

GRANT AGREEMENT

THIS GRANT AGREEMENT (the "Agreement") is made and entered into as of this __ day of November, 2022, by and between the City of Hopkinsville, Kentucky (the "City"); and Ascend Elements, Inc., a Delaware corporation, with an address of 133 Flanders Road, Westborough, MA 01581 (the "Grantee").

Recitals:

WHEREAS, the Parties desire and have entered into various negotiations with regard to the Company's location, construction, equipping and operation of an approximately 400,000 square foot manufacturing plant to be located in Commerce Park II on approximately 146 acres and the creation of 250 new full-time jobs, as more particularly described herein ("Project Apex"); and

WHEREAS, Project Apex will provide much needed industrial space in Hopkinsville, Christian County, Kentucky, and will provide additional revenue to the City through the collection of occupational license fees and ad valorem tax revenue; and

WHEREAS, it is the public policy of the City to encourage, promote, and support economic development, new job formation, and the development and growth of industry and commerce, and to preserve existing jobs in Kentucky for the public purposes of providing employment opportunities for its citizens and residents, alleviating conditions of unemployment, stabilizing and promoting the economy of Kentucky, and creating new tax bases and sources of revenue for the City;

WHEREAS, the City has determined that the expenditure of such funds is beneficial to the City and serves a public purpose by raising incremental tax revenues in an amount equal to or greater than the Grant and providing relief of unemployment for the citizens of the City;

WHEREAS, the City and Grantee are executing this Agreement for the purpose of setting forth the terms and conditions of acquiring the real estate identified as Lot 1 ("Lot 1") and Lot 2 on the Division Plat of the Hopkinsville Industrial Foundation, Inc. Property of record at Plat Book ___ Page ___ (the "Property"), and granting the sum of \$1,000,000.00 (the "Grant Funds") to the Grantee with respect to the project;

WHEREAS, additionally, the City is approving a municipal order to establish an industrial taxing district in substantially the form attached hereto as Exhibit A to provide certain ad valorem tax rebates; and

NOW THEREFORE, in order to induce the Grantee to make the investment, the City agrees to make a grant to Grantee by conveying the Property or granting the sum of \$2,642,000.00 for Grantee to acquire said real estate, and the sum of \$1,000,000.00, and in consideration of the mutual covenants and conditions contained herein, and for other good and valuable consideration, the receipt, mutuality, and sufficiency of all of which is hereby acknowledged by the parties hereto, the City and the Grantee hereby agree as follows:

1. Grant of Grant Funds. Subject to the terms and conditions of this Agreement, the City hereby agrees to convey to Grantee fee simple title to Lot 1, valued at \$2,642,000.00 and provide Grant Funds in the sum of \$1,000,000.00. Alternatively, in the event Grantee purchases the real estate directly from a third-party, the City will provide Grant Funds in the sum of \$2,642,000.00, to be used for the purchase of said real estate. In the event of said direct payment, the City will be fully secured as set forth in numerical paragraph 5 (D), and Grantee shall secure the appropriate subordination agreements from any and all lenders to accomplish City's secured status as the first lienholder on said property.

2. Permitted Use of Grant Funds. Grantee shall ensure that all Grant Funds are used solely for the purpose of construction, equipping and operation of a manufacturing plant on the Company's property located in Commerce Park II in Hopkinsville, Christian County, Kentucky.

3. Disbursement. The Grant Funds shall, upon Grantee's request, be disbursed by the City, for the permitted use set forth above. If the City reasonably determines (i) that Grant Funds have been used for any unauthorized purpose, Grantee shall ensure that funds, in an amount equal to the Grant Funds that were improperly disbursed or used, are promptly returned to the City upon the City's written demand, or (ii) that the Grantee is in material default of any of its obligations hereunder, City may immediately terminate this Agreement and be under no further obligation to advance Grant Funds

4. Conditions to be Satisfied Prior to the Disbursement of Grant Funds.

(A) No funds shall be disbursed to Grantee until Grantee begins construction of a manufacturing plant on the subject property. Commencement of construction shall upon the first of the following occurring: issuance of a building permit; purchase of material equipment related for the project; engagement of a general or other contractor for the project; or any civil site work. Provided that the conditions for disbursement set forth herein for making the Grant have been satisfied, the City shall disburse the Grant Funds to the Grantee. The City may withhold funds if it determines that the conditions for making the Grant have not been satisfied.

(B) Upon written notice from the City but no more often than once every calendar quarter, the Grantee shall provide evidence of the permits, licenses, certifications, authorizations, and zoning requirements obtained from the proper governmental authorities, including state and local authorities, for the completion of the Project. This information shall be directed to the attention of the Chief Financial Officer of the City of Hopkinsville.

5. Conditions to be Satisfied Subsequent to the Disbursement of Grant Funds.

(A) Compliance with City Ordinances. Grantee agrees to maintain a City of Hopkinsville Business License and to pay any and all applicable occupational license fees and other taxes and fees which may become due.

(B) Guarantee of Occupational Tax Revenue.

(i) Grantee hereby guarantees to generate Occupational Tax Revenue (as defined below) to the City of Hopkinsville equal to or exceeding the sum of \$5,822,010.00 (the "Release Amount") during the twenty-one (21) year period following the commencement of construction as defined in numerical paragraph 4(A) above as follows: \$1,164,402.00 during the first six (6) years; \$1,552,497.00 during the next five (5) years (years 7 through 11); \$1,552,555.00 during the next five (5) years (years 12 through 16); and \$1,552,556.00 during the final five (5) years (years 17 through 21).

(ii) For the purpose of this Agreement, "Occupational Tax Revenue" for any period shall be defined as all revenue paid to the City of Hopkinsville during such period pursuant to Hopkinsville Code of Ordinances, Section 110.04, or any other occupational tax levied by the City, as a result of Project Apex, including all occupational tax paid on behalf of (1) employees of Grantee, (2) contractors, subcontractors or employees of said contractors or subcontractors, or (3) any combination thereof during the construction or operation of Project Apex. It is the specific agreement and understanding of the parties that tax paid on behalf of any existing business located within the City limits of the City of Hopkinsville that relocates to the Property will not be considered in calculating the occupational tax revenue pursuant to this Agreement.

(iii) “Excess OTR” for any period means the amount, if any, by which the total Occupational Tax Revenue received by the City for all periods prior to the period for which Excess OTR is being determined exceeds the total guaranteed amounts for such prior periods set forth in Section 5(B)(i) above.

(iv) If the sum of Occupational Tax Revenue for any period plus Excess OTR for such period is less than the guaranteed amount in Section 5(B)(i) above for such period, Grantee agrees to pay to the City an amount of such deficiency. For example, in the event the City receives only \$1,100,000.00 in Occupational Tax Revenue during the first six (6) year period, the Grantee will refund and repay to the City the sum of \$64,402.00 in Grant Funds. Said payment shall be made within thirty (30) days of notification by the City of said deficiency, which notice shall provide detailed information reasonably acceptable to Grantee on the amount of Occupational Tax Revenue generated.

(v) If Grantee makes a deficiency payment under Section 5(B)(iv) and at the end of any subsequent period set forth in Section 5(B)(i), the total Occupational Tax Revenue through such subsequent period exceeds the sum of the total guaranteed amounts in Section 5(B)(i) through such subsequent period plus the amount of such deficiency payment, the City shall pay to Grantee the amount of such deficiency payment to the extent of such excess.

(C) Grantee further agrees to require all contractors and subcontractors performing any work within or upon the Property to register with the City and pay any and all applicable occupational license fees and other taxes and fees which may be required. Grantee shall use commercially reasonable efforts to provide the City a list of Grantee’s contractors and Grantee’s contractors’ subcontractors, along with relevant addresses, points of contact, email addresses and phone numbers for each such contractor or subcontractor.

(D) To secure Grantee’s repayment obligations under Section 5(B), Grantee shall execute a mortgage (the “Mortgage”) with respect to Lot 1. If the aggregate amount of Occupational Tax Revenue exceeds \$3,642,000 (the “Face Bond Amount”) on or before the date that is three years after the date (the “Operations Start Date”) a Certificate of Occupancy has been issued regarding Project Apex, (a) the City shall release the Mortgage within 15 days after the Occupational Tax Revenue exceeds the Face Bond Amount and (b) this Agreement shall terminate and neither party shall have any obligation to the other party, except for those that specifically survive termination. If the City has not received at least the Face Bond Amount of Occupational Tax Revenue on or before the date that is three years after the Operations Start Date, upon the demand of Grantee, the City shall subordinate the Mortgage to the principal lender of the Grantee pursuant to a subordination agreement in a form acceptable to Grantee and its lender. The City shall release the Mortgage within 15 days after the Occupational Tax Revenue exceeds the Release Amount at which time this Agreement shall terminate and neither party shall have any obligation to other except for those that specifically survive termination.

(E) In the event Grantee generates Occupational Tax Revenue or otherwise pays the Release Amount (\$5,822,010.00) prior to the expiration of fifteen (15) years after the date of this Agreement, Grantee will be entitled to an additional Grant in the form of a rebate equal to the amount of fifty percent (50%) of the Occupational Tax Revenue from employees of Grantee working at the Property. Said occupational tax rebate shall commence upon the date the Release Amount is paid in full and shall continue for the time remaining on the fifteen (15) year period after the date of this Agreement. Said grant shall be in the form of a rebate, which shall be paid to Grantee on an annual basis after the occupational tax revenue has been determined.

6. Grantee Commitments. The Grantee makes the following commitments to the City:

(A) Existence. The Grantee is duly organized and validly existing and is qualified to do business in Kentucky.

(B) Authority to Act. The Grantee has the requisite power, capacity, and authority to execute and deliver this Agreement and the other Grant Documents, to consummate the transactions contemplated by this Agreement and the other Grant Documents, and to observe and to perform this Agreement and the other Grant Documents in accordance with their respective terms and conditions. The persons executing and delivering this Agreement and the other Grant Documents on behalf of the Grantee have been and are duly authorized to enter into this Agreement and the other Grant Documents on behalf of the respective Company, and a copy of said corporate resolution authorizing execution shall be provided to the City prior to the execution of this Agreement. Grantee has secured or otherwise has access to sufficient funds to construct Project Apex.

(C) Compliance with Law. To the best of its knowledge, the execution and delivery of this Agreement and the other Grant Documents, and the performance or observance by the Grantee of the terms and conditions thereof, does not and will not violate any existing provisions of the Company's Articles of Organization, Operating Agreement, or other agreements of organization, or any laws applicable to the Company.

(D) No Violations or Obligations. To the best of its knowledge, the Grantee (i) has caused no violations of any agreements, covenants, or conditions under this Agreement or any of the other Grant Documents and no such violations have occurred or are continuing.

(E) Litigation. No litigation or proceeding involving the Grantee is pending or, to the best of the knowledge of the Grantee, is threatened in any court or administrative agency that, if determined adversely to the Grantee, could have a materially adverse impact on the ability of the Grantee to perform obligations under this Agreement or under any of the other Grant Documents.

7. General Covenants.

(A) Further Assurances. The Grantee shall, at any time upon request of the City, make, execute, and deliver or cause to be made, executed and delivered to the City, any and all other instruments, certificates, and other documents as may in the reasonable opinion of the City, be necessary or desirable in order to effect, complete, or otherwise to continue and preserve the obligations of the Grantee under this Agreement.

(B) Right to Inspect. The City shall at any time, upon reasonable notice, have the right to inspect any and all records of the Grantee relating to the construction of the project at the Hopkinsville, Christian County, Kentucky, location in order to determine compliance with the terms of this Agreement and the progress of said construction.

8. Defaults and Remedies. Should the Grantee fail to perform any obligations hereunder, after reasonable notice from the City of such failure and a reasonable time of at least 30 days to cure such failure, the City may pursue any remedies provided by law. In the event of default, Grantee shall be responsible for the City's expenses incurred in enforcing the terms of this Agreement, including a reasonable attorney's fee.

9. Official Capacity. All representations, warranties, covenants, agreements and obligations of the Grantee under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future member, officer, agent or employee of the Grantee in other than his or her official capacity. No official executing or approving the Grantee's participation in this Agreement shall be personally liable under this Agreement.

10. Limitation on Liability. Notwithstanding any provision in this Agreement or under applicable law, each of the parties agree in accepting this Agreement that it shall have no recourse to any members (individuals or entities), officers or employees of Grantee, any member (individual or entity) of any committee of Grantee, or any member (individual or entity) of the Board of Directors of Grantee (collectively, the "Constituent Entities"). Each of the parties further agree that no Constituent Entity shall have any personal liability for any obligation under this Agreement.

11. General Provisions.

(A) Entire Agreement. This Agreement, together with the other agreements and documents referred to herein, contain the entire Agreement between the parties with respect to the subject matter hereof and supersedes any prior discussions, negotiations, representations, or agreements, written or oral, between them respecting the subject matter hereof.

(B) Amendments. No alterations, additions, or other changes to this Agreement shall be made or binding unless made in writing and signed by both parties.

(C) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.

(D) Assignment; Binding Effect. Grantee shall be permitted to assign, in whole or in part, this Agreement and its obligations under this Agreement without the prior consent of the City. This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns. In the event of an assignment, Grantee shall remain obligated per the terms of this Agreement.

(E) Captions. The captions of the various sections of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and shall be ignored in construing this Agreement.

(F) Severability. If all or any part of any sentence or any section of this Agreement is held to be void, illegal or unenforceable by a Court of law, such sentence, section or part thereof shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(G) Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but all of which shall constitute but one Agreement, binding on all parties hereto, notwithstanding that all parties are not signatories to the same counterparts.

(H) Cooperation. The parties shall cooperate with each other to achieve the purpose of this Agreement and the incentives described herein, and will execute and deliver such other documents and perform such other actions as may be necessary, convenient or appropriate to effectuate, carry out and perform all of the terms, provisions and conditions of this Agreement.

12. Termination. This Agreement shall automatically terminate at such time as the City determines that all eligible Grant Funds have been applied by the Grantee, and upon Grantee complying with all conditions and conditions as provided herein.

[Signature Page Follows]

EXHIBIT A
Form of Municipal Order

(see attached)