedule I**

**Reporting Obligations**

Deliver (which delivery may be made by electronic communication (including email)) to the DIP Lender, each of the financial statements, reports, or other items set forth below at the following times in form reasonably satisfactory to the DIP Lender:

| | |
|---|---|
| Every other Thursday commencing with the second Thursday after the date hereof | a certificate which shall include such detail as is reasonably satisfactory to the DIP Lender (i) certifying that the Loan Parties are in compliance with the covenants contained in Section 15(j) and (ii) certifying that no Default or Event of Default has occurred or, if such a Default or Event of Default has occurred, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto, and attaching thereto the Approved Budget Variance Report which shall be prepared by the Parent Borrower as of the last day of the most recent Variance Testing Date, |
| Each Friday commencing with the second Friday after the date hereof | a revised proposed budget (it being understood that upon written approval of such proposed budget by the DIP Lender (and not before such written approval), in its sole discretion, such proposed budget shall become the "Approved Budget" and provided that until such time as such proposed budget becomes the Approved Budget, the prior Approved Budget shall continue to be the Approved Budget) and timing changes with respect to any periods that were included in a previously delivered report and which shall be in form and substance acceptable to the DIP Lender and DIP Lender, |
| promptly, to the extent reasonably feasible, | (i) copies of all material pleadings, motions, applications or financial information filed by any Loan Party with the Bankruptcy Court; provided that any such documents that are publicly available shall be deemed to have been delivered, (ii) a copy of each executed Trade Agreement (as defined in the Interim Order) and (iii) to the extent any order entered pursuant to the first day motions requires the maintenance and provision of a matrix or schedule of payments, the Debtors shall provide a copy of such matrix or schedule to counsel to the DIP Lender concurrently with the provision of such matrix or schedule to the U.S. Trustee, |
| promptly, but in any event within five (5) Business Days after any Borrower has knowledge of any event or condition that constitutes a Default, | notice of such event or condition and a statement of the curative action that such Borrower proposes to take with respect thereto, and |
| upon the reasonable request of the DIP Lender, | any other information relating to the business, financial, legal or corporate affairs of the Loan Parties and their Subsidiaries. |

**Schedule II**

**Taxes**

[To be provided on a post-closing basis]

## Schedule III

## Investigations and Disclosures to Governmental Authorities

[To be provided on a post-closing basis]

# Schedule IV

## Post-Closing Covenants

**Schedules to the Loan Agreement**

Within three Business Days after the Closing Date (or such later date as may be agreed by the DIP Lender in its sole discretion), the Company shall have delivered a completed copy of Schedule II and Schedule III to the Loan Agreement in form and substance reasonably satisfactory to the DIP Lender.

**France**

Within 10 days after the Closing Date (or such later date as may be agreed by the DIP Lender in its sole discretion), in relation to Ascend Elements France, a certified copy of the by-laws (*statuts*), relevant corporate resolutions and any power of attorney in relation to any DIP Documents and the transactions contemplated thereby and an original copy of (i) a company search (*extrait K-Bis*), (ii) a non-bankruptcy certificate (*certificat de non-faillite*) and (iii) encumbrance certificate (*état des privilèges et nantissements*), each dated not earlier than 10 Business Days prior to the signing date.

Within 10 days after the Closing Date (or such later date as may be agreed by the DIP Lender in its sole discretion), the French Security Documents and a certificate of pledge from Ascend Elements France and certified copies of the corporate registers (*registre de mouvement de titres* and *fiches individuelles de valeurs mobilières*) of Ascend Elements France evidencing the registration of the pledge over the financial securities account opened in the name of the Parent Borrower in the books of Ascend Elements France, created pursuant to the French Security Documents.

**Poland**

Within three Business Days after the Closing Date (or such later date as may be agreed by the DIP Lender in its sole discretion), all applications to the register of pledges relating to the registered pledges created under the Polish First Stage Security Agreements shall be duly filed, with the applicable court fees paid.

Within 10 days after the Closing Date (or such later date as may be agreed by the DIP Lender in its sole discretion), a Polish law security assignment agreement in relation to rights under material contracts/intercompany loans/incurrence policies between Ascend Elements Poland 2 sp. z o.o. as assignor and Bluegrass Infrastructure Partners Holdings, LLC as assignee; Ascend Elements Poland 2 sp. to confirm which receivables arising under material contracts, intercompany loans or insurance policies of the Polish Loan Parties are governed by Polish law and may be subject to assignment.

Within 10 days after the Closing Date (or such later date as may be agreed by the DIP Lender in its sole discretion), a Polish law security assignment agreement in relation to rights under material contracts/intercompany loans/incurrence policies between Ascend Elements Poland sp. z o.o. as assignor and Bluegrass Infrastructure Partners Holdings, LLC as assignee; Ascend Elements Poland sp. to confirm which receivables arising under material contracts, intercompany loans or insurance policies of the Polish Loan Parties are governed by Polish law and may be subject to assignment.

Within 10 days after the Closing Date (or such later date as may be agreed by the DIP Lender in its sole discretion), a Polish law security assignment agreement in relation to rights under material contracts/intercompany loans/incurrence policies between Ascend Elements Poland Holdings sp. z o.o. as assignor and Bluegrass Infrastructure Partners Holdings, LLC as assignee; scend Elements Poland Holdings

sp. z o.o. to confirm which receivables arising under material contracts, intercompany loans or insurance policies of the Polish Loan Parties are governed by Polish law and may be subject to assignment.

Within 10 days after the Closing Date (or such later date as may be agreed by the DIP Lender in its sole discretion), a Polish law statement on voluntary submission to enforcement from Ascend Elements Poland 2 sp. z o.o. made pursuant to art. 777 § 1 point 5 of the Polish Code of Civil Procedure.

Within 10 days after the Closing Date (or such later date as may be agreed by the DIP Lender in its sole discretion), a Polish law statement on voluntary submission to enforcement from Ascend Elements Poland sp. z o.o. made pursuant to art. 777 § 1 point 5 of the Polish Code of Civil Procedure.

Within 10 days after the Closing Date (or such later date as may be agreed by the DIP Lender in its sole discretion), a Polish law statement on voluntary submission to enforcement from Ascend Elements Poland Holdings sp. z o.o. made pursuant to art. 777 § 1 point 5 of the Polish Code of Civil Procedure.

Within 10 days after the Closing Date (or such later date as may be agreed by the DIP Lender in its sole discretion), a Polish law statement on voluntary submission to enforcement from Ascend Elements, Inc. made pursuant to art. 777 § 1 point 5 of the Polish Code of Civil Procedure.

Within 10 days after the Closing Date (or such later date as may be agreed by the DIP Lender in its sole discretion), an up-to-date (issued no earlier than 15 days before the Closing Date) ZUS (social security) certificate regarding each Polish Loan Party confirming that no Polish Loan Party has any outstanding social contributions or liabilities (or a statement that it does not have any employees or has not been registered as a social security payer).

Within 10 days after the Closing Date (or such later date as may be agreed by the DIP Lender in its sole discretion), an up-to-date (issued no earlier than 15 days before the Closing Date) tax certificate from the appropriate tax authority regarding each Polish Loan Party confirming that no Polish Loan Party has any outstanding taxes due but unpaid.

Within 10 days after the Closing Date (or such later date as may be agreed by the DIP Lender in its sole discretion), an up-to-date (issued no earlier than 15 days before the Closing Date) certificate from the register of treasury pledges regarding the absence of any prior registration of a treasury pledge established on any assets of any Polish Loan Party.

Within 10 days after the Closing Date (or such later date as may be agreed by the DIP Lender in its sole discretion), an up-to-date (issued no earlier than 15 days before the Closing Date) certificate from the register of treasury pledges regarding the absence of any prior registration of a treasury pledge established on any shares of any Polish Loan Party.

**United Kingdom**

Within 10 days after the Closing Date (or such later date as may be agreed by the DIP Lender in its sole discretion), the English law governed debenture by Ascend Elements UK, Ltd and the DIP Lender.

Within 10 days after the Closing Date (or such later date as may be agreed by the DIP Lender in its sole discretion), the English law governed share charge by Ascend Elements, Inc. and the DIP Lender, in relation to the pledge of the shares in Ascend Elements UK, Ltd.

Prior to or concurrently with the delivery of the foregoing under this heading "United Kingdom", a formalities certificate of Ascend Elements UK, Ltd in form and substance satisfactory to the DIP Lender

with respect to the Loan Agreement and the other applicable DIP Documents, that certifies and attaches the company's corporate board and shareholder resolutions and a copy of the company's up-to-date constitutional documents, issued no earlier than five (5) days before the Closing Date.

**United States**

Security Agreement to be entered into within 10 days of the Closing Date (or such later date as may be agreed by the DIP Lender in its sole discretion) by and among (i) Battery Resourcers LLC, (ii) each other Grantor (as defined therein) party thereto and (iii) the DIP Lender.

A UCC-1 financing statement in respect of Battery Resourcers LLC in favor of the DIP Lender.

EXHIBIT A

(Approved Budget)

EXHIBIT B

(Borrowing Request)

Bluegrass Infrastructure Partners Holdings, LLC, as DIP Lender
Bay Adelaide – East Tower
22 Adelaide Street West, Suite 3930
Toronto, ON, M5H 4E3
Attn: Corporate Secretary
Email: notifications@kinterracapital.com

[ ], 2026

Ladies and Gentlemen:

Reference is made to the Debtor in Possession Secured Term Loan Agreement, dated on or about May 5, 2026 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "DIP Loan Agreement"), by and among Ascend Elements, Inc., a Delaware corporation (the "Parent Borrower"), and certain of its debtor affiliates (together with the Parent Borrower, the "Borrowers" and individually, each a "Borrower") and Bluegrass Infrastructure Partners Holdings, LLC, as DIP Lender (the "DIP Lender"). Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the DIP Loan Agreement.

The applicable Borrower hereby gives you notice pursuant to Section 1 of the DIP Loan Agreement that such Borrower requests Term Loans under the DIP Loan Agreement on the below the terms:

(A) Borrower: _____

(B) Date of borrowing (which shall be a business day): _____, 2026

(C) Principal Amount of Term Loans: $_____

The applicable Borrower hereby represents that the applicable conditions set forth in Section 2(a) of the DIP Loan Agreement have been, or will be satisfied, prior to the date of borrowing.

**[ ]**, as Borrower

By: _____
Name:
Title:

**EXHIBIT C-1**

FORM OF UNITED STATES TAX COMPLIANCE CERTIFICATE

(For Foreign Lenders That Are Not Partnerships for U.S. Federal Income Tax Purposes)

Reference is hereby made to the Debtor in Possession Secured Term Loan Agreement, dated as of May 5, 2026 (as amended, restated, amended and restated, supplemented, waived, extended, or otherwise modified from time to time, the "DIP Loan Agreement"), among Ascend Elements, Inc., a Delaware corporation, certain of its debtor affiliates, and the DIP Lender (as defined therein). Capitalized terms used herein but not otherwise defined shall have the meaning given to such term in the DIP Loan Agreement.

Pursuant to the provisions of Section 10(f)(ii)(B) of the DIP Loan Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Term Loan(s) in respect of which it is providing this certificate, (ii) it is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a "ten percent shareholder" of the Parent Borrower within the meaning of Section 871(h)(3)(B) of the Code, (iv) it is not a "controlled foreign corporation" related to the Parent Borrower as described in Section 881(c)(3)(C) of the Code and (v) no payments in connection with any DIP Document are effectively connected with a United States trade or business conducted by the undersigned.

The undersigned has furnished the DIP Lender and the Parent Borrower with a duly-executed certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E or any successor form, as applicable. By executing this certificate, the undersigned agrees that (1) if the information provided in this certificate changes, expires or any documentation it previously delivered becomes obsolete or inaccurate in any respect, the undersigned shall promptly so inform the Parent Borrower and the DIP Lender in writing and deliver promptly to the Parent Borrower and the DIP Lender an updated certificate or other appropriate documentation (including any new documentation reasonably requested by the Parent Borrower or the DIP Lender) or promptly notify the Parent Borrower and the DIP Lender in writing of its legal ineligibility to do so, and (2) the undersigned shall have at all times furnished each of the Parent Borrower and the DIP Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding each such payment.

**BLUEGRASS INFRASTRUCTURE PARTNERS HOLDINGS, LLC**

By: _____
Name: _____
Title: _____

Date: _____ __, 20__

**EXHIBIT C-2**

FORM OF UNITED STATES TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Not Partnerships for U.S. Federal Income Tax Purposes)

Reference is hereby made to the Debtor in Possession Secured Term Loan Agreement, dated as of May 5, 2026 (as amended, restated, amended and restated, supplemented, waived, extended, or otherwise modified from time to time, the "DIP Loan Agreement"), among Ascend Elements, Inc., a Delaware corporation, certain of its debtor affiliates, and the DIP Lender (as defined therein). Capitalized terms used herein but not otherwise defined shall have the meaning given to such term in the DIP Loan Agreement.

Pursuant to the provisions of Section 10(f)(ii)(B) of the DIP Loan Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a "ten percent shareholder" of the Parent Borrower within the meaning of Section 871(h)(3)(B) of the Code, (iv) it is not a "controlled foreign corporation" related to the Parent Borrower as described in Section 881(c)(3)(C) of the Code and (v) no payments in connection with any DIP Document are effectively connected with a United States trade or business conducted by the undersigned.

The undersigned has furnished its participating DIP Lender with a duly-executed certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E or any successor form, as applicable. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, expires or if any documentation it previously delivered becomes obsolete or inaccurate in any respect, the undersigned shall promptly so inform such DIP Lender in writing, and deliver promptly to such DIP Lender an updated certificate or other appropriate documentation (including any new documentation reasonably requested by such DIP Lender) or promptly notify such DIP Lender in writing of its legal ineligibility to do so, (2) the undersigned shall have at all times furnished such DIP Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding each such payment.

**BLUEGRASS INFRASTRUCTURE PARTNERS HOLDINGS, LLC**

By: _____
Name: _____
Title: _____

Date: _____ __, 20__

**EXHIBIT C-3**

FORM OF UNITED STATES TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Partnerships for U.S. Federal Income Tax Purposes)

Reference is hereby made to the Debtor in Possession Secured Term Loan Agreement, dated as of May 5, 2026 (as amended, restated, amended and restated, supplemented, waived, extended, or otherwise modified from time to time, the "DIP Loan Agreement"), among Ascend Elements, Inc., a Delaware corporation, certain of its debtor affiliates, and the DIP Lender (as defined therein). Capitalized terms used herein but not otherwise defined shall have the meaning given to such term in the DIP Loan Agreement.

Pursuant to the provisions of Section 10(f)(ii)(B) of the DIP Loan Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect such participation, neither the undersigned nor any of its direct or indirect partners/members that is claiming the portfolio interest exemption ("Applicable Partners") is a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its Applicable Partners is a "ten percent shareholder" of the Parent Borrower within the meaning of Section 871(h)(3)(B) of the Code, (v) none of its Applicable Partners is a "controlled foreign corporation" related to the Parent Borrower as described in Section 881(c)(3)(C) of the Code, and (vi) no payments in connection with any DIP Document are effectively connected with a United States trade or business conducted by the undersigned or its Applicable Partners.

The undersigned has furnished its participating DIP Lender with a duly-executed IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, expires or if any documentation it previously delivered becomes obsolete or inaccurate in any respect, the undersigned shall promptly so inform its participating DIP Lender in writing, and deliver promptly to such DIP Lender an updated certificate or other appropriate documentation (including any new documentation reasonably requested by such DIP Lender) or promptly notify such DIP Lender in writing of its legal ineligibility to do so, (2) the undersigned shall have at all times furnished such DIP Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding each such payment.

**BLUEGRASS INFRASTRUCTURE PARTNERS HOLDINGS, LLC**

By: _____
Name: _____
Title: _____

Date: _____ __, 20

**EXHIBIT C-4**

United States Tax Compliance Certificate

(For Foreign DIP Lenders That Are Partnerships for U.S. Federal Income Tax Purposes)

Reference is hereby made to the Debtor in Possession Secured Term Loan Agreement, dated as of May 5, 2026 (as amended, restated, amended and restated, supplemented, waived, extended, or otherwise modified from time to time, the "DIP Loan Agreement"), among Ascend Elements, Inc., a Delaware corporation, certain of its debtor affiliates, and the DIP Lender (as defined therein). Capitalized terms used herein but not otherwise defined shall have the meaning given to such term in the DIP Loan Agreement.

Pursuant to the provisions of Section 10(f)(ii)(B) of the DIP Loan Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Term Loan(s) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Term Loan(s), (iii) neither the undersigned nor any of its direct or indirect partners/members that is claiming the portfolio interest exemption ("Applicable Partners") is a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its Applicable Partners is a "ten percent shareholder" of the Parent Borrower within the meaning of Section 871(h)(3)(B) of the Code, (v) none of its Applicable Partners is a "controlled foreign corporation" related to the Parent Borrower as described in Section 881(c)(3)(C) of the Code and (vi) no payments in connection with any DIP Document are effectively connected with a United States trade or business conducted by the undersigned or its Applicable Partners.

The undersigned has furnished the DIP Lender and the Parent Borrower with a duly-executed IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, expires or any documentation it previously delivered becomes obsolete or inaccurate in any respect, the undersigned shall promptly so inform the Parent Borrower and the DIP Lender in writing and deliver promptly to the Parent Borrower and the DIP Lender an updated certificate or other appropriate documentation (including any new documentation reasonably requested by the Parent Borrower or the DIP Lender) or promptly notify the Parent Borrower and the DIP Lender in writing of its legal ineligibility to do so, and (2) the undersigned shall have at all times furnished the Parent Borrower and the DIP Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding each such payment.

**BLUEGRASS INFRASTRUCTURE PARTNERS HOLDINGS, LLC**

By: _____
Name: _____
Title: _____

Date: _____ __, 20__

**EXHIBIT B**

(Initial Budget)

**Ascend Elements, Inc.**
**DIP Budget**
*($ in '000s)*

| | *Status* | *Fcst* | *Fcst* | *Fcst* | *Fcst* |
|---|---|---|---|---|---|
| | *Forecast Week* | *Wk-1* | *Wk-2* | *Wk-3* | *3 Weeks* |
| | **Week Ending** | **5/8** | **5/15** | **5/22** | **Total** |
| | **Cash Flow Activity** | | | | |
| | **RECEIPTS** | | | | |
| 1 | **Total Receipts** | **$ -** | **$ -** | **$ -** | **$ -** |
| | **OPERATING DISBURSEMENTS** | | | | |
| 2 | Payroll, Benefits, & Contractors | $ (121) | $ (832) | $ (576) | $ (1,530) |
| 3 | Trade Disbursements | (119) | (85) | (69) | (273) |
| 4 | Property Leases | - | (243) | - | (243) |
| 5 | Utilities | (73) | (5) | - | (78) |
| 6 | Insurance | (1,098) | - | (270) | (1,368) |
| 7 | Taxes | - | - | - | - |
| 8 | Other Operating Disbursements | (36) | (106) | - | (143) |
| 9 | **Total Operating Disbursements** | **$ (1,448)** | **$ (1,271)** | **$ (915)** | **$ (3,634)** |
| 10 | **Net Cash Flow prior to Non-Operating Disb** | **$ (1,448)** | **$ (1,271)** | **$ (915)** | **$ (3,634)** |
| | **NON-OPERATING ACTIVITIES** | | | | |
| 11 | Other Non-Operating Activities | (81) | (18,797) | - | (18,878) |
| 12 | **Total Non-Operating Disbursements** | **$ (81)** | **$ (18,797)** | **$ -** | **$ (18,878)** |
| | **RESTRUCTURING ACTIVITIES** | | | | |
| 13 | Restructuring Professionals | (2,039) | (2,322) | (9,375) | (13,736) |
| 14 | **Total Restructuring Activities** | **$ (2,039)** | **$ (2,322)** | **$ (9,375)** | **$ (13,736)** |
| 15 | **Net Cash Flow** | **$ (3,569)** | **$ (22,390)** | **$ (10,290)** | **$ (36,248)** |
| 16 | Beginning Unrestricted Book Cash | $ 8,082 | $ 35,362 | $ 12,972 | $ 8,082 |
| 17 | (+/-) Net Cash Flow | (3,569) | (22,390) | (10,290) | (36,248) |
| 18 | (+/-) DIP Draw / (Paydown) | 30,000 | - | - | 30,000 |
| 19 | (+/-) Release of LC Cash Collateral | 849 | - | - | 849 |
| 20 | **Ending Unrestricted Book Cash** | **$ 35,362** | **$ 12,972** | **$ 2,683** | **$ 2,683** |