Docket #0525 Date Filed: 06/28/2026

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)

DEBTORS' OMNIBUS REPLY IN SUPPORT OF THE SALE OF ITS COVINGTON, GEORGIA ASSETS FREE AND CLEAR TO R3 LITHIUM, INC.

The above-captioned debtors and debtors in possession (collectively, the "Debtors") submit this omnibus reply (the "Reply") in support of entry of the order (the "Proposed Sale Order")[2] authorizing the sale (the "Covington Sale") of the Debtors' interests in assets associated with its facility in Covington, Georgia (the "Covington Assets") free and clear of liens, claims, interests and encumbrances pursuant to the *Order (I)(A) Approving Bid Procedures, (B) Authorizing Designation of a Stalking Horse Bidder, (C) Scheduling an Auction, Related Deadlines, and a Sale Hearing, and (D) Granting Related Relief* [Docket No. 120] (the "Bid Procedures Order").[3]

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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.

[2] *See Order (I) Approving the Sale of Certain of the Debtors' Assets Free and Clear of Claims, Liens, and Encumbrances, (II) Approving the Assumption and Assignment Of Designated Executory Contracts and Unexpired Leases, and (III) Granting Related Relief* [Docket No. 487-2].

[3] This Reply addresses the following limited objections to the Proposed Sale Order and to the assumption of contracts related to the Covington Sale (collectively, the "Objections"): *AM Construction Inc. d/b/a AMCON Industrial's Limited Objection and Reservation of Rights in Connection with the Proposed Sale of the Debtors' Covington, Georgia Assets* [Docket No. 498] (the "AMCON Objection") filed by AM Construction Inc. d/b/a AMCON Industrial ("AMCON"); *Oracle's Limited Objection to, and Reservation of Rights Regarding, Debtors' Sale Motion and Related Second Notice to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases* [Docket No. 499] (the "Oracle Objection") filed by Oracle America, Inc. ("Oracle"); *Covington Industrial, LLC's Limited Objection and Reservation of Rights to Debtors' Listed Cure Amounts* [Docket No. 328] (the "Landlord Objection") filed by Covington Industrial, LLC ("Covington Industrial"); *Total Quality Logistics, LLC and Victory Equipment & Services, LLC's Limited Objection and Reservation of Rights to the Debtors' First Notice to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases* [Docket No. 329] (the "TQL/Victory Assumption Objection") and *Total Quality Logistics, LLC and Victory Equipment & Services, LLC's Limited Objection to Entry of Sale Order and Supplement to Limited Objection and Reservation of Rights to the Debtors' First Notice to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases [Docket No. 240]* [Docket No. 515] (The "TQL/Victory Sale Objection") filed by Total Quality Logistics, LLC and

In support of this Reply, the Debtors rely on (i) the First Day Declaration,[4] (ii) the O'Hara Bid Procedures Declaration,[5] (iii) the Titus Covington Sale Declaration,[6] and (iv) the Shin Covington Sale Declaration,[7] and respectfully state as follows:[8]

PRELIMINARY STATEMENT

1. The Debtors hereby seek approval of the sale of their assets related to the operation of their Covington, Georgia facility to R3 Lithium Inc. ("R3 Lithium" or "Purchaser"). This transaction is the latest milestone in the Debtors' ongoing, Court-supervised sales process designed to maximize value for creditors and other stakeholders. Since the Petition Date, the Debtors have successfully consummated multiple court-approved sale transactions, including sales of their intellectual property portfolio, Polish assets, and real property and other interests comprising the Debtors' Hopkinsville, Kentucky facility.

2. The Debtors' Covington, Georgia operations consist of a commercial-scale Black Mass production facility with lithium carbonate production capabilities. The Covington Assets consist of substantially all the Debtors' interests related to that facility, including the

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Victory Equipment & Services, LLC (collectively, "TQL/Victory"); the *Limited Objection and Reservation of Rights of Powertech Water, Inc., d/b/a ElectraMet with Respect to Sale of Debtors' Covington, Georgia Assets* [Docket No. 512] (the "PowerTech Objection"), filed by PowerTech Water, Inc. d/b/a ElectraMet ("PowerTech"); and the *Objection to Sale of Covington Assets* [Docket No. 513] (the "Georgia EPD Objection") filed by the Georgia Department of Natural Resources, Environmental Protection Division (the "Georgia EPD").

4 *Declaration of Linh Austin in Support of the Debtors' Chapter 11 Petitions and First Day Motions* [Docket No. 18] (the "First Day Declaration").

5 *Declaration of Michael O'Hara of Jefferies LLC in Support of the Debtors' Emergency Motion for Entry of Order (I)(A) Approving Bid Procedures, (B) Authorizing Designation of a Stalking Horse Bidder, (C) Scheduling an Auction, Related Deadlines, and a Sale Hearing, and (D) Granting Related Relief; and (II)(A) Approving the Sale of the Debtors' Assets, (B) Approving the Assumption and Assignment of Certain Contracts, and (C) Granting Related Relief* [Docket No. 88] (the "O'Hara Bid Procedures Declaration").

6 *Declaration of Adam Titus in Support of Entry of an Order (I) Approving the Sale of the Debtors' Interests in the Covington, Georgia Assets Free and Clear of Liens, Claims, Interests and Encumbrances, (II) Approving the Assumption and Assignment of Associated Executory Contracts and Unexpired Leases, and (III) Granting Related Relief* [Docket No. 521] (the "Titus Covington Sale Declaration").

7 *Declaration of Paul Shin of Jefferies LLC in Support of Entry of an Order (I) Approving the Sale of the Debtors' Interests in the Covington, Georgia Assets Free and Clear of Liens, Claims, Interests and Encumbrances, (II) Approving the Assumption and Assignment of Associated Executory Contracts and Unexpired Leases, and (III) Granting Related Relief* [Docket No. 520] (the "Shin Covington Sale Declaration").

8 Capitalized terms used but not defined herein shall have the meanings ascribed in the applicable Declarations.

Debtors' leasehold interests, assigned contracts, equipment, inventory, permits, and other operating assets included in the proposed Covington Sale.

3. Like those sales that preceded it, the Covington Sale is the product of a Court-supervised marketing and sale process designed to maximize value for the Debtors' estates and their creditors. R3 Lithium's going-concern bid, providing approximately $3 million in cash consideration, plus the assumption of liabilities, represents the highest or otherwise best bid reasonably available for the Covington Assets. In addition, as part of the transaction, R3 Lithium may extend employment offers to the Debtors' employees and other service providers associated with the Covington business. The asset purchase agreement between the Debtors and R3 Lithium (the "Covington APA") memorializes that transaction and should be approved.

4. As of the filing of this Reply, substantially all Objections to the Covington Sale have been resolved by agreement or through revisions to the Proposed Sale Order, subject to limited exceptions described below. Specifically, as to cure and adequate assurance specific objections (the Landlord Objection, the TQL/Victory Assumption Objection, and the TQL/Victory Sale Objection), the Debtors, in accordance with the Bid Procedures Order and Proposed Sale Order, shall schedule a day and time to be determined in order to resolve such cure and assurance disputes after the closing of the Covington Sale. As to Oracle and PowerTech, the Debtors do not seek to assume or assume and assign either objectors' contracts in connection with the Covington Sale, rendering their respective objections moot.

5. With respect to Georgia EPD, it is the beneficiary of a letter of credit issued by Bank of America in the amount of $750,000 – the same amount of the variance Georgia EPD asserts in its Objection that the Debtors must pay in connection with the Covington Sale. Based on discussions that preceded the Georgia EPD Objection, the Debtors understood that Georgia EPD had no objection to the Covington Sale provided a purchaser acknowledge the variance, agree to follow the variance's provisions, and continue the letter of credit in the purchaser's

name. The Debtors and R3 Lithium intend to comply with these instructions, subject to the Georgia EPD's rights under the existing letter of credit. Accordingly, the Debtors submit that the Georgia EPD Objection has been resolved.

6. With respect to AMCON, the parties have negotiated revisions to the Proposed Sale Order, including language that allows for an accelerated, separate proceeding (subject to the Court's availability) for the determination of the validity, priority and extent of AMCON's asserted lien and allocation of the proceeds of the Covington Sale.[9] Based on an agreement with AMCON, the Proposed Sale Order also provides for the Debtors to hold in escrow $1,900,000.00 of the sale proceeds pending resolution of such issues. To the extent AMCON holds a valid lien, such lien rights shall attach to sale proceeds in the same order of priority and with the same validity, force, and effect that existed prior to entry of the Proposed Sale Order. For the avoidance of doubt, however, the Debtors' agreement to escrow certain sale proceeds is a negotiated compromise solely to facilitate closing, and should not be construed as an admission of any kind regarding the validity, priority, or extent of AMCON's asserted lien, if any, or the proper allocation of the sale proceeds to any such lien. The Debtors expressly reserve all rights, claims, defenses, and objections with respect to AMCON's asserted lien and any allocation of sale proceeds.

7. For all these reasons and those set forth below, the Court should approve the Covington Sale and enter the Proposed Sale Order.

RELEVANT BACKGROUND

A. The Debtors' Marketing and Sales Process

8. On April 9, 2026, the above-captioned Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the "Petition Date"). Contemporaneous with the filing of the petitions, the Debtors filed the *Debtors' Emergency Motion for Entry of Order*

[9] As of the filing of this Reply, AMCON has not confirmed whether it consents to the revised Proposed Sale Order language.

(I)(A) Approving Bid Procedures, (B) Authorizing Designation of a Stalking Horse Bidder, (C) Scheduling an Auction, Related Deadlines, and a Sale Hearing, and (D) Granting Related Relief; and (II)(A) Approving the Sale of the Debtors' Assets, (B) Approving the Assumption and Assignment of Certain Contracts, and (C) Granting Related Relief [Docket No. 50] (the "Bid Procedures Motion"), which sought entry of the Bid Procedures Order. The Bid Procedures Order was entered on April 17, 2026, and properly served on all required parties. [Docket No. 129].

9. The Bid Procedures Order approved a process for the Debtors to market and sell substantially all of their assets, including bid procedures (the "Bid Procedures") designed to promote a value-maximizing sale process, permitting potential bidders to bid for some and not all of the Debtors' assets, and authorizing an auction if the Debtors received one or more timely and acceptable Qualified Bids. Bid Procedures Order ¶¶ 9-10.

10. Pursuant to the Bid Procedures, the Debtors filed an *Affidavit of Publication of the Notice of Auction for the Sale of the Debtors' Assets Free and Clear of Any and All Claims, Interests and Encumbrances in the New York Times* [Docket No. 134]. The Bid Procedures also set a deadline for the receipt of bids on the Debtors' assets for May 9, 2026 (the "Bid Deadline"), and an initial auction date of May 12, 2026.

11. As the marketing process progressed, the Debtors solicited and evaluated interest from numerous strategic buyers and financial parties and ultimately pursued separate transactions for distinct asset groups, beginning with the sale of the Debtors' Polish assets and intellectual property. Accordingly, on May 20, 2026, the Debtors filed the *Notice of (I) Designation of Newco as Successful Bidder for the Debtors' Intellectual Property and Polish Assets and (II) Cancellation of Auction with Respect to Such Assets* [Docket No. 352], and following a hearing, the Court entered the *Order (I) Approving the Sale of Certain of the Debtors' Assets and Interests Free and Clear of Claims, Liens, and Encumbrances, (II)*

Approving the Assumption and Assignment of Designated Executory Contracts and Unexpired Leases, and (III) Granting Related Relief [Docket No. 393], approving the sale of the Debtors' Polish and intellectual property assets. The Debtors consummated that transaction on May 26, 2026. *See* Docket Nos. 400, 403.

12. The marketing process also generated interest in the Debtors' Hopkinsville, Kentucky facility and related assets. After receiving multiple bids for those assets, the Debtors conducted an auction on May 26, 2026. *See* [Docket No. 392]. Following the auction, the Debtors designated Turner-Kokosing Joint Venture as the successful bidder. [Dkt. No. 407]. After conducting a sale hearing on June 3, 2026, the Court entered the *Order (I) Approving the Sale of the Debtors' Interests in the Hopkinsville, Kentucky Assets Free and Clear of Liens, Claims, Interests and Encumbrances, (II) Approving the Assumption and Assignment of Associated Executory Contracts and Unexpired Leases, and (III) Granting Related Relief* [Docket No. 469]. The Debtors subsequently consummated the Hopkinsville sale transaction and filed a notice of closing on June 11, 2026. *See* [Docket No. 474].

B. The Proposed Sale of the Covington Assets to R3 Lithium Inc.

13. After a separate marketing process for the Debtors' Covington Assets, the Debtors designated R3 Lithium as the successful and only bidder for those assets. *See* Docket No. 487. Because no other qualified bids were submitted for those assets, the auction was cancelled as to that asset group in accordance with the Bid Procedures. *Id.*

14. The Covington APA and Proposed Sale Order have been filed on the docket [Docket Nos. 489 & 524] and are available to all parties prior to the hearing on the Covington Sale. All parties in interest have had a full and fair opportunity to review the terms of the proposed sale transaction.

C. The Debtors' Prepetition Disputes with AMCON

15. Prepetition, Debtor Ascend Elements, Inc. contracted with AMCON to perform general contracting services at the Debtors' Covington facility in connection with the buildout of the facility. The Debtors lease the premises on which the Covington facility is located pursuant to a lease agreement with Covington Industrial (the "Covington Industrial Lease").

16. Following a payment dispute, AMCON commenced an action on August 8, 2025, in the Superior Court of Newton County, Georgia, Civil Action File No. SUCV2025002393, by filing a complaint against Ascend for damages and to foreclose on a lien AMCON had recorded for allegedly unpaid construction services. Relevant here, the Complaint asserts AMCON's lien against "whatever property interest Ascend has in the Property," which AMCON defined as "property owned by Covington Industrial LLC" located at "9176 Industrial Drive NE, Covington, Georgia 30014." AMCON and the Debtors jointly agreed to private arbitration of the action, which was stayed as of the Petition Date by operation of the automatic stay. The Debtors contested (and continue to contest) AMCON's claims on several grounds.

17. On June 23, 2026, AMCON filed a proof of claim in the amount of $9,881,478.40 that was designated as claim number 12 on the Court's claims register. Attached as an exhibit to the proof of claim is the *Claim of Lien on Leasehold Estate and Interests* that AMCON filed on August 8, 2025, in the amount of $6,232,621.09 plus interest with the Clerk of the Superior Court, Newton County, Georgia (the "AMCON Lien Claim").

18. According to the AMCON Lien Claim, AMCON asserts 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 of 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[.].” Exhibit A to the AMCON Lien Claim contains a legal description of the real property that identifies the property’s physical boundaries and location. The AMCON Lien Claim does not identify or describe any personal property.

REPLY

I. The Covington Sale Represents the Highest and Best Value for the Covington Assets.

A. The Selection of R3 Lithium as the Successful Bidder is an Exercise of the Debtors’ Sound Business Judgment.

19. Pursuant to section 363(b)(1) of the Bankruptcy Code, a debtor is permitted to “use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). A debtor may perform any of these actions as long as use, sale, or lease of assets is “‘supported by an articulated business justification, good business judgment, or sound business reasons.’” *In re BNP Petroleum Corp.*, 642 F. App’x 429, 435 (5th Cir. 2016) (quoting *In re Moore*, 608 F.3d 253, 263 (5th Cir. 2010)); *see also In re Cont’l Air Lines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986) (“[F]or the debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business.”). A sound business reason for selling assets outside the ordinary course of business may include that a sale is necessary to preserve the value of an estate for the benefit of creditors and interest holders. *See generally In re Lionel Corp.*, 772 F.2d 1063, 1070–71 (2d Cir. 1983).

20. The sound business justification for the Covington Sale is supported by the sworn declarations of Adam Titus, the Debtors’ Chief Restructuring Officer and Paul Shin of Jefferies. As set forth in their Declarations, the Debtors and their advisors conducted a fair, transparent, and competitive marketing process in compliance with the Bid Procedures Order. Based on this process, the Covington APA reflects the highest and best offer for the Covington

Assets. *See* Shin Covington Sale Declaration at ¶ 17; Titus Covington Sale Declaration at ¶ 25; *see also In re Moore*, 608 F.3d 253, 263 (5th Cir. 2010) (holding that in the context of section 363(b) of the Bankruptcy Code, a debtor must "demonstrate that the proposed sale price is the highest and best offer, though a bankruptcy court may accept a lower bid in the presence of sound business reasons"); *In re Tresha-Mob, LLC*, No. 18-52420-RBK, 2019 Bankr. LEXIS 1333, at *5 (Bankr. W.D. Tex. Apr. 3, 2019) (a court must also consider execution risk "contingencies, conditions, timing, or other uncertainties in an offer that may render it less appealing.") (internal citation omitted).

21. 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. The Debtors considered not only the stated purchase price but also the assumption of liabilities, the treatment of encumbrances, the certainty and timing of closing, the going concern nature of the transaction, including the possibility that employment offers would be extended to the Debtors' employees and other service providers associated with the Covington business, and the overall economic benefit to the estates. *See* Titus Covington Sale Declaration at ¶ 25.

22. The proposed transaction also provides a path to resolve substantial issues associated with the Covington Assets, which are subject to a purported mechanics' lien asserted by AMCON, and other disputes with the owner and landlord of the facility that could significantly complicate or impair alternative sale transactions. Through the sale process and the Covington APA, the Debtors have secured a transaction that monetizes the Covington Assets notwithstanding those issues and provides a path toward closing.

23. The Debtors also considered the significant execution risks associated with pursuing alternative transactions. Given AMCON's asserted lien claim, the current operational

status of the facility, and the costs associated with maintaining and marketing the assets, further delay would have required liquidity the Debtors did not have and thus could materially diminish value and reduce recoveries available to stakeholders. The cash proceeds from the sale will provide immediate and tangible value to the estates and stakeholders.

24. Therefore the Covington Sale provides the best outcome for the Debtors and all parties in interest, and no other sale or alternative transaction will provide more value to the Debtors' estates and parties in interest.

B. R3 Lithium Qualifies as a Good Faith Purchaser Under § 363(m).

25. Section 363(m) of the Bankruptcy Code "protects, from later modification on appeal, an authorized sale where the purchaser acted in good faith and the sale was not stayed pending appeal." *In re Energytec, Inc.*, 739 F.3d 215, 218 (5th Cir. 2013) (internal citations omitted). A transparent court-supervised process involving arms' length negotiations directly supports a good faith finding. *See, e.g., In re RE Palm Springs II, L.L.C.*, 65 F.4th 752, 765 (5th Cir. 2023) (affirming finding of lender-purchaser as a "good faith purchaser" by looking to the "transparency of the [sale] process"); *In re STAK Design, Inc.*, 612 B.R. 872, 874 (Bankr. N.D. Tex. 2020) (citing, among other factors, the fact that the purchase agreement was "an arms-length transaction").

26. Here, the Covington APA was the product of a transparent, Court-supervised process conducted at arm's length, with both parties represented by independent, sophisticated counsel — precisely the circumstances courts in this Circuit have recognized as supporting a good faith finding. Therefore, R3 Lithium should be deemed a good faith purchaser under section 363(m) of the Bankruptcy Code.

C. The Covington Sale Satisfies the Requirements of § 363(f) for a Sale Free and Clear of Encumbrances.

27. Section 363(f) of the Bankruptcy Code permits a debtor-in-possession to sell estate property "free and clear of any interest in such property of an entity other than the estate, only if—

> (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
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> (2) such entity consents;
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> (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
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> (4) such interest is in bona fide dispute; or
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> (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest."

28. Importantly, the requirements of § 363(f) are written in disjunctive. Therefore, the Debtors need only needs to satisfy one of the five conditions to invoke section 363(f). *See In re Nature Leisure Times, LLC*, Case No. 06-41357, 2007 WL 4554276 at *2 (Bankr. E.D. Tex. Dec. 19, 2007) ("The language of § 363(f) is in the disjunctive such that a sale free and clear of an interest can be approved if any one of the aforementioned conditions in § 363(f) are satisfied."); *In re Patriot Place*, 486 B.R. 773, 814 (Bankr. W.D. Tex. 2013) (identifying the "five alternative conditions" of § 363(f)). Of the five conditions justifying a sale free and clear of any interest under section 363(f), several—subsections (f)(2), and (f)(4)—are satisfied here.

29. The Covington Sale satisfies § 363(f)(2) because all parties who may assert an interest in the Covington Assets have consented or are deemed to have consented to the Sale. AMCON, the holder of a mechanics' lien claim asserted against the Covington Assets, has stated it does not object to the Covington Sale. AMCON Objection at ¶¶ 1, 12. In addition, any other entities who might claim an interest in the Covington Assets that have failed to file an

objection by the Sale Objection Deadline[10] are deemed to have consented to the sale. *See In re Gabel*, 61 B.R. 661, 667 (Bankr. W.D. La. 1985) (determining that a party who failed to object to a properly noticed sale was deemed to "consent" under § 365(f)(2)); *In re ATP Oil & Gas Corp.*, Case No. 12-36187, 2014 WL 570479 at *4 (Bankr. S.D. Tex. 2014) ("The Debtor may sell the Purchased Assets free and clear of all Claims and Interests, against the Debtor, its estate, or any of the Purchased Assets because those holders of Claims and Interests against the Debtor, its estate, or any of the Purchased Assets, who did not object . . . are deemed to have consented thereto pursuant to Section 363(f)(2) of the Bankruptcy Code.").

30. Alternatively, the Covington Sale should be approved because AMCON's lien is subject to a bona fide dispute under section 363(f)(4) of the Bankruptcy Code.[11] A "bona fide dispute" exists when there is an "objective basis for a factual or legal dispute as the validity of the debt." *In re Royal Alice Props., LLC*, 637 B.R. 465, 482 (Bank. E.D. La. 2021); *Patriot Place* 486 B.R. at 815 (stating same). The goal of section 363(f)(4) of the Bankruptcy Code is to "allow the sale of property subject to dispute so that liquidation of the estate's assets need not be delayed while such disputes are being litigated." *In re Daufuskie Island Props., LLC*, 431 B.R. 626, 645 (Bankr. D.S.C. 2010). Therefore, the Court need not resolve the underlying dispute to determine section 363(f) has been satisfied, but merely that a dispute exists. *See Royal Alice Props., LLC*, 637 B.R. at 482 (citing cases).

31. As explained below, the Debtors dispute that AMCON holds a valid lien on the Debtors' leasehold and personal property interests the Debtors propose to sell, and even if AMCON does hold a valid lien, the lien does not attach to property not on the premises of the

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[10] The deadline to object to the Covington Sale expired on June 25, 2026 at 12:00 p.m. Central Daylight Time, unless extended by agreement between the Debtors and the applicable objecting party. *See* Docket No. 489.

[11] Although AMCON claims not to object to the sale itself, it nevertheless argues that unless the conditions set forth in its Objection are satisfied, it "does not consent to the sale" and separately reserves its consent to the sale. AMCON Objection at ¶¶ 1, 12, 24(e). As of the filing of this Reply, the Debtors believe they have resolved the issues raised in the AMCON Objection but, out of an abundance of caution, raise these alternative grounds for approval of the Covington Sale.

Covington facility. Therefore, a bona fide dispute exists. *See, e.g., In re 9 Houston, LLC*, 578 B.R. 600, 611 n.8 (holding that debtor's objection at the sale hearing to a secured creditor's demand for postpetition and default interest was sufficient to qualify as a bona fide dispute within the meaning of section 363(f)(4) to authorize the sale over the creditor's objection). In addition, the pendency of AMCON's foreclosure action and the related arbitration proceedings in which the Debtors have contested AMCON's claims likewise demonstrates the existence of a bona fide dispute. *See, e.g.*, *In re TM Vill., Ltd.*, Case No. 18-32770-BJH, 2019 WL 1004571, at *5 (Bankr. N.D. Tex., Feb. 28, 2019) ("Because the Yao Lawsuit was pending when the Debtor filed for bankruptcy, the plaintiffs' claims remain subject to a bona fide dispute and the Condominiums may be sold free and clear of those claims in accordance with 11 U.S.C. § 363(f)(4)").

32. The Proposed Sale Order provides that all existing liens and encumbrances "attach solely to the proceeds of the Sale Transaction ultimately attributable to the sale of the property on which such holders have an Encumbrance, in the same order of priority, and with the same validity, force and effect that such Encumbrances had prior to the consummation of the Sale Transaction, subject to any rights, claims or defenses of the Debtors and their estates." Proposed Sale Order ¶ L. Thus, AMCON's and any other secured party's lien rights are preserved against the sale proceeds.

33. Therefore, the free-and-clear Covington Sale should be approved and the Proposed Sale Order entered because the Debtors have satisfied the requirements of § 363(f).

II. The Debtors Dispute the Validity, Priority, and Extent of AMCON's Purported Mechanic's Lien and the Allocation of Any Sales Proceeds to AMCON.

34. AMCON incorrectly asserts that its purported mechanic's lien attaches to both the Debtors' leasehold interest and the machinery, equipment, inventory, and other personal property at the premises of the Covington facility. AMCON Objection at ¶¶ 4, 20. AMCON's position is contradicted by the plain language of the AMCON Lien Statement, the Georgia

mechanic's lien statute, and case law interpreting the statute's provisions. Although the parties have agreed to escrow $1,900,000.00 of the sales proceeds pending resolution of the validity, priority, and extent of AMCON's lien, if any, and the allocation of the proceeds from the Covington Sale (subject to the parties' reservation of rights), the Debtors' decision to escrow the funds is solely to facilitate the Covington Sale and is not an admission to the validity, priority, or extent of AMCON's asserted liens or allocation of the sale proceeds to AMCON. To the contrary, the Debtors contest AMCON's asserted lien in its entirety, and raise the following in response to AMCON's statements regarding the scope and validity of its asserted lien.

A. The Debtors' Leasehold Interest Constitutes a Usufruct Under Georgia Law that May Not Be Encumbered.

35. Georgia law recognizes two types of leasehold interests, a usufruct and an estate for years. *See*, *e.g.*, *Stuttering Foundation, Inc. v. Glynn County*, 801 S.E.2d 793, 798 (Ga. 2017) ("Under Georgia law, a significant distinction exists between the interest conveyed by a usufruct and the interest conveyed by an estate for years."). Although a contractor's lien may properly attach to a lessee's interest in an estate for years, *see Bennett Iron Works, Inc. v. Underground Atlanta, Inc.*, 204 S.E.2d 331, 332 (Ga. Ct. App. 1974), a lien does not attach to a usufruct. *See Jones v. E. I. Rooks & Son*, 52 S.E.2d 580, 582 (Ga. Ct. App. 1949); *see also Ionosphere Clubs, Inc. v. Eastern Airlines Inc.*, 145 B.R. 386, 389 (Bankr. S.D.N.Y. 1992) (holding that the debtor's leasehold interest was a usufruct under Georgia law and therefore claimant's mechanic's lien could not attach to that interest).

36. The reason for the distinction rests on the nature of the leasehold interest. "[A]n 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,' so long as neither the property nor the person entitled to the reversionary interest in it is injured by that use." *Pinnacle Properties V, LLC v. Mainline Supply of Atlanta, LLC*, 735 S.E.2d 166, 169 (Ga. Ct.

App. 2012) (citing O.C.G.A. §§ 44-6-102–103). "A usufruct, by contrast, is created when the owner of real estate grants to another person the right to use and enjoy the property for a fixed time or at the will of the grantor, as in a landlord-tenant relationship, but no property interest arises in the grantee." *Id.*; *see also GeorgiaCarry.Org, Inc. v. Atlanta Botanical Garden, Inc.*, 834 S.E.2d 27, 35 (Ga. 2019) ("'Because a usufruct is not considered an estate in real property under Georgia law,' the creation of a usufruct in favor of a tenant does not pass any estate out of the hands of the landlord. Thus, during the term of a usufruct, the landlord continues to hold the present estate in the property.") (internal citation omitted).[12]

37. Courts apply a five-factor test to determine whether parties intended to create a usufruct or an estate for years. *Chatham County Board of Assessors v. Jay Lalaji, Inc., Airport Hotels,* 357 Ga.App. 34, 35-36 (Ga. Ct. App. 2020) (considering the following factors: (i) the terms used in the instrument of conveyance to describe the grantee's rights; (ii) any provisions in the instrument addressing the parties' understanding as to liability for ad valorem taxes; (iii) the grantor's retention of dominion or control over the leased property; (iv) which party has retained the duties to keep and maintain the premises and appurtenances; and (v) whether the grantee may assign the lease or allow any part of the leased premises to be used by others without the grantor's consent.). If a lease is for greater than five years (as here), a rebuttable presumption arises that the interest is an estate for years. *Id*. at 35.

38. That presumption is rebutted here, as each of the five factors weighs in favor of a usufruct that is not lienable based on the terms of the Covington Industrial Lease: (i) the lease terms strictly limit the premises "for the use specified in the Lease Summary," which is "[t]he

[12] Notwithstanding this distinction, bankruptcy courts recognize a debtor may properly assume and assign a usufruct under section 365 of the Bankruptcy Code. *See, e.g., In re Taylor Mfg., Inc.*, 6 B.R. 370, 372 (Bankr. N.D. Ga. 1980) ("Having determined that § 365(f) applies, it follows that the question of whether a usufruct or an estate for years was created by the lease need not be addressed since § 365(f)(1) preempts both state law and any contract or lease terms barring assignment."); *see also In re Emory Properties, Ltd.*, 106 B.R. 318, 321 (Bankr. N.D. Ga. 1989) (holding that section 365 of the Bankruptcy Code applies to the debtor's usufruct interest).

operation of a lithium battery recycling facility and for no other purpose, to be conducted under Tenant's Trade Name," among many other extensive use restrictions imposed on Ascend Element's rights regarding the premises (§§ 3.1, 3.4); (ii) the lease requires Ascend Elements to pay a proportionate share of the ad valorem taxes for the premises (§ 2.3(c)); (iii) the landlord retains strict control over Ascend Element's leased property (*see, e.g.* Article XI "Control of Building by Landlord"); (iv) the Landlord is responsible for making all "necessary repairs, replacements and maintenance" for the premises (§ 5.1) and retains any of the improvements or fixtures on the premises at its sole discretion (§ 5.4), while Ascend Element's responsibilities are limited to repairs and maintenance for items appurtenant to the tenant's improvements (§ 5.2); and (v) Ascend Elements is prohibited from transferring the lease without the landlord's consent except to the landlord's affiliates or controlled entities, and the landlord reserves the unrestricted right to sell the premises (§ 8.1).

B. Even if AMCON has a Valid and Enforceable Lien, It May Only Be Asserted Against the Debtors' Leasehold Interest, Not Any Personal Property.

39. Under Georgia law, "[a]ll contractors, all subcontractors, and all materialmen" have a lien for furnishing labor, services, or materials "for the improvement of real estate." O.C.G.A. § 44-14-361(a)(2). Such lien attaches to the "real estate[13] of the owner for which the labor, services, or materials are furnished at the instance of the owner, contractor, or some other person acting for the owner or contractor[.]" O.C.G.A. § 44-14-361(b). By contrast, only "mechanics" have a distinct statutory lien "on personal property" under Georgia's lien laws and only "for work done and material furnished in manufacturing or repairing the personal property and for storage of the personal property after its manufacture or repair…." O.C.G.A. § 44-14-363(a).

[13] The term "real estate" is defined to include all lands and buildings thereon, all things permanently attached to land or to the buildings thereon, and any interest existing in, issuing out of, or dependent upon land or the buildings thereon. O.C.G.A. § 44-1-2.

40. For a contractor's lien to be effective and enforceable against real estate it must comply with various notice and recording requirements, including filing a record of the lien claim with the clerk of the superior court of the county where the real property is located for which the labor, services, or materials were furnished and describing the real property against which the lien claim is asserted, followed by commencement of a lien action within a year. *See* O.C.G.A. § 44-14-361.1(a). Mechanics' liens against personal property are asserted differently, either by retention of the personal property, or by surrendering the personal property and subsequently recording a lien claim with the clerk of the superior court of the county where the personal property is located that specifically describes the subject property. *See* O.C.G.A. § 44-14-363(a), (c).

41. To the extent a tenant's leasehold interest constitutes an estate for years, a contractor's lien claim can be filed and enforced against the lease. *See In re Mikart, Inc.*, 9 B.R. 144, 147 (Bankr. N.D. Ga. 1981) (stating general principle) (citing *James G. Wilson Mfg. Co. v. Chamberlin Johnson-Dubose Company*, 79 S.E. 465 (1913)); *D&N Elec. v. Underground Festival*, 414 S.E.2d 891 (Ga. Ct. App. 1991) (stating same).

42. Debtor Ascend Elements is a tenant for the premises on which it operates the Covington facility. AMCON's Lien Statement plainly refers to a leasehold interest, which AMCON identifies by reference to the legal description of the real property where the premises resides. To the extent this Court determines that the Debtor's leasehold interest constitutes an estate for years, it is lienable. But a contractor's lien only attaches to that leasehold interest, not personal property on the premises. *See* O.C.G.A. § 44-14-361(b). Even if Georgia law allowed for a contractor's lien to attach to property other than real estate (which it plainly does not), nothing in AMCON's Lien Statement or its prepetition complaint refers to or describes the Debtors' personal property against which the lien might be asserted. The Lien Statement asserts 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 . . .*" (emphasis added). Furthermore, the Debtors are proposing to sell personal property that is not physically located on the premises, which even under AMCON's faulty interpretation of Georgia lien law, would not be encumbered by its statutory lien.

III. Responses to Objections of Specific Parties

Oracle Objection [Docket No. 499]	
Objection	**Response/Revised Order**
Oracle objects to the assumption and assignment of its agreements, citing lack of Oracle's consent, inadequate identification of the Oracle contracts, disputed cure amounts and adequate assurance, and prohibition on simultaneous use under a transition services agreement. *See* Oracle Objection pp 4-7.	The Oracle contacts have expired by their own terms and are therefore not "executory contracts" or "unexpired leases" subject to assumption, assumption and assignment, or rejection. Their inclusion on the Second Assumption Notice was in error.[14] The Debtors are not seeking to sell or assign the Oracle contracts to R3 Lithium in the Covington Sale, and the Oracle Objection is accordingly moot.
TQL/Victory Objections [Docket Nos. 329, 515]	
Objection	**Response/Revised Order**
The Debtors' postpetition obligations to TQL/Victory must be paid regardless of assumption or rejection. *See* TQL/Victory Assumption Objection ¶¶ 14-15.	TQL/Victory may file a claim for any qualifying postpetition obligations as administrative expenses under § 503(b) at the appropriate time.

[14] *Second Notice to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases* [Docket No. 488] (the "Second Assumption Notice").

TQL/Victory contend that their contracts require adequate assurance of future performance and that the Debtors have not demonstrated compliance with environmental, contractual, and maintenance requirements; they also seek modifications to the APA and Sale Order regarding R3 Lithium's assumption of environmental and casualty responsibilities. *See* TQL/Victory Assumption Objection ¶¶ 18-19; TQL/Victory Sale Objection ¶¶ 10-12, 14.	Pursuant to paragraph 19 of the Proposed Sale Order, the TQL/Victory contracts will be treated as Disputed Contracts. If the objections have not been resolved by the Closing, then the Debtors, with the consent of the Purchaser may elect to not assume and assign or postpone the assumption of such Disputed Contract until the resolution of such objections.
Landlord Objection [Docket No. 328]	
Objection	**Response/Revised Order**
The Debtors' proposed cure amount of $0.00 is incorrect, as the Debtors owe at least $838,000.00 in damages under the lease. Landlord Objection ¶ 12.	The parties are in discussions to resolve the cure dispute through an extended payment arrangement. If not resolved before the Sale Hearing, the Debtors will treat the lease as a Disputed Contract under paragraph 19 of the Proposed Sale Order.
PowerTech Objection [Docket No. 512]	
Objection	**Response/Revised Order**
PowerTech objects to inclusion of its equipment in the sale and to assumption and assignment of its contracts without its consent. PowerTech Objection §§ A-B.	The Debtors are not selling any PowerTech-owned equipment, and no PowerTech contracts are listed on any assumption notice or included in the APA. The PowerTech Objection is moot.

Georgia EPD Objection [Docket No. 513]	
Objection	**Response/Revised Order**
The Debtors must pay $750,000 in relation to a Variance granted to the Covington facility. Georgia EPD Objection ¶¶ 3, 4.	The Georgia EPD is the beneficiary of a letter of credit issued by Bank of America in the amount of $750,000. Based on instructions provided by the Georgia EPD before it filed its Objection, the Debtors understand that R3 Lithium intends to acknowledge the Variance, comply with its terms, and continue (or replace) the letter of credit in R3 Lithium's name. The Georgia EPD Objection is accordingly resolved.
AMCON Objection [Docket No. 498]	
Objection	**Response/Revised Order**
AMCON reserves its rights with respect to the allocation of the purchase price among asset categories, the priority of its lien relative to ad valorem taxes, transfer taxes, and cure costs, and the right to challenge any distribution of proceeds that diminishes the amounts available to satisfy its lien. *See* AMCON Objection ¶¶ 13, 18, 19-22.	Paragraph 39 of the Proposed Sale Order contains negotiated language that provides for $1.9 million of the net cash proceeds from the Covington Sale to be segregated and held in escrow pending the Court's determination of the validity, priority, and extent of AMCON's purported lien and allocation of the Cash Purchase Price, subject to further Order of the Court. The Debtors' understand that the cure cost and tax-related objections have been resolved based on the agreed upon escrow of the sale proceeds.
AMCON reserves its right to be heard on the allocation of the professional fee carve-outs among the three completed sales. *See* AMCON Objection ¶¶ 14-17.	Former paragraph 17 of the Proposed Sale Order has been removed by agreement of the parties.
AMCON reserves all rights to assert the validity, enforceability, perfection, priority, and amount of its lien and its secured claim against the Covington sale proceeds, including the right to challenge competing claims. *See* AMCON Objection ¶ 23.	Addressed by paragraph 39 of the Proposed Sale Order as described above. AMCON's lien rights, if any, are preserved against the escrowed proceeds with the same validity and priority as existed prior to the sale.

43. ***Remaining Objections***. All other objections should be overruled to the extent the Debtors are unable to resolve such objections prior to the hearing for approval of the Covington Sale.

[Signature Page to Follow]

Dated: June 28, 2026

Respectfully submitted,

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Counsel to the Debtors and Debtors in Possession

CERTIFICATE OF SERVICE

I certify that on June 28, 2026, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Ryan Manns
Ryan E. Manns