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

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

F.E. MORAN, INC., FIRE PROTECTION'S LIMITED OBJECTION AND JOINDER IN RESPONSE TO THE SALE OF THE DEBTORS' HOPKINSVILLE ASSETS PURSUANT TO DEBTORS' EMERGENCY MOTION FOR ENTRY OF ORDERS(I)(A) APPROVING BID PROCEDURES, (B) AUTHORIZING DESIGNATION OF A STALKING HORSE BIDDER, (C) SCHEDULING AN AUCTION, RELATED DEADLINES, AND A SALE HEARING, AND (D) GRANTING RELATED RELIEF; AND (II)(A) APPROVING THE SALE OF THE DEBTORS' ASSETS, (B) APPROVING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN CONTRACTS, AND (C) GRANTING RELATED RELIEF
[Related to Docket No. 50]

F.E. Moran, Inc. Fire Protection ("**F.E. Moran**") by and through undersigned counsel, files this limited objection and joinder in response to the sale of the Debtors' property in Hopkinsville, Kentucky (the "**Hopkinsville Assets**") pursuant to section 363 of the Bankruptcy Code (the "**Sale**") in accordance with the *Debtors' Emergency Motion for Entry of Orders (I)(A) Approving Bid Procedures, (B) Authorizing Designation of a Stalking Horse Bidder, (C) Scheduling an Auction, Related Deadlines, and a Sale Hearing, and (D) Granting Related Relief; and (II)(A) Approving the Sale of the Debtors' Assets, (B) Approving the Assumption and Assignment of Certain Contracts, and (C) Granting Related Relief* (the "**Sale Motion**")[2] [D.I. 50] filed by the above-captioned Debtors, and states as follows:

[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 not otherwise defined herein have the same meaning as in the Sale Motion.

PRELIMINARY STATEMENT

1. F.E. Moran is a perfected secured creditor of the Debtors on account of a mechanic's lien relating to its claim in the amount of $1,858,918.40, plus interest, costs and attorneys' fees. The claim arises from F.E. Moran's pre-petition installation of fire control systems on the Debtor's real property located at 6505 John Rivers Road, Hopkinsville, Kentucky 42240 (the "**Subject Property**"), valuable and necessary work that improved the Debtors' primary real estate asset.

2. F.E. Moran respectfully submits this limited objection (the "**Limited Objection**") to the Sale to the extent the proposed sale seeks authority to transfer the Subject Property free and clear of F.E. Moran's lien without providing adequate protection of F.E. Moran's secured interest.

3. F.E. Moran does not object to the Debtors' efforts to market and sell the Subject Property generally, nor TKJV's purchase of the Subject Property. However, the Sale Motion does not address how F.E. Moran, a perfected secured creditor, will be treated. To date, the proposed Asset Purchase Agreement (the "**APA**") and even the basic terms thereof have not been disclosed. As a secured creditor holding a valid mechanic's lien against the Subject Property and related improvements, F.E. Moran is entitled to the protections afforded under sections 361 and 363 of the Bankruptcy Code, which are designed to ensure F.E. Moran receives the indubitable equivalent of its interest. These potential protections include payment from sale proceeds, attachment of its lien to segregated proceeds, or other adequate protection preserving the validity, extent, and priority of its lien rights. The Sale Motion does not appear to offer any of these protections.

4. Section 363(f) does not permit the Debtors to extinguish F.E. Moran's lien interests without satisfying one of the statutory predicates for a free-and-clear sale and without adequately protecting F.E. Moran's secured claim. Accordingly, unless any sale order expressly provides for

payment of F.E. Moran's secured claim at closing or the establishment of an appropriate reserve or escrow from sale proceeds pending resolution of the lien claim, the Subject Property must be sold subject to F.E. Moran's lien interests.

5. The Debtors have identified Turner-Kokosing Joint Venture ("**TKJV**"), the general contractor which retained F.E. Moran for the work it performed at the Subject Property, as the Successful Bidder for the Subject Property. F.E. Moran reserves all rights it may have against TKJV under non-bankruptcy law.

6. Through this Limited Objection, F.E. Moran seeks to preserve and protect its valid secured interest in the Subject Property and requests that any sale order expressly recognize and provide for the treatment of its mechanic's lien consistent with the Bankruptcy Code and applicable nonbankruptcy law.

RELEVANT BACKGROUND

A. The F.E. Moran Mechanics' Lien

7. The Debtor, Ascend Elements, Inc., is the actual owner of the Subject Property. TKJV is the design-build contractor retained by the Debtors prepetition to design and build the so-named Apex-1 plant at the Subject Property.

8. Prior to the Petition Date, on or about June 2, 2024, F.E. Moran entered into an agreement with TKJV to provide fire protection services and materials to the Subject Property. In contracting with F.E. Moran for the labor, materials, supplies and equipment needed for the fire protection work, TKJV was acting in its capacity as general contractor and authorized agent for the Debtors.

9. F.E. Moran provided all requested labor, materials, supplies, and equipment to the Subject Property, and the last date that F.E. Moran furnished such labor and materials was on or

about November 8, 2024.

10. On February 6, 2025, having not received payment for its fire protection work, F.E. Moran notified the Debtors of its intent to file a mechanic's lien on the Subject Property. Thereafter, on February 24, 2025, pursuant to KY. Rev. Stat. § 376.010, F.E. Moran filed a Mechanic's and Materialman's Lien in the Christian County Clerk's Office, in which it asserted a lien against the Subject Property for the full unpaid, due and owing amount of $2,454,271.40, plus interest and costs. Notice of this lien was mailed to the Debtors on February 28, 2025, thus perfecting the lien pursuant to KY. Rev. Stat. § 376.080.

11. On March 26, 2025, F.E. Moran filed an Amended Mechanic's and Materialman's Lien in the Christian County Clerk's Office, in which it asserted a lien against the Subject Property for the full unpaid due and owing amount of $1,858,918.40, plus interest and costs (the "**F.E. Moran Mechanics' Lien**"). On April 1, 2025, F.E. Moran mailed notice of the filed lien to the Debtors, thereby perfecting the lien pursuant to KY. Rev. Stat. § 376.080.

B. The Chapter 11 Cases

12. On April 9, 2026 (the "**Petition Date**"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. 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.

C. The Sale

13. On April 17, 2026, this Court entered the *Order (A) Approving Bid Procedures, (B) Authorizing Designation of a Stalking Horse Bidder, (C) Scheduling an Auction, Related Deadlines, and a Sale Hearing, and (D) Granting Related Relief* [Docket No. 120] (the "**Bid Procedures Order**"), pursuant to which the Court established an expedited auction sale process

for the Debtors' assets, including the Subject Property.

14. Following entry of the Bid Procedures Order, the Debtors took steps to market and sell certain intellectual property and interests related to their Polish affiliate, separately from the Hopkinsville Assets.

15. An auction for the Hopkinsville Assets – which includes the Subject Property – occurred on May 26, 2026. Following that auction, the Debtors filed a *Notice of Successful Bidder and Back Up Bidder* [D.I. 407] identifying TKJV as the Successful Bidder for the Hopkinsville Assets, with American Battery Technology Company as the Back-Up Bidder.

16. As of the filing of this Limited Objection, the terms of the proposed Sale Transaction to TKJV have not been clearly disclosed on the docket. No term sheet, proposed APA or other summary of the material terms of the Sale is on file. No such information has been communicated to F.E. Moran, formally or informally, that would allow F.E. Moran to evaluate the proposed terms.

17. The Debtors filed a witness and exhibit list for the hearing on approval of the Sale Transaction [D.I. 412]. This list does not include any term sheet or proposed APA, even as a document "to be filed" ahead of the hearing.

LIMITED OBJECTION

A. The Terms of the Sale Transaction are Undisclosed

18. Section 363(b)(1) of the Bankruptcy Code provides that a debtor, "after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1).

19. As the moving party, a debtor bears the burden to show that the proposed terms of sale are appropriate. While a debtor is granted wide latitude to apply its business judgment in a

sale, "there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business." *In re Continental Air Lines, Inc.*, 780 F. 2d 1223, 1226 (5th Cir. 1986).

20. As of the time of filing of this Limited Objection, the material terms of the proposed Sale to TKJV are not known. They are not on the docket, and have not been circulated informally to F.E. Moran.

21. F.E. Moran submits that this Court cannot approve the Sale, on any terms, unless and until those terms have been publicly disclosed, with sufficient time ahead of an approval hearing for parties like F.E. Moran to weigh in on the propriety of the terms. Anything less violates due process.

22. Similarly, the Debtors cannot, even hypothetically, meet their burden to prove the proper application of their business judgment without disclosing the terms they accepted for a proposed Sale Transaction.

23. Simply put, F.E. Moran submits that this Court cannot approve the Sale prior to the disclosure of the terms and an appropriate opportunity for creditors and parties-in-interest to evaluate and object if appropriate.

B. The Debtors Must Satisfy F.E. Moran's Claim at Closing to Sell the Subject Property Free and Clear of F.E. Moran's Lien.

24. F.E. Moran is the holder of a properly perfected Kentucky mechanic's lien against the Subject Property and is therefore a secured creditor entitled to protection under the Bankruptcy Code. Mechanic's lien holders, such as F.E. Moran, are recognized as secured creditors where their liens are properly perfected under applicable state law. *Matter of Waller Creek, Ltd.*, 867 F.2d 228, 233 (5th Cir. 1989) ("Mechanic's and materialman's liens are statutorily-created security interests" that give the creditor a secured claim against the applicable property). As a secured

creditor, F.E. Moran is entitled to adequate protection to the extent its interest in property is affected by the automatic stay or by any use, sale, or lease of property under Bankruptcy Code sections 362, 363, or 364. *See* 11 U.S.C. §§ 361, 362, 363, 364.

25. Under 11 U.S.C. § 363(f), a debtor may sell property "free and clear" of another entity's interest only if one of the following conditions is satisfied:

> The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if—
> (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
> (2) such entity consents;
> (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
> (4) such interest is in bona fide dispute; or
> (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

26. A properly perfected mechanic's lien constitutes an "interest" in property within the meaning of section 363(f) and is entitled to adequate protection in connection with any proposed sale of the lien collateral. Perfected mechanic's lienholders are entitled to payment from the collateral ahead of junior lienholders and unsecured creditors. *See* James P. Chivilo, Richard A. Bixter, and Gregory R. Meeder, *Understanding Payment Disputes in Bankruptcy Between Project Participants During and After Completion of Construction Projects*, 18 Pratt's Journal of Bankruptcy Law 4 (2026); *see also In re Demay Int'l LLC*, 471 B.R. 510, 518 (S.D. Tex. 2012) ("Under [§ 363(f)], if the sale is ordered, a claimant's interest in the property is then separated from the asset to be sold and may then be reattached to cash proceeds of the sale."). Accordingly, if the Debtors seek authority to sell the Subject Property free and clear of F.E. Moran's mechanic's lien, the Debtors must provide adequate protection of that lien interest, and prove that they have done so.

27. The surest method of protecting such interests in a section 363(f) sale is to pay the lienholder at closing. The next-best remedy is to permit the liens to attach to segregated sale proceeds with the same validity, extent, and priority they held prepetition. *See In re Demay Int'l, LLC*, 431 B.R. 164, 173–76 (Bankr. S.D. Tex. 2010) (enforcing sale order provision escrowing portion of sale proceeds pending adjudication of mechanic's lien claimant's rights and holding that lien attached to segregated proceeds following free-and-clear sale) *aff'd*, 471 B.R. 510, 516–20 (S.D. Tex. 2012) (affirming escrow mechanism as proper exercise of bankruptcy court authority and confirming that mechanic's lien transferred to and attached to segregated sale proceeds).

28. The Debtors do not explain how F.E. Moran's mechanic's lien will be treated in connection with the contemplated Sale.

29. If, for example, there are insufficient proceeds to satisfy F.E. Moran's lien at a later date, then F.E. Moran submits that this Court cannot approve a free-and-clear sale, as the Debtors will not be able to satisfy any of the subsections of 11 U.S.C. § 363(f).

30. The Sale Transaction terms are still undisclosed, and once known, they may present other infirmities. F.E. Moran reserves all rights to raise further objections based upon later disclosure of the terms of the proposed Sale.

31. Accordingly, to the extent the Debtors seek to sell the Subject Property free and clear of F.E. Moran's mechanic's lien under section 363(f), any sale order must expressly provide that F.E. Moran's secured claim will be paid in full at closing, or, at minimum, that sufficient sale proceeds will be segregated into a reserve or escrow pending final adjudication of the amount, validity, or priority of the lien claim.

C. If F.E. Moran's Claim Is not Paid at Closing, the Sale Must Proceed Subject to F.E. Moran's Lien.

32. In the alternative, if the Debtors do not satisfy F.E. Moran's secured claim at closing

or otherwise provide adequate protection consistent with section 363 of the Bankruptcy Code, then the Subject Property cannot be sold free and clear of F.E. Moran's Mechanic's Lien and must instead be sold subject to that lien.

33. Accordingly, in the alternative to a Sale Order requiring payment in full or establishment of an adequate reserve at closing, F.E. Moran respectfully requests that any Sale Order expressly provide that: (a) F.E. Moran's Mechanic's Lien remains attached to the Subject Property following closing with the same validity, extent, and priority existing as of the Petition Date; or, alternatively, (b) F.E. Moran's Mechanic's Lien attaches to identifiable net sale proceeds in the same priority and amount as existed prepetition, with such proceeds maintained in a segregated reserve pending consensual resolution or adjudication of the lien claim.

D. The Sale Cannot Divest F.E. Moran's Non-Bankruptcy Rights Against TKJV

34. The Successful Bidder, TKJV, was the general contractor on the Apex-1 project. In connection therewith, TKJV retained F.E. Moran as a subcontractor to provide fire protection services and materials for the Subject Property.

35. F.E. Moran provided those services and materials, but was not paid for them, either by the Debtors or by TKJV. This unpaid claim is the basis for F.E. Moran's Mechanic's Lien.

36. Pursuant to non-bankruptcy contract law, common law, equity and applicable mechanic's lien law, F.E. Moran has rights to seek payment from TKJV. These rights arise from privity of contract between TKJV and F.E. Moran, not from F.E. Moran's relationship with the Debtors.

37. The Debtors may be able, if they meet their burden of proof, to convey the Subject Property free and clear of certain creditor interests.

38. What the Debtors cannot do is seek to defeat F.E. Moran's direct rights against TKJV arising from applicable non-bankruptcy law.

39. To be clear, F.E. Moran is not presently aware of an attempt to, for example, include an involuntary third-party release in the Sale Order that might seek to enjoin F.E. Moran from pursuing its non-bankruptcy rights against TKJV directly. F.E. Moran raises this issue primarily because no Sale terms have yet been disclosed.

RESERVATION OF RIGHTS AND JOINDER

40. F.E. Moran expressly reserves all such rights, including the right to supplement and/or amend this Limited Objection and to assert any additional objections to the Sale, and assert any further objections as deemed necessary and appropriate.

41. To the extent applicable and not inconsistent with the grounds raised herein, F.E. Moran also joins in the objections of other M&M Lienholders, the Committee, and any other parties in interest with respect to the Sale, to the extent consistent with this Limited Objection.

WHEREFORE, F.E. Moran respectfully requests that the Court (i) sustain this Limited Objection; (ii) and grant such other relief as the Court deems appropriate.

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Dated: May 29, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 29, 2026, a copy of foregoing was filed electronically and served by Court ECF notification upon all parties entitled to receive such notification.

/s/ Kathryn B. Davis
Kathryn B. Davis