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

IN RE:	§	**Chapter 11**
	§	
ASCEND ELEMENTS, INC., et al.,	§	**Case No. 26-90440(CML)**
	§	**Jointly Administered**
Debtors.	§	

OBJECTION OF RMF NOOTER, LLC TO SALE OF DEBTORS' INTELLECTUAL PROPERTY AND POLISH ASSETS TO NEWCO
[Docket Nos. 120 and 352]

RMF Nooter, LLC ("Nooter") objects to (i) the Debtors' Notice of Designation of Newco as Successful Bidder for the Debtors' Intellectual Property and Polish Assets and Cancellation of Auction with Respect to Such Assets (the "Notice") [Docket No. 352], and (ii) the Proposed Poland/IP Sale Order attached as Exhibit B.

Preliminary Statement

1. This is a trial by ambush. On the eve of the hearing, the Debtors seek approval of a secret Asset Purchase Agreement with Newco to strip away the purported “crown jewel” of the estates—the Debtors’ intellectual property—for nominal cash, plus a phantom credit bid “in an amount to be determined” based on avoidable liens. This exemplifies the insider self-dealing that has characterized these cases from their inception. Newco is not an arm's-length third-party purchaser. It is an entity composed of the Senior Noteholders and Junior Noteholders—the very prepetition secured parties who dictated the sale milestones, refused the Debtors access to cash collateral, and shaped every material aspect of this sale process.

2. The Proposed Sale Order seeks sweeping relief that no court should grant on this record. It requests a finding that the sale was conducted in good faith under section 363(m) of the Bankruptcy Code—despite pervasive insider control that has tainted the process. It requests an

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irrevocable release of all "Newco Stakeholders"—a term broadly defined to include the Senior Noteholders and Junior Noteholders "in all capacities"—from any claims by the estates, the Debtors, and any subsequently appointed trustee. And it proposes to transfer the Debtors' most valuable intangible assets—exclusive, worldwide, irrevocable patent licenses from Worcester Polytechnic Institute covering the core lithium battery recycling technologies that form the foundation of the Debtors' business—for nominal cash consideration.

3. The Debtors have compounded these substantive defects with a procedural one of the first order: as of 9:00 p.m. on May 20, 2026, the Asset Purchase Agreement with Newco has not been filed on the docket. Exhibit A to the Notice is labeled "forthcoming." Parties in interest—including Nooter, any unsecured creditors' committee, and this Court—are being asked to evaluate and approve a transaction whose operative terms remain hidden, on the eve of a Sale Hearing scheduled for May 21, 2026 at 9:00 a.m. This failure violates the Bid Procedures Order, the Bankruptcy Code, and fundamental due process.

4. For these reasons, and as set forth below, Nooter respectfully requests that the Court deny approval of the proposed sale of the Poland/IP Assets to Newco or, in the alternative, condition any approval on the removal of the § 363(m) good faith findings and releases in favor of Newco and the Newco Stakeholders.

The Debtors' Chapter 11 Cases and Nooter's Interest

5. The Debtors commenced these Chapter 11 cases on April 9, 2026, by filing voluntary petitions in this Court. Nooter is a subcontractor to Turner–Kokosing Joint Venture on the Debtors' Apex 1 facility in Hopkinsville, Kentucky, and holds a properly perfected Kentucky mechanic's and materialman's lien in the original principal amount of $39,850,480.17. Nooter's lien arises from labor, materials, and equipment furnished at the Apex 1 facility and relates to more

than $145 million in asserted statutory lien claims by contractors, subcontractors, and suppliers at Apex 1. Nooter has consistently participated in these cases, filing a Joinder to the Turner–Kokosing Joint Venture's Objection [Docket No. 85], a Supplemental Objection to the Final Cash Collateral Order [Docket No. 171], an Objection to the DIP Financing Motion [Docket No. 249], and an Objection to the Stalking Horse Designation [Docket No. 250].

A. The Bid Procedures Order

6. On April 17, 2026, this Court entered the Order Approving Bid Procedures [Docket No. 120] (the "Bid Procedures Order"), which established a timeline and framework for the sale of substantially all of the Debtors' assets. The Bid Procedures Order set a Stalking Horse Designation Deadline of May 6, 2026. The bid deadline for all assets was May 9, 2026, at 11:59 p.m. (prevailing Central Time). The Sale Hearing was scheduled for May 21, 2026, at 9:00 a.m. The Bid Procedures required that a Qualified Bid include, among other things, a duly authorized and executed Proposed Asset Purchase Agreement marked against the Form APA, a proposed Sale Order, and financial information demonstrating the bidder's ability to consummate the transaction. The Bid Procedures further required that all qualified bids fully disclose the identity of each entity bidding for the assets or otherwise participating in connection with such bid.

B. The Insider Configuration of Newco and the Notice of Designation of Newco as Successful Bidder

7. Newco is a newly formed entity "managed or controlled" by Kinterra Capital Corp. Kinterra is the same entity that formed Bluegrass Infrastructure Partners Holdings, LLC on April 6, 2026—three days before the petition date—for the express purpose of pursuing a stalking horse bid in these cases. Bluegrass is identified in the Proposed Sale Order as both the "Buyer" and "Newco." The bid submitted by Newco is a joint bid among Kinterra Capital Corp. and "certain of the Senior Noteholders and Junior Noteholders." The Senior Noteholders hold notes issued under

the Senior Secured Convertible Note and Warrant Purchase Agreement dated December 22, 2025, and the Junior Noteholders hold notes issued under the Subordinated Secured Convertible Note Purchase Agreement dated June 13, 2025. These are the same prepetition secured parties who, through their consent and consultation rights under the Interim Cash Collateral Order and the Bid Procedures Order, exercised pervasive control over the sale process and refused the Debtors access to cash collateral.

C. The Notice of Designation of Newco as Successful Bidder

8. On May 20, 2026, the Debtors filed the Notice designating Newco as the successful bidder for the Debtors' intellectual property and Polish assets (the "Poland/IP Assets"). The Notice states that no other Qualified Bids were received for the Poland/IP Assets and that the Debtors have accordingly canceled the Auction with respect to such assets. The Notice further states that Newco has proposed to acquire the Poland/IP Assets in exchange for $3.0 million in cash and a credit bid of the CLN Obligations in an amount "to be determined." Critically, the Asset Purchase Agreement governing the proposed transaction has not been filed. Exhibit A to the Notice is labeled "forthcoming."

III. Legal Argument

A. The Debtors Have Failed to Comply with the Bid Procedures Order by Not Filing the Asset Purchase Agreement

9. The Bid Procedures Order and the Bid Procedures themselves require transparency in the sale process. The Bid Procedures mandate that each Qualified Bid include a duly authorized and executed Proposed Asset Purchase Agreement, provided in both PDF and MS-Word format and marked against the Form APA to show any requested modifications. The Bid Procedures Order further requires that, following the conclusion of the Auction and selection of a Successful Bidder, the Debtors present the results and seek Court approval, and that the Successful Bidder and the

Debtors "as soon as commercially reasonable and practicable, complete and sign all agreements, contracts, instruments, or other documents evidencing and containing the terms upon which each such Successful Bid was made".

10. The Notice itself purports to attach the "Second Amended & Restated Asset Purchase Agreement" as Exhibit A, but the exhibit page states only "forthcoming." As of 9:00 p.m. on May 20, 2026, the APA still has not been filed on the docket. The Sale Hearing is scheduled for May 21, 2026, at 9:00 a.m.—less than 12 hours away. This failure to file the operative transaction document deprives all parties in interest of any meaningful ability to review, analyze, and object to the actual terms of the proposed transaction. It plainly violates the Bid Procedures Order's requirement that the terms of the successful bid be disclosed and placed on the record before the Sale Hearing.

11. Under controlling authority, a debtor proposing a section 363 sale of substantially all of its assets must provide adequate disclosure so that the bankruptcy court and all parties in interest can evaluate the transaction on its merits. The purpose of the Bid Procedures Order's disclosure requirements is to ensure that the sale process is open, transparent, and subject to meaningful judicial scrutiny. A sale cannot be approved when the document that defines the transaction's terms remains unavailable to objecting parties and the Court.

B. The Lack of Adequate Disclosure Prejudices Objecting Parties and Should Preclude Approval

12. The Debtors' failure to file the APA is not merely a technical deficiency. It constitutes a lack of adequate disclosure that prejudices Nooter, any unsecured creditors' committee, and all creditors of the estates. Without the APA, no party in interest can determine the precise scope of the "Acquired Assets" being transferred, the identity and amount of "Assumed Liabilities," the nature and extent of the representations and warranties, the conditions to closing,

the allocation of risks between the buyer and the estates, or the precise terms and scope of any releases granted to Newco and the Newco Stakeholders.

13. The Proposed Sale Order itself references the APA repeatedly—defining the "Acquired Assets," the "Credit Bid," the "Purchase Price," the "Assigned Contracts," and the "Assumed Liabilities" by reference to the APA. Without the APA, these critical terms are undefined. The Court cannot make the requisite findings—including that the consideration is fair and reasonable, that the sale is in the best interests of the estates, and that the buyer is a good faith purchaser—when the governing transactional document remains "forthcoming." The Proposed Sale Order contemplates findings and orders on terms that no party in interest has had an opportunity to review or challenge. This is fundamentally inconsistent with due process and the notice-and-hearing framework of the Bankruptcy Code.

14. Treatise authority instructs that courts reviewing sales of substantially all assets require more than cursory scrutiny. Applications to sell substantially all of a debtor's assets must be detailed and contain adequate disclosure of the terms and conditions of the sale. The failure to provide the APA prevents any such scrutiny and should preclude the Court from approving the sale.

B. The Senior Noteholders' Control Over the Sale Process Taints the Bidding and Undermines Any Good Faith Finding

15. Throughout these Chapter 11 cases, the Senior Noteholders exercised extraordinary control over the sale process in a manner that undermined competition and depressed the value of the estates' assets. The Interim Cash Collateral Order conditioned the Debtors' access to cash collateral on sale milestones dictated by the Senior Secured Holders, including deadlines for bid procedures, indications of interest, bids, an auction, and a sale hearing. Any effort by the Debtors

to seek bid procedures or designate a stalking horse without the Senior Secured Holders' "prior written consent" triggered a default and termination of consensual cash collateral use.

16. The Bid Procedures Order itself perpetuated this control. It authorized the Debtors, "subject to the consent of the Senior Secured Holders," to designate a stalking horse bidder, modify the bid procedures, and determine the successful bidder at the auction. The Bid Procedures required that copies of all bids and non-binding indications of interest be promptly shared with the Senior Secured Holders, and mandated regular update calls on the status of the marketing process and discussions with prospective bidders. The Senior Secured Holders were given the right to communicate directly with any third party that submitted or was considering submitting a bid.

17. This level of control by the very entities who then constituted themselves as the purchaser through Newco is fundamentally inconsistent with a fair and open sale process. The Senior Noteholders had access to all bids and competitive intelligence while simultaneously positioning themselves as the buyer through Kinterra-managed entities. The result was predictable: no other Qualified Bid was received for the Poland/IP Assets, and the Debtors cancelled the auction. The chilling effect of the Senior Noteholders' entrenched position—their DIP lending, their consent rights, their access to all competing bid information, and their credit-bid capability—deterred third-party participation.

18. Under these circumstances, the Debtors' assertion that the sale process was "substantively and procedurally open and fair" rings hollow. The Court should not credit that assertion absent rigorous evidentiary proof, which the Debtors have not offered. The fact that Newco was the only bidder for the Poland/IP Assets is not evidence of a robust sale process; it is evidence that the process was designed—through milestones, consent rights, and information advantages—to produce this outcome.

C. No Good Faith Finding Under § 363(m) Should Be Granted to Newco

19. The Proposed Sale Order contains extensive good faith findings under section 363(m) of the Bankruptcy Code. It states that the "Sale Transactions contemplated by this Sale Order, the APA and Transaction Documents are undertaken by the Newco Stakeholders without collusion and in good faith" and that "each of the Newco Stakeholders is a good faith purchaser within the meaning of section 363(m)." It further asserts that "neither the Buyer nor any of its affiliates, officers, directors, managers, shareholders, members, or any of their respective successors or assigns is an 'insider' or 'affiliate' (as those terms are defined in section 101 of the Bankruptcy Code) of any of the Debtors."

20. These assertions cannot withstand scrutiny. The Senior Noteholders and Junior Noteholders are equity owners or members of Newco. Kinterra Capital Corp., which manages or controls Newco, formed Bluegrass three days before the petition date for the express purpose of acquiring the Debtors' assets. The Senior and Junior CLN holders include entities such as Decarbonization Partners, Fifth Wall, and Doral, who are simultaneously lenders and equity holders of the Debtors. The Rule 2019 Verified Statement filed by Weil on behalf of BlackRock and Just Climate confirms that these entities hold funded debt and equity interests in Ascend Elements, consisting of Senior Secured Notes, Junior Secured Notes, and Existing Equity Interests.

21. Under established case law, a sale is made in good faith when the purchaser takes for value, is not in collusion with other bidders, and does not take unfair advantage of other bidders. Conversely, a lack of good faith may be shown by "fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders." Where the sale is to an insider or an entity acting in concert with insiders, heightened scrutiny—entire fairness, not mere business judgment—applies.

22. The record here cannot support a good faith finding. The Senior Noteholders controlled the sale process through their consent and consultation rights, had access to all competing bid information, conditioned the Debtors' liquidity on compliance with their preferred sale timeline, and ultimately constituted themselves as the only bidder through Newco and refuse to allow the Debtors' use of cash collateral. This conduct is the very definition of the insider self-dealing that the good faith requirement of § 363(m) is designed to police. The Court should deny any § 363(m) finding in favor of Newco and the Newco Stakeholders.

D. The Proposed Releases in Favor of Newco and the Newco Stakeholders Are Improper and Should Be Denied

23. The Proposed Sale Order contains an extraordinarily broad release provision. Paragraph 33 provides that upon Closing, the Debtors, their officers, directors, managers, employees, agents, representatives, advisors, and any subsequently appointed trustee "shall irrevocably and unconditionally release and forever discharge the Newco Stakeholders from any and all suits, legal or administrative proceedings, claims, demands, damages, losses, costs, liabilities, interests, or causes of action whatsoever, at law or in equity, known or unknown, which the Estate Entities might now or subsequently may have, based on, relating to, or arising out of or in connection with the Debtors' Chapter 11 Cases, the Sale process, or the Sale Transactions".

24. The term "Newco Stakeholders" is defined to include not only the Buyer, but also "the Senior Noteholders in all capacities" and "the Junior Noteholders in all capacities" — that is, the Debtors' prepetition secured lenders and equity holders who controlled the sale process and stand on both sides of this transaction. This release would extinguish, among other things, any claims the estates may have against the Senior or Junior Noteholders for breach of fiduciary duty, aiding or abetting breach of fiduciary duty, equitable subordination, recharacterization, preference,

or fraudulent transfer — claims that the Unsecured Creditors' Committee or a subsequently appointed trustee should have the opportunity to investigate and pursue.

25. These releases are fundamentally inappropriate in the context of a section 363 sale. A sale order is not a plan of reorganization, and it should not be used to grant third-party releases that effectively extinguish estate causes of action without the protections of the plan confirmation process. The Proposed Sale Order itself acknowledges that the sale "does not constitute a de facto plan of reorganization or liquidation", yet it seeks precisely the type of releases that are available, if at all, only through a confirmed plan with adequate disclosure, voting, and the safeguards of section 1129 of the Bankruptcy Code.

26. The conflicts of interest inherent in the Newco Stakeholders' position make these releases particularly objectionable. The Senior Noteholders advanced less than 50% of the principal commitment under the Senior Secured Convertible Notes, and the Junior Noteholders advanced less than 56% of the Junior Secured Convertible Notes. The resulting liquidity crisis led to these Chapter 11 cases. The estates may have substantial claims against the Noteholders arising from their conduct. A sale order that extinguishes those claims as part of a self-dealing insider transaction should not be approved.

E. Transfer of the WPI Licenses Eliminates Significant Estate Value for Nominal Consideration

27. The Poland/IP Assets that Newco proposes to acquire include the Debtors' intellectual property — most importantly, the exclusive, worldwide, irrevocable patent licenses from Worcester Polytechnic Institute ("WPI") covering the Debtors' core lithium battery recycling technologies. The Debtors hold four separate Exclusive License Agreements with WPI, dating from 2016 to 2021, covering patent rights related to lithium-ion battery recycling, recovery of LiFePO4 and graphite, mixed cathode upcycling, and charge material synthesized from recycled

batteries. Each agreement grants the Debtors (as successor to Battery Resources) an exclusive, worldwide, irrevocable, royalty-bearing license with the right to sublicense, under the relevant Patent Rights, to develop, make, use, sell, and otherwise commercially exploit the Licensed Products and Licensed Processes.

28. The transfer of these licenses to Newco for $3,000,000 in cash, plus a credit bid in an undetermined amount that incorporates an avoidable lien, would effectively strip the estates of their most valuable intangible assets and hand them to the insiders who controlled the process. The assignment provisions of the WPI license agreements permit assignment to a successor in connection with a sale of all or substantially all assets, but the question is whether this particular assignment, for this consideration, benefits the estates — or only benefits Newco.

29. The practical effect of the transfer is devastating. Once Newco holds the exclusive WPI licenses, the remaining Debtor assets — the Apex 1 facility, the Apex 0, and other physical infrastructure — lose the intellectual property that makes them commercially viable. Newco, as the exclusive licensee, would control whether and how those technologies are deployed. The estates would be left with physical assets stripped of the IP that gives them value, while Newco would have acquired the technological crown jewels for a nominal cash payment. This effectively shifts control of the case to Newco by eliminating a significant source of estate value.

30. The Court should not permit this result. A section 363 sale must benefit the estate, not non-debtor affiliates and insiders. The $3,000,000 cash consideration is plainly inadequate for exclusive, worldwide patent licenses covering pioneering lithium battery recycling technology. The credit bid component — in an amount "to be determined" — provides no additional value to the estate; it merely satisfies prepetition debt obligations that the Noteholders extended to themselves in a transaction whose fairness is itself in question.

IV. The Insider Transaction Fails the Entire Fairness Standard

31. Where a sale under section 363 is to an insider or a party acting in concert with insiders, courts apply heightened scrutiny. The transaction must satisfy the entire fairness standard, which requires both fair dealing and fair price. As to fair dealing, the Debtors missed the stalking horse designation deadline, proposed bid protections that deterred competition, failed to ensure complete Rule 2019 disclosures by all insider participants, and filed unexecuted board resolutions. As to fair price, the transaction delivers only $3,000,000 in cash to the estate, with the remainder consisting of a credit bid of obligations owed by entities that are themselves the buyer.

32. The Proposed Sale Order asserts that "no common identity of directors, managers, controlling shareholders, or members exists between the Debtors and the Buyer". This assertion is belied by the record. The Senior and Junior Noteholders are simultaneously lenders, equity holders, and the constituents of the Buyer. The Debtors' board likely includes members affiliated with or appointed by the same prepetition secured lenders driving the sale timeline. Compounding this opacity, Decarbonization Partners — identified as a lead Senior CLN Investor and second-largest equity holder — failed to file a Rule 2019 verified statement, despite actively participating in these cases.

33. On this record, the entire fairness standard is not satisfied. The Court should apply heightened scrutiny and deny approval of the sale absent a showing that the transaction is fair in both process and price.

F. The Proposed Sale Order Improperly Seeks to Insulate the Transaction from Appellate Review

34. The Proposed Sale Order waives the 14-day stays under Bankruptcy Rules 6004(h) and 6006(d), authorizing the Debtors to close the sale immediately upon entry of the order. Combined with the § 363(m) good faith findings, this structure is designed to render any appeal

moot. If the sale closes before an appeal can be filed and a stay obtained, the § 363(m) protections would insulate the transaction from reversal. The Supreme Court's decision in *MOAC Mall Holdings LLC v. Transform Holdco LLC* clarified that § 363(m) is not jurisdictional and does not automatically moot all appeals, but merely provides a targeted protection to good faith purchasers. Nevertheless, the practical effect of immediate closing is to limit available appellate relief.

35. Given the insider character of the transaction, the pervasive conflicts of interest, and the lack of transparency, the Court should not grant the § 363(m) protections. At minimum, the Court should decline to waive the 14-day stay periods to allow parties in interest a meaningful opportunity to seek appellate review if warranted.

Reservation of Rights

36. Nooter reserves all rights to supplement or amend this Objection; to be heard at the Sale Hearing; to object to any proposed sale order that does not incorporate the protections set forth above; to object to the assumption and assignment of any executory contract or unexpired lease in connection with the proposed sale, including the WPI license agreements; and to seek any additional or alternative relief necessary to protect Nooter's rights, including relief concerning the validity, priority, and extent of its M&M Lien and the allocation of sale proceeds. Nothing in this Objection waives, releases, or concedes any of Nooter's lien rights under Kentucky law or the Bankruptcy Code.

Conclusion and Prayer for Relief

For the foregoing reasons, RMF Nooter, LLC respectfully requests that the Court enter an order: (i) denying approval of the sale of the Debtors' intellectual property and Polish assets to Newco as set forth in the Notice [Docket No. 352] and the Proposed Poland/IP Sale Order; (ii) in the alternative, if the Court is inclined to approve the sale, conditioning such approval on the

removal of (a) all findings of good faith under 11 U.S.C. § 363(m) in favor of Newco and the Newco Stakeholders, and (b) all releases and discharges in favor of the Newco Stakeholders, including the release provisions in Paragraph 33 of the Proposed Sale Order; (iii) requiring the Debtors to file the Asset Purchase Agreement on the docket and provide parties in interest with a meaningful opportunity to review and object to its terms before any sale may be approved; (iv) declining to waive the 14-day stay periods under Bankruptcy Rules 6004(h) and 6006(d); and (v) granting such other and further relief as is just and proper.

Dated: May 20, 2026

Respectfully submitted,

ANDREWS MYERS, PC

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CERTIFICATE OF SERVICE

I hereby certify that on May 20, 2026, I electronically filed the foregoing documents with the Clerk of the U.S. Bankruptcy Court for the Southern District of Texas, using the CM/ECF system. The ECF system will send a "Notice of Electronic Filing" to all counsel of record who have consented in writing to accept service of this document by electronic means.

/s/ T. Josh Judd
T. Josh Judd