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 BRIEF AND MOTION FOR SUMMARY JUDGMENT ON THE ISSUES IDENTIFIED IN THE STIPULATION AND AGREED SCHEDULING ORDER
[Relates to Dkt. No. 565]

AM Construction Inc. d/b/a AMCON Industrial ("AMCON"), by and through its undersigned counsel, respectfully moves for summary judgment on the two lien challenge issues identified in the *Stipulation and Agreed Scheduling Order* [Dkt. No. 565] (the "Scheduling Order") entered in this contested matter.

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[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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TABLE OF CONTENTS

Page

I. INTRODUCTION 7

II. JURISDICTION AND PROCEDURAL POSTURE 7

III. SUMMARY JUDGMENT STANDARD 8

IV. SUMMARY JUDGMENT EVIDENCE 8

V. UNDISPUTED MATERIAL FACTS 9

VI. ARGUMENT 14

A. ISSUE 1: THE DEBTORS' INTEREST IN THE COVINGTON LEASE IS A LIENABLE LEASEHOLD ESTATE FOR YEARS 14

i. Georgia law distinguishes between a leasehold estate for years (which is lienable) and a usufruct (which is not lienable). 14

ii. Presumption favors a leasehold estate for years. 17

iii. The non-exhaustive five-factor test confirms a leasehold estate for years. 17

a. Factor 1: Terms of the instrument. 17

b. Factor 2: Tax liability. 20

c. Factor 3: Retention of dominion and control. 22

d. Factor 4: Maintenance and repair. 27

e. Factor 5: Assignability. 29

iv. Additional factors confirm a leasehold estate for years. 31

a. The parties' own construction contract reinforces that the Lease is a leasehold estate for years, not a mere usufruct. 31

b. The Debtors' actions and sworn statements in this bankruptcy case suggest that the Lease is a leasehold estate for years, not a mere usufruct. 33

v. The presumption is not rebutted. 36

B. ISSUE 2: GEORGIA LAW PERMITS AMCON'S M&M LIEN TO ATTACH TO EQUIPMENT, FIXTURES, TRADE FIXTURES, TENANT IMPROVEMENTS, AND OTHER FACILITY-INTEGRATED ASSETS 37

i. The statutory framework. 37

ii. Items that become part of the improved property are lienable. 38

iii. AMCON's lien language supports attachment to facility-integrated assets. 40

iv. The Lease confirms the Debtors held lienable property interests in facility-integrated assets. 41

v. AMCON's M&M Lien attached to the Covington Facility's integrated equipment as a matter of law. 42

VII. CONCLUSION AND RELIEF REQUESTED 42

TABLE OF AUTHORITIES

Page(s)

Cases

Allright Parking of Ga. v. Joint City-County Bd. of Tax Assessors,
244 Ga. 378 (Ga. 1979).....22, 23, 24

Anderson v. Liberty Lobby, Inc.,
477 U.S. 242 (1986).....8

Brigham v. Overstreet,
128 Ga. 447 (Ga. 1907).....19, 39, 40, 42

Buoy v. Chatham County Bd. of Tax Assessors,
142 Ga. App. 172 (1977) 14, 17, 20, 21, 22, 25, 29

Camp v. Delta Air Lines, Inc.,
232 Ga. 37 (Ga. 1974).....15

Celotex Corp. v. Catrett,
477 U.S. 317 (1986).....8

Chatham County Bd. of Assessors v. Jay Lalaji, Inc.,
357 Ga. App. 34 (Ga. Ct. App. 2020).....16, 18, 20, 22, 31

City of College Park v. Paradies-Atlanta, LLC,
346 Ga. App. 63 (2018) 14, 16, 22, 23, 24

Clayton County Bd. of Tax Assessors v. Aldeasa Atlanta Joint Venture,
304 Ga. 15 (Ga. 2018).....24

D. H. Overmyer Warehouse Co. v. W. C. Caye & Co.,
116 Ga. App. 128 (Ga. Ct. App. 1967).....39, 40, 42

Diversified Golf, LLC v. Hart County Bd. of Tax Assessors,
267 Ga. App. 8 (Ga. Ct. App. 2004).....17, 22

Eastern Air Lines, Inc. v. Joint City-County Bd. of Tax Assessors,
253 Ga. 18 (Ga. 1984).....16, 18, 20

J.S. Schofield & Son v. Stout, Mills & Temple,
59 Ga. 537 (1877) 39

James G. Wilson Mfg. Co. v. Chamberlin-Johnson-Dubose Co.,
140 Ga. 593 (Ga. 1913).....15

Jekyll Dev. Assocs., L.P. v. Glynn County Bd. of Tax Assessors,
240 Ga. App. 273 (1999) 14, 16, 17, 18, 19, 20, 22, 24, 27, 29, 30

Jones v. E. I. Rooks & Son,
78 Ga. App. 790 (Ga. Ct. App. 1949) 32

Macon-Bibb County Bd. of Tax Assessors v. Atl. Southeast Airlines,
262 Ga. 119 (Ga. 1992).....17, 23

Maxim Crane Works, L.P. v. Zurich Am. Ins. Co.,
11 F.4th 345 (5th Cir. 2021) 8

Pinnacle Props. V, LLC v. Mainline Supply of Atlanta, LLC,
319 Ga. App. 94 (Ga. Ct. App. 2012) 15

Richmond County Bd. of Tax Assessors v. Richmond Bonded Warehouse Corp.,
173 Ga. App. 278 (Ga. Ct. App. 1985) 16

Skandia Draperies Mfg. Co. v. Augusta Innkeepers,
157 Ga. App. 279, 277 S.E.2d 282 (1981).....38, 39, 40, 41, 42

Tolan v. Cotton,
572 U.S. 650 (2014).....8

Warehouses, Inc. v. Wetherbee,
203 Ga. 483 (Ga. 1948) 22, 23, 29

Waycross Opera House Co. v. Sossman & Landis,
94 Ga. 100, 20 S.E. 252 (Ga. 1894).....39, 40, 42

Wightman v. Ameritas Life Ins. Corp.,
2026 U.S. App. LEXIS 17184 (5th Cir. 2026) 8

Statutes

11 U.S.C. § 363(f).....14

28 U.S.C. § 157(b)(2)(B), (K), and (O) 7

28 U.S.C. § 1334(b) 7

28 U.S.C. § 1409(a) 8

I.R.C. § 512(b)(3).....19

I.R.C. § 856(d) 19

O.C.G.A. § 11-9-203(b)(2) 19, 41

O.C.G.A. § 44-1-2(a) 19, 38

O.C.G.A. § 44-6-103 27

O.C.G.A. § 44-7-1 .....15, 17

O.C.G.A. § 44-7-1(a) 14

O.C.G.A. § 44-7-1(b) 15, 16

O.C.G.A. § 44-14-360 38

O.C.G.A. § 44-14-361(a) 37

O.C.G.A. § 44-14-361(a)(2) 38

O.C.G.A. § 44-14-361(a)(6) 37

O.C.G.A. § 44-14-361(a)(7) 38

O.C.G.A. § 44-14-361.1 40

Other Authorities

Fed. R. Bankr. P. 9014 8

Fed. R. Bankr. P. 7056 8

Fed. R. Civ. P. 56 8

I. INTRODUCTION

2. This is a lien challenge. The Debtors are disputing the validity of AMCON's M&M Lien (defined herein). Pursuant to the Scheduling Order, the Debtors and AMCON agreed to an expedited process whereby cross motions for summary judgment will be filed to determine two narrow legal issues. The Issues are:

- **Issue 1:** Whether, under Georgia law, AMCON's asserted M&M Lien attaches to the Debtors' leasehold interest, if any, in the Covington property; and
- **Issue 2:** Whether, under Georgia law, AMCON's asserted M&M Lien attaches to equipment, machinery, fixtures, trade fixtures, tenant improvements, or other assets located at the Covington Facility and sold in connection with the Covington Sale, excluding any off-site feedstock or other off-site inventory.

3. The undisputed facts and applicable Georgia law establish that (a) the Debtors' interest under the Covington Lease is a lienable leasehold estate for years to which AMCON's M&M Lien attached and (b) Georgia's M&M lien statute permits AMCON's properly recorded lien to attach to equipment, machinery, fixtures, trade fixtures, tenant improvements, and other facility-integrated assets located at the Covington Facility, and it did so attach.

4. By agreement between AMCON and the Debtors, Issue 2 is presented as a threshold legal question: whether Georgia law permits such attachment as a matter of law. The cross motions for summary judgment do not seek determination at this stage as to any specific item of equipment or asset. All rights are reserved as to asset-specific determinations, including value.

II. JURISDICTION AND PROCEDURAL POSTURE

5. This Court has jurisdiction over this contested matter pursuant to 28 U.S.C. § 1334(b). This is a core proceeding under 28 U.S.C. § 157(b)(2)(B), (K), and (O).

6. On July 13, 2026, this Court entered the *Stipulation and Agreed Scheduling Order* [Dkt. No. 565], establishing the procedural framework for resolution of the two Issues identified

therein. The parties agreed to proceed on an expedited basis pursuant to Bankruptcy Rule 9014 and stipulated to the filing of cross-motions for summary judgment.

7. Summary judgment is governed by Federal Rule of Civil Procedure 56, made applicable to this contested matter by Bankruptcy Rules 7056 and 9014(c).

8. Venue is proper in this District pursuant to 28 U.S.C. § 1409(a).

III. SUMMARY JUDGMENT STANDARD

9. Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

10. The court must view the evidence "in the light most favorable to the [non-moving] party." *See Tolan v. Cotton*, 572 U.S. 650, 657 (2014). However, "the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986) (emphasis in original).

11. Issues of law, such as statutory interpretation, are appropriately resolved at the summary judgment stage. *Wightman v. Ameritas Life Ins. Corp.*, 2026 U.S. App. LEXIS 17184 at *4 (5th Cir. 2026). Specifically, when the only issues before the court are pure questions of law, summary judgment is appropriate. *Maxim Crane Works, L.P. v. Zurich Am. Ins. Co.*, 11 F.4th 345, 350 (5th Cir. 2021).

IV. SUMMARY JUDGMENT EVIDENCE

Exhibit	Description
A	AMCON M&M Lien
B	Covington Lease (Marked confidential, filed by agreement)

Exhibit	Description
C	First Amendment to Covington Lease (Marked confidential, filed by agreement)
D	Master Agreement Construction Services
E	AMCON Proof of Claim No. 12
F	Declaration of Aaron Phillips in Support of the Motion for Summary Judgment

V. UNDISPUTED MATERIAL FACTS

12. 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 title 11 of the United States Code (the "Bankruptcy Code").

13. Battery Resources, Inc. (now known as Ascend Elements, Inc.) ("Ascend") entered into a Lease Agreement dated December 31, 2021 (the "Lease"), with Covington Industrial LLC (the "Landlord") for premises located at 9176 Industrial Drive NE, Covington, Newton County, Georgia 30014 (the "Covington Facility" or "Premises"). The Lease is attached hereto as **Exhibit "B."**

14. The Lease term is seven years and three months (87 months), commencing January 1, 2022 and expiring March 31, 2029, with two consecutive five-year renewal options. Exh. B, Lease § 1.2 Rider 1.

15. The permitted use under the Lease is "the operation of a lithium battery recycling facility and for no other purpose." Exh. B, Lease § 3.1.

16. The Lease is a triple-net lease. Tenant pays its Proportionate Share[2] (46.20%) of Operating Costs, including ad valorem real estate taxes. Exh. B, Lease § 2.3. In addition, the

[2] Capitalized terms not defined herein shall have the meaning given to them in the Lease.

Debtors were separately billed for, and paid, personal property taxes assessed against their own property located at the Covington Facility through the 2024 tax year. The Debtors were also billed for, but did not pay, similar property taxes assessed for the 2025 tax year, which were ultimately assumed by the purchaser in the Covington Sale, reflecting a transfer of a taxable, ownership-like burden as part of the sale.

17. Under the Lease, the Tenant "shall be entitled to and shall take possession of the Premises" upon the Commencement Date; further, nothing within the Lease inhibits the Tenant's continuous possession of and 24/7 access to the Premises. *See* Exh. B, Lease §§ 1.1, 11.3.

18. Under the Lease, the Tenant is required to insure "Tenant's improvements, betterments, furniture, fixtures, equipment and contents" at full replacement value. Exh. B, Lease § 6.1(a)(i).

19. Under the Lease, the Tenant may remove its trade fixtures during the Term in the usual course of business. Trade fixtures become Landlord's property only if not removed at expiration or termination, and only at Landlord's option. Exh. B, Lease § 5.4.

20. The Lease grants Landlord "an express first and prior contract lien and security interest in all fixtures and equipment placed in the Premises," presupposing Tenant's ownership of and property interest in such items. Exh. B, Lease § 2.7.

21. Under the Lease, the Tenant is required to decommission and remove all Hazardous Substances Equipment at expiration or termination of the Lease. Exh. B, Lease § 3.4(j).

22. Under the Lease, the Tenant is required, "at its sole cost," to "repair and maintain the Premises," Exh. B, Lease § 5.2, and is specifically required to maintain and make repairs to:

- Life-safety and sprinkler systems, pipes, sprinklers, lines, ducts, wires, or conduits within the Premises up to the points of common connection
- Windows, plate glass, doors, and any fixtures or appurtenances composed of glass

- Tenant's signage
- Any HVAC equipment exclusively serving the Premises, including a preventive maintenance service contract with semi-annual servicing
- The Premises or the Building when repairs are necessitated by Tenant's negligence, misuse, failure to perform its Lease obligations, or damage caused by operation of Tenant's equipment

Exh. B, Lease § 5.2. The Landlord is only responsible for repair of structural elements, the exterior, the roof, and common areas. *See id*. at § 5.1.

23. Under the Lease, the Tenant is required to repair damage caused by removal of improvements and equipment at expiration/termination, including filling holes in the floor. Exh. B, Lease § 5.4.

24. Under the Lease, Tenant accepts the Premises "as is" and further requires that Tenant, at its sole cost and expense, install, maintain and pay all utilities needed for the permitted use, including separate meters; further, for the avoidance of doubt, the Tenant is required to pay to Landlord its proportionate share of Operating Costs (as defined therein) related to utilities charges paid by Landlord. Exh. B, Lease § 5.6.

25. Assignment or transfer of the Lease requires Landlord's consent; however, that consent "shall not be unreasonably withheld, conditioned, or delayed." Exh. B, Lease § 8.1(a). The Lease further permits certain transfers, including assignments and subleases to Affiliates, without Landlord's consent at all. Exh. B, Lease § 8.1(d). If Tenant makes an assignment or sublease containing a rental charge in excess of the rental charges currently payable under the Lease by Tenant, Tenant is required to pay Landlord fifty percent (50%) of any such excess rental after recovering its own transfer-related costs, a provision consistent with Tenant holding an economically valuable, transferable property interest. *Id.* § 8.1(a). The Lease also includes a recapture right for assignments or subleases exceeding 50% of the remaining Term. *Id.* § 8.1(c).

26. On January 7, 2025, the parties entered into the First Amendment to the Lease (the "First Amendment"), acknowledging substantial "Unreviewed Alterations" made by Tenant and adding additional outdoor space. The First Amendment is attached hereto as **Exhibit "C."**

27. The purpose of the First Amendment was to provide an additional Security Deposit (as defined therein) in connection with alterations by the Tenant, as well as to include Additional Outdoor Space (as defined therein) as a part of the leased Premises. Exh. C, First Amendment § C-E. Neither the First Amendment nor the Lease makes mention of the parties contemplating a usufruct construct.

28. AMCON is a Georgia corporation that served as general and specialty contractor for construction project services at the Covington Facility from 2021 through July 2, 2025. Phillips Decl. ¶¶ 3-4.

29. On March 12, 2024, Ascend Elements, Inc. and AMCON entered into a Master Agreement Construction Services agreement (the "Master Agreement"). The Master Agreement is attached hereto as **Exhibit "D."**

30. Throughout the Master Agreement, Ascend is defined and referred to, consistently and without qualification, as the "Owner." Exh. D, Master Agreement, p. 1 ("AGREEMENT between Ascend Elements Inc ('Owner') and AmCon Industrial ('Contractor')"). Neither the Master Agreement nor any of its exhibits refers to Ascend as a "Tenant," "Lessee," occupant, or licensee with respect to the Covington Facility.

31. The Master Agreement further states:

> [AMCON] shall submit a release of claims and liens in the form shown in **Exhibit F** of the [Master] Agreement. With the invoice for final payment, [AMCON] shall submit a release of claims in liens [sic] in the form shown in **Exhibit G** to the [Master] Agreement. If [AMCON] has subcontracted portions of the Work, [AMCON] must submit similar waivers of claim and lien signed by each

> subcontractor with any invoice that includes amounts attributable to that subcontractor's Work.

Id. § 3.3.2 (emphasis in original).

32. The Master Agreement also contains a section titled "Construction or Mechanics' Liens" which states:

> If any person places a mechanic's or construction lien on the [Ascend] or any person's interest in the Facility or the property on which it is located, or on any construction fund, despite the [Ascend] having paid [AMCON] in accordance with the Individual Project SOW, [AMCON] shall promptly remove the lien, by bonding it off or otherwise, and shall defend, indemnify, and hold the [Ascend] harmless against all Losses the [Ascend] incurs as a result of the lien. In the event the [Ascend] has not paid outstanding amounts due, [AMCON] is not obligated to remove the lien until the outstanding amounts are satisfied and adequate time has passed for [AMCON] to pay it's [sic] suppliers as outlined by the state laws governing payment.

Id. § 3.4.

33. The Master Agreement's form of interim lien waiver (Exhibit F) and form of final lien waiver (Exhibit G), which AMCON and its subcontractors were contractually required to execute with each progress and final payment application, both expressly identify "Ascend Elements Inc." as the "Property Owner." Exh. D, Master Agreement Exhs. F, G ("Property Owner: Ascend Elements Inc.").

34. Section 13.1 of the Master Agreement identifies AMCON's failure "to pay any subcontractors, laborers, mechanics, materialmen or suppliers when payment is due" as a ground for termination of the Master Agreement for default. Exh. D, Master Agreement § 13.1.

35. On August 8, 2025, AMCON recorded a *Claim of Lien on Leasehold Estate and Interests* (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). The M&M Lien is attached hereto as **Exhibit "A."** The M&M Lien encumbers "the leasehold estate for years and any other property

interests held by Ascend Elements, Inc. the lessee, in certain buildings and/or structures and in the premises or real estate upon which such are erected or built." *Id.*

36. The M&M Lien was recorded within 90 days of the last date AMCON furnished labor, equipment, materials, and services to the Covington Facility (July 2, 2025). Phillips Decl. ¶ 16–17.

37. The M&M Lien identifies Covington Industrial LLC as the owner of the real property. *See* Exh. A, M&M Lien ¶ 1.

38. AMCON filed proof of claim number 12 claiming a secured claim totaling $9,881,478.48. The filed proof of claim is attached hereto as **Exhibit "E."**

39. On June 30, 2026, this Court entered the *Covington Sale Order* [Dkt. No. 534], approving the sale of the Covington Assets free and clear of liens, claims, interests, and encumbrances under § 363(f) of the Bankruptcy Code, with those same liens, claims, interests, and encumbrances attaching to cash proceeds.

VI. ARGUMENT

A. ISSUE 1: THE DEBTORS' INTEREST IN THE COVINGTON LEASE IS A LIENABLE LEASEHOLD ESTATE FOR YEARS

i. Georgia law distinguishes between a leasehold estate for years (which is lienable) and a usufruct (which is not lienable).

40. Georgia law recognizes two types of leasehold interests: a usufruct and a leasehold estate for years.[3] Under O.C.G.A. § 44-7-1(a), the relationship of landlord and tenant, and with it

[3] Georgia courts use the terms "leasehold estate for years," "leasehold estate," and "estate for years" interchangeably to describe the same taxable, lienable property interest, as distinguished from a usufruct. *See, e.g., Jekyll Dev. Assocs., L.P. v. Glynn County Bd. of Tax Assessors*, 240 Ga. App. 273, 274, 275 (1999) (using "leasehold estate," "estate for years," and "the intended leasehold estate" within the same analysis to refer to the identical interest); *Buoy v. Chatham County Bd. of Tax Assessors*, 142 Ga. App. 172, 173–74 (1977) (concluding the lessee "acquired a leasehold interest that was taxable as realty" after analyzing whether the lease conveyed "an estate for years," and using "leasehold estate," "leasehold interest," and "estate for years" without distinction); *City of College Park v. Paradies-Atlanta, LLC*, 346 Ga. App. 63, 65 (2018) (framing the "rebuttable presumption . . . that the parties intended to create an estate for years" while the case caption and surrounding discussion elsewhere refer to the same interest as a "leasehold estate").

a mere usufruct, is created when an owner "grants to another person, who accepts such grant, the right simply to possess and enjoy the use of such real estate either for a fixed time or at the will of the grantor," in which case "no estate passes out of the landlord." Section 44-7-1(b) further provides that "[a]ll renting or leasing of real estate for a period of time less than five years shall be held to convey only the right to possess and enjoy such real estate, to pass no estate out of the landlord, and to give only the usufruct unless the contrary is agreed upon by the parties to the contract and is so stated in the contract." Georgia courts have long construed the converse of this provision to create a corresponding presumption that leases of five years or longer convey an estate for years. *See, e.g., Camp v. Delta Air Lines, Inc.*, 232 Ga. 37, 39 (Ga. 1974) ("under the provisions of Code § 61-101 [the predecessor to O.C.G.A. § 44-7-1], where the term of the lease is less than five years a rebuttable presumption arises that only a usufruct is created by the instrument. A concomitant presumption… is that where the term of the lease is for more than five years, there is a presumption that an estate for years is created").

41. The distinction between a usufruct and leasehold estate for years is legally significant. A leasehold estate for years is "essentially a lease by which one person acquires a right to use real estate of a finite period 'in as absolute a manner as may be done with a greater estate.'" *Pinnacle Props. V, LLC v. Mainline Supply of Atlanta, LLC*, 319 Ga. App. 94, 96 (Ga. Ct. App. 2012). It creates an interest in land that may be encumbered by liens. *See James G. Wilson Mfg. Co. v. Chamberlin-Johnson-Dubose Co.*, 140 Ga. 593, 594 (Ga. 1913). A usufruct, by contrast, is created when the owner of real estate grants to another person the right to use and enjoy the property, but no property interest arises in the grantee. *See Pinnacle Props.* at 96. In other words, a leasehold estate for years can be encumbered by a lien (like the M&M Lien), while a mere usufruct cannot.

42. However, the analysis of what constitutes a leasehold estate for years versus a usufruct is not always straightforward. Not unexpectedly, there are numerous cases involving leases that have some provisions characteristic of the conveyance of an estate for years along with others indicative of the grant of a mere usufruct. *See Jekyll Dev. Assocs. L.P. v. Glynn County Bd. of Tax Assessors*, 240 Ga. App. 273, 274 (Ga. Ct. App. 1999) (examples cited in n. 8).

43. As a starting point, where the lease term exceeds five years, a rebuttable presumption arises that the parties intended to create a leasehold estate for years. *See* O.C.G.A. § 44-7-1(b) (leases under five years presumed to convey only a usufruct, absent contrary agreement); *Richmond County Bd. of Tax Assessors v. Richmond Bonded Warehouse Corp.*, 173 Ga. App. 278, 278 (Ga. Ct. App. 1985) ("Where 'the term of a lease is for a period greater than five years, a rebuttable presumption arises that the parties intended to create an estate for years rather than a usufruct'") (citing *Eastern Air Lines, Inc. v. Joint City-County Bd. of Tax Assessors*, 253 Ga. 18, 19 (Ga. 1984)). The party disputing that classification must show that the terms of the lease rebut the presumption. *See Chatham County Bd. of Assessors v. Jay Lalaji, Inc.*, 357 Ga. App. 34, 35–36 (Ga. 2020); *City of College Park v. Paradies-Atlanta, LLC*, 346 Ga. App. 63, 67 (Ga. Ct. App. 2018).

44. When evaluating whether the presumption is supported or overcome, Georgia courts apply a non-exhaustive multi-factor analysis to determine which type of interest a lease creates: (1) the terms of the instrument; (2) whether ad valorem tax liability is imposed on the tenant; (3) whether the grantor retains dominion and control over the premises; (4) who is responsible for maintenance and repairs; and (5) assignability. *Chatham County Board of Assessors v. Jay Lalaji, Inc.*, 357 Ga. App. at 35–36 (Ga. Ct. App. 2020) (citing factors enumerated in *City of College Park v. Paradies-Atlanta, LLC*, 346 Ga. App. 63, 66 (Ga. Ct. App. 2018)).

ii. Presumption favors a leasehold estate for years.

45. The Lease term is 87 months (7 years, 3 months), commencing January 1, 2022 and expiring March 31, 2029. Exh. B, Lease §§ 1.1, 3.1. This exceeds five years by a substantial margin. Accordingly, Georgia case law construing O.C.G.A. § 44-7-1 creates a rebuttable presumption that the Covington Lease conveys a leasehold estate for years. *See* ¶ 43, *supra*. Logically, the Debtors bear the burden of rebutting this presumption as the party contesting the leasehold estate for years.

46. As demonstrated below, the non-exhaustive five-factor analysis, and other factors, confirm the presumption rather than rebutting it. Therefore, the Lease is a leasehold estate for years, which is a lienable interest that was validly encumbered by AMCON's M&M Lien.

iii. The non-exhaustive five-factor test confirms a leasehold estate for years.

a. Factor 1: Terms of the instrument.

47. In the first factor, "the terms of the lease must be examined in order to determine if this presumption was overcome." *Buoy v. Chatham County Board of Tax Assessors*, 142 Ga. App. 172, 173 (Ga. Ct. App. 1977). All provisions of the lease must be scrutinized objectively to determine whether the legal effect of the agreement is to grant an estate in the property or merely a right of use. *Jekyll Dev. Assocs. L.P. v. Glynn County Bd. of Tax Assessors*, 240 Ga. App. 273, 274–75 (Ga. Ct. App. 1999).

48. In some cases where it is determined a usufruct exists as opposed to a leasehold estate for years, the terms of the instrument expressly state that the agreement "is a usufruct and not an estate for years." *Macon-Bibb County Bd. of Tax Assessors v. Atl. Southeast Airlines*, 262 Ga. 119, 119–120 (Ga. 1992). In others, the lessee's rights are described merely as "possession, use or occupancy." *Diversified Golf, LLC v. Hart County Bd. of Tax Assessors*, 267 Ga. App. 8, 11 (Ga. Ct. App. 2004). Still other usufruct leases expressly state that they "create only the

relationship of landlord and tenant, and that no estate for years shall pass to" the tenant. *Eastern Air Lines*, 253 Ga. at 20. And in *Chatham County Bd. of Assessors v. Jay Lalaji, Inc.*, the lessee's rights were described only as "specified rights and privileges." 357 Ga. App. at 36. Each of these is an example of language that would help rebut the presumption of a leasehold estate for years, *but none of these terms are present in the Covington Lease.*

49. Here, the terms of our Lease do not provide that it was intended to convey a mere license to use real property. The Lease does not use the word "usufruct" or otherwise disclaim a property interest. It does not characterize itself as a license, permit, or bare occupancy right. The Lease uses standard conveyancing language: "Landlord leases to Tenant, and Tenant leases from Landlord, for the Term, the 'Premises.'" Exh. B, Lease § 1.1. Further, the Lease provides that "Tenant shall be entitled to and shall take possession of the Premises on the Commencement Date." Exh. B, Lease § 1.2. It grants exclusive possession for a fixed term. Indeed, the Lease's granting clause is a broad, relatively unrestricted conveyance of the Premises (the minimal restrictions will be addressed later). None of the usufruct buzzwords addressed above are present in the Lease.

50. The Lease also affirmatively uses the language of a real property estate elsewhere in its terms. Section 5.5 requires that any Notice of Commencement recorded in connection with Tenant's construction activity "shall clearly state that the interest of Tenant in the Premises is that of a *leasehold estate*." Exh. B, Lease § 5.5 (emphasis added). Similarly, the condemnation provision refers to "the value of the *leasehold estate* created hereby." *Id.* § 12.3 (emphasis added). The Georgia Court of Appeals has linked similar language to a leasehold estate for years. *See Jekyll Dev. Assocs. L.P. v. Glynn County Bd. of Tax Assessors*, 240 Ga. App. 273, 275 (Ga. Ct. App. 1999) ("The remaining restrictions do not quantitatively or qualitatively outweigh the incidents of ownership vested in the lessee to convert the interests conveyed from the intended

leasehold estate to a usufruct.") (emphasis added). The Lease's own characterization of the interest conveyed is "a factor to be taken into consideration in determining the nature of the conveyance." *See id.* at 275. Here, the Lease refers to itself as a leasehold estate, which signals a leasehold estate for years, not a mere usufruct.

51. Additionally, the Landlord's Lien under Section 2.7 of the Lease grants Landlord "an express first and prior contract lien and security interest in all fixtures and equipment placed in the Premises." Exh. B, Lease § 2.7. A security interest can only be granted in property owned by the debtor. *See* O.C.G.A. § 11-9-203(b)(2) (Georgia's enactment of UCC § 9-203(b)(2)). This provision presupposes that Tenant holds an ownership interest in its fixtures (which is real property in Georgia, as addressed further in Issue 2),[4] an interest inconsistent with a bare usufruct. Similarly, trade fixtures installed by Tenant remain Tenant's property throughout the Term and become Landlord's property only if not removed at expiration or termination, and then only at Landlord's option. Exh. B, Lease § 5.4. Vesting of Tenant's improvements in Landlord is therefore optional, not automatic, a further indication that Tenant holds a genuine property interest in its fixtures, improvements, and equipment during the Term (addressed more in Issue 2).

52. Further, the Lease is structured so that all rent payable by Tenant qualifies as "rents from real property" within the meaning of Sections 512(b)(3) and 856(d) of the Internal Revenue Code. Exh. B, Lease § 14.16. This tax characterization presupposes that Tenant's payments arise from a real property interest, not a license fee for the bare use of the Premises.

53. The "terms of the instrument" factor strongly favors a leasehold estate for years.

[4] *See, e.g.*, *Brigham v. Overstreet*, 128 Ga. 447, 449 (Ga. 1907) ("Realty or real estate includes all lands and the buildings thereon, and all things permanently attached to either."). Further, Georgia's M&M Lien statute defines "realty" or "real estate" to include "[a]ll lands and the buildings thereon" and "[a]ll things permanently attached to land or to the buildings thereon." *See* O.C.G.A. § 44-1-2(a).

b. Factor 2: Tax liability.

54. The second factor is whether ad valorem tax liability is imposed on the tenant. Here, it was, which is an indication of a leasehold estate for years.

55. The Lease is a triple-net lease. Tenant pays its Proportionate Share (46.20%) of Operating Costs, which expressly includes all real estate and ad valorem taxes assessed against the leased Premises. Exh. B, Lease §§ 4.2, 4.3. Pursuant to the terms of the Lease, Operating Costs include "the cost of all real estate, personal property owned by Landlord and located in or on the Building, Land and Common Areas, *and other ad valorem taxes, and any other levies, charges, local improvement taxes, and assessments whatsoever assessed* or charged against the Building, Land and Common Areas . . . ." Exh. B, Lease § 2.3(c) (emphasis added). The Debtors, in turn, were liable for their Proportionate Share of these costs. Further, "the pass-through of each of the taxes described in subsection (c)(i) above . . . may be charged as separate pass-through items from the other Operating Costs, which taxes . . . shall otherwise be billed to Tenant in the same manner as the pass-through of Operating Costs as provided herein." *Id.* § 2.3(d).

56. The Georgia Supreme Court has held that "usufructs . . . are not subject to ad valorem taxation." *Eastern Air Lines*, 253 Ga. at 20. Other Georgia courts have consistently treated the imposition of tax obligations on a tenant, including obligations extending beyond ad valorem real estate taxes, as strong evidence of an estate for years. *See Chatham County Bd. of Assessors v. Jay Lalaji, Inc.*, 357 Ga. App. at 35 ("A mere usufruct is not subject to ad valorem taxation."); *Buoy*, 142 Ga. App. at 173 (requirement that lessee pay "all real estate taxes and assessments, if any levied, against improvements erected by the lessee on the lands of the lessor" was a "strong indication" that the parties intended to convey a leasehold estate); *Jekyll Dev. Assocs.*, 240 Ga. App. at 275 (obligation to "pay all taxes and assessments" is "generally the responsibility of the holder of an estate in the property").

57. Here, while the Debtors did not have 100% of the ad valorem tax liability for the Premises imposed upon them, their Proportionate Share based on the percentage of rentable square footage they occupied was clearly imposed on them. Had they occupied the entire space, the Debtors would have been liable for the entire ad valorem tax. *See* Exh. B, Lease § 2.3(c). Courts have found that the mere existence of ad valorem tax liability language implies a leasehold estate for years exists. *See Buoy*, 142 Ga. App. at 173 ("If only the grant of a usufruct was intended then it would be unnecessary to impose a condition or duty on the lessee to pay any real property taxes on the improvements for if it were a mere usufruct there would be no real property taxes."). Similarly here, if the Lease was intended to be a mere usufruct, there would be no real property taxes on the improvements. Instead, the Debtors were billed for and paid their Proportionate Share during the lease term.

58. The Lease further states that "Tenant shall pay, when due, all taxes attributable to the personal property, trade fixtures, business, occupancy, or sales of Tenant." Exh. B, Lease § 2.4. As such, the Debtors were separately billed for, and paid, personal property taxes assessed against their own property, equipment, and fixtures located at the Covington Facility through the 2024 tax year, further confirming that the Debtors bore tax burdens characteristic of an ownership interest rather than a bare license to use. The Debtors were also billed for, but did not pay, similar personal property taxes assessed for the 2025 tax year, which were ultimately assumed by the purchaser in the Covington Sale,[5] reflecting a transfer of a taxable, ownership-like burden as part of the sale. *See id.*

[5] *See Debtors' Omnibus Reply in Support of the Sale of its Covington, Georgia Assets Free and Clear to R3 Lithium*, Inc. [Dkt. No. 525]. ("The consideration provided under the Covington APA consists of $3 million in cash, plus over $1 million in assumed liabilities and obligations associated with the Covington facility, *including certain property tax obligations*, cure costs associated with assigned contracts, and other liabilities expressly assumed under the APA.") (emphasis added).

59. This factor strongly favors a leasehold estate for years.

c. Factor 3: Retention of dominion and control.

60. The third factor is whether the grantor retained dominion or control over the leased property. The Debtors will attempt to manufacture a usufruct out of a handful of routine landlord protections, but Georgia courts have squarely rejected that approach, and none of the provisions the Debtors will cite rises anywhere near the level of control necessary to overcome the presumption. For this factor to overcome the presumption in favor of a leasehold estate for years, the restrictions must be "so pervasive as to be fundamentally inconsistent with the concept of an estate for years." *Allright Parking of Ga. v. Joint City-County Bd. of Tax Assessors*, 244 Ga. 378, 387 (Ga. 1979). No such restrictions are present here.

61. The Lease states that the permitted use is "the operation of a lithium battery recycling facility and for no other purpose." Exh. B, Lease Summary § 12. This is not surprising, considering the Landlord was negotiating with a lithium battery recycling company. But many Georgia courts have made it clear that a use limitation of this kind is not enough to rebut the presumption of a leasehold estate for years. *See Jekyll Dev. Assocs.*, 240 Ga. App. at 275 ("An estate for years may be encumbered or somewhat limited without being reduced to a usufruct.").[6] The Georgia Supreme Court has specifically ruled when finding a leasehold estate for years existed, that:

> [i]n conclusion it may be pointed out that—even though some of the provisions of the instant lease might result in imposing liabilities upon the lessor which are

[6] *See also Warehouses, Inc. v. Wetherbee*, 203 Ga. 483, 490–91 (Ga. 1948) (Georgia Supreme Court notes "[A] contract which ordinarily would be construed to create an estate for years is not reduced to a mere usufruct because certain limitations are put upon its use."); *Buoy v. Chatham County Bd. of Tax Assessors*, 142 Ga. App. 172, 174 (Ga. Ct. App. 1977) ("[A] contract which ordinarily creates an estate for years is not changed to a usufruct because of limitations placed on the lessee."); *Diversified Golf, LLC v. Hart County Bd. of Tax Assessors*, 267 Ga. App. 8, 10–11 (Ga. Ct. App. 2004) ("[A]n estate for years may be encumbered or somewhat limited without being reduced to a usufruct . . . ."); *City of College Park v. Paradies-Atlanta, LLC*, 346 Ga. App. 63, 66 (Ga. Ct. App. 2018) (same language as *Diversified*); *Chatham County Bd. of Assessors v. Jay Lalaji, Inc*., 357 Ga. App. 34, 36 (Ga. Ct. App. 2020) (same language as *Diversified*).

> usually incident to the relationship of landlord and tenant, and even if it could be said that certain of the provisions might be construed to impose limitations upon the use of the premises—yet, a contract which ordinarily would be construed to create an estate for years is not reduced to a mere usufruct because certain limitations are put upon its use.

Warehouses, Inc. v. Wetherbee, 203 Ga. 483, 490–91 (Ga. 1948).

62. While there is a clear "lithium battery recycling facility" use restriction in the Lease, that alone is not indicative of a level of dominion and control "so pervasive as to be fundamentally inconsistent with the concept of an estate for years." *See Allright Parking of Ga*, 244 Ga. at 387.

63. There are plenty of Georgia cases to look to when determining what exactly rises to the level of dominion and control that creates a usufruct. For example, a usufruct was found in the *Macon-Bibb* and *College Park* cases, where the landlord retained the right to take back portions of the premises on short notice (90 days and 30 days, respectively), and where the landlord exercised pervasive day-to-day operational controls, including over pricing, hours of operation, use of certain vendors, and record-keeping. The courts keyed in on the following:

> That the Authority could take back certain portions of the leased premises by giving 90-day written notice of that intent; that ASA had to implement an affirmative action program; and the requirement that ASA had to pay additional rent if it did not purchase its aircraft fuel from lessees or sub-lessees of the City illustrate that ASA did not have an estate for years.

Macon-Bibb County Bd. of Tax Assessors v. Atlantic Southeast Airlines, 262 Ga. 119, 121 (Ga. 1992); and:

> The City of Atlanta also retains the rights to: (i) unilaterally expand or contract each Parcel's size and require the plaintiffs to relocate to other areas in the Airport; (ii) enter each Parcel to inspect it or make ordinary repairs 'at any reasonable time and as often as [the City of Atlanta] considers necessary'; and (iii) terminate the Agreements without cause on 30 days' notice. . . .[and] restrict: (i) the hours during which deliveries may be made to the Parcels and who may make such deliveries; (ii) the types of services offered and activities conducted on the Parcels; (iii) the prices that may be charged for goods and services provided on the Parcels; and (iv) the hours during which businesses on the Parcels must be open.

City of College Park v. Paradies-Atlanta, LLC, 346 Ga. App. 63, 67–68 (Ga. Ct. App. 2018).

64. Similarly, in *Allright Parking* and *Clayton County*, the decisive dominion and control facts that created a usufruct included the landlord's "sole discretion" to determine which portions of the premises, "if any," the tenant could use or occupy. The Georgia Supreme Court noted the following in those cases:

> Throughout the term of the lease, the landlord shall have 'sole discretion' to determine those portions of the premises, 'if any,' which the tenant shall be entitled to use and occupy during any period of time. In order to preclude the tenant's use and occupancy of a portion of the premises, the landlord is required to give the tenant at least 30 days' prior notice.

Allright Parking of Ga. v. Joint City-County Bd. of Tax Assessors, 244 Ga. 378, 381 (Ga. 1979); and:

> . . . the right of the City to terminate the agreement at any time and without cause on 30-days' notice; the right of the City to require Aldeasa to relocate, or to contract or expand its retail space at any time; and the right of the City to retain control of the prices Aldeasa charges for merchandise, Aldeasa's hours of operation, the delivery companies it may use, and the types of cash registers it must use for record-keeping purposes.

Clayton County Bd. of Tax Assessors v. Aldeasa Atlanta Joint Venture, 304 Ga. 15, 17 (Ga. 2018).

65. These cases are *meaningfully distinguishable* from the facts here where a mere customary commercial permitted use clause exists.

66. In contrast, the Georgia Court of Appeals held in *Jekyll* that a leasehold estate for years was created even though "Section 3 provides that the premises shall be used by the lessee 'solely for the operation of a top quality, family, tourist and convention oriented resort hotel.'" *Jekyll Dev. Assocs.*, 240 Ga. App. at 275–76. The *Jekyll* use restriction, *which was not fatal to the leasehold estate for years*, is directly analogous to the "lithium battery recycling facility" use restriction present in this case.

67. Furthermore, other Georgia courts have found a leasehold estate for years where, as here, the landlord does not exercise dominion or control over the tenant's *business operations*. *See Buoy v. Chatham County Bd. of Tax Assessors*, 142 Ga. App. 172, 173 (1977) (lease conveyed a leasehold estate for years where, "[r]eading the lease in its entirety, *there was a clear intent to grant to the [tenant] the right to build and operate a motel on the lessor's lands and the latter did not purport to exercise any dominion or control over the operation of the motel*.") (emphasis added). The tenant in *Buoy* is like the Debtors in that it was granted a right to build and operate a specific business. And like in *Buoy*, the Landlord does not direct, participate in, or control the Debtors' operation of the Covington Facility, the industrial processes conducted there, or the Debtors' pricing, staffing, hours of operation, or customers. The Debtors' actual dominion over the Premises, including construction of an entire industrial processing facility, is the type of unfettered business operation that supports an estate for years.

68. While the "lithium battery recycling facility" use restriction does not rebut the presumption of a leasehold estate for years, other provisions of the Lease affirmatively support one. Tenant has exclusive possession of the Premises with continuous 24/7 access. Exh. B, Lease §§ 1.1, 1.2, 11.3. Tenant controls all operational aspects of the facility and is solely responsible for all systems and equipment exclusively serving the Premises. Indeed, Landlord's own right to alter, add to, or reconfigure the Building under Section 11.2 of the Lease is expressly limited to preserve Tenant's access to the Premises "at all times, except in the case of emergencies." Exh. B, Lease § 11.2.

69. Moreover, Landlord is in default under the Lease, and Base Rent abates, if Tenant is unable to access the Premises as a result of Landlord's failure to perform its obligations. *Id.* § 9.5. These provisions confirm that Landlord's retained rights over the Premises do not extend to

excluding or displacing Tenant, a right of continuous possession that is a hallmark of a leasehold estate for years rather than a usufruct.

70. Further, the fact that the Debtors' entire Covington Facility was built on the Premises to house a lithium battery recycling plant should not be swept under the rug. Indeed, upon completion of planned utility upgrades, the Debtors expected the Covington Facility to be "the first, and only, U.S. commercial recycled lithium carbonate production facility operating at scale." *See* Declaration of Linh Austin in Support of Chapter 11 Petitions and Emergency First-Day Motions, ¶ 23 [Dkt. No. 11]. Further, the Debtors explained at the early stages of this case that "*[t]here is no comparable facility anywhere in the United States*, and replicating what the Company has built—its proprietary process technology, *purpose-built infrastructure*, regulatory approvals, and customer-validated product—would require years of development and substantial capital investment by any new entrant." *Id.* ¶ 24 (emphasis added). These facts further support that the Debtors built and were operating an innovative and previously successful lithium battery recycling plant on the Premises that was not encumbered by dominion and control of the Landlord. There is no evidence that the Landlord was micromanaging the operations of this process. This was not a mere usufruct.

71. The Debtors will likely point to other small indicia of Landlord control, including that the Landlord retains rights with respect to Common Areas (*Id.* § 11.1) and structural elements (*Id.* § 5.1), Landlord's approval rights over certain alterations (*Id.* § 5.3) (which was often not enforced in practice according to the Lease's own First Amendment),[7] and the Landlord's

[7] The First Amendment confirms that Landlord's approval rights over alterations, though set forth in Lease § 3.4 were often not enforced in practice. The First Amendment recites that Tenant made "material alterations to the Premises and additional areas of the Land that were not identified to the Landlord prior to the installation of such alterations by Tenant as required under Paragraph 21 of the Lease Summary and Section 5.3 of the Lease." Exh. C, First Amendment, Recital C. The First Amendment further acknowledges that Tenant "has not" complied with the requirements. *Id.*, Recital F. Rather than enforcing this requirement, Landlord waived "any prior defaults that were known or should have been known by the Landlord as of December 15, 2024." *Id.* § 19.

inspection and self-help rights related to Hazardous Substances (*Id.* § 3.4). However, these are clearly provisions to protect the rights of other tenants and to avoid injury to the Landlord's reversion interest, which are limitations directly in line with the definition of an estate for years in the Georgia statutes. O.C.G.A. § 44-6-103, the Georgia statute defining a tenant's rights under an estate for years, provides: "An estate for years carries with it the right to use the property in as absolute a manner as may be done with a greater estate, *provided that the property or the person who is entitled to the remainder or reversion interest is not injured by such use*." (emphasis added). Here, protection of common areas, structural elements, and approval rights of certain alterations when the Debtors were using hazardous materials in their lithium recycling operations, are all provisions to protect the other tenants and reversion interest and do not amount to pervasive dominion and control. Like the *Jekyll* case, here "[t]he remaining restrictions do not quantitatively or qualitatively outweigh the incidents of ownership vested in the lessee to convert the interest conveyed from the intended leasehold estate to a usufruct." *Jekyll Dev. Assocs.*, 240 Ga. App. at 278.

72. Lastly, on a policy note, the Debtors' presumptive argument would effectively render any commercial lease a usufruct in the state of Georgia, given the routine inclusion of use restrictions (and other terms addressed above) in commercial leases. Such an application of this factor would render absurd results across Georgia law, converting nearly every commercial lease into a usufruct based on use restrictions that are now ubiquitous in commercial leasing.

73. This factor favors a leasehold estate for years.

d. Factor 4: Maintenance and repair.

74. The fourth factor is which party has retained the duties to keep and maintain the premises and appurtenances.

75. Here, Tenant is required, "at its sole cost," to "repair and maintain the Premises," Exh. B, Lease § 5.2, and is specifically required to maintain and make repairs to:

- Life-safety and sprinkler systems, pipes, sprinklers, lines, ducts, wires, or conduits within the Premises up to the points of common connection
- Windows, plate glass, doors, and any fixtures or appurtenances composed of glass
- Tenant's signage
- Any HVAC equipment exclusively serving the Premises, including a preventive maintenance service contract with semi-annual servicing
- The Premises or the Building when repairs are necessitated by Tenant's negligence, misuse, failure to perform its Lease obligations, or damage caused by operation of Tenant's equipment

Exh. B, Lease § 5.2.

76. The Landlord is only responsible for repair of structural elements, the exterior, the roof, and common areas, except to the extent repairs are necessitated by Tenant's negligence. *See id*. § 5.1.[8] This allocation is typical of commercial industrial leases and imposes substantial maintenance obligations on the Tenant, which is consistent with a property interest, not a bare license.

77. Georgia courts have treated similar tenant obligations, including obligations to maintain and repair the premises, procure broad insurance coverage, and pay utilities, as further indicia of a leasehold estate for years. *See Buoy*, 142 Ga. App. at 173 (tenant's obligations to repair and maintain the premises, provide broad insurance coverage, and pay utilities were "more indicia" that the lessee acquired a leasehold estate). The Debtors' similar obligations under the Lease to insure its improvements, fixtures, and equipment at full replacement value, and to decommission

[8] Indeed, the Landlord eventually asserted that the Debtor was liable for roof damages totaling $838,000 due to "penetrations and punctures in the roof, holes in the metal decking, and damage to the metal lapping, among other issues, which were caused by unapproved alterations and improvements performed by Ascend to the Property." *See Covington Industrial LLC's Limited Objection and Reservation of Rights to Debtors' Listed Cure Amounts*, ¶ 5 [Dkt. No. 328].

and remove Hazardous Substances Equipment at the end of the Term, reinforce this conclusion. Exh. B, Lease §§ 6.1(a)(i), 3.4(j). Here, like in *Buoy*, the Debtors were required to keep and maintain the premises and appurtenances and insure its improvements, fixtures, and equipment.

78. This factor strongly favors a leasehold estate for years.

e. Factor 5: Assignability.

79. The fifth non-exhaustive factor is whether the Lease is assignable or may be used by others without the Landlord's consent. Here, the Lease restricts assignment without Landlord consent, "not to be unreasonably withheld, conditioned, or delayed." Exh. B, Lease § 8.1(a).

80. The Debtors may argue that these restrictions favor a usufruct. However, the Lease does not absolutely prohibit assignment. It merely conditions it on consent *which shall not be unreasonably withheld*. *See id.* Restrictions on assignment are ubiquitous in commercial leases, including leases that create estates in land, and do not by themselves convert an estate for years into a usufruct. *See Buoy*, 142 Ga. App. at 174 (a contract that ordinarily creates an estate for years is not changed to a usufruct because of limitations placed on the lessee) (citing *Warehouses, Inc. v. Wetherbee*, 203 Ga. 483 (1948)).

81. The reasonableness requirement when withholding assignment consent is key here. The lease in the *Jekyll* case had nearly identical language, which the Georgia Court of Appeals concluded did *not* create a usufruct:

> Section 17 of the lease prohibits the lessee from assigning the lease or subletting any part of the premises without the consent of the lessor. This limitation is clearly inconsistent with the grant of an estate for years, "which normally can be alienated without the grantor's consent." But § 21 states that any consent requested by the lessee *shall not be unreasonably withheld, thereby circumscribing the lessor's power* to withhold its consent. Moreover, § 17 provides that any assignment or *subletting shall not relieve the lessee of liability* under the lease unless specified by the lessor. This indicates that an estate for years was transferred.

Jekyll Dev. Assocs., 240 Ga. App. at 276–77 (emphasis added). Here, as in *Jekyll*, the Landlord may not unreasonably withhold consent to assignment, "circumscribing" the Landlord's power to withhold consent. Further, as in *Jekyll*, the Lease states that "no acceptance by Landlord of any payments by a transferee shall be deemed a waiver of any provisions hereof regarding Tenant," and that "notwithstanding any Transfer, Tenant shall not be released from any of its obligations under this Lease," which likewise indicates that a leasehold estate for years was transferred.

82. Moreover, the Lease permits certain transfers without the Landlord's consent at all, further confirming that Tenant holds a genuinely transferable property interest rather than a personal, non-assignable license. Section 8.1(d) provides that, "notwithstanding anything to the contrary contained in this Lease," Tenant may assign the Lease or sublet all of the Premises, *without the Landlord's consent*, to: (i) any Affiliate of Tenant; or (ii) any entity controlling, controlled by, or under common control with Tenant, or any successor of Tenant resulting from a merger, consolidation, or a sale of all or substantially all of Tenant's assets or stock. Exh. B, Lease § 8.1(d) (emphasis added). The only conditions on this unilateral right to assign are five business days' prior written notice (unless prohibited by law), that the assignment or sublease not relieve Tenant of its existing liability under the Lease (further indicating a leasehold estate for years pursuant to *Jekyll Dev. Assocs.*, 240 Ga. App. at 277), and that the assignee or sublessee expressly assume Tenant's obligations in writing. Exh. B, Lease § 8.1(d). Section 8.1(d) further provides that any change in Tenant's controlling stock interest resulting from an initial public offering, or any transfer of Tenant's capital stock through the over-the-counter market, a recognized stock exchange, or a tender offer, is not even deemed a "Transfer" requiring Landlord's consent in the first place. *Id.* This is a broad, self-executing right of alienation exercisable at Tenant's sole

election, without regard to Landlord's judgment or approval, and stands in sharp contrast to the restricted, landlord-controlled transfer rights characteristic of a usufruct.

83. The Lease also includes a recapture right for assignments exceeding 50% of the remaining Term. Exh. B, Lease § 8.1(c).

84. Taken together, these assignability provisions are consistent with a leasehold estate for years, and not with a mere usufruct. The reasonableness qualifier on Landlord's consent, the Affiliate and equity-transfer carve-outs that dispense with consent altogether, and the survival of Tenant's liability following any permitted transfer all confirm that the Lease conveys a genuinely transferable property interest, not the personal, non-assignable right of occupancy characteristic of a mere usufruct. This factor favors a leasehold estate for years.

iv. Additional factors confirm a leasehold estate for years.

85. Georgia courts have recognized that the five factors discussed above are not exhaustive, and additional lease terms may inform the parties' intent. *See Chatham County Bd. of Assessors v. Jay Lalaji, Inc.*, 357 Ga. App. at 35 (identifying factors that a court is to consider in determining whether the parties intended to create a usufruct, without limiting the inquiry to those factors). Here, the Debtors' treatment of the Lease both before and during the bankruptcy supports several additional considerations that the Lease created a leasehold estate for years and not a mere usufruct.

a. The parties' own construction contract reinforces that the Lease is a leasehold estate for years, not a mere usufruct.

86. On March 12, 2024, Ascend Elements, Inc. and AMCON entered into the Master Agreement, which governed the general terms and conditions applicable to the parties' future work orders at the Covington Facility. *See generally* Exh. D. Throughout the Master Agreement, the Debtor is defined and referred to, consistently and without qualification, as the "Owner." Exh. D,

Master Agreement, p. 1 ("AGREEMENT between Ascend Elements Inc ('Owner') and AmCon Industrial ('Contractor')"). Neither the Master Agreement nor any of its exhibits refers to the Debtors as a "Tenant," "Lessee," occupant, or licensee with respect to the Covington Facility.

87. Critically, the Master Agreement's lien provisions confirm that the parties understood the Debtors to hold an interest in the Covington Facility capable of being encumbered by a lien, which is the very interest AMCON asserts here. Section 3.4 of the Master Agreement, titled "*Construction or Mechanics' Liens*," provides that "[i]f any person places a mechanic's or construction lien on the *Owner's* or any person's interest in the Facility or the property on which it is located, or on any construction fund . . . the Contractor shall promptly remove the lien, by bonding it off or otherwise, and shall defend, indemnify, and hold the Owner harmless against all Losses the Owner incurs as a result of the lien." Exh. D, Master Agreement § 3.4 (emphasis added). This provision necessarily presupposes that the Owner's interest in the Facility is an interest against which a "mechanic's or construction lien" may validly attach. Under Georgia law, a mere usufruct cannot be encumbered by a lien at all. *See Jones v. E. I. Rooks & Son*, 78 Ga. App. 790, 793 (Ga. Ct. App. 1949). The Master Agreement's lien-removal and indemnification obligations would be surplusage if the parties who negotiated them understood the Debtors' interest in the Facility to be a bare usufruct incapable of being liened in the first place.

88. The Master Agreement's lien-waiver forms confirm the same point. AMCON and its subcontractors were contractually required to execute a lien waiver with every progress and final payment application throughout the project, using the interim lien-waiver form (Exhibit F to the Master Agreement) and the final lien-waiver form (Exhibit G to the Master Agreement). Both forms expressly identify "Ascend Elements Inc." as the "*Property Owner*." Exh. D, Master Agreement Exhs. F, G ("Property Owner: Ascend Elements Inc.") (emphasis added).

89. These lien-waiver forms, generated and exchanged in the ordinary course of the parties' construction relationship and not manufactured for this litigation, repeatedly and contemporaneously identified the Debtors, not Covington Industrial LLC, as the "Property Owner" whose interest in the Covington Facility was subject to lien rights requiring waiver and release with each payment.

90. AMCON's own contractual risk allocation confirms that lien exposure against the Debtors' interest in the Covington Facility was a live, negotiated risk between sophisticated commercial parties, not a hypothetical one. Section 13.1 of the Master Agreement identifies the Contractor's failure "to pay any subcontractors, laborers, mechanics, materialmen or suppliers when payment is due" as an event of default. Exh. D, Master Agreement § 13.1. That provision exists precisely because such non-payment could give rise to a lien against the Debtors' interest in the Covington Facility.

91. These provisions were negotiated between AMCON and the Debtors, for this specific Covington Facility, well before AMCON recorded the M&M Lien at issue here. They are not self-serving, post hoc litigation positions; they are the parties' own contemporaneous business dealings. That AMCON's own construction-contract counterparty (a Debtor here) was repeatedly and consistently treated, by both signatories, as holding an ownership-type interest in the Covington Facility subject to lien rights further confirms that the Lease conveys a lienable leasehold estate for years, not a mere usufruct.

b. The Debtors' actions and sworn statements in this bankruptcy case suggest that the Lease is a leasehold estate for years, not a mere usufruct.

92. The leasehold estate for years designation is further confirmed by the Debtors' own actions and sworn statements in this bankruptcy case. In the Debtors' Schedule A/B, Part 9 (Real Property), Question 55 [Dkt. No. 357], Ascend Elements, Inc. lists "9176 INDUSTRIAL DRIVE

NORTHEAST, COVINGTON, GEORGIA, 30014" among its *real property holdings* and describes the "nature and extent of the debtor's interest in property" simply as "LEASED PROPERTY." The current value is listed as "Undetermined." This entry sits alongside other properties the Debtors similarly label "LEASED PROPERTY" (a Devens, Massachusetts facility; a second Covington, Georgia address at 10157 Industrial Drive; and a Turner Hill Road, Lithonia laydown lot), in contrast to its Westborough, Massachusetts headquarters and Hopkinsville, Kentucky facility, which are labeled "OWNED PROPERTY" with actual net book values. Notably, the Debtors did not use the word "usufruct," "license," or any qualifying language suggesting a lesser interest. It used the same "LEASED PROPERTY" designation it used for its other ordinary commercial leases. If the Lease were a mere usufruct, it would not be listed as real property holdings alongside other non-usufruct leases.

93. Further, in the Global Notes section of the Schedules, it states that "Multiple parties may have an interest in the same property" and as an example lists "Real Property in Georgia (leasehold interest)—AMCON holds a mechanics lien against the Debtors' leasehold interest." While the AMCON lien is listed as contingent, unliquidated, and disputed, the clear references to "Real Property" and "leasehold interest" are telling, and indicative of a leasehold estate for years.

94. Next, in Schedule G (Executory Contracts and Unexpired Leases), Ascend Elements, Inc. lists two entries for the Landlord:

- Entry 2.219: "COVINGTON INDUSTRIAL LLC ... LEASE AGREEMENT, DATED 12/31/2021"
- Entry 2.220: "COVINGTON INDUSTRIAL LLC ... AMENDMENT TO LEASE AGREEMENT, DATED 01/07/2025"

In other words, the Debtors classified its interest in the Covington property as an unexpired lease for bankruptcy purposes, not as a bare license or contract right for services.

95. The Lease was listed in its *First Notice to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases* (Item 12) [Dkt. No. 240] with a $0.00 cure amount. The Landlord objected, again noting the "unapproved alterations," and claiming the Debtors should be responsible for repairing structural damage to the roof totaling $838,000 (which, as noted above, favors a leasehold estate for years and not a mere usufruct) [Dkt. No. 328]. The dispute was later resolved with an *Agreed Order Resolving Covington Industrial LLC's Limited Objection to Debtors' Listed Cure Amounts* [Dkt. No. 547], which provided that the Landlord's cure costs shall consist of the following:

- $50,000 toward roof repair costs;
- $8,750 for water consumption costs;
- $44,039.55 in satisfaction of the 2025 Expense Reconciliation Invoice; and
- "[t]he assumption and assignment of the Lease shall be subject to the extension of an amended lease pursuant to the agreed upon Term Sheet as of closing and such amended lease shall be executed within five business days of closing."

96. This process not only produced a cure cost for repairs the Debtors were liable for pursuant to the Lease, but also assigned the Lease to a non-affiliate (albeit through the bankruptcy process).

97. Additionally, the Debtors themselves have represented to this Court that the assigned contracts and unexpired leases, including the Covington Lease, have significant economic value and are "essential to the value of the Assets and the Debtors' business as a going concern," and that "it is unlikely that any purchaser would want to acquire certain of the Assets unless the contracts and leases needed to conduct business and manage day-to-day operations of those Assets were included in the transaction." Sale Motion ¶ 62 [Dkt. No. 50]. Ultimately this Court found that "[t]he assumption and assignment of the Assigned Contracts are an integral part of the Sale Transaction. . . ." and "(ii) allow the Debtors to sell the Acquired Assets to the Purchaser as a going

concern, (iii) limit the losses suffered by the Contract/Lease Counterparties to the Assigned Contracts and (iv) maximize the recoveries of other creditors of the Debtors by avoiding claims against the Debtors' estates that would arise from the Debtors' rejection of the Assigned Contracts." Covington Sale Order ¶ Q [Dkt. No. 534]. These value characterizations are inconsistent with the Debtors' current position that the lease created a mere usufruct.

98. Most importantly, the word "usufruct" never appeared once in the Debtors' schedules, statement of financial affairs, cure notices, or the agreed order. There was no mention of a usufruct in the Covington Sale Order. The Landlord likewise never referred to the Lease as a usufruct in any of its pleadings.

99. In short, the Debtors *never* (pre- or post-petition) acted like the Lease was a mere usufruct until they began searching for a way to free up the cash proceeds of the sale of AMCON's collateral. These additional provisions reinforce the conclusion, compelled by the five-factor test, that the Covington Lease conveys a lienable leasehold estate for years.

v. The presumption is not rebutted.

100. Taking all of the factors together: (a) the terms of the Lease strongly favor a leasehold estate for years; (b) tax liability strongly favors a leasehold estate for years; (c) the dominion and control factor favors a leasehold estate for years; (d) the maintenance and repair factor strongly favors a leasehold estate for years; (e) the assignability factor favors a leasehold estate for years; and (f) the additional factors discussed above further confirm a leasehold estate for years. Every factor supports, and none rebuts, the statutory presumption that the Covington Lease conveys a lienable leasehold estate for years.

101. Regardless of Issue 1, AMCON's M&M Lien is not limited to the bare leasehold interest. The lien also claims "any other property interests held by Ascend Elements, Inc. the

lessee, in certain buildings and/or structures and in the premises or real estate upon which such are erected or built." Exh. A.

B. ISSUE 2: GEORGIA LAW PERMITS AMCON'S M&M LIEN TO ATTACH TO EQUIPMENT, FIXTURES, TRADE FIXTURES, TENANT IMPROVEMENTS, AND OTHER FACILITY-INTEGRATED ASSETS

102. AMCON's M&M Lien attaches not only to Ascend's leasehold estate for years discussed above, but also to the equipment, machinery, fixtures, trade fixtures, tenant improvements, and other assets that Ascend installed at, and integrated into, the Covington Facility to operate it as a lithium battery recycling plant. As set forth below, Georgia's mechanics' and materialmen's lien statute grants a qualifying lien claimant a special lien on the real estate it improves, including everything that becomes part of the finished structure. Because the industrial process equipment AMCON furnished and worked on at the Covington Facility is large, cumbersome, and permanently integrated into the Facility's infrastructure, that equipment is lienable under Georgia law regardless of whether the Debtors' underlying leasehold interest is ultimately classified as a leasehold estate for years or a usufruct.

i. The statutory framework.

103. O.C.G.A. § 44-14-361(a) grants qualifying lien claimants a "special lien on the real estate, factories, railroads, or other property for which they furnish labor, services, or materials."

104. O.C.G.A. § 44-14-361(a)(6) specifically protects "[a]ll contractors, all subcontractors and materialmen furnishing material to subcontractors, and all laborers furnishing labor for subcontractors for building factories, furnishing material for factories, or furnishing machinery for factories." Separately, O.C.G.A. § 44-14-361(a)(2) protects "all contractors, all subcontractors and all materialmen furnishing material to subcontractors, and all laborers furnishing labor to subcontractors, materialmen, and persons furnishing material for the improvement of real estate" generally, without regard to whether the real estate is a factory.

105. O.C.G.A. § 44-14-361(a)(7) grants special liens to "[a]ll machinists and manufacturers of machinery… who may furnish or put up any mill or other machinery in any county or who may repair the same."

106. O.C.G.A. § 44-14-360 defines "materials" broadly to include "tools, appliances, machinery, or equipment used in making improvements to the real estate."

107. O.C.G.A. § 44-1-2(a) defines "realty" or "real estate" to include "[a]ll lands and the buildings thereon" and "[a]ll things permanently attached to land or to the buildings thereon."

108. Read together, these provisions establish that a contractor who furnishes labor and materials to improve a factory or industrial facility has a lien on the "real estate, factories, . . . or other property" improved, which not only includes the bare land and buildings, but also items "permanently attached" thereto.

ii. Items that become part of the improved property are lienable.

109. The leading Georgia authority on the scope of M&M liens for installed equipment is *Skandia Draperies Mfg. Co. v. Augusta Innkeepers*, 157 Ga. App. 279, 277 S.E.2d 282 (1981). The court held that "material for the improvement of real estate" means "something that goes into and becomes a part of the finished structure." *Id.* at 279–80. The *Skandia* court explained: "in order to render real property subject to foreclosure for material supplied, it must appear that the articles alleged to be lienable have become fixtures." *Id.* Applying this test, the court found that draperies hung by curtain rods and hooks were not lienable because they were loose, movable chattels that, as the court explained, "are not attached to any of said improvements in any way other than by the normal curtain rod and hook method." *Id.* at 280.

110. But the Georgia Court of Appeals drew a sharp distinction with large, integrated apparatus. Citing the Georgia Supreme Court in *Waycross Opera House Co. v. Sossman & Landis*, 94 Ga. 100, 20 S.E. 252 (Ga. 1894), the court noted that "scenery and other articles constituting

the stage and scenic apparatus of an opera house were lienable items because they constituted 'part and parcel of the edifice itself' and were 'essential to the completeness of a building of that kind.'" *Skandia*, 157 Ga. App. at 280.

111. The principle is clear: loose, easily removable items (draperies, bedspreads, curtain rods) are not lienable. But large, cumbersome, facility-essential equipment that is affixed, integrated, or "permanently used with the building" *is lienable* as part of the improved real estate. *See Brigham v. Overstreet*, 128 Ga. 447, 450 (1907) (fixtures "not intended to be moved about from place to place, but to be permanently used with the building" become part of the realty) (cited in *Skandia*, 157 Ga. App. at 280).

112. By contrast, in *D. H. Overmyer Warehouse Co. v. W. C. Caye & Co.*, 116 Ga. App. 128, 130 (Ga. Ct. App. 1967), the Georgia Court of Appeals held that rented scaffolding used to construct a warehouse was not a lienable item, because the scaffolding never became part of the building and instead remained akin to a contractor's own tools. In reaching that conclusion, the court reaffirmed the rule that machinery becomes lienable once it is attached to and incorporated with the realty it improves: "Machinists, and manufacturers of machinery, have no lien on real estate for machinery furnished, *unless the machinery furnished is attached to, and becomes incorporated with, the realty* for which it was furnished." *Id.* at 130 (quoting *J.S. Schofield & Son v. Stout, Mills & Temple*, 59 Ga. 537 (1877)) (emphasis in original). *D. H. Overmyer* therefore draws the same line at issue here: equipment that is merely rented or delivered but never becomes part of the structure is not lienable, but equipment that is attached to and incorporated with the realty is.

113. The Covington Facility is a specialized lithium battery recycling plant. Its industrial process equipment, including dry shredding lines, wet shredding lines, metals extraction systems,

tanks, piping, ventilation systems, electrical systems, and environmental control systems, is precisely the type of large, cumbersome, facility-essential equipment that *Skandia*, *Waycross Opera House*, and *Brigham* (when read together) identify as lienable, and is nothing like the rented scaffolding found non-lienable in *D. H. Overmyer*. This equipment is bolted to the floor, anchored to concrete pads, hard-wired to electrical systems, hard-piped to plumbing and process systems, and/or otherwise integrated into the facility's operational infrastructure. Phillips Decl. ¶¶ 7-11.

iii. AMCON's lien language supports attachment to facility-integrated assets.

114. AMCON's recorded M&M Lien claims a lien on "the leasehold estate for years and *any other property interests held by Ascend Elements, Inc.* the lessee, in certain buildings and/or structures and in the premises or real estate upon which such are erected or built." Exh. A. (emphasis added).

115. The phrase "any other property interests . . . in certain buildings and/or structures and in the premises" is broad enough to encompass the Debtors' property interests in installed equipment, fixtures, trade fixtures, tenant improvements, and other improvements that became part of the Covington Facility.

116. Under Georgia law, the lien claimant need not separately describe each item of equipment or improvement for the lien to be effective. The lien is filed against the real estate (the fixtures) or leasehold interest therein for which labor and materials were furnished. *See* O.C.G.A. § 44-14-361.1 (governing the contents and effect of a recorded lien claim). Equipment that becomes part of that improved real estate as a fixture is encompassed within the lien on the property. *See Skandia*, 157 Ga. App. at 280.

117. AMCON's M&M Lien is not a bare lien on a leasehold interest alone. It separately and distinctly reaches all the Debtors' "property interests" in the buildings, structures, and premises, including the Debtors' property interests in installed improvements and equipment, and

the M&M Lien accordingly attaches to the cash proceeds of the Covington Sale attributable to those interests.

iv. The Lease confirms the Debtors held lienable property interests in facility-integrated assets.

118. The Covington Lease itself confirms that the Debtors held property interests in equipment, improvements, and fixtures at the Facility:

119. Trade Fixtures: Section 5.4 provides that Tenant may remove trade fixtures "at any time during the Term thereof in the usual course of business." Crucially, trade fixtures become Landlord's property only if not removed at termination, and only at Landlord's option. Exh. B, Lease § 5.4. This confirms Tenant's ownership during the Term, which has never lapsed.

120. Improvements, Fixtures, Equipment: Section 6.1(a)(i) requires Tenant to insure "Tenant's improvements, betterments, furniture, fixtures, equipment and contents" at full replacement value. This language presupposes Tenant's property interest in these items.

121. Hazardous Substances Equipment: Section 3.4(j) requires Tenant to "decommission and remove" all Hazardous Substances Equipment at termination, again confirming Tenant's ownership and control.

122. Landlord's Security Interest: Section 2.7 grants Landlord "an express first and prior contract lien and security interest in all fixtures and equipment placed in the Premises." A security interest can only be granted in property owned by the debtor. *See* O.C.G.A. § 11-9-203(b)(2) (Georgia's enactment of UCC § 9-203(b)(2)). While no such competing lien is present in this case, this provision conclusively establishes that the parties understood Tenant to own the fixtures and equipment.

123. Further, the Debtors' own Schedules of Assets and Liabilities confirm that this equipment was carried as the Debtors' owned property, not the Landlord's property. Schedule

A/B, Part 8 (Machinery, Equipment, and Vehicles) lists thousands of individual fixed assets, including reactors, extraction and leaching equipment, filter presses, tanks, and related process equipment consistent with the categories of equipment described in the Lease and the Phillips Declaration, several of which are specifically identified as "COVINGTON LAB" assets. [Dkt. No. 357]. The Debtors reported a combined value for Part 8 of $10,528,123.15. While the Schedules are not broken out by facility for every line item, and AMCON reserves all rights as to the identification and valuation of specific assets, the Debtors' own sworn filings confirm that this type of equipment was recorded as the Debtors' property, not the Landlord's.

v. AMCON's M&M Lien attached to the Covington Facility's integrated equipment as a matter of law.

124. In sum, Georgia's M&M lien statute, as construed in *Skandia*, *Waycross Opera House*, *Brigham*, and *D. H. Overmyer*, draws a clear line between rented or loose personal property that never becomes part of a structure and large, cumbersome equipment that is affixed to and integrated with the improved real estate. The equipment AMCON furnished and worked on at the Covington Facility falls decisively on the lienable side of that line: it is bolted, hard-wired, hard-piped, and otherwise permanently integrated into the Facility's infrastructure such that the Facility could not function as a lithium battery recycling plant without it. AMCON's M&M Lien, which reaches not only the Debtors' leasehold interest but "any other property interests held by Ascend Elements, Inc." in the buildings, structures, and premises, therefore attaches to this equipment and to the cash proceeds of the Covington Sale attributable to it.

VII. CONCLUSION AND RELIEF REQUESTED

125. For the foregoing reasons, AMCON respectfully requests that the Court enter summary judgment as follows:

- **On Issue 1:** Declaring that the Debtors' interest under the Covington Lease is a lienable leasehold estate for years under Georgia law, and that AMCON's

asserted M&M Lien attached to that interest and the cash proceeds from the Covington Sale attributable to that interest;

- **On Issue 2:** Declaring that, as a matter of Georgia law, AMCON's properly recorded M&M Lien attached to equipment, machinery, fixtures, trade fixtures, tenant improvements, and other facility-integrated assets located at the Covington Facility that have become part of the improved property, to the extent such assets satisfy the fixture/integration test under Georgia law, and that AMCON's asserted M&M Lien attached to that interest and the cash proceeds from the Covington Sale attributable to that interest; and

- Granting such other and further relief as the Court deems just and appropriate.

126. AMCON expressly reserves all rights with respect to the identification of specific assets, the allocation of the Cash Purchase Price among the Acquired Assets, and the priority of competing claims to the Covington Proceeds Escrow, which are not at issue in this motion, and requests that the Court schedule a hearing on those issues.

127. A proposed order granting this motion is submitted herewith.

Dated: July 24, 2026

Respectfully submitted,

JACKSON WALKER L.L.P.

By: /s/Zachary McKay
Zachary McKay (TX Bar No. 24073600)
1401 McKinney St. #1900
Houston, TX 77010
Telephone: (713) 752-4261
Email: zmckay@jw.com

Counsel for AM Construction Inc. d/b/a AMCON Industrial

CERTIFICATE OF SERVICE

I hereby certify that on July 24, 2026, a true and correct copy of the foregoing *AM Construction Inc. d/b/a AMCON Industrial's Motion for Summary Judgment on the Issues Identified in the Stipulation and Agreed Scheduling Order*, together with all exhibits thereto, was served via the Court's CM/ECF electronic filing system on all parties registered to receive electronic notification in this case.

/s/ Zachary McKay
Zachary McKay

EXHIBIT A

BK: 306 PG: 221-223
Filed and Recorded
08-08-2025 10:56 AM
DOC# L2025-007034
STEPHANIE FINNIE
CLERK OF SUPERIOR COURT
NEWTON COUNTY

After recording, return to:
AM Construction d/b/a Amcon Industrial
Linda Lilly
1375 Oakley Industrial Blvd
Fairburn, GA 30213

CLAIM OF LIEN ON LEASEHOLD ESTATE AND INTERESTS

STATE OF GEORGIA
COUNTY OF NEWTON

AM Construction Inc. d/b/a AMCON Industrial ("Lienor"), a general contractor, who was hired by Ascend Elements, Inc. to engage in the business of improving real estate by furnishing labor and materials, claims a lien in the amount of $6,232,621.09 (Six Million Two Hundred Thirty-Two Thousand Six Hundred Twenty-One Dollars and Nine Cents) plus interest as provided by law on the leasehold estate for years and any other property interests held by **Ascend Elements, Inc.** the lessee, in certain buildings and/or structures and in the premises or real estate upon which such are erected or built described as 9172 Industrial Drive NE, Covington, Georgia 30014, Land Lot 273, 9th District, Newton County, State of Georgia, and detailed more specifically on that legal description attached as **Exhibit "A,"** for satisfaction of a claim which became due on or after July 2, 2025 which is the last date that labor, equipment, materials and/or other services were provided to said property by Lienor. The Owner of said premises or real estate is **Covington Industrial LLC.**

THIS CLAIM OF LIEN EXPIRES AND IS VOID 395 DAYS FROM THE DATE OF FILING OF THE CLAIM OF LIEN IF NO NOTICE OF COMMENCEMENT OF LIEN ACTION IS FILED IN THAT TIME PERIOD.

PURSUANT TO O.C.G.A. §44-14-368, THE OWNER OF THE REAL PROPERTY DESCRIBED HEREIN, OR THE OWNER'S AGENT OR ATTORNEY, OR THE CONTRACTOR'S AGENT OR ATTORNEY SHALL HAVE THE RIGHT TO ELECT TO CONTEST THIS LIEN AND SHORTEN THE TIME PRESCRIBED IN WHICH TO COMMENCE A LIEN ACTION TO ENFORCE THIS CLAIM OF LIEN BY RECORDING IN THE SUPERIOR COURT CLERK'S OFFICE A NOTICE OF CONTEST OF LIEN, ALL AS PROVIDED FOR IN O.C.G.A. § 44-14-368.

This claim of lien is filed for record, pursuant to the provisions of O.C.G.A. §§ 44-14-360 et seq. within 90 days after the completion of the work or within 90 days after the material or machinery is furnished.

This the 8th day of August, 2025.

AM Construction, Inc.

Linda Lilly

By: Linda Lilly
Its: Accounting Specialist

PAMELA HANLEY
Notary Public, Georgia
Cobb County
My Commission Expires
February 09, 2027

Sworn to and subscribed before me Linda Lilly this 8th day of August, 2025

Notary Public _____ My Commission Expires: February 09, 2027

EXHIBIT A

[Legal Description]

All that tract or parcel of land lying and being in Land Lot 273 of the 9th District, City of Covington, Newton County, Georgia and being more particularly described as follows:

Commencing at a right of way monument found at the intersection of the westerly side of the right of way of Alcovy Road (a variable right of way) and the southerly side of the right of way of Interstate 20 Limited Access Highway (a variable right of way), thence running easterly along the southerly side of the right of way of Interstate 20 Limited Access Highway a distance of 485.02' to a ½" rebar set at the **TRUE POINT OF BEGINNING** (the above referenced distance is more particularly described by the following six (6) courses and distances: North 88 degrees 02 minutes 13 seconds East a distance of 114.40 feet to a right of way monument found; thence along a curve to the left an arc length of 115.20 feet, said curve having a radius of 248.00' and a chord bearing of North 79 degrees 14 minutes 54 seconds East and a chord distance of 114.16 feet to a right of way monument found; thence North 66 degrees 33 minutes 04 seconds East a distance of 126.11 feet to a right of way monument found; thence North 87 degrees 17 minutes 25 seconds East a distance of 48.21 feet to a right of way monument found; thence North 53 degrees 54 minutes 44 seconds East a distance of 30.61 feet to a right of way monument found; thence North 81 degrees 31 minutes 01 seconds East a distance of 50.49 feet to an iron pin set at the **TRUE POINT OF BEGINNING**). From point **TRUE POINT OF BEGINNING** thus established continue along the southerly side of the right of way of Interstate 20 Limited Access Highway North 81 degrees 48 minutes 47 seconds East a distance of 165.76 feet to a nail set; thence continuing along the southerly side of said right of way North 89 degrees 37 minutes 14 seconds East a distance of 462.40 feet to a right of monument found; thence continuing along the southerly side of said right of way South 89 degrees 06 minutes 22 seconds East a distance of 455.76 feet to a right of way monument found at the intersection of the southerly side of the right of way of Interstate 20 Limited Access Highway and the southerly side of the right of way of Industrial Drive (a 60' right of way); thence running along the southerly side of the right of way of Industrial Drive North 89 degrees 53 minutes 43 seconds East a distance of 13.31 feet to a ½" rebar found; thence leaving the southerly side of the right of way of Industrial Drive South 00 degrees 09 minutes 59 seconds West a distance of 705.16 feet to a ½" rebar found; thence North 74 degrees 07 minutes 51 seconds East a distance of 645.09 feet to a rock found; thence South 27 degrees 41 minutes 45 seconds East a distance of 169.19 feet to an iron pin set; thence South 09 degrees 20 minutes 10 seconds West a distance of 207.97 feet to an iron pin set on the northwesterly side of the right of way of the Georgia Railroad (a 200' right of way); thence running along the northwesterly side of said Georgia Railroad right of way South 50 degrees 33 minutes 00 seconds West a distance of 872.57 feet to a ½" rebar found at the intersection of the northwesterly side of said Georgia Railroad right of way with the northeasterly line of property now or formerly owned by CSX Railroad; thence leaving the northwesterly side of said Georgia Railroad right of way and running northwesterly along the northeasterly boundary line of adjacent property now or formerly owned by CSX Railroad the following courses and distances: along the northeasterly boundary line

of the adjacent property now or formerly owned by CSX Railroad along a curve to the right an arc length of 559.93 feet, said curve having a radius of 557.35' and a chord bearing of North 73 degrees 54 minutes 17 seconds West and a chord distance of 536.68 feet to a point; North 47 degrees 09 minutes 42 seconds West a distance of 19.33 feet to a point; North 45 degrees 40 minutes 29 seconds West a distance of 98.45 feet to a point; North 45 degrees 14 minutes 27 seconds West a distance of 99.85 feet to a point; North 40 degrees 53 minutes 24 seconds West a distance of 188.34 feet to a ½" rebar found; thence leaving said northeasterly boundary line of the adjacent property now or formerly owned by CSX Railroad North 89 degrees 56 minutes 41 seconds West a distance of 28.58 feet to a point in the centerline of a railroad spur line; thence North 35 degrees 18 minutes 32 seconds West a distance of 205.51 feet to a ½" rebar found; thence North 01 degrees 04 minutes 15 seconds East a distance of 272.97 feet to a 2" brass disc found; thence South 85 degrees 05 minutes 55 seconds West a distance of 56.44 feet to an iron pin set; thence North 05 degrees 10 minutes 29 seconds West a distance of 209.58 feet to a 2" brass disc found; thence South 88 degrees 22 minutes 36 seconds West a distance of 71.40 feet to a 2" brass disc found; thence North 00 degrees 19 minutes 08 seconds West a distance of 332.71 feet to an iron pin set on the southerly side of the right of way of Interstate 20 Limited Access Highway at the **TRUE POINT OF BEGINNING.**

Commonly known as 9172 Industrial Drive, Covington, Georgia.

Together with the rights, easements, privileges and obligations appurtenant to the above described land created and established under that certain Reciprocal Easement Agreement by and between Pactiv Corporation and Tyco Plastics, LP, dated as of May 28, 2002, recorded in Deed Book 1232, Page 550, Newton County, Georgia Records.

Said tract or parcel, containing approximately 1,628,755 square feet or 37.39 acres, is more accurately shown on that certain ALTA/ACSM Land Title Survey, dated November 13, 2014, prepared for IPA Covington, LLC, Atlantic Capital Bank and Chicago Title Insurance Company, by Travis Pruitt & Associates, Inc., last revised December 10, 2014.

EXHIBIT B

[Filed by Agreement]

LEASE AGREEMENT

BETWEEN

COVINGTON INDUSTRIAL LLC, a Delaware limited liability company,

AS LANDLORD

AND

BATTERY RESOURCERS, INC, a Delaware corporation

AS TENANT

LOCATED AT

9176 INDUSTRIAL DRIVE NORTHEAST, COVINGTON, GEORGIA, 30014

Confidential

LEASE SUMMARY

The following is a summary of basic lease provisions with respect to the Lease. It is an integral part of the Lease, and terms defined or dollar amounts specified in this Lease Summary shall have the meanings or amounts as stated, unless expanded upon in the text of the Lease and its Exhibits, which are attached to and made a part of this Lease Summary.

1.	Date of Lease Execution, Effective Date of Lease:	December 31, 2021
2.	"Landlord":	Covington Industrial LLC, a Delaware limited liability company
3.	Landlord's Address:	Covington Industrial LLC c/o David Alpert Underhill Properties LLC 157 East New England Avenue Suite 400 Winter Park FL 32789 with a copy to: Thomas L. Brodie 114 East 72nd Street New York, NY 10021
	Landlord's Address for Rent Payments:	for payments by standard mail delivery: Covington Industrial LLC c/o David Alpert Underhill Properties LLC 157 East New England Avenue Suite 400 Winter Park FL 32789 for payments by overnight courier service delivery: Covington Industrial LLC c/o David Alpert Underhill Properties LLC 157 East New England Avenue Suite 400 Winter Park FL 32789 for payments by ACH Information: Bank of America For: Covington Industrial LLC Routing – 021000322 Account #483071211047 Note – Tenant shall not send any rent or other payments to any other ACH account information without Landlord's prior written approval.

Confidential

4.	"Tenant":	Battery Resourcers, Inc.
5.	Tenant's Address:	Prior to occupancy: Battery Resourcers, Inc. 133 Flanders Road Westborough, MA 01581 Attention: President With a copy to: Battery Resourcers, Inc 133 Flanders Road Westborough, MA 01581 Following occupancy: Battery Resourcers, Inc. (Premises) 9176 Industrial Drive NE Covington, GA 30014 Attention: President With a copy to: Battery Resourcers, Inc. 133 Flanders Road Westborough, MA 01581 Attention: President
6.	"Guarantor":	None
7.	Guarantor's Address:	NA
8.	Premises:	9176 Industrial Drive NE, Covington, GA 30014
9.	Rentable Area of Premises:	Approximately 154,041 rentable square feet.
10.	Rentable Area of Building:	Approximately 333,426 rentable square feet
11.	Tenant's Proportionate Share:	46.20%
12.	"Permitted Use" of Premises:	The operation of a lithium battery recycling facility and for no other purpose, to be conducted under Tenant's Trade Name.
13.	Term of Lease:	7 years, 3 months (87) months "Commencement Date": January 1, 2022 "Rent Commencement Date" April 1, 2022 "Expiration Date": March 31, 2029

Confidential

14. "Base Rent":

LEASE YEAR	ANNUAL BASE RENT RATE PER SQUARE FOOT	MONTHLY BASE RENT
1	$4.75	$60,974.56
2	$4.89	$62,803.80
3	$5.04	$64,687.91
4	$5.19	$66,628.55
5	$5.35	$68,627.41
6	$5.51	$70,686.23
7	$5.67	$72,806.82

15. Prepaid Rent: $60,974.56 + $8,343.88 (estimate of 1st month's Operating Costs) = $69,318.44 (due upon execution of Lease; to be applied to first full month that Base Rent is due)

16. Security Deposit: $415,911.00 (due upon execution of Lease)

17. Cost Pass-Throughs: Operating Costs, on a "triple net" basis (estimated, but not guaranteed or capped at $0.65 per square foot for the first full or partial calendar year; Landlord's evidentiary documentation supporting such cost shall be delivered to Tenant prior to Tenant's execution of the Lease)

18. Parking: Automobile, truck and trailer parking shall be permitted in the areas identified on the Site Plan (as defined below).

19. Broker(s): Stephen Bridges and Palmer Thomas of JLL (Jones Lang LaSalle IP, Inc.) represent the Landlord and Patrich Jett and Darren Ross of Colliers International represent the Tenant (hereafter, "Landlord's Broker" or "Tenant's Broker" as applicable)

20. Tenant Improvement Allowance: $154,041.00. The Tenant Improvement Allowance shall be paid by Landlord to Tenant in six (6) equal and consecutive monthly installments, the first of which shall be due the first month following the date that Tenant commences construction of the Tenant Improvements with all required governmental approvals and permits, copies of which shall be delivered to Landlord prior to any payments being due to Tenant. In the event that any payments are due in months that Tenant owes rent to Landlord, Tenant shall be permitted to credit against the Base Rent due for such month an amount equal to the installment due from Landlord for such month. Tenant shall be solely responsible for any and all costs and expenses with respect to the construction of the Tenant Improvements which exceed the Tenant Improvement Allowance.

21. Tenant Improvements: Those improvements required or desired by Tenant upon and to operate the Premises for the Permitted Use as identified on Schedule 1 attached hereto. Tenant shall also comply with the review and approval provisions identified in Section 2 of Rider 1 prior to undertaking any Tenant Improvements.

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22. Option to Renew: See Rider 1

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LEASE AGREEMENT

THIS LEASE (the "Lease"), dated December 31, 2021, is made between Covington Industrial LLC, a Delaware limited liability company (the "Landlord"), and Battery Resourcers, Inc., a Delaware corporation (the "Tenant").

ARTICLE I
GRANT; TERM; IMPROVEMENTS

1.1 Grant. Upon and subject to the covenants, agreements, terms, provisions and conditions of this Lease, Landlord leases to Tenant, and Tenant leases from Landlord, for the Term, the "Premises," which Premises are outlined on the site plan attached hereto and made a part hereof as Exhibit "A." (the "Site Plan"). The Premises are located in that certain industrial building (the "Building") located on the land described in Exhibit "B," attached hereto and made a part hereof (the "Land"). The rentable area of the Premises (which includes a proportionate share of the Common Areas) and the Building are approximately as shown on the Lease Summary.

1.2 Term. The "Term" of the Lease is the period from the Commencement Date as specified in the Lease Summary, through the Expiration Date, as specified in the Lease Summary. Notwithstanding that the Commencement Date may occur and the Term and rent payments may commence after the date of execution of this Lease, upon delivery and acceptance of this Lease in accordance with the terms of this Lease, this Lease shall be in full force and effect and valid and binding against the parties in accordance with, but on and subject to, the terms and conditions of this Lease. Tenant shall be entitled to and shall take possession of the Premises on the Commencement Date. Within thirty (30) days after the Commencement Date, the parties shall confirm in writing the exact Commencement Date, Rent Commencement Date and Expiration Date in the form attached hereto and made a part hereof as Exhibit "E."

1.3 No Improvements by Landlord. Landlord shall have no construction or improvement obligations with respect to the alteration of the Premises.

ARTICLE II
RENT

2.1 Covenant to Pay. Tenant shall pay to Landlord all sums due hereunder from time to time from the Rent Commencement Date without prior demand, together with all applicable Georgia sales tax thereon; however, unless otherwise provided in this Lease, payments other than Tenant's regular monthly payments of Base Rent and Operating Costs shall be payable by Tenant to Landlord within twenty (20) days following written demand. All rent or other charges that are required to be paid by Tenant to Landlord shall be payable at Landlord's address indicated in the Lease Summary. Base Rent and additional rent for any "Lease Year" consisting of less than twelve (12) months shall be prorated on a per diem basis, based upon a period of 365 days. The first "Lease Year" is (i) the twelve (12) full calendar months commencing on the Rent Commencement Date, if the Rent Commencement Date is the first day of a month; or (ii) the balance of the calendar month in which the Rent Commencement Date occurs plus the twelve (12) full calendar months thereafter, if the Rent Commencement Date is not the first day of a month. For purposes of this Lease, the initial three (3) month free rent period between the Commencement Date and the Rent Commencement Date shall be considered a part of the first Lease Year, but shall not be included in the determination of the beginning or end of the first Lease Year for purposes of the payment of, or increases to, Base Rent or Operating Costs. Subsequent Lease Years shall be the twelve (12) month periods ending on the anniversary of the expiration of the first Lease Year. However, the final Lease Year may contain less than twelve (12) months due to expiration or sooner termination of the Term. Tenant agrees that its covenant to pay rent and all other sums under this Lease is an independent covenant and that all such amounts are payable without demand, deduction or set-off, except as expressly provided for in this Lease.

2.2 Base Rent. Subject to any escalation which may be provided for in this Lease, Tenant shall pay Base Rent for the Premises during the Term in the initial amount specified in the Lease Summary, which, except for the first installment, shall be payable throughout the Term in equal monthly installments in advance on the first day of each calendar month of each year of the Term commencing on the Rent Commencement Date, such monthly installments to be in the amounts (subject to escalation) specified in the Lease Summary. The first monthly installment of Base Rent shall be due on the date of this Lease. The Base Rent shall be adjusted as provided in the Lease Summary.

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2.3 Operating Costs.

(a) Commencing on the Rent Commencement Date, Tenant shall pay to Landlord the Tenant's Proportionate Share of Operating Costs, as hereinafter defined, plus applicable sales tax. The amount of Operating Costs payable to Landlord may be reasonably estimated by Landlord for such period as Landlord determines from time to time (not to exceed twelve (12) months), and Tenant agrees to pay to Landlord the amounts so estimated in equal installments, in advance, on the first day of each month during such period. Notwithstanding the foregoing, when bills for all or any portion of Operating Costs so estimated are actually received by Landlord, Landlord may bill Tenant for Tenant's Proportionate Share thereof, less any amount previously paid by Tenant to Landlord on account of such item(s) by way of estimated Operating Costs payments.

(b) Within one hundred twenty (120) days after the end of the period for which estimated payments have been made, Landlord shall submit to Tenant a reasonably detailed statement ("Statement") from Landlord setting forth the actual amounts payable by Tenant based on actual costs, together with such supportive documentation and calculations as may be requested by Tenant. If the amount Tenant has paid based on estimates is less than the amount due based on actual costs, Tenant shall pay such deficiency within thirty (30) days after submission of such Statement. If the amount paid by Tenant is greater than the amount actually due, the excess may be retained by Landlord to be credited and applied by Landlord to the next due installments of Tenant's Proportionate Share of Operating Costs, or as to the final Lease Year, provided Tenant is not in default, Landlord will refund such excess to Tenant. Tenant's Proportionate Share of actual Operating Costs for the final estimate period of the Term of this Lease shall be due and payable even though it may not be finally calculated until after the expiration of the Term. Accordingly, Landlord shall have the right to continue to hold Tenant's security deposit following expiration of the Term until Tenant's Proportionate Share of actual Operating Costs has been paid. Tenant shall have the right to dispute the correctness of any Statement, supportive documentation and calculations, or any of them, by giving notice to Landlord in writing that it disputes the correctness thereof, specifying in reasonable detail the basis for such assertion. Provided that Tenant is not in uncured financial default under this Lease, upon reasonable notice, Landlord shall make available for Tenant's inspection at Landlord's office where such records are kept, during normal business hours, during the four (4) month period described below Landlord's records relating to the Operating Costs for such preceding calendar year. Within four (4) months after Tenant's receipt of the Statement for the prior calendar year, Tenant shall have the right to audit Landlord's books and records in accordance with this Section 2.3(b). Tenant shall exercise such audit right by providing Landlord with a written notice of Tenant's exercise of such audit right within such four (4) month period (the "Audit Notice"). Such audit shall be performed by Tenant's chief financial officer or an independent, reputable certified public accounting firm charging for its services on an hourly rate (and not a contingent fee) basis for the purpose of inspecting and auditing Landlord's books and records relating to the objections raised in Tenant's Audit Notice. Any such audit shall be performed at Landlord's office. All costs and expenses of any such audit shall be paid by Tenant. Notwithstanding anything contained herein to the contrary, Tenant shall be entitled to exercise its audit right pursuant to this Section 2.3(b) only in strict accordance with the foregoing procedures no more often than once per calendar year and each such audit shall relate only to the Statement for the calendar year most recently ended. In the event that Tenant fails to notify Landlord within the foregoing four (4) month period that Tenant objects to the Statement, then Tenant's right to audit such year's Statement shall be null and void. This Section 2.3 shall survive the expiration or any earlier termination of this Lease.

(c) For purposes of this Lease, Tenant's Proportionate Share shall be a fraction, the numerator of which is the rentable area of the Premises, and the denominator of which is the rentable area of the Building (which is set forth in the Lease Summary). Tenant's Proportionate Share is as set forth in the Lease Summary. The term "Operating Costs" shall mean any amounts paid or payable whether by Landlord or by others on behalf of Landlord, to repair, maintain, insure, manage and operate the Premises, Building, Land and Common Areas, including, without limitation: (i) the cost of all real estate, personal property owned by Landlord and located in or on the Building, Land and Common Areas, and other ad valorem taxes, and any other levies, charges, local improvement taxes, and assessments whatsoever assessed or charged against the Building, Land and Common Areas, the equipment and improvements owned by Landlord therein contained, and including any amounts assessed or charged in substitution for or in lieu of any such taxes, excluding only income or capital gains taxes imposed upon Landlord, and including all costs associated with the appeal of any assessment or taxes; (ii) the cost of insurance which Landlord is obligated or permitted to obtain under this Lease and any deductible amount applicable to any claim made by Landlord under such insurance (except for amortized capital expenditures described in Section 2.2(e)(8) below); (iii) the cost of ordinary repairs, cleaning and maintenance of the Common Areas, the cost of security, janitorial, landscaping, garbage removal, and trash

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removal services; (iv) the cost of heating, ventilating, and air conditioning, to the extent incurred with respect to the Premises, Building, and Common Areas, or with respect to any shared systems; (v) the cost of all fuel, water, electricity, telephone, sewer, sprinkler and any other utilities used in the maintenance, operation, or administration of the Premises, Building, Land and Common Areas; (vi) salaries, wages, and any other amounts paid or payable for all personnel involved in the repair, maintenance, operation, security, supervision, or cleaning of the Premises, Building, and Common Areas (including, without limitation, the elevators); (vii) a management fee not to exceed three percent (3%) of the Base Rent and Tenant's Proportionate Share of Operating Costs; and (viii) the cost of any capital improvements or replacement of capital items if such capital improvements or capital items are (a) intended by Landlord in good faith to achieve a verifiable expense savings in Operating Costs or (b) required in order to comply with Legal Requirements adopted after the date of this Lease or (c) to replace all or any part of the roof, HVAC system or resurfacing of the driveways and parking area serving the Premises, then such cost shall be evenly amortized over the life of the capital improvement with interest imputed on the unamortized portion at the interest rate customarily utilized by Landlord in its amortization of capital improvements. Notwithstanding the above, in the event Tenant's use of the Premises shall result in an increase in the insurance premiums for Landlord's policies of insurance with respect to the Building, Tenant shall be solely responsible for the payment of said increase.

(d) The pass-through of each of the taxes described in subsection (c)(i) above and the insurance described in subsection (c)(ii) above may be charged as separate pass-through items from the other Operating Costs, which taxes and insurance shall otherwise be billed to Tenant in the same manner as the pass-through of Operating Costs as provided herein. In addition, in determining the amount of Operating Costs for any calendar year, if less than ninety-five (95%) percent of the Building shall have been occupied by tenants, Operating Costs shall be increased to an amount equal to the Operating Costs which would normally be expected to be incurred had such occupancy been ninety-five (95%) percent during the entire calendar year.

(e) Notwithstanding anything to the contrary contained in this Lease, the following costs and expenses shall be excluded from Operating Costs:

(1) expenses relating to the leasing of space in the Building (including tenant improvements and painting, decorating, Landlord construction allowances or contributions, leasing commissions, rental concessions, and advertising expenses incurred in connection with the listing of available space in the Building);

(2) legal fees and disbursements incurred for negotiation of leases or enforcement of leases;

(3) the cost of utilities to the extent paid for directly by tenants;

(4) expenditures for financing and refinancing and for mortgage debt service or any other cost incurred in respect of any mortgage or other financing of the Building except for expenditures incurred in connection with items which (i) if leased, the lease payments with respect to which would be included in Operating Costs or (ii) if purchased would be amortizable pursuant to item (8) below;

(5) depreciation of the Building and amortization except as otherwise expressly set forth herein;

(6) franchise, transfer, gains, inheritance, estate, mortgage recording, and income taxes imposed upon Landlord;

(7) salaries, fringe benefits, bonuses and other compensation (A) of personnel above the grade of building manager, (B) above the industry standard, or (C) to or for those who do not devote 100% of their working time to the operation or management of the Building (in which case an appropriate proportionate amount of such sums may be included in Operating Costs based on the amount of working time devoted to the Building);

(8) costs for which Landlord receives a credit against any payment due from Landlord to Tenant or any third party costs and expenses otherwise includible in Operating Costs, to the extent that Landlord is reimbursed from other sources for such costs and expenses;

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(9) rent and additional rent payable under a ground lease or any other superior lease affecting the Building;

(10) costs for which Landlord is compensated by insurance proceeds exclusive of deductibles;

(11) costs incurred in connection with a sale of all or a portion of the Building or the sale or transfer of any beneficial ownership interest in and to Landlord and/or the Building or the grant of a ground lease or any other superior lease affecting the Building;

(12) any fee or expenditure paid to a related party materially in excess of the amount which would be paid in an arm's-length transaction for materials or services of comparable quality (but only to the extent of such excess);

(13) salaries or fringe benefits of personnel not employed exclusively at the Building, to the extent such salaries and benefits relate to work performed not at the Building, as determined on a pro rata basis;

(14) any expense fully reimbursed to Landlord by Tenant or any other tenant of the Building, or any expense billed to and paid directly by same for their own account or on Landlord's behalf (other than Operating Costs passed through to all tenants pursuant to lease provisions substantially similar to this Section 2.3);

(15) advertising and promotional expenditures;

(16) any bad debt loss, rent loss, or reserves for bad debts or rent loss; and

(17) costs incurred by Landlord for repairs or replacements to the extent that Landlord is reimbursed under warranties or guarantees.

2.4 Payment of Personal Property Taxes. Tenant shall pay, when due, all taxes attributable to the personal property, trade fixtures, business, occupancy, or sales of Tenant.

2.5 Rent; Late Charges. For purposes of this Lease, all sums due from Tenant, including, but not limited to, Base Rent and Tenant's Proportionate Share of Operating Costs, shall be deemed to be "rent" whether or not specifically designated as such. Tenant shall pay all applicable sales and use taxes levied or assessed against all rent payments due under this Lease, if any, simultaneously with each such rent payment. If any payment due from Tenant shall be overdue by five (5) days or more, a late charge of five (5%) percent of the delinquent sum may be charged by Landlord. If any payment due from Tenant shall remain overdue for more than thirty (30) days, an additional late charge in an amount equal to the lesser of the highest rate permitted by law or 16% per annum times the delinquent amount may be charged by Landlord, such charge to be computed for the entire period for which the amount is overdue and which shall be in addition to and not in lieu of the five (5%) percent late charge or any other remedy available to Landlord. Further, (a) Landlord and Tenant agree that any such late charge is not intended as a penalty but is instead intended to compensate Landlord for additional administrative charges and other damages incurred by Landlord on account of such late payment; (b) Landlord and Tenant agree that the actual damages to be suffered by Landlord in such event shall be difficult, if not impossible, to ascertain; and (c) such late charge is a reasonable estimate of such charges and damages.

2.6 Security Deposit. Landlord acknowledges receipt of a security deposit in the amount specified in the Lease Summary to be held by Landlord, without any liability for interest thereon, as security for the performance by Tenant of all its obligations under this Lease. Landlord shall be entitled to commingle the security deposit with Landlord's other funds. If Tenant defaults in any of its obligations under this Lease, Landlord may at its option, but without prejudice to any other rights which Landlord may have, apply all or part of the security deposit to compensate Landlord for any loss, damage, or expense sustained by Landlord as a result of such default. If all or any part of the security deposit is so applied, Tenant shall restore the security deposit to its original amount on demand of Landlord. Subject to the provisions of Section 2.3, within thirty (30) days following termination of this Lease, if Tenant is not then in default, the security deposit will be returned by Landlord to Tenant.

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2.7 Landlord's Lien. To secure the payment of all rent and other sums of money due and to become due hereunder and the faithful performance of this Lease by Tenant, Tenant hereby gives to Landlord an express first and prior contract lien and security interest in all fixtures and equipment placed in the Premises and also upon all proceeds of any insurance which may accrue to Tenant by reason of destruction of or damage to any such property. Such property shall not be removed from the Premises without the prior written consent of Landlord until all arrearages in rental and other sums of money then due to Landlord hereunder shall first have been paid. All exemption laws are hereby waived in favor of said lien and security interest. This lien and security interest is given in addition to Landlord's statutory lien and shall be cumulative thereto. Landlord shall, in addition to all of its rights hereunder, also have all of the rights and remedies of a secured party under the Uniform Commercial Code as adopted in the State in which the Premises is located. To the extent permitted by law, this Lease shall constitute a security agreement under Article 9 of the Georgia Uniform Commercial Code. Notwithstanding the foregoing, Landlord agrees to subordinate its lien to a bona fide institutional lender providing acquisition financing or lease financing for Tenant's fixtures and equipment, so that Landlord will have a second lien on such fixtures and equipment. Notwithstanding anything to the contrary, in no event and at no time shall the amount of such lien and security interest granted to Landlord exceed the amount of the rent owed and to be owed to Landlord through the end of the then existing Term of this Lease and other sums of money under this Lease.

ARTICLE III
USE OF PREMISES

3.1 Permitted Use. The Premises shall be used and occupied only for the use specified in the Lease Summary. Tenant shall not do, omit, permit, or suffer to be done or exist upon the Premises anything which shall result in a nuisance, hazard, or bring about a breach of any provision of this Lease or any applicable Legal Requirements (as hereinafter defined) or violate the Use Restrictions identified on Exhibit "C". Tenant shall observe the rules and regulations for the Building attached to and made a part of this Lease as Exhibit "D," and such reasonable modifications and additions thereto (which will be applicable to all similarly situated Building tenants with similar uses) as Landlord may from time to time make; provided, however, such modifications and additions shall not materially interfere with Tenant's use and enjoyment of the Premises. In the event of any conflicts between the rules and regulations for the Building and the terms and provisions of this Lease, the terms and provisions of this Lease shall control. Landlord and Tenant acknowledge that Tenant's intended use of the Premises as identified in this Lease, including but not limited to the Tenant Improvements identified on Schedule 1 and the lists of Hazardous Substances (as defined below) and Hazardous Substances Equipment (as defined below) identified on Schedule 3.4 attached hereto, have been reviewed by Landlord's insurance company providing the insurance coverages in effect on the Commencement Date hereof. Tenant shall not change the use of the Premises for any purpose or in any manner that would cause any of Landlord's policies of insurance with respect to the Building or Land to be canceled (including, specifically, changes in any processes or materials used or processed by Tenant); provided that if Tenant's use does result in the cancellation of any of Landlord's policies of insurance, Tenant shall be permitted the right to obtain insurance of the same type and coverage as that canceled within ten (10) days of the date of written notice from Landlord to Tenant of such cancellation. In the event Tenant's use of the Premises shall result in an increase in the insurance premiums for Landlord's policies of insurance with respect to the Building or Land, Tenant shall be solely responsible for the payment of said increase.

3.2 Compliance with Laws. The Premises shall be used and occupied in a safe and lawful manner so as not to contravene any present or future governmental or quasi-governmental laws, regulations, or orders (collectively, "Legal Requirements"), or the requirements of Landlord's or Tenant's insurers. Tenant agrees to be wholly responsible at Tenant's sole cost and expense for the compliance of any alterations made by Tenant in the Premises with the Americans with Disabilities Act of 1990, as amended (the "ADA") and all Environmental Laws (as defined below).

3.3 Signs. Tenant may install the signage depicted in Exhibit "F" attached to this Lease and approved through the execution of this Lease. With respect to all other signage, so long as such signage is in compliance with all applicable laws and municipal codes, and so long as Landlord approves the design, specification and location of such signage, in its sole but reasonable discretion, in writing in advance, Tenant shall have the right to install at its sole cost suitable signage on the Premises' exterior, as well as directional, wayfinding and existing monument identification signage for the Building, Premises and/or Tenant, all in such locations as Landlord shall designate from time to time. Tenant shall remove all signage installed by or on behalf of Tenant at the expiration or earlier termination of this Lease

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and repair any damage caused by the installation, maintenance or removal of such signage at Tenant's sole cost and expense.

3.4 Environmental Provisions.

(a) As used in this Lease: (i) "Environmental Laws" means any federal, regional, state, county and local statutes, ordinances, rules, regulations, judicial decisions, codes, orders, directives and the judgment or decree of a governmental authority, arbitrator or other private adjudicator, pertaining to industrial hygiene, occupational safety, damage to or protection of the environment, environmental conditions, injuries or damages to natural resources, Releases or threatened Releases of Hazardous Substances into the environment or the use, analysis, manufacture, processing, distribution, treatment, storage, generation, disposal, transport or handling of Hazardous Substances, as now or at any time hereafter in effect, and any and all rules, regulations, guidelines and guidance documents promulgated or created under the foregoing; including, but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §9601 et. seq., the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6901, et. seq., the Federal Water Pollution Control Act, 33 U.S.C. §1251 et. seq., the Clean Air Act, 42 U.S.C. §7401 et. Seq, the Georgia Hazardous Waste Management Act, Ga. Code Ann. § 12-8-60, et seq., the Georgia Hazardous Site Response Act, Ga. Code Ann. § 12-8-90, et seq., the Georgia Underground Storage Act, Ga. Code Ann. § 12-13-1, et seq., and Ga. Code Ann. § 25-2-16 (hazardous substances), all applicable rules and regulations, including but not limited to Hazardous Waste Management, Ga. Comp. R. & Regs. 391-3-11, et seq., Hazardous Site Response, Ga. Comp. R. & Regs. 391-3-19, et seq., Rules and Regulations for Flammable and Combustible Liquids, Ga. Comp. R. & Regs. 120-3-11, et seq., and Underground Storage Tank Management, Ga. Comp. R. & Regs. 391-3-15, et seq., (ii) "Hazardous Substances" means any substances, materials, pollutants, contaminants, hazardous or other waste, including any medical waste, whether solid, liquid or gaseous, that are infectious, toxic, hazardous, explosive, corrosive, flammable or radioactive, or which are defined, designated, listed, regulated or included in any Environmental Law; (iii) "Release" means any intentional or unintentional, active or passive, release of a Hazardous Substance into the environment, and includes, without limitation, any spilling, dripping, seeping, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of a Hazardous Substance; and (iv) "Remedial Action" shall mean all actions as may be required by Environmental Laws to: (a) clean-up, remove, treat, remediate or address any Release of Hazardous Substances in any surface or subsurface soils, groundwater, surface water, air, indoor air, the workplace and any other media or strata ("Environmental Media") on, at, or in the Premises or the Land; (b) prevent or minimize any Release so that a Hazardous Substance does not migrate or endanger or threaten human health or welfare or Environmental Media; (c) perform any corrective or curative actions necessary to resolve any alleged or actual violations of Environmental Law; or (d) perform pre-remedial studies and investigations and post-remedial monitoring and care with respect to any Release of Hazardous Substance.

(b) **Schedule 3.4** attached hereto and made a part hereof identifies the specific Hazardous Substances that Tenant intends to use in its operations at the Premises and or to store in tanks to be located on the Land (the "Permitted Hazardous Substances"). Schedule 3.4 also identifies the machinery, tanks, piping and other equipment intended to be installed by Tenant at the Premises or on the Land that will hold, store, process, treat or otherwise come into contact with Hazardous Substances and be used by Tenant in its operations at the Premises (the "Hazardous Substances Equipment"). Landlord hereby approves of Tenant's use of the Permitted Hazardous Substances and the Hazardous Substances Equipment at the Premises and the Land subject to all of the other terms and conditions of this Lease. Tenant shall also comply with the review and approval provisions identified in Section 2 of Rider 1 prior to the installation and use of any Hazardous Substance Equipment and Hazardous Substances in the Premises or on the Land. Tenant shall not cause or permit the use, generation, release, manufacture, refining, production, processing, storage or disposal of any Hazardous Substances on, under or about the Land, Building or the Premises, or the transportation to or from the Premises of any Hazardous Substances, except as necessary and appropriate for its Permitted Use (including specifically the use of the Permitted Hazardous Substances and the Hazardous Substances Equipment) in which case the use, storage or disposal of such Hazardous Substances shall be performed in compliance with the Environmental Laws. If during the Lease Term Tenant intends to use any Hazardous Substances other than the Permitted Hazardous Substances or any equipment that will come into contact with Hazardous Substances other than the Hazardous Substances Equipment, Tenant must obtain Landlord's prior written consent to the use of such additional Hazardous Substances or Hazardous Substances Equipment, which approval shall not be unreasonably withheld, conditioned or delayed so long as Tenant is able to confirm that the use of such substances or equipment

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will comply with all Environmental Laws and this Lease and will be covered by Tenant's environmental insurance coverages required pursuant to Section 6.1 hereof.

(c) If and only if Tenant complies with all of the following conditions and with this Section 3.4, Tenant may use and store in the Premises the Permitted Hazardous Substances identified on Schedule 3.4: (i) prior to using or storing any Hazardous Substances in the Premises, Tenant maintains and delivers to Landlord copies of the Materials Safety Data Sheets ("MSDS") for such Hazardous Substances at the Premises, (ii) Tenant takes all precautions necessary and uses its best efforts to prevent the Release of any Hazardous Substances within and outside of the Premises, (iii) Tenant uses and stores all Hazardous Substances in accordance with the MSDS Sheets that Tenant maintains, (iv) Tenant uses and stores all Hazardous Substances in accordance with all applicable Legal Requirements, including but not limited all applicable Environmental Laws, (v) Tenant does not use or store any Hazardous Substances in a manner that would cause the Premises to become subject to regulation as a hazardous waste treatment, storage or disposal facility under RCRA or the regulations promulgated thereunder, and (vi) Tenant shall not use or store any Hazardous Substances in a manner as to cause Tenant to become regulated as a generator under RCRA other than as a "Conditionally Exempt Small Quantity Generator" or as a "Very Small Quantity Generator", which shall mean the current RCRA definition of a generator of not more than 100 kg of hazardous wastes per month. Tenant shall promptly notify Landlord of, and shall promptly provide Landlord with true, correct, complete and legible copies of all of the following environmental items relating to the Premises which may be filed or prepared by or on behalf of, or delivered to or served upon, Tenant: reports filed pursuant to any self-reporting requirements, reports filed pursuant to any applicable laws or this Lease, all permit applications, permits, monitoring reports, workplace exposure and community exposure warnings or notices and all other reports, disclosures, plans or documents (even those which may be characterized as confidential) relating to water discharges, air pollution, waste generation or disposal, underground storage tanks or Hazardous Substances.

(d) Tenant shall obtain and comply with all permits, licenses, approvals, and authorizations (and all conditions and provisions of same) required under applicable laws or required by governmental agencies in connection with all Tenant Improvements planned or sought by Tenant relating to the Premises before Tenant installs or operates any such Tenant Improvements. Tenant shall maintain, inspect, and manage all tanks, drums, containers, storage tanks, chemicals, chemical or waste storage/management areas, and other Tenant Improvements at the Premises in a good and workmanlike manner and in accordance with applicable laws, including but not limited to, with all containment measures and secondary containment required by any permits, licenses, approvals, authorizations, or applicable laws. Tenant shall obtain and maintain all necessary insurance, including but not limited to financial assurance or financial responsibility, required under applicable laws. Tenant shall provide to Landlord written proof of such compliance and documentation at the request of Landlord. Tenant shall also provide access to Landlord at Landlord’s request to observe and to verify the status, condition, or compliance of any such Tenant Improvements at the Premises under this Lease or applicable laws. Tenant shall comply with all applicable laws and legal requirements relating to the inspection, management, recordkeeping, manifesting, collection, transportation, and disposal of waste materials, chemicals or substances, contamination, and Hazardous Substances generated or present at the Premises in connection with the Tenant Improvements.

(e) Tenant shall immediately (i) notify Landlord of (a) any violation by Tenant, its employees, agents, representatives, customers, invitees or contractors ("Tenant's Representatives") of any Environmental Laws on, under or about the Land, Building or the Premises, or (b) the Release of any Hazardous Substances on, under or about the Land, Building or the Premises, and (ii) deliver to Landlord any notice received by Tenant relating to (i)(a) and (i)(b) above from any source.

(f) Landlord and Landlord's agents and employees shall have the right, but not the obligation, to inspect, investigate, sample and/or monitor the Premises and the portion of the Land upon which any of the Hazardous Substances Equipment may be located, including any soil, water, groundwater or other sampling, and any other testing, digging, drilling or analysis, at any time to determine whether Tenant is complying with the terms of this Lease, and in connection therewith, Tenant shall provide Landlord with full access to all relevant facilities, records and personnel. If Tenant is not in compliance with any of the provisions of this Lease, then, after three (3) Business Days prior notice (except in the event of an emergency when no notice is required), Landlord and Landlord's agents and employees shall have the right, but not the obligation, without limitation upon any of Landlord's other rights and remedies under this Lease to immediately enter upon the Premises and to discharge Tenant's obligations under this Section 3.4 at Tenant's expense, notwithstanding any other provision of this Lease. Landlord and Landlord's agents and employees shall

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endeavor to minimize interference with Tenant's business but shall not be liable for any such interference. If Tenant is not in compliance with this Lease, all sums reasonable disbursed, deposited or incurred by Landlord in connection therewith, including, but not limited to, all costs, expenses and actual attorneys' fees, shall be due and payable by Tenant to Landlord, as an item of additional rent, on demand by Landlord, together with interest thereon at the maximum interest rate permitted by law from the date of such demand until paid by Tenant.

(g) Tenant shall indemnify Landlord and Landlord's managing agent from any and all claims, losses, liabilities, costs, expenses and damages, including attorneys' fees, costs of testing and remediation costs, incurred by Landlord in connection with any breach by Tenant of its obligations under this Section 3.4. This indemnification by Tenant of Landlord includes, without limitation, any and all costs incurred in connection with any investigation of site conditions or any clean up, remedial or restoration work required by any federal, state or local governmental agency or political subdivision because of the presence of such Hazardous Substances in, on or about the Premises or the soil or ground water on or under the Land or any portion thereof. The covenants and obligations under this Section 3.4 shall survive the expiration or earlier termination of this Lease.

(h) Landlord has provided Tenant with a copy of Landlord's Phase I Environmental Site Assessment for the Land and Building prepared by AEI Consultants dated October 10, 2017. Landlord covenants and agrees that if any Hazardous Substances, other than Permitted Hazardous Substances, as that term is defined below, are discovered to have been Released to the Land, Building or Premises by someone other than Tenant or Tenant's Representatives in such amounts and locations so as to be in violation of Environmental Laws such that clean-up, remediation or other corrective action (collectively "Corrective Action") is required under such Environmental Laws, then Landlord shall complete any required Corrective Action of such Hazardous Substances in accordance with all Environmental Laws; provided that, so long as such Hazardous Substances are not causing a health hazard to Tenant or its employees, if Landlord is pursuing a third party based on such party's Release of the Hazardous Substances on the Land, Building or Premises, Landlord may postpone the Corrective Action during the time Landlord is actively pursuing such party to remove or cause the removal of such Hazardous Substances. If Tenant or Tenant's Representatives are responsible for the Release requiring Corrective Action, then Tenant shall complete any required Corrective Action within a reasonable period of time. All Corrective Actions by Landlord shall be accomplished in a manner that does not cause an unreasonable disruption to Tenant's operations in the Premises. The term "Permitted Hazardous Substances" shall mean such Hazardous Substances as are commonly and legally used or stored as a consequence of using, maintaining or operating the Land, the Building and the Premises, but only so long as the quantities thereof do not pose a threat to public health or to the environment or would necessitate a "response action" as that term is defined under CERCLA or other Environmental Laws, and so long as Tenant complies or causes compliance with all Environmental Laws. Any Corrective Action required herein shall comply with all Environmental Laws and any applicable laws governing required or permitted alteration, repair, maintenance, restoration, removal or other work in or about the Premises, Building or Land that involves or affects any Hazardous Substances other than Permitted Hazardous Substances. In all applications for the storage, use, handling and disposal of Hazardous Substances on or from the Premises, Building or Land by Tenant or any of Tenant's Representatives and if any Corrective Actions are required as a result of an action or inaction by Tenant or any of Tenant's Representatives, Tenant shall be identified as the permittee and responsible party in all such ways, including in any and all financial assurance and financial responsibility matters.

(i) In the event that Landlord determines in its reasonable judgment that it is in Landlord's best interest to join and participate in any legal proceedings or actions initiated in connection with any claims or causes of action arising out of the storage, generation, use or disposal by Tenant, its agents, employees, contractors or invitees, of Hazardous Substances in, on, under, from or about the Premises or any other portion of the Land, Landlord, at Tenant's sole cost and expense, shall have the right, but not the obligation, to do so. If the presence of any Hazardous Substances in, on, under or about the Premises or any other portion of the Land caused by Tenant, its agents, employees, contractors or invitees, results in (i) injury to any person, (ii) injury to or any contamination of the Premises or (iii) injury to or contamination of any real or personal property wherever situated, Tenant, at its sole cost and expense, shall promptly take all actions necessary to return the Premises or such other portion of the Land, to the condition existing prior to the introduction of such Hazardous Substances to the Premises and to remedy or repair any such injury or contamination. Notwithstanding the foregoing, Tenant shall not, without Landlord's prior written consent, not to be unreasonably withheld, take any remedial action in response to the presence of any Hazardous Substances in, on, under or about Premises or any other portion of the Land, or enter into any settlement agreement, consent decree or other compromise with any governmental agency with respect to any Hazardous Substance claims; provided, however, Landlord's prior written consent shall not be necessary in the event that the presence of Hazardous

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Substances in, on, under or about the Premises or any other portion of the Land (i) poses an immediate threat to the health, safety or welfare of any individual or (ii) is of such a nature that an immediate remedial response is necessary and is not possible to obtain Landlord's consent before taking such action. If any governmental entity or third party asserts or alleges non-compliance against Landlord on the basis of Landlord's ownership of the Land, Building or Premises in connection with a Release by Tenant or any Tenant Representative of Hazardous Substances, Tenant shall take and assume any and all responsibility and response, even if Landlord is also identified or alleged to be a responsible party.

(j) Upon the expiration or sooner terminated of this Lease, Tenant covenants to decommission and remove from the Premises and/or the Land, at its sole cost and expense, any and all Hazardous Substances and the Hazardous Substances Equipment and any additional tanks, equipment or systems containing Hazardous Substances or which, during the Term of the Lease held, used, stored or treated Hazardous Substances or which are brought upon, stored, used, generated or released into the environment by Tenant, its agents, employees, contractors or invitees in accordance with applicable laws. Tenant shall provide written proof of same to Landlord to Landlord's satisfaction. In connection therewith, Landlord may require Tenant, at Tenant's sole cost and expense, to immediately hire an outside consultant satisfactory to Landlord to perform a complete environmental audit of the Premises or any other portion of the Land, an executed copy of which shall be delivered to Landlord within thirty (30) days after Landlord's request therefor. If Tenant or the environmental audit discloses the existence of Hazardous Substances, in, on, under or about the Premises or the Land and such Hazardous Substances are subject to the indemnification and cleanup obligation contained herein, Tenant shall, at Landlord's request, immediately prepare and submit to Landlord within thirty (30) days after such request a comprehensive plan, subject to Landlord's approval, specifying the actions to be taken by Tenant to return the Premises or any other portion of the Land to the condition existing prior to the introduction of such Hazardous Substances. Upon Landlord's approval, of such clean-up plan, Tenant shall, at Tenant's sole cost and expense, without limitation on any rights and remedies of Landlord under this Lease, immediately implement such plan and proceed to clean up such Hazardous Materials in accordance with all applicable laws and as required by such plan and this Lease.

ARTICLE IV
ACCESS AND ENTRY

4.1 Right of Examination. Landlord shall be entitled at all reasonable times and upon twenty-four (24) hours' prior notice (but no notice is required in emergencies) to enter the Premises to examine them; to make repairs, alterations, or improvements thereto; to have access to underfloor facilities and access panels to mechanical shafts and risers and to check, calibrate, adjust, and balance controls and other parts of the heating, air conditioning, ventilating, climate control, telecommunications and other Building systems. Landlord reserves to itself the right to install, maintain, use, and repair pipes, ducts, conduits, vents, wires, and other installations leading in, through, over, or under the Premises, and for this purpose, Landlord may take all material into and upon the Premises which is required therefor. Tenant shall not unduly obstruct any pipes, conduits, or mechanical or other electrical equipment so as to prevent reasonable access thereto. Landlord reserves the right to use all exterior walls and roof area. Landlord shall exercise its rights under this Section, to the extent possible in the circumstances, in such manner so as to minimize interference with Tenant's use and enjoyment of the Premises.

4.2 Right to Show Premises. Landlord and its agents have the right to enter the Premises at all reasonable times and upon one (1) Business Day prior notice to show them to prospective purchasers, brokers, lenders, or anyone having a prospective interest in the Building, and, during the last twelve (12) months of the Term (or the last twelve (12) months of any renewal term if this Lease is renewed), to show them to prospective tenants.

ARTICLE V
MAINTENANCE, REPAIRS, AND ALTERATIONS

5.1 Maintenance and Repairs by Landlord. Landlord covenants to keep the following in good operating condition consistent with the operation of a warehouse/industrial facility and to make all necessary repairs, replacements and maintenance to: (i) the structure of the Building including the foundation, footings, structural frame of the Building, structural portions of load-bearing walls, structural floors and subfloors, structural columns and beams, curtain/tilt walls, exterior walls and roofs/roof membranes; (ii) the base Building's central HVAC (if any), plumbing, electrical, and mechanical systems located in the Building to the point of connection for the Premises; (iii) the utility and

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telecommunications lines servicing the Building; (iv) the entrances, driveways, grounds, alleys, landscape, landscaping sprinkler systems, sidewalks, corridors, parking areas and other facilities from time to time comprising the Common Areas; (v) the exterior of the Building (including painting, caulking and sealing); and (vi) any items associated with the foregoing. Excepting repairs and replacements to the aforementioned structural elements that are capital in nature, which shall be made at Landlord's sole cost and expense and shall not be passed through to the Tenant except as set forth below and/or in Section 2.3(c) above, the cost of repairs, replacements and maintenance for the items in subparts (i) – (vi) above shall be included in Operating Costs. Notwithstanding any other provisions of this Lease, if any part of the Building is damaged or destroyed or requires repair, replacement, or alteration as a result of the negligence or misuse of Tenant, its employees, agents, invitees, licensees, or contractors, Landlord shall have the right to perform same and the cost of such repairs, replacement, or alterations shall be paid by Tenant to Landlord upon demand. In addition, if, in an emergency, it shall become necessary to make promptly any repairs or replacements required to be made by Tenant, Landlord may re-enter the Premises and proceed forthwith to have the repairs or replacements made and pay the costs thereof. Upon demand, Tenant shall reimburse Landlord for the cost of making the repairs. Subject to the provisions set forth in Section 9.5 of this Lease, so long as Landlord is acting in good faith, Landlord shall not be responsible for any damages caused to Tenant by reason of failure of any equipment or facilities serving the Building or delays in the performance of any work for which Landlord is responsible pursuant to this Lease.

5.2 Maintenance and Repairs by Tenant. Landlord agrees to deliver all improvements and systems exclusively servicing the Premises to Tenant in good operating condition and repair, and warrants such condition for one (1) year from the Commencement Date. Tenant shall, at its sole cost, repair and maintain the Premises including, but not limited to, all improvements and systems exclusively servicing the Premises, in good repair and condition (reasonable wear and tear, casualty and condemnation excepted) consistent with the operation of premises within a warehouse/industrial facility, with the exception only of those repairs which are the obligation of Landlord pursuant to this Lease. Without limiting the generality of the foregoing, Tenant is specifically required to maintain and make repairs to (i) the portion of any life-safety and sprinkler systems, pipes, sprinklers, lines, ducts, wires, or conduits contained within the Premises up to the points of common connection; (ii) windows, plate glass, doors, and any fixtures or appurtenances composed of glass; (iii) Tenant's sign; (iv) any heating or air conditioning equipment exclusively serving the Premises ("HVAC") (which shall include, without limitation, a preventive maintenance HVAC service contract, which service contract shall be entered into (A) between Tenant and one of Landlord's approved HVAC contractors, or (b) a reputable and appropriately licensed maintenance contractor selected by Tenant for servicing all equipment within the Premises, and such service contract shall include, without limitation, preventive HVAC maintenance no less than semi-annually); and (v) the Premises or the Building when repairs to the same are necessitated by the negligence or misuse of Tenant, or the failure of Tenant to perform its obligations under this Lease or caused by the operation of Tenant's equipment within the Premises to the extent that same causes damage to the Premises or the Building. All repair and maintenance performed by Tenant in the Premises shall be performed by contractors or workmen pre-approved by Landlord. At the expiration or earlier termination of the Term, Tenant shall surrender the Premises to Landlord in as good condition and repair as Tenant is required to maintain the Premises throughout the Term, reasonable wear and tear, casualty and condemnation excepted. Tenant shall also furnish, maintain, and replace all electric light bulbs, tubes, and tube casings located within or serving the Premises and Tenant's signage, all at Tenant's sole cost and expense. Landlord will assign or make available to Tenant the benefit of any manufacturer's warranties with respect to the mechanical, electrical, and plumbing systems.

5.3 Approval of Tenant's Alterations. Except with respect to the Tenant Improvements identified in Schedule 1 to this Lease, the exact scope, size, location and methods of installation of which shall be subject to the review process in Section 2 of Rider 1 attached hereto, no alterations to the Premises, other than alterations or improvements to the Premises which are interior and nonstructural and costing no more than $25,000.00 for any one alteration/improvement or related series of alterations/improvements ("Minor Alterations"), shall be made to the Premises without Landlord's written approval, which shall not be unreasonably withheld, conditioned or delayed; provided that exterior or structural alterations and alterations which affect the base building systems, may be withheld in Landlord's sole discretion. Tenant shall be permitted to make Minor Alterations to the Premises without Landlord's prior written consent. Any alterations by Tenant shall be performed at the sole cost of Tenant, by contractors and workmen approved by Landlord and insured to Landlord's reasonable satisfaction, in a good and workmanlike manner, and in accordance with all applicable Legal Requirements. Tenant shall pay to Landlord or Landlord's designee Landlord's reasonable out of pocket costs incurred in connection with having Tenant's proposed improvements, processes and materials reviewed and commented on by Landlord's architects, engineers and environmental consultants. Tenant shall also pay to

Confidential

Landlord or Landlord's designee a fee for the supervision of any such alterations, other than Minor Alterations, made by or on behalf of Tenant, in the amount of five (5%) percent of all hard costs and soft costs incurred by Tenant in connection therewith. Such fee shall be due and payable within thirty (30) days following written demand therefor by Landlord. Upon completion of the work or prior to the date any contractor or supplier has the right to file a lien, Tenant shall deliver to Landlord lien waivers or releases from all contractors, subcontractors and materialmen who performed work or supplied materials for any such alterations undertaken by Tenant.

5.4 Removal of Improvements and Fixtures. All leasehold improvements (other than unattached, movable trade fixtures which can be removed without damage to the Premises) shall at the expiration or earlier termination of this Lease, at Landlord's sole election, either become Landlord's property or Tenant shall remove such leasehold improvements. Tenant may, during the Term, in the usual course of its business, remove its trade fixtures; and Tenant shall, at the expiration or earlier termination of the Term, at its sole cost, remove such of the leasehold improvements (except for improvements installed by Landlord prior to the Commencement Date) and trade fixtures in the Premises as Landlord shall require to be removed and restore the Premises to the condition existing prior to the installation thereof. Tenant shall at its own expense repair any damage caused to the Premises and the Building by such removal, including but not limited to filling all holes in the floor of the Premises caused by Tenant's installation of its improvements and equipment with cement or other appropriate material so that the floor is level and without perforations caused by Tenant or its contractors. If Tenant does not remove its trade fixtures at the expiration or earlier termination of the Term, the trade fixtures shall, at the option of Landlord, become the property of Landlord and may be removed from the Premises and sold or disposed of by Landlord in such manner as it deems advisable without any accounting to Tenant.

5.5 Liens. Tenant shall promptly pay for all materials supplied and work done in respect of the Premises for work contracted for by Tenant or its agents, employees or contractors so as to ensure that no lien is recorded against any portion of the Building or the Land or against Landlord's or Tenant's interest therein. If a lien is so recorded, Tenant shall discharge the lien within five (5) days after the date Tenant first becomes aware of the same by payment or bonding. If any such lien against the Building or the Land or Landlord's interest therein is recorded and not discharged by Tenant as above required within ten (10) days following written request from Landlord, Landlord shall have the right to remove such lien by bonding or payment and the cost thereof shall be paid immediately by Tenant to Landlord. Landlord and Tenant expressly agree and acknowledge that no interest of Landlord in the Premises, the Building or the Land shall be subject to any lien for improvements made by Tenant in or for the Premises or on the Building or the Land, and Landlord shall not be liable for any lien for any improvements made by Tenant, such liability being expressly prohibited by the terms of this Lease. Tenant shall, prior to any construction, provide such assurances to Landlord (including, but not limited to, waivers of lien, surety company payment and performance bonds and personal guarantees) as Landlord shall require to protect Landlord against any loss from any mechanics', laborers' or materialmen's liens, or other liens. Tenant shall record a Memorandum of Lease or other notice in the office of the Clerk of Newton County, Georgia, identifying Tenant as the party for whom Tenant's work is being performed ("Notice of Commencement"). Any Notice of Commencement shall clearly state that the interest of Tenant in the Premises is that of a leasehold estate and shall also state that the interest of Landlord as the fee simple owner of the Premises and the Land shall not be subject to construction liens on account of the work which is the subject of such Notice of Commencement. If such statements are not set forth in a recorded Memorandum of this Lease and are to be filed as a separate document, then such separate document shall be furnished to and approved by Landlord and its attorneys prior to the recording thereof. Tenant hereby agrees to inform all contractors and materialmen performing work in or for or supplying materials to the Premises and or the Land of the existence of said notice and incorporate a notice of Landlord's non-liability for any such liens in all contracts between Tenant and its contractors, subcontractors and material suppliers.

5.6 Utilities; Janitorial. Except as specifically provided below in this Section 5.6, Tenant shall pay to Landlord, or as Landlord directs, all gas, electricity, water, and other utility charges applicable to the Premises as separately metered or, if not so metered, as part of Tenant's proportionate share of Operating Costs or upon such alternative method agreed upon by Landlord and Tenant that accurately reflects Tenant's use of such utility service. Tenant shall directly pay the cost of janitorial, garbage removal, and trash removal services for the Premises and the cost of heating, ventilating, and air conditioning the Premises. Tenant has disclosed to Landlord that Tenant's intended use of the Premises shall require utilities, including but not limited to, electrical power, gas, water and sewer service, in excess of the building standard services provided by Landlord. Notwithstanding any other provision of the Lease to the contrary, the Tenant hereby accepts all of the electrical, gas, water, sewer and other utility services and plumbing

Confidential

fixtures existing in and serving the Premises on the Effective Date of the Lease in their "as is" condition and shall, at Tenant's sole cost and expense, and as a part of the Tenant Improvements, install, maintain and pay for all installation, operational, maintenance, repair and replacement costs of the electrical, gas, water, sewer and other utilities needed by Tenant for the intended use of the Premises. Tenant shall also install, or cause to be installed, at Tenant's sole cost and expense, separate meters for all utilities used in or by the Premises, including, but not limited to, electrical power, gas, water and sewer services.

ARTICLE VI
INSURANCE AND INDEMNITY
[Note – This Section is under review by Landlord and its consultant]

6.1 Tenant's Insurance.

(a) Tenant's Insurance. Effective as of the earlier of the date Tenant enters or occupies the Premises, or the Commencement Date, and continuing throughout the Term, Tenant, at Tenant's expense, shall maintain the following insurance policies:

(i) All Risk (special form or equivalent) property insurance including coverage the full replacement value of Tenant's improvements, betterments, furniture, fixtures, equipment and contents. The insurer used by Tenant hereunder shall waive rights of subrogation against Landlord for losses payable under such property insurance.

(ii) Commercial General Liability insurance policy (hereinafter referred to as a "Liability Policy"). Such Liability Policy shall include Landlord and Underhill Properties LLC (and any other party reasonably required by Landlord, including, without limitation, any mortgage), as additional insureds and be written on an "occurrence basis" including, without limitation, Blanket Contractual Liability coverage, Broad Form Property Damage, and Personal Injury coverage protecting Landlord against liability (except for liability resulting from gross negligence or willful misconduct of Landlord) occasioned by any occurrence on or about the Premises, which insurance shall be primary and non-contributory. Such Liability Policy shall be maintained in an amount not less than $5,000,000 per location for an aggregate single occurrence limit and $10,000,000 per location for an aggregate limit, and, in addition, $25,000,000 of Excess or Umbrella Liability Insurance, per location for an aggregate limit, which Excess or Umbrella Liability Insurance shall be primary and non-contributory.

(iii) Business Auto Liability covering owned, non-owned and hired vehicles with a limit of not less than $5,000,000.00 per accident, which insurance shall be primary and non-contributory.

(iv) Business interruption insurance with a limit of liability representing loss of at least approximately twelve (12) months of income.

(v) Statutory Workers Compensation and Employer's Liability insurance with the following Employer's Liability minimum limits, which required limits may be satisfied in combination of both Primary and Excess or Umbrella Liability Insurance:

Bodily injury by disease per person	$5,000,000
Bodily injury by accident policy limit	$5,000,000
Bodily injury by disease policy limit	$5,000,000

(vi) Contractor's Pollution Liability insurance and Owner's / Tenant's Pollution Liability insurance (each an “Environmental Pollution Policy”) in the amount of $20,000,000.00 with a deductible not to exceed $50,000.00 (said amounts subject to adjustment as provided for in this Section 6.1), providing coverage for, and/or to insure against any Remedial Action required by, or damages pursuant to any Environmental Law, including any claims alleging that Releases of Hazardous Substances have occurred on, at, to or from the Premises or the Land, that such pollution has migrated from the Premises and or the Land and has caused damages outside of the Premises arising during the Lease Term. Landlord, Underhill Properties LLC and the Landlord's mortgagee shall be additional insureds, though the policies will provide that only Tenant is responsible for premium payment. Tenant shall require

Confidential

its general contractor for any Tenant Improvements to obtain a Contractor's Pollution Liability Policy providing coverage in the amount of $20,000,000.00 with a deductible not to exceed $50,000.00. Before commencement of construction of any Tenant Improvements, Tenant shall deliver to Landlord a certificate of insurance with applicable endorsements evidencing that Tenant's general contractor has obtained a Contractor's Pollution Liability Policy required by this Section, as reasonably satisfactory to Landlord. Tenant shall require its environmental pollution policy in effect at the Effective Date to be written as primary and not to be affected by any other primary insurance and the insurer will not seek contribution from any other insurance available to the insured and shall thereafter cause its insurer(s) to issue similar Environmental Pollution Policies in connection with the Premises.

(vii) Tenant shall carry and maintain, or cause to be carried and maintained, at all times during the Term of this Lease and at Tenant's expense such other insurance or such additional amounts of insurance with respect to the Premises as is generally maintained by persons having similar exposures or properties similarly situated and as Landlord shall from time to time reasonably require; including but not limited to all risk coverages on Tenant's owned or leased machinery and equipment incorporated into the Premises or on the Land and Tenant's Environmental Pollution Policies.

(viii) The insurance required under this Section shall be written by insurers authorized and licensed to conduct business in the state where the Premises is located and have an A.M. Best Company rating of "A" or better and financial size category of not less than VIII.

(ix) If any of the insurance required under this Section is canceled (in whole or in part) for any reason whatsoever, other than nonpayment of premium, such cancellation shall not be effective as to Landlord until at least thirty (30) days after receipt by Landlord of written notice from each insurer of such cancellation. Tenant shall furnish Landlord with evidence premium payment on an annual basis, along with the required certificates of insurance.

(x) Certificates of Insurance executed by authorized representatives of insurance companies shall be issued in connection with each of the policies required under this Section and delivered to Landlord on or prior to the Commencement Date and from time to time upon renewal of such coverage as soon as reasonably practicable, but in no event later than the expiration date of the policy.

(xi) Notwithstanding anything to the contrary in this Section or in this Lease, Tenant's liability obligations under this Lease shall not be limited to the policy limits contained in Tenant's insurance policies as detailed above.

(xii) Tenant may place the coverage required under this Section under blanket insurance policies covering other properties of Tenant, provided that (A) any such blanket insurance policy shall specify therein, or the insurer under such policy shall certify to Landlord, any material sub-limits in such blanket policy applicable to the Premises, which sub-limits shall not be less than the amounts required pursuant to this Section, (B) any such blanket insurance policy shall comply in all respects with the other provisions of this Section, and (C) any deductibles and self-insured retention must be approved by Landlord.

(xiii) Whenever Tenant undertakes any Tenant Improvements, alterations, additions, or other improvements in, to, or about the Premises, Builder's Risk insurance on an "all risk" basis and on a completed value form including Permission to Complete and Occupy endorsement and the other aforesaid insurance protections on all work to be done by the Tenant and covering the structure of the Building and any improvements to be made by Tenant on the Land, must be carried by the contractors and subcontractors and extend to and include injuries to persons and damage to property arising in connection with such work, and any contractor(s) engaged by Tenant and any subcontractors engaged by Tenant's contractor for such work shall provide the aforesaid insurance protection stated in this Section and such insurance shall name Landlord, Underhill Properties LLC and such other parties as Landlord may from time to time designate (including, without limitation, any mortgagee) as named insureds. The policies of or certificates evidencing all such insurance must be delivered to Landlord prior to the commencement of any such work. Tenant shall require its contractor to execute and deliver the Contract Agreement Rider substantially in the form attached hereto as Rider 2 prior to commencing any work at the Premises.

(b) Landlord's Insurance. Landlord, as part of Operating Costs, shall throughout the Term carry: (i) all risks (special form or equivalent) insurance on the Building and the machinery and equipment contained therein or

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servicing the Building and owned by Landlord (excluding any personal property of Tenant and other tenants which Tenant or such other tenants, as applicable, are obliged to insure), insuring the full insurable replacement cost thereof (excluding the costs of below basement/below ground excavations, foundations and footings except to the extent such coverage is required by Landlord's mortgage, if any, in which case such coverage shall be included in Operating Costs); (ii) commercial general liability and property damage insurance covering the Building; and (iii) such other forms of insurance as Landlord or its mortgagee reasonably considers advisable, provided that such insurance shall be in such amounts and with such deductibles as would be carried by a prudent owner of a similar building, having regard to size, age, and location. To the extent that any costs or premiums for the insurance to be carried by Landlord as provided herein is increased specifically as a result of Tenant's fixtures, equipment or activities on or in the Premises, Building or Land, Tenant shall pay, as part of Operating Costs, such additional amounts.

6.2 Indemnification. Tenant shall, and does hereby indemnify, defend, and hold harmless Landlord, its partners, principals, and agents from and against all claims, causes of actions, liabilities, judgments, damages, losses, costs and expenses, including reasonable attorneys' fees and costs actually incurred through all appeals, incurred or suffered by Landlord, its partners, principals and agents, and arising from any injury to person or property: (i) occurring in the Premises following the date Landlord delivers possession of the Premises to Tenant, except to the extent caused by the gross negligence or willful misconduct of Landlord or Landlord's agents, employees or contractors; (ii) occurring in or on the Building or Land (other than within the Premises) to the extent caused by the negligence or willful misconduct of Tenant or Tenant's agents, employees or contractors, or (iii) arising out of the installation, operation, maintenance, repair or removal of any property of Tenant located in or about the Building or the Land, except to the extent caused by the gross negligence or willful misconduct of Landlord or Landlord's agents, employees or contractors.

6.3 Loss or Damage. Landlord shall not be liable for any death or injury arising from or out of any occurrence in, upon, at, or relating to the Building or damage to property of Tenant or of others located on the Premises or elsewhere in the Building, nor shall it be responsible for any loss of or damage to any property of Tenant or others from any cause, unless such death, injury, loss, or damage results from the gross negligence or willful misconduct of Landlord. Without limiting the generality of the foregoing, Landlord shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, falling ceiling tile, falling fixtures, steam, gas, electricity, water, rain, flood, or leaks from any part of the Premises or from the pipes, sprinklers, appliances, plumbing works, roof, windows, or subsurface of any floor or ceiling of the Building or from the street or any other place or by dampness, or by any other cause whatsoever.

6.4 Waiver of Claims/Subrogation. Notwithstanding anything to the contrary contained herein, Landlord and Tenant each hereby waive any and all rights of recovery, claim, action, or cause of action, against the other, its agents, officers, or employees, for any loss or damage that may occur to the Premises, or any improvements thereto, or the Building, which could be insured against under the terms of the property insurance policy referred to in this Article or is otherwise insured against under an insurance policy maintained by the party suffering such loss or damage, regardless of cause or origin, except gross negligence or willful misconduct of the other party hereto and/or its agents, officers, or employees, and each party covenants that no insurer shall hold any right of subrogation against such other party. The special form property insurance policies, Liability Policies, business auto liability policies, umbrella policies, Environmental Pollution Policies and worker's compensation insurance policies maintained by Landlord and Tenant as provided in this Lease shall include an endorsement containing an express waiver of any rights of subrogation by the insurance company against Landlord and Tenant, as applicable.

6.5 Landlord's Replacement Insurance. Tenant hereby acknowledges that because of Tenant's intended use of the Premises and portions of the Land, including, but not limited to, the processes that will involve the storage, handling and disposal of Hazardous Substances, Landlord will be required to obtain new policies of insurance for the types of insurance identified in Section 6.1(b) hereof. Landlord is required to maintain such coverages not only for the Premises but also for the other improvements and other tenants located on the Land. As a result, provided Tenant and Tenant's contractor obtains the Builder's Risk Insurance required pursuant to Section 6.1(a)(xiii) hereof, Tenant shall be permitted to construct and or install Tenant's Improvements in the Premises and on the Land as otherwise provided in this Lease. However, Tenant hereby agrees that it shall not bring any Hazardous Materials onto the Land or into the Premises or begin any testing or operations of the Tenant Improvements until Landlord has been able to obtain the replacement policies for those identified in Section 6.1(b) hereof. All such replacement policies must be from an admitted carrier (licensed to do business in the state where the Premises are located) and with a carrier having

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at least an "A" or better rating by A.M. BEST. Landlord agrees to use commercially reasonable efforts to obtain such replacement policies and Tenant agrees to provide information required by applicable insurance companies and otherwise to cooperate with Landlord as required to obtain such coverages.

ARTICLE VII
DAMAGE AND DESTRUCTION

7.1 Damage to Premises. If the Premises are partially destroyed due to fire or other casualty, Landlord shall diligently repair the Premises, to the extent of its obligations under Section 5.1, and Base Rent shall abate proportionately to the portion of the Premises, if any, rendered untenantable from the date of destruction or damage until Landlord's repairs have been substantially completed. If the Premises are totally destroyed due to fire or other casualty, Landlord shall diligently repair the Premises to the extent of its obligations under Section 5.1, and Base Rent shall abate entirely from the date of destruction or damage to such date which is the earlier of (i) the date tenantable, or (ii) thirty (30) days after Landlord's repairs have been substantially completed. Landlord's obligation hereunder with respect to the Premises shall be limited to the reconstruction of such leasehold improvements as were originally required to be made by Landlord pursuant to this Lease. Tenant agrees that during any period of reconstruction or repair of the Premises, it will continue the operation of its business within the Premises to the extent practicable. If all or any part of the Premises shall be damaged by fire or other casualty and the fire or other casualty is caused by the fault of neglect of Tenant or Tenant's agents, guests, or invitees, rent and all other charges shall be abated only to the extent Landlord is compensated for such rent and other charges by loss of rents insurance proceeds, if any. Landlord's application of any insurance proceeds related to damage or destruction to the Premises and or the Building shall be subject to the requirements of any lender holding a mortgage or deed of trust on the Building and or the Land.

7.2 Termination for Damage. Notwithstanding Section 7.1, if: (i) damage or destruction which has occurred to the Premises or the Building is such that in the reasonable opinion of Landlord such reconstruction or repair cannot be completed within one hundred eighty (180) days of the happening of the damage or destruction, or (ii) such damage or destruction occurs within the last twelve (12) months of the initial Term or any Renewal Term, then either Landlord or Tenant may, at its option, terminate this Lease on written notice given to the other party within thirty (30) days after such damage or destruction and Tenant shall immediately deliver vacant possession of the Premises in accordance with the terms of this Lease.

ARTICLE VIII
ASSIGNMENT, SUBLEASES, AND TRANSFERS

8.1 Transfer by Tenant.

(a) Except as hereinafter provided, Tenant shall not enter into, consent to, or permit any Transfer, as hereinafter defined, without the prior written consent of Landlord in each instance, which consent shall not be unreasonably withheld, conditioned or delayed. For purposes of this Lease, "Transfer" means an assignment of this Lease in whole or in part; a sublease of all or any part of the Premises; any transaction whereby the rights of Tenant under this Lease or to the Premises are transferred to another; any mortgage or encumbrance of this Lease or the Premises or any part thereof or other arrangement under which either this Lease or the Premises become security for any indebtedness or other obligations; and if Tenant is a corporation, limited liability company or a partnership, the transfer of a controlling interest in the stock of the corporation or membership or partnership interests, as applicable. If there is a permitted Transfer, Landlord may collect rent or other payments from the transferee and apply the net amount collected to the rent or other payments required to be paid pursuant to this Lease but no acceptance by Landlord of any payments by a transferee shall be deemed a waiver of any provisions hereof regarding Tenant. Notwithstanding any Transfer, Tenant shall not be released from any of its obligations under this Lease. If Tenant shall make a transfer for a rental or other payment in the nature of rental in excess of the rental charges payable under this Lease, Tenant shall pay to Landlord fifty percent (50%) of any such excess rental upon receipt after Tenant recovers all of its costs reasonably and actually incurred of entering into the Transfer, including (i) any changes, alterations and improvements made to the Leased Premises, and/or any tenant improvement allowance or other economic concessions (rental abatement, space planning allowance, moving expenses, etc.) provided by Tenant to the transferee, in connection with the transfer, assignment or sublease, (ii) any reasonable and customary brokerage commissions and advertising expenses in connection with the Transfer, and (iii) any other reasonable out-of-pocket costs of Tenant related thereto (including reasonable legal fees incurred by Tenant). Without limiting Landlord's right to withhold its consent to any

Confidential

Transfer by Tenant, and regardless of whether Landlord shall have consented to any such Transfer, neither Tenant nor any other person having an interest in the possession, use, or occupancy of the Premises or any part thereof shall enter into any lease, sublease, license, concession, assignment, or other Transfer or agreement for possession, use, or occupancy of all or any portion of the Premises which provides for rent or other payment for such use, occupancy, or utilization based, in whole or in part, on the net income or profits derived by any person or entity from the space so leased, used, or occupied, and any such purported lease, sublease, license, concession, assignment, or other Transfer or agreement shall be absolutely void and ineffective as a conveyance of any right or interest in the possession, use, or occupancy of all or any part of the Premises. There shall be no deduction from the rental payable under any sublease or other transfer nor from the amount thereof passed on to any person or entity, for any expenses or costs related in any way to the subleasing or transfer of such space.

(b) Without limiting the circumstances that would allow Landlord to reasonably withhold Landlord's consent, Landlord's consent shall not be deemed unreasonably withheld, conditioned or delayed if any one or more of the following circumstances exists: (i) the proposed subtenant or assignee's financial responsibility and character is not comparable to that of Tenant at time the Lease was executed; (ii) the proposed assignee or subtenant is a governmental entity or agency (or subdivision thereof); or (iii) the proposed assignee or subtenant is a current or prospective tenant of the Building or the project of which the Building is a part with whom Landlord has exchanged written proposals during the previous six (6) months (unless Landlord cannot accommodate the same within the Building or the project of which the Building is a part. In no event shall any sublease or assignment be made or allowed which would (x) in any way violate any exclusive use provisions granted to, or any prohibitions of certain uses agreed to by Landlord with, any other tenants or occupants of the Building; or (y) in Landlord's reasonable judgment, cause physical harm to the Building or harm to the reputation of the Building which would result in an impairment of Landlord's ability to lease space in the Building or a diminution in the rental value of space in the Building.

(c) Except as hereinafter provided in Section 8.1(d) of this Lease, in the event that Tenant desires to assign this Lease or to enter into a sublease of all or any portion of the Premises for a period of time that is in excess of fifty percent (50%) of the Term then remaining under the Lease, Landlord shall have the option to terminate this Lease (in the case of a proposed assignment by Tenant) or to exclude from the Premises covered by this Lease the space proposed to be sublet by Tenant, effective as of the proposed commencement date of the proposed assignment or sublease by Tenant. Landlord may exercise said option by giving Tenant written notice within twenty (20) days after receipt by Landlord of Tenant's notice of the proposed assignment or sublease. If Landlord exercises said option, Tenant shall surrender possession of the Premises or the proposed sublease space to Landlord on the effective date of the termination of this Lease or the exclusion of said space from the Premises covered by this Lease, as applicable, and, except as otherwise provided herein, neither party hereto shall have any further rights or liabilities with respect to the Premises or said sublease space arising under this Lease, as applicable. Effective as of the date of exclusion of any portion of the Premises covered by this Lease pursuant to this paragraph, unless the sublease specifies the exact per square foot rate for the Base Rent applicable to the excluded space (in which event the Base Rent for this Lease shall be reduced by such rate multiplied by the applicable excluded square footage), (i) the Base Rent shall be reduced in the same proportion as the number of square feet of net rentable area contained in the portion of the Premises so excluded bears to the number of square feet of rentable area contained in the Premises immediately prior to such exclusion, (ii) the rentable area of the Premises shall be decreased by the number of square feet of rentable area contained in the portion of the Premises so excluded, for all purposes under this Lease, and (iii) the number of parking spaces to which Tenant is entitled shall be reduced in the same proportion as the Base Rent is reduced.

(d) Notwithstanding anything to the contrary contained in this Lease, Tenant may assign this Lease or sublet all of the Premises from time to time, without Landlord's consent but only after five (5) Business Days' prior written notice (unless prior notice is prohibited by law), to: (i) any Affiliate (as defined below) of Tenant; (ii) any entity controlling, controlled by, or under common control with Tenant, or to any successor of Tenant resulting from a merger or consolidation of Tenant, or as a result of a sale by Tenant of all or substantially all of its assets or stock; provided, however, that (A) no such assignment or sublease shall relieve Tenant from any liability under this Lease, whether accrued to the date of such assignment or sublease, or thereafter accruing, and (B) such assignee or sublessee expressly assumes, in writing, all of Tenant's obligations under this Lease, in form and content reasonably acceptable to Landlord (except, as between a sublessee and Tenant, for the specific business deal between Tenant and such sublessee), and (iii) no series of one or more of such transactions shall be used by Tenant to "spin-off" this Lease to independent third parties. In addition, any change in the controlling interest in the stock of Tenant as a result of an

Confidential

initial public offering of Tenant's stock, and any transfer of the capital stock of Tenant by persons or parties through the "over-the-counter market" or through any recognized stock exchange or through a tender offer, shall not be deemed to be a Transfer requiring Landlord's consent. For the purposes of this Lease "Affiliate" shall mean (1) any subsidiary or entity that is directly or indirectly controlled by Battery Resourcers, Inc. or any of its Affiliates, and (2) a person or entity directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with the tenant in question, or in which the tenant in question holds a controlling ownership interest. The term "control," as used in the immediately preceding sentence, means, with respect to an entity that is a corporation, the right to the exercise, directly or indirectly, of more than fifty percent (50%) of the voting rights attributable to the shares of the controlled corporation and, with respect to an entity that is not a corporation, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled entity.

8.2 Assignment by Landlord. Landlord shall have the unrestricted right to sell, lease, convey, or otherwise dispose of the Building or any part thereof and this Lease or any interest of Landlord in this Lease. To the extent that the purchaser or assignee from Landlord assumes the obligations of Landlord under this Lease, Landlord shall thereupon and without further agreement be released of all further liability under this Lease. If Landlord sells its interest in the Premises, it shall deliver any security deposit made pursuant to this Lease to the purchaser and Landlord will thereupon be released from any further liability with respect to any such security deposit or its return to Tenant and the purchaser shall become directly responsible to Tenant therefor.

ARTICLE IX
DEFAULT

9.1 Defaults. A default by Tenant shall be deemed to have occurred hereunder, if and whenever: (i) any Base Rent or Tenant's Proportionate Share of Operating Costs, is not paid within five (5) days after becoming due whether or not any notice or demand for payment has been made by Landlord; (ii) any other additional rent is in arrears and is not paid within twenty (20) days after written demand by Landlord; (iii) Tenant has breached any of its obligations in this Lease (other than the payment of rent) and Tenant fails to remedy such breach within thirty (30) days after written notice thereof from Landlord; provided, however, that if such breach cannot reasonably be remedied within thirty (30) days, then if Tenant fails promptly to commence to remedy and thereafter proceed diligently to remedy such breach within a reasonable time (not to exceed sixty (60) days unless Tenant notifies Landlord of the need for additional time, the reason for same and the amount thereof); or (iv) a petition in bankruptcy or insolvency is filed by or against Tenant and Tenant fails to secure a stay or discharge thereof within thirty (30) days thereafter, or if a receiver is appointed for Tenant's business or assets and the appointment of the receiver is not vacated or set aside within thirty (30) days thereafter.

9.2 Remedies. In the event of any default hereunder by Tenant, then without prejudice to any other rights which it has pursuant to this Lease or at law or in equity, Landlord shall have the following rights and remedies, which are cumulative and not alternative:

(a) Landlord may cancel this Lease and retake possession of the Premises for Landlord's account, or may terminate Tenant's right to possession (without terminating this Lease), for the account of Tenant. In either event, Tenant shall then quit and surrender the Premises to Landlord. Tenant's liability under all of the provisions of this Lease shall continue notwithstanding any expiration and surrender, or any re-entry, repossession, or disposition hereunder. Landlord may, in its sole discretion and election, re-enter and take possession of the Premises without recourse to the Georgia summary eviction statute provided Landlord may do so only if Landlord can accomplish the eviction without a "breach of the peace".

(b) To the extent permitted by applicable laws, Landlord may enter the Premises as agent of Tenant to take possession of any property of Tenant on the Premises, to remove and store such property at the expense and risk of Tenant or to sell or otherwise dispose of such property in accordance with the terms of this Lease. Landlord shall not be liable in any way in connection with its actions pursuant to this Section, to the extent that its actions are in accordance with applicable law.

(c) If Tenant's right to possession is terminated (without terminating this Lease) under subsection (a) above, Tenant shall remain liable (in addition to accrued liabilities) to the extent legally permissible for all rent and all of the charges Tenant would have been required to pay until the date this Lease would have expired had

Confidential

such cancellation not occurred. Tenant's liability for rent shall continue notwithstanding re-entry or repossession of the Premises by Landlord, less the net proceeds, if any, of any reletting of the Premises by Landlord, after deducting the cost of repairs, alterations, additions, redecorating, attorneys' fees and costs reasonably and actually incurred by Landlord, and brokerage commissions and other expenses reasonably and actually incurred in connection with such reletting of the Premises.

(d) Landlord may relet all or any part of the Premises for all or any part of the unexpired portion of the Term of this Lease or for any longer period, and may accept any rent then attainable, grant any concessions of rent, and agree to paint or make any special repairs, alterations, and decorations for any new Tenant as it may deem advisable in its reasonable discretion. Landlord shall be under no obligation to relet or to attempt to relet the Premises.

(e) If Tenant's right to possession is terminated (without terminating this Lease) under subsection (a) above, and Landlord so elects, the rent hereunder shall be accelerated and Tenant shall pay Landlord damages in an amount equal to the present value (using a discount factor equal to the stated prime lending rate on the date of Tenant's default as published in the Wall Street Journal) of the difference of any and all sums which would have been due for the remainder of the Term, less the then-current fair market rental value of the Premises for the remainder of the Term (taking into consideration the reasonable costs of marketing and reletting the Premises). Upon such acceleration of such amounts, Tenant agrees to pay the same at once, together with all Rent and other amounts theretofore due, at Landlord's address as provided herein; provided however, that such payment shall not constitute a penalty or forfeiture but shall constitute liquidated damages for Tenant's failure to comply with the terms and provisions of this Lease (Landlord and Tenant agreeing that Landlord's actual damages in such an event are impossible to ascertain and that the amount set forth above is a reasonable estimate thereof).

(f) Landlord may remedy or attempt to remedy any default of Tenant under this Lease for the account of Tenant and enter upon the Premises for such purposes. No notice of Landlord's intention to perform such covenants need be given Tenant unless expressly required by this Lease. Landlord shall not be liable to Tenant for any loss or damage caused by acts of Landlord in remedying or attempting to remedy such default and Tenant shall pay to Landlord all reasonable expenses incurred by Landlord in connection with remedying or attempting to remedy such default. Any expenses incurred by Landlord shall accrue interest from the date of payment by Landlord until repaid by Tenant at an interest rate at the lower of sixteen percent (16%) per annum or the highest rate permitted by law if such rate is less than sixteen percent (16%) per annum.

9.3 Costs. Tenant shall pay to Landlord all costs actually and reasonably incurred by Landlord, including attorneys' fees and costs, actually incurred by Landlord in enforcing any of the obligations of Tenant under this Lease. In addition, upon any default by Tenant, Tenant shall also be liable to Landlord for the expenses to which Landlord may be put in re-entering the Premises; repossessing the Premises; painting, altering, or dividing the Premises; combining the Premises with an adjacent space for any new tenant; putting the Premises in proper repair; protecting and preserving the Premises by placing watchmen and caretakers therein; reletting the Premises (including attorneys' fees and disbursements actually incurred, marshall's fees, and brokerage fees, in so doing); and any other expenses reasonably incurred by Landlord.

9.4 Additional Remedies; Waiver. The rights and remedies of Landlord set forth herein shall be in addition to any other right and remedy now and hereinafter provided by law. All rights and remedies shall be cumulative and non-exclusive of each other. No delay or omission by Landlord in exercising a right or remedy shall exhaust or impair the same or constitute a waiver of, or acquiescence to, a default.

9.5 Default by Landlord. Landlord shall be in default if it fails to perform any term, condition, covenant or obligation required under this Lease for a period of thirty (30) days after written notice thereof from Tenant to Landlord; provided, however, that if the term, condition, covenant or obligation to be performed by Landlord is such that it cannot reasonably be performed within thirty (30) days, such default shall be deemed to have been cured if Landlord commences such performance within said thirty-day period and thereafter diligently completes the required action within a reasonable time. Notwithstanding anything to the contrary contained in this Lease, in the event that Tenant is reasonably unable to access the Premises or all or a material portion of the Premises is rendered reasonably untenantable as a result of any Landlord failure to perform the terms, conditions, covenants or obligations required

Confidential

under this Lease, then, except as attributable to casualty, the exercise of eminent domain or force majeure (which shall be treated as otherwise set forth in this Lease), following five (5) days' prior written notice to Landlord and opportunity to cure, Base Rent shall equitably and proportionately abate during any period of time that the Premises is inaccessible and for any portion of the Premises that is untenantable until such access or use is restored by Landlord. If the event of a default not cured by Landlord or on behalf of Landlord within the cure periods set forth above, as applicable, Tenant may, at its option, have any one or more of the following described remedies: (i) the right, upon not less than ten (10) Business Days' prior written notice to Landlord describing in reasonable detail the actions proposed to be taken by Tenant and the estimated cost thereof, to remedy such default or breach within the Leased Premises and be reimbursed the reasonable costs thereof within thirty (30) days after Landlord's receipt of a paid invoice and contractor's lien waivers as applicable, therefor; (ii) the right to pursue the remedy of specific performance; and (iii) any and all other rights available to Tenant under law and equity. The reasonable amount of the cost and expense so incurred by Tenant, together with the amount of any reasonable actual attorneys' fees in successfully instituting, prosecuting or defending any action or proceeding by reason of any default of Landlord hereunder, shall be paid by Landlord to Tenant.

9.6 Prevailing Party. Notwithstanding anything to the contrary contained in this Lease, in the event of any litigation between Landlord and Tenant arising out of this Lease or Tenant's use and occupancy of the Premises, the prevailing party shall be entitled to recover its costs and expenses incurred in such litigation, including attorneys' fees and costs actually incurred, at all levels, including appeals.

9.7 Limitation of Landlord's Personal Liability. The liability of Landlord for any default by Landlord under this Lease shall be limited to the interest of Landlord in the Building and Tenant agrees to look solely to Landlord's interest in the Building for the recovery of any judgment from Landlord, it being intended that Landlord shall not be personally liable for any judgment or deficiency.

ARTICLE X
ESTOPPEL CERTIFICATE; SUBORDINATION

10.1 Estoppel Certificate. Within ten (10) days after written request by Landlord, Tenant shall deliver in a form supplied by Landlord, an estoppel certificate to Landlord as to the status of this Lease, including whether this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified and identifying the modification agreements); the amount of Base Rent and additional rent then being paid and the dates to which same have been paid; whether or not there is any existing or alleged default by either party with respect to which a notice of default has been served, or any facts exist which, with the passing of time or giving of notice, would constitute a default and, if there is any such default or facts, specifying the nature and extent thereof; and any other matters pertaining to this Lease as to which Landlord, Landlord's lender or a prospective purchaser of the Land shall reasonably request in such certificate. Landlord, and any prospective purchaser, lender, or ground lessor shall have the right to rely on such certificate.

10.2 Subordination; Attornment. This Lease and all rights of Tenant shall be subject and subordinate to any and all mortgages, security agreements, or like instruments resulting from any financing, refinancing, or collateral financing (including renewals or extensions thereof), and to any and all ground leases, made or arranged by Landlord of its interests in all or any part of the Building, from time to time in existence against the Building, whether now existing or hereafter created. Such subordination shall not require any further instrument to evidence such subordination. However, on request, Tenant shall further evidence its agreement to subordinate this Lease and its rights under this Lease to any and all documents and to all advances made under such documents. The form of such subordination shall be made as required by Landlord, its lender, or ground lessor, with such changes as Tenant and such counterparty may reasonably agree. Landlord agrees to provide to Tenant a subordination, non-disturbance and attornment agreement with respect to any superior mortgager or ground lease, the form of which shall be subject to Tenant's review and approval, not to be unreasonably withheld, conditioned or delayed. In the event of the enforcement by a lender of the remedies provided for by law or by any mortgage now or hereafter encumbering the Building or any portion thereof, Tenant will, upon request of any person succeeding to the interest of Landlord as a result of such enforcement, automatically become the lessee of said successor-in-interest, without change in the terms or other provisions of this Lease; provided, however, that said successor-in-interest shall not be (i) bound by any payment of rent for more than one (1) month in advance; (ii) liable for any security deposit unless said successor-in-interest actually receives such funds; (iii) liable for any act, omission or default of any prior Landlord; (iv) subject to any

Confidential

offsets, claims or defenses that Tenant may have against any prior Landlord occurring prior to the succession (but such successor shall be subject to the continuing obligations of Landlord hereunder first arising from and after such succession; or (v) bound by any amendment or modification of the Lease made without the consent of lender or ground lessor, except for those amendments and modifications permitted to be made by Landlord without such lender's or ground lessor's consent pursuant to the terms of the underlying loan documents between Landlord and such lender, or the underlying ground lease between Landlord and such ground lessor, as applicable. Within ten (10) days of a written request by said successor in interest, Tenant shall execute and deliver an instrument or instruments confirming such attornment.

ARTICLE XI
CONTROL OF BUILDING BY LANDLORD

11.1 Use and Maintenance of Common Areas. Tenant, its employees, agents, licensees and those doing business with Tenant for purposes associated with Tenant's business on the Premises, shall have a non-exclusive license to use the Common Areas for their intended purposes during normal business hours in common with others entitled thereto and subject to any reasonable rules and regulations imposed by Landlord. Landlord shall keep the Common Areas in good repair and condition and shall clean the Common Areas when necessary. Tenant acknowledges that all Common Areas shall at all times be under the exclusive control and management of Landlord. For purposes of this Lease, "Common Areas" shall mean those areas, facilities, utilities, improvements, equipment, and installations of the Building and Land which serve or are for the benefit of the tenants of more than one component of the Building and which are not designated or intended by Landlord to be leased, from time to time, or which are provided or designated from time to time by Landlord for the benefit or use of all tenants in the Building, their employees, customers, and invitees, in common with others entitled to the use or benefit of same, including, without limitation, the parking facilities.

11.2 Alterations by Landlord. Landlord may (i) alter, add to, subtract from, construct improvements on, re-arrange, and construct additional facilities in, adjoining, or proximate to the Building; (ii) relocate the facilities and improvements in or comprising the Building or erected on the land; (iii) do such things on or in the Building as required to comply with any laws, by-laws, regulations, orders, or directives affecting the land or any part of the Building; and (iv) do such other things on or in the Building as Landlord, in the use of good business judgment determines to be advisable, provided that notwithstanding anything contained in this Section 11.2, access to the Premises shall be available at all times, except in the case of emergencies.

11.3 Access. Access to the Premises shall be available to Tenant 24 hours per day, 7 days per week, 365 days per year, subject to reasonable security measures and except for emergency events which cause Landlord to limit access to tenants.

ARTICLE XII
CONDEMNATION

12.1 Total or Partial Taking. If all or any substantial part of the Building or Common Areas shall be taken by any public authority under the power of eminent domain or sold to any public authority under threat or in lieu of such taking (each, a "Taking"), Landlord may terminate this Lease by giving written notice to Tenant on or before the date possession or title shall be taken by such public authority, whichever is earlier ("Taking Date"). In the event of a Taking of the whole of the Premises, or such portion thereof as will make the Premises impractical for Tenant to use for the Permitted Use, Tenant may terminate this Lease by giving written notice to Landlord on or before the Taking Date. Upon any such termination, the rent and all other charges shall be paid up to the Taking Date with a proportionate refund by Landlord of any rent and all other charges paid for a period subsequent to the Taking Date. If less than the whole of the Premises, or less than such portion thereof as will make the Premises impractical for Tenant to use for the Permitted Use, Landlord, at its sole cost, shall proceed with due diligence to repair, alter and restore the remaining portion of the Premises substantially to their former condition to the extent of its obligations under Section 5.1, to the extent commercially reasonable, the Term shall cease only as to the part so taken as of the Taking Date, and Tenant shall pay rent and other charges up to the Taking Date, with appropriate credit by Landlord (toward the next installment of rent due from Tenant) of any rent or charges paid for a period subsequent to the Taking Date. Base Rent and other charges payable to Landlord shall be reduced in proportion to the amount of the Premises taken.

Confidential

12.2 Taking for Temporary Use. If there is a taking of the Premises for temporary use, this Lease shall continue in full force and effect, and Tenant shall continue to comply with Tenant's obligations under this Lease, except to the extent compliance shall be rendered impossible or impracticable by reason of the taking. Base Rent and other charges payable to Landlord shall be reduced in proportion to the amount of the Premises taken for the period of such temporary use.

12.3 Award. All compensation awarded or paid upon a total or partial taking of the Premises or Building including the value of the leasehold estate created hereby shall belong to and be the property of Landlord without any participation by Tenant; Tenant shall have no claim to any such award based on Tenant's leasehold interest. However, nothing contained herein shall be construed to preclude Tenant, at its cost, from independently prosecuting any claim directly against the condemning authority in such condemnation proceeding for damage to, or cost of removal of, stock, trade fixtures, furniture, and other personal property belonging to Tenant; provided, however, that no such claim shall diminish or otherwise adversely affect Landlord's award or the award of any mortgagee.

ARTICLE XIII
PARKING

Subject to all of the terms, provisions, covenants, and conditions contained herein, Tenant shall have the right to use the number of parking spaces indicated in the Lease Summary in the parking area which Landlord shall provide for the use of tenants of the Premises as identified on the Site Plan. Landlord shall not be liable for any damage of any nature whatsoever to, or any theft of, automobiles or other vehicles or the contents thereof, while in or about the parking area. Tenant acknowledges that its non-exclusive right to use any parking facilities forming part of the Building may be subject to such rules and regulations as reasonably imposed by Landlord from time to time. Landlord shall have a right to designate the location of Tenant's parking and alter such designation upon reasonable notice to Tenant; provided that Landlord does not decrease the number of parking spaces identified for Tenant's use in the Lease Summary and any such changes in location of the parking spaces, including costs of striping and preparation of such spaces for Tenant's use, shall be at Landlord's sole cost and expense. Landlord shall also have the right to establish or modify the methods used to control parking in the parking area, including, without limitation, the installation of certain control devices or the hiring of parking attendants or a managing agent and/or parking operator. If Landlord contracts with a parking operator, at Landlord's request, Tenant shall enter into a separate parking agreement between such operator and Tenant, and Landlord will cause the operator of the parking area to agree to provide Tenant during the Term with the number of parking spaces indicated in the Lease Summary at no cost to Tenant so long as Tenant complies with the terms and conditions set forth in the parking agreement. Tenant acknowledges that all driveways used to access Tenant's parking and that run through Tenant's parking are intended for the joint use of all tenants of the Land and their invitees and that owners of property adjacent to the Land have certain easement rights over some of the driveways located on the Land.

ARTICLE XIV
GENERAL PROVISIONS

14.1 Delay. Except as expressly provided in this Lease, whenever Landlord or Tenant is delayed in the fulfillment of any obligation under this Lease, other than the payment of rent or other charges, by an unavoidable occurrence which is not the fault of the party delayed in performing such obligation, then the time for fulfillment of such obligation shall be extended during the period in which such circumstances operate to delay the fulfillment of such obligation.

14.2 Holding Over. If Tenant remains in possession of the Premises after the end of the Term without having executed and delivered a new lease or an agreement extending the Term, there shall be no tacit renewal of this Lease or the Term, Tenant shall be deemed to be occupying the Premises as a Tenant at sufferance at a monthly rent payable in advance on the first day of each month equal to one hundred fifty percent (150%) of the monthly amount of rent payable during the last month of the Term, and otherwise upon the same terms as are set forth in this Lease, so far as they are applicable to a tenancy at sufferance and shall be in default of this Lease if such hold over exceeds two (2) months in length.

14.3 Waiver; Partial Invalidity. If either Landlord or Tenant excuses or condones any default by the other of any obligation under this Lease, this shall not be a waiver of such obligation in respect of any continuing or subsequent default and no such waiver shall be implied. All of the provisions of this Lease are to be construed as covenants even

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though not expressed as such. If any such provision is held or rendered illegal or unenforceable it shall be considered separate and severable from this Lease and the remaining provisions of this Lease shall remain in force and bind the parties as though the illegal or unenforceable provision had never been included in this Lease.

14.4 Recording. Neither Tenant nor anyone claiming under Tenant shall record this Lease or any memorandum hereof in any public records without the prior written consent of Landlord and Tenant.

14.5 Notices. Any notice, consent, or other instrument required or permitted to be given under this Lease shall be in writing and shall be delivered in person, or sent by certified mail, return receipt requested, or overnight express mail courier, postage prepaid, addressed to each party's address set forth in the Lease Summary. Any such notice or other instruments shall be deemed to have been given and received on the day upon which personal delivery or delivery by overnight express mail courier is made or, if mailed, then 48 hours following the date of mailing. Either party may give notice to the other of any change of address and after the giving of such notice, the address therein specified is deemed to be the address of such party for the giving of notices. If postal service is interrupted or substantially delayed, all notices or other instruments shall be delivered in person or by overnight express mail courier. Once the Tenant has taken occupancy of the Premises, any notice from Landlord to Tenant shall be effective if delivered to the Premises address in the manner provided in this paragraph.

14.6 Successors; Joint and Several Liability. The rights and liabilities created by this Lease extend to and bind the successors and assigns of Landlord and the heirs, executors, administrators, and permitted successors and assigns of Tenant. No rights, however, shall inure to the benefit of any transferee unless such Transfer complies with the provisions of Article VIII.

14.7 Captions and Section Numbers. The captions, Section numbers, and article numbers appearing in this Lease are inserted only as a matter of convenience and in no way affect the substance of this Lease.

14.8 Extended Meanings. The words "hereof," "hereto," "hereunder," and similar expressions used in this Lease relate to the whole of this Lease and not only to the provisions in which such expressions appear. This Lease shall be read with all changes in number and gender as may be appropriate or required by the context. Any reference to Tenant includes, when the context allows, the employees, agents, invitees, and licensees of Tenant and all others over whom Tenant might reasonably be expected to exercise control. This Lease has been fully reviewed and negotiated by each party and their counsel and shall not be more strictly construed against either party.

14.9 Entire Agreement; Governing Law; Time. This Lease and the Exhibits and Riders, if any, attached hereto are incorporated herein and set forth the entire agreement between Landlord and Tenant concerning the Premises and there are no other agreements or understandings between them. This Lease and its Exhibits and Riders may not be modified except by agreement in writing executed by Landlord and Tenant. This Lease shall be construed in accordance with and governed by the laws of the State of Georgia. Time is of the essence of this Lease, including specifically, but not limited to, the terms and conditions contained in Rider 1 attached hereto.

14.10 No Partnership. Nothing in this Lease creates any relationship between the parties other than that of lessor and lessee and nothing in this Lease constitutes Landlord a partner of Tenant or a joint venturer or member of a common enterprise with Tenant.

14.11 Quiet Enjoyment. Provided that Tenant pays rent and other charges and observes and performs all of its other obligations under this Lease, Landlord warrants and covenants that Tenant shall have peaceful and quiet enjoyment of the Premises for the Term without interruption or interference by Landlord or any person claiming through Landlord.

14.12 Brokerage. Landlord and Tenant each represent and warrant one to the other that except as set forth in the Lease Summary, neither of them has employed any broker in connection with the negotiations of the terms of this Lease or the execution thereof. Landlord and Tenant hereby agree to indemnify and to hold each other harmless against any loss, expense, or liability (including, without limitation, reasonable attorneys' fees and costs actually incurred) with respect to any claims for commissions or brokerage fees arising from or out of any breach of the foregoing representation and warranty. Landlord shall pay any commissions payable to Landlord's Broker pursuant

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to separate agreement, and Landlord shall cause Landlord's Broker to pay any commissions payable to Tenant's Broker pursuant to separate agreement between Landlord's Broker and Tenant's Broker.

14.13 Telecommunications.

(a) Tenant shall, at Tenant's sole cost and expense, be solely responsible for securing such telephone and other electronic telecommunications service from the Building's common connection point to the Premises as Tenant may require for its use and occupancy thereof, and Landlord shall have no obligations or liability whatsoever to Tenant with respect the installation, operation or maintenance of any equipment or facilities relating to the telecommunications services from the Building's common connection point to the Premises.

(b) None of Landlord's approval of, or requirements concerning, any telecommunications work, lines, equipment, plans, specifications or drawings or any equipment related thereto, Tenant's telecommunications provider or Tenant's and/or Tenant's telecommunications provider's contractors or subcontractors, shall be deemed a warranty as to the adequacy, suitability, competence or financial strength thereof, and Landlord hereby disclaims any responsibility or liability for the same. Further, Landlord makes no representation to Tenant regarding the condition, security, availability, competence, financial strength or suitability for Tenant's purposes of any telecommunications services presently located within the Building, and Tenant hereby acknowledges that Landlord shall have no obligation or liability and hereby waives any claim against Landlord for any damages or problems in the event that Tenant's telecommunications services, lines or equipment are in any way inadequate, do not satisfy Tenant's requirements, are interrupted, curtailed, discontinued, disconnected, terminated, damaged or otherwise interfered with, or fail, except to the extent caused by the negligence or willful misconduct of Landlord, its employees or agents.

(c) Any telegraphic, telephone or data lines, cabling, and wiring installed in the Premises and/or the Building by or on behalf of Tenant shall be appropriately tagged with Tenant's name and the name of the provider, and all of such wiring shall be removed by Tenant, at Tenant's expense, upon the expiration or termination of this Lease unless Landlord notifies Tenant that Tenant shall leave all such lines, cabling, and wiring in place for use by Landlord and/or a future occupant.

14.14 Business Days. For all purposes of this Lease, a "Business Day" means any day other than a Saturday, Sunday or legal holiday declared by the federal government.

14.15 Authority. Tenant and Landlord and the individuals and/or entities executing this Lease on behalf of them represent to the other party to this Lease that such party is authorized to do so and that this Lease has been duly authorized and executed by such party.

14.16 Rents From Real Property. Landlord and Tenant agree that all rent payable by Tenant to Landlord shall qualify as "rents from real property" within the meaning of both Sections 512(b)(3) and 856(d) of the Internal Revenue Code of 1986, as amended (the "Code") and the U.S. Department of Treasury Regulations promulgated thereunder (the "Regulations"). If Landlord, in its sole discretion, determines that there is any risk that all or part of any rent shall not qualify as rents from real property for the purposes of the Code and the Regulations, Tenant agrees to cooperate with Landlord (at Landlord's expense) by entering into such amendment or amendments as Landlord deems necessary to qualify all rent as rents from real property, in form and content reasonably acceptable to Tenant; provided, however, that any adjustments required pursuant to this paragraph shall be made so as to produce the equivalent rent (in economic terms) payable prior to such adjustment.

14.17 OFAC Compliance. Tenant represents and warrants that (a) neither Tenant nor any person or entity that owns an equity interest in it nor any of its officers, directors, or managing members is a person or entity (each, a "Prohibited Person") with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including Executive Order 13224 (the "Executive Order") signed on September 24, 2001 and entitled "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"), or other governmental action, (b) Tenant's activities do not violate the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001 or the regulations or orders promulgated thereunder (as amended from time to time, the "Money

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Laundering Act") (i.e., Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the "Patriot Act"), and (c) Tenant shall comply with the Executive Order, the Money Laundering Act, and the Patriot Act.

14.18 WAIVERS BY TENANT. Tenant expressly waives all of the following: (i) The requirement under Georgia law, if any, that the plaintiff in his distress for rent action file a bond payable to Tenant in the sum, or any multiple thereof, demanded by the plaintiff, it being understood that no bond shall be required in any such action; (ii) the right of Tenant to replevy distrained property; (iii) in the event of suit by or against Landlord, then the venue of such suit shall be in Newton County, Georgia, and Tenant hereby waives for itself whatever rights it may have in the selection of venue; (iv) the right of counterclaim in any action brought by Landlord against Tenant for damages or for possession of the Premises due to nonpayment of Base Rent or other sums required of Tenant under this Lease; (v) the notice requirements set under Georgia law for actions based on leases of commercial property and (vi) the right to tender payment pursuant to GA Code Ann. 44-7-52.

14.19 TRIAL BY JURY. LANDLORD AND TENANT EACH HEREBY WAIVES ITS RIGHT TO A JURY TRIAL OF ANY ISSUE OR CONTROVERSY ARISING UNDER THIS LEASE.

14.20 Counterparts This Lease may be executed by each of the parties in separate counterparts with the same effect as if all parties executed the same counterpart. Each such counterpart shall be deemed an original and all of such counterparts together shall constitute one instrument. Any counterpart executed by facsimile or via email as a portable document format (.pdf), shall be deemed to be an original in all cases.

[signature page follows]

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IN WITNESS WHEREOF, the parties have executed this Lease as of the date first above written.

LANDLORD'S TWO WITNESSES:

Print Name: [illegible]

Print Name: [illegible]

LANDLORD:

Covington Industrial LLC, a Delaware limited liability company

By: 9172 Industrial MM LLC, its Manager

By: [illegible]
Name: THOMAS L. BROBIE
Title: Managing Member

TENANT'S TWO WITNESSES:

Print Name: _____

Print Name: _____

TENANT:

Battery Resourcers, Inc., a Delaware corporation

By: _____
Print Name: _____
Title: _____

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IN WITNESS WHEREOF, the parties have executed this Lease as of the date first above written.

LANDLORD'S TWO WITNESSES:

_____
Print Name:_____

_____
Print Name:_____

LANDLORD:

Covington Industrial LLC, a Delaware limited liability company

By: 9172 Industrial MM LLC, its Manager

By:_____
Name:_____
Title: Managing Member

TENANT'S TWO WITNESSES:

_____
Print Name: Andrew Aberdale

_____
Print Name: LIAM LOCHHEAD

TENANT:

Battery Resourcers, Inc., a Delaware corporation

By:_____
Print Name: Michael O'Kronley
Title: CEO

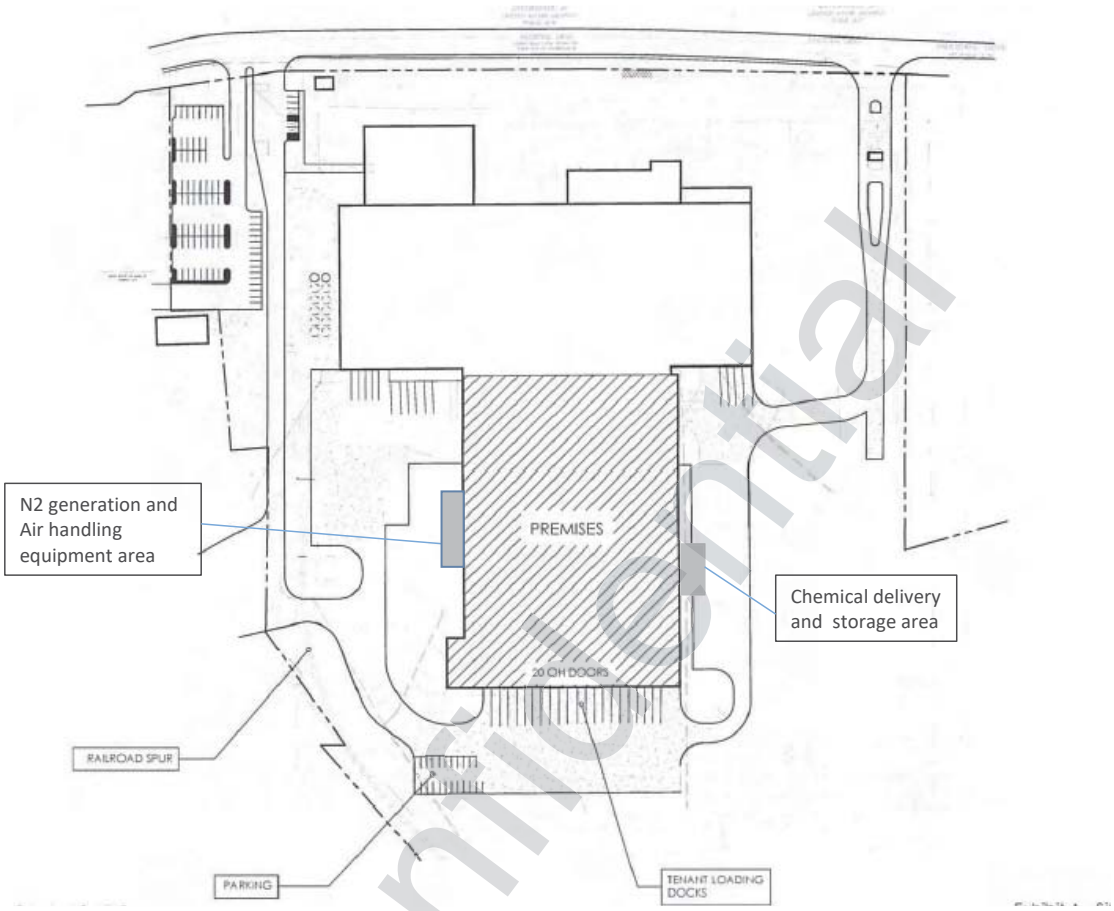
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EXHIBIT "A"

SITE PLAN OF PREMISES

[See Attached Sketch]

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EXHIBIT "B"

LEGAL DESCRIPTION OF THE LAND

All that tract or parcel of land lying and being in Land Lot 273 of the 9th District, City of Covington, Newton County, Georgia and being more particularly described as follows:

Commencing at a right of way monument found at the intersection of the westerly side of the right of way of Alcovy Road (a variable right of way) and the southerly side of the right of way of Interstate 20 Limited Access Highway (a variable right of way), thence running easterly along the southerly side of the right of way of Interstate 20 Limited Access Highway a distance of 485.02' to a ½" rebar set at the **TRUE POINT OF BEGINNING** (the above referenced distance is more particularly described by the following six (6) courses and distances: North 88 degrees 02 minutes 13 seconds East a distance of 114.40 feet to a right of way monument found; thence along a curve to the left an arc length of 115.20 feet, said curve having a radius of 248.00' and a chord bearing of North 79 degrees 14 minutes 54 seconds East and a chord distance of 114.16 feet to a right of way monument found; thence North 66 degrees 33 minutes 04 seconds East a distance of 126.11 feet to a right of way monument found; thence North 87 degrees 17 minutes 25 seconds East a distance of 48.21 feet to a right of way monument found; thence North 53 degrees 54 minutes 44 seconds East a distance of 30.61 feet to a right of way monument found; thence North 81 degrees 31 minutes 01 seconds East a distance of 50.49 feet to an iron pin set at the **TRUE POINT OF BEGINNING)**. From point **TRUE POINT OF BEGINNING** thus established continue along the southerly side of the right of way of Interstate 20 Limited Access Highway North 81 degrees 48 minutes 47 seconds East a distance of 165.76 feet to a nail set; thence continuing along the southerly side of said right of way North 89 degrees 37 minutes 14 seconds East a distance of 462.40 feet to a right of monument found; thence continuing along the southerly side of said right of way South 89 degrees 06 minutes 22 seconds East a distance of 455.76 feet to a right of way monument found at the intersection of the southerly side of the right of way of Interstate 20 Limited Access Highway and the southerly side of the right of way of Industrial Drive (a 60' right of way); thence running along the southerly side of the right of way of Industrial Drive North 89 degrees 53 minutes 43 seconds East a distance of 13.31 feet to a ½" rebar found; thence leaving the southerly side of the right of way of Industrial Drive South 00 degrees 09 minutes 59 seconds West a distance of 705.16 feet to a ½" rebar found; thence North 74 degrees 07 minutes 51 seconds East a distance of 645.09 feet to a rock found; thence South 27 degrees 41 minutes 45 seconds East a distance of 169.19 feet to an iron pin set; thence South 09 degrees 20 minutes 10 seconds West a distance of 207.97 feet to an iron pin set on the northwesterly side of the right of way of the Georgia Railroad (a 200' right of way); thence running along the northwesterly side of said Georgia Railroad right of way South 50 degrees 33 minutes 00 seconds West a distance of 872.57 feet to a ½" rebar found at the intersection of the northwesterly side of said Georgia Railroad right of way with the northeasterly line of property now or formerly owned by CSX Railroad; thence leaving the northwesterly side of said Georgia Railroad right of way and running northwesterly along the northeasterly boundary line of adjacent property now or formerly owned by CSX Railroad the following courses and distances: along the northeasterly boundary line of the adjacent property now or formerly owned by CSX Railroad along a curve to the right an arc length of 559.93 feet, said curve having a radius of 557.35' and a chord bearing of North 73 degrees 54 minutes 17 seconds West and a chord distance of 536.68 feet to a point; North 47 degrees 09 minutes 42 seconds West a distance of 19.33 feet to a point; North 45 degrees 40 minutes 29 seconds West a distance of 98.45 feet to a point; North 45 degrees 14 minutes 27 seconds West a distance of 99.85 feet to a point; North 40 degrees 53 minutes 24 seconds West a distance of 188.34 feet to a ½" rebar found; thence leaving said northeasterly boundary line of the adjacent property now or formerly owned by CSX Railroad North 89 degrees 56 minutes 41 seconds West a distance of 28.58 feet to a point in the centerline of a railroad spur line; thence North 35 degrees 18 minutes 32 seconds West a distance of 205.51 feet to a ½" rebar found; thence North 01 degrees 04 minutes 15 seconds East a distance of 272.97 feet to a 2" brass disc found; thence South 85 degrees 05 minutes 55 seconds West a distance of 56.44 feet to an iron pin set; thence North 05 degrees 10 minutes 29 seconds West a distance of 209.58 feet to a 2" brass disc found; thence South 88 degrees 22 minutes 36 seconds West a distance of 71.40 feet to a 2" brass disc found; thence North 00 degrees 19 minutes 08 seconds West a distance of 332.71 feet to an iron pin set on the southerly side of the right of way of Interstate 20 Limited Access Highway at the **TRUE POINT OF BEGINNING.**

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EXHIBIT "C"

USE RESTRICTIONS

Without intending to expand on Tenant's Permitted Use of the Premises, in no event may the Premises be used for any of the following uses:

1. Businesses that generate unsightliness noxious, offensive, unhealthy or harmful odors, fumes, dust, smoke, waste, glare or excessive light, noise, vibration or any other unlawful, or unreasonably objectionable use; provided that if any other tenant of the Property complains about Tenant's use of the Premises or the Land for any of the reasons identified above, Tenant shall take commercially reasonable efforts to mitigate any such activities to reasonably acceptable levels.

2. Drilling and exploring for and/or removal of oil, gas or other hydrocarbon substances

3. Adult entertainment or oriented businesses (e.g., gentlemen's clubs, adult videos or bookstore)

4. The sale or servicing of firearms, explosives, weapons of any kind or other similar dangerous products

5. Shooting range

6. Animal breeding or the sale of animals

7. Animal hospitals or veterinarian services

8. Kennels or dog pounds

9. Boarding and rescue (animals)

10. Stockyard or slaughter of animals

11. Tallow processing

12. Refining of petroleum or its products

13. Dance or night clubs

14. Laboratories utilizing Hazardous Substances; provided, however, that Landlord acknowledges that Tenant's use and storage of chemicals typically used in the conduct of Tenant's business for the Permitted Use which are used and stored in accordance with the terms of the Lease will not violate the foregoing restriction

15. Placement, transportation, holding, locating, disposal, manufacture, storage or dumping of Hazardous Substances; provided, however, that Landlord acknowledges that Tenant's use and storage of chemicals typically used in the conduct of Tenant's business for the Permitted Use which are used and stored in accordance with the terms of the Lease will not violate the foregoing restriction

16. Amusement center

17. Bingo or game parlor

18. Billiards parlor

19. Beauty parlor

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20. Recording studio or any related commercial music production use

21. Sale or distribution of graphically-explicit sexual images

22. Central laundry or dry cleaning plant

23. Funeral parlor or mortuary

24. Off-track betting establishment

25. Sale, display, rental, leasing, repair or storage of parts for automobiles, motorcycles, boats, trucks, trailers, recreational vehicles, mobile homes or other motor vehicles

26. Tattoo parlor

27. Church

28. Cannabis grow facility

29. Any uses that are in violation of the applicable zoning uses of the city or county applicable to the Land, Building and Premises

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EXHIBIT "D"

RULES AND REGULATIONS

1. Security. Landlord may from time to time adopt appropriate systems and procedures for the security or safety of the Building, any persons occupying, using, or entering the same, or any equipment, furnishings, or contents thereof, and Tenant shall comply with Landlord's reasonable requirements relative thereto.

2. Return of Keys. At the end of the Term, Tenant shall promptly return to Landlord all keys for the Building and Premises which are in the possession of Tenant. If Tenant fails to return keys, Landlord may retain $500 of Tenant's security deposit for locksmith work and administration.

3. Repair, Maintenance, Alterations, and Improvements. Tenant shall carry out Tenant's repair, maintenance, alterations, and improvements in the Premises only during times agreed to in advance by Landlord and in a manner which will not interfere with the rights of other tenants in the Building.

4. Water Fixtures. Tenant shall not use water fixtures for any purpose for which they are not intended, nor shall water be wasted by tampering with such fixtures. Any cost or damage resulting from such misuse by Tenant shall be paid for by Tenant.

5. Personal Use of Premises. The Premises shall not be used or permitted to be used for residential, lodging, or sleeping purposes.

6. Heavy Articles. Tenant shall not place in or move about the Premises without Landlord's prior written consent any safe or other heavy article which in Landlord's reasonable opinion may damage the Building, and Landlord may designate the location of any such heavy articles in the Premises. Notwithstanding the foregoing, Tenant shall be permitted to install any equipment used in conducting Tenant's business operations in compliance with the Permitted Use without prior approval, subject to Landlord's approval with respect to the appropriate placement of such equipment within the Premises.

7. Bicycles, Animals. Tenant shall not bring any animals (excepting only dogs trained to assist handicapped persons) into the Building, and shall not permit bicycles or other vehicles inside or on the sidewalks outside the Building except in areas designated from time to time by Landlord for such purposes; provided, however, that the foregoing shall not prohibit the use of forklifts in or around the Building.

8. Deliveries. Tenant shall ensure that deliveries of supplies, fixtures, equipment, furnishings, wares, and merchandise to the Premises are made through such entrances, elevators, and corridors as may from time to time be designated by Landlord, and shall promptly pay or cause to be paid to Landlord the cost of repairing any damage in the Building caused by any person making improper deliveries.

9. Solicitations. Landlord reserves the right to restrict or prohibit canvassing, soliciting, or peddling in the Building.

10. Food and Beverages. Except as is customary for general office purposes, or with Landlord's prior written consent and in accordance with arrangements approved by Landlord, Tenant shall not permit on the Premises the use of equipment for dispensing food or beverages or for the preparation, solicitation of orders for, sale, serving, or distribution of food or beverages.

11. Refuse. Tenant shall place all refuse in proper receptacles provided by Tenant at its expense in the Premises or in areas designated by Landlord for the Building and shall not place or allow its employees, agents or contractors to place any refuse on sidewalks and driveways outside the Building, and lobbies, corridors, stairwells, ducts, and shafts of the Building.

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12. Proper Conduct. Tenant shall not conduct itself in any manner which is inconsistent with the character of the Building as a first quality building or which will impair the comfort and convenience of other tenants in the Building.

13. Employees, Agents, and Invitees. In these Rules and Regulations, "Tenant" includes the employees, agents, invitees, and licensees of Tenant and others permitted by Tenant to use or occupy the Premises.

14. Parking. If Landlord designates tenant parking areas for the Building, each tenant shall park its vehicles and shall cause its employees and agents to park their vehicles only in such designated parking areas. Landlord may itself or through any agent designated for such purpose, make, administer, and enforce additional rules and regulations regarding parking by tenants and by their employees or agents, including, without limitation, rules and regulations permitting Landlord or such agent to move any vehicles improperly parked to the designated tenant or employee parking areas. No trucks, tractors, or similar vehicles can be parked anywhere other than in Tenant's own truck dock area. Tractor-trailers which must be unhooked or parked with dolly wheels beyond the concrete loading areas must use steel plates or wood blocks under the dolly wheels to prevent damage to the asphalt paving surfaces. No parking or storing of such trailers will be permitted in the parking areas or on streets adjacent thereto.

15. Traffic Flow. During periods of loading and unloading, Tenant shall not obstruct the traffic flow and loading and unloading areas of other tenants. All products, materials, or goods must be stored within Tenant's Premises and not in any exterior areas, including, but not limited to, exterior dock platforms, against the exterior of the Building, parking areas and driveway areas. Tenant agrees to keep the exterior of the Premises clean and free of nails, wood, pallets, packing materials, barrels and any other debris produced from their operation.

16. Waiver. Landlord may, upon request by any tenant, waive the compliance by such tenant of any of the rules and regulations provided that (i) no waiver shall be effective unless signed by Landlord or Landlord's authorized agent, (ii) any such waiver shall not relieve such tenant from the obligation to comply with such rule or regulation in the future unless expressly consented to by Landlord, and (iii) no waiver granted to any tenant shall relieve any other tenant from the obligation of complying with the rules and regulations unless such other tenant has received a similar waiver in writing from Landlord. Landlord is not responsible for other tenants' violations of these rules and regulations; provided, however, Landlord shall use good faith efforts to enforce the rules and regulations uniformly.

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EXHIBIT "E"

COMMENCEMENT DATE CONFIRMATION

Re: Lease dated _____, 2021 (the "Lease"), between Covington Industrial LLC, a Delaware limited liability company (the "Landlord"), and Battery Resourcers, Inc., a ____ corporation (the "Tenant"), regarding approximately 154,510 rentable square feet located at 9176 Industrial Drive Northeast, Covington, Georgia 30014 (the "Premises").

In accordance with the Lease, Landlord and Tenant hereby confirm that the Commencement Date of the Lease is _____, 202__, the Rent Commencement Date is _____, 202__ and that the Expiration Date of the Lease is _____, 20__.

Tenant hereby accepts the Premises as being in the condition required under the Lease.

Executed this _____ day of _____, 202__.

LANDLORD:

Covington Industrial LLC, a Delaware limited liability company

By:_____
Name:_____
Title:_____

TENANT:

Battery Resourcers, Inc., a _____ corporation

By:_____
Print Name:_____
Title:_____

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EXHIBIT "F"
TENANT'S APPROVED SIGNAGE

[To Be Provided By Tenant Along With Its Plans and Specifications For The Tenant Improvements]

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RIDER 1

SPECIAL STIPULATIONS

1. Options to Renew.

(a) Landlord hereby grants Tenant the option to renew (the "Renewal Options") the Term (not to include, for purposes of this Rider, the Renewal Term, as hereinafter defined) for two (2) additional terms of sixty (60) months each (the "Renewal Terms"), the first such Renewal Term, if exercised, commencing as of the date immediately following the expiration of the Term and the second such Renewal Term, if exercised, commencing as of the date immediately following the expiration of the first Renewal Term, such option to be subject to the covenants and conditions hereinafter set forth in this Rider.

(b) Tenant shall give Landlord written notice (the "Renewal Notice") of Tenant's election to exercise its Renewal Options not later than twelve (12) months prior to the expiration of the initial Term of the Lease or the expiration of the first Renewal Term, as applicable; provided that Tenant's failure to give the Renewal Notice by said date, whether due to Tenant's oversight or failure to cure any existing defaults or otherwise, shall render the Renewal Option null and void and of no further force or effect. Time is of the essence as to the delivery of the Renewal Notice.

(c) Tenant shall not be permitted to exercise the Renewal Options at any time during which Tenant is in default under the Lease, subject to applicable notice and grace periods (if any). The second Renewal Term can only be exercised by Tenant if Tenant has properly exercised the first Renewal Term.

(d) Tenant shall be deemed to have accepted the Premises in "as-is" condition as of the commencement of each of the Renewal Terms, subject to any other repair and maintenance obligations of Landlord under the Lease, it being understood and agreed that Landlord shall have no additional obligation to renovate or remodel the Premises or any portion of the Building as a result of Tenant's renewals of the Lease.

(e) The covenants and conditions of the Lease in force during the Term, as the same may be modified from time to time, shall continue to be in effect during the Renewal Terms, except as follows:

(i) The "Commencement Date" and the "Rent Commencement Date" for the purpose of the Lease shall both be the first day of the applicable Renewal Term.

(ii) The Base Rent for the first Lease Year of the Renewal Terms shall be an amount equal to the greater of i) three percent (3%) above the Base Rent amount in effect for the last Lease Year of the initial Term of the Lease or the last Lease Year of the first Renewal Term, as applicable, or ii) the then Fair Market Rental Value of the Premises. "Fair Market Rental Value" of the Premises shall be an amount determined in accordance with this Subsection 1(e)(ii) to be the effective rental rate then being offered by landlords to tenants desiring to lease comparable space, which is the size of the Premises, in the other comparable industrial buildings located in comparable projects in the Covington/Conyers, Georgia area, for a comparable term, with comparable on-site amenities and services, including heavy power for manufacturing equal to the amount of power available on a per foot basis as the Premises and with a comparable number of transformers and comparable parking rights and privileges and access to a railroad spur line. In the event Tenant submits a Renewal Notice as set forth above, Landlord shall, within thirty (30) days after Landlord's receipt of such Renewal Notice, provide Tenant notice of Landlord's proposed "Fair Market Rental Value" for the Premises for such Renewal Term, as reasonably determined by Landlord ("Landlord's Rent Proposal"). In no event shall Base Rent for any year of the Renewal Terms be less than the amount of Base Rent for the immediately prior Lease Year. Following Tenant's receipt of Landlord's Rent Proposal, Landlord and Tenant shall have forty-five (45) days to negotiate in good faith a mutual determination of the Fair Market Rental Value. If, after negotiating in good faith, Landlord and Tenant are unable to agree on the Fair Market Rental Value within said forty-five (45) day period, Tenant shall have ten (10) days to elect to withdraw its exercise of the option to extend, in which case this Lease will expire at the end of the then current base Term or Renewal Term, as the case may be. Within thirty (30) days following the mutual agreement of the determination of the Fair Market Rental Value in question,

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Landlord and Tenant shall execute an amendment to this Lease stating the Base Rent for the Renewal Term. The Base Rent for each Lease Year of the exercised Renewal Terms after the initial Lease Year thereof shall increase at the rate of three percent (3%) per year over the Base Rent in effect for the prior Lease Year.

(iii) Following expiration of the second Renewal Term, Tenant shall have no further right to renew or extend the Lease.

(f) Tenant's option to renew the Lease shall not be transferable by Tenant, except in conjunction with a permissible Transfer in accordance with the applicable provisions of the Lease.

2. Required Review of all Tenant Improvements, Tenant Alterations and Processes Involving Hazardous Substances.

During the Term of this Lease, Tenant shall provide plans and specifications for all Tenant Improvements, Tenant alterations and all processes involving Hazardous Substances to be used on the Premises and or the Land to Landlord in advance of Tenant's construction activities related to same. Landlord shall promptly review and notify Tenant of whether it approves of the submitted plans and specifications within thirty (30) days after Tenant's submission thereof. Such approval shall not be unreasonably withheld, conditioned or delayed. If Landlord disapproves of such plans and specifications, then Landlord shall notify Tenant thereof specifying in reasonable detail the reasons for such disapproval, in which case Tenant shall, within five (5) Business Days after such notice, revise such plans and specifications to address Landlord's objections and submit to Landlord for its review and approval. Landlord shall notify Tenant in writing whether it approves of the resubmitted plans and specifications within five (5) Business Days after its receipt thereof. This process shall be repeated until the plans and specifications have been finally approved by Landlord and Tenant. Landlord and Tenant shall act diligently and in good faith to expeditiously resolve any dispute between the parties related to Landlord's disapproval of any of the items submitted to Landlord for approval. Any work done in connection with the Tenant Improvements, Tenant alterations and all processes involving Hazardous Substances by Tenant shall be performed at the sole cost of Tenant by reputable contractors selected by Tenant, in a good and workmanlike manner, and in accordance with all applicable Legal Requirements, including but not limited to all Environmental Laws. Tenant shall pay to or reimburse Landlord for Landlord's fees and costs charged by Landlord's architect and or engineer and incurred in connection with their review of plans and inspection of any work done in connection with any Tenant Improvements, Tenant alterations and all processes involving Hazardous Substances. Such fees and costs shall be due and payable within thirty (30) days following written demand therefor by Landlord. Upon completion of the work or prior to the date any contractor or supplier has the right to file a lien, Tenant shall deliver to Landlord lien waivers or releases from all contractors, subcontractors and materialmen who performed work or supplied materials for any such work undertaken by Tenant. Landlord's review and approval of plans and specifications for any and all Tenant Improvements, Tenant alterations and all processes involving Hazardous Substances to be used on the Premises and or the Land shall not be deemed to be and shall not be confirmation, consent or approval that such plans and specification comply with any or all Laws, including but not limited to any and all Environmental Laws. Tenant shall be responsible for confirming that its plans and specifications for any and all Tenant Improvements, Tenant alterations and all processes involving Hazardous Substances to be used on the Premises and or the Land comply with all applicable Laws, including but not limited to any and all Environmental Laws.

3. Tenant Refinancing of Existing Loan.

(a) The Land is currently encumbered by a Deed to Secure Debt and Security Agreement dated October 30, 2017 from Landlord to Ameritas Life Insurance Corp ("Lender") recorded in Official Records Book 3627 at Page 449 of the Public Records of Newton County, Georgia (the "Deed of Trust"). The Deed of Trust secures a loan (the "Loan") evidenced by that certain promissory note from Landlord to Lender also dated October 30, 2017 in the original principal amount of $6,200,000.00 (the "Note") and other related documents (the Note, Deed of Trust and other Loan documents are collectively referred to herein as the "Loan Documents"). As discussed by the parties, the Landlord will be required to obtain the Lender's approval of the Lease and Tenant's intended use of the Premises. Within five (5) Business Days after the Effective Date of this Lease, Landlord shall request from Lender approval of this Lease and Tenant's intended use of the Premises.

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(b) In the event that the Lender does not approve of the Lease and/or Tenant's proposed use of the Premises then Tenant agrees that it shall either: (i) if the Lender will agree to assign the Loan and Loan Documents to Tenant, Tenant shall, within five (5) Business Days after Landlord's notice that the Lender will not approve of the Lease and or Tenant's use, pay to the Lender all principal, accrued interest and other fees and costs due to Lender under the Loan Documents and accept an assignment of the Loan and Loan Documents from Lender and enter into a modification of the Loan Documents with Landlord consistent with the terms and conditions identified in Subsection 3(c) below, or (ii) if the Lender will not agree to assign the Loan and Loan Documents to Tenant, Tenant shall, within five (5) Business Days after Landlord's notice that the Lender will not approve of the Lease and or Tenant's use, pay to the Lender all principal, accrued interest and other fees and costs due to Lender under the Loan Documents and enter into a new loan with Landlord on terms and conditions reasonably acceptable to Landlord and Tenant, including but not limited to those identified in Subsection 3(d) below.

(c) If the Lender will agree to assign the Loan and Loan Documents to Tenant, then upon the assignment of the Loan and Loan Documents to Tenant, Tenant and Landlord shall enter into an amendment of the Loan Documents (or such individual Loan Documents as appropriate) amending them with the following terms and conditions: (i) the outstanding principal balance of the Loan shall be modified to equal all amounts paid by Tenant to the Lender for the assignment of the Loan to Tenant including any prepayment or yield maintenance fees and any penalties; (ii) the interest rate under the Loan shall be six percent (6%) per annum for the first twelve (12) months of the Loan and eight percent (8%) per annum for the next twelve (12) months of the Loan; (iii) during the term of the Loan payments will be interest only with the full principal amount due upon pay-off or refinancing of the Loan; (iv) the Maturity Date of the Loan (as defined in the Note) shall be modified to be the date that is twenty-four (24) months after the date of the Loan modification; (v) the Loan can be prepaid at any time without any prepayment penalty or yield maintenance requirements; (vi) Tenant shall agree not to assign the Loan or Loan documents during the term of the Loan unless requested by Landlord to do so for a future refinancing of the Loan; (vii) neither Landlord nor any of Landlord's managers or other affiliated parties will be required to guaranty the Loan; (viii) Tenant shall not have the right to review, approve or disapprove of any of Landlord's actions with respect to any other current or future tenant of the Building or the Land; (ix) Landlord will not have to escrow annual real estate taxes and insurance payments with Tenant; (x) any covenants, obligations, indemnities and requirements in the Loan Documents that may otherwise be applicable to the Tenant's storage, use, handling and disposal of Hazardous Substances shall not apply to Tenant's storage, use, handling and disposal of Hazardous Substances; and (xi) that this Lease shall be deemed to be a Permitted Exception under the Loan Documents.

(d) If the Lender will not agree to assign the Loan and Loan Documents to Tenant, then upon the prepayment of the Loan by Tenant, Tenant and Landlord shall enter into a new promissory note, deed of trust and other appropriate loan documents to evidence a new loan from Tenant to Landlord (the "New Loan") provided such New Loan shall have the following terms and conditions: (i) the outstanding principal balance of the New Loan shall be equal to all amounts paid by Tenant to the Lender to payoff and satisfy the Loan including any prepayment or yield maintenance fees and any penalties; (ii) the interest rate under the New Loan shall be six percent (6%) per annum for the first twelve (12) months of the New Loan and eight percent (8%) per annum for the next twelve (12) months of the New Loan; (iii) during the term of the New Loan payments will be interest only with the full principal amount due upon pay-off or refinancing of the New Loan; (iv) the maturity date of the New Loan shall be the date that is twenty-four (24) months after the date of the New Loan; (v) the New Loan can be prepaid at any time without any prepayment penalty or yield maintenance requirements; (vi) Tenant shall agree not to assign the New Loan during the term of the New Loan unless requested by Landlord to do so for a future refinancing of the New Loan; (vii) neither Landlord nor any of Landlord's managers or other affiliated parties will be required to guaranty the New Loan; (viii) Tenant shall not have the right to review, approve or disapprove of any of Landlord's actions with respect to any other current or future tenant of the Building or the Land; (ix) Landlord will not have to escrow annual real estate taxes and insurance payments with Tenant; (x) any covenants, obligations, indemnities and requirements in the Loan Documents that may otherwise be applicable to the Tenant's storage, use, handling and disposal of Hazardous Substances shall not apply to Tenant's storage, use, handling and disposal of Hazardous Substances; and (xi) this Lease shall be deemed to be a Permitted Exception under the New Loan.

(e) Tenant agrees that during the term of the Loan, if assigned to Tenant, or the New Loan, Tenant shall reasonably cooperate with Landlord in Landlord's efforts to refinance the Loan or New Loan.

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(f) To avoid a default under the Loan Documents, Tenant agrees that it shall not make any alterations to the Premises, Building or the Land and shall not make any use of the Premises, Building or Land until either (i) Lender has approved of the Lease and Tenant's intended use of the Premises or (ii) Tenant has (a) obtained an assignment of the Loan and Loan Documents from Lender and entered into a modification of the Loan Documents with Landlord as provided herein or (b) paid to Lender the outstanding principal, accrued interest and any other fees and costs due under the Loan and entered into the New Loan with Landlord on terms and conditions acceptable to Landlord, including but not limited to those identified above for the New Loan.

(g) If the Lender does not approve of the Lease and or the Tenant's intended use of the Premises and the Landlord and Tenant have not completed either (i) the assignment and modification of the Loan or (ii) the completion and execution of the documents for the New Loan within twenty (20) Business Days of the Effective Date of this Lease, then Landlord may elect to terminate this Lease by delivering a notice of termination to the Tenant and, if terminated by Landlord, this Lease shall be of no further force or effect.

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SCHEDULE 1

TENANT IMPROVEMENTS

Battery Resourcers, Covington Facility
Environmental and Safety Compliance Plan

Battery Resourcers Inc., a supplier of premium battery materials, is planning to expand its supply chain for sustainably sourced battery materials. A key element of that plan is the addition of 3 recovery lines to reprocess both battery manufacturing scrap and end-of-life lithium battery cells. SSOE Group ("SSOE") in consultation with Battery Resourcers, developed this plan to ensure safe operation of and minimal environmental impact from these operations, based on a proposed installation at 9176 Industrial Drive in Covington.

1. Recovery Equipment

The three recovery lines process different feedstocks and recovery different battery materials:

- Dry Shredding – Reduces battery manufacturing scrap to granular ("black sand") material & separates for further processing. This is limited to manufacturing scraps never wetted with battery solvent.
- Wet Shredding – Reduces batteries to granular ("black sand") material & separates for further processing, including removal of battery solvent for sale.
- Metals Extraction – Removes metals from dried granular feed ("black sand") using liquid leaching and extraction processes and separates those metals into battery grade raw materials.

2. Fire and Chemical Safety

Key elements of the building will be upgraded to allow for additional protection with the installation of these recovery processes and storage of the chemicals needed to perform the metals separations

- Upgraded fire water sprinkler coverage in chemical process/storage areas.
- Installation of H-4 chemical room for diluted corrosive chemicals feeding the process.
- Separation of recovered battery solvent tanks from the rest of Wet Shredding.
- Placement of concentrated chemical feed tanks external to the building in outside containment area.

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- Installation of collection trenches and tank for fire water and/or chemical spill events.
- Added egress doors to ensure adequate egress distances.
- Temperature monitoring and fire suppression systems for solvent recovery equipment.
- Containment curbs inside to contain spills and separate incompatible chemicals.
- Additional separation walls and fire doors as needed.
- Chemical delivery truck containment facilities to contain spills.
- Safety Shower and Eye Wash (SSEW) stations throughout of manufacturing facility.

3. Stormwater/Runoff

All applicable NPDES (National Pollutant Discharge Elimination System) standards will be followed, especially with respect to exterior construction, such as tank-farm and interior containment.

- CGP (Construction Storm Water General Permit)
- SWPPP (Storm Water Pollution Prevention Plan

4. Air Permitting

The recovery lines are designed to recover the maximum amount of materials with minimum waste. In reviewing all facility support equipment and recovery line equipment, we have identified the following air emissions from normal operations:

- Dust Collection Vent – Typically 99.9% efficient. Recovered dust is recovered for sale.
- Packaged gas boiler vent – Small unit with low NOx burners
- Aqueous chemical storage vents – low VOC and acid vapor flow from tank breathing
- Regenerative Thermal Oxidizer (RTO) vent – battery solvent condensers recovery > 99% of battery solvent and a gas washer removes > 98% of fluorine compounds before destruction of the remaining solvent in the vent gas by the RTO.

All 3 recovery processes are low pressure and low temperature. In the case of equipment failure, emergency vents exhaust to the roof to allow adequate dispersion of any vapors.

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5. Wastewater

We have also reviewed the water use and wastewater needs for the building support and recovery processes and identified the following streams from normal operations:

Concentrated Salts

SSOE is working with Battery Resourcers to design wastewater treatment systems to concentrate and remove concentrated, non-hazardous salts for resale or off-site disposal.

Dilute Wastewater

This includes multiple utility and process wastes compatible with discharge to the Covington Water Reclamation Facility including:

- Cooling Tower (CT) blowdown
- Packaged boiler blowdown
- Vent gas vapor scrubber blowdown
- City water purification (RO/DI) reject/blowdown
- Salt concentrate condensate recovery blowdown

6. By Products

This facility will produce non-hazardous byproducts that are sold into the metals recycling market as well as the steel production industry. These include:

- Carbon black / graphite
- Iron (Fe) & Aluminum (Al) mixed metal

7. Process Safety Management (PSM)/Hazardous Substances Planning/Accidental Release Prevention

Two Chemicals used in the Leaching and Separation processes (37% HCL solution & 31% H2O2) require additional planning and monitoring when stored and used in large quantities. SSOE is experienced in this process and is preparing the appropriate documents and summaries for permit approvals.

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SCHEDULE 3.4

LISTS OF HAZARDOUS SUBSTANCES AND HAZARDOUS SUBSTANCE EQUIPMENT

A. LIST OF HAZARDOUS SUBSTANCES

1. Hydrogen peroxide
2. Hydrochloric acid
3. Sulfuric acid
4. Sodium carbonate
5. Sodium phosphate
6. Sodium hydroxide
7. Sodium metabisulfite
8. C272 (CAS#83411-71-6)
9. P507 (CAS#14802-03-0)
10. P204 (CAS#298-07-7)
11. Nickel Sulfate

B. LIST OF HAZARDOUS SUBSTANCE EQUIPMENT

The hazardous chemicals listed are used in the metals extraction process. Equipment in the process consists of raw material tanks, distribution piping, process tanks, process filters, and process piping.

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Rider 2

Contract Agreement Rider

1. **Indemnity.** In consideration of the Contract Agreement, and to the fullest extent permitted by law, the Contractor shall defend and shall indemnify, and hold harmless, at Contractor's sole expense, the Owner, and the officers, directors, agents, employees, successors and assigns of each of them from and against all liability or claimed liability for bodily injury or death to any person(s), and for any and all property damage, including all reasonable attorney fees, disbursements and related costs, arising out of or resulting from the Work covered by this Contract Agreement to the extent such Work was performed by or contracted through the Contractor or by anyone for whose acts the Contractor may be held liable, excluding only liability created by the sole and exclusive negligence of the Indemnified Parties. This indemnity agreement shall survive the completion of the work specified in the Contract Agreement.

2. **Insurance.** The Contractor shall procure and shall maintain until final acceptance of the Work, such insurance as will protect the Contractor, all entities the Contractor is required to indemnify and hold harmless, the Owner, and their officers, directors, agents and employees, for claims arising out of or resulting from Contractor's Work under this Contract Agreement, whether performed by the Contractor, or by anyone directly or indirectly employed by Contractor, or by anyone for whose acts Contractor may be liable. Such insurance shall be provided by an insurance carrier rated "A" or better by A.M. Best and lawfully authorized to do business in the jurisdiction where the Work is being performed.

2.1 The Contractor's insurance shall include contractual liability coverage and additional insured coverage for the benefit of the Owner and anyone else the Owner is required to name (as set forth in the schedule below), and shall specifically include coverage for completed operations. The insurance required to be carried by the Contractor and any Subcontractors shall be PRIMARY AND NON-CONTRIBUTORY. With respect to each type of insurance specified hereunder, the Owners insurance shall be excess to Contractor's insurance.

2.2 The Contractor warrants that the coverage provided under the commercial general liability policy shall be written on an "occurrence" basis with coverage as broad as the Insurance Service Office Inc.'s form and that no policy provisions shall restrict, reduce, limit or otherwise impair contractual liability coverage or Owner's (or others as required and as listed below) status as additional insured.

2.3 Not less than five (5) days prior to commencement of the Work and until final acceptance of the Work, Contractor shall provide the Owner with certificate(s) of insurance evidencing the required insurance coverage with the limits stated below or elsewhere in the Contract documents. The Contractor shall provide the Owner thirty (30) days written notice of a change or cancellation in coverage. In addition, all insurance policies shall state that the insurer will provide Contractor thirty (30) days prior written notice of a change or cancellation in coverage.

2.4 Unless otherwise stipulated in the Contract Agreement, the Contractor shall maintain no less than the limits specified for each of the following insurance coverages:

a) Commercial General Liability using an industry standard unmodified coverage form including contractual liability & products/completed operations, with minimum limits of $5,000,000 each occurrence, $10,000,000 aggregate with either per project or per location endorsement for property damage and bodily injury; the products/completed operations coverage shall remain in effect for at least two (2) years from the date the work is substantially completed and, in addition, $25,000,000 of Excess or Umbrella Liability Insurance, per location for an aggregate limit, which Excess or Umbrella Liability Insurance shall be primary and non-contributory

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b) Comprehensive Automobile Liability insurance with minimum limits of $5,000,000 combined single limit each accident, including bodily injury and property damage liability.

c) Workers' Compensation and disability benefit insurance including Occupational Disease with the following Employer's Liability minimum limits, which required limits may be satisfied in combination of both Primary and Excess or Umbrella Liability Insurance:

Bodily injury by disease per person	$5,000,000
Bodily injury by accident policy limit	$5,000,000
Bodily injury by disease policy limit	$5,000,000

2.5 The Contractor and his insurer shall waive all rights of subrogation against the Owner and any other indemnified party, except as respects Worker's Compensation insurance.

2.6 If Contractor engages a Subcontractor, it is the affirmative duty of the Contractor to ensure that any Subcontractor complies with the insurance and indemnification requirements of this Contract Agreement.

List of Indemnified Parties and Additional Insureds:

Covington Industrial LLC, a Delaware limited liability company
Underhill Properties LLC
Owner's lender, to be identified by Owner

Acknowledged by:

Owner _____

Signature: _____
Name: _____
Title: _____
Date: _____

Contractor _____

Signature: _____
Name: _____
Title: _____
Date: _____

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EXHIBIT C

[Filed by Agreement]

FIRST AMENDMENT TO LEASE AGREEMENT

THIS FIRST AMENDMENT TO LEASE AGREEMENT ("**First Amendment**"), is effective as of January 7, 2025 ("**First Amendment Effective Date**"), by and between COVINGTON INDUSTRIAL LLC, a Delaware limited liability company ("**Landlord**"), and ASCEND ELEMENTS, INC. f/k/a Battery Resources, Inc., a Delaware corporation ("**Tenant**").

RECITALS:

A. WHEREAS, Landlord and Tenant are parties to that certain Lease Agreement dated December 31, 2021 ("**Lease**"), whereby Landlord leases to Tenant, and Tenant leases from Landlord, the Premises, as more particularly described in the Lease;

B. WHEREAS, the Commencement Date of the Lease occurred on January 1, 2022;

C. WHEREAS, Tenant has made material alterations to the Premises and additional areas of the Land that were not identified to the Landlord prior to the installation of such alterations by Tenant as required under Paragraph 21 of the Lease Summary and Section 5.3 of the Lease (collectively, the "**Unreviewed Alterations**");

D. WHEREAS, Landlord will be required to incur significantly greater costs than anticipated in the Lease and provided for though the current Security Deposit to remove the Unreviewed Alterations, if required to do so at the termination of the Lease;

E. WHEREAS, Tenant is occupying and has installed and/or constructed portions of the Unreviewed Alternations in those certain outdoor portions of the Land consisting of approximately 46,465 exterior square feet more specifically described in Exhibit A attached hereto (the "**Additional Outdoor Space**"), which such areas as of the date hereof do not form part of the Premises leased to Tenant;

F. WHEREAS, Paragraph 21 of the Lease Summary provides: "Tenant Improvements: Those improvements required or desired by Tenant upon and to operate the Premises for the Permitted Use as identified on Schedule 1 attached hereto. Tenant shall also comply with the review and approval provisions identified in Section 2 of Rider 1 prior to undertaking any Tenant Improvements." and Section 5.3 of the Lease required Tenant to identify the "exact scope, size, location and methods of installation" of the Tenant Improvements identified in Schedule 1 to the Lease for Landlord's review and approval prior to installation but Tenant has not done so and some or all of those improvements may constitute a part of the Unreviewed Alterations; and

G. WHEREAS, Tenants has requested and Landlord has agreed to add the Additional Outdoor Space as an area leased to Tenant pursuant to the Lease and accept the Unreviewed Alterations, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

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1. Capitalized Terms and Recitals. Any capitalized terms used in this First Amendment and not otherwise defined herein shall have the meanings ascribed to them in the Lease. The foregoing recitals are incorporated herein by reference and Tenant warrants that the same are true and correct.

2. Additional Outdoor Space. Landlord hereby leases to Tenant the Additional Outdoor Space as such space is depicted on Exhibit A attached hereto. The Exhibit A attached hereto hereby replaces the Exhibit A attached to the Lease. Upon payment by Tenant to Landlord of (i) the Additional Outdoor Space Accrued Base Rent set forth in Section 4 below, (ii) the additional Security Deposit amount set forth in Section 5 below, (iii) the Alterations Fee set forth in Section 7 below, and (iv) the First Amendment Legal Fees set forth in Section 11 below, the Additional Outdoor Space shall be added to the Premises and, going forward, the term "**Premises**" shall (except for the Additional Outdoor Space Base Rent and renewal options identified below) mean the initial Premises identified in the Lease plus the Additional Outdoor Space identified in this Amendment. The Additional Outdoor Space is leased from Landlord to Tenant in its "as-is" condition as of the date initially occupied by Tenant and shall be subject to all of the terms and conditions of the Lease. For avoidance of doubt, the Additional Outdoor Space is separate and apart from those certain exterior areas identified as "chemical delivery and storage area" and "N2 generation and air handling equipment area" in the original Exhibit A of the Lease and on the Exhibit A attached hereto, which currently form part of the Premises. Consistent with Section 3.2 of the Lease, Tenant shall keep the Additional Outdoor Space in compliance with all Legal Requirements, the ADA and all Environmental Laws. Tenant shall, within sixty (60) days of the First Amendment Effective Date, enclose the entire Additional Outdoor Space with fencing of a quality that will protect Tenant's improvements constructed or placed in such areas. Tenant shall not enclose all or any portions of the Additional Outdoor Space within any walls or roof material without the Landlord's prior written consent which may be granted or withheld in Landlord's sole discretion. Other than within the Additional Outdoor Space and the areas identified on Exhibit A as "N2 generating and Air handling equipment area" and the "Chemical delivery and storage area" Tenant shall not place or store, whether temporarily or permanently, any equipment, materials, products or personal property of Tenant on any portion of the Land outside of the Building without Landlord's prior written approval.

3. Additional Outdoor Space Base Rent. Throughout the Term of the Lease, in addition to the rent due for the Premises, Tenant agrees to pay Landlord the following annual Base Rent for the Additional Outdoor Space (the "**Additional Outdoor Space Base Rent**"), together with the applicable sales tax, payable in equal monthly installments, in advance, on the first (1st) day of each month during the Term. The Additional Outdoor Space Base Rent payable during the Term shall be as follows:

Lease Year	Annual Additional Outdoor Space Base Rent Per Square Foot	Annual Base Rent
2	$3.00	$104,546.25*
3	$3.09	$143,576.85
4	$3.18	$147,884.16
5	$3.28	$152,320.68
6	$3.38	$156,890.30
7	$3.48	$161,597.01

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* This is a partial Lease Year composed of nine (9) calendar months for the period commencing July 1, 2023 through March 31, 2024.

4. Accrued Additional Outdoor Space Base Rent. In order to bring the Additional Outdoor Space Base Rent current through the December 31, 2024, Tenant shall pay to Landlord the Additional Outdoor Space Base Rent for the period commencing on July 1, 2023 through and including December 31, 2024, in the amount of $212,228.89 (the "**Additional Outdoor Space Accrued Base Rent**") on or before two (2) Business Days after the First Amendment Effective Date. For avoidance of doubt the foregoing $212,228.89 amount is based on the sum of (a) $104,546.25 due for the period commencing July 1, 2023 through March 31, 2024 plus (b) $107,682.64 due for the period commencing on April 1, 2024 through December 31, 2024.

5. Security Deposit. As of the date hereof, Landlord is holding a cash Security Deposit in the amount of $415,911.00. Landlord and Tenant hereby agreed that the amount of the Security Deposit identified in Paragraph 16 of the Lease Summary shall be increased to be a total of $2,500,000.00 consisting of (i) the $415,911.00 currently held by Landlord pursuant to Paragraph 16 of the Lease Summary, (ii) the Tenant Improvement Allowance in the amount of $154,041.00, as set forth in Paragraph 20 of the Lease Summary, shall be held and disbursed by Landlord as a part of the Security Deposit, and (iii) on or before two (2) Business Days after the First Amendment Effective Date, Tenant shall deposit with Landlord a letter of credit ("**Letter**") in the amount of $1,930,048.00 pursuant to the requirements identified in the Letter of Credit Requirements attached hereto and made a part hereof as Exhibit "G". The Security Deposit, as increased above, shall be held, drawn upon, reduced and/or released in accordance with Section 2.6 of the Lease and the Letter of Credit Requirements attached hereto and made a part hereof as Exhibit "G". Notwithstanding the above, in the event that (x) Tenant has an initial public offering of its stock on a public stock market located in the United States or (y) Tenant records Net Income exceeding $50,000,000.00 each year for two (2) consecutive years, then the amount of the Letter may be reduced by $750,000.00 from $1,930,048.00 to $1,180,048.00 for the remaining term of the Lease, as the same may be extended. After such reduction, the total amount of the Security Deposit shall be $1,750,000.00. For purposes of this Section, the term "Net Income" shall mean that Tenant's income exceeds its expenses as determined by generally accepted accounting principles. The Landlord and Tenant hereby agree that the form of the Letter attached hereto as Exhibit "G-1" is acceptable for purposes of meeting the requirements of Exhibit "G".

6. Tenant's Unreviewed Alterations. Tenant represents and warrants to Landlord that (i) all of the Unreviewed Alterations have been performed in a good and workmanlike manner, and in accordance with all applicable Legal Requirements, and (ii) there are no contractors, subcontractors, or any other third parties with lien rights against any portion of the Building or the Land or against Landlord's or Tenant's interest therein.

7. Alterations Fee. In accordance with Section 5.3 of the Lease, Tenant and Landlord have agreed that Tenant shall pay to Landlord an agreed upon fee in the amount of $750,000.00 (the "**Alterations Fee**") on or before two (2) Business Days after the First Amendment Effective Date. The foregoing stipulated amount of the Alterations Fee shall only relate to the alterations which have been constructed by Tenant as of the First Amendment Effective Date. The fifth (5th) sentence of Section 5.3 is hereby amended to read: "Tenant shall also pay to Landlord or Landlord's designee a

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fee for the supervision of any and all such alterations, other than Minor Alterations, made by or on behalf of Tenant, in the amount of two and one/half percent (2.5%) of all hard costs and soft costs incurred by Tenant in connection therewith."

8. Additional Outdoor Space Renewal Options. The Renewal Options set forth in Rider 1 to the Lease shall apply to the Additional Outdoor Space, provided that the Additional Outdoor Space Base Rent due for the Additional Outdoor Space for the first year of the Renewal Terms shall be at a per square foot rate that is the higher of (i) one half (1/2) the Base Rent due for the Premises for the first year of the Renewal Terms or (ii) One Hundred and Three Percent (103%) of the Additional Outdoor Space Base Rent due during the immediately preceding Lease Year. The Additional Outdoor Space Base Rent for each Lease Year of the exercised Renewal Terms after the initial Lease Year thereof shall increase at the rate of three percent (3%) per year over the Base Rent in effect for the prior Lease Year. Notwithstanding the foregoing or anything to the contrary in the Lease, the Tenant shall not have the right to exercise the Renewal Options for the Additional Outdoor Space unless it is also exercising each of the Renewals Options as to the Premises.

9. Tenant's Proportionate Share. Note that because the Additional Outdoor Space does not affect the square footage of the Building within which the Premises are located, the Tenant's Proportionate Share shall not be increased from the current 46.20% amount.

10. Tenant Improvement Allowance. As provided in Section 5 above, the Tenant Improvement Allowance in the amount of $154,041.00, as set forth in the Lease Summary, shall be held and disbursed by Landlord as a part of the Security Deposit.

11. Landlord's Legal Fees. On or before two (2) Business Days after the First Amendment Effective Date, Tenant shall reimburse Landlord for Landlord's legal fees incurred in connection with the negotiations concerning Tenant's non-compliance with the Lease terms and the preparation and negotiation of this First Amendment in the amount of $25,000.00. (the "**First Amendment Legal Fees**").

12. Insurance. Together with the execution of this First Amendment, Tenant shall deliver to Landlord a full copy of the current insurance policy(s) insuring the Premises and the Additional Outdoor Space in PDF format as the evidence of insurance required under Article VI of the Lease. During the remaining Term of the Lease, at the request of Landlord, and from time to time upon renewal of such coverage, Tenant shall also deliver to Landlord a full copy of the then current insurance policy(s) insuring the Premises and the Additional Outdoor Space in PDF format as the evidence of insurance required under Article VI of the Lease. Landlord shall maintain the confidentiality of the evidence of insurance, and shall not, without the Tenant's prior written consent, disclose or permit the disclosure of any such information to any other person other than those who require such knowledge, such as the Landlord's agents, employees, members, partners, consultants, accountants, lenders and attorneys and who are notified of the confidentiality of such information.

13. Conflict. In the event of any conflict between the terms of this First Amendment and the other terms and conditions of the Lease, the terms of this First Amendment shall control. Except as specifically modified, amended or supplemented by the provisions of this First Amendment, all of the terms, obligations and conditions of the Lease are hereby ratified by Landlord and Tenant, remain

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unmodified and continue in full force and effect. Effective as of the First Amendment Effective Date, this First Amendment will be deemed part of the defined term Lease.

14. No Rule of Construction. Landlord and Tenant have each been represented by counsel in the negotiation and preparation of this First Amendment. Therefore, this First Amendment shall be deemed to be drafted and negotiated collectively by Landlord and Tenant, and no rule of construction shall be invoked respecting the authorship of this First Amendment.

15. Entire Agreement. This First Amendment sets forth the entire agreement with respect to the matters set forth herein. No modification, supplementation, or amendment to the Lease or this First Amendment shall be effective unless made by written agreement between Landlord and Tenant.

16. Governing Law. This First Amendment shall be construed in accordance with and governed by the laws of the State of Georgia.

17. Authority. To the extent required, Tenant has obtained all necessary authorization and consent to amend the Lease. Each party represents to the other that it has full power and authority to execute this First Amendment

18. Brokers. Section 14.12 of the Lease is hereby amended to provide that, as to any of the terms or conditions of this First Amendment, including but not limited to the addition of the Additional Outdoor Space or the payment of the Additional Outdoor Space Base Rent and or the Additional Outdoor Space Accrued Base Rent, Landlord shall pay any commissions or brokerage fees due to Landlord's Broker or any third party broker that represented Landlord pursuant to any agreement between Landlord and Landlord's Broker or such third party and Tenant shall pay any commissions or brokerage fees due to Tenant's Broker or any third party broker that represented Tenant pursuant to any agreement between Tenant and Tenant's Broker or such third party.

19. Waiver of Defaults. Upon payment by Tenant to Landlord of (i) the Additional Outdoor Space Accrued Base Rent set forth in Section 4 hereof, (ii) the additional Security Deposit amount set forth in Section 5 hereof, including, but not limited to, delivery of the letter of credit required thereunder, and (iii) the Alterations Fee set forth in Section 7 hereof, and the delivery to Landlord of the insurance policy(s) as provided in Section 12 hereof, any prior defaults that were known or should have been known by the Landlord as of December 15, 2024 are hereby waived by Landlord; provided, however, such waiver does not extend to any violations of Legal Requirements, including, but not limited to, violations of Environmental Laws.

20. Miscellaneous. This First Amendment may be executed in any number of counterparts and by the different parties to this First Amendment on separate counterparts, each of which, when so executed, (a) will be deemed an original, but all such counterparts will constitute one and the same First Amendment, and (b) will be deemed part of the "Lease". Any signature delivered by a party by facsimile transmission or electronic mail will be deemed to be an original signature.

[SIGNATURE PAGES FOLLOW]

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IN WITNESS WHEREOF, each of the respective parties have duly executed this First Amendment, which First Amendment shall be effective as of the First Amendment Effective Date.

LANDLORD:

COVINGTON INDUSTRIAL LLC,
a Delaware limited liability company

By: Covington Industrial MM LLC, its Manager

By: DocuSigned by: Thomas L. Brodie C9181E298CDC4B3...
Name:
Title: Managing Member

TENANT:

ASCEND ELEMENTS, INC.,
a Delaware corporation

By: DocuSigned by: 37EC7AE24B9243C...
Name:
Title: CFO

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Docusign Envelope ID: 3B438613-3CB5-4A48-BD05-E2C082AD1F80

EXHIBIT A

PREMISES AND ADDITIONAL OUTDOOR AREA

(attached)

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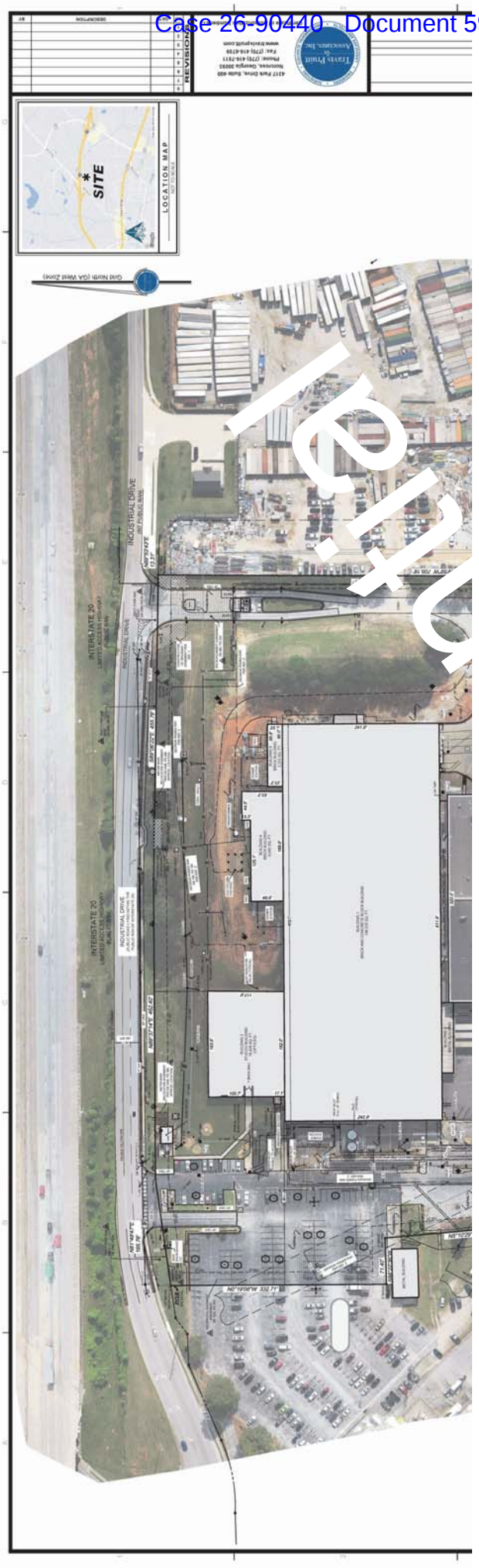

LOCATION MAP
SITE
INTERSTATE 20
INDUSTRIAL DRIVE

EXHIBIT D

MASTER AGREEMENT CONSTRUCTION SERVICES

AGREEMENT between **Ascend Elements Inc** ("Owner") and **AmCon Industrial** ("Contractor") dated as of **March 12, 2024**("Master Agreement Effective Date").

1. SCOPE OF WORK, GENERALLY

1.1. "Work" Generally

1.1.1. The "Work" included in the Master Agreement consists, generally, of the construction, installation, and related services required by the Master Agreement, whether completed or partly completed, and includes provision of all project management, supervision, scheduling, coordination, quality control, labor, materials, equipment, tools, and other services and things required to properly complete the Work, as outlined in previous work orders and the individual project documents Exhibit A associated with each scope of work to be performed, in accordance with the Master Agreement Documents. Subject only to the express exceptions stated in **Exhibit A**, the Work will also include providing all temporary services and utilities, and obtaining governmental approvals and permits required for the Work. The Work will be carried out as part of the Owner's overall projects to complete the Facility identified in **Exhibit A**. This description is a general summary only, and is supplemented and qualified by the remaining provisions of the Master Agreement Documents. Existing Open Work Orders, listed below shall be subject to this Master Agreement , but will not require any Work Order revision under the new Exhibit A format. In the event f any conflict between any previous agreement and this Agreement, the terms and conditions of this Agreement shall prevail.

Existing Open Work Orders

WO 1 – Lithium Extraction
WO 2 – Wet Shredding Line
WO 3 – Wastewater Treatment
WO 4 – Rental Equipment
WO 7 – General Facilities
WO 8 – Management Personnel
WO 14 – pCAM Design/Build

All work performed under time and materials shall be subject to the rates set forth in Exhibit P, attached hereto.

1.1.2. The Contractor will obtain and maintain any contractor's or other licenses that may be required in the state in which the Facility is located. To the extent required by applicable Laws, the Contractor shall also obtain all permits and other governmental authorizations necessary for its Work, except those permits or authorizations which **Exhibit A** states will be obtained by others. The Contractor shall not begin Work without all legally required licenses, permits, and governmental authorizations. The "Laws" are all applicable laws, codes, regulations, ordinances, and statutory requirements of any governmental authority having jurisdiction over the Work of the Facility, including, without limitation, those laws relating to building design, construction, use or occupancy,

Contractor: _____
Owner: _____

payment of subcontractors or suppliers, employees, health and safety, and protection of the environment.

1.1.3. The Contractor shall use its best skill and attention to complete the Work so that it is in strict accordance with the requirements of the Master Agreement.

1.1.4. The Work shall be carried out in a good and workmanlike manner, in accordance with sound modern practices of the applicable trades. At the Owner's request or as required by the Master agreement Documents, the Contractor shall deliver to the Owner reasonable evidence of the kind and quality of materials incorporated into the Work.

1.1.5. If the detailed design of any portion of the Work is to be provided by the Contractor to meet performance and other specifications stated in the Master Agreement Documents, the Contractor shall have the detailed design prepared and sealed by a qualified Professional Engineer licensed in the state in which the Facility is located, unless the parties have agreed otherwise, in writing. The Engineer and/or Owner will review Submittals with respect to Work designed by the Contractor only to ascertain that the requirements of this Subparagraph have been met and for overall compliance with the Master Agreement Documents. (The "Engineer" is the design professional for the project, identified in **Exhibit A**. The term "Submittal" is defined in Subparagraph 1.6.1. Such a review will not include detailed checking of the design details or calculations, and will be for the sole benefit of the Owner. The Contractor and its design professional will remain responsible for the design's compliance with the Contract requirements.

Commented [CP1]: What if contractor is not internally providing design or hiring the design team. As it stands on this project, SSOE is Engineer of record, who is contracted directly by Ascend. AMCON has no control or liability to their design contractually.

Commented [JB2R1]: This only applies when the AE is subcontracted through you.

1.2. "Master Agreement" and "Master Agreement Documents" Defined

The Master Agreement consists of the following "Master Agreement Documents" only: this Agreement, its Exhibits, the Drawings, Technical Specifications (performance and/or prescriptive), any other identified Master Agreement Documents listed in **Exhibit A**, and such additional documents as are incorporated by reference into the listed Master Agreement Documents. The term "Master Agreement" means the parties' complete and integrated agreement, as expressed by the Master Agreement Documents. The Master Agreement supersedes any prior or contemporaneous agreements, negotiations, discussions, or understandings. Master Agreement Documents within the Exhibits will also serve as Individual Project Scope of work Documents.

1.3. Interpretation/Order of Precedence

Change Directives and Change Orders take precedence over the documents that have been issued to modify. To the extent reasonably possible, all of the other Master Agreement Documents shall be read to be complementary, and to constitute a single, consistent agreement. If there is a conflict among the provisions, the Master Agreement Documents will be given the following order of precedence: (1) the Master Agreement, (2) the Owner's performance-based Technical Specifications or requirements identified in **Exhibit A**, (3) other Technical Specifications and the Drawings and other requirements listed in **Exhibit A**, (4) the remaining Exhibits, and (5) other Master Agreement Documents. In executing the Master Agreement, the Contractor represents that it has carefully examined the Master Agreement Documents and has confirmed that any prescriptive Technical Specifications are consistent with the performance-based Technical Specifications in accordance with which the Contractor will provide detailed design on an individual project basis.

Contractor: _____
Owner: _____

1.4. Pre-Project Site Examination/Review of Site-Related Documents

By entering into the Project Scope of work (SOW) Forms on an individual project basis, the Contractor represents that it has conducted a thorough visual examination of the Facility site to ascertain its nature and location and other conditions relevant to the Project SOW Work, including, without limitation, topographical features, water on or near the Facility site, roads, the size and shape of the Facility site and its ability to accommodate the various trades and any required storage, features affecting transportation, vegetation or physical barriers, rocks, rubble, existing structures or impediments to construction, and as-built conditions. The Contractor further represents that it has carefully examined any Facility site-related geotechnical, as-built, or other information made available by the Owner.

1.5. Staffing; Key Personnel

1.5.1. The Contractor shall devote as many people and man hours to the Work as are needed to meet its obligations under the on the Individual Project SOW, including the obligation to complete the Work within the Individual Project SOW Times specified in **Exhibit A**. The Work shall be performed under the direct supervision of a qualified and experienced superintendent approved by the Owner. The Contractor's superintendent (or a designated substitute, during times when the superintendent is ill or on vacation) shall be present on the Project Site at all times when Work is in progress there, until Substantial Completion has been achieved, and thereafter shall devote a sufficient amount of his or her time to the Work to assure that Final Completion is achieved within the allowed time.

1.5.2. If the Owner requires that other identified Key Persons be assigned to the Work for specified tasks or periods during the Individual Project SOW term, then such Key Persons are reflected in **Exhibit L** and the Contractor shall provide the listed Key Persons for the tasks or periods indicated in the Exhibit.

1.5.3. Neither the superintendent nor any Key Persons may be replaced during the Individual Project SOW term, except if they become unavailable due to death, illness, resignation, dismissal, or personal circumstances that do not reasonably permit them to continue on the Project. If the superintendent or any Key Person must be replaced during the Individual Project SOW term for these reasons, the Contractor will promptly notify the Owner, in writing, and propose a properly qualified substitute for the Owner's approval, which will not be unreasonably withheld. The waiver of consequential damages in Paragraph 12.4 does NOT apply to consequential or incidental damages arising from failure to retain the superintendent on the Project, for reasons other than those specified in this Subparagraph or failure to promptly provide a suitable substitute when the originally designated superintendent becomes unavailable; the Owner retains its rights to seek consequential or incidental damages for such a breach.

1.5.4. If the Owner notifies the Contractor, in writing, that it is dissatisfied with the performance of any of the Contractor's personnel, the Contractor shall replace the person(s) to whom objection has been made within seven (7) days of the written notice. However, removal of the superintendent or other Key Persons will be required only for reasonable cause, which the Owner shall identify, in writing.

1.5.5. The Contractor shall employ in the Work only those employees and subcontractors who will work together in harmony and who will cooperate with one another and the Contractor in the Work.

1.5.6. The Contractor shall enforce strict discipline, good order, and harmony among its employees and its subcontractors. The Contractor shall promptly remove from the Work any employee or subcontractor who violates the Laws or the Owner's policies stated in **Exhibit I, J, and K**, or who otherwise is unfit or has behaved inappropriately. The Contractor shall comply promptly with any request by the Owner to remove an unsuitable person from the Facility site.

1.6. Submittals

1.6.1. "Submittals" are shop drawings, samples, product data, and similar submittals. The Contractor shall prepare, or cause its subcontractors to prepare, and shall submit to the Owner (or at the Owner's direction to the Engineer) for review, all Submittals required by the Individual Project SOW Documents. The data shown in Submittals shall be complete as to quantities, dimensions, specified performance and design criteria, materials and similar data to show the materials and equipment the Contractor proposes to use and to indicate precisely the Work to be performed. The Submittals shall provide for the proper construction and functioning of all components or systems. Samples shall be identified clearly as to materials, supplies, pertinent data such as catalogue numbers, and the use for which the material is intended, and shall conform to the requirements of the Individual Project SOW Documents.

1.6.2. The Contractor shall carefully review all Submittals before delivering them to the Owner or Engineer. By providing Submittals to the Owner or Engineer, the Contractor certifies that (1) the Submittals are complete, (2) the Submittals comply with all Individual Project SOW requirements, and (3) the Contractor has verified materials, field measurements and field construction information related to the Submittals.

1.6.3. Submittals shall be reviewed, approved, and submitted to the Owner or Engineer at the times and in the sequence required by the Individual Project SOW Schedule. Except to the extent that the Owner agrees otherwise, in writing, the Individual Project SOW Schedule will allow the Owner and/or the Engineer at least fourteen (14) days within which to review and act on the Submittals.

1.6.4. The Contractor shall not perform any portion of the Work as to which Submittals are required without first obtaining the Owner's or Engineer's approval of the relevant Submittals. All Work subject to Submittal requirements shall be performed strictly in accordance with the approved Submittals.

1.6.5. The Owner's or Engineer's approval of a Submittal that fails to comply with the requirements of the Individual Project SOW will not authorize the Contractor to depart from the Individual Project SOW. In order to avoid confusion, the Contractor must specifically inform the Owner or Engineer of any Submittal that departs from Individual Project SOW requirements at the time of submittal, so that consideration may be given as to whether any proposed alternates or variations should be permitted. However, delays that arise from Submittals that depart from the

Individual Project SOW, proposed claimed "equals" or alternates, or Submittals that seek relief from Contract requirements, are not Excusable Delays.

1.6.6. Subcontractors in the mechanical and electrical trades shall prepare composite shop drawings. If the Individual Project SOW Documents create conflicts in the Work required of these trades, the Contractor shall request the Engineer's assistance as appropriate. The Contractor shall not be entitled to an increase in the Individual Project SOW Price due to any such conflict unless the conflict is brought to the Owner's attention before the affected Work is installed, and the Contractor provides reasonable evidence that the conflict has increased or will, despite prompt notice, increase the Contractor's costs. Conflicts or inefficiencies that arise due to the Contractor's failure to carefully manage and coordinate the orderly installation of Work by the subcontractors will not entitle the Contractor to either an extension of time or additional compensation.

1.7. Responsibility for Work/Means and Methods

The Contractor is fully responsible to the Owner for the acts and omissions of his employees, agents, suppliers, subcontractors, and their agents and employees. The Contractor is responsible for all construction means, methods, techniques, sequences and procedures and for proper coordination of all construction and installation required to complete the Work.

1.8. Field Measurements

The Contractor shall take field measurements and verify field conditions and carefully compare the resulting information with information provided by the Individual Project SOW before beginning Work. The Contractor shall report to the Owner, promptly and in writing, any discrepancies between its field observations and measurements and the measurements or conditions indicated in the Individual Project SOW Documents. If the Contractor proceeds with affected Work before reporting such discrepancies, the Owner will not be liable to the Contractor for any added costs the Contractor incurs, and any resulting delay will be Inexcusable Delay.

1.9. Cutting and Patching

The Contractor is responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. The Contractor shall not damage or undermine any portion of the Work, the work of Separate Contractors, or the Owner's property on the Project Site, by cutting, patching, or altering the construction, or by excavating or blasting. The Contractor may not cut or modify construction by Separate Contractors or others without first obtaining the written consent of the Owner. The Contractor shall not unreasonably withhold its consent to cutting or altering of its Work to accommodate the work of other contractors. See Subparagraph 2.2 for the definition of Separate Contractors. In the event contractor's work is cut or altered by separate contractor, warranty and liability of that section and any connecting sections transfers to contractor that altered the work.

1.10. Testing, Inspections and Approvals

1.10.1. Testing, inspections, and approvals of portions of the Work required by the Individual Project SOW or by the applicable legal requirements shall be made at an appropriate time. Unless specified otherwise in the technical specifications or elsewhere in the Individual Project SOW

Documents, the Contractor will make arrangements for required tests, inspections and approvals to be carried out by an independent testing laboratory or third-party inspector or testing agency acceptable to the Owner, or by the appropriate public authority, and the Owner will pay all related costs directly to the inspector or testing agency, without mark-up by the Contractor. The Contractor will make arrangements with the inspector or testing agency to invoice the Owner directly to avoid delay in processing payments. The Contractor shall give the Owner and Engineer timely notice when portions of the Work subject to testing or inspection are ready for sampling, testing or inspection so that they may have representatives present, if they wish.

1.10.2. If the Owner or Engineer doubts that the Work is in accordance with the Individual Project SOW, either of them may require additional testing or inspection, at their expense. The Contractor shall furnish for such testing samples of all materials and component parts of the Work the Engineer or Owner may require. All such inspection or testing shall be done in a timely manner so as to avoid unnecessary delay in the completion of the Work.

1.10.3. Any Work done without proper inspection or testing as required by the Individual Project SOW is subject to rejection. If any Work is covered up before the required inspection or testing, it must be uncovered for inspection and testing and properly restored as provided for in Subparagraph 1.10.4.

1.10.4. When the Owner or Engineer directs, the Contractor shall uncover any portion of the Work that has been covered, to permit observation, inspection or testing, and after testing or inspection, the Contractor shall restore the Work to a condition that complies with the Individual Project SOW. If the Work was covered contrary to the requirements of applicable Laws, the Individual Project SOW, or the Engineer or Owner's timely request, the uncovering and recovering shall be carried out at the Contractor's own cost, without reimbursement by the Owner or adjustment to the Individual Project SOW Price, whether or not the Work proves to be in accordance with the Individual Project SOW. In all other cases, if the Work uncovered was in accordance with the Individual Project SOW, the Owner will reimburse the Contractor for the reasonably documented cost of uncovering and recovering plus 10%, and if the Work uncovered was not in accordance with the Individual Project SOW, the Contractor shall bear that cost, without reimbursement by the Owner or increase to the Individual Project SOW t Price.

1.11. Storage of Material

The Contractor shall provide for safe and clean storage of materials and construction equipment acquired for installation in the Work in such manner, only at such places on the Project Site as are designated by the Owner. The Contractor shall not store materials on the Project Site in a location or manner that would damage any structure or otherwise affect the integrity or safety of the Project Site. The Contractor shall take reasonable measures to protect the Work and stored materials from damage.

1.12. Limitations on Use of/Access to Project Site

Any limitations on the hours during which Work can be carried out, or other limitations on access to and use of the Project Site are stated in **Exhibit A**, and the Contractor acknowledges it has taken these limitations into account in entering in the Individual Project SOW and will abide by them.

1.13. Housekeeping/Clean-Up

The Contractor shall keep the Facility site and surrounding areas free from undue accumulation of waste materials or rubbish caused by the Work that would create unsafe or unsanitary conditions or fire hazards, attract vermin, or violate any Laws. At the completion of the Work, the Contractor shall remove from the Facility site all waste materials, rubbish, the Contractor's and subcontractors' tools, equipment, signs, and surplus materials. If additional requirements apply, they are stated in **Exhibit A** to the Agreement.

1.14. Record Documents/As-Built Documentation

The Contractor shall maintain at the Facility site one record copy of all Construction Documents, Change Orders, and permitted field modifications to those documents, in good order and currently marked up to show all changes made during the performance of the Work. The Contractor shall keep these record documents, and all Submittals, readily available for the Owner's and Engineer's reference or inspection at all times and shall deliver them to the Owner as a condition of Final Completion

1.15. SAFETY, PROTECTION OF PERSONS AND PROPERTY Compliance With Laws

1.15.1. The Contractor shall comply with OSHA and all other local, state, or federal safety and health requirements to the extent that they apply to the Work. In accordance with state or federal requirements or both, the Contractor shall formulate and implement its own safety program to promote safe and orderly prosecution of the Work. The rules shall provide for frequent and regular inspection of the Facility site, materials and equipment by competent persons designated by the Contractor. "Competent persons" means those capable of identifying existing and predictable hazards and who have the authority to take prompt corrective measures to eliminate them. The Contractor shall provide the Owner with satisfactory evidence that the required Safety Program has been formulated and put in place before beginning Work on the Facility site. The Owner's receipt of such evidence without objection will not relieve the Contractor from its responsibility for carrying out the Work safely and in accordance with applicable Laws relating to health, safety, and protection of the environment.

1.15.2. The Contractor shall provide and maintain any safety devices or measures that are required by applicable Laws, or by conditions on the Facility site, to protect persons and property on the Facility site, including, as examples only, safety nets, barricades, fire prevention equipment, and appropriate signs.

1.16. Compliance with Owner's Rules and Regulations

The Contractor shall also comply with the requirements of **Exhibit I, J, and K** and any safety directions or rules reasonably issued by the Owner to prevent injury or assure compliance with applicable law.

1.17. Protection Against Property Loss or Damage

The Contractor shall:

1.17.1. Properly store and protect equipment and materials delivered but not yet installed from damage by the elements or by persons at the Facility site, and from theft;

1.17.2. Protect Work already completed from damage until Substantial Completion;

1.17.3. Avoid loading any part of the Work so as to damage the Work;

1.17.4. Ensure that neither the Contractor, any of its subcontractors at any tier, nor any material or equipment supplier damages the Owner's property at the Facility site; and

1.17.5. Take all reasonable measures to monitor the activities of employees and subcontractors while they are on the Facility site, to prevent property loss or damage, to theft, vandalism, or unexplained disappearance.

1.18. Reports of Accidents

The Contractor shall immediately notify the Owner by telephone or messenger of any accident resulting in death or personal injury or material property damage, providing as complete a description of the accident and its consequences as it reasonably can at the time. The Contractor shall promptly supplement its initial notice, in writing, providing all relevant details of the accident, the nature and extent of any injuries or property damage, the names of all witnesses and other persons having knowledge of the circumstances of the accident, and any other details that the Owner or its insurers may require. The Contractor shall cooperate fully with the Owner and the Owner's insurers in dealing with any claims resulting from an accident. The Contractor shall create and maintain a complete accident file in such form and containing such information as the Owner or applicable Laws may require for the longest of the following: (a) three years from Final Completion, (b) until all disputes arising from any Work-related accident have been finally resolved, or (c) the period required by the Laws.

1.19. Emergencies

If an emergency threatening health, life or property arises, the Contractor shall immediately, and without awaiting direction from the Owner: (a) take all actions necessary to save lives and protect persons from injury, and (b) after averting injury to persons, take reasonable actions to safeguard property from damage or loss. The Contractor shall notify the Owner of any such emergency as promptly as is practicable under the circumstances, initially by telephone or messenger, and in writing promptly afterward.

1.20. Hazardous Materials

1.20.1. A "Hazardous Material" is any substance defined by applicable state or federal Laws as hazardous to health and regulated as such, including, without limitation, PCBs and asbestos. The Contractor shall not bring or release onto the Facility site, or use in the Work, any Hazardous Material, unless expressly authorized to do so in a writing signed by the Owner. If the Contractor, its subcontractors, or their employees, or agents cause any Hazardous Material to be released onto the Facility site, bring any Hazardous Material onto the Facility site without written authorization, or handle any authorized Hazardous Material in a negligent manner so that it is dispersed, spilled, or otherwise released on the Facility site or in other areas, the Contractor shall defend, indemnify and hold harmless the Owner, the Engineer, the Separate Contractors, and their respective

directors, officers, employees, and agents from all resulting Losses, including, without limitation, any Losses arising from penalties, fines, regulatory or environmental violations, or orders to clean up the Hazardous Materials. "Losses" are claims, damages, regulatory and other fines assessed by any governmental entity, losses, expenses, liabilities, causes of action, costs, and expenses, including, without limitation, reasonable attorneys' and consultants' fees.

1.20.2. Bringing or releasing Hazardous Materials onto the Facility site without authorization, or handling them negligently, is a material breach of the Master Agreement, justifying termination for default. The indemnity in this Paragraph is in addition to indemnities required by other provisions of the Master Agreement Documents. Delays due to the Contractor's breach of its duties under Subparagraph 1.6.2 are Inexcusable Delays.

1.20.3. If the Contractor discovers Hazardous Materials on the Facility site, the Contractor shall report its discovery to the Owner at once, stop Work in the affected area, and not resume Work in the area until the Owner has notified the Contractor, in writing, that the material has been determined not to be hazardous or has been removed or rendered non-hazardous. If the discovery of Hazardous Materials on the Facility site causes delay or additional cost to the Contractor, the Contractor may seek modifications in the Individual Project SOW Price in accordance with Article 6 of the Agreement, and/or changes to the Individual Project SOW Time(s) in accordance with Article 5. Furthermore, if the Contractor has complied with the provisions of this Subparagraph, the Owner shall defend and indemnify the Contractor against all Losses arising from the presence of such Hazardous Materials on the Facility site.

2. OWNER-SUPPLIED MATERIALS OR SERVICES/SEPARATE CONTRACTORS

2.1. Owner-Supplied Materials or Services

If **Exhibit B** reflects that the Owner will supply any materials, temporary facilities or utilities, or other services for the Contractor's use in completing the Work ("Owner-Supplied Items"), the Owner-Supplied Items will be supplied by the dates specified in **Exhibit A**. If the Owner fails to deliver any Owner-Supplied Item within the agreed times and this failure causes a delay on the critical path for completion of the Work, the delay is Excusable Delay and the Contractor is entitled to an extension of time subject to the provisions of Article 5. The Contractor shall conduct a careful visual inspection of any equipment, materials, tools, or utility connections provided as Owner-Supplied Items, and notify the Owner, in writing, if they are damaged or in any respect not in conformity with the Contract requirements. Unless the Contractor notifies the Owner of any such damage or defect within five (5) days of delivery of the items, the Contractor will be deemed to have accepted the items as free from non-conformities reasonably discoverable by visual inspection.

2.2. Separate Contractors

2.2.1. The Owner has the right to hire other contractors, under separate contracts, to perform work outside the scope of Individual Project SOW for completion of the overall Facility ("Separate Contractors"), and to have those Separate Contractors present at and working on or adjacent to the Facility site while the Contractor is also working on the Facility site. In agreeing to the Individual Project SOW Times, the Contractor has taken into account such information about Separate Contractors and coordination and sequencing requirements as is included in **Exhibit B**.

2.2.2. The Contractor shall cooperate reasonably and in good faith with the Owner to properly coordinate its Work with the work of the Separate Contractors. This cooperation will include, without limitation, (1) adhering strictly to the Individual Project SOW requirements in developing the initial Individual Project SOW Schedule and in updating the Individual Project SOW Schedule, (2) notifying the Owner's Project Manager (identified in **Exhibit H**) of any actual or anticipated delays or disruptions to the Contractor's Work due to the activities of any Separate Contractor in accordance with Subparagraph 5.4.3 and Paragraph 5.6, to allow the Owner's Project Manager to act to prevent or mitigate the delays or disruptions, (3) attending and participating reasonably and in good faith in all meetings with the Separate Contractors that the Project Manager may reasonably schedule, and (4) actively working with the Owner's Project Manager and Separate Contractors to anticipate and avoid conflicts between the Contractor's Work and the work of the Separate Contractors.

2.2.3. The Contractor will cooperate reasonably, diligently, and in good faith with the Owner's Project Manager and the Separate Contractors to promote proper coordination of its Work with that of the Separate Contractors, and thus to avoid defects in the Facility as a whole. If any part of the Contractor's Work that depends or connects with work of Separate Contractors, the Contractor will not proceed with its dependent or connecting Work until Owner is notified and approves the work. as being free from reasonably discoverable deficiencies that would adversely affect the Contractor's Work. See also Paragraph 1.9.

2.2.4. If the Contractor fails to comply with the provisions of Subparagraph 2.2.1 through 2.2.3, and its Work is delayed or disrupted as a result, the delay is Inexcusable Delay. Further, the parties expressly agree that, to the extent that the Contractor's failure to comply with Subparagraphs 2.2.1 through 2.2.3, to carry out the Work in accordance with the Individual Project SOW Schedule, or to complete the Work within the Individual Project SOW Times causes delay or disruption to the work of Separate Contractors, the Contractor will be liable to the Owner for the resulting added costs. Such costs are not regarded by the parties as consequential, but direct, and are not waived by the waiver of consequential damages in Paragraph 12.4. To the extent that the Separate Contractor's failure to comply with Subparagraphs 2.2.1 through 2.2.3, to carry out the Work in accordance with the Individual Project SOW Schedule, or to complete the Work within the Individual Project SOW Times causes delay or disruption to the work of Contractors, the Contractor will not be liable to the Owner for the resulting added costs. Remedy of compensation or time delay by Separate Contractor to the Owner and Contractor will be regarded by the parties as consequential, and are not waived by the waiver of consequential damages in Paragraph 12.4

3. Individual Project SOW and/or Master Agreement **PRICE**

3.1. Amount and Timing of Payments

3.1.1. The Owner shall pay the Contractor the Price specified in **Exhibit B** to the Individual Project SOW and/or the Master Agreement. The Price shall be paid in a series of progress payments and a final payment, in accordance with the payment schedule in **Exhibit B**. If any retainage is applicable to progress payments, it is identified in **Exhibit B**. Except to the extent otherwise stated in **Exhibit B**, all payments shall be in United States dollars, and no adjustments to the Individual Project SOW

and/or Master agreement Price or agreed unit price or hourly rates will be made on account of currency exchange fluctuations.

3.1.2. If any portion of the Price is to be paid on a unit-price or hourly rate basis, that portion of the Individual Project SOW and/or Master Agreement Price shall be paid based on the actual number of defined units delivered or the number of hours actually worked, multiplied by the agreed unit price or hourly rate, and not based on any estimated quantities that may be referred to in the Individual Project SOW and/or Master Agreement Documents. In such a case, **Exhibit B** includes the relevant description of the methods by which actual quantities are to be determined.

3.2. Taxes

The Individual Project SOW and/or Master Agreement Price includes all applicable sales and use taxes, except to the extent stated otherwise in **Exhibit B**.

3.3. Invoicing Requirements

3.3.1. The Contractor shall comply with the invoicing requirements stated in **Exhibit B** to the Master Agreement. If any portion of the Price, as adjusted for changes, is based on actual cost, the invoices must be accompanied by the cost documentation reasonably acceptable to the Owner in content and form. The AIA G702/G703 forms (Or agreed upon equivalent forms identified in Exhibit A) The summary form with project manager signature should be submitted along with the invoice in order to be approved for payment on Individual Project SOW projects.

3.3.2. With each invoice for interim or progress payment, the Contractor shall submit a release of claims and liens in the form shown in **Exhibit F** to the Agreement. With the invoice for final payment, the Contractor shall submit a release of claims in liens in the form shown in **Exhibit G** to the Agreement. If the Contractor has subcontracted portions of the Work, the Contractor must submit similar waivers of claim and lien signed by each subcontractor with any invoice that includes amounts attributable to that subcontractor's Work.

3.3.3. With each monthly invoice submittal, the Contractor shall confirm that all amounts currently sought for subcontractor or supplier Work are currently due and owing to the subcontractors and suppliers,. The Contractor shall comply with all requirements of all applicable laws in its dealings with subcontractors and suppliers,, and all backup documentation must be made available.

3.4. Construction or Mechanics' Liens

If any person places a mechanic's or construction lien on the Owner's or any person's interest in the Facility or the property on which it is located, or on any construction fund, despite the Owner's having paid the Contractor in accordance with the Individual Project SOW, the Contractor shall promptly remove the lien, by bonding it off or otherwise, and shall defend, indemnify, and hold the Owner harmless against all Losses the Owner incurs as a result of the lien. In the event the Owner has not paid outstanding amounts due, Contractor is not obligated to remove the lien until the outstanding amounts are satisfied and adequate time has passed for Contractor to pay it's suppliers as outlined by the state laws governing payment.

3.5. Disputed Amounts

If the Owner, acting in good faith, disputes any amount invoiced by the Contractor, the Owner shall promptly notify the Contractor of the dispute within 10 business days of receipt of invoice, providing a reasonable description of the nature and extent of the dispute, and specifying the amount that is disputed. The Owner shall pay the Contractor the amount, if any, that is not disputed, within the time specified in **Exhibit B**. The Owner's refusal to make payments on amounts disputed in good faith will not entitle the Contractor to suspend Work or to terminate the Individual Project SOW and/or the Master Agreement. Work shall continue during all such disputes, and a failure to continue without delay or interruption is a material breach.

4. OWNER-DIRECTED SUSPENSIONS

4.1. Authorized

At any time, the Owner may direct the Contractor to suspend all or an identified portion of the Work for the Owner's convenience. All such directions must be in writing, and signed by the Owner's Authorized Representative. If the Owner issues such a direction, the Contractor shall immediately confer with the Owner to (a) agree on measures to carry out the suspension in a safe and orderly manner, (b) render the Contractor's best good faith advice on mitigating the costs associated with the suspension order and its execution, and (c) advise the Owner of likely delays to the Work as a result of the suspension order. The Contractor shall carry out the suspension in accordance with the Owner's written direction, any suspension procedures and measures on which the parties agree, in writing, and in the exercise of its good faith efforts to mitigate costs and delays due to the suspension.

4.2. Adjustments to Master Agreement Project **Time(s) and Price Due to Suspension for Convenience**

All delays to completion of the Work that are caused solely by the Owner's suspension of Work for its convenience are Excusable Delays for which the Contractor is entitled to an extension of time, subject to the provisions of Article 5. The Contractor is also entitled to a Change Order adjusting the Individual Project SOW and/or Master Agreement Price for costs added costs which the Contractor reasonably incurs in carrying out the Work due to an order to suspend Work for the Owner's convenience, and which the Contractor would not have incurred absent the order, subject to the provisions of Article 6**.** If the Owner directs an acceleration after suspending Work for its convenience, Paragraph 4.8 will apply. This Paragraph does not entitle the Contractor to extensions of time or adjustments to the Individual Project SOW and/or Master Agreement Price due to suspensions that result, in whole or in part, from the Contractor's breach of Agreement, failure to comply with Master Agreement provisions, or Force Majeure.

5. Master Agreement and/or Individual Project SOW **TIMES, SCHEDULE, DELAYS, AND SCHEDULE UPDATE REPORTING**

5.1. Master Agreement and/or Individual Project SOW **Times Specified/Liquidated Delay Damages for Unexcused Delay**

Time is of the essence for performing work associated with the Master Agreement and/or Individual Project SOW. The Contractor shall achieve Substantial Completion by the "Required Completion Date" reflected in **Exhibit A**, as that date may be adjusted on account of Excusable Delay, and shall carry out the Work in accordance with any other agreed Individual Project SOW Times in **Exhibit A**. If the Contractor fails to achieve Substantial Completion by the Required Completion Date, as adjusted on account of Excusable Delay, the Contractor shall pay the Owner, or the Owner may withhold from amounts otherwise due to the Contractor, the liquidated delay damages specified in **Exhibit C**. If liquidated damages have been agreed with respect to late completion of Work by other Master Agreement and/or Individual Project SOW Times, they are stated in **Exhibit C** as well. Payment of the specified liquidated damages will not, however, excuse the Contractor from continued good faith diligent efforts to complete the Work without further delay.

5.2. Individual Project SOW **Schedule**

5.2.1. If the parties have agreed upon a Project Schedule as of the Individual Project SOW's Effective Date, it is attached as part of **Exhibit A**. If they have not agreed upon a Project Schedule as of the Individual Project SOW's Effective Date, the Contractor shall, within the time specified in **Exhibit A**, submit to the Owner, for its review and approval, a proposed schedule for the completion of the Work. The proposed schedule shall take into account all relevant information, including information which the Contractor has been provided concerning the work of Separate Contractors. When approved, this schedule will become the Individual Project SOW Schedule. The proposed Individual Project SOW Schedule shall be prepared using the critical path method and shall be in sufficient detail to clearly show the Contractor's actual planned sequencing, dates, and durations of all relevant Work activities including, without limitation, any engineering or design Work which the Individual Project SOW requires of the Contractor, procurement of materials and equipment (with exception to materials and equipment procured by the owner), preparation and review of Submittals, equipment and materials transportation time, construction mobilization, installation and construction activities, and all required testing, inspections, commissioning, and systems start-up. The Project Schedule shall be in sufficient detail to allow proper management of the Work and to allow proper coordination of the Work with the Owner's activities and those of any Separate Contractors. Owner acknowledges that Contractor is not liable or responsible for delays to the project caused by separate contractors schedule delays outside of Contractor's control.

5.2.2. The Contractor shall perform the Work in accordance with the Individual Project SOW Schedule, which may not be modified except with the Owner's consent. The Owner's consent will not be unreasonably withheld, provided that the proposed changes do not result in delay to the projected date of Substantial Completion and do not result in delay or disruption to the work of Separate Contractors or the Owner's own operations in completing the Facility.

5.3. Progress Meetings

5.3.1. The Contractor shall schedule and attend weekly progress meetings at which the Owner, the Contractor, Engineer of Record, and Separate Contractors will discuss safety issues, the progress of the Work, the Individual Project SOW Schedule, and any factors likely to affect the completion of the Work within the Project Times, the quality of the Work, or the Project Price, or coordination of the Contractor's Work with the work of Separate Contractors. The Contractor shall be represented

at these meetings by its Authorized Representative and, if the Owner so requests, other relevant and knowledgeable persons.

5.3.2. The Owner's Project Manager will prepare minutes of the weekly meetings and distribute them, within two (2) working days, to the attendees and such other persons as the attendees request or the Owner deems appropriate. Any party may object, in writing, to statements in the minutes or omissions from the minutes within three (3) working days of their issuance. Meetings required by this Paragraph are in addition to any meetings with subconsultants, subcontractors, suppliers, Engineers of Record, or employees that the Contractor considers prudent to manage the Work, and any other meetings with the Contractor that the Owner reasonably requests.

5.4. Schedule Update Report

5.4.1. The Contractor shall submit to the Owner monthly (or frequency determined by Owner at project kickoff), on a date specified by the Owner, a Schedule Update Report in such digital format and hard copy format as the Owner's Project Manager reasonably requires for the Individual Project SOW.

5.4.2. The Schedule Update Report shall include an eight-week look-ahead schedule. It shall include an updated critical path method for Individual Project SOW Schedule, based on (1) actual conditions of Work progress, (2) the Contractor's best projection of the actual date by which the Work will achieve Substantial Completion and any Milestones defined in **Exhibit A** will be achieved, and (3) any updated information the Contractor has about the work of Separate Contractors, including actual progress of such work.

5.4.3. If the Contractor becomes aware of any event or circumstance that would likely have a significant effect on the currently approved Individual Project SOW Schedule, it shall not await the next Schedule Update Report, but shall notify the Owner as soon as reasonably possible.

5.4.4. The Schedule Update Report shall include a schedule narrative in plain English that (a) identifies any delays or developing delays on the critical path or near-critical paths, (2) states what steps the Contractor has taken or will take to avoid or reduce the delay, (3) identifies any differences between actual or currently projected manpower and resource loading and the manpower and resource loading shown in the original agreed Individual Project SOW Schedule, and (4) states what actions the Owner can take to avoid or mitigate the delay (whether contractually required or not), and the dates by which those actions must be taken, provided that the Contractor's statement will not impose upon the Owner any obligation to take actions that it is not contractually obligated to take. The Contractor shall point out, in its narrative, changes that have occurred since the last update, including those related to major changes in the scope of the Work, activities modified since the last update, revised projections of durations, progress and completion, revisions to the schedule logic or assumptions, the activities or Separate Contractors, Engineers of Record, and other relevant changes.

5.5. Excusable Delay/Extensions of Time

5.5.1. An "Excusable Delay" is delay on the critical path for a Individual Project SOW Time for which the Contractor is not held responsible under this Master Agreement, and is limited to delay caused by (1) Owner-directed changes in the Work; (2) other actions of the Owner, the Engineer,

Contractor: _____
Owner: _____

the Separate Contractors, if any, or their agents or representatives, or their failure to take actions required by the Individual Project SOW with the time required by the Master Agreement and/or the Individual Project SOW; (3) Differing Site Conditions, or (4) Force Majeure Events. An "Inexcusable Delay" is a delay other than Excusable Delay, for which the Contractor is not entitled to an extension of time.

5.5.2. "Differing Site Conditions" are concealed subsurface, soils, or other physical conditions at the Facility site, whether natural or as-built, which differ materially from those indicated in the Individual Project SOW Documents or separate geotechnical information the Owner provided to the Contractor before the C Individual Project SOW's Effective Date and which the Contractor neither discovered nor reasonably should have discovered by examining the Facility site as required by Paragraph 1.4.

5.5.3. "**Force Majeure Events**" are (1) exceptional events or circumstances which are (2) beyond the affected party's control, (3) which that party could not reasonably have anticipated and provided against before entering into the Master Agreement (4) which, having arisen, the party could not reasonably have avoided or overcome, and (5) which are not substantially attributable to the other party. Force Majeure Events may include, but are not limited to, the following circumstances or events: war, invasion, act of foreign enemies, rebellion, terrorism, insurrection, military or usurped power, civil war, riot, or commotion, epidemics, pandemics, government required quarantine, natural catastrophes such as earthquake, flooding, hurricane, tropical storms, typhoon, volcanic activity, or extraordinarily adverse weather conditions beyond those that could reasonably have been anticipated, given the nature of the Work, the Facility's location, and the time of year during which the Work was planned to occur. A party's financial incapacity or bankruptcy or inability to pay amounts due when due, for any reason, is not a Force Majeure Event. Delay in transportation or other delays in receipt of materials or performance of Work by subcontractors or shortages of materials are not Force Majeure Events, unless all five of the numbered conditions stated above are met. Strikes or lockouts engaged in by the managers, supervisors, staff, labor, or other employees of the Contractor or its subcontractors or suppliers are not Force Majeure Events, unless the strike or lockout is part of a regional or national-wide strike or lockout.

5.5.4. The Contractor is entitled to an extension of time, and potential monetary change order, with respect to a Individual Project SOW Time or Times if and only if the Contractor has suffered an Excusable Delay to the Work, and the Contractor has given the Owner written notice of the delay in accordance with Paragraph 5.6.

5.6. Required Notice/Documentation of Delay

5.6.1. The Contractor must give the Owner written notice of a delay as soon as possible, but in no event more than five (5) days after discovering the circumstance, event, or action that gives rise to the claimed delay. If the delay-causing circumstance is a Differing Site Condition, this notice must also be given before the condition has been disturbed. The written notice shall identify the cause of the claimed delay and state whether the Contractor regards the delay as an Excusable Delay. To the extent reasonably possible, the notice shall also identify the particular activities that will be delayed and to what extent delay is expected to occur.

5.6.2. The initial notice of delay shall be followed, within seven (7) days of the initial notice, by reasonable documentation of the extent of the claimed delay and of any adjustments the Contractor seeks in any of the Individual Project SOW Times due to the delay. See also Paragraph 6.2 for notice and documentation requirements if an adjustment to the Master Agreement and/or Individual Project SOW Price is sought.

5.7. Contractor's Delay-Related Costs

5.7.1. The Contractor is entitled to an increase in the Individual Project SOW Price for delay-caused additional costs if and only if it shows that (1) it suffered an Excusable Delay that was caused solely by the acts or omissions of the Owner, Engineer, Separate Contactors, or their agents or contractors, and (2) there were no concurrent delays for which the Contractor is responsible under the Master Agreement or which were due to Force Majeure; (3) the delay caused the Contractor's costs of performance to increase, and (4) the Contractor has taken reasonable measures to mitigate the added delay-caused costs including, without limitation, complying fully with the requirements of Paragraph 2.2.

5.7.2. The amount of a Price adjustment due to delay-caused costs is limited to the actual, documented direct costs arising from the delay, plus the agreed mark-up reflected in **Exhibit B** for all indirect and overhead costs and profit. In no event is the Contractor entitled to any additional amounts, including home office overhead, unabsorbed or under-absorbed overheads, or other indirect costs, whether based on an Eichleay calculation or otherwise. In no event is the Contractor entitled to an increase in the Price based on its own or a subcontractor's claimed losses on other projects or work foregone, or any other alleged costs or losses not arising directly from the Work.

5.8. Acceleration

The Owner may, at its election, request that the Contractor accelerate the Work to recover Excusable Delays, rather than granting an extension of time. If the Owner requests acceleration, the Contractor shall promptly confer with the Owner on what acceleration measures are feasible and actually likely to recover or reduce delays, and the costs associated with such acceleration measures. If the Owner continues to wish the Contractor to accelerate in light of the Contractor's information, the Owner will issue a Change Order authorizing specific acceleration measures.

6. CHANGES

6.1. Change Authorized

The Owner may, without invalidating the Contract, and without notice to or approval of any surety, order changes in the Work by Change Order A "Change Order" is a writing signed by the Authorized Representatives of both parties, authorizing an identified change and stating the agreed adjustments to the Individual Project SOW Times, Individual Project SOW Price. Any other affected terms due to the change outside of the Master Agreement Terms will need to be reviewed and agreed to with Owner. All Change Orders shall be in the form attached hereto as **Exhibit M**.

6.2. Required Notice of Claimed Changes or Change Events

The Contractor shall give the Owner written notice of a claimed change to the Individual Project SOW or Work within five (5) days of the events giving rise to the claimed change, identifying the claimed

changes and stating, to the extent reasonably possible, the adjustments to the Individual Project SOW (s), Price or other terms the Contractor believes to be appropriate, given the claimed change. The initial notice of change shall be followed, within seven (7) days of the initial notice, by reasonable documentation of the extent of the claimed change and the effects it has or will have on the Individual Project SOW Time(s), Price, or other Project terms.

6.3. Contractor's Entitlement to Adjustments to the Individual Project SOW **Price**

The Contractor is entitled to a Change Order modifying the Individual Project SOW Price if and only if the cost of performing the Work is materially increased by any of the following circumstances:

6.3.1. the Owner's directing a change to the Work

6.3.2. the Owner's order to accelerate or re-sequence the Work, except where the order is issued to mitigate the effects of an Inexcusable Delay; or

6.3.3. the Owner's, Separate Contractors', or the Engineer's', or their agents' other acts that delay or disrupt the Work or materially change the conditions under which it is to be carried out, or the Owner's failures to take actions required under the Individual Project SOW; or,

6.3.4. Differing Site Conditions, or

6.3.5. Force Majeure.

6.4. Amount of Adjustments to Individual Project SOW **Price**

6.4.1. If a change requires increases or decreases to the quantity of Work covered by unit prices set forth in **Exhibit B**, the Individual Project SOW Price listed in Exhibit A will be modified using the appropriate unit price and the actual number of units performed or provided, unless the parties agree otherwise.

6.4.2. In all other cases, if reasonably possible, the Owner and Contractor will agree upon a lump sum amount to adjust the Individual Project SOW Price, and set forth their agreement in a Change Order.

6.4.3. If unit-price adjustments do not apply, and the parties do not agree upon a lump-sum adjustment to the Individual Project SOW Price for changes to the Work, the adjustment will be calculated as follows: actual increase in the direct costs of the changed Work plus an additional **10%** on account of indirect costs, overheads, and profit. For purposes of this Paragraph, direct costs attributable to changes in subcontracted Work will be based either on unit prices in the relevant subcontracts or on time and material cost records, kept in accordance with Subparagraph 6.4.4. Delegation of changed Work to tiers lower than contractor or supplier is prohibited without the Owner's express written consent. Where a change results in increases in some costs and decreases in others, the increases and decreases shall be netted against each other in calculating the adjustment.

6.4.4. If the parties do not agree on a lump-sum adjustment, or if they agree to price a change based on actual incurred costs, the Contractor will keep, and cause its affected subcontractors to keep, detailed records to document the actual costs incurred with respect to the affected Work, and to make the records available for the Owner's review, copying, and audit upon reasonable notice,

for a period ending one year after Final Completion or the date on which all disputes arising from the Individual Project SOW have been finally resolved, whichever is later. In such cases, and in cases in which the Contractor claims a change has occurred and the Owner disagrees, the Contractor or any subcontractor performing the disputed Work shall keep daily time records that identify each person directly engaged in performing the disputed Work, and reflecting the number of hours spent in performing that Work. These records shall be submitted to a designated field representative of the Owner at the end of each working day. If the Owner's representative agrees with the tally of persons and hours working on the disputed Work for the day, he or she will sign the daily time records. This signature does not constitute an acknowledgment that any disputed Work is actually changed Work, but only as a confirmation of the number of persons and hours expended in performing the identified Work.

6.5. Failure to Agree/Duty to Proceed

If the Contractor claims entitlement to a change in the Individual Project SOW or existing work order and the Owner responds, in writing, that it does not agree that any action or event has occurred to justify any change in time or compensation, the Contractor will nevertheless proceed with the base scope Work per Exhibit A , without interruption or delay, and may make a claim as provided in Article 12 of the Agreement.

6.6. Executed Change Orders Final

Except to the extent expressly agreed otherwise in a particular Change Order, the Contractor agrees that any Change Order executed by the Owner and Contractor constitutes the Contractor's full and final adjustment for all costs, delays, disruptions, inefficiencies, accelerations, schedule impacts, or other consequences arising from the change in question, or from any claimed cumulative effect of changes made to the date of the Change Order, and that any further adjustments in compensation or time shall be sought or made with respect to changes will require an additional Change Order.

7. COMPLETION AND ACCEPTANCE

7.1. Substantial Completion

7.1.1. "Substantial Completion" is the point at which (1) the Work, or an agreed, identified portion of the Work, is complete and is ready for use for its intended purposes, and (2) only minor punch list items, not affecting normal use and operation, remain to be completed. If certificates of occupancy are necessary to allow the Work to be used for its intended purpose, Substantial Completion does not occur until the required certificates of occupancy, either temporary or final, have been obtained. If local laws permit occupancy and use based on issuance of a temporary certificate of occupancy, the Contractor shall, promptly after obtaining the temporary certification of occupancy, complete any remaining Work required to obtain a final, permanent certificate of occupancy.

7.1.2. The Contractor shall promptly notify the Owner, in writing, when it believes it has achieved Substantial Completion, and promptly submit a proposed punch list identifying all punch list Items requiring correction or completion. The Owner and, at the Owner's option, the Engineer, will promptly inspect the Work. If the Owner agrees that Substantial Completion has been achieved, it will issue a written acknowledgment of Substantial Completion, identifying any additional punch list Items, as appropriate. If the Owner does not agree that Substantial Completion has been achieved, the Owner will so notify the Contractor, in writing, identifying, in reasonable detail, the Work that remains incomplete. If the Owner must conduct more than one inspection for Substantial Completion, the Contractor shall pay any additional costs the Owner incurs in conducting the repeated inspection.

7.2. Final Completion

7.2.1. "Final Completion" occurs when Substantial Completion has been achieved, all punch list items noted at Substantial Completion have been completed, and the Contractor has delivered to the Owner all documents which the Individual Project SOW requires be delivered as a condition of Final Completion

7.2.2. The Contractor shall notify the Owner, in writing, when it believes it has achieved Final Completion. The Owner and, at the Owner's option, the Engineer, will promptly inspect the Work. If the Owner agrees that Final Completion has been achieved, the Owner will issue a written acknowledgment of Final Completion. If the Owner does not that Final Completion has been achieved, the Owner will promptly inform the Contractor identifying, in reasonable detail, the Work that remains incomplete.

7.3. Effect of Final Payment

7.3.1. The making of final payment shall constitute a waiver of the Owner's claims against the Contractor, EXCEPT those arising from: mechanic's liens, security interests, or encumbrances arising out the Contract; failure of the Work to comply with the requirements of the Master Agreement and/or Individual Project SOW Documents; terms of warranties made under the Master Agreement and/or Individual Project SOW Documents; and/or the Contractor's duty to defend and indemnify under any provision of the Master Agreement and Exhibits or under applicable Laws.

7.3.2. The Contractor's acceptance of final payment shall constitute a waiver of its claims against the Owner EXCEPT for those which have been asserted, in writing, before the application for final payment and in accordance with the time limits and other provisions of the Master Agreement or Individual Project SOW, and which the Contractor has identified as still outstanding, in a written list attached to the request for final payment.

8. DEFECTS CORRECTION AND WARRANTIES

8.1. Defects Discovered Before Substantial Completion

8.1.1. If the Owner notifies the Contractor of, or the Contractor becomes aware of, any non-conformity in the Work before Substantial Completion, the Contractor shall promptly correct the non-conformity at its own cost. If the Owner issues a written notice directing that a defect be corrected, and the Contractor will respond and provide a plan for the defect within seven (7) days, the Owner may have the defect corrected by others, without further notice to the Contractor, and charge the resulting cost to the Contractor or withhold the cost from amounts otherwise due to the Contractor. Any delay due to such non-conformities or their correction is Inexcusable Delay.

8.1.2. If the Contractor fails to correct the non-conformities promptly, and the Owner concludes that permitting Work to proceed without the corrections would create a risk of further non-conformities or risk of damage to other portions of the Facility, the Owner has the right, but not the obligation, to order that the Work or a specified portion of the Work, be suspended until the required corrections are made. Any delay due to such a suspension is Inexcusable Delay.

8.2. Warranty Extent and Duration

The Contractor warrants that (a) all of its Work is of good quality, (b) all installation and construction has been carried out in a good and workmanlike manner, in accordance with sound modern practices of the applicable trades, (c) all materials and equipment supplied by the Contractor or its subcontractors or suppliers are free from any manufacturing or other defects, and (d) the Work is otherwise in accordance with the Individual Project SOW requirements. This warranty shall extend for the Warranty Period stated in **Exhibit D**, or such longer Warranty Period as is specified elsewhere in the Individual Project SOW. This warranty is in addition to, and does not limit, any manufacturer's, supplier's, subcontractor's, or additional guarantee or warranty required by other provisions of the Master Agreement Documents.

8.3. Acknowledgment and Cure of Warranty Defects

8.3.1. If the Owner gives the Contractor written notice of any warranty defect, the notice shall state whether the non-conformity is a Minor Warranty Item or a Major Warranty Item. A "Major Warranty Item" is one which (1) renders the products to be produced by the Facility unsalable under the Owner's quality standards, (2) materially affects the Facility's production rate, (3) results in the violation of any Laws, or (3) creates a safety hazard. A "Minor Warranty Item" is any warranty defect other than a Major Warranty Item. The Contractor shall acknowledge all notices of warranty defect within twenty-four (24) hours after receiving them. If the defect is a Major Warranty Item, the Contractor shall begin meaningful repair or replacement work to cure the Item within forty-eight (48) hours after the Owner's notice and continue its cure efforts diligently thereafter until they are completed. If the defect is a Minor Warranty Item, the Contractor shall begin meaningful repair or

replacement work to cure the Item within one (1) week after the Owner's notice and continue its cure efforts diligently thereafter until they are completed. If the Contractor does not comply with the requirements of this Subparagraph, the Owner may proceed to carry out the correction itself, and charge the resulting costs to the Contractor. In such a case, the Contactor shall pay the costs within thirty (30) days after the date of the Owner's invoice with applicable support, and the Contractor's warranty shall continue in effect, as if the Contractor had carried out the corrections.

8.3.2. The Owner may include in any notice of warranty defect a proposal that the Owner itself carry out a specified repair or replacement, to allow more rapid or efficient correction of the defect. In such cases, the Contractor shall include, in its acknowledgment, its concurrence with or objection to the Owner's proposal. If the Owner's proposal is accepted, the Owner may proceed with the repair or replacement and invoice the Contractor for the agreed cost or, if there is no agreed cost, the actually incurred cost of the repair or replacement. In such a case, the Contactor shall pay the agreed costs (or if there are no agreed costs, the actually incurred costs) within thirty (30) days after the date of the Owner's invoice, and the Contractor's warranty shall continue as if the Contractor had made the corrections. If the Contractor objects to the Owner's proposed repair or replacement, the Contractor shall proceed to provide a cure itself, in accordance with Subparagraph 8.3.1.

8.4. Warranty Rights Cumulative

The warranty rights provided by this Paragraph are in addition to, and not a limitation upon, the rights and remedies otherwise available to the Owner for defective or nonconforming Work, normal wear and tear, poor maintenance and misuse not included within warranty.and do not establish any limitation period with respect to those other rights and remedies. Neither final payment by the Owner nor Final Completion of the Work will relieve the Contractor from its responsibilities under this Article.

9. INTELLECTUAL PROPERTY ISSUES

9.1. License to Owner/Representations

To the extent that the Contractor provides detailed design for any portion of the Work, the Contractor:

9.1.1. grants to the Owner, and will cause its relevant design professionals to grant to the Owner, a perpetual, worldwide, non-cancellable, non-exclusive, full-paid-up license to use the design for purposes of completing, operating, and maintaining the Facility, subject only to the Owner's duty to make payments for the design in accordance with the Master Agreement; and

9.1.2. represents that the Contractor or its relevant design professionals own right, title and interest in any patents or copyrights that may apply to the designs, or have obtained all required licenses entitling them to convey to the Owner the required license to use the design to complete, operate, and maintain the Facility, without the Owner's having to pay any license or other fees, either to the Contractor or to others, other than such fees as have already been taken into account and made part of the Contract Price.

9.2. Other Duties With Respect to Intellectual Property

9.2.1. The Contractor shall defend and indemnify the Owner, and its directors, officers, and employees, against any claims asserted by any person or entity that any design provided by the Contractor or its design professionals as part of the Work infringes upon his or its patent or copyright rights when used for the purposes disclosed by the Master Agreement ("Infringement Claim"), and the Contractor shall pay any judgments and/or awards of costs that may be awarded against the Owner as a result of Infringement Claims. The duty to defend and indemnify is conditioned only on the Owner's providing prompt notice of any Infringement Claim of which it becomes aware, and tendering its defense to the Contractor.

9.2.2. The Contractor has no duty to discover that any design provided by the Owner or Engineer may infringe upon the rights of other persons. If, however, the Contractor believes that any design provided by the Owner or Engineer does infringe on intellectual property rights of another, the Contractor shall notify the Owner, in writing, before proceeding with the affected Work.

10. INSURANCE AND FINANCIAL GUARANTEES; INDEMNITY

10.1. Contractor's Required Insurance

10.1.1. The Contractor shall obtain and maintain insurance in accordance with **Exhibit E** to the Agreement, and shall also cause its subcontractors to comply with the provisions of **Exhibit E** relating to subcontractor insurance. If any subcontractor does not obtain and maintain the insurance required by **Exhibit E**, the Contractor shall defend, indemnify, and hold harmless the Owner and Owner's Project Manager, and their respective affiliates, directors, agents, employees, representatives, officers, directors, and managers against all Losses arising out of or incident to the subcontractor's failure to be so insured.

10.2. Requirements for Bonding or Other Financial Guarantees

The Contractor shall provide the bonds or other financial guarantees, if any, required by **Exhibit E** to the Agreement.

10.3. Indemnity Obligations

10.3.1. To the maximum extent permitted by applicable law, the Contractor agrees to defend, indemnify, and hold harmless the Owner, the Owner's Project Manager and Engineer, the Separate Contractors, and their respective affiliates, directors, officers, employees. and agents ("Indemnified Parties"), from and against all Losses arising out of or incident to the Master Agreement and/or the Individual Project SOW, the performance of the Work, and/or the presence on the Facility site of the Contractor's employees, agents, or invitees ("Contractor Parties") if the Losses are caused, in whole or in part, by the negligence or willful misconduct of any of the Contractor Parties or the Contractor's failure to perform any of its Contract obligations, including, without limitation, its obligations relating to the health and safety of persons and compliance with OSHA or other applicable Laws, EXCEPT that the Contractor is not required to defend or indemnify against Losses that were caused solely or in part by the Indemnified Parties or any of them and the Contractor is not required to defend or indemnify for actual Losses with respect to which the parties have agreed on liquidated damages under the Contract.

10.3.2. The Contractor's indemnification obligations under Paragraph 10.3.1 are not limited by workers' compensation or other disability or employee benefit laws and, solely with respect to the obligations of Paragraph 10.3.1, the Contractor hereby expressly waives any rights it might have to assert any immunities or defense that it may have under such laws against any Indemnified Party, but not against any employee of the Contractor.

11. CONFIDENTIALITY OBLIGATIONS

11.1. Obligations, Generally

11.1.1. In connection with the Work, the Owner may make available to the Contractor trade secrets, know-how, or other proprietary and confidential information of the Owner and/or its affiliates. This information ("Confidential Information") may include, for example, data about the Owner's manufacturing process, the Owner's proprietary design information, actual or projected production or sales volumes, products, customers, business plans, or business relationships. The Contractor shall use Confidential Information solely for purposes of carrying out the Work, and for no other purpose, and shall maintain Confidential Information in its possession using reasonable measures at least as stringent as those it applies to its own confidential data to preserve it from unauthorized disclosure or dissemination. The Contractor may disclose Confidential Information to those employees, subcontractor, or suppliers as reasonably need to know the information to carry out the Work, but only after informing them that the information is confidential and obtaining their written agreement to abide by the confidentiality provisions of this Article. With the exceptions stated in Paragraph 11.2, the Contractor shall not disclose the Confidential Information to any other persons or entities, for any reason, without the prior written consent of the Owner. The Owner does not, by disclosing proprietary design information to the Contractor, transfer to the Contractor any patents, copyrights, or other intellectual property of the Owner relating to the proprietary design information (including particularly, design of the conical kettles).

11.2. Exceptions

The obligations of Paragraph 11.1 do not apply if the Contractor can show that (a) the information was in the public domain when the Owner provided it to the Contractor, (b) the information came into the public domain after the initial communication by the Owner to the Contractor, through no act or omission of the Contractor or its agents or employees; (c) the information was properly provided to the Contractor without restriction by a third party lawfully entitled to do so; (d) the information was already in the Contractor's lawful possession at the time of it was first received from the Owner under a confidential designation; or (e) the Contractor is required, by subpoena or other valid order of court, law, regulation, or action of any governmental agency or authority, to disclose the information. Before making any disclosure in response to a subpoena or other valid governmental or court order, the Contractor shall (a) notify the Owner, in writing, that the Contractor is being required to provide the Confidential Information to a third party, to give the Owner the opportunity to seek a protective order or other similar order preventing or limiting the proposed disclosure, and (b) give the Owner reasonable assistance in seeking such protective order or other similar order. The Contractor shall disclose Confidential Information only to the extent required to comply with the order to produce.

12. CLAIMS AND DISPUTES

12.1. Notice of Claims

If the Contractor disputes any direction or determination made by the Owner, or any action taken by the Owner, in connection with the Master Agreement, it shall deliver a written notice of claim to the Owner no later than thirty (30) days after the Owner's decision or determination, or the decision will be deemed final and binding upon both parties. The notice shall identify the decision that is being disputed, explain the circumstances giving rise to the claim, and specify the relief sought.

12.2. Duty to Continue Work

If the Contractor disagrees with any direction, determination, or action by the Owner, or any claim or dispute otherwise arises involving the Master Agreement, the Contractor shall proceed with the approved Individual Scope of Work and/or approved Change Orders, without interruption or delay, shall follow the Owner's directions, and may bring a claim as provided in this Article. The Contractor's failure to proceed with the Work as directed during the pendency of any claim or dispute shall constitute a material breach of the Master Agreement.

12.3. Mediation and Arbitration

12.3.1. All disputes arising from or in connection with the Master Agreement or its breach, and which the parties are unable to resolve through negotiation within thirty (30) days after the notice of claim shall be first submitted to mediation under the Mediation Rules of the American Arbitration Association. Mediation may be demanded by either party and is a condition precedent to arbitration or litigation of any claim. The mediator's fees and other costs of mediation, the AAA fees and costs, and rental charges for facilities for the mediation sessions shall be shared equally by the parties. Each party is, however, responsible for the cost of its own efforts, personnel, counsel, and experts in connection with the mediation. All mediation sessions shall be conducted in **Worcester County, Massachusetts** unless the parties agree otherwise. The Contractor expressly agrees that it may be joined in any mediation between the Owner and one or more third parties if the third-parties have asserted claim for which the Owner may seek contribution or indemnity from the Contractor, or if the Contractor has asserted claims against the Owner for which the Owner may seek contribution or indemnity from the third parties.

12.3.2. All disputes arising from or in connection with the Contract or it breach, and which are not resolved by negotiation or mediation, shall be decided by litigation exclusively in the Worcester County (**Massachusetts** Superior Court or, if federal jurisdiction exists and either party timely elects, in a United States District Court for the State of **Massachusetts**. Both parties consent to personal jurisdiction in these courts for purposes of resolving disputes arising under or in connection with the Contract or its breach, and waive any forum non conveniens objections they might otherwise have to the specified venue. **THE PARTIES EXPRESSLY WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY SUCH DISPUTES.**

12.3.3. The Owner has the right to include the Contractor, by consolidation, joinder or in any other manner, in any arbitration proceeding involving separate professionals, contractors or other persons, firms or entities arising out of the project to design and build the Facility, with whom the Owner has entered into an agreement to arbitrate, regardless of who originally initiated such proceedings, if the disputes involve common issues of fact or law.

12.4. Waiver of Consequential Damages

Each party waives all rights it might otherwise have to recover consequential damages from the other arising from or relating to the Master Agreement. This provision shall not, however, relieve the Contractor of the obligation to pay any liquidated damages that are specified in **Exhibit C**.

13. TERMINATION

13.1. By the Owner, For Default

13.1.1. Grounds for Termination

The Owner may terminate the Master Agreement for default if the Contractor fails materially to perform any of its duties or obligations under the Master Agreement and/or Individual Project SOW. In particular, but without limitation, the Owner may terminate the Master agreement if the Contractor fails to prosecute the Work diligently and in accordance with the agreed Project Schedule, delivers Equipment that fails materially to conform to the Master Agreement requirements, is reasonably determined to have abandoned the Work, has failed to pay any subcontractors, laborers, mechanics, materialmen or suppliers when payment is due, or becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition in bankruptcy or an involuntary petition filed against it, has a receiver appointed, or files for dissolution or is otherwise dissolved.

13.2. Default Termination Procedures

The Owner must provide the Contractor with written notice of its intent to terminate the Master Agreement under this provision thirty (30) days before actually putting the termination into effect. If the Contractor has begun meaningful curative action and has made progress satisfactory to the Owner within the thirty (30) days, the Owner may so notify the Contractor and the termination will not take effect. Otherwise, the termination shall take effect after fourteen days without further notice or opportunity to cure.

13.3. By the Contractor, For Non-Payment

If the Owner fails to make payments in accordance with the Master Agreement, the Contractor may cease Work thirty (30) days after giving the Owner written notice of the failure to pay and the Contractor's intention to cease Work as a result, unless payment is made during that time. If payment is still not forthcoming within ten (10) further days, the Contractor may declare the Master Agreement terminated for the Owner's breach. The Owner's refusal to pay amounts as to which a good faith dispute has been asserted under Paragraph 3.5 is not, however, a breach of the Master Agreement, and does not justify the Contractor's suspending Work or terminating the Contract.

13.4. For Owner's Convenience

13.4.1. The Owner may, upon seven (7) days' written notice to the Contractor, terminate the Master Agreement, in whole or specified part, for its convenience. The notice of termination will state the effective date of termination, the extent of the termination, and any specific instructions with respect to winding up the Work.

13.4.2. After receiving notice of termination for convenience, the Contractor shall (1) stop its Work

as of the effective date of the termination and stop issuing subcontracts or supply agreements for the Work; (2) consult with the Owner regarding the disposition of existing supply agreements, subcontracts, and orders for materials, equipment, or software, and use its best efforts to terminate them on terms favorable to the Owner; (3) consult with the Owner to decide what actions should be taken to protect Work in place and Equipment and materials that have been delivered and not yet installed, and proceed to take such actions as may be agreed upon or, absent agreement, as may be reasonable; (4) take necessary action to protect and preserve property in the Contractor's possession in which the Owner has or may acquire an interest and, (5) as directed by the termination notice or other order from the Owner, deliver the property to the Owner or assist the Owner in disposing of the property. The Contactor shall also promptly notify the Owner, in writing, of any legal proceeding arising from any subcontract or supply agreement related to the terminated portion of the Work and, in consultation with the Owner, settle outstanding liabilities arising out of the terminated portion of the Work on the best terms reasonably possible.

13.4.3. The Contractor is entitled to receive the following upon a termination for convenience:

13.4.3.1. the amounts payable for any Work performed on Individual Project SOW as of the date of the notice of termination's effective date for which a price is stated in Exhibit A

13.4.3.2. the cost plus 10% of any materials ordered for the Work which have been delivered to the Contractor or for which the Contractor is liable to accept delivery (and such materials shall become the property of the Owner when payment is made and shall be placed at the Owner's disposal);

13.4.3.3. the cost of canceling any outstanding orders or subcontracts; and

13.4.3.4. other reasonable costs of winding up the Work, including any measures agreed with the Owner to render the Facility site safe, if construction had begun at the time of the termination, or to proper secure Equipment delivered to the Facility and protect it from damage, and including agreed amounts or, if no amounts were previously agreed, the costs incurred plus 10%, for assisting the Owner to dispose of property if the Owner has requested such assistance.

13.5. By Either Party, For Force Majeure

If the execution of a substantial portion of the Work in progress is prevented for a continuous period of **30** days or for multiple periods which total more than **60** days due to Force Majeure, then either party may elect to terminate the Master Agreement in whole or in part, without default. The party electing to terminate the Master Agreement in whole or in part for this reason shall give the other party notice of the termination, in writing, and the termination shall take effect immediately upon the other party's receipt of the notice. After giving or receiving such a notice, the Contractor shall promptly take all commercially reasonable measures to cancel outstanding material orders and subcontracts and otherwise mitigate the costs associated with terminating the Master Agreement in whole or in part. In case of termination due to Force Majeure, unless otherwise specified in **Exhibit N**, the Contractor shall be entitled to payment for the same amounts as for termination for convenience.

14. MISCELLANEOUS

Contractor: _____
Owner: _____

14.1. Language of Master Agreement

If there is more than one version of the Master Agreement, the official version is the English version. All communications concerning the Master Agreement shall be conducted in English.

14.2. Governing Law

The Contract shall be construed in accordance with and governed by the laws of Massachussets, without regard to that state's conflict of laws principles, except that any arbitration agreement included in the Contract shall be governed by the United States Arbitration Act. The United Nations Convention on Contracts for the International Sale of Goods (the Vienna Sales Convention) and the Convention on the Limitation period in the International Sale of Goods shall not apply to the Master Agreement.

14.3. Independent Contractor

In carrying out all its obligations under the Master Agreement, the Contractor will act as an independent contractor, and not as an employee, agent, or joint venture of the Owner. The Contractor has exclusive authority to manage, direct, and control the Work, and will be responsible for all construction means, methods, techniques, sequences, and procedures, as well as for safety.

14.4. Subcontracting

The Contractor will remain fully responsible for all subcontracted Work as if the Work had been performed with its own forces, and for all acts or omissions of its subcontractors and suppliers in connection with the Work.

14.5. Owner's Right to Audit

If any portion of the Master Agreement Price, in whole or in part, as adjusted, or any claim, is based on incurred costs, the Contractor shall maintain records of those costs in accordance with generally accepted accounting principles, and make the records available to the Owner, upon reasonable notice, for review, copying, and audit. Payment of amounts priced based on incurred cost is conditioned on the Contractor's compliance with this provision. Records documenting costs in accordance with this provision shall be maintained for the longer of one year from the date of Final Completion or until all disputes between the Owner and Contractor in connection with the Master Agreement have been finally resolved. This provision will apply, regardless of whether the parties are engaged in dispute resolution, and the Owner will not be required to engage in discovery to obtain this information.

14.6. Parties' Authorized Representatives/Designation and Authority

14.6.1. Owner

The Owner designates the person(s) identified in **Exhibit H** as the Owner's Representative(s) for this Master Agreement. The name, address, telephone and fax numbers, and e-mail address(es) of each Owner's Authorized Representative are shown in **Exhibit H** to this Agreement, together with any applicable limits on the authority of each Owner's Authorized Representative. The Owner may change its designated Owner's Authorized Representative(s) and/or their contact information, at

Contractor: _____
Owner: _____

any time, upon seven (7) days' written notice to the Contractor, signed by one of the currently designated Owner's Representatives. The Owner will NOT make any oral designations of authority to act on its behalf and will NOT change the current designation orally.

14.6.2. Contractor

The Contractor designates the person identified in **Exhibit H** as the Contractor's Authorized Representative, authorized to take all actions on behalf of the Contractor with respect to the Contract, and to receive all notices called for under the Master Agreement. The name, address, telephone and fax numbers, and e-mail address(es) of the Contractor's Authorized Representative are shown in **Exhibit H** to this Agreement. The Contractor may change its designated Contractor's Authorized Representative and/or his or her contact information, at any time, upon seven (7) days' written notice to the Owner.

14.7. Responsible Development

The approach and expectations of Owner with regard to its suppliers are formalized in **Exhibit O** attached hereto and incorporated herein by reference. The Contractor declares that it has read **Exhibit O** and complies with its principles and hereby agrees to be subject to audit from time to time by Owner in order to confirm Contractor's compliance with the terms of this section

14.8. No Gift Policy

Contractor acknowledges that it is familiar with the restrictions contained in Owner's Gifts Guidelines (the "Guidelines"), available on the Ascend elements website, which prohibit employees from soliciting or accepting gifts, as that term is used in the Policy, from suppliers or potential suppliers or business partners to the Owner. Contractor acknowledges and agrees that this Agreement may be terminated immediately if Contractor violates, or attempts to induce an employee to violate, the Guidelines.

14.9. No Third-Party Beneficiary Rights

Nothing in the Contract shall be construed as creating third-party beneficiary rights in any person or entity.

14.10. Notices/Communications

All formal notices or communications required or permitted under the Master Agreement shall be in writing and shall be hand delivered or sent by registered or certified mail, postage prepaid, return receipt requested, or by fax or recognized overnight courier, to the other party's Authorized Representative at the address shown in **Exhibit H** or in a subsequent written notice of a change of contact information. If any additional notice requirements apply, they are stated in **Exhibit H**. Any such notice is effective upon the earlier of the other party's actual receipt or deemed delivery. Delivery shall be deemed to have occurred as follows: if hand delivered, on the day delivered; if mailed, three business days after the date mailed; if sent by fax, upon written confirmation by the sending machine of effective transmission or upon telephone confirmation of receipt (provided that a confirming copy is also sent by recognized overnight courier); and if sent by recognized overnight courier, the next business day. Each party shall endeavor to send all such notices also by e-mail to the Authorized Representative's designated e-mail address or addresses, to promote more rapid

communication, but notice will not be effective, as a contractual matter, unless and until the delivery of the notice via the other means specified in this Paragraph or until the receiving party acknowledges receipt of the communication, in writing.

14.11. Recoupment or Offset

The Contractor authorizes the Owner to recoup or offset against amounts otherwise due and owing to the Contractor under the Agreement any and all amounts due to the Owner from the Contractor, regardless of the origin of such obligations.

14.12. Binding Effect; Assignment

The Master Agreement is for the benefit of, and is binding on and enforceable by, the parties and their respective successors and permitted assigns. The Contractor acknowledges that, in entering into the Masster Agreement, the Owner has relied on the particular qualifications of the Contractor, and the Contractor therefore shall not delegate or assign any of its duties or obligations under the Master Agreement, except in accordance with the Contract's provisions relating to subcontracting, or with the Owner's prior written consent. The Contractor shall not assign its rights under the Master Agreement, including the right to all or a portion of its compensation, without the Owner's prior written consent. Any attempted delegation or assignment made contrary to the provisions of this Paragraph is null and void, and will entitle the Owner to terminate the Master Agreement for default.

14.13. Survival

All agreements and representations of the Contractor contained in the Master Agreement or in any certificate or document furnished pursuant to the Contract shall survive termination or expiration of the Master Agreement, including, without limitation, the Contractor' s indemnity obligations pursuant to the Master Agreement.

14.14. No Waiver

If the Owner waives any power, right, or remedy arising from the Master Agreement or any applicable law, the waiver shall not be deemed to be a waiver of the power, right, or remedy on the later recurrence of any similar events. No act, delay, or course of conduct by the Owner shall be deemed to constitute the Owner's waiver, which may be effected only by an express written waiver signed by the Owner.

14.15. Remedies Cumulative

Unless specifically provided to the contrary in the Master Agreement Documents, all remedies set forth in the Master Agreement are cumulative and not exclusive. The Owner's rights and remedies will be exercised at its sole discretion, and shall not be regarded as conferring any obligation on the Owner to exercise those rights or remedies for the benefit of the Contractor or any other person or entity. Neither the Warranty Period nor the Extended Warranty Period shall operate as a limitations period limiting the Owner's exercise of rights, other than warranty rights.

14.16. Headings/Captions

The headings or captions used in this Agreement are for convenience only and shall not be deemed to constitute a part of the Master Agreement, nor shall they be used in interpreting the Master Agreement.

14.17. Modification of Agreement

No modifications to the Master Agreement, in whole or in part, shall be effective unless made in writing signed by both the Owner and the Contractor, unless otherwise expressly provided to the contrary in the Master Agreement.

14.18. Execution in Counterparts

The Master Agreement may be executed in counterparts which, when taken together, shall constitute a single agreement. The Master Agreement will not be binding on the Owner until it has been executed by both parties and the Contractor has delivered to the Owner the Contractor's executed signature page.

14.19. Electronic Signatures

Both parties consent to the use of electronic signatures in the execution of this Master Agreement.

[Ascend Elements Inc]

DocuSigned by:
Liam Lochhead
AE7106CA09EF441...

By: Liam Lochhead

Title: VP of Contracts

3/23/2024

[Amcon Industrial]

DocuSigned by:
Coleen Phillips
12855E54E501241C...

Coleen Phillips

Co-Founder & VP Product

AMCON Industrial

3/20/2024

By: _____

Title: _____

EXHIBIT A
PROJECT SCOPE OF WORK FORM
EQUIPMENT AND SOFTWARE TO BE SUPPLIED

Identification of Facility, Facility Site, and Limitations on Access to or Use of Site

[ENTER ANY LIMITATIONS ON ACCESS TO OR USE OF SITE]

Identification of Engineer

The Engineer is:

Identification of Drawings, Specifications, and Other Project Documents

[LIST ALL DRAWINGS AND SPECIFICATIONS BY NAME, NUMBER, REVISION NUMBER, AND DATE; LIST ALL OTHER PROJECT DOCUMENTS]

By executing the Project Scope of Work Form, the Contractor represents that it has been given copies of or access to all of the above-listed Project Documents before the Project's Effective Date.

NOTE: If a purchase order is issued together with the Project Scope of Work form, to facilitate processing of payments and for other accounting functions by the Owner, any terms and conditions appearing on the purchase order are aligned to the Master Agreement terms and/or listed in Exhibit A and routed for signature

Required Submittals

The Contract shall submit for the Owner's review and approval, the Submittals as follows:

[LIST HERE ANY REQUIRED SUBMITTALS, INCLUDING LAYOUTS, ARRANGEMENT DRAWINGS, INSTALLATION DETAILS, P&IDs, SAMPLES OF MATERIALS, ETC. OR REFER THE CONTRACTOR TO APPROPRIATE TECHNICAL SPECIFICATIONS]

Title and Risk of Loss

Title to the Work, or identified portions of the Work, will pass to the Owner at the earlier of (1) the Owner's payment for the Work or identified portions of the Work or (2) delivery of the Work or identified portion of the Work to the Facility site. For the avoidance of doubt, if the Owner pays for specified pieces of Equipment which the Contractor will deliver under the Project Scope of Work Form, title to those pieces of Equipment will pass to the Owner at earlier of the Owner's payment for those pieces of Equipment or their delivery to the Facility site. Transfer of title will not be delayed until the Owner has paid for all of the Work to be performed under the

Project Scope of Work Form, but will occur incrementally, as payment is made for particular pieces of Equipment and particular identified portions of the Work. Risk of loss with respect to the Equipment and materials to be incorporated into the Work or identified portions of the Work will pass to the Owner upon delivery of that Work at the Facility site EXCEPT if Owner places a builder's risk policy. In such event, the Contractor will remain liable for loss of, damage to or destruction of the Work within the deductible of the builder's risk insurance if the loss, damage, or destruction is caused, in whole or in part, by the Contractor's willfully wrongful conduct or negligence, or that of its subcontractors or suppliers.

[Exclusions from Scope of Supply/Clarifications

[ENTER ANY APPLICABLE PROVISIONS. IF NONE, ENTER "NONE."]

Owner-Supplied Items

The Owner will supply the following to the Contractor for use in completing the Work:

[LIST ALL APPLICABLE OWNER-SUPPLIED UTILITIES, ETC. (E.G., ELECTRICITY, WATER, FUEL, GEOTECH INFORMATION, TEMPORARY TELEPHONE, SOFTWARE SPECIALISTS OR OTHER STAFF, COMPUTERS, EQUIPMENT, MATERIALS. IF THE OWNER WILL SUPPLY MATERIALS OR EQUIPMENT FOR THE WORK, MAKE SURE EXHIBIT C REFLECTS BY WHAT DATE THOSE THINGS MUST BE AVAILABLE TO AVOID DELAY.]

Other Required Technical Documentation/Deliverables

[ENTER HERE ALL REQUIREMENTS FOR ALL ADDITIONAL REQUIRED TECHNICAL DOCUMENTATION, OTHER THAN AS-BUILT DOCUMENTS, WHICH ARE COVERED IN THE PROJECT SCOPE OF WORK FORM'S TEXT. SPECIFY DETAILS INCLUDING FORMATTING AND NUMBER OF COPIES, UNLESS ADDRESSED IN SPECS ATTACHED ABOVE.]

Contract Times Schedule and Pricing

The Required Completion Date is [**ENTER**].

[ENTER ALSO ANY OTHER RELEVANT MILESTONE COMPLETION DATES. WITHOUT LIMITATION, IF THE PARTIES DID NOT AGREE UPON A PROJECT SCHEDULE BEFORE THE PROJECT'S EFFECTIVE DATE, SPECIFY WHEN THE CONTRACTOR MUST SUBMIT A PROPOSED PROJECT SCHEDULE AND PROPOSAL FOR REVIEW AND APPROVAL. STATE WHEN ANY OWNER-SUPPLIED ITEMS MUST BE DELIVERED. IF A MILESTONE MATTERS FOR PAYMENT PURPOSES ONLY, IT SHOULD GO IN THE PROJECT SCOPE OF WORK FORM.]

EXHIBIT B
MASTER AGREEMENT PRICE AND PAYMENT TERMS

The Master Agreement Price and schedule for payment are as follows:

PROJECT SCHEDULES, T&M RATES, AND LUMP SUM PROPOSALS WILL BE ROUTED FOR APPROVAL ON AN INDIVIDUAL PROJECT BASIS WITH THE PROJECT SCOPE OF WORK FORM AND ADDED AS AN AMENDMENT TO THE MASTER AGREEMENT

IF THE PARTIES AGREE TO PAYMENT MILESTONES ON EQUIPMENT, THEY SHOULD BE IDENTIFIED WITHIN THE PROJECT SCOPE OF WORK FORM ON AN INDIVIDUAL PROJECT BASIS.

PAYMENT TERMS ON ALL INDIVIDUAL PROJECTS WILL BE NET 30 DAYS RECEIPT OF INVOICE

RETAINAGE WILL BE WITHHELD FROM INTERIM PAYMENTS, AT A RATE OF 10% UNTIL SUBSTANTIAL COMPLETION , WITH 5% REMAINING UNTIL 30 DAYS POST FINAL COMPLETION PUNCHLIST IS COMPLETED .]

The following unit prices and agreed hourly rates will apply in pricing changes prices on a unit-priced or cost-reimbursable basis:

T&M RATES BY ROLE STRAIGHT TIME AND OVERTIME – BY LINE ITEM WILL BE SUBMITTED ANNUALLY FOR REVIEW AND APPROVAL BY BOTH PARTIES, AND ATTACHED TO THE MASTER AGREEMENT. The following mark-up will apply to cover indirect costs and overheads in pricing compensable delay costs governed by Paragraph 5.7:

10%]

The Contractor shall comply with the following requirements as to content and timing of invoices or requests for payment, and as to required supporting documentation:

Unless the Owner agrees otherwise, in writing, all invoices will include the below documents: :.

The AIA G702/G703 forms (Or agreed upon equivalent forms identified in Exhibit A) The summary form (G702 or equivalent) with project manager signature should be submitted along with the invoice in order to be approved for payment on Individual Project SOW projects.

EXHIBIT C
MASTER AGREEMENT LIQUIDATED DAMAGES FOR DELAY

Liquidated Delay Damages

The Contractor shall pay to the Owner, or the Owner may withhold from amounts otherwise due to the Contractor, the following liquidated damages for failure to achieve Substantial Completion by the Required Project Scope of Work Completion Date, for reasons other than Excusable Delay:

[LIQUIDATED DELAY DAMAGES

1% of work not completed if 30 days past final completion date

2% work not completed if 60 days past final completion date

4% work not completed if 90 days or more past final completion date]

The above liquidated damages are intended to compensate the Owner for damages it will suffer due to late completion, consisting of losses of income and added costs. These liquidated damages are not intended to compensate the Owner for any added costs it may have to pay Separate Contractors due to the Contractor's failure to carry out Work in accordance with the Project Schedule, the Project Times, and Paragraph 2.2 of the Agreement. Any such additional costs are separately addressed and expressly treated as direct damages, not consequential damages, under this Master Agreement.

EXHIBIT D
PROJECT SCOPE OF WORK WARRANTY PROVISIONS FORM

The Warranty Period for the warranty on the Work is 12 **Months**

The Contractor offers the Owner an Extended Warranty Period as follows:

[ENTER LENGTH OF EXTENDED WARRANTY TERM, PRICE, AND DATE BY WHICH THE OPTION MUST BE EXERCISED.]

[ENTER ANY ADDITIONAL PROVISIONS]

EXHIBIT E

Master Agreement Insurance and Bonds

While performing any work or providing products or services related to this Master Agreement, any applicable SOW or PO, any extension thereof, or as indicated otherwise herein, Contractor agrees to maintain, at its own expense, all necessary insurance for itself and its personnel of at least the following kinds and limits, with reputable and financially strong independent insurance companies licensed or permitted to do business in the jurisdiction(s) where the work, products or services will be provided and rated at a minimum of "A-" VIII by AM Best (or similarly recognized rating agency in the country where the coverage was obtained):

1. Workers' Compensation – in accordance with statutory requirements for all locations where work, products or services are to be provided.

   1.1 The policy shall be amended to include a waiver of subrogation endorsement in favor of Owner Parties, which shall be defined as: Owner, its affiliates and each of their respective members, directors, officers, stockholders and employees (the "Owner Parties").

   [Note: Section 2. If contractor is a sole proprietor and can purchase Workers compensation in the jurisdiction the work is performed it should be purchased. If WC insurance for some reason cannot be obtained a discussion should take place with Risk Management. Employer's Liability insurance requirement may be waived if Supplier has no employees, however, if Contractor is required to carry workers' compensation coverage, it shall also be required to carry employer's liability insurance.]

2. Employer's Liability – with a limit not less than $1,000,000 each employee by disease, $1,000,000 each accident, and $1,000,000 disease policy limit.

   2.1 The policy shall be amended to include a waiver of subrogation endorsement in favor of Owner Parties.

3. Commercial General Liability – with a limit of not less than $5,000,000 per occurrence, $2,000,000 for products and completed operations, and $5,000,000 in the aggregate including, but not limited to, coverage for bodily injury, death, property damage, products and completed operations, independent contractors, premises/operations, sudden and accidental pollution coverage, and contractual, explosion, collapse, underground, and personal and advertising injury liabilities.

3.1

a. Policy shall include endorsements ISO form CG 20 26 and CG 20 37 including Owner Parties as additional insureds. Owner Parties are to be afforded the same types of coverage as listed in declarations page of the named insured's policy.
b. Policy shall include a waiver of subrogation endorsement in favor of Owner Parties.
c. Policy shall include a cross-liability and severability of interest clauses.
d. Policy shall contain endorsement 20 01 noting that Contractor's insurance is primary and any other insurance carried by Owner shall be noncontributory.
e. Policy shall not contain any exclusions or limitations related to nature of products or services being provided under this Agreement.

4. Commercial Automobile Liability – with a combined single limit of not less than $2,000,000 per occurrence for bodily injury, death and property damage for all owned, non-owned, hired or leased vehicles operated by Contractor personnel.

4.1

a. Policy shall include an endorsement, including Owner Parties as additional insureds. Owner Parties are to be afforded the same types of coverage as listed in declarations page of the named insured's policy.
b. Policy shall include a waiver of subrogation endorsement in favor of Owner Parties.
c. Policy shall include a cross-liability endorsement and severability of interest clauses.
d. Policy shall contain an endorsement noting that Contractor's insurance is primary and any other insurance carried by Owner shall be noncontributory.

5. Excess\Umbrella Liability – with a limit of not less than $5,000,000 per occurrence, at least with respect to policies required in 2., 3. and 4.; coverage shall provide excess limits and be at least follow form or broader.
a. Policy shall include Owner Parties as additional insureds. Owner Parties are to be afforded the same types of coverage as listed in declarations page of the named insured's policy. Policy shall include a waiver of subrogation endorsement in favor of Owner Parties.
b. Policy shall include a cross-liability and severability of interest clauses.
c. Policy shall contain an endorsement noting that Contractor's insurance is primary and any other insurance carried by Owner shall be noncontributory.

[Note: Section 6. Professional Liability (Errors & Omissions) insurance requirement applies to Contractors that perform professional services (i.e. accounting, legal,

architects/engineering, technology, consulting, tax, public relations/marketing, etc.). If no professional services are provided, coverage may be waived.]

6. Professional Liability (Errors & Omissions) – with a limit of not less than $2,000,000 per claim and covering claims arising out of or related to acts, errors or omissions in connection with work or services provided by Contractor. The policy shall have a retroactive date on or before the Agreement date or the date of Contractor's first professional service, whichever is earlier. Contractor shall use commercially reasonable efforts to maintain such coverage for five (5) consecutive years following final delivery of work or services.

[NOTE: Section 9. Pollution Liability applies to Contractors who provide services will involve the work with, remediation of, or removal of hazardous substances (i.e. asbestos abatement, removal of hazardous material from the location). If the aforementioned exposures don't apply, the requirement may be waived. If you are unsure, please contact Risk Management.]

7. Contractor Pollution Liability, naming Owner as an additional insured, with a limit of not less than $2,000,000 dollars per pollution condition and $2,000,000 in the aggregate written on an occurrence form with no sunset clause, if applicable, for losses caused by pollution conditions that arise from the operations of the Contractor described under the scope of services to be provided related to this project. Such conditions shall include
    a. Bodily injury, sickness, and disease to include mental anguish or shock, sustained by any one person; including death
    b. Property damage including physical damage to or destruction of tangible property including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically destroyed.
    c. Defense including costs, charges, and expenses incurred in the investigation, adjustment of defense claims for such compensatory damages;
    d. Transportation coverage including the loading and unloading of products, goods, and/or waste

8. All insurance policies required to be maintained by Contractor, except for Professional Liability, must be written on an occurrence form (claims-made form, occurrence reported form or modified occurrence not allowed) and shall be maintained without interruption during the term of this Agreement or as specified otherwise. Policies specified above may be maintained with limits listed in other foreign currencies, as long as they are equivalent to the amounts required herein. Contractor's required insurance limits may be satisfied by a combination of primary and excess/umbrella policies.

9. Owner will be provided with certificates of insurance and, where applicable, copies of policy endorsements, declaration pages and forms schedules prior to beginning of work or delivery of products or services and annually upon renewal of Contractor's insurance programs evidencing that the aforementioned policies are in force and including the coverage required above. Contractor shall not commence work until the required certificates, declaration pages, form schedules and endorsement copies have been provided and approved by Owner.

10. The required insurance policies shall not be canceled, reduced in scope or allowed to expire until at least 30 days' prior written notice has been given by Contractor, its insurance broker or carrier to Owner. The policies shall contain an endorsement requiring the insurer to give Owner written notice of reduction, expiration and/or cancellation.

11. Contractor shall require all subcontractors performing work related to this Agreement to maintain insurance coverage in compliance with all terms and conditions as required herein and to name Owner Parties as an additional insured as outlined above. Contractor shall not allow any subcontractor to commence work until evidence of required insurance coverage has been provided and verified by Contractor. Construction Manager shall indemnify, defend and hold harmless Owner Parties from and against all Losses arising out of or incident to the failure of any such subcontractor to be so insured. Subcontractor Default Insurance will be required when subcontractors are engaged at the Project level or within the Master agreement work

12. If any of the foregoing insurance coverages are required to remain in force after expiration or termination of this Agreement, additional certificates evidencing continuation of such coverage shall be submitted on an annual basis to Owner. Information concerning reduction of coverage on account of revised limits or claims paid under the general aggregate, or both, shall be furnished to Owner as soon as reasonably possible in accordance with Contractor's information and belief.

13. Should any loss occur under any of Contractor's or subcontractor's required insurance policies, Contractor or subcontractor shall be liable for the amount of any deductibles, retentions or other self-insurance mechanisms specified in such policies. Furthermore, Contractor and subcontractor waive any claims they might have against Owner Parties for payment of any deductibles or retentions or other self-insurance mechanisms.

14. None of the requirements contained herein as to types or limits or Owner's approval of insurance coverage to be maintained by Contractor are intended to, and shall not in any manner, limit, qualify or quantify any liabilities and obligations assumed by Contractor under the Master Agreement or otherwise provided by law. Owner reserves the right to review insurance requirements at any point in time and make changes in order to address

additional exposures, which may exist as a result of Contractor's performance under the Master Agreement. Owner's failure to monitor compliance or to object to noncompliance or unsatisfactory compliance with any terms of these insurance requirements does not modify or waive Contractor's obligations in any way. In the event of any failure by the Contractor to comply with the insurance provisions of this Master Agreement, Owner may, without or in any way compromising or waiving any right or remedy at law or in equity, upon notice to the Contractor, purchase such insurance, at the Contractor's expense, provided that Owner shall have no obligation to do so, and if Owner shall do so, the Contractor shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.

15. Protection of Property. Contractor shall, and shall ensure that any subcontractor thereof shall, use suitable precautions to prevent damage to Owner's property. If any such property is damaged by the fault or negligence of Contractor or any subcontractor thereof, Contractor shall, at no cost to Owner, promptly and equitably reimburse Owner for such damage or repair or otherwise make good such property to Owner's satisfaction. If Contractor fails to do so, Owner may do so and recover from Contractor the cost thereof.

EXHIBIT F

PROJECT FORM OF LIEN WAIVER (PROGRESS PAYMENTS)(CONDITIONED ON PAYMENT)

Property Owner:	Ascend Elements Inc.
Property Description:	[ENTER ADDRESS AND DESCRIPTION]
Project Description:	[ENTER NAME OF FACILITY]

1. Contingent only on receipt of the sum of _____ ("Progress Payment Amount"), the undersigned waives and releases all rights he/she/it has to assert mechanic's liens, materialman's liens, or construction liens against the interest of the Owner or any other person in the identified Property and against any construction funds with respect to work performed or labor, materials, or equipment supplied through _____ ("Applicable Release Date"), EXCEPT with respect to such claims as are listed on the reverse of this page ("Identified Claims"), and except with respect to any applicable unpaid retainage.

2. As an inducement to the Owner's making the requested payment, the undersigned represents and warrants the following:

- upon payment of the Progress Payment Amount, the undersigned will have been paid in full for all amounts due and owing for labor and/or materials supplied for the Project through the Applicable Release Date, except for retainage and any Identified Claims;
- the undersigned has not assigned any lien right against the Property of the construction funds to any other person or entity with respect to labor performed and/or materials supplied through the Applicable Release Date; and
- the undersigned will keep the Property free of all claims or liens of third parties for labor or material or both furnished to the undersigned for the Project through the Applicable Release Date, except as to the Identified Claims and unpaid retainage; and
- if any lien has already been placed on the Property related to the undersigned's work on the Project through the Applicable Release Date, for amounts other than the Identified Claims and unpaid retainage, the undersigned will cause the lien to be released immediately after receiving the Payment Amount; and
- no security interest has been given or executed by the undersigned in connection with any materials or equipment placed upon or installed on the Property or as part of the work through the Applicable Release Date.

[CONTRACTOR'S OR SUBCONTRACTOR'S NAME]

_____

By:

Typed Name and Title:

EXHIBIT G

PROJECT FORM OF LIEN AND CLAIM WAIVER (FINAL PAYMENT)(CONDITIONED ON PAYMENT)

Property Owner:	Ascend Elements Inc.
Property Description:	[ENTER ADDRESS AND DESCRIPTION]
Project Description:	[ENTER NAME OF FACILITY]

1. Contingent only on receipt of the sum of _____ ("Final Payment Amount"), the undersigned waives and releases all rights the undersigned has to assert mechanic's lien, materialman's lien, construction lien, or other lien rights against any interest of the Owner or any other person in the Property or in any construction fund.

2. As an inducement to the Owner's making the requested payment, the undersigned represents and warrants the following:

> upon payment of the Final Payment Amount, the undersigned will have been paid in full for all amounts due and owing for labor and/or materials supplied for the Project;

> the undersigned has not assigned any lien right against the Property or the construction funds to any other person or entity with respect to labor performed and/or materials supplied for the Project; and

> the undersigned will keep the Property free of all claims or liens of third parties for labor or material or both furnished to the undersigned for the Project; and

> if any lien has already been placed on the Property related to the undersigned's work on the Project through the Applicable Release Date, the undersigned will cause the lien to be released immediately after receiving the Payment Amount; and

> no security interest has been given or executed by the undersigned in connection with any materials or equipment placed upon or installed on the Property or as part of the work through the Applicable Release Date.

[CONTRACTOR'S OR SUBCONTRACTOR'S NAME]

_____

By:

Typed Name and Title:

EXHIBIT H
PARTIES' AUTHORIZED REPRESENTATIVES

The Owner designates the following persons to act as its Owner's Representatives for the Master Agreement:

Jill Baker
Sr. Category Manager - Purchasing
jbaker@ascendelements.com

Alternate Owner's Representative:

_____
_____
_____

(All formal notices required or permitted under the Master Agreement **MUST** also be sent to the Alternate Owner's Representative, as well as by one of the officially recognized means stated in Paragraph 14.10, to constitute effective notice.)

[ENTER NAME AND CONTACT INFORMATION FOR OWNER'S REP Alternate to act in absence.

Rodrigo Almeida – Supply Chain Director ralmeida@ascendelements.com

The Contractor designates the following person to act as its Contractor's Representative:

[ENTER NAME, ADDRESS, TELEPHONE AND FAX NUMBERS, AND E-MAIL ADDRESS.]

EXHIBIT I
PROJECT SITE SAFETY RULES

PROVIDED BY ASCEND ELEMENTS PROJECT MANAGER FOR EACH INDIVIDUAL PROJECT SCOPE OF WORK FORM]

EXHIBIT J
PROJECT (ASCEND ELEMENTS INC)
"SAFETY INFORMATION AND INSTRUCTIONS FOR CONTRACTORS"

[Provided by Ascend elements site EHS manager for each individual project scope of work form **]**

EXHIBIT K
PROJECT FORM - ALCOHOL AND DRUG ABUSE POLICY AGREEMENT FOR CONTRACTOR EMPLOYEES ON COMPANY PREMISES

Where applicable

EXHIBIT L
INDIVIDUAL PROJECT FORM KEY PERSONNEL

NAME/TITLE	PERIOD REQUIRED/ PERCENTAGE OF TIME REQUIRED
[ENTER APPLICABLE INFORMATION]	

Contractor: _____
Owner: _____

EXHIBIT M

PROJECT REQUIRED CHANGE ORDER FORM
CHANGE ORDER NO __

[Ascend Elements Inc.] ("Owner") and **[ENTER CONTRACTOR'S NAME]** ("Contractor") hereby agree to modify Contract No. _____, dated _____, as follows:

The Work is modified as follows:

The Contract Price is modified as follows:

Original Contract Price	$ _____
Changes Made by Prior Change Orders (Total)	$ _____
Change Made by This Change Order	$ _____
TOTAL REVISED CONTRACT PRICE	$ _____

The Project Times are modified as follows (if no change is reflected below, the Project Times are not modified on account of changes made by this Change Order):

No other changes to the Project Scope of Work Form are made by this Change Order. All Contract terms not expressly modified by the Change Order remain unchanged.

The Contractor agrees that this Change Order constitutes its full and final adjustment for all costs, delays, disruptions, inefficiencies, accelerations, schedule impacts, or other consequences arising from the identified change, whether caused by the change itself, or by any claimed cumulative effect of changes made to the date of the Change Order, and that no further adjustments in compensation or time shall be sought or made with respect to the change.

The effective date of this Change Order is _____.

[ENTER CONTRACTOR'S NAME] **ASCEND ELEMENTS, INC**

By: _____ By: _____

Title: _____ Title: _____

EXHIBIT N
ADDITIONAL CONTRACT TERMS

[ENTER ANY APPLICABLE PROVISIONS. IF NONE, ENTER "NONE."]

EXHIBIT O

RESPONSIBLE DEVELOPMENT

Ascend Elements Inc has adopted a policy of responsible purchasing, an integral part of the Responsible Development policies. The approach and expectations of the Ascend Elements Inc Group with regard to its suppliers are formalized in the "Suppliers Code of Conduct" available on request.

In addition to this Suppliers Code of Conduct (SCoC), Ascend Elements Inc has set up an alert system for suppliers allowing them to report any event or conduct non-compliant with applicable laws and regulations, international rules or with the principles of the SCoC. Any alert may be sent through the email address HR@ASCENDELEMENTS.COM

As part of its "Responsible Purchasing" policy, and in application of its vigilance plan, Ascend Elements Inc conducts a supplier analysis based on its risks mapping before assessing, if necessary, its suppliers' environmental, social and ethical practices through documentation reviews or on-site audits, on the basis of international standards (hereinafter referred to as the "Evaluations"). Should these assessments show any disparities between the standard reference framework used and the supplier's practices, Ascend Elements Inc will define with the supplier the corrective measures to be implemented. Any failure to implement these measures may result in the supplier being delisted and in the early termination for breach of this agreement and all other agreements concluded with Ascend Elements Inc companies.

The Supplier confirms that it has read, and complies with, the SCoC. The Supplier acknowledges that Owner may conduct Evaluations on the Supplier and agrees to provide the necessary assistance for that purpose.

COMPLIANCE

The Supplier undertakes to fulfil the compliance obligations set forth in this article. In addition, the Supplier shall require its own suppliers and subcontractors to comply with the same rules. Ascend Elements Inc is entitled to conduct audits in order to ensure the compliance to these rules.

Depending on the situation, the term "Ascend Elements Inc", as used in this Exhibit may refer to Owner and/or all companies and legal entities which belong to Ascend Elements Inc. Ascend Elements Inc consists of any and all companies and legal entities directly or indirectly detained and/or controlled by "Ascend Elements Inc", a company headquartered at 133 Flanders Rd, Westborough MA, 01581.

FIGHT AGAINST CORRUPTION

The Supplier warrants that it has not provided or promised any undue advantage to Ascend Elements Inc, any person employed by Ascend Elements Inc, or any third party to obtain the benefit of this Agreement.

The Supplier shall comply and require that all of its affiliated companies, officers, employees, representatives, subcontractors, and agents (the "**Supplier's Representatives"**) comply with the Suppliers' SCoC and applicable laws on preventing corruption. In particular, the Supplier and the Supplier's Representatives shall not directly or indirectly promise, offer, or grant to any public official or any other person any undue advantage with a view to making this person do or abstain from doing something, in breach of their legal or professional obligations.

The Supplier shall keep accurate accounts in accordance with its country's generally accepted accounting principles and in which all financial flows generated by this Agreement shall be correctly recorded; and shall inform Ascend Elements Inc, as soon as it may be aware, of any solicitation to commit an act of bribery or corruption occurring during the performance of the Master Agreement.

ECONOMIC SANCTIONS

The Supplier undertakes to comply with any laws and regulations on economic sanctions applicable to the activities covered by this Agreement. These may include instruments adopted by the United Nations or the United States.

For all matters pertaining to the execution of this Master Agreement, the Supplier undertakes that it will not enter into transactions with any person or entity with whom commercial transactions are forbidden or restricted by the United States.

The Supplier also undertakes to inform Ascend Elements Inc promptly in the event that any of the materials, products and/or components (including software or services) covered by this Master Agreement, are wholly or partly subject to any re-export restriction; and/or originate from the United States or incorporate content manufactured in the United States. In any such event, the Supplier shall provide Ascend Elements Inc with all related (and reasonably necessary) information and documents.

SUSPENSION OF OBLIGATIONS

Either Party shall be entitled to suspend temporarily or definitively the performance of its obligations under the Master Agreement without any liability to the other if, at any time, new

economic sanctions and/or export regulations enter into force and render the execution of the Master Agreement either impossible or illegal for one Party.

SUPPLIER BREACH OF ITS OBLIGATIONS

- Evaluations and audits

The Supplier authorizes Ascend Elements Inc to conduct evaluations and audits at any time in order to make sure that the Supplier is complying with its obligations under this Exhibit "**RESPONSIBLE DEVELOPMENT**". In this regard, the Supplier shall provide all the documents and data required to prepare and conduct the evaluation or the audit and give access to the site of the Supplier or its affiliated companies.

Organization and performance of evaluations or audits may include exchange and storage of personal data, mainly work-related.

- Master Agreement suspension

If Ascend Elements Inc has reasons to believe that the Supplier is not fulfilling the obligations contained in this Exhibit **RESPONSIBLE DEVELOPMENT**, Ascend Elements Inc shall inform the Supplier and may suspend performance of the Master Agreement until the Supplier provides reasonable proof that it has not committed or is not about to commit a breach. Ascend Elements Inc company shall under no circumstances be liable for any damage or loss caused to the Supplier by the suspension of the Master Agreement.

- Agreement termination

In case of an actual breach by the Supplier or the Supplier's Representatives of the provisions of this Exhibit **RESPONSIBLE DEVELOPMENT**, Ascend Elements Inc shall be entitled to terminate the Master Agreement, ipso jure with immediate effect, by registered letter with acknowledgement of receipt, without paying any compensation and without prejudice to any damages or remedies which Ascend Elements Inc may be able to claim as provided for by law.

Any and all general exclusions or limitations of liability mentioned elsewhere in the Master Agreement shall not be applicable to claims arising from or in connection with the Supplier's breach of obligations under this Exhibit **"RESPONSIBLE DEVELOPMENT".**

EXHIBIT P

CONSTRUCTION RATES ARE EFFECTIVE FEBERUARY 1 - DECEMBER 31ST, 2024.

AMCON
An AM Construction Company

CONSTRUCTION RATES

RATES ARE EFFECTIVE FEBERUARY 1 - DECEMBER 31ST, 2024.

CLASSIFICATION	DAY SHIFT - STRAIGHT TIME	DAY SHIFT - OVERTIME	NIGHT SHIFT - STRAIGHT TIME	NIGHT SHIFT - OVERTIME
Project Manager	$137.22	$192.19	--	--
Safety	$97.37	$146.06	--	--
General Foreman	$82.61	$123.92	$87.47	$131.20
Foreman	$72.89	$109.33	$77.75	$116.62
Mechanical Journeyman	$61.82	$85.05	$65.96	$92.32
Mechanical Helper	$44.17	$66.26	$49.48	$74.22
Material Manager	$44.17	$66.26	$49.48	$74.22
Controls	$92.32	$138.49	$97.19	$145.78
Electrical Journeyman	$63.17	$94.75	$68.03	$102.05
Electrical Helper	$44.17	$66.26	$49.48	$74.22
Field Admin	$76.63	$103.46	$82.18	$110.94
Office Admin	$76.63	$103.46	$82.18	$110.94
Office Management	$91.29	$115.54	--	--
Line Worker/General Labor	$43.92	$60.78	$49.19	$66.36

RIGUPATL
A GA RIGGING COMPANY

CRANE & RIGGING MANPOWER	HOURLY RATES (8 HR MIN)	OVERTIME RATES (8 HR MIN ON WEEKENDS)
FOREMAN	$72	$108
RIGGER	$65	$98
HELPER	$52	$78
OPERATOR	$70	$105
EQUIPMENT	OPERATED RATES	OVERTIME RATE
BOOM TRUCK	$200	$240
12K LULL	$125	$165
25/35 RIGGER LIFT	$250	$290
40/60 RIGGER LIFT	$350	$390

Non-Solicitation of Employees and Contractors. During the term of this Agreement and for one (1) year following the last day on which AMCON performs services for Customer under this Agreement, Customer will not, directly or indirectly, employ or offer employment to any employee of AMCON or contractor provided by AMCON, or assist any related corporation, affiliate or third party in doing so, without first contacting AMCON and obtaining the AMCON's express consent with respect to the specific employee(s) in question.

Contractor: _____
Owner: _____

DocuSign Envelope ID: DBCB4A00-3BE6-4D42-A641-81353B8A057F

WORKING HOURS

STRAIGHT TIME IS DURING NORMAL WORKING HOURS - MONDAY THROUGH FRIDAY, 40 HOURS PER WEEK.

OVERTIME IS IN EFFECT AFTER 40 NORMAL WORKING HOURS AND ALL-DAY SATURDAY AND SUNDAY.

DOUBLE TIME APPLIES ON **HOLIDAYS**:

THANKSGIVING, CHRISTMAS, NEW YEARS, MEMORIAL DAY, JULY

FOURTH, LABOR DAY

OTHER EXPENSES

TO BE BILLED PER THE MASTER SERVICES AGREEMENT

TRUCKING AND HAULING PERMITS NOT INCLUDED AND WILL BE BILLED SEPARATELY IF APPLICABLE.

OWNED EQUIPMENT EXPENSES

SERVICE/YARD TRUCK $125/DAY OR $600/WEEK PER PERSON

STAKE BODY TRUCK $225/DAY

LOT TOOLS/EQUIPMENT $350/WEEK PER SET UP

PER DIEM $150/DAY/PERSON // $155/DAY/SAFETY PERSON

Non-Solicitation of Employees and Contractors. During the term of this Agreement and for one (1) year following the last day on which AMCON performs services for Customer under this Agreement, Customer will not, directly or indirectly, employ or offer employment to any employee of AMCON or contractor provided by AMCON, or assist any related corporation, affiliate or third party in doing so, without first contacting AMCON and obtaining the AMCON's express consent with respect to the specific employee(s) in question.

Contractor: _____
Owner: _____

DocuSign Envelope ID: DBCB4A00-3BE6-4D42-A641-81353B8A057E

Contractor: _____
Owner: _____

TABLE OF CONTENTS

1. SCOPE OF WORK, GENERALLY 1
1.1. "Work" Generally 1
1.2. "Project Scope of Work" and "Master Agreement Documents" Defined 2
1.3. Interpretation/Order of Precedence 2
1.4. Pre-Contract Site Examination/Review of Site-Related Documents 3
1.5. Staffing; Key Persons 3
1.6. Submittals 4
1.7. Responsibility for Work/Means and Methods 5
1.8. Field Measurements 5
1.9. Cutting and Patching 5
1.10. Testing, Inspections and Approvals 5
1.11. Storage of Material 6
1.12. Limitations on Use of/Access to Project Site 6
1.13. Housekeeping/Clean-Up 7
1.14. Record Documents/As-Built Documentation 7
1.15. Safety, Protection of Persons and Property, Compliance With Laws 7
1.16. Compliance with Owner's Rules and Regulations 7
1.17. Protection Against Property Loss Or Damage 7
1.18. Reports of Accidents 8
1.19. Emergencies 8
1.20. Hazardous Materials 8
2. OWNER-SUPPLIED MATERIALS OR SERVICES/SEPARATE CONTRACTORS 9
2.1. Owner-Supplied Materials or Services 9
2.2. Separate Contractors 9
3. CONTRACT PRICE 10
3.1. Amount and Timing of Payments 10
3.2. Taxes 11
3.3. Invoicing Requirements 11
3.4. Construction or Mechanics' Liens 11
3.5. Disputed Amounts 12
4. OWNER-DIRECTED SUSPENSIONS 12
4.1. Authorized 12
4.2. Adjustments to Contract Time(s) and Contract Price Due to Suspension for Convenience 12
5. CONTRACT TIMES, CONTRACT SCHEDULE, DELAYS, AND SCHEDULE UPDATE REPORTING 12
5.1. Liquidated Delay Damages for Unexcused Delay 12
5.2. Project Schedule 13
5.3. Progress Meetings 13
5.4. Schedule Update Report 14

5.5. Excusable Delay/Extensions of Time 14
5.6. Required Notice/Documentation of Delay 15
5.7. Contractor's Delay-Related Costs 16
5.8. Acceleration 16
6. CHANGES 16
6.1. Changed Authorized 16
6.2. Required Notice of Claimed Changes or Change Events 16
6.3. Contractor's Entitlement to Adjustments to the Contract Price 17
6.4. Amount of Adjustments to Price 17
6.5. Failure to Agree/Duty to Proceed 18
6.6. Executed Change Orders Final 18
7. COMPLETION AND ACCEPTANCE 19
7.1. Substantial Completion 19
7.2. Final Completion 19
7.3. Effect of Final Payment 19
8. DEFECTS CORRECTION AND WARRANTIES 20
8.1. Defects Discovered Before Substantial Completion 20
6.2. Warranty Extent and Duration 20
8.3. Acknowledgment and Cure of Warranty Defects 20
8.4. Warranty Rights Cumulative 21
9. INTELLECTUAL PROPERTY ISSUES 21
9.1. License to Owner/Representations 21
9.2. Other Duties With Respect to Intellectual Property 21
10. INSURANCE AND FINANCIAL GUARANTEES; INDEMNITY 22
10.1. Contractor's Required Insurance 22
10.2. Requirements for Bonding or Other Financial Guarantees 22
10.3. Indemnity Obligations 22
11. CONFIDENTIALITY OBLIGATIONS 23
11.1. Obligations, Generally 23
11.2. Exceptions 23
12. CLAIMS AND DISPUTES 23
12.1. Notice of Claims 24
12.2. Duty to Continue Work 24
12.3. Mediation and Arbitration 24
12.4. Waiver of Consequential Damages 25
13. TERMINATION 25
13.1. By the Owner, For Default 25
13.2. Default Termination Procedures 25
13.3. By the Contractor, For Non-Payment 25
13.4. For Owner's Convenience 25

13.5. By Either Party, For Force Majeure 26
14. MISCELLANEOUS 26
14.1. Language of Contract 27
14.2. Governing Law 27
14.3. Independent Contractor 27
14.4. Subcontracting 27
14.5. Owner's Right to Audit 27
14.6. Parties' Authorized Representatives/Designation and Authority 27
14.7. Responsible Development 28
14.8. No Gift Policy 28
14.9. No Third-Party Beneficiary Rights 28
14.10. Notices/Communications 28
14.11. Recoupment or Offset 29
14.12. Binding Effect; Assignment 29
14.13. Survival 29
14.14. No Waiver 29
14.15. Remedies Cumulative 29
14.16. Headings/Captions 29
14.17. Modification of Agreement 30
14.18. Execution in Counterparts 30

TABLE OF EXHIBITS

Exhibit A	Project Scope of Work Form
Exhibit B	Master Agreement Price and Payment Provisions
Exhibit C	Liquidated Damages for Delay
Exhibit D	Warranty Period/Extended Warranty Terms
Exhibit E	Insurance/Required Bonding or Financial Guarantees
Exhibit F	Lien Waiver for Interim Payments
Exhibit G	Lien Waiver for Final Payment
Exhibit H	Parties' Authorized Representatives
Exhibit I	Site Safety Rules
Exhibit J	Ascend Elements Inc Corporation's Call to Action "Safety Information and Instructions for Contractors"
Exhibit K	Alcohol and Drug Abuse Policy Agreement for Contractor Employees on Company Premises
Exhibit L	Key Personnel
Exhibit M	Required Change Order Form
Exhibit N	Additional Contract Terms
Exhibit O	Supplier Code of Conduct
Exhibit P	Time and Material Rates

ITEMS IN AQUA ARE PROJECT SCOPE OF WORK TEMPLATE FORMS AND MUST BE FILLED OUT ON A PROJECT BASIS AND ROUTED FOR APPROVALS WITH PROPOSALS

EXHIBIT E

Fill in this information to identify the case:

Debtor 1: Ascend Elements, Inc.

Debtor 2 (Spouse, if filing):

United States Bankruptcy Court for the: Southern District of Texas

Case number: 26-90440

Official Form 410

Proof of Claim

04/16

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**

AM Construction Inc. d/b/a AMCON Industrial
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**

✓ No
Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
Jackson Walker LLP c/o Zachary McKay Name	AMCON Industrial c/o Coleen Phillips Name
1401 McKinney Street, Suite 1900 Number Street	1375 Oakley Industrial Blvd Number Street
Houston TX 77010 City State ZIP Code	Fairburn GA 30213 City State ZIP Code
Contact phone (713) 752-4261	Contact phone (770) 251-4710
Contact email zmckay@jw.com	Contact email Coleen@amconindustrial.com

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**

✓ No
— Yes. Claim number on court claims registry (if known) _____ Filed on ____ / ____ / ____ (MM / DD / YYYY)

5. **Do you know if anyone else has filed a proof of claim for this claim?**

✓ No
Yes. Who made the earlier filing?

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
✓ No
Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ ____ ____ ____

7. **How much is the claim?** $ 9,881,478.48 . **Does this amount include interest or other charges?**
*Plus interest, fees and all other amounts owed pursuant to applicable law or equity
No
✓ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.
Work, labor, materials, and equipment provided, per Addendum

9. **Is all or part of the claim secured?**
No
✓ Yes. The claim is secured by a lien on property.
Nature of property:
✓ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim.*
__ Motor vehicle
✓ Other. Describe: All of the right, title and interest of the Property and Project
Basis for perfection: Recorded Mechanics' and Materialman's Lien Statement
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
Value of property: $____
Amount of the claim that is secured: $ 9,881,478.48
Amount of the claim that is unsecured: $ 0.00 (The sum of the secured and unsecured amounts should match the amount in line 7.)
Amount necessary to cure any default as of the date of the petition: $ 9,881,478.48
Annual Interest Rate (when case was filed)_____%
Fixed
__ Variable

10. **Is this claim based on a lease?**
✓ No
__ Yes. **Amount necessary to cure any default as of the date of the petition.** $____

11. **Is this claim subject to a right of setoff?**
✓ No
Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?** A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.		**Amount entitled to priority**
	✓ No	
	Yes. *Check one:*	
	☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
	☐ Up to $2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
	☐ Wages, salaries, or commissions (up to $12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
	☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
	☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
	☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- ✓ I am the creditor.
- ☐ I am the creditor's attorney or authorized agent.
- ☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- ☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 06/23/2026
MM / DD / YYYY

Coleen Phillips
Signature

Print the name of the person who is completing and signing this claim:

Name: Coleen Phillips
First name Middle name Last name

Title: Chief Financial Officer

Company: AMCON Industrial
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: 1375 Oakley Industrial Blvd
Number Street

Fairburn GA 30213
City State ZIP Code

Contact phone: (770) 251-4710 Email: Coleen@amconindustrial.com

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)
Debtor.	§	
	§	

ADDENDUM TO SECURED PROOF OF CLAIM OF AM CONSTRUCTION INC. D/B/A AMCON INDUSTRIAL

AM Construction Inc. d/b/a AMCON Industrial ("Claimant") submits the following in support of its proof of claim (the "Proof of Claim"). This Addendum provides greater specificity as to the nature of Claimant's Claim (as defined below). Capitalized terms not defined herein shall have the meaning ascribed to them in the MSA (as defined below).

A. Background

1. On April 9, 2026 (the "Petition Date"), the Debtors filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of Texas (the "Court").

2. In 2022, Claimant began performing work as a subcontractor to a prior general contractor at the Covington facility. Upon information and belief, Ascend Elements, Inc. ("Ascend") terminated its contract with the prior general contractor and sought to contract with Claimant directly. In May 2023, Claimant entered into a Professional Services Agreement (the "PSA") with Ascend, effective May 24, 2023, to provide labor, services and materials on the project known as Apex-0 located at 9176 Industrial Drive NE, Covington, Newton County, Georgia 30014 (the "Property"). The owner of the Property is Covington Industrial LLC (the "Landlord"), which leases the Property to Ascend. The PSA was structured on a Time & Materials, cost-plus basis.

3. On March 12, 2024, Claimant and Ascend entered into a Master Agreement for Construction Services (the "MSA"), which, except for certain existing open work orders, superseded the PSA. Pursuant to the MSA, Claimant agreed to serve as the general contractor for construction project services at the Apex-0 facility (the "Project"). The MSA was likewise structured on a Time & Materials, cost-plus basis.

4. Claimant performed work and furnished labor, materials, and equipment for the improvement of the Property pursuant to the PSA and MSA from 2022 through July 2, 2025.

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[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.

Despite Claimant's diligent performance, in or around the summer of 2024, Ascend began to fall significantly behind on payment of Claimant's invoices. At no point during this time did Ascend notify Claimant that it disputed any of Claimant's invoices pursuant to the dispute provisions of the MSA. Despite multiple formal demands for payment, including demands issued on August 22, 2024, and March 17, 2025, and a payment plan agreed to by the parties, Ascend failed to pay Claimant the amounts due and owing. The last date that labor, equipment, materials and/or other services were provided to the Property by Claimant was July 2, 2025.

5. Prior to the Petition Date, on August 8, 2025, Claimant filed a Complaint for Damages against Ascend in the Superior Court of Newton County, Georgia (Civil Action File No. SUCV2025002393), asserting claims for breach of contract, quantum meruit, and foreclosure of lien. The parties had previously attended mediation as required by the MSA, which was unsuccessful. The state court action is currently stayed pursuant to 11 U.S.C. § 362.

6. Also on August 8, 2025, Claimant properly filed and recorded a mechanics' and materialmen's lien (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 on the Project in the amount of $6,232,621.09 (the "Lien Amount"). A copy of the recorded M&M Lien is attached hereto as **Exhibit A**. The M&M Lien was properly recorded within 90 days after the completion of the work and the last date that materials or machinery were furnished, as required by O.C.G.A. § 44-14-361.1.

7. Claimant asserts that its M&M Lien is valid, perfected, and enforceable under Georgia law to secure payment to Claimant in the amount of $6,232,621.09, plus interest and all costs incurred in the enforcement of its M&M Lien, which continue to accrue. Claimant's claim includes unpaid amounts for work performed by Claimant, interest as permitted by O.C.G.A. § 7-4-2, attorney's fees, and costs. Interest accrued through the Petition Date brings Claimant's total secured claim to $9,881,478.48 (the "Indebtedness"). The total Indebtedness is calculated in detail on the spreadsheet attached hereto as **Exhibit B**.

8. As such, Claimant holds a valid secured claim totaling $9,881,478.48 against the leasehold estate and any other property interests held by Ascend Elements, Inc. in the Property, including but not limited to any personal property, leasehold improvements, tenant improvements, betterments, furniture, fixtures, trade fixtures, equipment, and contents.

9. The Indebtedness does not yet include post-petition interest, attorneys' fees, or costs, but to the extent that Claimant is oversecured, Claimant intends to amend and/or supplement this Proof of Claim and the Indebtedness amount to assert all such amounts as are allowed pursuant to 11 U.S.C. § 506(b). To the extent the value of the Property exceeds the value of Claimant's secured claim, the claim includes all rights to additional interest, fees, and damages in respect thereof.

B. Amendment to Proof of Claim

10. Claimant hereby reserves its right to amend or supplement this Proof of Claim from time to time to, among other things, recharacterize in any manner the claims set forth herein, refine amounts owing, and/or reflect any additional amounts owing from the Debtors, and to include herein any further relevant information.

NO ADMISSIONS AND RESERVATION OF RIGHTS

11. All exhibits are incorporated into this Addendum by reference, and this Addendum is incorporated into the Proof of Claim by reference. The Debtors should already be in possession of all documents and invoices in support of the Indebtedness. Documentation in support of this Proof of Claim is in the possession of Claimant. Such documentation and requests for further documentation or additional information should be directed to counsel for Claimant.

12. The assertion of the claim herein by Claimant is not a concession or admission as to the correct characterization or treatment of such claim, nor a waiver of any rights of Claimant. The execution and filing of this Proof of Claim does not constitute: (a) a waiver or release of Claimant's rights against any other entity or person liable for or any other source of recovery in connection with all or part of the claim; (b) a consent by Claimant to the jurisdiction of this Court with respect to any proceeding commenced against or otherwise involving Claimant; (c) a consent by Claimant to the treatment of any non-core claim against it as a core claim; (d) a waiver, release or limitation of Claimant's right to have any and all final orders in any and all non-core matters or proceedings entered only after de novo review by a United States District Court Judge; (e) a waiver of the right to move to withdraw the reference with respect to the subject matter of the claim or otherwise; (f) a waiver of any right to the subordination, in favor of Claimant, of indebtedness or liens held by other creditors of the Debtors; (g) an election of remedies that waives or otherwise affects any other remedies; (h) a waiver of defaults; (i) a waiver or limitation on any rights, remedies, claims, counterclaims, defenses (procedural or substantive) or interests, including any rights to claim specific assets or any other rights or rights of action that Claimant has or may have against the Debtors, the Landlord, any non-debtor obligor, or other entity or person liable for all or part of the claim described herein; (j) a waiver of any right to arbitration or other alternative dispute resolution mechanism that is otherwise applicable; (k) a waiver of any rights that Claimant may have pursuant to section 506(b) of the Bankruptcy Code; or (l) a waiver of any additional claims or other rights that Claimant may have against the Debtors.

13. Claimant, on behalf of itself, expressly: (a) reserves all legal, equitable and contractual rights against all parties (including the Debtors, the Landlord, or any other person that is or may become a debtor) with respect to the claim and otherwise and does not waive any right or remedy of Claimant, including without limitation any right to any security held by or for it, or any right to claim an interest in specific assets or any other rights or causes of action that it has or may have against the Debtors, the Landlord, or any other person or persons, and expressly reserves all such rights; (b) reserves the right to file additional proofs of claim and to amend, supplement or modify this Proof of Claim in any respect and at any time, including without limitation by (i) specifying the dollar amount of any part of the claim that is not stated in specific amounts herein, (ii) specifying the amount of fees, costs, and charges owed to Claimant to the extent not set forth herein, (iii) specifying additional interest, fees, costs, or charges arising prior or subsequent to the

date of confirmation of any plan of reorganization, or (iv) restating the amount of any portion of the claim; and (c) reserves the right to assert that all or any part of the claim described herein is a postpetition administrative expense entitled to priority under sections 503, 507(a)(2) and 507(b) of the Bankruptcy Code, including, but not limited to, costs and expenses (including attorneys' fees and disbursements) incurred by Claimant that remain unpaid.

14. Without limiting the generality of the foregoing, nothing in this Proof of Claim or any action taken by Claimant in connection with the Debtors' bankruptcy cases, including, without limitation, the filing of this Proof of Claim, participation in any sale process under 11 U.S.C. § 363, any credit bid submitted by Claimant, any consent or objection (or absence thereof) with respect to any bid or sale, or any distribution received from the Debtors' estates, shall be deemed to constitute a release, waiver, impairment, satisfaction, or discharge of, or an election of remedies with respect to, any and all claims, rights, and remedies that Claimant holds or may hold directly against the Landlord, whether arising under applicable lien statutes, bond claims, or otherwise at law or in equity. Claimant expressly reserves all such claims, rights, and remedies against the Landlord in full, without limitation.

15. To the extent that the Debtors assert any claims against Claimant, Claimant reserves its rights to assert that any such claim is subject to rights of setoff and/or recoupment, whether or not arising under the transactions set forth in this Proof of Claim, which rights are treated as secured claims under the Bankruptcy Code, or state and federal laws of similar import as well as in equity.

16. Nothing in this Proof of Claim shall be deemed an admission by Claimant. Claimant expressly reserves the right to withdraw all or any part of the claim as if it had never been filed. No judgment has been rendered on the claims set forth in this Proof of Claim.

EXHIBIT A

BK: 306 PG: 221-223
Filed and Recorded
08-08-2025 10:56 AM
DOC# L2025-007034
STEPHANIE FINNIE
CLERK OF SUPERIOR COURT
NEWTON COUNTY

After recording, return to:
AM Construction d/b/a Amcon Industrial
Linda Lilly
1375 Oakley Industrial Blvd
Fairburn, GA 30213

CLAIM OF LIEN ON LEASEHOLD ESTATE AND INTERESTS

STATE OF GEORGIA
COUNTY OF NEWTON

AM Construction Inc. d/b/a AMCON Industrial ("Lienor"), a general contractor, who was hired by Ascend Elements, Inc. to engage in the business of improving real estate by furnishing labor and materials, claims a lien in the amount of $6,232,621.09 (Six Million Two Hundred Thirty-Two Thousand Six Hundred Twenty-One Dollars and Nine Cents) plus interest as provided by law on the leasehold estate for years and any other property interests held by **Ascend Elements, Inc.** the lessee, in certain buildings and/or structures and in the premises or real estate upon which such are erected or built described as 9172 Industrial Drive NE, Covington, Georgia 30014, Land Lot 273, 9th District, Newton County, State of Georgia, and detailed more specifically on that legal description attached as **Exhibit "A,"** for satisfaction of a claim which became due on or after July 2, 2025 which is the last date that labor, equipment, materials and/or other services were provided to said property by Lienor. The Owner of said premises or real estate is **Covington Industrial LLC.**

THIS CLAIM OF LIEN EXPIRES AND IS VOID 395 DAYS FROM THE DATE OF FILING OF THE CLAIM OF LIEN IF NO NOTICE OF COMMENCEMENT OF LIEN ACTION IS FILED IN THAT TIME PERIOD.

PURSUANT TO O.C.G.A. §44-14-368, THE OWNER OF THE REAL PROPERTY DESCRIBED HEREIN, OR THE OWNER'S AGENT OR ATTORNEY, OR THE CONTRACTOR'S AGENT OR ATTORNEY SHALL HAVE THE RIGHT TO ELECT TO CONTEST THIS LIEN AND SHORTEN THE TIME PRESCRIBED IN WHICH TO COMMENCE A LIEN ACTION TO ENFORCE THIS CLAIM OF LIEN BY RECORDING IN THE SUPERIOR COURT CLERK'S OFFICE A NOTICE OF CONTEST OF LIEN, ALL AS PROVIDED FOR IN O.C.G.A. § 44-14-368.

This claim of lien is filed for record, pursuant to the provisions of O.C.G.A. §§ 44-14-360 et seq. within 90 days after the completion of the work or within 90 days after the material or machinery is furnished.

This the 8th day of August, 2025.

AM Construction, Inc.

Linda Lilly

By: Linda Lilly
Its: Accounting Specialist

PAMELA HANLEY
Notary Public, Georgia
Cobb County
My Commission Expires
February 09, 2027

Sworn to and subscribed before me Linda Lilly this 8th day of August, 2025

Notary Public _____ My Commission Expires: February 09, 2027

EXHIBIT A

[Legal Description]

All that tract or parcel of land lying and being in Land Lot 273 of the 9th District, City of Covington, Newton County, Georgia and being more particularly described as follows:

Commencing at a right of way monument found at the intersection of the westerly side of the right of way of Alcovy Road (a variable right of way) and the southerly side of the right of way of Interstate 20 Limited Access Highway (a variable right of way), thence running easterly along the southerly side of the right of way of Interstate 20 Limited Access Highway a distance of 485.02' to a ½" rebar set at the **TRUE POINT OF BEGINNING** (the above referenced distance is more particularly described by the following six (6) courses and distances: North 88 degrees 02 minutes 13 seconds East a distance of 114.40 feet to a right of way monument found; thence along a curve to the left an arc length of 115.20 feet, said curve having a radius of 248.00' and a chord bearing of North 79 degrees 14 minutes 54 seconds East and a chord distance of 114.16 feet to a right of way monument found; thence North 66 degrees 33 minutes 04 seconds East a distance of 126.11 feet to a right of way monument found; thence North 87 degrees 17 minutes 25 seconds East a distance of 48.21 feet to a right of way monument found; thence North 53 degrees 54 minutes 44 seconds East a distance of 30.61 feet to a right of way monument found; thence North 81 degrees 31 minutes 01 seconds East a distance of 50.49 feet to an iron pin set at the **TRUE POINT OF BEGINNING**). From point **TRUE POINT OF BEGINNING** thus established continue along the southerly side of the right of way of Interstate 20 Limited Access Highway North 81 degrees 48 minutes 47 seconds East a distance of 165.76 feet to a nail set; thence continuing along the southerly side of said right of way North 89 degrees 37 minutes 14 seconds East a distance of 462.40 feet to a right of monument found; thence continuing along the southerly side of said right of way South 89 degrees 06 minutes 22 seconds East a distance of 455.76 feet to a right of way monument found at the intersection of the southerly side of the right of way of Interstate 20 Limited Access Highway and the southerly side of the right of way of Industrial Drive (a 60' right of way); thence running along the southerly side of the right of way of Industrial Drive North 89 degrees 53 minutes 43 seconds East a distance of 13.31 feet to a ½" rebar found; thence leaving the southerly side of the right of way of Industrial Drive South 00 degrees 09 minutes 59 seconds West a distance of 705.16 feet to a ½" rebar found; thence North 74 degrees 07 minutes 51 seconds East a distance of 645.09 feet to a rock found; thence South 27 degrees 41 minutes 45 seconds East a distance of 169.19 feet to an iron pin set; thence South 09 degrees 20 minutes 10 seconds West a distance of 207.97 feet to an iron pin set on the northwesterly side of the right of way of the Georgia Railroad (a 200' right of way); thence running along the northwesterly side of said Georgia Railroad right of way South 50 degrees 33 minutes 00 seconds West a distance of 872.57 feet to a ½" rebar found at the intersection of the northwesterly side of said Georgia Railroad right of way with the northeasterly line of property now or formerly owned by CSX Railroad; thence leaving the northwesterly side of said Georgia Railroad right of way and running northwesterly along the northeasterly boundary line of adjacent property now or formerly owned by CSX Railroad the following courses and distances: along the northeasterly boundary line

of the adjacent property now or formerly owned by CSX Railroad along a curve to the right an arc length of 559.93 feet, said curve having a radius of 557.35' and a chord bearing of North 73 degrees 54 minutes 17 seconds West and a chord distance of 536.68 feet to a point; North 47 degrees 09 minutes 42 seconds West a distance of 19.33 feet to a point; North 45 degrees 40 minutes 29 seconds West a distance of 98.45 feet to a point; North 45 degrees 14 minutes 27 seconds West a distance of 99.85 feet to a point; North 40 degrees 53 minutes 24 seconds West a distance of 188.34 feet to a ½" rebar found; thence leaving said northeasterly boundary line of the adjacent property now or formerly owned by CSX Railroad North 89 degrees 56 minutes 41 seconds West a distance of 28.58 feet to a point in the centerline of a railroad spur line; thence North 35 degrees 18 minutes 32 seconds West a distance of 205.51 feet to a ½" rebar found; thence North 01 degrees 04 minutes 15 seconds East a distance of 272.97 feet to a 2" brass disc found; thence South 85 degrees 05 minutes 55 seconds West a distance of 56.44 feet to an iron pin set; thence North 05 degrees 10 minutes 29 seconds West a distance of 209.58 feet to a 2" brass disc found; thence South 88 degrees 22 minutes 36 seconds West a distance of 71.40 feet to a 2" brass disc found; thence North 00 degrees 19 minutes 08 seconds West a distance of 332.71 feet to an iron pin set on the southerly side of the right of way of Interstate 20 Limited Access Highway at the **TRUE POINT OF BEGINNING.**

Commonly known as 9172 Industrial Drive, Covington, Georgia.

Together with the rights, easements, privileges and obligations appurtenant to the above described land created and established under that certain Reciprocal Easement Agreement by and between Pactiv Corporation and Tyco Plastics, LP, dated as of May 28, 2002, recorded in Deed Book 1232, Page 550, Newton County, Georgia Records.

Said tract or parcel, containing approximately 1,628,755 square feet or 37.39 acres, is more accurately shown on that certain ALTA/ACSM Land Title Survey, dated November 13, 2014, prepared for IPA Covington, LLC, Atlantic Capital Bank and Chicago Title Insurance Company, by Travis Pruitt & Associates, Inc., last revised December 10, 2014.

EXHIBIT B

Job No	Job Name	Work Order #	Invoice No	Invoice Description	Inv Date	0 - 1 days	2 - 31 days	32 - 61 days	62 + days	Age	Due Date
1010	ASCEND AUDIT CHARGES	N/A	25019	LOT TOOL BACK CHARGE	5/20/2025	-	-	-	861,583.00	323	5/20/2025
1010	ASCEND AUDIT CHARGES	N/A	25020	INTEREST FEES THRU 06.11.25	6/11/2025	-	-	-	1,110,362.15	271	7/11/2025
1010	ASCEND AUDIT CHARGES	N/A	25021	LUMP SUM WORK COMPLETE	6/11/2025	-	-	-	433,621.00	271	7/11/2025
1010	ASCEND AUDIT CHARGES	N/A	25088	INTEREST CHARGES 6.11-7.28.25	7/28/2025	-	-	-	125,757.87	224	8/27/2025
1010	ASCEND AUDIT CHARGES	N/A	25302	INTEREST 7.28.25 - 11.13.25	11/13/2025	-	-	-	246,975.22	116	12/13/2025
1010	ASCEND AUDIT CHARGES	N/A	25599	CREDIT FOR SALES TAX ADJ INTER	4/8/2026	(27,543.73)	-	-	-	-30	5/8/2026
1010	ASCEND AUDIT CHARGES	N/A	25600	INTEREST THRU 03.30.26	4/8/2026	292,686.82	-	-	-	-30	5/8/2026
				Job Total	3,043,442.33	265,143.09	-	-	2,778,299.24		
10-23115	Rental Equipment	1	24665	16M01A LI ROASTING MECH & EQUI	1/8/2025	-	-	-	25,897.18	425	2/7/2025
10-23115	Rental Equipment	1	24723	RENTAL EQ JANUARY 2025	1/31/2025	-	-	-	72,507.73	402	3/2/2025
10-23115	Rental Equipment	1	24777	FEB 2025 T&M BILLING	3/10/2025	-	-	-	34,031.97	364	4/9/2025
10-23115	Rental Equipment	1	24822	MAR 2025 T&M	3/27/2025	-	-	-	29,992.84	347	4/26/2025
10-23115	Rental Equipment	1	24906	APRIL 2025 T&M BILLING	5/5/2025	-	-	-	21,249.15	308	6/4/2025
10-23115	Rental Equipment	1	24986	MAY 2025 T&M	6/11/2025	-	-	-	5,575.99	271	7/11/2025
				Job Total	189,254.86	-	-	-	189,254.86		
10-23116	General Facilities Ma	1	24312-A	T&M Billing June 2024	6/27/2024	-	-	-	125,073.26	620	7/27/2024
10-23117	Site Management	1	24667	December 2024 T&M	1/8/2025	-	-	-	25,529.72	425	2/7/2025
10-23117	Site Management	1	24724	SITE MGMT - JAN 2025	1/31/2025	-	-	-	107,217.99	402	3/2/2025
10-23117	Site Management	1	24778	FEB 2025 T&M BILLING	3/10/2025	-	-	-	85,646.53	364	4/9/2025
10-23117	Site Management	1	24824	MAR 2025 T&M	3/27/2025	-	-	-	72,417.12	347	4/26/2025
10-23117	Site Management	1	24907	APRIL 2025 T&M BILLING	5/5/2025	-	-	-	26,526.88	308	6/4/2025
10-23117	Site Management	1	24989	MAY 2025 T&M	6/11/2025	-	-	-	4,891.04	271	7/11/2025
				Job Total	322,229.28	-	-	-	322,229.28		
10-23162	16M01A Li Roast Mec Eq Set T&M	1	24663	December 2024 T&M	1/8/2025	-	-	-	81,859.00	425	2/7/2025
10-23162	16M01A Li Roast Mec Eq Set T&M	1	24721	LITHIUM - JAN 2025	1/31/2025	-	-	-	1,879,555.01	402	3/2/2025
10-23162	16M01A Li Roast Mec Eq Set T&M	1	24775	FEB 2025 T&M BILLING	3/10/2025	-	-	-	424,610.43	364	4/9/2025
10-23162	16M01A Li Roast Mec Eq Set T&M	1	24820	MAR 2025 T&M	3/27/2025	-	-	-	121,262.33	347	4/26/2025
10-23162	16M01A Li Roast Mec Eq Set T&M	1	24904	APRIL 2025 T&M BILLING	5/5/2025	-	-	-	176,387.94	308	6/4/2025
10-23162	16M01A Li Roast Mec Eq Set T&M	1	24987	MAY 2025 T&M	6/11/2025	-	-	-	151,412.24	271	7/11/2025
				Job Total	2,835,086.95	-	-	-	2,835,086.95		
10-24028	PCAM Production Line (Mech)	14	24668	December 2024 T&M	1/8/2025	-	-	-	158,233.10	425	2/7/2025
10-24028	PCAM Production Line (Mech)	14	24725	PCAM JAN 2025	1/31/2025	-	-	-	36,595.34	402	3/2/2025
10-24028	PCAM Production Line (Mech)	14	24779	FEB 2025 T&M BILLING	3/10/2025	-	-	-	1,015,853.93	364	4/9/2025
10-24028	PCAM Production Line (Mech)	14	24825	MAR 2025 T&M	3/27/2025	-	-	-	579,449.10	347	4/26/2025
10-24028	PCAM Production Line (Mech)	14	24908	APRIL 2025 T&M BILLING	5/5/2025	-	-	-	267,114.83	308	6/4/2025
10-24028	PCAM Production Line (Mech)	14	24990	MAY 2025 T&M	6/11/2025	-	-	-	149,791.13	271	7/11/2025
10-24028	PCAM Production Line (Mech)	14	25030	June 2025	6/26/2025	-	-	-	9.07	256	7/26/2025
10-24028	PCAM Production Line (Mech)	14	25037	July 2025	7/10/2025	-	-	-	36,163.75	242	8/9/2025
10-24028	PCAM Production Line (Mech)	14	25039	July 2025	7/10/2025	-	-	-	1,950.00	242	8/9/2025
10-24028	PCAM Production Line (Mech)	14	25040	July 2025	7/10/2025	-	-	-	60,990.00	242	8/9/2025
10-24028	PCAM Production Line (Mech)	14	25042	July 2025	7/11/2025	-	-	-	343,225.00	241	8/10/2025
10-24028	PCAM Production Line (Mech)	14	25078	JULY 2025 LABOR	7/22/2025	-	-	-	17,236.72	230	8/21/2025
				Job Total	2,666,611.97	-	-	-	2,666,611.97		
10-24083	General Facilities Maint	14	24666	December 2024 T&M	1/8/2025	-	-	-	14,391.52	425	2/7/2025
20-23162	16M01A-LI Roasting Duct Bank	1	24664	December 2024 T&M	1/8/2025	-	-	-	121,134.20	425	2/7/2025
20-23162	16M01A-LI Roasting Duct Bank	1	24722	LI - JANUARY 2025	1/31/2025	-	-	-	95,274.27	402	3/2/2025
20-23162	16M01A-LI Roasting Duct Bank	1	24776	FEB 2025 T&M BILLING	3/10/2025	-	-	-	86,190.09	364	4/9/2025
20-23162	16M01A-LI Roasting Duct Bank	1	24821	MAR 2025 T&M	3/27/2025	-	-	-	61,309.66	347	4/26/2025
20-23162	16M01A-LI Roasting Duct Bank	1	24905	APRIL 2025 T&M BILLING	5/5/2025	-	-	-	29,046.23	308	6/4/2025
20-23162	16M01A-LI Roasting Duct Bank	1	24985	MAY 2025 T&M	6/11/2025	-	-	-	18,153.71	271	7/11/2025
				Job Total	411,108.16	-	-	-	411,108.16		
20-24028	PCAM Production Line (Elec)	14	24669	December 2024 T&M	1/8/2025	-	-	-	95,095.25	425	2/7/2025
20-24028	PCAM Production Line (Elec)	14	24726	PCAM - JAN 2025	1/31/2025	-	-	-	35,333.30	402	3/2/2025
20-24028	PCAM Production Line (Elec)	14	24780	FEB 2025 T&M BILLING	3/10/2025	-	-	-	84,794.31	364	4/9/2025
20-24028	PCAM Production Line (Elec)	14	24826	MAR 2025 T&M	3/27/2025	-	-	-	59,057.29	347	4/26/2025
				Job Total	274,280.15	-	-	-	274,280.15		
				Grand Total	**9,881,478.48**	**265,143.09**	**-**	**-**	**9,616,335.39**		

EXHIBIT F

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)**

DECLARATION OF AARON PHILLIPS IN SUPPORT OF AM CONSTRUCTION INC. D/B/A AMCON INDUSTRIAL'S MOTION FOR SUMMARY JUDGMENT

I, Aaron Phillips, declare as follows pursuant to 28 U.S.C. § 1746:

1. My name is Aaron Phillips. I am the Chief Executive Officer of AM Construction Inc., d/b/a AMCON Industrial ("AMCON"), a Georgia corporation. I have held this position since 2011. I have 15+ years of experience in commercial and industrial construction. I am a custodian of AMCON's business records.

2. I have personal knowledge of the facts set forth in this declaration. I was personally involved in managing AMCON's work at the Covington, Georgia facility that is the subject of this contested matter.

3. AMCON served as the general & specialty contractor for construction project services at the facility located at 9176 Industrial Drive NE, Covington, Newton County, Georgia 30014 (the "Covington Facility" or the "Property"). This project was referred to internally as the "Apex-0" project.

4. AMCON performed work at the Covington Facility from 2021 through July 2, 2025. AMCON's work was performed pursuant to the Professional Services Agreement effective

[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.

May 24, 2023 (the "PSA") and the Master Services Agreement dated March 12, 2024 (the "MSA"), each between AMCON and Ascend Elements, Inc. ("Ascend").

5. AMCON furnished labor, materials, equipment, and services for the construction and improvement of the Covington Facility. The scope of AMCON's work included, but was not limited to: fabrication and installation of process equipment; piping systems and connections; electrical systems, wiring, and panel installation; structural modifications to the building; utility upgrades and connections and separate metering; equipment foundations and concrete pads; ventilation and environmental control systems; building modifications to accommodate industrial equipment; fire suppression and safety systems; and site improvements. This covers the gist high-level without getting granular.

6. The Covington Facility is a specialized lithium battery recycling and black mass processing facility. The work AMCON performed was necessary to construct, build out, and equip the facility for its intended industrial use. When AMCON began its work, the premises were an empty industrial shell. AMCON's work transformed the premises into a fully operational battery recycling plant.

7. I have been to the Covington Facility many times. Based on my personal knowledge and observation, the Covington Facility contains substantial industrial process equipment, including but not limited to: dry shredding lines; wet shredding lines; metals extraction systems; lithium process line; chemical processing tanks and vessels; piping and process plumbing systems; ventilation and fume extraction systems; electrical distribution systems; environmental control and monitoring systems; material handling and conveyor systems; water treatment systems; and control systems and instrumentation.

8. Based on my personal knowledge and observation of the Covington Facility, the industrial process equipment described in paragraph 7 is not loose or freely movable property. Rather, this equipment is:

a. bolted to the facility floor and/or anchored to concrete foundations and pads;

b. hard-wired to the facility's electrical distribution systems;

c. hard-piped to the facility's plumbing, water, and process piping systems;

d. connected to the facility's ventilation, fume extraction, and environmental control systems;

e. integrated into the facility's overall operational infrastructure such that the equipment and the building function as a unified industrial system.

9. Removal of the equipment would require significant labor, disassembly, disconnection from multiple utility and process systems, and would cause damage to the facility floor walls, and infrastructure that would be deemed substandard and unusable by industry standard for next user without considerable repair.

10. The equipment described above is essential to the operation of the Covington Facility as a lithium battery recycling facility. Without the installed equipment, the building would be an empty industrial shell, not a functioning recycling plant. The equipment is what makes the facility capable of performing its intended purpose.

11. The equipment at the Covington Facility is large and cumbersome. It is not the type of property that is moved from place to place in the ordinary course of business. It was designed, procured, and installed for permanent use with the Covington Facility.

12. AMCON installed, modified, improved, connected, or otherwise furnished labor and materials with respect to substantially all the equipment, improvements, and systems at the Covington Facility.

13. Throughout the period AMCON performed work at the Covington Facility, the Lease Agreement dated December 31, 2021 between Covington Industrial LLC ("Landlord") and Battery Resources, Inc. (now Ascend Elements, Inc.) ("Tenant") was in full force and effect.

14. I understand that Covington Industrial LLC is the owner of the real property at 9176 Industrial Drive NE, Covington, Georgia. Ascend Elements, Inc. was the tenant and lessee of the Property during the entire period of AMCON's work.

15. AMCON was hired by Ascend Elements, Inc. to perform the construction and improvement work at the Covington Facility. AMCON's contracts (the PSA and the MSA) were with Ascend.

16. On August 8, 2025, AMCON recorded a Claim of Lien on Leasehold Estate and Interests in the Office of the Clerk of Superior Court, Newton County, Georgia (Book 306, Pages 221-223, Doc. No. L2025-007034). A true and correct copy of the recorded lien is attached as **Exhibit A** to AMCON's Motion for Summary Judgment.

17. The lien was recorded within 90 days of July 2, 2025, the last date on which AMCON furnished labor, equipment, materials, and services to the Covington Facility.

18. The records attached to the Motion as Exhibits A, D, and E are originals or true and correct duplicates of records regularly kept by AMCON in the course of its business. These records: (a) were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters; (b) were kept in the course of AMCON's regularly conducted business activity; and (c) were made by AMCON's regularly conducted business activity as a regular practice.

19. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct pursuant to 28 U.S.C. § 1746.

Executed on July 24, 2026, at Newnan, Georgia.

Aaron Phillips
Chief Executive Officer
AM Construction Inc. d/b/a AMCON Industrial

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)**

ORDER GRANTING AM CONSTRUCTION INC. D/B/A AMCON INDUSTRIAL'S MOTION FOR SUMMARY JUDGMENT ON THE ISSUES IDENTIFIED IN THE STIPULATION AND AGREED SCHEDULING ORDER [DKT. NO. 565]

Upon consideration of *AM Construction Inc. d/b/a AMCON Industrial's Motion for Summary Judgment on the Issues Identified in the Stipulation and Agreed Scheduling Order* (the "Motion") filed by AM Construction Inc. d/b/a AMCON Industrial ("AMCON"); and the Court having considered the Motion, the summary judgment evidence submitted in support thereof, including the Declaration of Aaron Phillips in Support of the Motion for Summary Judgment and all exhibits attached thereto; and the Court having considered the Stipulation and Agreed Scheduling Order [Dkt. No. 565] (the "Stipulation"), which framed the two discrete legal Issues to be resolved by cross-motions for summary judgment; and the Court having considered all responses and replies filed in connection with the Motion; and the Court having considered applicable law; and it appearing that proper notice of the Motion has been given; and after due deliberation and sufficient cause appearing therefor;

The Court finds that: (a) this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (c) venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; (d) there is no genuine dispute as

[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.

to any material fact with respect to Issue 1 and Issue 2 as defined in the Stipulation; and (e) AMCON is entitled to judgment as a matter of law on both Issues.

Based upon the foregoing, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT**:

1. The Motion is **GRANTED**.

2. **Issue 1.** The Court declares that the Debtors' interest under the Lease Agreement dated December 31, 2021, between Covington Industrial LLC (as landlord) and Ascend Elements, Inc. (as tenant), as amended by the First Amendment thereto (collectively, the "Covington Lease"), is a lienable leasehold estate for years under Georgia law, and that AMCON's asserted Claim of Lien on Leasehold Estate and Interests recorded on August 8, 2025, in the Office of the Clerk of Superior Court, Newton County, Georgia (the "M&M Lien") attached to that interest and the cash proceeds from the sale approved by the Court's Order Approving Sale of Covington Assets [Dkt. No. 534] (the "Covington Sale") attributable to that interest.

3. **Issue 2.** The Court declares that, as a matter of Georgia law, AMCON's properly recorded M&M Lien attached to equipment, machinery, fixtures, trade fixtures, tenant improvements, and other facility-integrated assets located at the property covered by the Covington Lease that have become part of the improved property, to the extent such assets satisfy the fixture/integration test under Georgia law, and that AMCON's asserted M&M Lien attached to that interest and the cash proceeds from the Covington Sale attributable to that interest.

4. AMCON expressly reserves all rights with respect to the identification of specific assets, and the allocation of the Cash Purchase Price among the Acquired Assets, which are not at issue in this Motion. The Court shall schedule a hearing on those issues at a later date to be determined.

5. Nothing in this Order shall be construed as resolving or making findings on asset-specific identification, valuation, allocation, or priority disputes among competing claimants to the Covington Proceeds Escrow. This Order is limited strictly to the two legal Issues identified in the Stipulation and Agreed Scheduling Order [Dkt. No. 565].

6. The Court retains jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

_____

UNITED STATES BANKRUPTCY JUDGE