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)**

AM CONSTRUCTION INC. D/B/A AMCON INDUSTRIAL'S LIMITED OBJECTION AND RESERVATION OF RIGHTS IN CONNECTION WITH THE PROPOSED SALE OF THE DEBTORS' COVINGTON, GEORGIA ASSETS
[Relates to Dkt. Nos. 50, 120, 487]

AM Construction Inc. d/b/a AMCON Industrial ("AMCON"), by and through its undersigned counsel, hereby files this *Limited Objection and Reservation of Rights* (the "Objection") in connection with the *Notice of (I) Designation of R3 Lithium, Inc. as Successful Bidder for the Debtors' Covington, Georgia Assets and (II) Cancellation of Auction with Respect to Such Assets* [Dkt. No. 487] (the "Notice") and the Proposed Covington Sale Order, and respectfully represents as follows:

PRELIMINARY STATEMENT

1. AMCON does not object to the sale of the Debtors' Covington, Georgia assets (the "Covington Assets") to R3 Lithium, Inc. (the "Purchaser") pursuant to the *Asset Purchase Agreement dated June 19, 2026* (the "Covington APA"). AMCON files this Objection solely to preserve and protect its rights as a secured creditor holding a valid, perfected, and enforceable mechanics' and materialmen's lien (the "M&M Lien") on the Covington Assets, and to request that

[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.

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the Court condition the sale on adequate protection of AMCON's interest in the sale proceeds pursuant to section 363(e) of the Bankruptcy Code.

BACKGROUND

2. On April 9, 2026 (the "Petition Date"), the above-captioned debtors and debtors in possession (collectively, the "Debtors") filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. On April 10, 2026, the Debtors filed its *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* [Dkt. No. 50] (the "Sale Motion"). On April 17, 2026, the 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* [Dkt. No. 120] (the "Bid Procedures Order").

3. AMCON is a Georgia corporation that served as the general contractor for construction project services at the Debtors' Covington, Georgia facility located at 9176 Industrial Drive NE, Covington, Newton County, Georgia 30014 (the "Property"). AMCON performed work and furnished labor, materials, and equipment for the improvement of the Property from 2022 through July 2, 2025.

4. On August 8, 2025, AMCON properly filed and recorded the M&M Lien in the Office of the Clerk of Superior Court, Newton County, Georgia (Book 306, Pages 221-223, Doc. No. L2025-007034), encumbering the leasehold estate for years and any other property interests held by Ascend Elements, Inc. in the Property, securing payment for labor, materials, equipment,

and services furnished in the amount of $6,232,621.09, plus interest. AMCON's total secured claim as of the Petition Date is $9,881,478.48, as set forth in AMCON's Proof of Claim filed in these cases [ECF Claim No. 12].

5. The M&M Lien is valid, perfected, and enforceable under Georgia law, pursuant to O.C.G.A. § 44-14-360 *et seq*. The Bid Procedures Order expressly preserved AMCON's lien rights, providing that "[n]othing in this Order shall impair or extinguish any mechanics' or materialman's lien rights arising under applicable non-bankruptcy law to the extent such rights are valid and enforceable under applicable non-bankruptcy law." Bid Procedures Order ¶ 33.

6. On June 20, 2026, the Debtors filed the Notice. The Notice states that no Qualified Bids were received for the Covington Assets other than the bid submitted by the Purchaser. Accordingly, the Debtors designated the Purchaser as the Successful Bidder and cancelled the Auction with respect to the Covington Assets. The Sale Hearing is scheduled for June 26, 2026, at 11:00 a.m. (prevailing Central Time). *See* Notice of Hearing [Dkt. No. 489].

7. Attached to the Notice is the Covington APA. Under the Covington APA, the Purchaser has proposed to acquire the Covington Assets in exchange for the assumption of certain liabilities, including tax obligations, and $3,000,000 in cash (the "Cash Purchase Price"), plus payment of certain cure costs. *See* Covington APA § 2.1(a). Notably, the Covington APA does not allocate the Cash Purchase Price among specific asset categories (e.g., leasehold interest, personal property, equipment, inventory, contracts, or permits).

8. Under Section 1.5(a)(i) of the Covington APA, the Seller (the Debtor) is obligated to pay the first $750,000 of cure costs in connection with the assumption and assignment of the Assigned Contracts (the "Seller Cure Costs"), and the Purchaser is responsible for all remaining cure costs (the "Purchaser's Allocated Portion"). *See* Covington APA § 1.5(a)(i).

9. The Proposed Covington Sale Order (attached to the Covington APA as Exhibit A) provides, at paragraph 7, that the sale and transfer of the Covington Assets shall be free and clear of all Encumbrances, "with all such Encumbrances to attach to the net proceeds of the Sale Transaction ultimately attributable to the sale of the property in which such holders have a[n] Encumbrance, in the same order of priority, and with the same validity, force and effect that such Encumbrances had prior to the consummation of the Sale Transaction, subject to any rights, claims or defenses of the Debtors or their estates." Proposed Covington Sale Order ¶ 7.

10. The Proposed Covington Sale Order further provides, at paragraph 17, that "[u]pon Closing, any M&A Transaction Fee payable to Jefferies LLC and Completion Fee payable to Alvarez & Marsal North America, LLC shall be paid or otherwise satisfied, escrowed or segregated from the proceeds of the Sale Transaction pursuant to and as set forth in the Bid Procedures Order." Proposed Covington Sale Order ¶ 17. Identical language appears in the sale orders entered in connection with two prior sales that have already closed: (a) the sale of the Debtors' equity interests in non-debtor subsidiaries and intellectual property to Bluegrass Infrastructure Partners Holdings, LLC, generating $3,000,000 in cash (the "IP Sale") [Dkt. No. 393]; and (b) the sale of the Debtors' Hopkinsville, Kentucky assets to Turner-Kokosing Joint Venture, generating $15,000,000 in cash (the "Hopkinsville Sale") [Dkt. No. 469]. The two prior sales generated a combined $18,000,000 in cash proceeds from which the professional fees could have been, and upon information and belief should have been, escrowed or otherwise satisfied.

11. On April 28, 2026, the Newton County Tax Commissioner filed Claim No. 18 (on the Verita Global claim agent website) asserting a priority claim for 2025 ad valorem property taxes related to the Covington Property totaling $1,017,573.24. Under Section 1.3(c) of the Covington APA, the Purchaser assumes "all Liabilities for property Taxes allocable to the 2025

and 2026 tax years as identified on Schedule 1.3(c).” However, Schedule 1.3(c) does not appear to be filed or otherwise available for review.

LIMITED OBJECTION AND RESERVATION OF RIGHTS

12. AMCON does not object to the sale of the Covington Assets to the Purchaser free and clear of liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code. Upon the closing of the sale, AMCON’s M&M Lien will attach to the net proceeds of the sale ultimately attributable to the Covington Assets in which AMCON holds its M&M Lien, with the same validity, priority, force, and effect that such lien had prior to the consummation of the sale. While AMCON does not dispute this lien-attachment mechanism in principle, lien attachment is meaningful only if the proceeds to which the lien attaches are preserved and available for distribution to secured creditors. As set forth below, AMCON has significant concerns regarding the treatment of those proceeds and seeks adequate protection of its interest therein. Without addressing those concerns, AMCON does not consent to the sale.

A. Reservation Regarding Allocation of Purchase Price.

13. The Covington APA provides for a total cash purchase price of $3,000,000 for all the Covington Assets, without any allocation of the purchase price among specific asset categories. AMCON reserves its right to be heard on the allocation of the purchase price to specific asset categories, including the allocation of proceeds to the assets encumbered by AMCON’s M&M Lien. AMCON objects to any allocation that does not reflect the fair value of the assets at the Covington facility in which AMCON holds a perfected security interest.

B. Reservation Regarding Professional Fee Carve-Outs.

14. Paragraph 17 of the Proposed Covington Sale Order directs that the Jefferies M&A Transaction Fee and the Alvarez & Marsal Completion Fee “shall be paid or otherwise satisfied,

escrowed or segregated from the proceeds of the Sale Transaction." The Jefferies M&A Transaction Fee is capped at a single payment of $4,250,000 for all M&A Transactions consummated during these Chapter 11 Cases. *See* Order Authorizing Retention of Jefferies [Dkt. No. 480] ¶ 3. The Alvarez & Marsal Completion Fee is $1,500,000. *See* Application to Retain Alvarez & Marsal [Dkt. No. 158]. The combined professional fee obligations total $5,750,000, which is nearly twice the entire Cash Purchase Price of $3,000,000.

15. The Debtors have already consummated two prior sales generating a combined $18,000,000 in cash proceeds. To the extent such professional fees were or could have been satisfied, escrowed, or segregated from the proceeds of those prior sales, particularly with any unencumbered cash proceeds generated by the IP Sale, AMCON objects to any further deduction from the Covington sale proceeds on account of such fees. AMCON should not bear the burden of professional fee obligations that could and should have been addressed in connection with prior, larger transactions.

16. Moreover, the professional fee carve-out language in paragraph 30 of the Bid Procedures Order describes the Jefferies fee as "an express carve-out from the collateral of the Debtors' *pre- and postpetition secured lenders*." (emphasis added). That language was negotiated with, and consented to by, the Senior Secured Holders (defined in the Bid Procedures Order as the CLN Noteholders and Fifth Wall), which are the institutional lenders whose collateral was the subject of the carve-out. AMCON is not a "pre- or postpetition secured lender." AMCON is a statutory mechanics' and materialmen's lienholder whose rights arise independently under Georgia law (O.C.G.A. § 44-14-360 *et seq.*) and were separately and expressly preserved by paragraph 33 of the Bid Procedures Order. AMCON did not consent to, and was not a party to, the negotiation

of the professional fee carve-out. The carve-out should not be applied to subordinate AMCON's statutory lien rights to professional fee claims that AMCON never agreed to bear.

17. To the extent the Court determines that the professional fee carve-out applies to the Covington sale proceeds, AMCON reserves the right to be heard on the allocation of the professional fee obligation among the three completed sales. Any such allocation should be made on a pro-rata basis relative to the cash proceeds generated by each sale and should not disproportionately burden the Covington sale proceeds at the expense of AMCON's secured claim.

C. Reservation Regarding Seller's Cure Cost Obligation.

18. Under Section 1.5(a)(i) of the Covington APA, the Seller (the Debtor) is obligated to pay the first $750,000 of Cure Costs in connection with the assumption and assignment of the Assigned Contracts. AMCON reserves the right to object to any payment of the Seller's Cure Cost obligation from the cash proceeds of the sale of the Covington Assets to the extent such payment would reduce the proceeds available to satisfy AMCON's M&M Lien. Cure costs payable under section 365(b)(1) of the Bankruptcy Code are obligations owed to the contract counterparties in connection with the assumption and assignment of executory contracts. They are not obligations that should be satisfied from proceeds encumbered by AMCON's M&M Lien in priority to AMCON's secured claim. The Seller's agreement to absorb a portion of the cure costs is a negotiated deal term between the Seller and the Purchaser, and should be funded from the estate's unencumbered assets or other sources, not from AMCON's collateral.

D. Reservation Regarding Tax Obligations.

19. Section 1.3(c) of the Covington APA provides that the Purchaser shall assume "all Liabilities for property Taxes allocable to the 2025 and 2026 tax years as identified on Schedule

1.3(c) and any Post-Closing Tax Period, in each case solely with respect to the Acquired Leased Real Property." However, Schedule 1.3 is not filed or otherwise available for review.

20. The Newton County Tax Commissioner has filed Claim No. 18 in the amount of $1,017,573.24, representing 2025 ad valorem property taxes assessed on machinery, equipment, inventory, and other personal property located at the Covington facility (some of the same categories of personal property encumbered by AMCON's M&M Lien). Notably, Newton County's 2025 assessment values this personal property at a fair market value of $84,729,478, which underscores that the personal property and equipment at the Covington facility constitute the predominant amount, *if not all*, of the value of the Covington Assets.

21. AMCON reserves the right to object to any payment of 2025 or 2026 ad valorem property taxes from the cash proceeds of the sale of the Covington Assets (whether to Newton County or any other creditor). Under Section 1.3(c) of the Covington APA, such property taxes are Assumed Liabilities of the Purchaser and should be paid directly by the Purchaser, not from the cash proceeds of the Sale Transaction. To the extent the 2025 ad valorem property taxes identified in Claim No. 18, or any other similarly situated claim, are not assumed by the Purchaser, or are otherwise satisfied from the cash proceeds of the Sale Transaction, AMCON reserves the right to be heard on the priority of its M&M Lien relative to any such tax obligations and to object to any distribution of proceeds that gives effect to such tax obligations in priority to AMCON's secured claim.

22. AMCON further reserves the right to object to any payment of the Seller's share of Transfer Taxes pursuant to Section 9.1 of the Covington APA from the cash proceeds of the Sale Transaction to the extent such payment would reduce the proceeds available to satisfy AMCON's M&M Lien.

E. Reservation Regarding Priority and Amount of AMCON's Secured Claim.

23. AMCON reserves all rights to assert the validity, enforceability, perfection, priority, and amount of its M&M Lien and its secured claim against the Covington sale proceeds, including the right to assert that its M&M Lien is senior to or independent from any other claimed liens or interests in the Covington Assets or their proceeds, and the right to challenge the amount or characterization of any such competing claims.

F. General Reservation.

24. Nothing in this filing, or any failure by AMCON to object to any specific provision of the Proposed Covington Sale Order, shall be deemed to constitute: (a) a waiver or release of any of AMCON's rights, claims, or defenses, whether arising under the Bankruptcy Code, applicable non-bankruptcy law, or otherwise; (b) a consent to the characterization, treatment, priority, or amount of any claim or lien other than as expressly set forth herein; (c) a waiver of AMCON's right to object to the distribution of proceeds from the sale of the Covington Assets; (d) a waiver of AMCON's rights against the landlord (Covington Industrial LLC) or any other non-debtor party; (e) consent to the sale, or (f) a waiver of any rights expressly reserved in AMCON's Proof of Claim, including ECF Claim No. 12, or any related amendments thereto filed in these cases.

CONCLUSION

WHEREFORE, AMCON respectfully requests that the Court: (a) acknowledge and preserve AMCON's rights as set forth herein; (b) provide that the Covington Sale Order shall not prejudice or impair AMCON's rights to assert its M&M Lien against the proceeds of the sale of the Covington Assets; (c) *as adequate protection*, condition the approval of the sale on the requirement that the net cash proceeds of the Sale Transaction attributable to the Covington Assets be segregated and held in a separate, interest-bearing escrow account pending the Court's

determination of the validity, priority, and amount of AMCON's M&M Lien, the allocation of the Cash Purchase Price, and the priority of competing claims to such proceeds; and (d) grant such other and further relief as the Court deems just and appropriate.

Dated: June 23, 2026

/s/ *Zachary McKay*

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CERTIFICATE OF SERVICE

This is to certify that on June 23, 2026, I caused a true and correct copy of the foregoing to be served via the CM/ECF notification system for the Southern District of Texas.

/s/ *Zachary McKay*
Zachary McKay