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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended June 30, 2022

or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from _____ to _____

Commission File Number 001-41279

5E ADVANCED MATERIALS, INC.

(Exact name of Registrant as specified in its Charter)

Delaware	**87-3426517**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**
19500 State Highway 249, Suite 125 Houston, TX	**77070**
(Address of principal executive offices)	**(Zip Code)**

Registrant's telephone number, including area code: (346) 439-9656

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, $0.01 par value	**FEAM**	**The NASDAQ Global Select Market**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	☐	Accelerated filer	☐
Non-accelerated filer	☒	Smaller reporting company	☒
		Emerging growth company	☒

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒

The registrant was not a public company as of the last business day of its most recently completed second fiscal quarter and, therefore, cannot calculate the aggregate market value of its voting and non-voting common equity held by non-affiliates as of such date.

As of September 21, 2022, the number of shares of the registrant's common stock outstanding was 43,355,315.

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Selected Definitions

- "ABR" refers to American Pacific Borates Limited, a company incorporated under the laws of Western Australia.
- "ASX" refers to the Australian Securities Exchange."
- 'CDI" refers to a CHESS Depositary Interest.
- "Company" refers to 5E Advanced Materials, Inc., a Delaware corporation.
- "Corporations Act" refers to the Australian Corporations Act, 2001 (Cth).
- "NASDAQ" refers to The NASDAQ Global Select Market.
- "Reorganization" refers to the transactions pursuant to which, among other things, we issued (a) to eligible shareholders of ABR either one share of our Common Stock for every ten ordinary shares of ABR or one CDI over our Common Stock for every one ordinary share of ABR, in each case, as held on the Scheme record date and (b) to ineligible shareholders proceeds from the sale of the CDIs to which they would otherwise be entitled by a broker appointed by ABR, who sold the CDIs in accordance with the terms of a sale facility agreement and remitted the proceeds to ineligible shareholders, (ii) cancelled each of the outstanding options to acquire ordinary shares of ABR and issued replacement options representing the right to acquire shares of our Common Stock on the basis of a one replacement option for every ten existing ABR options held, (iii) maintained an ASX listing for its CDIs, with each CDI representing 1/10th of a share of Common Stock, (iv) delisted ABR's ordinary shares from the ASX, and (v) became the parent company to ABR.
- "Scheme" refers to a statutory Scheme of Arrangement under Australian law under Part 5.1 of the Corporations Act.

TRADEMARKS AND TRADE NAMES

This Annual Report on Form 10-K contains and incorporates by reference references to trademarks and service marks belonging to other entities. Solely for convenience, trademarks and trade names referred to in this Annual Report on Form 10-K or the documents incorporated by reference herein may appear without the ® or ™ symbols, but such references are not intended to indicate, in any way, that the applicable licensor will not assert, to the fullest extent under applicable law, its rights to these trademarks and trade names. We do not intend our use or display of other companies' trade names, trademarks or service marks to imply a relationship with, or endorsement or sponsorship of us by, any other companies.

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This report contains various forward-looking statements relating to our future financial performance and results, financial condition, business strategy, plans, goals and objectives, including certain projections, milestones, targets, business trends and other statements that are not historical facts. These statements constitute forward-looking statements within the meaning of the Safe Harbor provisions of the U.S. Private Securities Litigation Reform Act of 1995. These forward-looking statements generally are identified by the words “believe,” “project,” “expect,” “anticipate,” “estimate,” “intend,” “budget,” “target,” “aim,” “strategy,” “estimate,” “plan,” “guidance,” “outlook,” “intend,” “may,” “should,” “could,” “will,” “would,” “will be,” “will continue,” “will likely result” and similar expressions, although not all forward-looking statements contain these identifying words. Forward-looking statements reflect our beliefs and expectations based on current estimates and projections. Forward-looking statements include, but are not limited to, statements concerning:

- The timing, completion and estimated production capacity of our proposed small-scale boron facility (“SSBF”) and proposed large-scale complex;
- The outputs from our proposed SSBF and their impact on future estimates and potential studies regarding our proposed large-scale complex;
- Unanticipated costs or delays associated with our proposed SSBF;
- Use of our injection-recovery wells for extraction once our proposed SSBF and large-scale complex is complete;
- Our ability to successfully and economically extract boron and lithium from colemanite;
- The quantities of resources we expect to be able to extract and our production capabilities;
- The timing of completing and the expected ability of our proposed SSBF facility to serve as a foundation for future design, engineering and cost optimization for our proposed large-scale complex;
- Our ability to secure the requisite funding for the successful engineering, development, construction, completion and operation of our proposed facilities;
- The timing and viability of achieving initial commercial production;
- Our ability to commercialize our output and to enter into commercial agreements;
- The total addressable market for materials we intend on producing and selling, including its current size, growth trajectory and the underlying factors that may drive growth in the overall market size;
- The cost and availability of natural gas and electricity;
- Our ability to timely and successfully reach anticipated full commercial production capacity;
- Our ability to achieve and maintain profitability and to develop and maintain positive cash flow from our proposed operating activities;
- Our ability to enter into and deliver product under binding supply agreements;
- Our ability to acquire and maintain the necessary mining licenses, permits and access rights;
- Our ability to acquire and maintain the necessary mineral property interests and related water rights;
- The demand for borates and lithium and the market for their end-use applications; and
- Our ability to develop downstream advanced materials capabilities.

These forward-looking statements are subject to a number of risks and uncertainties, including:

- Our limited operating history in the borates and lithium industries and no revenue from our proposed extraction operations at our properties;

- Our need for substantial additional financing to execute our business plan and our ability to access capital and the financial markets;
- Our status as an exploration stage company dependent on a single project with no known mineral reserves and the inherent uncertainty in estimates of mineral resources;
- Our lack of history in mineral production and the significant risks associated with achieving our business strategies, including our downstream processing ambitions;
- We have incurred significant net operating losses to date and we anticipate incurring continued losses for the foreseeable future;
- Risks and uncertainties relating to the development of Fort Cady ("Fort Cady" or the "Project");
- Risks related to our ability to prepare and update further technical and economic analysis of Fort Cady, and the timing thereof;
- Our dependence on a single project;
- Risks related to our ability to achieve and maintain profitability and to develop positive cash flow from our operating activities;
- Risks, including changes in technology, that could adversely affect the demand for end use applications that require borates, lithium, and related minerals and compounds;
- Our long-term success is dependent on our ability to enter into and deliver product under supply agreements;
- Risks related to estimates of our total addressable market;
- The costs and availability of natural gas, electricity, and water;
- Uncertain global economic conditions and the impact this may have on our business and plans;
- Risks associated with our ongoing investment in Fort Cady;
- Risks associated with the required infrastructure at Fort Cady;
- Risks related to the titles of our mineral property interests and related water rights;
- Any restrictions on our ability to obtain, recycle, and dispose of water on site;
- Risks related to the portion of Fort Cady that we lease from a third party;
- Risks related to land use restrictions on our properties;
- Risks related to volatility in prices or demand for borates, lithium, and other minerals;
- Fluctuations in the U.S. dollar relative to other currencies;
- Risks related to mineral exploration and development;
- Risks related to equipment shortages and supply chain disruptions;
- Risks associated with any of our customers, suppliers, or any third parties not implementing ethical or legal business practices in compliance with applicable laws and regulations;
- Competition from new or current competitors in the mineral exploration and mining industry;
- Risks associated with consolidation in the markets in which we operate and expect to operate;
- Risks related to compliance with environmental and regulatory requirements, reclamation requirements, the potential generation and disposal of hazardous waste, climate change, and the proposed SEC rules on climate-related disclosures;
- Risks related to our ability to acquire and maintain necessary mining licenses, permits, or access rights;

- Litigation risk;
- Risks related to our main operations being located in California and our engagement with local communities;
- Risks relating to our investment in the Salt Wells North project area and the Salt Wells South project area (together, the "Salt Wells Projects") located in Nevada;
- Our dependence on key management and third parties;
- Risks related to potential acquisitions, joint ventures, and other investments;
- Risks related to public health threats, including the novel coronavirus, that may continue to cause disruptions to our operations or may have a material adverse effect on our development plans and financial results;
- Information technology risks;
- Risks and costs relating to the Reorganization;
- Risks related to the possible dilution of our Common Stock;
- Risks related to our stock price and trading volume volatility;
- Risks relating to the development of an active trading market for our Common Stock;
- Risks related to our status as an emerging growth company;
- Risks related to technology systems and security breaches;
- A shortage of skilled technicians and engineers;
- Risks related to technology systems and security breaches;
- Our facilities of operations could be adversely affected by outside events outside of our control, such as natural disasters, climate change, wars, or health epidemics or pandemics;
- Risks and uncertainties related to the COVID-19 pandemic;
- Our increased costs as a result of being a U.S. listed public company;
- Strategic actions, including acquisitions and dispositions of investments, including but not limited to integrations of acquiring investments; and
- Risks associated with our convertible notes issued subsequent to June 30, 2022
- Risk of insufficient cash flow to service the convertible notes
- Risk of foreclosure on our assets if we default on the convertible notes
- Risk of dilution of the ownership interest of our existing stockholders if the convertible notes are converted
- Risk of adverse impact on the price of our common stock if the convertible notes are converted
- Risks associated with limitations on our ability to raise money through equity offerings and to incur additional indebtedness imposed by the convertible notes agreement
- Any other risks described elsewhere in this Annual Report on Form 10-K or the documents incorporated herein by reference.

While we believe these expectations, and the estimates and projections on which they are based, are reasonable and were made in good faith, these statements are subject to numerous risks and uncertainties. Forward-looking statements involve known and unknown risks, uncertainties and other important factors, which

include, but are not limited to, the risks described under the heading "*Risk Factor Summary*" and "*Risk Factors*," any of which could cause our actual results, performance or achievements, or industry results, to differ materially from any future results, performance or achievements expressed or implied by such forward-looking statements. Therefore, you should not rely on any of these forward-looking statements.

These forward-looking statements speak only as of the date of this report and, except as required by law, we undertake no obligation to correct, update or revise any forward-looking statement, whether as a result of new information, future events or otherwise, except to the extent required under federal securities laws. You are advised, however, to consult any additional disclosures we make in our reports to the U.S. Securities and Exchange Commission (the "SEC"). All subsequent written and oral forward-looking statements attributable to us or persons acting on our behalf are expressly qualified in their entirety by the cautionary statements contained in this filing.

CAUTIONARY NOTE REGARDING RESERVES

Unless otherwise indicated, all mineral resource estimates included in this report have been prepared in accordance with, and are based on the relevant definitions set forth in, the SEC's Mining Disclosure Rules and Regulation S-K 1300 (each as defined below). Mining disclosure in the United States was previously required to comply with SEC Industry Guide 7 (the "SEC Industry Guide 7") under the Securities Exchange Act of 1934 (the "Exchange Act"). In accordance with the SEC's Final Rule 13-10570, Modernization of Property Disclosure for Mining Registrant, the SEC has adopted final rules, effective February 25, 2019, to replace SEC Industry Guide 7 with new mining disclosure rules (the "Mining Disclosure Rules") under sub-part 1300 of Regulation S-K of the Securities Act of 1933, as amended (the "Securities Act") ("Regulation S-K 1300"). Regulation S-K 1300 replaces the historical property disclosure requirements included in SEC Industry Guide 7. Regulation S-K 1300 uses the Committee for Mineral Reserves International Reporting Standards ("CRIRSCO")-based classification system for mineral resources and mineral reserves and accordingly, under Regulation S-K 1300, the SEC now recognizes estimates of "Measured Mineral Resources," "Indicated Mineral Resources" and "Inferred Mineral Resources," and require SEC-registered mining companies to disclose in their SEC filings specified information concerning their mineral resources, in addition to mineral reserves. In addition, the SEC has amended its definitions of "Proven Mineral Reserves" and "Probable Mineral Reserves" to be substantially similar to international standards. The SEC Mining Disclosure Rules more closely align SEC disclosure requirements and policies for mining properties with current industry and global regulatory practices and standards, including the Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves, referred to as the "JORC Code." While the SEC now recognizes "Measured Mineral Resources," "Indicated Mineral Resources" and "Inferred Mineral Resources" under the SEC Mining Disclosure Rules, investors should not assume that any part or all of the mineral deposits in these categories will be converted into a higher category of mineral resources or into mineral reserves.

The following terms, as defined in Regulation S-K 1300, apply within this report:

Measured Mineral Resource ("Measured" or "Measured Mineral Resource")	that part of a mineral resource for which quantity and grade or quality are estimated on the basis of conclusive geological evidence and sampling. The level of geological certainty associated with a measured mineral resource is sufficient to allow a qualified person to apply modifying factors in sufficient detail to support detailed mine planning and final evaluation of the economic viability of the deposit. Because a measured mineral resource has a higher level of confidence than the level of confidence of either an indicated mineral resource or an inferred mineral resource, a measured mineral resource may be converted to a proven mineral reserve or to a probable mineral reserve.

Indicated Mineral Resource (“Indicated” or “Indicated Mineral Resource”)	that part of a mineral resource for which quantity and grade or quality are estimated on the basis of adequate geological evidence and sampling. The level of geological certainty associated with an indicated mineral resource is sufficient to allow a qualified person to apply modifying factors in sufficient detail to support mine planning and evaluation of the economic viability of the deposit. Because an indicated mineral resource has a lower level of confidence than the level of confidence of a measured mineral resource, an indicated mineral resource may only be converted to a probable mineral reserve.
Inferred Mineral Resource (“Inferred” or “Inferred Mineral Resource”)	that part of a mineral resource for which quantity and grade or quality are estimated on the basis of limited geological evidence and sampling. The level of geological uncertainty associated with an inferred mineral resource is too high to apply relevant technical and economic factors likely to influence the prospects of economic extraction in a manner useful for evaluation of economic viability. Because an inferred mineral resource has the lowest level of geological confidence of all mineral resources, which prevents the application of the modifying factors in a manner useful for evaluation of economic viability, an inferred mineral resource may not be considered when assessing the economic viability of a mining project, and may not be converted to a mineral reserve.
Probable Mineral Reserve (“Probable” or “Probable Mineral Reserve”)	the economically mineable part of an indicated and, in some cases, a measured mineral resource. that part of a mineral resource for which quantity and grade or quality are estimated on the basis of limited geological evidence and sampling. The level of geological uncertainty associated with an inferred mineral resource is too high to apply relevant technical and economic factors likely to influence the prospects of economic extraction in a manner useful for evaluation of economic viability. Because an inferred mineral resource has the lowest level of geological confidence of all mineral resources, which prevents the application of the modifying factors in a manner useful for evaluation of economic viability, an inferred mineral resource may not be considered when assessing the economic viability of a mining project, and may not be converted to a mineral reserve.
Proven Mineral Reserve (“Proven” or “Proven Mineral Reserve”)	the economically mineable part of a measured mineral resource and can only result from conversion of a measured mineral resource.

Millcreek Mining Group prepared an independent technical report dated February 7, 2022, with an effective date of October 15, 2021 (the “Initial Assessment Report”). The purpose of the Initial Assessment Report is to support the disclosure of mineral resource estimates for Fort Cady. The Initial Assessment Report was prepared in accordance with the SEC’s Mining Disclosure Rules and Regulation S-K Subpart 1300 and Item 601(b)(96) (technical report summary). The Initial Assessment Report is discussed in *Business* and *Properties* and incorporated by reference as Exhibit 96.1 to this report on Form 10-K.

UNLESS OTHERWISE EXPRESSLY STATED, NOTHING CONTAINED IN THIS FILING IS, NOR DOES IT PURPORT TO BE, A TECHNICAL REPORT SUMMARY PREPARED BY A QUALIFIED PERSON PURSUANT TO AND IN ACCORDANCE WITH THE REQUIREMENTS OF SUBPART 1300 OF SECURITIES EXCHANGE COMMISSION REGULATION S-K.

CAUTIONARY NOTE REGARDING EXPLORATION STAGE COMPANIES

We are an exploration stage company and do not currently have any known mineral reserves and cannot expect to have known mineral reserves unless and until an appropriate technical and economic study is completed for Fort Cady or any of our other properties that shows Proven or Probable Mineral Reserves as defined by Regulation S-K 1300. We currently do not have any Proven or Probable Mineral Reserves. There can be no assurance that Fort Cady or any of our other properties contains or will contain any such SEC-compliant Proven or Probable Mineral Reserves or that, even if such reserves are found, the quantities of any such reserves warrant continued operations or that we will be successful in economically recovering them.

CAUTIONARY NOTE REGARDING EMERGING GROWTH COMPANY STATUS

Section 102(b)(1) of the Jumpstart Our Business Startups Act ("JOBS Act") exempts emerging growth companies from being required to comply with new or revised financial accounting standards until private companies (that is, those that have not had a Securities Act registration statement declared effective or do not have a class of securities registered under the Securities Exchange Act of 1934, as amended) are required to comply with the new or revised financial accounting standards. The JOBS Act provides that a company can elect to opt out of the extended transition period and comply with the requirements that apply to non-emerging growth companies but any such election to opt out is irrevocable. We have elected not to opt out of such extended transition period which means that when a standard is issued or revised and it has different application dates for public or private companies, we, as an emerging growth company, can adopt the new or revised standard at the time private companies adopt the new or revised standard, until such time we are no longer considered to be an emerging growth company. At times, we may elect to adopt a new or revised standard early.

CAUTIONARY NOTE REGARDING INDUSTRY AND MARKET DATA

This filing includes information concerning our industry and the markets in which we will operate that is based on information from various sources including public filings, internal company sources, various third-party sources and management estimates. Our management estimates regarding our position, share and industry size are derived from publicly available information and our internal research, and are based on a number of key assumptions made upon reviewing such data and our knowledge of such industry and markets, which we believe to be reasonable. While we believe the industry, market and competitive position data included in this report is reliable and is based on reasonable assumptions, such data is necessarily subject to a high degree of uncertainty and risk and is subject to change due to a variety of factors, including those described in "Cautionary Note Regarding Forward-Looking Statements," "Risk Factors" and elsewhere in this filing. These and other factors could cause results to differ materially from those expressed in the estimates included herein. We have not independently verified any data obtained from third-party sources and cannot assure you of the accuracy or completeness of such data.

PART 1

Items 1 and 2. Business and Properties

Overview

We are an exploration stage company focused on becoming a vertically integrated global leader and supplier of boron specialty and advanced materials, complemented by lithium carbonate production capabilities. Our mission is to become a supplier of these critical materials to industries addressing global decarbonization, food security, and production of domestic supply. Our business strategy and objectives are to develop capabilities ranging from upstream extraction and product sales of boric acid, lithium carbonate and potentially other co-products, to downstream boron advanced material processing and development. Our business is based on our large domestic boron and lithium resource in Southern California, and we intend to leverage this asset once commercially operational to internally supply our proposed downstream advanced material development activities overtime.

We hold 100% of the rights—either through ownership or leasehold interest—in Fort Cady through our wholly owned subsidiary, 5E Boron Americas, LLC (f/k/a Fort Cady (California) Corporation) ("5E Boron Americas"). Through a multi-phased approach, we plan to develop Fort Cady into a large-scale boron and lithium complex. Fort Cady is based on a conventional colemanite deposit, which is a hydrated calcium borate mineral found in evaporite deposits, and we believe it is one of the largest known new conventional boron deposits globally. The deposit hosts a mineral resource from which we intend to extract and process into boric acid, boron advanced materials, lithium carbonate, and potentially other co-products. These materials are scarce in resource, currently subject to supply risk as a large portion of their consumption in the United States is sourced from foreign producers and are essential for supporting critical industries. If and when Fort Cady is successfully developed, we believe that we can become an important supplier helping address supply security for these materials in the United States. The importance of Fort Cady and its mineral resource has been recognized by it being designated as Critical Infrastructure by the Department of Homeland Security's Cybersecurity and Infrastructure Security Agency. Fort Cady is also expected to serve as an important supply source of boric acid that we intend to process and develop into boron specialty and advanced materials over time.

Our Strengths

We believe the following key strengths will help us toward our goal of becoming an important supplier of boron specialty and advanced materials, complemented by lithium carbonate production capabilities:

Strategically Positioned to Benefit from Expected Substantial Demand Growth as Decarbonization Efforts Intensify and Future Facing Markets Develop. We are an exploration-stage company aiming to develop a materials resource of high-quality borates and other key materials, such as lithium, currently positioned as inputs into key technologies and industries that address climate change, support decarbonization, and support food and domestic security sectors. We believe factors such as government regulation and incentives and capital investments across industries will drive demand for end-use applications like solar and wind energy infrastructure, neodymium-ferro-boron magnets, lithium-ion batteries, and other critical material applications. We expect any such growth in demand to increase the need for borates and other advanced materials that we seek to produce. In addition, products with future facing applications, including in the semi-conductor, life sciences, aerospace, military and automotive markets, are also expected to drive demand growth. As a result of our broader focus on the boron specialty and advanced materials rather than specific end use applications, we believe we can be well-positioned to be an important domestic supplier to a number of different sectors benefitting from their expected growth.

Attractive Geographic Location with a Potential to Address Global Supply Challenges and National Security Concerns. Over the last year, the United States has taken action to reinforce existing supply chains and access to critical materials, while working to secure the domestic supply. In February 2022, Fort Cady was designated as Critical Infrastructure by the Department of Homeland Security's Cybersecurity and Infrastructure Security

Agency, which we believe is a testament to its potential importance as a U.S.-based source of boron, lithium and other materials. This designation supports our goal of playing an important role in providing critical materials domestically, while simultaneously addressing the currently challenged global supply chain. The global boron market is exposed to potential supply risks. There are currently only two major global suppliers (Eti Maden and Rio Tinto Borax) who together represented approximately 85% of total supply in 2021, with Eti Maden representing approximately 60% of global supply in 2021. Similarly, there are only a small number of domestic lithium carbonate suppliers today in the United States. Fort Cady is located in Southern California and, if successfully commercialized, we expect it will have the ability to supply U.S. markets and industries with these two key materials, and thereby help reduce reliance on foreign sources. Our plans to develop U.S.-based downstream capabilities are similarly expected to allow us to onshore additional components of the overall boron supply chain that have historically been concentrated in Asia and other foreign regions.

Fort Cady is Based on one of the Largest Known New Conventional Boron Deposits in the World and Includes a Complementary Lithium Resource that has the Potential to Enable Us to Become an Important Participant in the U.S. Lithium Market. The Fort Cady deposit is a rare colemanite borate deposit, and we believe it is one of the largest known new deposits of colemanite globally. The Initial Assessment Report prepared for us estimates a combined 97.55 million tons of Measured Mineral Resource plus Indicated Mineral Resource at Fort Cady, with a grade of 6.53% for boron oxide (B2O3) and 324 parts per million for lithium. The mineral resource estimate also identified 11.43 million tons of Inferred Mineral Resource with a grade of 6.40% boron oxide and 324 parts per million for lithium. Across the three mineral resource categories there is an estimated 108.98 million tons grading 6.52% for boron oxide and 324 parts per million for lithium. The Initial Assessment Report estimated total contained mineral resource across all resource categories equal to 12.62 million tons of boric acid equivalent at a 5% cut-off grade. We believe that the complementary lithium resource at Fort Cady, if successfully developed, has the potential to enable us to become an important participant in the U.S. lithium market. We believe the size and quality of our Fort Cady resource also positions us to become a long-term supplier, if and when the site becomes operational.

We Believe Our Approach for Developing and Commercializing Fort Cady, along with our Orientation towards Decarbonization-Enabling Materials and Industries can Position us Well to Focus On Important Sustainability Initiatives. We believe that the boron and lithium materials we plan on producing will support industries and applications that enable decarbonization and emission reduction, such as electric vehicles and green energy. These industries are important contributors and supporters of the United Nations Sustainability Development Goals (“SDG’s”), which include accelerating a net-zero future, promoting sustainable infrastructure, improving global nutrition and health as well as promoting innovation. Further, we believe that our extraction techniques will help us create a set of infrastructure that is aligned with the industries we plan on supporting. Our method of in-situ extraction is expected to source hot water from our hydrology wells while providing for closed loop water recycling which we expect will help reduce overall water consumption and provide for efficient energy management. In-situ extraction is also traditionally associated with less above ground land disturbance than traditional resource extraction methods, while using less fossil fuels. Given our early stage of development, we believe we have a clean sheet opportunity to develop and grow our business and a potential sustainability advantage, including building a diverse board of directors and leadership team as well as creating strong corporate governance policies, in each case focused on sustainability matters. Our focus will be to have a positive impact on the prosperity of local communities by supporting job creation, providing specialized training, targeting local procurement and investment, all of which are important given the local community near Fort Cady is designated an economic development zone by the State of California. Finally, we expect to collaborate on technology and material development with universities and research institutions across the United States and abroad with the overall objective of driving innovation, including with respect to boron advanced materials.

Proven Management Team with Deep Project Execution and Operational Experience. Our management team is led by our Chief Executive Officer, Henri Tausch, who has over 30 years of international experience developing and growing businesses in mature and emerging regions, and in leading the development of complex

projects and services in various industries across mining, power generation, refining, distribution, and chemicals. Mr. Tausch's prior roles included Chief Operating Officer of Shawcor, a global infrastructure and energy technology services company, and Vice President and Global Business Leader for Honeywell's Field Solutions Business. The senior leadership team also includes Dr. Dinakar Gnanamgari (Chief Commercial Officer and Chief Technical Officer) and Tyson Hall (Chief Operating Officer), both of whom bring a wealth of project delivery, operations, and executive leadership experience, including at Albemarle Corporation, a global specialty chemicals business.

Our Strategy

Our strategy is founded on leveraging our large mineral resource, related proposed infrastructure project, project development and advanced materials expertise to develop a vertically integrated business focused on boron specialty and advanced materials, complemented by lithium production capabilities. We intend to thoughtfully develop our business over time in a systematic manner, starting with the development and construction of our SSBF to support ongoing design work, engineering and cost optimization for our proposed large-scale complex that we believe will provide us with the ability to commercially produce salable products including boric acid and lithium carbonate, while opportunistically developing downstream boron advanced material processing capabilities to extract greater value out of the boron supply chain.

Key elements of our strategy include:

Develop and Commercialize Fort Cady to Produce an Economical and Secure Supply of Boron and Lithium and Focusing on a more Environmentally Friendly In-Situ Extraction Process as Compared to Traditional Mining. Our initial objective is to develop our Fort Cady boron and lithium resource and achieve a commercial extraction volume of borates, lithium and other co-products safely, profitably with a focus on a more environmentally friendly in-situ extraction process as compared to traditional mining. The SSBF, which we began constructing in April 2022, is expected to serve as a foundation for future design, engineering, and cost optimization of our planned large-scale complex. If and when Fort Cady is fully operational in accordance with our current plan, we believe that we can have an opportunity to be a long-term supplier of boric acid and lithium carbonate, and Fort Cady can serve as an important internal supply source for our development of downstream specialty and advanced materials.

Establish Competitive Market Positions in High Value, High Margin Markets for Boron Specialty and Advanced Materials and Lithium that Address Decarbonization, Food Security, and production of Domestic Supply. We are seeking to establish competitive market positions in high value in use, high margin, and high technology boron specialty and advanced materials and lithium markets. We believe that as a result of the global push to address climate change and achieve decarbonization, as well as increasing challenges related to food security and geopolitical instability, key sectors such as electric vehicle manufacturing, clean energy infrastructure, food and fertilizers, and domestic security, will experience significant growth in the future. As a result, these sectors are expected to require secure and substantial new supplies of key inputs such as boron and lithium to support their growth. Assuming the successful commercial completion of our large-scale complex, we believe we will have the opportunity to become one of the largest suppliers of boric acid and lithium carbonate in the domestic U.S. and international markets. Over time, we plan on developing downstream boron advanced materials capabilities to convert boric acid into boron advanced materials. These boron advanced materials may support higher technology applications across the fields of semi-conductors, life sciences, aerospace, military and automotive markets and would allow us to extract greater value from our processes and supply chain. Downstream boron advanced materials capabilities may be developed over time through a combination of internal research and development, commercial partnerships or joint ventures with other organizations or research institutions, or via the acquisition of intellectual property related to processing and manufacturing.

Sign Offtake Agreements and Develop Commercial Partnerships to Expand High-Performance Boron and Lithium Product Capabilities and Embed Ourselves in Customer Supply Chains. As part of the commercialization plans for Fort Cady, we plan on dedicating resources for marketing efforts to establish commercial offtake agreements for the sale of boric acid and lithium carbonate. We believe sales of these materials will support our strategy of achieving a durable revenue base, which can be used to fund subsequent incremental capacity plans at Fort Cady and generate cash necessary for investments in downstream boron advanced materials capabilities. As we develop our downstream materials business, we plan to collaborate with customers and partners to support their development of high-performance applications in the areas of clean energy infrastructure, electric transportation, and high-grade fertilizers among other end uses. These commercial partnerships are expected to be an important element of embedding us within global supply chains and positioning us as an essential supplier of boron specialty and advanced materials. We intend to invest in research and development initiatives with an aim to support our customers' product development and create intellectual property for us.

Potentially Diversify our Sources of Supply. Initially, we will rely on production from Fort Cady to support materials sales and downstream materials processing capability development. We have the opportunity to expand our supply of resources as a result of our earn-in right to acquire a 100% interest ("Earn-In Agreement") in the Salt Wells Projects in the State of Nevada, a land package that is considered a prospective area for borates and lithium deposits. Pursuant to the Earn-In Agreement, we may acquire a 100% interest in the Salt Wells Projects which has the potential to serve as a second pillar of high-quality borates and lithium supply to us. We plan on assessing new resources that offer the potential to provide economically viable alternative sources of borates or other essential materials.

Corporate History and Reorganization

American Pacific Borates Limited ("ABR"), our former parent company, was incorporated in October 2016 under the laws of Western Australia for the purpose of acquiring the rights in Fort Cady from Atlas Precious Metals, Inc. The acquisition of Fort Cady was completed in May 2017 and ABR's ordinary shares were subsequently admitted for official quotation on the Australian Securities Exchange ("ASX") in July 2017.

We were incorporated in the State of Delaware on September 23, 2021, as a wholly owned subsidiary of ABR for the purposes of effecting the Reorganization (as defined herein).

We received all the issued and outstanding shares of ABR pursuant to a statutory Scheme of Arrangement under Part 5.1 of the Australian Corporations Act ("Scheme"). The Scheme was approved by ABR's shareholders at a general meeting of shareholders held on December 2, 2021. Following shareholder approval, the Scheme was approved by the Federal Court of Australia on February 24, 2022.

After completion of the Scheme, we listed our Common Stock on the NASDAQ under the symbol "FEAM" on March 15, 2022 and de-listed ABR from the ASX on March 8, 2022.

Pursuant to the Reorganization, we issued to the shareholders of ABR either one share of our Common Stock for every ten ordinary shares of ABR or one CHESS Depositary Interest over our Common Stock (a "CDI") for every one ordinary share of ABR, in each case, as held on the Scheme record date. Eligible shareholders of ABR (those whose residence at the record date of the Scheme is in Australia, New Zealand, Canada, Hong Kong, Ireland, Papua New Guinea, Singapore, Malaysia, Thailand, or the United States) received CDIs by default. In order to receive Common Stock, eligible shareholders were required to complete and submit an election form to ABR's registry no later than 5:00 pm (AEDT) on March 2, 2022. Ineligible shareholders did not receive CDIs or shares of Common Stock but instead received the proceeds from the sale of the CDIs to which they would otherwise have been entitled by a broker appointed by ABR. The appointed broker sold the CDIs in accordance with the terms of a sale facility agreement and remitted the proceeds to ineligible shareholders. Additionally, we canceled each of the outstanding options to acquire ordinary shares of ABR and

issued replacement options representing the right to acquire shares of our Common Stock on the basis of one replacement option for every ten existing ABR options held. We maintain an ASX listing for our CDIs, with each CDI representing 1/10th of a share of Common Stock. Holders of CDIs are able to trade their CDIs on the ASX and holders of shares of our Common Stock are able to trade their shares on NASDAQ.

Following completion of the Reorganization, ABR became a wholly owned subsidiary of 5E Advanced Materials, Inc.

Corporate Update

In March 2022 we executed a research agreement with Georgetown University that aims to enhance the performance of permanent magnets through increased usage of boron. We believe the potential benefits of this agreement include creating intellectual property and commercialization pathways for us as it pertains to the manufacturing of boron enhanced permanent magnets.

Our team in California and Texas continues to grow with several new hires across operations, administration, and finance, including a former key employee with over 19 years of experience at Albemarle Corporation that spans across multiple disciplines including process design, purchasing, M&A, and general management. As of June 2022, the majority of our administrative and operational personnel have transitioned to the U.S. and we hired a Chief Accounting Officer with over 29 years of experience. We anticipate a step-up in hiring as we work towards mechanical completion and operation of the SSBF.

In light of the recent Presidential Executive Orders and U.S. government initiatives, we have increased our government affairs effort by engaging a specialized management consulting firm in May 2022 to pursue federal, state, and local funding opportunities. We have continued to advance our efforts around environmental, sustainability and governance (“ESG”), and have been working with a North American sustainability consulting firm to develop our ESG strategy and future reporting framework.

In May 2022 we signed a non-binding letter of intent with Rose Mill Co. (“Rose Mill”) for the joint research and development of boron advanced materials applications across a number of industrial and military fields. In June 2022, we signed a non-binding letter of intent with Corning International for the supply of boron and lithium materials, technical collaboration to develop advanced materials and potential financial accommodations in support of a commercial agreement. We continue to advance discussions with other customers for boron advanced materials.

SSBF Update

The SSBF is our proposed smaller scale boron facility which is expected to serve as a foundation for future design, engineering, and cost optimization for our large-scale complex at Fort Cady focused on boron and lithium. Once successfully completed, the SSBF will be an essential step in the overall Fort Cady development plan and is expected to serve as our initial extraction and processing facility. In recent months, we have made progress on planning and procurement of long lead item equipment for our SSBF, with major equipment either already on-site or scheduled for delivery. Detailed engineering, including our hazard analysis, instrument designs, piping isometrics, and structural and foundation design, was substantially completed by March 2022 and the progress of detailed engineering provided us the opportunity to engage in a competitive bidding process for the SSBF construction contract. In April 2022, we awarded the construction contract to a contractor. Assuming no unexpected delays in construction, supply chain issues or availability of labor, we are targeting completing the construction of the SSBF around the end of the 2022 calendar year at an engineered estimated test production capacity of approximately 2,000 tons per year of boric acid. This facility is being designed to process a pregnant leach solution (“PLS”) containing boron and lithium extracted from colemanite. Assuming the timely and successful construction and operation of the SSBF, production from our SSBF is primarily intended to provide PLS and process intelligence that will help us to more effectively detail engineer our proposed large-scale

complex and estimate capital expenditures required to build our large-scale complex. It is possible that a portion of the output from our SSBF may be used to support customer origination efforts for eventual offtake and qualification and may be used for commercial sales and to progress our advanced materials development. The extraction of the PLS is expected to occur through our injection-recovery wells, and we completed four such wells by May 2022. As of June 30, 2022, we had no lost time injuries for any of our sites during the calendar year 2022, and we will continue to prioritize the safety and well-being of personnel. While the total cost is subject to change, we currently estimate the total cost of the SSBF (including the drilling and installation costs for our injection recovery wells of $3.4 million) to be between $45 and $55 million, of which $25.6 million had been spent (including costs for our injection recovery wells of $3.4 million) as of June 30, 2022, and the remainder is expected to be incurred prior to March 31, 2023.

Fort Cady

Our previous development plans were focused on boron and sulphate of potash ("SOP") and developing a large-scale complex under a phased development process. During the 2022 fiscal year, we have changed the focus of our business plan and have worked with our external engineering partners on an updated process design for our proposed large-scale complex at Fort Cady. Our Initial Assessment Report added further definition to our large boron resource and established the existence of a lithium mineral resource that we believe could provide us with potential lithium carbonate production. Due to the current favorable market backdrop and growing importance of critical materials, we now intend to focus primarily on further defining our boron and lithium resources, and to work towards developing a large-scale boron and lithium complex for the extraction of boric acid and lithium carbonate. A focus on boron and lithium extraction and related end markets is aligned with our mission to become a global leader in enabling industries addressing decarbonization, food security, and production of domestic supply and our focus on high value in use materials and applications.

The SSBF is expected to serve as a foundation for future design, engineering, and cost optimization for our large-scale complex. We believe that the successful completion of the SSBF is an important path to obtaining critical information that will help enable us to optimize the efficiency, output and economic profile of our large-scale complex. As such, we expect to incorporate value engineering and cost structure optimization into the continued technical and economic analysis of the proposed large-scale complex, and to provide project updates, rather than completing a bankable feasibility study in fiscal year 2022. We have begun to progress plans for the proposed large-scale complex processing plant, including defining infrastructure, material balance and process flow diagrams, co-generation, as well as the integration of a sulfuric acid plant, and are developing a priced equipment list for process equipment needed for full-scale operations. Notwithstanding the proposed scope changes to Fort Cady and our large-scale complex focused on boron and lithium, we continue to target, assuming timely and successful construction and operation of the SSBF, and obtaining the requisite funding for construction, the potential for initial commercial production in 2025. We also intend to develop downstream boron specialty and advanced materials capabilities and anticipate using internally generated boric acid to supply downstream processing activities.

As a result of the change in project scope, enhanced focus on boron and lithium, and current favorable market backdrop for these materials, we have also refined our anticipated phased development approach for the large-scale complex at Fort Cady, which differs from our February 2021 Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves ("JORC Code") report. We are currently targeting a boric acid production capacity of approximately 250,000 tons per year once our proposed large-scale complex at Fort Cady commences initial operations. In addition, based on currently expected engineering and process design, once in full production, we believe Fort Cady could potentially produce up to 500,000 tons per year of boric acid. We will consider the pacing and timing of any potential incremental capacity additions above the initial target of 250,000 tons per year, and we expect this to be an economic decision based on factors including go-forward supply and demand fundamentals, pricing, and further engineering work to be conducted over time. We also intend to leverage our anticipated internal supply of borates to produce boron specialty and advanced materials and additional lithium carbonate. However, further analysis is required with respect to the potential for

boron advanced materials, with the successful completion and operation of the SSBF expected to provide key operational input for this analysis. Additionally, early estimates by us currently target a lithium carbonate production capacity of up to several thousand tons per year upon completion of our proposed large-scale complex, and we expect the successful completion and operation of the SSBF to provide further information on this point. If we successfully meet the aforementioned early estimates of lithium carbonate production capacity, this could allow us to become an important participant in the U.S. lithium carbonate market. Given currently high lithium prices and electric vehicle growth forecasted by third-party analysts, we believe that an ability to produce a co- product of lithium carbonate could have a positive impact on our business.

The proposed large-scale complex is being designed and engineered to regenerate a significant portion of hydrochloric acid, which we expect to increase efficiencies and reduce our emphasis on SOP to produce feedstock hydrochloric acid. While production of SOP remains in our long-term plans, we believe we can implement the Mannheim process to produce SOP during later phases of Fort Cady when capacity for boric acid production exceeds 250,000 tons per year. Our short to medium term plan focuses on the production of boric acid, boron advanced materials, and lithium carbonate where we currently see favorable market pricing and high value in use. We believe that a focus on boron and lithium could be an important step towards creating a more durable, less seasonal business compared to a more traditional commodity-driven fertilizer focused business.

The continued technical and economic analysis described above with respect to our proposed large-scale complex and overall business strategy, has been determined by us to be a currently more cost effective and time efficient way to proceed. This continued technical and economic analysis of the proposed large-scale complex is subject to change and may lead to a separate technical study, an update to our Initial Assessment Report or a more comprehensive study. However, we cannot assure you of the form and scope of this continued technical and economic analysis, and it is possible that we will conclude that the completion of any such further studies (including a bankable feasibility study) may not be commercially reasonable, necessary or possible at all.

In May 2022, we announced a change in project scope compared to our previous business plans. Our new business plan includes:

- a focus on boron and lithium extraction (as opposed to boron and SOP under our previous plans);
- revisions to the proposed processing facility design (including a targeted increase of the overall long- term potential production capacity to approximately 500,000 tons pa of boric acid compared to approximately 450,000 tons pa of boric acid under our previous plans); and
- a modified sequencing of our project development timeline to include the initial SSBF followed by the development of our proposed large-scale complex (as opposed to only developing the large-scale complex under our previous plans), with the expectation that operating data to be obtained from the SSBF will be important in determining the future design, engineering and cost optimization for our large-scale complex, as well as the expected total capital expenditures and ongoing required operating expenditures related thereto.

These project scope changes, taken together with cost inflation, have resulted in a material increase to our previously estimated capital expenditure budget required to complete our proposed large-scale complex. As a result, we currently expect a material increase to our capital expenditure budget compared to the previously published estimates and our internal cost estimates. In addition, the capital expenditures related to our proposed large-scale complex continue to be subject to change as our technical and economic analysis progresses. Such changes could also be material, including without limitation as a result of potential future price increases for major equipment or labor, and future operating data from our SSBF which may result in changes in the design and engineering of our proposed large-scale complex. The foregoing factors may lead to materially higher costs, delays or the inability to complete our proposed large-scale complex as planned or on commercially reasonable terms or at all. Furthermore, it could take several months or longer for the operating data from the operational SSBF to be sufficiently calibrated and reliable to provide reasonable input into the future design, engineering and

cost optimization for our large-scale complex, as well as the expected total capital expenditures and ongoing required operating expenditures related thereto. As a result, depending on the timing, nature, quality and specificity of the data we receive from the operational SSBF, we may require significant additional capital before we can progress the development of our proposed large-scale complex. Such additional capital may be needed to fund further detailed engineering work necessary to prepare a feasibility study (if any), including engineering work to define, with a reasonable degree of certainty, the capital expenditures required for our proposed large- scale complex and in particular related to equipment and drilling. We may also need additional capital for continued operation of the SSBF to obtain test and flow data required to complete such detailed engineering work. As a result, we can provide no assurance that we will be able to meet our expected timelines, capital expenditure and costs estimates with respect to our SSBF and large-scale complex and we may need significant additional capital to pursue our operating plans, which capital may not be available to us on commercially reasonable terms or at all.

Competition

The mining industry is highly competitive. According to Global Market Insights, in 2021, there were two major competitors in the borates industry, Rio Tinto Borates ("RTB") and Eti Maden. If we are successful in bringing Fort Cady into production, we would be competing with those two large competitors in the borates industry, one global mining conglomerate and one state-owned enterprise, each of which we believe are generally well-funded and established. We, therefore, may be at a significant disadvantage in the course of obtaining materials, supplies, labor and equipment from time to time. Additionally, we are, and expect to continue to be, an insignificant participant in the business of mining exploration and development for the foreseeable future.

The two largest competitors in the production of boric acid are RTB and Eti Maden, which is owned by the Turkish Government. According to a 2021 report from Global Market Insights, together they supplied approximately 85% of global boron production demand in 2021 which has led to a global duopoly, with Eti Maden alone having supplied approximately 60% of the world's demand in 2021.

Additionally, the lithium industry is highly competitive, and according to a Woods Mackenzie report, as of March 2022, the market was dominated by Albemarle Corporation, Sociedad Quimica y Minera De Chile S.A., Jiangxi Gangfeng Lithium Co. Ltd., Tianqi Lithium Corp., and Livent Corporation, all of which we believe are generally well-funded and established.

If and when Fort Cady is successfully developed and commercialized, the primary factors that we will be competing upon include, without limitation, the amount and quality of our material resource, the pricing of our products, and the quality of our customer support and service. Furthermore, prospective customers may consider additional factors such as the geographic location of our operations and the reputation of our business as compared to our competitors.

Customers

Because we have not yet begun production of mineral products, we currently do not have any binding supply agreements with customers.

In May 2021, ABR entered into a non-binding letter of intent with Compass Minerals America Inc. ("Compass Minerals"), a subsidiary of NYSE-listed Compass Minerals, Inc., to progress negotiations with respect to Compass Minerals taking responsibility for the sales and marketing of SOP from our operations.

In September 2021, ABR entered into a non-binding letter of intent with Borman Specialty Materials. Under the terms of the letter of intent, we agreed to work together towards a binding agreement for the supply of boric acid and other boron specialty and advanced materials, which will be used to manufacture products with critical applications for future facing global markets, including the semi-conductor, life sciences, aerospace, military and automotive markets.

In May 2022, we signed a non-binding letter of intent with Rose Mill Co. for boron advanced materials that focus on industrial and military applications. In June 2022, we signed a non-binding letter of intent with Corning Incorporated for the supply of boron and lithium materials, technical collaboration to develop advanced materials and potential financial accommodations in support of a commercial agreement. We continue to advance discussions with other potential customers for boron advanced materials.

In parallel with ongoing test works, we plan to explore options to sell by-product gypsum into the Californian gypsum market.

Governmental Regulation

We are subject to numerous and extensive federal, state and local laws, regulations, permits and other legal requirements applicable to the mining and mineral processing industry, including those pertaining to employee health and safety, air emissions, water usage, wastewater and stormwater discharges, air quality standards, greenhouse gas emissions, waste management, plant and wildlife protection, handling and disposal of hazardous and radioactive substances, remediation of soil and groundwater contamination, land use, reclamation and restoration of properties, the discharge of materials into the environment and groundwater quality and availability. Our business may be affected in varying degrees by government regulation such as restrictions on production, price controls, tax increases, expropriation of property, environmental and pollution controls or changes in conditions under which minerals may be marketed. An excess supply of certain minerals may exist from time to time due to lack of markets, restrictions on exports, and numerous factors beyond our control. These factors include market fluctuations and government regulations relating to prices, taxes, royalties, allowable production and importing and exporting minerals. These laws, regulations, permits and legal requirements have had, and will continue to have, a significant effect on our results of operations, earnings and competitive position.

Federal legislation and implementing regulations adopted and administered by the Environmental Protection Agency, the Bureau of Land Management, the Fish and Wildlife Service, the Army Corps of Engineers and other agencies, including legislation such as the federal Clean Water Act (“CWA”), the Safe Drinking Water Act (“SDWA”), the Clean Air Act, as amended (“CAA”), the National Environmental Policy Act (“NEPA”), the Endangered Species Act, the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), and the Resource Conservation and Recovery Act (“RCRA”), have a direct bearing on our proposed solution mining and processing operations. These federal initiatives are often administered and enforced through state agencies operating under parallel state statutes and regulations.

CERCLA, and comparable state statutes, impose strict, joint and several liability on current and former owners and operators of sites and on persons who disposed of or arranged for the disposal of hazardous substances found at such sites. It is not uncommon for the government to file claims requiring clean-up actions, demands for reimbursement for government-incurred clean-up costs, or natural resource damages, or for neighboring landowners and other third parties to file claims for personal injury and property damage allegedly caused by hazardous substances released into the environment. The RCRA, and comparable state statutes, govern the disposal of solid waste and hazardous waste and authorize the imposition of substantial fines and penalties for noncompliance, as well as requirements for corrective actions. CERCLA, RCRA, and comparable state statutes can impose liability for clean-up of sites and disposal of substances found on exploration, mining and processing sites long after activities on such sites have been completed.

CAA restricts the emission of air pollutants from many sources, including processing activities. Any future processing operations by us may produce air emissions, including fugitive dust and other air pollutants from stationary equipment, storage facilities and the use of mobile sources such as trucks and heavy construction equipment, which are subject to review, monitoring and/or control requirements under the CAA and state air quality laws, as administered by the Mojave Desert Air Quality Management District. New equipment and facilities are required to obtain permits before work and operations can begin. Once constructed or obtained, we may need to incur additional capital costs to ensure such facilities and equipment remain in compliance with

applicable rules and regulations. In addition, permitting rules do impose limitations on our estimated production levels or result in additional capital expenditures in order to comply with the rules. We have received Authorization to Construct air permits for up to 270,000 tons of borates per year. We expect that we will need to modify these permits as engineering designs are finalized.

The CWA, and comparable state statutes, impose restrictions and controls on the discharge of pollutants into waters of the United States. The discharge of pollutants into regulated waters is prohibited, except in accordance with the terms of a permit issued by the EPA or an analogous state agency. Fort Cady received a Water Board Order from the Lahontan Regional Water Quality Control Board in 1988 and remains in compliance with the permit conditions. The water board regulates surface activities, such as ponds, that have the potential to allow process solutions to leak into the subsurface.

The CWA regulates storm water from facilities such as Fort Cady and generally requires a storm water discharge permit. Fort Cady is located within a closed basin; therefore, the stormwater regulations do not apply either during construction or operations. We have requested and received a Notice of Non-Applicability (NONA) from the Lahontan Regional Water Quality Control Board. CWA and comparable state statutes provide for civil, criminal and administrative penalties for unauthorized discharges of pollutants and impose liability on parties responsible for those discharges for the costs of cleaning up any environmental damage caused by the release and for natural resource damages resulting from the release.

The SDWA and the Underground Injection Control (“UIC”) program promulgated thereunder, regulate the drilling and operation of subsurface injection wells. The EPA directly administers the UIC program in California. The program requires that a Class III Solution Mining Permit be obtained before drilling an injection- recovery well. We have obtained permits to construct and operate a borate solution mine, with approval and bonding for the 13 injection-recovery and water monitoring wells. We expect that the EPA will grant authorization for additional wells as requested by FCCC subject to an increase of the reclamation bonding amount. Violation of these regulations and/or contamination of groundwater by mining related activities may result in fines, penalties, and remediation costs, among other sanctions and liabilities under the SWDA and state laws. In addition, third party claims may be filed by landowners and other parties claiming damages for alternative water supplies, property damages, and bodily injury; however, there are no drinking water aquifers within the area covered by the UIC permit.

The Federal Land Policy Management Act (the “FLPMA”) governs the way in which public lands administered by the U.S. Bureau of Land Management are managed. The General Mining Law of 1872 and the FLPMA authorize U.S. citizens to locate mining claims on federal lands open to mineral entry. Borate is a locatable mineral. Locatable mineral deposits within mining claims such as Fort Cady may be developed, extracted and processed under a Plan of Operations approved by the Bureau of Land Management. The National Environmental Policy Act requires a review of all projects proposed to occur on public lands.

NEPA requires federal agencies to integrate environmental considerations into their decision-making processes by evaluating the environmental impacts of their proposed actions, including issuance of permits to mining facilities, and assessing alternatives to those actions. The Barstow Office of the BLM issued a Record of Decision for the EIS in 1994. The existing Record of Decision does not have an expiration date, and minor modifications may be required in the future, but are not required to begin operating.

Solution mining does not meet the definition of a mine under the Federal Mine Safety and Health Act of 1977 (the “Mine Act”), as amended by the Mine Improvement and New Emergency Response Act of 2006 (“MINER Act”). Solution mining and processing activities are covered by the regulations adopted by the California Occupational Safety and Health Administration (“CalOSHA”). Therefore, our proposed operations will need to comply with the CalOSHA regulations and standards, including development of Safe Operating Procedures and training of personnel. At this time, it is not possible to predict the full effect that new or proposed statutes, regulations and policies will have on our operating costs, but any expansion of existing regulations, or making such regulations more stringent may have a negative impact on the profitability of the operations.

When operational, Fort Cady will be required to maintain a comprehensive safety program. Employees and contractors will be required to complete initial training, as well as attend annual refresher sessions, which cover potential hazards that may be present at the facility. Workers at the facility will be entitled to compensation for any work-related injuries. The State of California may consider changes in workers' compensation laws from time-to-time. Our costs will vary based on the number of accidents that occur at Fort Cady and the costs of addressing such claims. We are and will be required to maintain insurance under various state workers' compensation programs under the statutory limits for the current and proposed operations at Fort Cady and the offices in California and Houston.

We generally are required to mitigate long-term environmental impacts by stabilizing, contouring, re-sloping and revegetating various portions of a site after well-field and processing operations are completed as well as plugging and abandoning injection recovery, water monitoring and exploration drilling holes. Comprehensive environmental protection and reclamation standards must be met during the course of, and upon completion of, mining activities, and any failure to meet such standards may subject us to fines, penalties or other sanctions. Reclamation efforts will be conducted in accordance with detailed plans, which are reviewed and approved by the USEPA, BLM and San Bernardino County on a regular basis. We currently have reclamation obligations and we have arranged and pledged certificates of deposits for reclamation with the state and federal regulatory agencies. At this time, land disturbance certificate of deposits for approximately $308 thousand are in place with the County of San Bernardino and certificate of deposits of approximately $778 thousand are held for EPA reclamation.

We may be required to obtain new permits and permit modifications, including air, construction and occupancy permits issued by San Bernardino County, California government, to complete our development plans. To obtain, maintain and renew these and other environmental permits and perform any required monitoring activities, we may be required to conduct environmental studies and collect and present to governmental authorities data pertaining to the potential impact that the current development plan or future operations may have upon the environment.

Environmental, safety and other laws and regulations continue to evolve which may us to meet stricter standards and give rise to greater enforcement, result in increased fines and penalties for noncompliance, and result in a heightened degree of responsibility for us and our officers, directors and employees. Future laws, regulations, permits or legal requirements, as well as the interpretation or enforcement of existing requirements, may require substantial increases in capital or operating costs to achieve and maintain compliance or otherwise delay, limit or prohibit our development plans and future operations, or other restrictions upon, our development plans or future operations or result in the imposition of fines and penalties for failure to comply.

Complying with these regulations is complicated and requires significant attention and resources. Our employees have a significant amount of experience working with various federal, state and local authorities to address compliance with such laws, regulations and permits. However, we cannot be sure that at all times we have been or will be in compliance with such requirements. We expect to continue to incur significant sums for ongoing regulatory expenditures, including salaries, and the costs for monitoring, compliance, remediation, reporting, pollution control equipment and permitting. In addition, we plan to invest significant capital to develop infrastructure to ensure it operates in a safe and environmentally sustainable manner.

We are not aware of any probable government regulations that would materially impact us at this time, however there can be no assurance that regulations may not arise in the future that may have a negative effect on our results of operations, earnings and competitive position.

Dependence on Key Vendors, Suppliers and Global Supply Chain

Construction of an in-situ leaching mining operation and processing plant at Fort Cady will require local resources of contractors, construction materials, energy resources, employees, and housing for employees. Fort

Cady has good access to I-40 which connects it to numerous sizable communities between Barstow and the greater Los Angeles area which we believe can offer access to transportation, construction materials, labor, and housing. Fort Cady currently has limited electrical service sufficient for mine office and storage facilities on site but will require an upgrade for the proposed plant and wellfield facilities. We are currently exploring options for upgrading electrical services to Fort Cady and have executed an agreement to source high-speed internet to Fort Cady. An electrical transmission corridor operated by SCE extends north-eastward through the eastern part of Fort Cady. We currently have two water production wells in an aquifer within our permit boundary, but water is limited in the Mojave Desert. Currently no natural gas connects to the Project, but we are negotiating services with two suppliers in the region with multiple gas transmission pipeline located proximal to Fort Cady.

While we have to date not experienced any material adverse impact with respect to our employees or third-party vendors as a result of the pandemic, the effects of COVID-19 on supply chains have adversely impacted our equipment procurement activities and could continue to do so. Material extended lead times for numerous items have caused delays on anticipated start-up timeframes and the related price increases due to scarcity of supply have also affected us. These considerations are factored into our forecast but may be subject to revision depending on a change or extension of event. We continue to implement mitigation and risk management measures to reduce potential delays such as engaging multiple suppliers, vendor site visits, and procuring rental equipment to bridge potential gaps, however no assurance can be given that we will be successful in these efforts.

Employees

As of June 30, 2022, we had 23 full-time employees. We expect to significantly increase the number of employees upon full production at Fort Cady.

We use the services of independent consultants and contractors to perform various professional services, including land acquisition, legal, environmental and tax services. In addition, we utilizes the services of independent contractors to perform construction, geological, exploration and drilling operation services and independent third-party engineering firms assist with the design, engineering, and cost optimization of the large- scale complex.

Exploration

In July 2021, we purchased an additional three parcels of land adjacent to Fort Cady, which we expect to become an exploration target to support proposed resource expansion drilling activities. An exploration target is a statement or estimate of the exploration potential of a mineral deposit in a defined geological setting where the statement or estimate, quoted as a range of tons and range of grade (or quality), relates to mineralization for which there has been insufficient exploration to estimate a mineral resource. The exploration target described above relates to the southeastern area outside the existing resource boundary of the Fort Cady deposit.

Seasonality

We have no properties that are subject to material restrictions on its operations due to seasonality. However, we note that given Fort Cady's location in the Mojave Desert, Fort Cady site may be impacted by extreme heat in the summer season. In addition, the desert terrain of Fort Cady does not adequately absorb water and is subject to flash flooding in the instance of significant rain.

Corporate Office

Our principal executive offices are located at 19500 State Highway 249, Suite 125, Houston, Texas. Our telephone number is +1 (346) 439-9656.

Properties

Fort Cady

We hold 100% of the rights—either through ownership or leasehold interest—in the Project. Fort Cady is located in the Mojave Desert region in eastern San Bernardino County, California, approximately 36 miles east of Barstow, near the town of Newberry Springs and two miles south of Interstate 40 ("I-40"). Fort Cady lies approximately 118 miles northeast of Los Angeles, California, or approximately half-way between Los Angeles and Las Vegas, Nevada. Access to Fort Cady is eastbound from Barstow on I-40 to the exit for Newberry Springs. From the exit of New Berry Springs, travel continues south on County Road 20796 for 2.2 miles to an unnamed dirt road bearing east for another 1.1 miles to the mine office and plant site at Fort Cady.

Fort Cady area operates with electricity and is well served by other infrastructure, including I-40 and the main BNSF rail line serving Los Angeles running immediately north alongside I-40. There are three main natural gas transmission lines along the I-40. The two southern transmission lines are owned and operated by Southern California Edison, while the northern transmission line is owned and operated by Kinder Morgan. The port of Los Angeles and its sister port, the port of Long Beach, are in relatively close proximity. We believe that personnel resources are generally available, and labor can be sourced primarily from Barstow, California.

We believe the Fort Cady deposit is in a prospective area for borate and lithium mineralization. The deposit is situated in the Hector evaporite basin and is in close proximity to an Elementis-owned Hectorite lithium clay mine (the "Hectorite Mine"). Fort Cady has a similar geological setting as RTB's Boron open-pit mine and Nirma Limited's Searles Lake operations, situated approximately 75 miles west- northwest and 90 miles northwest of Fort Cady, respectively.

The approved Fort Cady area, as defined in the land use operating permits, covers an area of approximately 343 acres.

Mineral Tenure

Mineral tenure for Fort Cady is through a combination of federal mining claims, a mineral lease, and private fee simple lands. These include 1,010 acres of fee simple patented or privately held land; 2,380 acres of unpatented claims held by FCCC; and 1,520 acres of unpatented claims leased by FCCC from Elementis.

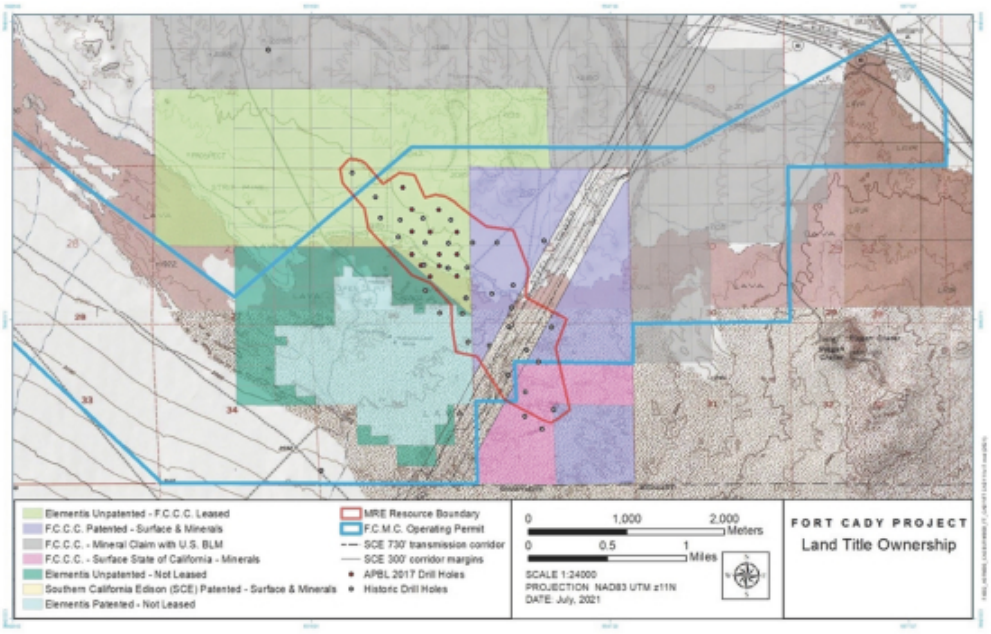
Other areas surrounding the Fort Cady area include patented and unpatented lands of the Hectorite Mine directly west of Fort Cady and unclaimed public lands managed by the U.S. Department of Interior, Bureau of Land Management ("BLM") to the north and east. Land south of the Fort Cady area are part of the U.S. Marine Corps Twentynine Palms Base.

FCCC owns two parcels of fee simple lands in Sections 25 and 36, Township 8 North, Range 5 East, SBM. An electrical transmission corridor operated by Southern California Edison ("SCE") tracts north-eastward through the fee lands with SCE having surface and subsurface control to a depth of 500 feet and affecting approximately 91 acres of land owned by FCCC. While this limits access to the land, mineralization occurs at depths in excess of 1,000 feet, which is still accessible to solution mining. FCCC currently holds two unpatented lode claims and 117 unpatented placer claims.

FCCC entered into a mineral lease agreement with Elementis to examine the mineral potential and develop commercial mining operations for a group of mining claims that are adjacent to the Hectorite Mine. The lease covers 36 unpatented placer claims, 15 unpatented lode claims, a diagonal swath of two unpatented placer claims, and excludes any and all patented claims. The lease carries a 3% royalty on net returns from all ores, minerals, or other products produced from the leased lands. The lease became effective on October 1, 2011, with an initial duration of 10 years with certain provisions to extend the lease. FCCC and Elementis executed a lease extension until March 31, 2023.

Finally, the State of California owns approximately 272 acres of land in Section 36, Township 8 North, Range 5 East, SBM. We believe that this land is potentially available to FCCC through a mineral lease from the California State Lands Commission.

Overview of Mining Locations



Fort Cady History

Colemanite was first discovered at Fort Cady in 1964 and Fort Cady had a long history of exploration and pre-development activities prior to being acquired by ABR in May 2017, including license acquisition, drilling and resource estimation, well-testing, metallurgical testing, feasibility studies and pilot plant infrastructure.

Duval Corporation evaluated the Fort Cady deposit in the late 1970s and early 1980s, completing over 30 diamond drill exploration holes upon which an initial resource estimate was defined. Duval Corporation commenced limited-scale solution mining in 1981. An additional 17 production wells were completed in the following years which were used for injection testing and pilot-scale operations. In July 1986, an additional series of tests were conducted by Mountain States Mineral Enterprises Inc. In these tests, a diluted hydrochloric acid solution was injected through a well into the ore body and a boron-rich solution with a boric acid average head grade of 3.7% was withdrawn from the same well. In July 1986, Fort Cady Minerals Corp. was formed with the view of commencing pilot-scale testing. The first phase of pilot plant operations was conducted between 1987 and 1988.

Approximately 450 tonnes of boric acid were produced during this time. Given the promising results of the pilot-scale tests, Fort Cady was viewed to be commercially viable. Concentrated permitting efforts for commercial-scale operations began in early 1990. Final approval for commercial-scale solution mining and processing was obtained in 1994.

Extensive feasibility studies, detailed engineering and test works were undertaken in the late 1990s and early 2000s. This included an initial phase of small-scale commercial operations between 1996 and 2001, during which approximately 1,800 tonnes of a synthetic colemanite product (marketed as “CadyCal 100”) was produced. CadyCal was produced using sulfuric acid as the leachate which resulted in gypsum precipitation underground and in the surface piping. In 2001, the operation was ceased due to low product pricing and other priorities of the controlling entity.

In May 2017, ABR entered into a share purchase agreement with the then owner of Fort Cady, Atlas Precious Metals, Inc., pursuant to which ABR acquired all of the equity in FCCC together with the mining rights to Fort Cady and the land titles located in and around the Fort Cady area.

Access and Infrastructure

The plant site currently has a 1,600 square foot mine office building, storage buildings, a prepared level pad for the SSBF (20 acres), and a gypsum storage area occupying 17 acres. Access to Fort Cady is via I-40, eastbound from Barstow to the exit for Newberry Springs. The BNSF Railroad main line from Las Vegas to Los Angeles runs subparallel to I-40. Connection to a rail spur is being considered for the Project for purposes of loading and unloading materials to and from the plant. San Bernardino County operates six general aviation airports with the closest airport to Fort Cady being the Barstow-Daggett Airport located approximately 23 miles west of Fort Cady on the National Trails Highway. Commercial flight service is available through five airports in the greater Los Angeles area and in Las Vegas. A dedicated cargo service airport is located approximately 65 miles southwest of Fort Cady.

Construction of an in-situ leaching mining operation and processing plant at Fort Cady will require local resources of contractors, construction materials, energy resources, employees, and housing for employees. Fort Cady has good access to I-40 which connects it to numerous sizable communities between Barstow and the greater Los Angeles area which we believe can offer access to transportation, construction materials, labor and housing. Plant access roads will require upgrades and some roads may require paving, while new access roads are also being considered. Fort Cady currently has limited electrical service sufficient for mine office and storage facilities on site but will require an upgrade for the proposed plant and wellfield facilities. An economic trade-off study is currently being conducted to evaluate co-generation of power versus an upgraded powerline to Fort Cady. An electrical transmission corridor operated by SCE extends north-eastward through the eastern part of

Fort Cady. Fort Cady has two water wells located nearby to support in-situ leaching operations. Currently no natural gas connects to Fort Cady, but based on currently expected natural gas usage, we are negotiating services with two suppliers in the region with multiple gas transmission pipelines located proximal to Fort Cady. A natural gas pipeline will be required to connect to the transmission pipeline to provide heat and power for the processing plant. To provide for access to electric power before any such pipeline is completed, we have a purchase commitment for a liquid natural gas generator to facilitate power for the SSBF. Storage for materials (products and consumables) will need to be built near the plant site including a stacking system for gypsum. In addition, in May 2022 we executed an agreement to provide for high-speed internet to Fort Cady.

SSBF Update

In April 2022, we awarded the construction contract to a contractor. Assuming no unexpected delays in construction or supply chain issues, we target completing construction of the SSBF around the end of the 2022 calendar year at an engineered estimated production capacity of approximately 2,000 tons per year of boric acid. This facility is engineered to process a PLS containing boron and lithium extracted from colemanite. Assuming the timely and successful construction and operation of the SSBF, production from our SSBF is primarily intended to provide PLS and process intelligence that will help us to more effectively detail engineer our proposed large-scale complex and estimate capital expenditures required to build our large-scale complex. It is possible that a portion of the output from our SSBF may be used to support customer origination efforts for eventual offtake and qualification and may be used for commercial sales and to progress our advanced materials development. The extraction of the PLS is expected to occur through our injection-recovery wells, and we completed one of our four wells during the third quarter that will supply the SSBF. Three additional injection-recovery wells were completed in the fourth quarter.

Fort Cady Update and Progress of Technical Studies

As part of the aforementioned change in the focus of our business plan, during the fiscal year 2022, we have worked with our external engineering partners on an updated process design for our proposed large-scale complex at Fort Cady. Our Initial Assessment Report dated February 7, 2022 added further definition to our large boron resource and established the existence of a lithium mineral resource that we believe could provide us with potential lithium carbonate production. Due to the current favorable market backdrop and growing importance of critical materials, we now intend to focus primarily on further defining its boron and lithium resources, and to work towards developing a large-scale boron and lithium complex for the extraction of boric acid and lithium carbonate. A focus on boron and lithium extraction and related end markets is aligned with our mission to become a global leader in enabling industries addressing decarbonization, food production, and domestic security and our focus on high value in use materials.

The SSBF is expected to serve as a foundation for future design, engineering, and cost optimization for our large-scale complex. We believe that the successful completion of the SSBF is an important path to obtaining critical information that will help enable us to optimize the efficiency, output and economic profile of our large- scale complex. As such, we expect to incorporate value engineering and cost structure optimization into the continued technical and economic analysis of the proposed large-scale complex, and to provide project updates, rather than completing a bankable feasibility study in fiscal year 2022. We have begun to progress plans for our proposed processing plant, including defining infrastructure, material balance and process flow diagrams, co-generation, integration of a sulfuric acid plant, and development of a priced equipment list for process equipment needed for full-scale operations. Notwithstanding the proposed scope changes to Fort Cady and our large-scale complex focused on boron and lithium, we continue to target, assuming timely and successful construction and operation of the SSBF and obtaining the requisite funding for construction, that we will be able to achieve initial commercial production in 2025. However, there are a number of factors that may impact this timeline. See “Risk Factors—We may not be able to compete the SSBF on our current targeted timeline which would impact the successful construction of our proposed large-scale complex and potential for initial commercial production targeted in 2025.” We also intend to develop downstream boron specialty and advanced materials capabilities and anticipates using internally generated boric acid to supply downstream processing activities.

We are currently targeting a boric acid production capacity of up to approximately 250,000 tons per year once our proposed large-scale complex at Fort Cady commences initial operations. In addition, based on currently expected engineering and process design, once in full production, we believe Fort Cady could potentially produce up to 500,000 tons per year of boric acid. We also intend to sell boron advanced materials from the above estimated capacity figures. However, further analysis is required with respect to the potential for boron advanced materials, with the successful completion and operation of the SSBF expected to provide key operational input for this analysis. Additionally, early estimates by us currently target a lithium carbonate production capacity of up to several thousand tons per year upon completion of our proposed large-scale complex, and we expect the successful completion and operation of the SSBF to provide further information on this point, which if successful, could allow us to become an important participant in the U.S. lithium carbonate market. Given currently high lithium prices and electric vehicle growth forecasted by third-party analysts, we believe that an ability to produce a co-product of lithium carbonate could have a positive impact on our business.

The proposed large-scale complex has been value engineered to regenerate a significant portion of hydrochloric acid, which we expect to increase efficiencies and reduce our emphasis on sulphate of potash ("SOP") to produce feedstock hydrochloric acid. While production of SOP remains in our long-term plans, we believe we can implement the Mannheim process to produce SOP during later phases of Fort Cady when capacity for boric acid production exceeds 250,000 tons per year. Our short to medium term plan focuses on the production of boric acid, boron advanced materials, and lithium carbonate where we currently see favorable market pricing and high value in use. We believe that a focus on boron and lithium could be an important step towards creating a more durable, less seasonal business compared to a more traditional commodity-driven fertilizer focused business.

The continued technical and economic analysis described above with respect to our proposed large-scale complex and overall business strategy, has been determined by us to be a currently more cost and time efficient way to proceed. This continued technical and economic analysis of the proposed large-scale complex is subject to change and may lead to a separate technical study, an update to our Initial Assessment Report from February 2022 or a more comprehensive study. However, we cannot assure you of the form and scope of this continued technical and economic analysis, and it is possible that we will conclude that the completion of any such further studies (including a bankable feasibility study) may not be commercially reasonable, necessary or possible at all. We commenced construction of the SSBF in April 2022 and we are conducting process design for the large-scale complex in parallel with the construction of the SSBF in order to expedite the timeline for the large-scale complex. The SSBF is expected to serve as a foundation for future design, engineering, and cost optimization for our large-scale complex. We believe that the successful completion of the SSBF is an important part of the path to obtaining critical information that will help enable us to optimize the efficiency, output, and economic profile of our large-scale complex. However, it is possible that future operating data from the SSBF could necessitate changes in the design of our proposed large-scale complex. Any such changes could have an adverse impact on the overall costs and schedule for the large-scale complex.

In May 2022, we announced a change in project scope compared to our previous business plans. Our new business plan includes:

- a focus on boron and lithium extraction (as opposed to boron and SOP under our previous plans);
- revisions to the proposed processing facility design (including a targeted increase of the overall long- term potential production capacity to approximately 500,000 tons pa of boric acid compared to approximately 450,000 tons pa of boric acid under our previous plans); and
- a modified sequencing of our project development timeline to include the initial SSBF followed by the development of our proposed large-scale complex (as opposed to only developing the large-scale complex under our previous plans), with the expectation that operating data to be obtained from the SSBF will be important in determining the future design, engineering and cost optimization for our large-scale complex, as well as the expected total capital expenditures and ongoing required operating expenditures related thereto.

These project scope changes, taken together with cost inflation, have resulted in a material increase to our previously estimated capital expenditure budget required to complete our proposed large-scale complex. As a result, we currently expect a material increase to our capital expenditure budget compared to the previously published estimates and our internal cost estimates. In addition, the capital expenditures related to our proposed large-scale complex continue to be subject to change as our technical and economic analysis progresses. Such changes could also be material, including without limitation as a result of potential future price increases for major equipment or labor, and future operating data from our SSBF which may result in changes in the design and engineering of our proposed large-scale complex. The foregoing factors may lead to materially higher costs, delays or the inability to complete our proposed large-scale complex as planned or on commercially reasonable terms or at all. Furthermore, it could take several months or longer for the operating data from the operational SSBF to be sufficiently calibrated and reliable to provide reasonable input into the future design, engineering and cost optimization for our large-scale complex, as well as the expected total capital expenditures and ongoing required operating expenditures related thereto. As a result, depending on the timing, nature, quality and specificity of the data we receive from the operational SSBF, we may require significant additional capital before we can progress the development of our proposed large-scale complex. Such additional capital may be needed to fund further detailed engineering work necessary to prepare a feasibility study (if any), including engineering work to define, with a reasonable degree of certainty, the capital expenditures required for our proposed large-scale complex and in particular related to equipment and drilling. We may also need additional capital for continued operation of the SSBF to obtain test and flow data required to complete such detailed engineering work. As a result, we can provide no assurance that we will be able to meet our expected timelines, capital expenditure and costs estimates with respect to our SSBF and large-scale complex and we may need significant additional capital to pursue our operating plans, which capital may not be available to us on commercially reasonable terms or at all. Our inability to obtain any such required additional capital on commercially reasonable terms would have a material adverse impact on our business, operations, liquidity and financial position.

Plan of Operations

Upon successful development of Fort Cady, we expect to mine and process colemanite to produce boric acid and lithium carbonate with by-product SOP, gypsum and HCl. We expect to derive revenue principally from the sale of boron specialty and advanced materials, boric acid, lithium carbonate and SOP. It is expected that gypsum will be sold to the local cement industry or sold as soil conditioner.

The Fort Cady deposit is planned to be mined via in-situ leaching solution mining to recover borate and lithium from the mineralized horizons, which is a technique that has been utilized for several decades in the production of uranium, salt, bromine, potash and soda ash. The use of in-situ technology for boron extraction was developed on the Fort Cady property in the 1980s. A small-scale commercial operation operated on the Fort Cady property between 1995 and 2001. The conventional Mannheim furnace process (utilized in the production of over 50% of SOP production worldwide) will be used to produce SOP (and HCl feedstock) on-site. In-situ solution mining depends on void spaces and porosity, permeability, ore zone thickness, transmissivity, storage coefficient, piezometric surface, and hydraulic gradient as well as reaction and extraction method efficiencies. There are various ways of developing the wellfield for in-situ leaching, including a “push-pull” mechanism where wells function as both injection and recovery wells; line drive; and multiple spot patterns. In addition to the vertical wells, horizontal drilling for well development is also being evaluated as a potential option for Fort Cady. The mine wellfield development and the pattern will ultimately depend on the hydrogeologic model and the cost benefit analysis of various patterns and options as well as inputs on optimization efforts expected to be obtained from the SSBF once it is operating successfully.

The recovery of boron from the colemanite mineral at Fort Cady will be performed by injecting a weak hydrochloric acid (HCl) solution (containing <6% HCl in substantially recycled water solution with regenerated HCl) through wells drilled into the colemanite ore body. The injected acid remains in the formation for a limited period of time to allow reaction with the alkaline ore body and leach the colemanite ore. Boric acid, lithium

carbonate, and calcium chloride are expected to be withdrawn from the wells as products of the chemical reaction.

The extracted solution will be pumped to the proposed processing facility where boric acid will be crystallized from the solution or where alternate processing of the solution is expected to be performed to produce boron specialty and advanced materials. Lithium and gypsum are expected to be recovered from the remaining solution with the final solution being substantially recycled back into the boron solution mine. The crystallized boric acid will be dried, sized, and bagged as final product. Other boron products are expected to be prepared for market, as required, by end-use customers. Lithium is expected to be produced via conversion to lithium carbonate and precipitation, while by-product gypsum will either be dried and sold or stored in the gypsum storage facility for later sale. Within the proposed processing facility, some HCl is expected to be regenerated from the gypsum precipitation process as a result of the sulfuric acid acidification of the process recycle stream. The weak HCl solution will be combined with recycled water to produce the make-up solution for reinjection into the formation. The process is expected to operate a zero liquid discharge evaporator and produce no liquid waste.

Mineral Resource Estimate

In September 2021, we engaged Millcreek Mining Group ("Millcreek") to complete an Initial Assessment Report for Fort Cady (the "Initial Assessment Report") in accordance with the Regulation S-K 1300 rules and guidance of the SEC. The Report concluded that Fort Cady contained an estimated combined 97.55 million tons of Measured Mineral Resource plus Indicated Mineral Resources with an average grade of 6.53% boron oxide and 324 parts per million Lithium, using a 5% cut-off grade for boron oxide. A cut-off grade of 5% B_2O_3 was previously established by Duval and was carried forth by our external geologists in their JORC Code resource reporting. This cut-off grade has been used for resource estimation purposes while work continues to determine the pregnant leach solution brine grade and processing plant costs. While additional technical data expected to be obtained from the operation of the SSBF will further define the applicable cut-off grade, a cut-off grade of 5% B_2O_3 equates to an 8.9% H_3BO_3 grade which is considered adequate and appropriate to account for mining losses and recovery for solution mining. The Report also identified 11.43 million tons of Inferred Mineral Resource under mineral control by FCCC. However, such quantities may not be converted to a Mineral Reserve, as defined under Regulation S-K 1300. Approximately 91.21 million tons, or 94%, of the mineral resources controlled by FCCC occurs within the operating permit region approved for commercial-scale operations, which was awarded to FCCC in 1994. The Report noted that 27.58 million tons, or 25%, of the total mineral resources is contained within the electrical transmission corridor operated by SCE. While SCE maintains control of the surface and resources to a depth of 500 feet, it does not impinge on FCCC's mineral rights for boron oxide and lithium, which occur at depths in excess of 1,000 feet. The Report also stated that the resource boundary contains an estimated 23.18 million tons at a grade of 6.82% boron oxide of "Uncontrolled Resources," which are resources we do not have mineral rights to exploit.

A high-level economic analysis, including then current assumptions, has been prepared to support the mineral resource estimation in the Initial Assessment Report. Key assumptions used in the economic assessment include: an in-situ leaching mining operation delivering 5% boric acid in solution to an above ground processing plant; operating costs of $587 per tonne of boric acid produced; 92% conversion of boric acid in solution to saleable boric acid powder (recovery rate); 80% recovery of in-situ boron (extraction ratio) and an average sales price of US$900 per tonne of boric acid. A high-level financial model using a discount rate of 8% delivered a positive net present value to support the cut-off grade and more broadly the resulting mineral resource estimation. Potential by-product production of lithium, SOP and gypsum was excluded from the financial model and may ultimately provide the potential for a reduction in the cut-off grade.

Methodology

Millcreek prepared the Initial Assessment Report to evaluate the resources and development activities performed by FCCC to advance Fort Cady to a viable in-situ leaching operation. The Initial Assessment Report

was prepared in accordance with the Regulation S-K 1300 rules and guidelines of the SEC. The "Qualified Person" ("QP"), as such term is defined by Regulation S-K 1300, for the Report was Steven Kerr, CPG. Mr. Kerr is the Principal Consultant—Geology at Millcreek, with over 36 years' experience in exploration and resource evaluation. Mr. Kerr is a Certified Professional Geologist with the American Institute of Professional Geologists (CPG-10352), a recognized professional organization of the Committee for Mineral Reserves International Reporting Standards. Mr. Kerr is not our employee, and neither Mr. Kerr nor Millcreek are affiliated with us or another entity that has an ownership, royalty, or other interest in Fort Cady. The effective date of the Initial Assessment Report and the mineral resource estimate included therein is February 7, 2022.

Mineral resources were classified in accordance with Item 1302(d)(1)(iii)(A) of Regulation S-K into Measured, Indicated and Inferred Mineral Resources. The classification is based upon an assessment of geological and mineralization continuity and quality assurance/quality control ("QA/QC") procedures in place.

The database used for the mineral resource estimate includes 34 drill holes completed by Duval, 3 drill holes completed by Mountain States Mineral Enterprises, Inc. ("FCMC") and 14 drill holes completed by us, for a cumulative total of 51 drill holes and a cumulative sampled length of 24,823.6 meters (81,421.4 feet). The database was provided to Millcreek in a digital format, representing Fort Cady's exploration dataset as of July 19, 2021. The QP completed a thorough review and verification of the drilling database and found that reasonable care was taken to collect and dispatch samples for analysis and the database is of sufficient quality to support a mineral resource estimate.

Fort Cady Mineral Resource Estimate as of October 15, 2021

Measured Mineral Resources	Horizon	Tonnage (million tons or Mt)	Boron Oxide (B_2O_3) (weight %)	Boric Acid (H_3BO_3) (weight %)	Lithium (Li) (ppm)	Boron Oxide (B_2O_3) (Mt)	Boric Acid (H_3BO_3) (mt)
FCCC Fee Lands	UMH[1]	0.03	5.73	10.17	259	0.00	0.00
	MMH[2]	7.01	6.31	11.20	317	0.44	0.79
FCCC Fee Lands—Transmission Corridor	MMH	5.24	6.51	11.55	293	0.34	0.61
FCCC—Elementis Leased Lands	UMH	0.75	6.64	11.79	264	0.05	0.09
	MMH	18.59	6.74	11.98	349	1.25	2.23
	IMH[3]	4.34	6.35	11.27	324	0.28	0.49
Total Measured Mineral Resource		**35.96**	**6.57**	**11.67**	**330**	**2.36**	**4.20**

Indicated Mineral Resources	Horizon	Tonnage (million tons or Mt)	Boron Oxide (B_2O_3) (weight %)	Boric Acid (H_3BO_3) (weight %)	Lithium (Li) (ppm)	Boron Oxide (B_2O_3) (Mt)	Boric Acid (H_3BO_3) (mt)
FCCC Fee Lands	UMH	0.87	5.73	10.17	259	0.05	0.09
	MMH	29.00	6.47	11.50	329	1.88	3.33
FCCC Fee Lands—Transmission Corridor	MMH	20.41	6.51	11.55	293	1.33	2.36
FCCC—Elementis Leased Lands	UMH	0.31	6.68	11.87	251	0.02	0.04
	MMH	7.70	6.74	11.98	349	0.52	0.92
	IMH	3.29	6.40	11.37	324	0.21	0.37
Total Indicated Mineral Resource		**61.59**	**6.51**	**11.55**	**318**	**4.01**	**7.12**
Total Measured + Indicated Mineral Resource		**97.55**	**6.53**	**11.61**	**324**	**6.37**	**11.31**

Inferred Mineral Resources	Horizon	Tonnage (million tons or Mt)	Boron Oxide (B_2O_3) (weight %)	Boric Acid (H_3BO_3) (weight %)	Lithium (Li) (ppm)	Boron Oxide (B_2O_3) (Mt)	Boric Acid (H_3BO_3) (mt)
FCCC Fee Lands	UMH	0.03	5.73	10.17	259	0.00	0.00
	MMH	6.46	6.55	11.42	334	0.42	0.75
FCCC Fee Lands—Transmission Corridor	MMH	0.59	5.64	10.01	330	0.03	0.06
FCCC—Elementis Leased Lands	UMH	1.93	6.51	11.55	293	0.13	0.22
	MMH	0.27	6.74	11.98	349	0.02	0.03
	IMH	2.14	6.32	10.48	330	0.14	0.24
Total Inferrd Mineral Resource		**11.43**	**6.40**	**11.37**	**324**	**0.74**	**1.31**

(1) "UMH" is Upper Mineralized Horizon
(2) "MMH" is Major Mineralized Horizon
(3) "IMH" is Lower Mineralized Horizon

The Initial Assessment Report was prepared based primarily on information provided by us, is subject to certain assumptions and is qualified by various limitations. The foregoing summary description of the Initial Assessment Report is qualified by the full Initial Assessment Report, which is included as an exhibit to our Registration Statement on Form 10 and incorporated herein by reference.

Internal controls disclosure

The Initial Assessment Report indicates that the QA/QC procedures for the Duval and FCMC drill holes are unknown though the work products compiled during these historic drilling campaigns, suggests they were carried out by competent geologists following procedures considered standard practice at those times. Discussions held with the exploration geologist for Duval at the time of drilling and sampling, indicate that Duval had internal QA/QC procedures in place to ensure that assay results were accurate. Geochemical analyses were carried out using X-Ray Fluorescence Spectrometry ("XRF"). XRF results were reportedly checked against logging and assay data.

For our database of drill holes, entire core hole sequences were sampled and dispatched by commercial carrier to the Saskatchewan Research Council ("SRC") for geochemical analysis. As part of our QA/QC procedures, internationally recognized standards, blanks and duplicates were inserted into the sample batches prior to submitting to SRC. SRC has been accredited by the Standards Council of Canada and conforms with the requirements of ISO/IEC 17025.2005. Upon receipt of samples from us, SRC completed an inventory of samples received, completing chain of custody documentation, and providing a ledger system to us tracking samples received and steps in process for sample preparation and analysis. Core samples were dried in their original sample bags, then jaw crushed. A subsample was split out using a sample riffler. The subsample was then pulverized with a jaw and ring grinding mill. The grinding mill was cleaned between each sample using steel wool and compressed air or by silica sand. The resulting pulp sample was then transferred to a barcode labelled plastic vial for analysis. All samples underwent a multi-element Inductively Coupled Plasma Optical Emission Spectroscopy ("ICP-OES"), using a multi-acid digestion for a range of elements. Boron was also analyzed by ICP-OES but underwent a separate digestion where an aliquot of the sample was fused in a mixture of NaO2/NaCO3 in a muffle oven, then dissolved in deionized water, prior to analysis. Major oxides were reported in weight percent. Minor, trace, and rare earth elements were reported in ppm. The detection limit for boron was 2 ppm and 1 ppm for lithium.

For our database of drill holes, a total of 2,118 core samples and 415 control samples were submitted for multi-element analysis to SRC. We submitted control samples, in the form of certified standards, blanks and coarse duplicates (bags with sample identification supplied by us for SRC to make duplicate samples). In

addition to these control samples, SRC also submitted their own internal control samples in the form of standards and pulp duplicates. Certified standards, prepared by the National Institute of Standards and Technology, were submitted as part of our QA/QC procedures. No two standards in any single batch submission were more than two standard deviations from the analyzed mean, implying an acceptable level of precision of SRC instrumentation. SRC assayed two different standards, for its own QA/QC protocol and the QP found that the analytical precision for analysis of both standards was reasonable, with no two standards in any single batch submission being more than two standard deviations from the analyzed mean.

Blank samples inserted by us consisted of non-mineralized marble. One hundred and thirty-five blank samples were submitted, all of which had assay results of less than 73 ppm boron. The level of boron detected in the blanks was likely sourced from pharmaceutical (borosilicate) glass used during sample digestion. These boron concentrations are considered immaterial in relation to the boron levels detected in the colemanite mineralization and do not appear to represent carryover contamination from sample preparation. Lithium levels in the blank samples were also at acceptable levels with the majority of assays less than 15 ppm lithium. The four highest lithium levels in the blanks immediately followed samples that contained relatively high lithium concentrations. Overall, the concentration of the primary elements of interest (boron and lithium) in the blank samples were at levels considered to be acceptable, implying a reasonable performance for sample preparation.

A total of 136 duplicate samples were submitted to the SRC. We commissioned SRC to compose coarse duplicate samples using a Boyd rotary splitter. There was a good correlation between original and duplicate samples with a reasonable level of precision maintained in the results.

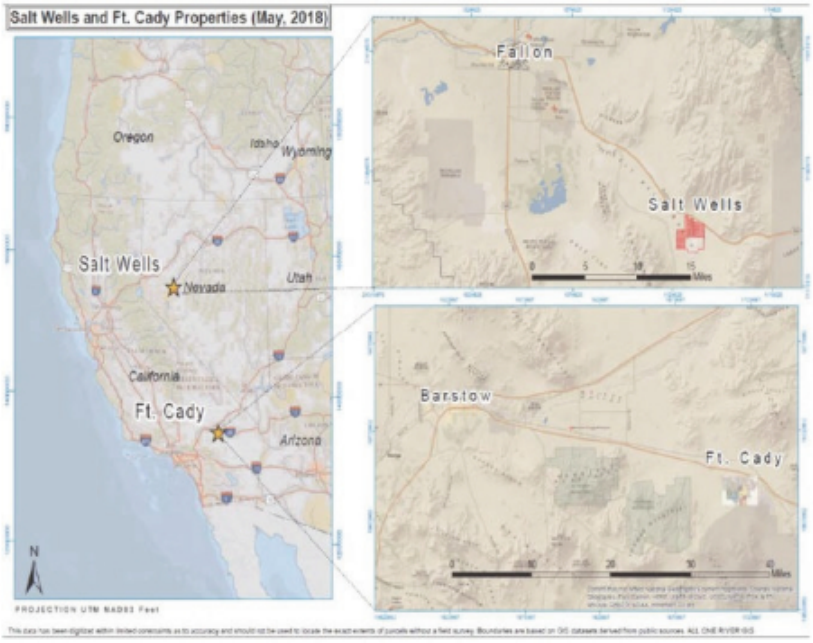
In their report, Millcreek made recommendations to advance the geology and resource characteristics for Fort Cady including the following:

- Additional delineation drilling of 15 drill holes to further refine resource classification and to further test resource potential on the southern land holdings;
- Standardizing sample lengths in future drilling to reduce sampling and analytical costs;
- Mineralogical testing to identify the source of lithium mineralization along with testing of pregnant leach solution to help determine recovery and what processes might be required to extract lithium and steps to produce lithium carbonate Li2CO3 and or lithium hydroxide LiOH(H2O)n and/or lithium hydroxide LiOH(H2O)n;
- Consider using seismic and electromagnetic surveying to assist in understanding structural setting a facies in the Fort Cady area; and
- Perform further analysis to determine if economics will support a lower cut-off grade for boron oxide B2O3.

We expect to address these recommendations, as needed, as construction and operation of the SSBF and the large-scale complex progresses.

Salt Wells Projects

In addition to the Project, the Earn-in Agreement with Great Basin Resources Inc. allows us to acquire a 100% interest in the Salt Wells Projects in the State of Nevada if we incur project related expenditures described below. The Salt Wells Projects cover an area of 14 square miles and are considered prospective for borates and lithium in the sediments and lithium in the brines within the project area. The Salt Wells Projects are located in Churchhill County, Nevada, 15.5 miles southeast on Route 50 from the town of Fallon, Nevada. The Salt Wells Projects are within close proximity to the Interstate 80 corridor, which provides ample access to infrastructure including rail and ports. The town of Fallon has a population of over 9,000 according to the 2020 United State Census Bureau as well as a municipal airport. The Salt Wells North project consists of 171 mineral claims and the Salt Wells South project consists of 105 mineral claims, with each claim being 20 acres.



Surface salt samples collected by us from the Salt Wells North project area were assayed in April 2018 and showed elevated levels of both lithium and boron with several results of over 500 ppm lithium and over 1% boric acid equivalent. With our focus on Fort Cady, we have decided to defer spending commitments under the Earn-in Agreement at the Salt Wells Projects. In July 2020, we renegotiated the Earn-in Agreement expenditure requirements at the Salt Wells Projects, which was further renegotiated in August 2022. We currently have funding commitments under the Earn-In Agreement of $900,000 by December 31, 2023, $800,000 by December 31, 2024, and approximately $756,000 by December 31, 2025. In the event that we do not make the expenditures described above, we will not be assigned any rights, titles, or interest in the Salt Wells Projects. In addition, we are responsible for payment of annual mineral claims to the Bureau of Land Management, and the Earn-in Agreement with Great Basin Resources Inc. provides for a 3% revenue royalty if concentrates or ore of minerals are sold in the future.

Available Information

We make available free of charge on our website, *www.5eadvancedmaterials.com*, our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to those reports filed or furnished pursuant to the Securities Exchange Act of 1934, as soon as reasonably practicable after we

electronically file such information with, or furnish it to, the SEC. These documents are also available on the SEC's website at *www.sec.gov*. The information on our website is not, and shall not be deemed to be, a part of this Annual Report on Form 10-K or incorporated into any of our other filings with the SEC.

Item 1A. Risk Factors

An investment in our Common Stock involves a high degree of risk. You should carefully consider the risks described below as well as the other information included in this filing, including "Cautionary Note Regarding Forward-Looking Statements," "Selected Financial Information," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the financial statements and the related notes thereto included elsewhere in this filing, before making an investment decision. Our business, prospects, financial condition, or operating results could be harmed by any of these risks, as well as other risks not currently known to us or that we currently consider immaterial. The trading price of our Common Stock could decline due to any of these risks, and, as a result, you may lose all or part of your investment. Set forth below is a summary of some of the principal risks we face:

- We have incurred significant net operating losses since our inception and we will incur continued losses for the foreseeable future;
- Our future performance is difficult to evaluate because we have no or only a limited operating history in the minerals industry and no revenue from our proposed extraction operations at our properties, which may negatively impact our ability to achieve our business objectives.
- If we do not obtain additional financing and maintain sufficient funds to continue our ongoing development and proposed operations, our proposed business may be at risk or the execution of our business plan may be delayed.
- Our inability to timely and successfully complete and operate the SSBF, and our inability to complete further technical and economic studies (including a bankable feasibility study) with respect to Fort Cady, may have a material adverse impact on Fort Cady.
- There are risks associated with our convertible notes issued subsequent to June 30, 2022 that could adversely affect our business and financial condition.
- Servicing our debt requires a significant amount of cash, and we may not have sufficient cash flow from our business to pay our debt.
- Our obligations to the purchaser under the convertible notes, and any additional convertible notes, are secured by a security interest in substantially all of our assets, and if we default on those obligations, the purchaser could foreclose on our assets.
- We may not be able to compete the SSBF on our current targeted timeline which would impact the successful construction of our proposed large-scale complex and potential for initial commercial production targeted in 2025.
- We have invested and plan to continue to invest significant amounts of capital in Fort Cady on exploration and development activities, which involve many uncertainties and future operating risks that could prevent us from realizing profits.
- We have no history of mineral production and we may not be able to successfully achieve our business strategies, including our downstream processing ambitions.
- We may be unable to develop or acquire certain intellectual property required to implement our business strategy successfully.
- Third parties may claim that we infringe on their proprietary intellectual property rights, and resulting litigation may be costly, result in diversion of management's time and efforts, require us to pay damages or prevent us from marketing our future products.
- All of our business activities are now in the exploration stage and there can be no assurance that our exploration efforts will result in commercial development.

- We are an exploration stage company with no known Proven or Probable Mineral Reserves, our estimates of resources and mineralized material are inherently uncertain and subject to change, and the volume and grade of ore actually recovered may vary from our estimates.
- Estimates relating to the development of Fort Cady and mine plan are uncertain and we may incur higher costs and lower economic returns than estimated.
- We depend on a single mining project.
- Our long-term success will depend ultimately on our ability to achieve and maintain profitability and to develop positive cash flow from our proposed operating activities.
- Our growth depends upon the continued growth in demand for end use and future facing applications that require borates, lithium, and related minerals and compounds we expect to produce
- Changes in technology or other developments could adversely affect demand for lithium compounds or result in preferences for substitute products.
- Our growth depends upon the continued growth in demand for electric vehicles with high performance lithium compounds.
- Our long-term success will depend on our ability to enter into and deliver product under supply agreements.
- If the estimates and assumptions we use to determine the size of our total addressable market are inaccurate, including its current size, growth trajectory, and the underlying factors that may drive future growth in overall market size, particularly for boron where there is limited third party published research and market forecasting, our future growth rate may be adversely affected, and the potential growth of our business may be limited.
- The cost and availability of electricity and natural gas are subject to volatile market conditions.
- Uncertain global economic conditions could have a material adverse effect on our business, financial condition, results of operations or prospects, including the pricing of our products.
- We are subject to anti-bribery, anti-corruption, and anti-money laundering laws, including the U.S. Foreign Corrupt Practices Act, as well as export control laws, customs laws, sanctions laws and other laws governing our operations. If we fail to comply with these laws, we could be subject to civil or criminal penalties, other remedial measures and legal expenses, which could adversely affect our business, results of operations and financial condition.
- Inadequate infrastructure may constrain our future mining operations, including at Fort Cady.
- Title to mineral properties and related water rights is a complex process and we may suffer a material adverse effect in the event the Fort Cady property or other properties that we may acquire are determined to have title deficiencies.
- Restrictions on our ability to obtain, recycle and dispose of water may impact our ability to execute our development plans in a timely or cost-effective manner.
- The development, construction and proposed operation of our properties and projects is subject to various environmental and operational regulations, and risks relating to land use restrictions and potential opposition from landowners, environmental groups and other third parties, all of which could adversely affect or prevent our ability to grow.
- The mining industry is historically a cyclical industry and market fluctuations in the prices of borates, lithium, and lithium byproducts and other minerals could adversely affect our business.
- Fluctuations in the value of the United States dollar relative to other currencies may adversely affect our business.
- We face risks relating to mining, exploration, and mine construction, if warranted, on our properties.

Risks Relating to Our Business

We have incurred significant net operating losses since our inception and anticipate that we will incur continued losses for the foreseeable future.

We had an accumulated deficit of $107.4 million as of June 30, 2022, and we expect to incur significant discovery and development expenses in the foreseeable future related to the completion of exploration, development and commercialization of Fort Cady. As a result, we expect we will continue to sustain substantial operating and net losses, and it is possible that we will never be able to sustain or develop the revenue levels necessary to attain profitability. If we are unable to raise sufficient capital when needed, our business, financial condition and results of operations could be materially and adversely affected, and we may need to modify our operational plans. In addition, if we were unable to raise sufficient capital in the future, it may be determined that we would be unable to continue as a going concern, which could have a further material adverse impact on our business and financial condition.

Our future performance is difficult to evaluate because we have no or only a limited operating history in the minerals industry and no revenue from our proposed extraction operations at our properties, which may negatively impact our ability to achieve our business objectives.

Although the Fort Cady deposit was identified over 50 years ago and significant work has been undertaken to refine the resource estimate and development plan since that time, including by our immediate predecessor, ABR, which undertook significant development activities to develop the resource estimate and mine plan for Fort Cady, we have not realized any revenues to date from the sale of mineral products. To date, our operating cash flow needs have been financed primarily through equity financing and not through cash flows derived from our operations.

We do not currently produce any material, nor do we currently sell any materials that may be derived from our properties. As a result, our revenues are expected to be determined, to a large degree, by the success of our construction and operation of the SSBF, development of our proposed large-scale complex at Fort Cady, subsequent operating activities as well as ongoing commercial and marketing efforts to establish offtake contracts for material products. Our revenues will also be substantially impacted by the prevailing prices for boric acid and its derivatives, lithium carbonate, HCl, SOP and gypsum, to the extent that these products can be successfully extracted. At the present time, a recovery process for lithium has not been developed and will likely not be addressed until recovery of boric acid is operational. Furthermore, preliminary work regarding the recovery of SOP has been completed, but a determination has not been made as to whether or when SOP production will be included in the planned operations at Fort Cady. For the products that we aim to successfully produce in the future, market prices are dictated by supply and demand, and we cannot predict or control the price we will receive for boric acid and its derivatives, lithium carbonate, HCl, SOP and gypsum. Although management has identified currently favorable market conditions concerning the supply and demand of boric acid, boron advanced materials and lithium carbonate, future market conditions may be significantly less favorable as a result of numerous factors, including many that are beyond the scope of our control.

We were incorporated in September 2021, and we have only recently begun to implement our current business strategy. As a result, we have little or no historical financial and operating information available to help you evaluate our future financial and operating performance. Therefore, it is possible that actual costs may increase significantly, and we may not be able to achieve our expected results. Fort Cady may ultimately be less profitable than currently anticipated or may not be profitable at all, which could have a material adverse effect on our results of operations and financial position.

If we do not obtain additional financing and maintain sufficient funds to continue our ongoing development and proposed operations, our proposed business may be at risk or the execution of our business plan may be delayed.

We have limited assets upon which to develop and commence our business operations and to rely otherwise. As of June 30, 2022 and June 30, 2021, we had cash and cash equivalents of $31.1 million and $40.8 million, respectively. We have had recurring net losses from operations and an accumulated deficit of $107.4 million as of June 30, 2022 and $40.7 million as at June 30, 2021. Given our net losses and with only these funds, we will need to seek significant additional funds in the future through equity or debt financings, or strategic alliances with third parties, either alone or in combination with equity financings to fund our business plan and to complete our mining exploration initiative. Our business plan, which includes the development of Fort Cady, has required and will continue to require substantial capital expenditures. We will require financing to fund our planned pre-production activities and are required to raise additional capital in respect of continuing our proposed mining exploration program, pre-production activities, including the SSBF, legal, operational set-up, general and administrative, marketing, employee salaries and other related expenses.

The full scope of our current business plan for the next 12 months includes, among other things: achieving mechanical completion and commissioning of the SSBF, potential additional drilling of wells to support operation of the SSBF, operation of the SSBF for several months and hiring additional personnel to support our development of Fort Cady. We believe that the net proceeds from our convertible note private placement, together with cash on hand, will enable us to fund the full scope of our current business plan for the next 12 months. However, this estimate is based on assumptions that may prove to be wrong. For example, changing circumstances could cause us to consume capital significantly faster than we currently anticipate, and we may need to spend more than currently expected because of unanticipated issues or circumstances beyond our control. In addition, we have incurred net losses and negative operating cash flows in each quarter since our inception and expect to incur significant losses in future periods as we continue to increase our expenses to pursue the development of our business.

Additional development work will be required beyond the scope our current 12-month business plan in order to optimize, design and engineer operational processes at our proposed large-scale complex at Fort Cady, which we expect will assist in our technical and economic analysis of the Fort Cady Project. Such additional development work may include additional drilling and detailed engineering work, continued operation of the SSBF to get additional input, and the preparation of a feasibility study (if any), among others. We expect to source the capital needed for such additional development work from additional capital raises.

If we are unable to raise adequate funds, we may have to delay, reduce the scope of or eliminate some or all of our business plan expenditures, and the failure to procure such required financing could have a material and adverse effect on our business, liquidity, financial condition and results of operations as well as our ability to continue as a going concern. If we are unable to continue as a going concern, we might have to liquidate our assets and the values we receive for our assets in liquidation or dissolution could be significantly lower than the values reflected in our financial statements. Any potential inclusion of a going concern explanatory paragraph by our auditors, our lack of cash resources and our potential inability to continue as a going concern may materially adversely affect our business, share price, and our ability to raise new capital or to enter into critical contractual relations with third parties due to concerns about our ability to meet our contractual obligations.

Our ability to raise additional funds may also be adversely impacted by potential worsening global economic conditions and the disruptions to, and volatility in, the credit and financial markets in the United States and worldwide resulting from the COVID-19 pandemic, economic slowdown, higher inflation, increased interest rates, supply chain issues, diminished liquidity and credit availability, declines in consumer confidence, declines in economic growth, increases in unemployment rates, and uncertainty about economic stability. If the equity and credit markets deteriorate, it may make any necessary debt or equity financing more difficult, more costly and more dilutive. Obtaining additional funding will be subject to various additional factors, including investor

acceptance of our business plan, the status of our development program and ongoing results from our exploration and development efforts. If we are not able to secure adequate additional funding when needed, we will need to re-evaluate our operating plan and may be forced to make significant reductions in spending, extend payment terms with suppliers, liquidate assets where possible, limit, suspend or curtail planned development programs and cease operations entirely. Having insufficient funds may also require us to relinquish rights to assets and technology that we would otherwise prefer to develop ourselves, or on less favorable terms than we would otherwise choose. The foregoing actions and circumstances could materially adversely impact our business, liquidity, results of operations and future prospects.

Any such required financing may not be available in amounts or on terms acceptable to us or at all, and the failure to procure such required financing could have a material and adverse effect on our business, financial condition and results of operations, or threaten our ability to continue as a going concern. In addition, if we are unsuccessful in raising the required funds, we may need to modify our operational plans to continue as a going concern, and we may have to delay, reduce the scope of or eliminate some or all of our planned development activities or proposed exploration programs at Fort Cady and elsewhere. In the event additional capital resources are unavailable, we may also be forced to sell some or all of our properties in an untimely fashion or on less than favorable terms. Any of these factors could harm our operating results.

Until successful commercial production is achieved from Fort Cady, allowing for the generation of sufficient revenue to fund our continuing operations, we will continue to incur operating and investing net cash outflows associated with, among other things, developing Fort Cady, maintaining our properties and undertaking ongoing exploration and optimization activities. As a result, we rely on access to capital markets as a source of funding for our capital and operating requirements. We require additional capital to fund our ongoing operations, define mineralization, conduct further technical and economic studies (which may include a bankable feasibility study) and bring Fort Cady into production, which will require funds for construction and working capital. We cannot assure you that such additional funding will be available to us on satisfactory terms, or at all, or that we will be successful in commencing and maintaining commercial borates or lithium extraction, production of boron advanced materials, or that our sales projections for these and other products will be realized.

Depending on the type and the terms of any financing we pursue, shareholder’s rights and the value of their investment in our CDIs and Common Stock could be reduced. Any additional equity financing will dilute stockholdings, and new or additional debt financing, if available, may involve restrictions on financing and operating activities. In addition, if we issue secured debt securities, the holders of the debt would have a claim to our assets that would be prior to the rights of shareholders until the debt is paid. Interest on such debt securities would increase costs and negatively impact operating results. If the issuance of new securities results in diminished rights to holders of our CDIs and Common Stock, the market price of our CDIs and Common Stock could be negatively impacted. There is, however, no guarantee that we will be able to secure any additional funding or be able to secure funding which will provide us with sufficient funds to meet our objectives, which may adversely affect our business and financial position.

Certain market disruptions may increase our cost of borrowing or affect our ability to access one or more financial markets. Such market disruptions could result from:

- adverse economic conditions;
- adverse general capital market conditions;
- poor performance or cyclical decline of the borates, lithium, or mining industries in general;
- bankruptcy or financial distress of unrelated companies or marketers engaged in the borates or lithium industries;
- significant decrease in demand for borates or lithium; or
- adverse regulatory actions that affect our development and construction plans or the use of borates or lithium generally.

Our previous development plans were focused on boron and sulphate of potash ("SOP") extraction and developing a large-scale complex without first developing a smaller scale pilot facility, such as the SSBF. In May 2022, we announced a change in project scope compared to our previous business plans. Our new business plan includes:

- a focus on boron and lithium extraction (as opposed to boron and SOP under our previous plans);
- revisions to the proposed processing facility design (including a targeted increase of the overall long- term potential production capacity to approximately 500,000 tons pa of boric acid compared to approximately 450,000 tons pa of boric acid under our previous plans); and
- a modified sequencing of our project development timeline to include the initial SSBF followed by the development of our proposed large-scale complex (as opposed to only developing the large-scale complex under our previous plans), with the expectation that operating data to be obtained from the SSBF will be important in determining the future design, engineering and cost optimization for our large-scale complex, as well as the expected total capital expenditures and ongoing required operating expenditures related thereto.

These project scope changes, taken together with cost inflation, have resulted in a material increase to our previously estimated capital expenditure budget required to complete our proposed large-scale complex. As a result, we currently expect a material increase to our capital expenditure budget compared to the previously published estimates and our internal cost estimates. In addition, the capital expenditures related to our proposed large-scale complex continue to be subject to change as our technical and economic analysis progresses. Such changes could also be material, including without limitation as a result of potential future price increases for major equipment or labor, and future operating data from our SSBF which may result in changes in the design and engineering of our proposed large-scale complex. The foregoing factors may lead to materially higher costs, delays or the inability to complete our proposed large-scale complex as planned or on commercially reasonable terms or at all. Furthermore, it could take several months or longer for the operating data from the operational SSBF to be sufficiently calibrated and reliable to provide reasonable input into the future design, engineering and cost optimization for our large-scale complex, as well as the expected total capital expenditures and ongoing required operating expenditures related thereto. As a result, depending on the timing, nature, quality and specificity of the data we receive from the operational SSBF, we may require significant additional capital before we can progress the development of our proposed large-scale complex. Such additional capital may be needed to fund further detailed engineering work necessary to prepare a feasibility study (if any), including engineering work to define, with a reasonable degree of certainty, the capital expenditures required for our proposed large- scale complex and in particular related to equipment and drilling. We may also need additional capital for continued operation of the SSBF to obtain test and flow data required to complete such detailed engineering work. As a result, we can provide no assurance that we will be able to meet our expected timelines, capital expenditure and costs estimates with respect to our SSBF and large-scale complex and we may need significant additional capital to pursue our operating plans, which capital may not be available to us on commercially reasonable terms or at all. Our inability to obtain any such required additional capital on commercially reasonable terms would have a material adverse impact on our business, operations, liquidity and financial position.

Our inability to timely and successfully complete and operate the SSBF, and our inability to complete further technical and economic studies (including a bankable feasibility study) with respect to Fort Cady, may have a material adverse impact on Fort Cady.

The SSBF is our proposed smaller scale boron facility which is expected to serve as a foundation for future design, engineering, and cost optimization for our large-scale complex at Fort Cady focused on boron and lithium. We believe that the successful completion of the SSBF is an important path to obtaining critical information that will help enable us to optimize the efficiency, output and economic profile of our large-scale complex. Assuming no unexpected delays in construction or supply chain issues, we currently target completing

construction of the SSBF around the end of 2022, with production of boric acid expected to commence in 2023. However, there can be no assurance that we will be able to meet that target on time and on budget. Until the SSBF has been successfully completed and is operational, we will not have access to more refined inputs for estimating capital and operational expenditures required to complete further technical and economic studies (such as a bankable feasibility study) with respect to our proposed large-scale complex at Fort Cady. Such further technical and economic studies may be required to assist in determining the economic recoverability of mineral resources for Fort Cady. In addition, our current abbreviated approach to process development provides for both pilot scale and large-scale process design for Fort Cady to be undertaken in parallel. This approach has a higher risk of requiring re-work of certain parts, which could lead to potential delays and increased design costs. An abbreviated process development approach may also lead to technical risk, and higher capital and operating expenditures. We cannot assure you that the SSBF, and subsequently our proposed large-scale complex at Fort Cady, will be completed on schedule, within budget or at all, or achieve an adequate return on investment. We are also a newly formed company which makes it more difficult for you to evaluate our track record of meeting various milestones or target completion deadlines.

Our inability to timely and successfully complete and operate the SSBF may delay or prevent the completion of further technical and economic studies (including any bankable feasibility study). Our ability to complete further technical and economic studies (including any bankable feasibility study) could materially and adversely impact our ability to secure additional funding and thereby delay or otherwise have a material adverse impact on Fort Cady. For example, a successfully completed and operating SSBF is required to complete further technical and economic studies (such as a bankable feasibility study), including studies complying with the relevant Regulation S-K 1300 requirements to present reserves and otherwise determine commercial viability of Fort Cady.

We have begun working on further technical and economic analysis of Fort Cady. This continued technical and economic analysis is subject to change and may lead to a separate technical study, an update to our Initial Assessment Report or a more comprehensive study (such as a bankable feasibility study). However, we currently cannot assure you of the form and scope of this continued technical and economic analysis, and we may conclude that the completion of any such further studies (including a bankable feasibility study) may not be commercially reasonable, necessary or possible at all.

Even if such further technical and economic studies (including a bankable feasibility study) are completed on time, there is no guarantee that they will produce favorable outcomes. If the outcomes are not favorable, we may be unable to extrapolate a Regulation S-K 1300 compliant Indicated or Inferred Mineral Resource to a Regulation S-K 1300 Probable or Proven Mineral Reserve and to demonstrate commercial viability. Additional exploration may be required which would require significant additional investments and financing. Even with further exploration, there is no assurance that Fort Cady will result in a profitable commercial mining operation. Any such further study (including a bankable feasibility study) may also indicate that substantial additional financing will be required to complete Fort Cady. We cannot give any assurance that we will be successful in completing any such financing or that such financing will be available to us if and when required or on satisfactory terms, or at all.

We may not be able to compete the SSBF on our current targeted timeline which would impact the successful construction of our proposed large-scale complex and potential for initial commercial production targeted in 2025.

We are currently targeting completion of construction of the SSBF around the end of 2022. There can be no assurance that we will be able to meet that target on time, on budget, or at all. Our inability to successfully complete the SSBF on this schedule will impact our ability to determine the economic recoverability of mineral resources at Fort Cady and will delay any future design, engineering, and cost optimization for our proposed large-scale complex. Delays will impact our ability to successfully begin initial commercial production targeted in 2025, which could have a further material adverse impact on our business and financial condition.

We have invested and plan to continue to invest significant amounts of capital in Fort Cady on exploration and development activities, which involve many uncertainties and future operating risks that could prevent us from realizing profits.

In total, we have spent in excess of $75.7 million on Fort Cady thus far, including resource drilling, metallurgical test works, well injection tests, permitting activities and pilot-scale test works. For year ended June 30, 2022, our capital expenditures per our statement of cash flows were $11.4 million, of which $10.0 million was related to construction in progress.

Our business is capital intensive. Specifically, the exploration and recovery of boric acid and lithium, the mining costs, the maintenance of machinery and equipment, and the compliance with applicable laws and regulations, each require substantial capital expenditures. We plan to continue to invest significant capital over the next several years on the development of Fort Cady to bring it into production and will have to continue to invest capital to maintain or increase the amount of mineral resources we hold and our rates of production once commercialization of Fort Cady has occurred. Mining exploration is highly speculative in nature, involves many risks and is frequently unsuccessful. Development and production activities may involve many uncertainties and operating risks that could prevent us from realizing profits, putting pressure on our balance sheet and credit rating. Unforeseen issues, including increasing the required amount of capital expenditure necessary to bring Fort Cady into production, the impact of volatile boric acid and its derivatives, lithium carbonate, HCl, SOP and gypsum prices, our ability to enter into supply contracts with buyers, and obstacles or complexities that could arise in the environmental or permitting process may cause us not to proceed with any one or a combination of these activities. Moreover, once mineralization is discovered, it may take a number of years from the initial phases of drilling before production is possible, during which time the economic feasibility of production may change. Our target of reaching initial commercial production in 2025 is dependent on a number of factors and assumptions, including timely and successful construction and operation of the SSBF and obtaining the requisite funding for, and the successful construction of, our proposed large-scale complex. There can be no assurance that we will be able to meet that target on time, on budget, or at all due to many factors including our limited experience in successful construction of similar projects, the complexity of the project, supply chain issues, higher costs, construction delays, cost overruns, planned and unplanned shutdowns, turnarounds, outages and other delays and interruptions. If and when production begins, no assurance can be given that we will be able to maintain our production levels or generate sufficient cash flow, capitalize a sufficient amount of our net profit or have access to sufficient equity investments, bank loan or other debt financing alternatives to fund our capital expenditure at a level necessary to continue our exploration and exploitation activities. In addition, we cannot assure you that existing or future projects, if approved and executed, will be completed on schedule, within budget or achieve an adequate return on investment.

The amounts and timing of expenditures will depend on the progress of ongoing development, the results of consultants' analyses and recommendations, the rate at which operating losses are incurred, and other factors, many of which are beyond our control. Whether the mineral deposits we have discovered will be successfully extracted depends on a number of factors, which include, without limitation, the particular attributes of the deposit, prices for the minerals and the volatility of their respective markets, and governmental regulations. If we cannot complete development activities and commence and maintain mining operations, we may never generate revenues and will never become profitable.

Fort Cady may be delayed, more costly than anticipated or unsuccessful for many reasons, including declines in boric acid and its derivatives, lithium carbonate, HCl, SOP and gypsum prices, cost overruns, project implementation schedule slippage, shortages of or delays in the delivery of equipment or purpose-built components from suppliers, escalation in capital costs estimates, mechanical or technical difficulties, increases in operating costs structures, possible shortages of construction or other personnel, other labor shortages or industrial action, pandemic or localized epidemic, environmental occurrences during construction that result in a failure to comply with environmental regulations or conditions on development, or delays and higher-than expected costs, unanticipated natural disasters, accidents, miscalculations, unanticipated financial events,

political or other opposition, litigation, acts of terrorism, operational difficulties or other events associated with such construction that may result in the delay, suspension or termination of Fort Cady, resulting in further costs, the total or partial loss of our investment and a material adverse effect on our results of operations, financial performance and prospects.

We have no history of mineral production and we may not be able to successfully achieve our business strategies, including our downstream processing ambitions.

We are an exploration stage company and we have no history of mining or refining mineral products from our properties. As such, any future revenues and profits are uncertain. There can be no assurance that Fort Cady will successfully reach production, produce minerals in commercial quantities or otherwise generate operating earnings. Advancing projects from the exploration stage into development and commercial production requires significant capital and time and will be subject to further technical and economic studies, permitting requirements and construction of mines, processing plants, roads and related works and infrastructure. We will continue to incur losses until mining-related operations successfully reach commercial production levels and generate sufficient revenue to fund continuing operations. There is no certainty that we will generate revenue from any source, operate profitably or provide a return on investment in the future.

A key element of our long-term business strategy is to develop high-performance, boron specialty and advanced materials that support downstream applications in the areas of clean energy infrastructure, electric transportation, and high-grade fertilizers among other end uses. To implement this strategy successfully, we may need to license certain intellectual property related to these downstream processes and/or develop the ability, or collaborate with, purchase or form a joint venture with, commercial partners.

In addition, other licenses that may be necessary for some of these downstream processing steps have not yet been obtained. Any failure to establish or maintain collaborative, joint venture or licensing arrangements for the production of boron or lithium specialty products on favorable terms could adversely affect our business and prospects.

In addition, substantial additional capital will be required to develop and support potential downstream processing capabilities at Fort Cady. The economic viability of the production of boron advanced materials at Fort Cady will be dependent on a number of factors beyond the scope of our control, including the market demand for and competitive landscape of the boron advanced materials that we hope to produce. We cannot assure you that our downstream processing ambitions will operate profitably or provide a return on investment in the future.

We may be unable to develop or acquire certain intellectual property required to implement our business strategy successfully.

A key element of our long-term business strategy is to develop high-performance, boron specialty and advanced materials that support downstream applications in the areas of clean energy infrastructure, electric transportation, and high-grade fertilizers among other end uses. To implement this strategy successfully, we may need to license certain intellectual property related to these downstream processes and/or develop to ability, or collaborate with, purchase or form a joint venture with commercial partners. No assurances can be given that we will be able to successfully license any such intellectual property, or that we will be able to do so on favorable terms. If we materially breach the obligations in any future licensing agreements, the licensor typically has the right to terminate the license and we may not be able to market products that are covered by the license, which could adversely affect our competitive business position and harm our business prospects. In addition, any claims brought against us by any future licensors could be costly and time-consuming and would divert the attention of our management and key personnel from our business operations.

Other licenses that may be necessary for some of our proposed downstream processing steps have not yet been obtained. Any failure to establish or maintain collaborative, joint venture or licensing arrangements for the

production of boron or lithium specialty products on favorable terms could adversely affect our business and prospects.

Third parties may claim that we infringe on their proprietary intellectual property rights, and resulting litigation may be costly, result in diversion of management's time and efforts, require us to pay damages or prevent us from marketing our future products.

Our commercial success will depend in part on not infringing, misappropriating or violating the intellectual property rights of others. From time to time, we may be subject to legal proceedings and claims, including claims of alleged infringement of trademarks, copyrights, patents and other intellectual property rights held by third parties. In the future, third parties may sue us for alleged infringement of their proprietary or intellectual property rights. We may not be aware of whether our products do or will infringe existing or future patents or the intellectual property rights of others. Any litigation in this regard, regardless of outcome or merit, could result in substantial costs and diversion of management and technical resources as well as harm to our brand, any of which could adversely affect our business, financial condition and results of operations. If the party claiming infringement were to prevail, we could be forced to discontinue the use of the related technology or design and/or pay significant damages unless we enter into royalty or licensing arrangements with the prevailing party or are able to redesign our products or processes to avoid infringement. Any such license may not be available on reasonable terms, if at all, and there can be no assurance that we would be able to redesign our products or processes in a way that would not infringe the intellectual property rights of others. In addition, any payments we are required to make and any injunction we are required to comply with as a result of such infringement could harm our reputation and financial results.

All of our business activities are now in the exploration stage and there can be no assurance that our exploration efforts will result in commercial development.

All of our operations are at the exploration stage and there is no guarantee that any such activity will result in commercial production. Limited drilling has been conducted at Fort Cady to date, which makes the extrapolation of a Regulation S-K 1300 compliant Indicated or Inferred resource to a Regulation S-K 1300 compliant Probable or Proven Mineral Reserve and to demonstrate commercial viability impossible without further drilling and engineering. We intend to engage in additional exploratory drilling and engineering upon completion of the SSBF, but we can provide no assurance of future success from our planned additional drilling program and engineering. The exploration for boron and lithium involves significant risks which even a combination of careful evaluation, experience and knowledge cannot eliminate. While the discovery of these minerals may result in substantial rewards, few properties which are explored are ultimately developed into producing mines. Major expenses may be required to locate and establish Proven Mineral Reserves, to develop processes and to construct mining and processing facilities at a particular site, including at Fort Cady. It is impossible to ensure that the exploration programs planned by us or any future development programs will result in a profitable commercial mining operation. There is no assurance that our mineral exploration activities will result in any discoveries of commercial quantities of boron or lithium, or any other materials. There is also no assurance that, even if commercial quantities of ore are discovered, any mineral property will be brought into commercial production. Whether a mineral deposit will be commercially viable depends on a number of factors, some of which are: the particular attributes of the deposit, such as size, grade and proximity to infrastructure, the run of mine solution produced, engineering of the plant and process to produce a commercial product, prices of minerals and the volatility of their respective markets; and government regulations, including regulations relating to prices, taxes, royalties, land tenure, land use, importing and exporting of minerals and environmental protection. These factors and others are beyond our control, and the effects of these factors cannot be accurately predicted. Our long-term profitability will be in part related to the cost and success of our proposed exploration programs and any subsequent development programs at Fort Cady and elsewhere.

We are an exploration stage company with no known Proven or Probable Mineral Reserves, our estimates of resources and mineralized material are inherently uncertain and subject to change, and the volume and grade of ore actually recovered may vary from our estimates.

We are an exploration stage company, with no Proven or Probable Mineral Reserves. There can be no assurance that the Fort Cady deposit contains Proven or Probable Mineral Reserves as defined by SEC Regulation S-K 1300, or that even if such reserves are found, that we will be successful in economically recovering them. Investors should not assume that the mineral resource estimates described under "Properties—Mineral Resource Estimate" will ever be extracted. Few properties which are explored are ultimately developed into producing mines. Major expenses may be required to locate and establish Proven or Probable Mineral Reserves, to develop processes and to construct mining and processing facilities at a particular site. It is impossible to ensure that the exploration programs planned by us or any future development programs will result in a profitable commercial mining operation. There is no assurance that our mineral exploration activities will result in any discoveries of commercial quantities of borates or lithium.

Mineral resources that are not mineral reserves do not have demonstrated economic viability. Inferred Mineral Resources are considered too speculative geologically to have economic considerations applied to them that would enable them to be categorized as Probable or Proven Mineral Reserves. Furthermore, development projects such as ours have no operating history upon which to base estimates of Proven or Probable Mineral Reserves and estimates of future cash operating costs. Such estimates are, to a large extent, based upon the interpretation of reserves and estimates of future cash operating costs as well as the interpretation of geological data obtained from drill holes and other sampling techniques, and technical and economic studies (including feasibility studies) that derive estimates of cash operating costs based upon anticipated tonnage and grades of minerals to be mined and processed estimates of cash operating costs based upon anticipated tonnage and grades of minerals to be mined and processed, comparable facility and equipment operating costs, anticipated climatic conditions and other factors. In addition, mineral resource estimates prepared by different reserve professionals based upon the analysis of the same geologic data may vary significantly from each other based upon the inherent subjective judgments included in such estimates. As a result, actual cash operating costs and economic returns based upon development of resources may differ significantly from those originally estimated. Moreover, significant decreases in actual or expected prices may mean Proven or Probable Mineral Reserves, if and when established, will be uneconomical to mine.

The Fort Cady deposit has had a significant amount of prior drilling and is the subject of at least three separate historic mineral resource estimates, including a 2018 initial feasibility study prepared for ABR and a second feasibility study, originally released in April 2020 and updated further in February 2021. None of the prior mineral resource estimates were Regulation S-K 1300 compliant. The Initial Assessment Report prepared by Millcreek in October 2021 and subsequently updated in February 2022 confirmed an estimated combined 97.55 million tons of Measured Mineral Resource plus Indicated Mineral Resource at Fort Cady, with a grade of 6.53% for boron oxide and 324 parts per million for lithium as of October 2021. At this time, the Initial Assessment Report does not include any known Proven or Probable Mineral Reserves and there are no other Regulation S-K 1300 compliant feasibility studies, including a bankable feasibility study. Additional time and expenditures are required to potentially establish Probable or Proven Mineral Reserves sufficient to commercially mine and to construct, complete and install mining and processing facilities in those properties that are actually mined and developed. Any expenditures that we may make in the exploration of any mineral property or the development of any boron advanced materials may not result in the discovery of any commercially exploitable mineral deposits or such boron advanced materials.

The mineral resource estimates stated in this filing and extracted from the Initial Assessment Report represent the amount of boron oxide and lithium that the "Qualified Person" ((or QP), as such term is defined by Regulation S-K 1300) in that report estimated, at October 2021, could be economically and legally extracted or produced at the time of the mineral resource determination. There can be no assurance that our disclosed mineral resource estimates will be recovered and any material reductions in the quantity of mineral resources or the

related grades or increase cost of production could have a material adverse effect on our business, financial condition or prospects. Estimates of resources and reserves are subject to considerable uncertainty, and the estimation of mineral resources is a subjective process. Such estimates are expressions of judgement based on knowledge, experience and industry practice at the time of the estimation and will be, to a large extent, based on the interpretations, which may be imprecise or which may later prove to be inaccurate, of geologic data obtained from drill holes and other exploration techniques and which may not necessarily be indicative of future results. Estimates made at a given time may change significantly in the future when new information becomes available. We expect that our estimates of resources will change to reflect such updated information. Resource estimates may be revised upward or downward based on the results of current and future drilling, testing or production levels, significantly lower borate or lithium prices as a result of a decrease in commodity prices, increases in operating costs, reductions in metallurgical recovery or other modifying factors, and this could result in material write-downs of our investment in mining properties, goodwill and increased amortization, reclamation and closure charges. Such revisions may also render previously disclosed estimates of mineral resources uneconomical. We cannot assure that any particular level of recovery of borates or other minerals from discovered mineralization will in fact be commercially realized. The exploration and development of mineral deposits involves a high degree of financial risk over a significant period of time which a combination of careful evaluation, experience and knowledge of management may not eliminate.

Mineral tenure to Fort Cady is through a combination of federal mining claims, a mineral lease and private fee simple lands. Our subsidiary FCCC entered into a mineral lease agreement with Elementis Specialties plc (“Elementis”) in 2011 relating to a group of unpatented mining claims covering approximately 1,520 acres included in the Fort Cady site. Our mineral resource estimate includes some land which is the subject of this mineral lease agreement, which currently expires on March 31, 2023. The loss of access to the mineral claims or right to use the land on which our projects are or will be located and leased from Elementis could have a material adverse effect on our ability to develop Fort Cady on an economically viable basis. While we have in the past been able to negotiate extensions of this mineral lease agreement, no assurance can be given that we will be successful in doing so going forward.

We are engaged in the business of exploring and developing mineral properties with the intention of locating economic deposits of minerals. Our property interests are at the pre-production stage. Accordingly, it is unlikely that we will realize profits in the short term, and we cannot assure you that we will realize profits in the medium to long term. Any profitability from our business in the future will be dependent upon development of an economic deposit of minerals and further exploration and development of other economic deposits of minerals, each of which is subject to numerous risks that are outside of our control.

Producers use feasibility studies for undeveloped ore bodies to derive estimates of capital and operating costs based upon anticipated tonnage and grades of ore to be mined and processed, the predicted configuration of the ore body, expected recovery rates of minerals from the ore, the costs of comparable facilities, the costs of operating and processing equipment and other factors. We cannot assure you that we will complete any such feasibility study. Actual operating and capital cost and economic returns on projects may differ significantly from original estimates. Further, it may take many years to commence production, during which time, the economic feasibility of production may change.

In addition, pre-production projects like Fort Cady have no operating history upon which to base estimates of future operating costs and capital requirements. Exploration project items, such as any future estimates of reserves, mineral recoveries or cash operating costs will to a large extent be based upon the interpretation of geologic data, obtained from a limited number of drill holes and other sampling techniques, and future feasibility studies (if any). We cannot assure you that we will complete any such feasibility study. Actual operating costs and economic returns of any and all exploration projects may materially differ from the costs and returns estimated, and accordingly our financial condition, future results of operations, and cash flows may be negatively affected.

Estimates relating to the development of Fort Cady and mine plan are uncertain and we may incur higher costs and lower economic returns than estimated.

Mine development projects such as Fort Cady typically require a number of years and significant expenditures during the development phase before production is possible. These projects could experience unexpected problems and delays during development, construction and mine start-up. Our decisions concerning the development of the Fort Cady deposit have been based on the results of multiple studies performed under the JORC Code and our Initial Assessment Report, which have estimated the anticipated economic returns of the Project. The actual profitability or economic feasibility of Fort Cady may differ from our estimates as a result of any of the following risks normally encountered in the mining industry, such as:

- changes in tonnage, grades and metallurgical characteristics of ore to be mined and processed;
- changes in input commodity and labor costs;
- the quality of the data on which engineering assumptions are made;
- adverse geotechnical conditions;
- availability of adequate and skilled labor force, adequate machinery and equipment;
- availability, supply and cost of water and power;
- fluctuations in inflation;
- availability and terms of financing;
- delays in obtaining environmental or other government permits or approvals or changes in the laws and regulations related to project development or operations;
- changes in tax laws, the laws and/or regulations around royalties and other taxes due to the local, state and federal governments and any royalty agreements;
- weather or severe climate impacts, including, without limitation, prolonged or unexpected precipitation, drought, forest fires and/or sub-zero temperatures;
- accidental fires, floods, earthquakes or other natural disasters;
- controlling water and other similar mining hazards;
- liability for pollution, other environmental damage, or harm to plants or animals, including endangered or protected species;
- potential delays and restrictions in connection with health and safety issues, including pandemics
- (such as COVID-19) and other infectious diseases;
- potential delays relating to social and community issues, including, without limitation, issues resulting in labor disputes, protests, road blockages or work stoppages;
- uncertainties regarding our ability to successfully implement downstream processing and reach full revenue potential;
- potential challenges to mining activities or to permits or other approvals or delays in development and construction based on claims of disturbance of cultural resources or the inability to secure consent for such disturbance; and
- other known and unknown risks involved in the conduct of exploration, development and the operation of mines.

Any one of the aforementioned risks may cause substantial delays to Fort Cady and require significant capital outlays, adversely affecting our future earnings and competitive position and, potentially our financial

viability. In addition, the nature of some of these risks is such that liabilities could exceed any applicable insurance policy limits or could be excluded from coverage. As many of the risks described above are also risks against which we cannot insure or against which we may elect not to insure, we are not fully insured against all potential risk incident to our business. The potential costs which could be associated with any liabilities not covered by insurance, or in excess of insurance coverage, or compliance with applicable laws and regulations could be substantial. As a result of market conditions, certain insurance may become unavailable or available only for reduced amounts of coverage. If we were to incur a significant liability for which we were not fully insured, it could have a material adverse effect on our business, results of operations, financial condition and liquidity.

We depend on a single mining project.

Fort Cady accounts for all of our mineral resources and the current potential for the future generation of revenue. Any adverse development affecting Fort Cady will have a material adverse effect on our business, prospects, profitability, financial performance and results of operations. These developments include, but are not limited to, the inability to obtain necessary permits or financing to develop Fort Cady, changes in technical parameters of project development, changes in costs or anticipated costs which may make it uneconomic to develop and/or operate Fort Cady, unusual and unexpected geologic formations, seismic activity, rock bursts, flooding, drought, and other conditions involved in the drilling and removal of material, any of which could result in damage to, or destruction of, property, and which could hinder the development and future operation of Fort Cady. If Fort Cady is completed to management's contemplated target production capacity of up to 500,000 tons per year of boric acid, it may exceed the limits of our existing permits, which would require us to seek modifications to the permits. There can be no assurance that we could obtain any required permit modifications. Based on the February 2022 mineral resource estimate in the Initial Assessment Report and assuming we reach economically viable production, Fort Cady, by its nature, will have a defined production life (the period during which extraction will remain viable). Ultimately, we will be required to replace and expand our resources and any established reserves if we are to maintain operating revenues. In the absence of additional mineral projects, we will be solely dependent on Fort Cady for our revenue and profits, if any. Our ability to maintain or increase our annual production will be dependent, in significant part, on our ability to expand Fort Cady, bring new projects into production and to complete acquisitions.

Our long-term success will depend ultimately on our ability to achieve and maintain profitability and to develop positive cash flow from our proposed operating activities.

Our long-term success, including the recoverability of the carrying values of our assets, our ability to acquire and develop additional projects, and continuing with the exploration, development and commissioning and operating activities of Fort Cady will depend ultimately on our ability to achieve and maintain profitability and to develop positive cash flow from our operations by establishing ore bodies that contain commercially recoverable borates, lithium, and other minerals and to develop these into profitable operating activities. The economic viability of our future operating activities has many risks and uncertainties including, but not limited to:

- a significant, prolonged decrease in the market price of borates, lithium, and other minerals;
- difficulty in marketing and/or selling borates, lithium, and other minerals;
- significantly higher than expected capital costs to construct Fort Cady;
- significantly higher than expected extraction costs;
- significantly lower than expected borates, lithium, and other minerals extraction;
- significant delays, reductions or stoppages of borates, lithium, and other minerals extraction activities;
- the introduction of significantly more stringent regulation affecting our activities; and

- global political, economic and market conditions, including political disturbances, war, terrorist attacks and changes in global trade policies.

Our future operating activities may change as a result of any one or more of these risks and uncertainties, and we cannot assure you that any ore body that we extract mineralized materials from will result in achieving and maintaining profitability and developing positive cash flow.

Our growth depends upon the continued growth in demand for end use and future facing applications that require borates, lithium, and related minerals and compounds we expect to produce.

Our growth is dependent upon the continued adoption and demand by consumers of end use applications, such as solar and wind energy infrastructure, neodymium-ferro-boron magnets, and lithium-ion batteries, and future facing applications, including the semi-conductor, aerospace, military, and automotive markets, which require borates, lithium, and related minerals and compounds we expect to produce. If the market for such applications does not develop as we expect, or develops more slowly than we expect, our business, prospects, financial condition and results of operations will be affected. The market for such end use applications is relatively new, rapidly evolving, and could be affected by numerous external factors such as:

- government regulations;
- tax and economic incentives;
- rates of consumer adoption; and
- competition.

Changes in technology or other developments could adversely affect demand for lithium compounds or result in preferences for substitute products.

Lithium and its derivatives are preferred raw materials for certain industrial applications, such as rechargeable batteries. For example, current and future high energy density batteries for use in electric vehicles will rely on lithium compounds as a critical input. The pace of advances in current battery technologies, development and adoption of new battery technologies that rely on inputs other than lithium compounds or a delay in the development and adoption of future high nickel battery technologies that utilize lithium hydroxide could significantly and adversely impact our prospects and future revenues. Many materials and technologies are being researched and developed with the goal of making batteries lighter, more efficient, faster charging and less expensive, some of which could be less reliant on lithium hydroxide or other lithium compounds. Some of these technologies, such as commercialized battery technologies that use no, or significantly less, lithium compounds, could be successful and could adversely affect demand for lithium batteries in personal electronics, electric and hybrid vehicles and other applications. We cannot predict which new technologies may ultimately prove to be commercially viable and on what time horizon. In addition, alternatives to industrial applications dependent on lithium compounds may become more economically attractive as global commodity prices shift. Any of these events could adversely affect demand for and market prices of lithium, thereby resulting in a material adverse effect on the economic feasibility of extracting any mineralization we discover at our properties and reducing or eliminating any reserves we may identify in the future.

Our growth depends upon the continued growth in demand for electric vehicles with high performance lithium compounds.

Our growth is dependent upon the continued adoption of electric vehicles by consumers. If the market for electric vehicles does not develop as we expect, or develops more slowly than we expect, our business, prospects, financial condition and future results of operations will be adversely affected. The market for electric vehicles is relatively new, rapidly evolving, and could be affected by numerous external factors, such as:

- government regulations and automakers’ responses to those regulations;

- tax and economic incentives;
- rates of consumer adoption, which is driven in part by perceptions about electric vehicle features (including range per charge), quality, safety, performance, cost and charging infrastructure;
- competition, including from other types of alternative fuel vehicles, plug-in hybrid electric vehicles, and high fuel-economy internal combustion engine vehicles;
- volatility in the cost of battery materials, oil and gasoline;
- rates of customer adoption of higher performance lithium compounds; and
- rates of development and adoption of next generation high nickel battery technologies.

Our long-term success will depend on our ability to enter into and deliver product under supply agreements.

Because we have not yet begun production of mineral products, we currently do not have any binding supply agreements with any customers. We may encounter difficulty entering into or maintaining supply agreements for our products, may fail to deliver required minimum amounts required by such agreements or may experience production costs in excess of the fixed price to be paid to us under such agreements.

In May 2021, we announced the entry into a non-binding letter of intent with Compass Minerals America Inc. (“Compass Minerals”), a subsidiary of NYSE-listed Compass Minerals, Inc., to progress negotiations with respect to Compass Minerals taking responsibility for the sales and marketing of SOP from our operations.

In September 2021, we announced the entry into a non-binding letter of intent with Borman Specialty Materials. Under the terms of the letter of intent, we agreed to work together towards a binding agreement for the supply of boric acid and other boron specialty and advanced materials, which will be used to manufacture products with critical applications for future global markets, including the semi-conductor, life sciences, aerospace, military and automotive markets.

In May 2022, we also announced the entry into a non-binding letter of intent with Rose Mill. Under the terms of the letter of intent, we agreed to work together on supplying advanced materials that focus on industrial and military applications.

In June 2022, we signed a non-binding letter of intent with Corning Incorporated for the supply of boron and lithium materials, technical collaboration to develop advanced materials and potential financial accommodations in support of a commercial agreement.

We cannot assure you that the conditions to the closing of any of these non-binding agreements, which have not yet been completed, will be satisfied or, as applicable, waived or that the non-binding agreements will be finalized at all. Likewise, non-binding agreements that have not yet been completed may be completed on terms that differ, perhaps substantially, from those described herein. If the closing conditions are not satisfied or waived on a timely basis, or if another event occurs delaying, preventing or terminating these non-binding agreements, or if we are otherwise unable to enter into binding product and supply agreements, such delay, failure or termination of the non-binding agreements, or inability to enter into binding product and supply agreements, could cause uncertainty or other negative consequences that may materially and adversely affect our business, financial performance and operating results.

Our business, results of operations and financial condition may be materially and adversely affected if we are unable to enter into similar agreements with other parties, are unable to mutually agree to matters required by the non-binding agreements with Compass Minerals, Borman Specialty Materials, Rose Mill, and Corning are unable to deliver the product required by such agreements, if we are otherwise unable to enter into binding product and supply agreements, or if we experience costs in excess of the price set forth in such agreements.

If the estimates and assumptions we use to determine the size of our total addressable market are inaccurate, including its current size, growth trajectory, and the underlying factors that may drive future growth in overall market size, particularly for boron where there is limited third party published research and market forecasting, our future growth rate may be adversely affected, and the potential growth of our business may be limited.

Our estimate of the annual total addressable market for our proposed products is based on a number of internal and third-party estimates, which are based on a number of factors, including, without limitation, historical and current global demand and pricing, the number and geographic location of global and regional suppliers and their current capacity capabilities, and the growing number of end-use applications and demand for such applications. Market estimates and growth forecasts are subject to significant uncertainty and are based on assumptions and estimates that may prove to be inaccurate. Even if the market in which we compete meets our size estimates and forecasted growth, our business could fail to grow at similar rates, if at all. Our market opportunity is also based on the assumption that our existing and future offerings will be more attractive to our customers and potential customers than competing products and services. If these assumptions prove inaccurate, our business, financial condition and results of operations could be adversely affected.

The cost and availability of electricity and natural gas are subject to volatile market conditions.

Mining development projects and operations consume large amounts of raw materials and energy. We rely on third parties for the supply of energy we consume and will consume in our development and mining activities. The prices for and availability of electricity, natural gas, oil and other energy resources are all also subject to worldwide supply and demand, volatile market conditions, often affected by weather conditions, as well as political and economic factors beyond our control. Variations in the cost of raw materials, and of energy, which primarily reflects market prices for oil and natural gas, may significantly affect our operating results from period to period. We must have dependable delivery of energy in order to develop and ultimately operate our facilities. Accordingly, we are at risk in the event of an energy disruption. Prolonged black-outs or brown-outs or disruptions caused by natural disasters, or other means, would substantially disrupt our production. Moreover, we expect much of our finished borate products to be delivered by truck. Unforeseen fluctuations in the price of fuel attributable to fluctuations in crude oil prices would also have a negative impact on our costs or on the costs of many of our future customers. In addition, changes in certain environmental regulations in the U.S., including those that may impose output limitations or higher costs associated with climate change or greenhouse gas emissions legislation, could substantially increase the cost of inputs to our operations, such as energy, to us and other borate producers.

Uncertain global economic conditions could have a material adverse effect on our business, financial condition, results of operations or prospects, including the pricing of our products.

Our financial results are tied to global economic conditions and their impact on levels of consumer confidence and consumer spending. Global consumer markets can be impacted by significant U.S. and international economic downturns, such as the current levels of inflation and the global credit crunch experienced in 2008. Continued high levels of inflation or a return to a recession or a weak recovery, due to factors that include, but are not limited to, disruptions in financial markets in the United States, or elsewhere, federal budget, tax or trade policy issues in the United States, political upheavals, war or unrest economic sanctions against trading nations, and demonetization, could cause us to experience significant cost increases and revenue declines due to deteriorated consumer confidence and spending, and a decrease in the availability of credit or on commercially acceptable terms, which could have a material adverse effect on our business prospects or financial condition.

Our business is also dependent upon certain industries, such as energy, automotive, agriculture, transportation, petrochemical and original equipment manufacturing, and these are also cyclical in nature. Therefore, these industries may experience their own significant fluctuations in demand for our products based

on such things as economic conditions, energy prices, consumer demand and infrastructure funding decisions by governments. Many of these factors are beyond our control. As a result of the volatility in the industries we plan to serve, we may ultimately have difficulty increasing or maintaining our level of sales or profitability. If the industries we serve were to suffer a downturn, then our business may be further adversely affected.

We are subject to anti-bribery, anti-corruption, and anti-money laundering laws, including the U.S. Foreign Corrupt Practices Act, as well as export control laws, customs laws, sanctions laws and other laws governing our operations. If we fail to comply with these laws, we could be subject to civil or criminal penalties, other remedial measures and legal expenses, which could adversely affect our business, results of operations and financial condition.

The U.S. Departments of Justice, Commerce, State and Treasury and other federal agencies and authorities have a broad range of civil and criminal penalties they may seek to impose against corporations and individuals for violations of economic sanctions laws, export control laws, the U.S. Foreign Corrupt Practices Act, or the FCPA, and other federal statutes and regulations, including those established by the Office of Foreign Assets Control, or OFAC. Under these laws and regulations, as well as other anti-corruption laws, anti-money laundering laws, export control laws, customs laws, sanctions laws and other laws governing our operations, various government agencies may require export licenses, may seek to impose modifications to business practices, including cessation of business activities in sanctioned countries or with sanctioned persons or entities and modifications to compliance programs, which may increase compliance costs, and may subject us to fines, penalties and other sanctions. A violation of these laws or regulations would negatively affect our business, financial condition and results of operations.

We are continuing to implement policies and procedures designed to ensure compliance by us and our directors, officers, employees, representatives, consultants and agents with the FCPA, OFAC restrictions and other export control, anti-corruption, anti-money-laundering and anti-terrorism laws and regulations. We cannot assure you, however, that our policies and procedures are or will be sufficient or that directors, officers, employees, representatives, consultants and agents have not engaged and will not engage in conduct for which we may be held responsible, nor can we assure you that our business partners have not engaged and will not engage in conduct that could materially affect their ability to perform their contractual obligations to us or even result in our being held liable for such conduct. Violations of the FCPA, OFAC restrictions or other export control, anti-corruption, anti-money laundering and anti-terrorism laws or regulations may result in severe criminal or civil sanctions, and we may be subject to other liabilities, which could have a material adverse effect on our business, financial condition and results of operations.

Inadequate infrastructure may constrain our future mining operations, including at Fort Cady.

Any potential commercial production at Fort Cady will depend on adequate infrastructure. In particular, reliable power sources, water supply, transportation and surface facilities are all necessary to develop and operate mines. Failure to adequately meet these infrastructure requirements or changes in the cost of such inputs could affect our ability to develop or commence production at Fort Cady and could have a material adverse effect on our business, financial condition, results of operations, cash flows or prospects.

Title to mineral properties and related water rights is a complex process and we may suffer a material adverse effect in the event the Fort Cady property or other properties that we may acquire are determined to have title deficiencies.

Acquisition of title to mineral properties and related water rights is a very detailed and time-consuming process. Title to, and the area of, mineral properties may be disputed. Although we have obtained a title opinion in respect to our Fort Cady interests, we cannot give any assurance that title to such property will not be challenged or impugned. Mineral properties sometimes contain claims or transfer histories that examiners cannot verify. A successful claim that we do not have title to the Fort Cady property or lack appropriate water rights

could cause us to lose any rights to explore, develop and mine any minerals on that property, without compensation for our prior expenditures relating to such property.

Restrictions on our ability to obtain, recycle and dispose of water may impact our ability to execute our development plans in a timely or cost-effective manner.

Water is an essential component of our planned mining processes. We currently have two water production wells in an aquifer within our permit boundary, but water is limited in the Mojave Desert. If our demand for water were to outpace supply, our ability to perform mining operations could be restricted or made more costly. Along with the risks of other extreme weather events, drought risk, in particular, is likely increased by climate change. If we are unable to obtain sufficient water to use in our operations, we may be unable to economically produce our target minerals, which could have an adverse effect on our financial condition, results of operations and cash flows.

The development, construction and proposed operation of our properties and projects is subject to various environmental and operational regulations, and risks relating to land use restrictions and potential opposition from landowners, environmental groups and other third parties, all of which could adversely affect or prevent our ability to grow.

Our properties and projects are subject to numerous environmental laws, regulations, guidelines, policies and other requirements relating to, among other things, local land use, zoning, building and operational laws and regulations. We may also operate in jurisdictions with little or no land use regulations or programs for installation and operation of our generation and storage projects. Requirements that are in place for mining projects may require conformance with specified generation capacities, sound levels, radar setbacks, as well as restrictions on communications interference, shadow flicker, hazards to aviation or navigation, or other potential nuisances.

Mining projects may experience local opposition in certain markets due to claims based on these alleged nuisances, concerns about land use conversion from agriculture or undeveloped land to mining, or other claims of potential adverse health or environmental impacts, such as misuse of water resources, landscape degradation, land use, food scarcity or price increase. We could experience significant opposition from third parties, including environmental non-governmental organizations, local landowners, neighborhood groups, municipalities and other entities either during the permit application process, including during any public hearings, comment periods or appeal proceedings, or after environmental permits are issued. We could also experience renewed opposition if any permit requires amendment.

Any such opposition may be taken into account by government officials responsible for granting the relevant permits, which could result in the permits being delayed, not being granted or being granted solely on the condition that we carry out certain corrective measures to our proposed projects (including at Fort Cady), which could materially increase our operational costs. In addition, we may become subject to legal proceedings or claims contesting the construction or operation of our projects or permits required thereunder. Any such delays, permit restrictions, legal proceedings or disputes (even if ultimately decided in our favor) could materially delay our ability to complete construction of a project (including at Fort Cady) in a timely manner, or at all, materially increase the costs associated with commencing or continuing such project’s commercial operations or harm our reputation. Any settlement of claims or unfavorable outcomes or developments relating to these proceedings or disputes, such as judgments for monetary damages, injunctions or denial or revocation of permits, could have a material adverse effect on our business, financial condition, results of operations, and reputation.

The mining industry is historically a cyclical industry and market fluctuations in the prices of borates, lithium, and lithium byproducts and other minerals could adversely affect our business.

We may derive revenues from the extraction and sale of borates, lithium and other minerals. The marketability of minerals is affected by numerous factors beyond our control. These factors include government

regulations relating to pricing, taxes, royalties, allowable production, imports, exports, prevailing price, price volatility, supply, changes in buyer preferences and demand for borates and other minerals. The prices of such commodities have historically fluctuated, and may in the future fluctuate widely and may be affected by numerous factors beyond our control, including international, economic and political trends, domestic and foreign tax policy, the price of imports of commodities, the cost of exploration, development, production and processing mineral ore, available transportation capacity, expectations of inflation, currency exchange fluctuations, interest rates, global or regional consumptive patterns, speculative activities, increased production due to new or improved extraction and production developments and methods, technological changes in the markets for the end products and the overall supply and demand for minerals. The effect of these factors on the price of borates, lithium, and other minerals, and therefore the economic viability of any of our exploration properties, cannot accurately be predicted. Additionally, new production of lithium hydroxide or lithium carbonate from current or new competitors in the lithium markets could adversely affect prices. In recent years, new and existing competitors have made investments to increase the supply of lithium hydroxide and lithium carbonate. Any additional supply (including as a result of such investments) could have an adverse effect on the price of such materials. Only limited information is available with respect to the status of new lithium production capacity expansion projects being developed by current and potential competitors, and, as such, we cannot make accurate projections regarding the future capacities of current and possible new entrants into the market and the dates on which such capacities could become available on the market. If these potential projects are completed in the short term, they could adversely affect market lithium prices, thereby resulting in a material adverse effect on the economic feasibility of extracting any minerals we discover.

Changes in commodity prices would affect our revenues and may reduce the amount of funds available to reinvest in development activities. Reductions in mineral prices not only reduce our revenues and profits but could also reduce the quantities of any reserves that are commercially recoverable. Declining mineral prices may also adversely impact our operations by requiring a review of the commercial feasibility of any of our proposed exploration and development programs. Any such review may indicate a material adverse effect on the economic feasibility of our proposed business.

Fluctuations in the value of the United States dollar relative to other currencies may adversely affect our business.

Fluctuations in the value of the dollar can be expected to affect our business. A strong U.S. dollar would likely result in imported borate and lithium products being comparatively less expensive, potentially resulting in more imports of borate products into the U.S. by our foreign competitors, while a weak U.S. dollar may have the opposite impact on imports.

We face risks relating to mining, exploration, and mine construction, if warranted, on our properties.

Our level of profitability, if any, in future years will depend to a great degree on boron and lithium prices and whether our exploration-stage properties can be brought into production. Exploration and development of boron and lithium resources are highly speculative in nature, and it is impossible to ensure that the currently proposed and future exploration programs and/or feasibility studies on our existing properties will establish reserves. Whether it will be economically feasible to extract boron and lithium depends on a number of factors, including, but not limited to: the particular attributes of the deposit, such as size, grade and proximity to infrastructure; boron and lithium prices and volatility of the market for each; mining, processing and transportation costs; the willingness of lenders and investors to provide project financing on commercially reasonable or favorable terms; labor costs and possible labor strikes; and governmental regulations, including, without limitation, regulations relating to prices, taxes, royalties, land tenure, land use, importing and exporting materials, foreign exchange, environmental protection, employment, worker safety, transportation, and reclamation and closure obligations. The effect of these factors cannot be accurately predicted, but any one or a

combination of these factors may result in us receiving an inadequate return on invested capital. In addition, we are subject to the risks normally encountered in the mining industry, such as:

- the discovery of unusual or unexpected geological formations;
- accidental fires, floods, earthquakes, severe weather or other natural disasters;
- unplanned power outages and water shortages;
- construction delays and higher than expected capital costs due to, among other things, supply chain disruptions, higher transportation costs and inflation;
- controlling water and other similar mining hazards;
- explosions and mechanical failure of equipment;
- operating labor disruptions and labor disputes;
- the ability to obtain suitable or adequate machinery, equipment or labor;
- our liability for pollution or other hazards; and
- other unknown risks involved in the conduct of exploration and operation of mines.

The nature of these risks is such that liabilities could exceed any applicable insurance policy limits or could be excluded from coverage. There are also risks against which we cannot insure or against which we may elect not to insure. The potential costs, which could be associated with any liabilities not covered by insurance or in excess of insurance coverage, or compliance with applicable laws and regulations may cause substantial delays and require significant capital outlays, adversely affecting our future earnings and competitive position and potentially our financial viability.

Mineral exploration and development, such as our proposed operations, are subject to extraordinary risks.

Mineral exploration, development and production involves many risks which even a combination of experience, knowledge and careful evaluation may not be able to overcome. The industrial activities conducted at our facilities present significant risk of serious injury or death to our employees, customers or other visitors to our operations, notwithstanding our safety precautions, including our material compliance with federal, state and local employee health and safety regulations. While we have in place policies and procedures to minimize such risks, we may nevertheless be unable to avoid material liabilities for an injury or death. Our operations will be subject to geological, technical and operating hazards and risks inherent in the exploration for mineral resources and, if we discover a mineral resource in commercially exploitable quantity, our operations could be subject to all of the hazards and risks inherent in the development and production of resources, including liability for pollution or similar hazards against which we cannot insure or against which we may elect not to insure. Any such event could result in work stoppages and damage to property, including damage to the environment. Even though we maintain workers' compensation insurance and a general liability policy to address the risk of incurring material liabilities for injury or death, there can be no assurance that the insurance coverage will be adequate or will continue to be available on the terms acceptable to us, or at all, which could result in material liabilities for an injury or death. The payment of any liabilities that arise may have a material adverse impact on us.

Our proposed facilities or operations could be adversely affected by events outside of our control, such as natural disasters, wars or health epidemics or pandemics.

We may be impacted by natural disasters, wars, health epidemics or pandemics or other events outside of our control. For example, Fort Cady is located in San Bernardino County, California near active faults, which could lead to nearby earthquakes. If major disasters such as earthquakes, wildfires, health epidemics or pandemics, floods, drought, or other events occur, or our information system or communications network breaks

down or operates improperly, our ability to achieve or continue operations at Fort Cady may be seriously damaged, or we may have to stop or delay our proposed exploration and development, and eventually production and shipment of our products. We may incur expenses or delays relating to such events outside of our control, which could have a material adverse impact on our business, operating results and financial condition.

A shortage of skilled technicians and engineers may further increase our operating costs, which may materially adversely affect our results of operations.

Efficient production of boron and lithium products using modern techniques and equipment requires skilled technicians and engineers. In addition, our efforts will significantly increase the number of skilled operators, maintenance technicians, engineers and other personnel required to successfully operate our business. In the event that we are unable to hire, train and retain the necessary number of skilled technicians, engineers and other personnel there could be an adverse impact on our labor costs and our ability to reach anticipated production levels in a timely manner, which could have a material adverse effect on our results of operations.

A shortage of equipment or disruption in our supply chain could adversely affect our ability to operate our business.

We are dependent on various supplies and equipment to carry out our mineral exploration and, if warranted, development operations. Any shortage of such supplies, equipment and parts could have a material adverse effect on our ability to carry out our operations and therefore limit or increase the cost of potential future production.

Further, we are subject to risk from fluctuating market prices of certain raw materials, including steel, fiberglass reinforced plastic, and bulk chemicals, which are necessary to the construction and maintenance of our assets. The price of these raw materials may be affected by supply restrictions or other market factors (including inflation) from time to time. Some of the components and materials related to our assets are sourced from outside the United States through arrangements with various vendors, and there have been delays in obtaining these components and materials as a result of the COVID-19 pandemic, shipping and transportation constraints, and other supply chain disruptions. Political, social or economic instability in regions where these components and materials are made could cause future disruptions in trade.

Actions in various countries have created uncertainty with respect to tariff impacts on the costs of some of these components and materials. The degree of our exposure is dependent on (among other things) the type of some of these components and materials. Significant price increases for these raw materials could reduce our operating margins, and could harm our business, financial condition, and results of operations.

In particular, bulk chemicals are critical to the operation of our business. These raw materials are in high demand, subject to price fluctuations and of limited availability. If manufacturers are not able to procure enough of these components or procure them in a timely manner, this would have a material adverse effect on the development of our products and in turn, our business, financial conditions and results of operations. Significant price increases for bulk chemicals in particular may have an adverse impact on the economic viability of our proposed development and operating activities.

Disruptions in production at our proposed facilities may have a material adverse impact on our business, results of operations and/or financial condition.

Manufacturing facilities in our industry are subject to planned and unplanned production shutdowns, turnarounds, outages and other disruptions. Any serious disruption at our proposed facilities could impair our ability to use our facilities and have a material adverse impact on any future revenues and increase our costs and expenses. Long-term production disruptions may allow competitors to be sought for alternative supply which could further adversely affect our profitability or delay or keep us from reaching commercial development at all.

Unplanned production disruptions may occur for external reasons including natural disasters, weather, disease, strikes, transportation interruption, government regulation, political unrest or terrorism, or internal reasons, such as fire, unplanned maintenance or other manufacturing problems. We may experience delays in construction, equipment procurement, or in completing our SSBF or our proposed large-scale complex on time. Any such production disruption could have a material impact on our proposed operations, operating results and financial condition.

Failure by our vendors or our component or raw material suppliers to use legal or ethical business practices and comply with applicable laws and regulations may adversely affect our proposed business.

We do not control our vendors or suppliers or their business partners. Accordingly, we cannot guarantee that they follow legal or ethical business practices, such as fair wage practices and compliance with environmental safety and other local laws. A lack of demonstrated compliance could lead us to seek alternative manufacturers or suppliers, which could increase our costs and result in delayed delivery of components and raw materials, or other disruptions of our operations. Violation of labor or other laws by our manufacturers or suppliers or the divergence of a supplier's labor or other practices from those generally accepted as ethical in the U.S. or other markets in which we do and expect to do business could also attract negative publicity for us and harm our proposed business.

Competition with and new production of borates, lithium, and other minerals from current or new competitors in the market could adversely affect prices and our proposed business.

The mining industry is highly competitive. According to Global Market Insights, as of 2021, there are two major competitors in the borates industry, RTB (as defined below) and Eti Maden. If we are successful in bringing Fort Cady into production, we would be competing with two large competitors in the borates industry, one global mining conglomerate and one state-owned enterprise, both of which we believe are generally well funded and established. Additionally, the lithium industry is highly competitive, and, according to Woods Mackenzie, as of March 2022, the market was dominated by Albemarle Corporation, Sociedad Quimica y Minera De Chile S.A., Jiangxi Gangfeng Lithium Co. Ltd., Tianqi Lithium Corp., and Livent Corporation, all of which we believe are generally well-funded and established. Competition principally involves sales, supply and labor prices, contractual terms and conditions, attracting and retaining qualified personnel and securing the services and supplies we need for our operations. We cannot guarantee that competition, with these two major competitors for boron and five major competitors for lithium and lithium derivatives as well as with others, will not adversely affect us in the future. For example, lower cost producers of the minerals we mine could be better positioned to manage future volatility through commodity price cycles. Any significant production increases from either of the aforementioned two main borate competitors and major lithium and lithium derivative producers, and others, or the discovery of any additional significant borate or lithium resources could negatively impact prices received for borates or lithium. Furthermore, it is possible that competitors may engage in pricing activities that could result in market price reductions that may materially and adversely impact the economic feasibility of our plans. In addition, mines have limited lives and, as a result, we must periodically seek to replace and expand our mineral resources by acquiring new properties. Significant competition exists to acquire mining concessions, land and related assets.

We expect that our competitors may have well-established relationships with our current and potential suppliers, lenders and customers and have extensive knowledge of our target markets. As a result, these competitors may be able to respond more quickly to evolving industry standards and changing customer requirements than we may be able to. The adoption of more advanced technology could reduce our competitors' production costs or may result in other efficiencies and, if we do not adopt such technologies, our competitors may have a lower cost structure or greater production efficiency, which may adversely affect our ability to compete.

There is limited information on the status of new production capacity expansion projects being developed by the current and potential competitors and, as such, we cannot make accurate projections regarding the capacities

of possible new entrants into the market and the dates on which any new projects could become operational but any significant increase in supply could adversely affect market prices for borates, thereby resulting in a material adverse effect on the economic feasibility of extracting our resources.

Industry consolidation may result in increased competition, which could have a material adverse effect on our proposed business.

Some of our competitors have made or may make acquisitions or enter into partnerships or other strategic relationships to achieve competitive advantages. In addition, new entrants not currently considered competitors may enter our market through acquisitions, partnerships or strategic relationships. We expect industry consolidation to continue and/or increase as demand for critical materials increases. Industry consolidation may result in competitors with more compelling product offerings or greater pricing flexibility than we may have, or business practices that make it more difficult for us to compete effectively, including on the basis of price, sales, technology or supply. These competitive pressures could have a material adverse effect on our proposed business.

We are subject to significant environmental and government regulations and compliance with such regulations requires significant expenditures.

Mining activities in the United States are subject to extensive federal, state, local and foreign laws and regulations governing environmental protection, natural resources, prospecting, development, production, post-closure reclamation, taxes, labor standards and occupational health and safety laws and regulations, including mine safety, toxic substances and other matters. The costs associated with compliance with such laws and regulations are substantial. In addition, changes in such laws and regulations, or more restrictive interpretations of current laws and regulations by governmental authorities, could result in unanticipated capital expenditures, expenses or restrictions on or suspensions of our operations and delays in the development of our properties.

As a current holder of interests in U.S. mineral properties, we may be subject to CERCLA. CERCLA, along with analogous statutes in certain states, imposes strict, joint and several liability on owners and operators of facilities which release hazardous substances into the environment. CERCLA imposes similar liability upon generators and transporters of hazardous substances disposed of at an off-site facility from which a release has occurred or is threatened. Under CERCLA's strict joint and several liability provisions, we could potentially be liable for all remedial costs associated with property that we currently or previously owned or operated regardless of whether our activities are the actual cause of the release of hazardous substances. Such liability could include the cost of removal or remediation of the release and damages for injury to the natural resources. Releases from such facilities or from any of our current U.S. properties due to past or current activities could form the basis for liability under CERCLA and its analogs. In addition, off-site disposal of hazardous substances, including hazardous mining wastes, may subject us to CERCLA liability. Our current and prior U.S. properties are not, to our knowledge, currently listed or proposed for listing on the National Priority List and we are not aware of pending or threatened CERCLA litigation which names us as a defendant or concerns any of our current or prior U.S. properties or operations. However, we have not conducted a Phase 1 or similar environmental site assessment on our properties and cannot be certain that we are aware of all current or historical operations at or affecting our properties that could involve contamination. We cannot predict the potential for future CERCLA liability with respect to our U.S. properties, nor can we predict the potential impact or future direction of CERCLA litigation in the area surrounding our current and prior properties.

Environmental regulations, including climate change related regulations, mandate, among other things, the maintenance of air and water quality standards, land development and land reclamation, and set forth limitations on the generation, transportation, storage and disposal of solid and hazardous waste. Enhanced public and private focus on climate change, greenhouse effects and proposed or contemplated laws and regulations relating to carbon emissions may impact aspects of our development plans or our future production. Environmental legislation is evolving in a manner that may require stricter standards and enforcement, increased fines and

penalties for non-compliance, more stringent environmental assessments of proposed projects, and a heightened degree of responsibility for mining companies and their officers, directors and employees. In connection with our current activities or in connection with our prior operating activities, we may incur environmental costs that could have a material adverse effect on financial condition and results of operations. Any failure to remedy an environmental problem could require us to suspend operations or enter into interim compliance measures pending completion of the required remedy.

We may also incur substantial costs, including fines, damages, criminal or civil sanctions and remediation costs, or experience interruptions in our operations, for violations arising under these laws and regulations or permit requirements. If we violate environmental, health and safety laws or regulations, in addition to being required to correct such violations, we can be held liable in administrative, civil or criminal proceedings for substantial fines and other sanctions could be imposed that could disrupt or limit our operations. Liabilities associated with the investigation and clean-up of hazardous substances, as well as personal injury, property damages or natural resource damages arising from the release of, or exposure to, such hazardous substances, may be imposed without regard to violations of laws or regulations or other fault, and may also be imposed jointly and severally.

We may in the future be subject to claims by third parties or employees relating to exposure to hazardous materials and the associated liabilities may be material.

Any failure to ensure on-going compliance with current and future laws and government regulations, including environment, workplace health and safety, tax and accounting laws, rules and regulations as well as stock exchange listing rules could have a material adverse effect on our future financial condition and prospects.

We may face increased costs and be subject to liability resulting from the generation and disposal of certain wastes, including hazardous wastes, in the course of Fort Cady's development and/or other future operations.

Our business is subject to stringent and complex laws and regulations relating to the generation, use, handling, storage, recycling, disposal and exposure to solid and hazardous wastes. These laws are frequently subject to change. In the course of our operations, we may generate solid or certain hazardous wastes through the disposal of other materials utilized in our development activities or our future operations. In addition, environmental laws can result in the imposition of liability in connection with end-of-life system disposal.

We own and lease real property and may be subject to requirements regarding the storage, use and disposal of hazardous substances, including spill prevention, control and counter-measure requirements. If our owned or leased properties are contaminated, whether during or prior to our ownership or operation, we could be responsible for the costs of investigation and cleanup and for any related liabilities, including claims for damage to property, persons or natural resources. That responsibility may arise even if we were not at fault and did not cause or were not aware of the contamination. The costs of compliance with laws relating to the management and disposal of solid and hazardous wastes or the remediation of any contamination to which we are or may be responsible, and any changes to our operations mandated by new or amended laws, may be significant. Failure to comply with such laws and regulations could result in significant expenses, delays or fines, which in turn could have a material adverse effect on our results of operations and financial position.

Land reclamation requirements may be burdensome on our financial position.

Land reclamation requirements are generally imposed on companies with mining operations or mineral exploration companies in order to minimize long term effects of land disturbance. We are required to mitigate long-term environmental impacts at Fort Cady by stabilizing, contouring, re-sloping, and revegetating various portions of the site after well-field and processing operations are completed. In addition, we are responsible for plugging and abandoning all injection recovery, water monitoring, and exploration drilling holes. In undertaking these reclamation activities, we must meet comprehensive environmental protection and reclamation standards.

Any failure to meet such standards may subject us to fines, penalties, or other sanctions. In addition, in order to carry out reclamation obligations imposed on us in connection with exploration, potential development and production activities, we must allocate financial resources that might otherwise be spent on exploration and development programs. We currently have reclamation obligations and have arranged and pledged certificates of deposits for reclamation. If we are required to carry out unanticipated reclamation work, our financial position could be adversely affected.

The physical consequences of climate change could have a material adverse effect on our properties and proposed business activities.

Climate change may increase the frequency or intensity of adverse weather conditions, such as tropical storms, wildfires, droughts, floods, hurricanes, tornadoes, extreme temperatures or ice storms and may have the long-term effect of changing weather patterns in ways that are difficult to anticipate, which may result in damage or destruction to our assets or to third party assets on which we rely, affect the availability of water for our facilities, or otherwise require us to incur costs, or elicit changes in applicable regulations in the jurisdictions in which we operate, which may result in, among other impacts, increased compliance costs, reduced revenues, restrictions on our proposed operations, and difficulties in obtaining or maintaining permits, licenses or authorizations required for our proposed business. Any such disruption may prevent us from continuing to develop Fort Cady and any other of our properties, or, if and when completed, operating in the normal course.

Certain of our operations are dependent on particular meteorological conditions. Climate change may have a long-term and permanent effect on meteorological patterns, including the frequency or intensity of wind, precipitation, or change in temperatures at Fort Cady and any other of our properties. Furthermore, components of our systems could be damaged by severe weather, such as wildfires, hailstorms, tornadoes, hurricanes, flooding, drought, high or low temperatures or other weather conditions. Replacement and spare parts for key components may be difficult or costly to acquire or may be unavailable. Unfavorable weather and atmospheric conditions could impair the effectiveness of our assets or reduce their output beneath their estimated or engineered capacity or require shutdown of key equipment, impeding future operation of our assets.

Increasing concentration of greenhouse gases in the Earth’s atmosphere are contributing to climate changes that are having significant physical effects, such as increased frequency and severity of storms, droughts, fires, floods and other climatic events. If any such effects were to occur in the regions in which we explore, develop and operate, they could adversely affect or delay such activities and may otherwise cause us to incur significant costs in preparing for or responding to those effects.

New climate-related disclosure obligations in proposed SEC rule amendments could have uncertain impacts on our business, impose additional reporting obligations on us, and increase our costs.

In March 2022, the SEC proposed rule amendments that would provide a framework for the reporting of climate-related risks and create a wide range of new climate-related disclosure obligations for all registrants, including us. The proposed rules would require us to include certain climate-related information in registration statements and annual reports, including (i) climate-related risks and their actual or likely material impacts on our business, strategy, and outlook; (ii) our governance of climate-related risks and relevant risk management processes; (iii) information on our greenhouse gas emissions; (iv) certain climate-related financial statement metrics and related disclosures in a note to our audited financial statements; and (v) information about our climate-related targets, goals, and transition plans.

The proposed rules remain open to public comment and may be subject to challenges and litigation. Thus, the ultimate scope and impact of the proposed rules on our business remain uncertain. To the extent new rules, if finalized, impose additional reporting obligations on us, we could face substantial increased costs. Separately, the SEC has also announced that it is scrutinizing climate-change related disclosures in public filings, increasing the potential for enforcement if the SEC were to allege that our existing climate disclosures are misleading or deficient.

We are required to obtain, maintain, and renew governmental permits in order to conduct development and mining operations, a process which is often costly and time-consuming.

We are required to obtain, maintain and renew governmental permits for our development activities and, prior to mining any mineralization, we will be required to modify or obtain new governmental permits for our proposed operations. Certain of our land titles are subject to royalty payments that are either currently payable or may be payable in the future (subject to negotiation with the State of California). Obtaining, maintaining, and renewing governmental permits is a complex and time-consuming process. The timeliness and success of permitting efforts are contingent upon many variables, not all of which are within our control, including the interpretation of permit approval requirements administered by the applicable permitting authority. We may not be able to obtain, maintain, or renew permits that are necessary to our planned operations or the cost and time required to obtain, maintain, or renew such permits may exceed our expectations. Any unexpected delays or costs associated with the permitting process could delay the development or operation of our properties, which in turn could materially adversely affect our future revenues and profitability. In addition, key permits and approvals may be revoked or suspended or may be changed in a manner that adversely affects our activities.

Private parties, such as environmental activists, frequently attempt to intervene in the permitting process and to persuade regulators to deny necessary permits or seek to overturn permits that have been issued. Obtaining the necessary governmental permits involves numerous jurisdictions, public hearings and possibly costly undertakings. These third-party actions can materially increase the costs and cause delays in the permitting process and could potentially cause us to not proceed with the development or operation of our properties. In addition, our ability to successfully obtain key permits and approvals to explore for, develop, operate and expand operations will likely depend on our ability to undertake such activities in a manner consistent with the creation of social and economic benefits in the surrounding communities, which may or may not be required by law. Our ability to obtain permits and approvals and to successfully operate in particular communities may be adversely affected by real or perceived detrimental events associated with our activities.

Lawsuits may be filed against us or arbitration proceedings may be commenced and an adverse ruling in any such lawsuit or arbitration may adversely affect our business, or financial condition.

In the ordinary course of our business, we may become involved in, named as a party to, or be the subject of, various legal proceedings, including regulatory proceedings, tax proceedings and legal actions, including arbitration proceedings, relating to personal injuries, workers' compensation, employment discrimination, property damage, property taxes, land rights, the environment, damages related to breaches of privacy or data security, and contract disputes. Such proceedings and actions may involve liquidated damages, consequential damages, punitive damages and civil penalties or other losses, or injunctive or declaratory relief. In addition, we may also be subject to class action lawsuits, including those alleging violations of the Fair Labor Standards Act and state and municipal wage and hour laws.

Due to the inherent uncertainties of litigation and other dispute resolution proceedings, the outcome of outstanding, pending or future actions or proceedings may be difficult to assess or quantify, cannot be predicted with certainty and may be determined adversely to us and as a result, could have a material adverse effect on our assets, liabilities, business, financial condition or results of operations. Even if we prevail in any such action or proceeding, they could be costly and time-consuming and may divert the attention of management and key personnel from our business operations, which could adversely affect our financial condition. The ultimate resolution of any litigation or proceeding through settlement, mediation, or a judgment could have a material impact on our reputation and adversely affect our financial performance and financial position.

Moreover, governmental authorities and private parties may bring lawsuits based upon damage to property and injury to persons resulting from the environmental, health and safety impacts of prior and current operations, including operations conducted by other mining companies many years ago at sites located on properties that we currently own or own in the future. These lawsuits could lead to the imposition of substantial fines, remediation

costs, penalties and other civil and criminal sanctions. We cannot assure you that any such law, regulation, enforcement or private claim would not have a material adverse effect on our financial condition, results of operations or cash flows.

We are vulnerable to the risks associated with operating in a single geographic region and concentrating our capital investment in the State of California increases our exposure to that risk.

We expect to focus our operational activities and capital investments at Fort Cady in California and potentially, in the future, in respect of the Salt Wells Projects in Nevada. Should we be able to bring Fort Cady into production, we would then be solely dependent upon a single mining operation for our revenue and profits and all of our operations would be conducted in a single geographic region in the western United States in California. The geographic concentration of our operations may disproportionately expose us to disruptions in our operations if the region experiences severe weather, transportation capacity constraints, constraints on the availability of required equipment, facilities, personnel or services, significant governmental regulation or natural disasters. If any of these factors were to impact the region in which we operate more than other borate producing regions, our business, financial condition, results of operations and cash flows could be adversely affected relative to other mining companies that have a more geographically diversified asset portfolio.

In addition, scientists have warned that increasing concentrations of greenhouse gases in the Earth's atmosphere may produce climate changes that have significant physical effects, such as increased frequency and severity of storms, droughts and floods and other climatic events. For example, the State of California has experienced several years of increasingly more extreme drought and forest fires throughout the state. If these warnings are correct, and if any such climate-related weather and environmental effects were to detrimentally impact the areas where we or our customers operate, they could have an adverse effect on our business, financial condition and prospects.

The operation or development of our facilities could be adversely affected by local communities and/or other stakeholders.

Relationships with local communities and other stakeholders may impact the development or operations of Fort Cady as well as other future projects. We may become impacted by the interests of local communities and other stakeholders, including in some cases, Indigenous peoples. Certain of these communities or other stakeholders may have or may develop interests or objectives which are different from, or even in conflict with, our objectives, including the use of our project lands and waterways near our facilities. Our relationships with the communities near Fort Cady and other stakeholders are critical to the future success of Fort Cady, as well as at any future development. There is an increasing level of public concern relating to the perceived effect of mining activities on the environment and on communities impacted by such activities. Publicity adverse to Fort Cady, or the mining industry generally, could have an adverse effect on our development plans or future operations and may impact relationships with the communities in which we ultimately operate and other associated stakeholders.

We may in the future, be subject to disputes with local communities, including Indigenous peoples, regarding the use of certain aspects of our assets, facilities and land and may in the future, be required to enter into settlement agreements providing for such use, on terms that include, among others, lump sum payments, royalty payments or restrictions on our business.

In addition, disputes surrounding Indigenous land claims regarding lands on or near our properties could interfere with future operations and/or result in additional operating costs or restrictions, as well as adversely impact the use and enjoyment of our real property rights with respect to our assets.

While we are committed to operating in a socially responsible manner, there can be no assurance that our efforts in this respect will mitigate this potential risk. All the foregoing could have a material adverse effect on our business, financial condition and results of operations, including, but not limited to, as a result of increased

costs, reduced revenues, diversion of management attention, reputational harm, disruptions to our operations and other reasons.

We currently plan to continue to invest significant amounts of capital in our Salt Wells Projects and a variety of exploration activities, which involve many uncertainties and risks that could prevent us from realizing profits or may result in the total or partial loss of our investment.

We have an Earn-in Agreement to acquire a 100% interest in the Salt Wells Projects in the State of Nevada if we incur project related expenditures of $900,000 by December 31, 2023, $800,000 by December 31, 2024, and approximately $756,000 by December 31, 2025. We did not incur all of the project related expenses required for the fiscal year ending June 30, 2022 under the Earn-in Agreement. However, in August 2022, we entered into an amendment whereby the schedule and amounts of the required project related expenditures were changed and are now as described above. We cannot assure you that we will be able to obtain any similar amendments or waivers under the Earn-in Agreement in the future, if necessary. In the event that we do not make the expenditures as required under the Earn-in Agreement described above, we will not be assigned any rights, titles, or interest in the Salt Wells Projects.

Our Salt Wells Projects and other exploration activities may be delayed, more costly than anticipated or unsuccessful for many reasons, including declines in boric acid and its derivatives, lithium carbonate, HCl, SOP and gypsum, misalignment between any associated joint venture participants, cost overruns, unanticipated financial, operational or political events, mechanical and technical difficulties, increases in operating cost structures, equipment and labor shortages, industrial actions or other circumstances which may result in the delay, suspension or termination of our Salt Wells Projects and other exploration projects, the total or partial loss of our investment in such projects and activities and a material adverse effect on our results of operations, financial condition and prospects.

Our future success depends on the continuing efforts of our management and key employees and our ability to attract and retain highly-skilled personnel and senior management.

The responsibility of overseeing the day-to-day operations and the strategic management of our business depends substantially on our senior officers and our key personnel. Loss of such personnel may have an adverse effect on our performance. The success of our operations will depend upon numerous factors, many of which are beyond our control, including our ability to attract and retain additional key personnel in sales, marketing, technical support and finance. We currently depend upon a relatively small number of key persons to seek out and form strategic alliances and find and retain additional employees. Certain areas in which we operate are highly competitive regions and competition for qualified personnel is intense. We may be unable to hire suitable field personnel for our technical team or there may be periods of time where a particular position remains vacant while a suitable replacement is identified and appointed.

Our inability to hire and maintain suitable personnel could have a material adverse effect on us and could prevent us from effectively pursuing our business plan, including developing, growing, and operating our business profitably.

We also depend upon third parties, including consultants, engineers, suppliers and others, for their development, construction and operating expertise and expect to remain so for the foreseeable future. Our ability to continue conducting our activities is in large part dependent upon the efforts of third parties. Highly qualified consultants and engineers are expensive and difficult to attract and retain. We may need to engage additional third parties for new development projects, to establish mineral reserves through drilling, to carry out environmental and social impact assessments, to develop processes to extract boron and lithium and other materials, and to continue to develop Fort Cady. If such parties' work is deficient or negligent or is not completed in a timely manner, it could have a material adverse effect on us. As a result, our use of services of consultants could have a material adverse effect on us and could prevent us from effectively pursuing our business plan.

We will need to increase the size of our organization and we may be unable to manage our growth effectively.

Our past growth has provided, and our future growth may create challenges to our organization. Members of our management team possess significant experience and have previously carried out or been exposed to exploration, development and production activities. However, we have limited operating history and our ability to achieve our objectives depends on the ability of our directors, officers and management to implement current plans and respond to any unforeseen circumstances that require changes to those plans. The execution of our business plan will place demands on us and our management. In the future, we expect to hire and train new personnel as we continue to grow and expand our operations. Our ability to recruit, assimilate, and maintain new personnel will be critical to our performance and we will be required to recruit additional personnel to achieve our business objectives. As a public company, we will need to support managerial, operational, financial and other resources. This growth may place significant strain on us. Successful growth is also dependent upon our ability to implement appropriate financial and management controls and systems and procedures. If we are unable to recruit additional personnel and effectively train, motivate, retain, and manage employees, or if we fail to manage these challenges effectively, our financial condition, business, and results of operations could be materially and adversely affected.

Our directors and officers may in the future be in a position of a conflict of interest.

Some of our directors and officers currently also serve as directors and officers of other companies involved in natural resource exploration, development and production, and any of our directors may in the future serve in such positions. As at the date of this report, none of our directors or officers serves as an officer or director of a minerals exploration, development or producing company nor possesses a conflict of interests with our business. However, there exists the possibility that they may in the future be in a position of a conflict of interest.

We may acquire additional businesses or assets, form joint ventures or make investments in other companies in the future that may be unsuccessful and may harm our operating results and prospects.

As part of our business strategy, we may pursue additional acquisitions of complementary businesses or assets. While we currently expect that any such acquisition would be funded with equity, the type of financing for any such acquisition will depend on circumstances existing at that time, including market conditions and our share price. If we are successful at identifying and making such acquisitions, integration of any acquired businesses or assets nevertheless involves many challenges, including a potential strain on our administrative and operational resources, unanticipated issues, expenses or liabilities, and difficulties in the assimilation of different corporate cultures and business practices. We may also seek to enter into joint ventures, pursue strategic alliances in an effort to leverage our existing operations and industry experience, increase our product offerings, expand our distribution and make investments in other companies. We do not have specific timetables for these potential activities and we cannot guarantee that we will be able to identify and complete suitable acquisitions or investments at reasonable prices, or that we will be successful in realizing any anticipated benefits from any future acquisitions or investments.

The success of any acquisitions, joint ventures, strategic alliances or investments will depend on our ability to identify, negotiate, complete and, in the case of acquisitions, integrate those transactions and, if necessary, obtain satisfactory debt or equity financing to fund those transactions. We may not realize the anticipated benefits of any acquisition, joint venture, strategic alliance or investments. We may not be able to integrate acquisitions successfully into our existing business, maintain the key business relationships of businesses we acquire, or retain key personnel of an acquired business, and we could assume unknown or contingent liabilities or incur unanticipated expenses.

Integration of acquired companies or businesses also may require management resources that otherwise would be available for ongoing development of our existing business. Any acquisitions or investments made by us also could result in significant write-offs or the incurrence of debt and contingent liabilities, any of which could harm our operating results. In addition, if we choose to issue equity as consideration for any acquisition, our shareholders may experience dilution.

We face risks related to health epidemics and other outbreaks, including the recent spread of COVID-19 or novel coronavirus, or fear of such an event.

Our business could be adversely affected by a widespread outbreak of contagious disease, including the outbreak of the 2019 novel strain of coronavirus, causing a contagious respiratory disease known as COVID-19, which was declared a pandemic by the World Health Organization on March 11, 2020. Through June 30, 2022, the spread of this virus and government responses have caused business disruption and are adversely affecting many industries. The spread of COVID-19 has also caused significant volatility in U.S. and international debt and equity markets. There is significant uncertainty around the breadth and duration of business disruptions related to COVID-19, as well as its impact on the U.S. economy and consumer confidence. If a significant portion of our workforce becomes unable to work or travel to our operations due to illness or state or federal government restrictions (including travel restrictions and "shelter-in-place" and similar orders restricting certain activities that may be issued or extended by authorities), we may be forced to reduce or suspend operations, which could reduce exploration activities and development projects and impact liquidity and financial results. To the extent the COVID-19 pandemic adversely affects our business and financial results, it may also have the effect of heightening many of the other risks described in this "Risk Factors" section.

We may be subject to litigation if one or more employees contract COVID-19 at work or litigation initiated by stockholders who view decisions by the Board of Directors or management as inconsistent with duties to the Company under Delaware law or who may assert claims under federal securities laws. We understand that, as indicated by sharp increases in average premiums for director and officer insurance policies in recent months, insurers expect increased litigation relating to COVID-19.

We are monitoring the situation and taking reasonable steps to keep our business premises, properties, vendors and employees in a safe environment and are constantly monitoring the impact of COVID-19. The extent to which COVID-19 impacts our results will depend on future developments, which are highly uncertain and cannot be predicted, including new information which may emerge concerning the severity of COVID-19 and the actions taken to contain it or treat its impact. While we have not seen a significant impact to our results from COVID-19 to date, if the virus continues to cause significant negative impacts to economic conditions or our ability to continue development of Fort Cady, our results of operations, financial condition and liquidity could be adversely impacted.

Risks related to global economic instability, including global supply chain issues, inflation and fuel and energy costs may affect our business.

The volatile global economic environment has created market uncertainty and volatility recently. This global economic uncertainty has negatively affected the mining and minerals sectors in general. Many industries, including the mining industry, are impacted by these market conditions. Global financial conditions remain subject to sudden and rapid destabilizations in response to economic shocks. A slowdown in the financial markets or other economic conditions including but not limited to global supply chain issues, inflation, fuel and energy costs, business conditions, lack of available credit, the state of the financial markets, interest rates and tax rates, may adversely affect our growth. Future economic shocks may be precipitated by a number of causes, including a continued rise in the price of oil and other commodities, the volatility of metal prices, geopolitical instability (including events such as the Russian invasion of Ukraine), terrorism, pandemics, the devaluation and volatility of global stock markets and natural disasters. Any sudden or rapid destabilization of global economic conditions could impact our ability to obtain equity or debt financing in the future on terms favorable to us or at all. In such an event, our operations and financial condition could be adversely impacted.

Prices and availability of commodities consumed or used in connection with exploration and development and mining, such as natural gas, diesel, oil and electricity, also fluctuate, and these fluctuations affect the costs of operations. These fluctuations can be unpredictable, can occur over short periods of time and may have a material adverse impact on our operating costs or the timing and costs of various projects.

We could be subject to information technology system failures, network disruptions, and breaches in data security which could negatively affect our business, financial position, results of operations and cash flows.

As dependence on digital technologies is expanding, cyber incidents, including deliberate attacks or unintentional events have been increasing worldwide. Computers and telecommunication systems are used to conduct our exploration and development activities, will be used to conduct our production activities and have become an integral part of our business. We use these systems to analyze and store financial and operating data, as well as to support our internal communications and interactions with business partners. Cyber-attacks could compromise our computer and telecommunications systems and result in additional costs as well as disruptions to our business operations or the loss of our data. A cyber-attack involving our information systems and related infrastructure, or those of our business partners, could disrupt our business and negatively impact our operations in a variety of ways, such as, among others:

- an attack on the computers which control our mining operations could cause a temporary interruption of our production;
- a cyber-attack on our accounting or accounts payable systems could expose us to liability to employees and third parties if their sensitive personal information is obtained;
- possible loss of material information, which in turn could delay productive processes and selling efforts, causing economic losses; or
- a cyber-attack on a service provider could result in supply chain disruptions, which could delay or halt our major development projects.

Risks Relating to Our CDIs and Common Stock

The market price and trading volume of our CDIs and Common Stock may be volatile and may be affected by economic conditions beyond our control.

The market price of our CDIs and Common Stock may be highly volatile and subject to wide fluctuations. In addition, the trading volume of our Common Stock may fluctuate and cause significant price variations to occur. If the market price of our CDIs and Common Stock declines, you may be unable to resell your CDIs or Common Stock at a competitive price. We cannot assure you that the market price of our CDIs and Common Stock will not fluctuate or significantly decline in the future. In addition, although our Common Stock is listed on NASDAQ, we cannot assure you that a trading market for our Common Stock will be maintained.

Some specific factors that could negatively affect the price of our CDIs and Common Stock or result in fluctuations in their price and trading volume include:

- actual or expected fluctuations in our prospects or operating results;
- changes in the demand for, or market prices for, borates, lithium, or lithium-ion batteries, and other minerals;
- additions or departures of our key personnel;
- changes or proposed changes in laws, regulations or tax policy;
- sales or perceived potential sales of our Common Stock by us or our directors, senior management or shareholders in the future;
- announcements or expectations concerning additional financing efforts;
- conditions in the U.S. and global financial markets, or in our industry in particular, or changes in general economic conditions; and
- the other factors described in this “Risk Factors” section and elsewhere in this Annual Report.

In recent years, the stock markets generally have experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of those companies. Broad market and industry factors may significantly affect the market price of our Common Stock, regardless of our actual operating performance.

We incur significant costs as a result of being publicly traded in the United States and Australia.

As our Common Stock is publicly traded in both the United States and Australia, we incur significant legal, accounting, insurance and other expenses related to compliance with applicable regulations. Our management and other personnel devote a substantial amount of time to these compliance initiatives, and we may need to continue to add additional personnel and develop our internal compliance infrastructure. Moreover, these rules and regulations increase our legal and financial compliance costs and make some activities more time consuming and costly. Furthermore, if we are unable to satisfy our obligations as a public company in the United States, we could be subject to delisting of our Common Stock, fines, sanctions, and other regulatory action and potentially civil litigation.

Our Common Stock is publicly traded on the ASX in the form of CDIs. As a result, we must comply with the ASX Listing Rules. We have policies and procedures that we believe are designed to provide reasonable assurance of our compliance with the ASX Listing Rules. If, however, we do not follow those procedures and policies, or they are not sufficient to prevent non-compliance, we could be subject to liability, fines and lawsuits. These laws, regulations and standards are subject to varying interpretations and, as a result, their application in practice may evolve over time as new guidance is provided by regulatory and governing bodies. We intend to invest resources to comply with evolving laws, regulations and standards, and this investment may result in increased general and administrative expenses and a diversion of management's time and attention from revenue generating activities to compliance activities. If, notwithstanding our efforts to comply with new laws, regulations and standards, we fail to comply, regulatory authorities may initiate legal proceedings against us and our business may be harmed.

We incur increased costs as a result of operating as a U.S. listed public company, and our management is required to devote substantial time to new compliance initiatives and corporate governance practices.

As a U.S. listed public company we incur, and particularly after we are no longer an "emerging growth company" we expect to incur, significant additional legal, accounting, and other expenses. The Dodd-Frank Wall Street Reform and Consumer Protection Act, the Sarbanes-Oxley Act, the listing requirements of NASDAQ, and other applicable securities rules and regulations impose various requirements on public companies, including establishment and maintenance of effective disclosure and financial controls and corporate governance practices. We expect that we will need to hire additional accounting, finance, legal, and other personnel in connection with our becoming, and our efforts to comply with the requirements of being, a public company, and our management and other personnel will need to devote a substantial amount of time towards maintaining compliance with these requirements. These requirements increase our legal and financial compliance costs and make some activities more time-consuming and costly. In addition, we expect that the rules and regulations applicable to us as a public company may make it more difficult and more expensive for us to obtain directors' and officers' liability insurance, which could make it more difficult for us to attract and retain qualified members of our board of directors or executive officers.

We will be subject to Section 404 of the Sarbanes-Oxley Act and the related rules of the SEC, which generally require our management and independent registered public accounting firm to report on the effectiveness of our internal control over financial reporting. Beginning with the second annual report that we will be required to file with the SEC, Section 404 requires an annual management assessment of the effectiveness of our internal control over financial reporting. However, for so long as we remain an emerging growth company as defined in the JOBS Act, we intend to take advantage of certain exemptions from various reporting requirements that are applicable to public companies that are not emerging growth companies, including, but not

limited to, not being required to comply with the auditor attestation requirements of Section 404. Once we are no longer an emerging growth company or, if prior to such date, we opt to no longer take advantage of the applicable exemption, we will be required to include an opinion from our independent registered public accounting firm on the effectiveness of our internal control over financial reporting.

An active trading market for our CDIs and Common Stock may not be sustained and the trading price for our CDIs and Common Stock may fluctuate significantly.

Shares of our Common Stock are able to be traded by the public on NASDAQ. However, a liquid public market for our Common Stock may not develop or be sustained, which means you may experience a decrease in the value or trading price of the shares of our Common Stock and our CDIs (which is based upon the value of our Common Stock) that you received in connection with the Reorganization, regardless of our operating performance. If a liquid public market for our Common Stock does not develop or is not sustained, then the value of our CDIs, which is based upon the value of our Common Stock, is also likely to decrease in value. In the past, following periods of volatility in the market price of a company's securities, shareholders often instituted securities class action litigation against that company. If we were involved in a class action suit, it could divert the attention of directors or senior management and, if adversely determined, could have a material adverse effect on our results of operations and financial condition.

Because we do not anticipate paying dividends on our Common Stock in the foreseeable future, capital appreciation, if any, will be your sole source of gain on our Common Stock.

Our former parent company, ABR, did not declare any dividends during fiscal 2019, 2020 or 2021 and we do not anticipate that we will do so in the foreseeable future. We currently intend to retain future earnings, if any, to finance the development of our proposed business. Dividends, if any, on our outstanding CDIs and Common Stock will be declared by and subject to the discretion of our Board of Directors on the basis of our earnings, financial requirements and other relevant factors, and subject to Delaware and federal law. We cannot assure you that our CDIs or Common Stock will appreciate in value. You may not realize a return on your investment in our CDIs and Common Stock and you may even lose your entire investment in our CDIs and Common Stock.

If securities or industry analysts do not publish research or reports about our business, or if they issue an adverse or misleading opinion regarding our stock, the market price and trading volume of our CDIs and Common Stock could decline.

The trading market for our CDIs and Common Stock will be influenced by the research and reports that U.S. securities or industry analysts publish about us or our business. Securities and industry analysts may discontinue research on us, to the extent such coverage currently exists, or in other cases, may never publish research on us. If no or few U.S. securities or industry analysts commence coverage of us, the trading price for our CDIs and Common Stock would be negatively affected. In the event securities or industry analysts initiate coverage, if one or more of the analysts who cover us downgrade our CDIs and Common Stock or publish adverse or misleading research about our business, the market price of our CDIs and Common Stock would likely decline. If one or more of these analysts cease coverage of us or fail to publish reports on us regularly, we could lose visibility in the financial markets, demand for our CDIs and Common Stock could decrease, which might cause our price and trading volume to decline. In addition, research and reports that Australian securities or industry analysts may, initiate or may continue to, publish about us, our business or our Common Stock may impact the market price of our CDIs and Common Stock.

We are an "emerging growth company" and the reduced disclosure requirements applicable to emerging growth companies may make our CDIs and Common Stock less attractive to investors and, as a result, adversely affect the price of our CDIs and Common Stock and result in a less active trading market for our CDIs and Common Stock.

We are an "emerging growth company" as defined in the U.S. Jumpstart Our Business Startups Act of 2012 (the "JOBS Act") and we may take advantage of certain exemptions from various reporting requirements that are

applicable to other public companies that are not emerging growth companies. For example, we have elected to rely on an exemption from the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act") relating to internal control over financial reporting, and we will not provide such an attestation from our auditors.

We may avail ourselves of these disclosure exemptions until we are no longer an "emerging growth company." We cannot predict whether investors will find our CDIs and Common Stock less attractive because of our reliance on some or all of these exemptions. If investors find our CDIs and Common Stock less attractive, it may adversely affect the price of our CDIs and Common Stock and there may be a less active trading market for our CDIs and Common Stock.

We will cease to be an "emerging growth company" upon the earliest of:

- the last day of the fiscal year during which we have total annual gross revenues of US$1,235,000,000 (as such amount is indexed for inflation every five years by the SEC) or more;
- the last day of our fiscal year following the fifth anniversary of the completion of our first sale of common equity securities pursuant to an effective registration statement under the Securities Act;
- the date on which we have, during the previous three-year period, issued more than US$1,000,000,000 in non-convertible debt; or
- the date on which we are deemed to be a "large accelerated filer," as defined in Rule 12b-2 of the Exchange Act, which would occur if the market value of our Common Stock that are held by non-affiliates exceeds US$700,000,000 as of the last day of our most recently completed second fiscal quarter.

Further, Section 102(b)(1) of the JOBS Act exempts emerging growth companies from being required to comply with new or revised financial accounting standards until private companies (that is, those that have not had a Securities Act registration statement declared effective or do not have a class of securities registered under the Exchange Act) are required to comply with the new or revised financial accounting standards. The JOBS Act provides that a company can elect to opt out of the extended transition period and comply with the requirements that apply to non-emerging growth companies but any such election to opt out is irrevocable. We have elected not to opt out of such extended transition period which means that when a standard is issued or revised and it has different application dates for public or private companies, we, as an emerging growth company, can adopt the new or revised standard at the time private companies adopt the new or revised standard, until such time we are no longer considered to be an emerging growth company. This may make comparison of our financial statements with another public company which is neither an emerging growth company nor an emerging growth company which has opted out of using the extended transition period difficult or impossible because of the potential differences in accounting standards used.

If we experience any material weaknesses in the future or otherwise fail to develop or maintain an effective system of internal controls in the future, we may not be able to accurately report our financial condition or results of operations, which may adversely affect investor confidence in us and, as a result, the value of our Common Stock.

Effective internal control over financial reporting is necessary for us to provide reliable financial reports, prevent fraud and operate successfully as a public company. If we cannot provide reliable financial reports or prevent fraud, our reputation and operating results would be harmed. As a result of being a public company, we will be required, under Section 404 of the Sarbanes-Oxley Act, to furnish a report by management on, among other things, the effectiveness of our internal control over financial reporting beginning in the year following our first annual report required to be filed with the SEC. This assessment will need to include disclosure of any material weaknesses identified by our management in our internal control over financial reporting. If we identify one or more material weaknesses in our internal control over financial reporting during the evaluation and testing

process, we may be unable to conclude that our internal controls are effective. We have not been, and will not be, audited or subject to an assessment of internal control over financial reporting, as a combined entity following the Reorganization. There can be no assurance that no material weakness or significant deficiency will be identified once such an audit or assessment of internal control over financial reporting is completed.

Additionally, when we cease to be an "emerging growth company" under the federal securities laws, our independent registered public accounting firm may be required to express an opinion on the effectiveness of our internal controls. If we are unable to confirm that our internal control over financial reporting is effective, or if our independent registered public accounting firm is unable to express an unqualified opinion on the effectiveness of our internal controls, we could lose investor confidence in the accuracy and completeness of our financial reports, which could cause the price of our Common Stock to decline.

Our disclosure controls and procedures may not prevent or detect all errors or acts of fraud.

As a public company, we are subject to the periodic reporting requirements of the Exchange Act. We designed our disclosure controls and procedures to provide reasonable assurance that information we must disclose in reports we file or submit under the Exchange Act is accumulated and communicated to management, and recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC. We believe that any disclosure controls and procedures, no matter how well-conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people or by an unauthorized override of the controls. Accordingly, because of the inherent limitations in our control system, misstatements due to error or fraud may occur and not be detected.

Our Certificate of Incorporation and Bylaws contain anti-takeover provisions that could delay or discourage takeover attempts that shareholders may consider favorable and may prevent attempts by our shareholders to replace or remove our current management.

Our Certificate of Incorporation and Bylaws contain provisions that could delay or prevent a merger, acquisition, or other change in control of our company that shareholders may find favorable, including transactions in which shareholders might otherwise receive a premium for their shares. These provisions could also limit the price that investors might be willing to pay in the future for shares of our Common Stock, thereby depressing the market prices for our Common Stock. In addition, these provisions could also make it difficult for shareholders to elect directors who are not nominated by the current members of our Board of Directors or take other corporate actions, including effecting changes in our management. These provisions include, among other things, that:

- the ability of our Board of Directors to issue shares of Preferred Stock and to determine the price and other terms of those shares, including preferences and voting rights, without shareholder approval, which could be used to significantly dilute the ownership of a hostile acquirer;
- allowing only our Board of Directors to fill director vacancies, which prevents shareholders from being able to fill vacancies on our Board of Directors;
- a prohibition on shareholders action by written consent, which forces shareholder action to be taken at an annual or special meeting of our shareholders;
- a requirement that special meetings of our shareholders may be called only by (i) our Board of Directors or (ii) our secretary, following receipt of one or more written demands to call a special meeting from shareholders of record who own, in the aggregate, at least 25% of the voting power of our outstanding shares then entitled to vote on the matter or matters to be brought before the proposed special meeting that complies with the procedures for calling a special meeting set forth in our Bylaws, which may inhibit the ability of an acquirer to require the convening of a special meeting of our shareholders;

- a requirement for the affirmative vote of holders of at least 66 2/3% of the voting power of all of the then-outstanding shares of the voting stock, voting together as a single class, to amend the certain provisions of our Certificate of Incorporation or our Bylaws, which may inhibit the ability of an acquirer to effect such amendments to facilitate an unsolicited takeover attempt;
- the ability of our Board of Directors to amend our Bylaws, which may allow our Board of Directors to take additional actions to prevent an unsolicited takeover and inhibit the ability of an acquirer to amend the Bylaws to facilitate an unsolicited takeover attempt;
- advance notice procedures with which shareholders must comply to nominate candidates to our Board of Directors or to propose matters to be acted upon at a shareholders' meeting, which may discourage or deter a potential acquirer from conducting a solicitation of proxies to elect the acquirer's own slate of directors or otherwise attempting to obtain control of our company; and
- a prohibition of cumulative voting in the election of our Board of Directors, which would otherwise allow less than a majority of shareholders to elect director candidates.

We are also subject to Section 203 of the Delaware General Corporation Law (the "DGCL"), which prevents us from engaging in a business combination, such as a merger, with an interested shareholder (i.e., a person or group that acquires at least 15% of our voting stock) for a period of three years from the date such person became an interested shareholder, unless (with certain exceptions) the business combination or the transaction in which the person became an interested shareholder is approved in a prescribed manner.

Raising additional capital could adversely affect the voting power or value of our CDIs and Common Stock.

Until such time, if ever, as we can generate substantial revenue, we may finance our cash needs through a combination of equity offerings or the issuance of debt instruments or other securities convertible into Common Shares. We do not currently have any committed external source of funds. In addition, we may seek additional capital due to favorable market conditions or strategy considerations, even if we believe that we have sufficient funds for our current or future operating plans.

We cannot predict the size or price of future issuances of Common Shares or the size or terms of future issuances of debt instruments or other securities convertible into Common Shares, or the effect, if any, that future issuances and sales of our securities will have on the market price of the Common Shares. To the extent that we raise additional capital through the sale of equity or convertible debt securities, investors' ownership interests will be diluted, and the terms of these securities may include liquidation or other preferences that adversely affect your rights as a common shareholder including voting rights.

Our Certificate of Incorporation authorizes us to issue, without the approval of our shareholders, one or more classes or series of Preferred Stock having such designations, preferences, limitations and relative rights, including preferences over our CDIs and Common Stock respecting dividends and distributions, as our Board of Directors may determine. For example, we might grant holders of Preferred Stock the right to elect some number of our directors in all events or on the happening of specified events or the right to veto specified transactions. The terms of one or more classes or series of Preferred Stock could adversely impact the voting power or value of our CDIs and Common Stock. Similarly, the repurchase or redemption rights or liquidation preferences we might grant to holders of Preferred Stock could affect the residual value of our Common Stock.

Debt financing and preferred equity financing, if available, may involve agreements that include covenants limiting or restricting our ability to take specific actions, such as incurring additional debt, making capital expenditures, or declaring dividends.

NASDAQ may de-list our securities from its exchange, which could limit investors' ability to make transactions in our securities and subject us to additional trading restrictions.

We have listed our Common Stock on the NASDAQ. In the future, our securities may fail to meet the continued listing requirements to be listed on the NASDAQ. If the NASDAQ delists our Common Stock from trading on its exchange, we could face significant material adverse consequences, including:

- a limited availability of market quotations for our Common Stock;
- a determination that our Common Stock is a "penny stock" which will require brokers trading in our Common Stock to adhere to more stringent rules, which could result in a reduced level of trading activity in the secondary trading market for our Common Stock;
- more limited news and analyst coverage for us; and
- a decreased ability to issue additional securities or obtain additional financing in the future.

Sales by our existing shareholders can reduce the market price of our Common Stock and CDIs.

Sales of a substantial number of our Common Stock in the public market could occur at any time. Such sales, or any market perception that substantial holders of our Common Stock intend to sell our Common Stock, could reduce the market price of our Common Stock and CDIs. If this occurs, it could impair our ability to raise additional capital through the sale of securities.

We are a holding company and, as such, we depend on our subsidiaries to generate cash to fund our operations and expenses.

We are a holding company and essentially all of our assets are the capital stock of our subsidiaries. As a result, our investors are subject to the risks attributable to our subsidiaries. As a holding company, we conduct all of our business through our subsidiaries. Therefore, our ability to fund and conduct our business, service our debt and pay dividends, if any, in the future will principally depend on the ability of our subsidiaries to generate sufficient cash flow to make upstream cash distributions to us. Our subsidiaries are separate legal entities, and although they are wholly-owned and controlled by us, they have no obligation to make any funds available to us, whether in the form of loans, dividends or otherwise. The ability of these entities to pay dividends and other distributions will depend on their operating results and will be subject to applicable laws and regulations which require that solvency and capital standards be maintained by such companies and contractual restrictions contained in the instruments governing any debt obligations. In the event of a bankruptcy, liquidation or reorganization of any of our material subsidiaries, holders of indebtedness and trade creditors may be entitled to payment of their claims from the assets of those subsidiaries before us.

Our Bylaws designate the Court of Chancery of the State of Delaware as the sole and exclusive forum for certain types of actions and proceedings that may be initiated by our shareholders, which could limit our shareholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers, employees or agents.

Our Bylaws provide that, unless we consent in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have jurisdiction, the federal district court for the District of Delaware) will, to the fullest extent permitted by applicable law, be the sole and exclusive forum for (i) any derivative action or proceeding brought on our behalf, (ii) any action asserting a claim of breach of a fiduciary duty owed by any of our directors, officers, employees or agents to us or our shareholders, (iii) any action asserting a claim arising pursuant to any provision of the DGCL, our Certificate of Incorporation or Bylaws or (iv) any action asserting a claim against us that is governed by the internal affairs doctrine, in each such case subject to such Court of Chancery of the State of Delaware having personal jurisdiction over the indispensable parties named as defendants therein. Our Bylaws further provide that, unless

we consent in writing to the selection of an alternative forum, the federal district courts of the United States will, to the fullest extent permitted by law, be the sole and exclusive forum for the resolutions of any complaint asserting a cause of action arising under the Securities Act. We note that there is uncertainty as to whether a court would enforce the choice of forum provision with respect to claims under the Securities Act, and that investors cannot waive compliance with the Securities Act and the rules and regulations thereunder. Any person or entity purchasing or otherwise acquiring any interest in shares of our capital stock will be deemed to have notice of, and consented to, the provisions of our Bylaws described in the preceding sentence. This forum selection provision is not intended to apply to any actions brought under the Exchange Act. Section 27 of the Exchange Act creates exclusive federal jurisdiction over all suits brought to enforce any duty or liability created by the Exchange Act or the rules and regulations thereunder.

These choice-of-forum provisions may limit a shareholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers, employees or agents, which may discourage such lawsuits against us and such persons. Alternatively, if a court were to find these provisions of our Bylaws inapplicable to, or unenforceable in respect of, one or more of the specified types of actions or proceedings, we may incur additional costs associated with resolving such matters in other jurisdictions, which could adversely affect our business, financial condition or operating results.

Risks Related to the Convertible Notes

There are risks associated with our Convertible Notes issued subsequent to June 30, 2022 that could adversely affect our business and financial condition.

On August 11, 2022, we issued $60.0 million of convertible debt ("Convertible Notes") under a convertible note purchase agreement (the "Convertible Note Purchase Agreement"), which closed August 26, 2022. Pursuant to the Convertible Note Purchase Agreement, the Convertible Notes bear interest at a rate of 4.50% per annum, payable semi-annually, or 6.00% per annum if the Company elects to pay such interest through the delivery of additional Convertible Notes and are convertible into 3,409,091 shares of Common Stock at a conversion price of $17.60 per share of Common Stock in accordance with the terms of the Convertible Note Purchase Agreement. The Convertible Notes mature on August 15, 2027. The Company may, at its election, force conversion of the Convertible Notes (i) if the last reported sale price of the Common Stock exceeds 200% of the conversion price for at least 20 trading days during the period of the first 24 months after issuance; (ii) if the last reported sale price of the Common Stock exceeds 150% of the conversion price for the following 12 months; and (iii) if the last reported sale price of the Common Stock exceeds 130% of the conversion price thereafter. Following certain corporate events that may occur prior to the maturity date or if the Company forces a mandatory conversion, the Company will, in certain circumstances, increase the conversion rate for a holder who elects to convert its Convertible Notes in connection with such a corporate event or has its Convertible Notes mandatorily converted, as the case may be.

The Convertible Note Purchase Agreement provides for standard and customary events of default, such as our failing to make timely payments and failing to timely comply with the reporting requirements of the Exchange Act. The Convertible Notes also contains customary affirmative and negative covenants, including limitations on incurring additional indebtedness, and the creation of additional liens on our assets. In addition, if we experience a Change in Control, as defined in the Convertible Note Purchase Agreement, which includes the sale of all or substantially all of our assets, or our common stock ceasing to be listed on NASDAQ or any other eligible exchange, then the holder of the Convertible Notes can require us to repay the outstanding indebtedness in cash.

Our ability to remain in compliance with the covenants under the Convertible Notes depends on, among other things, our operating performance, competitive developments, financial market conditions, and stock exchange listing of our common stock, all of which are significantly affected by financial, business, economic, and other factors, many of which we are not able to control. Accordingly, our cash flow may not be sufficient to allow us to pay principal and interest on the Convertible Notes or meet our other obligations under the

Convertible Notes Purchase Agreement. Our level of indebtedness under the Convertible Notes Purchase Agreement could have other important consequences, including the following:

- We may need to use a substantial portion of our cash flow from operations to pay interest and principal on the Convertible Notes, which would reduce funds available to us for other purposes such as working capital, capital expenditures, potential acquisitions, and other general corporate purposes;
- We may be unable to refinance our indebtedness under the Convertible Notes Purchase Agreement or to obtain additional financing for working capital, capital expenditures, acquisitions, or general corporate purposes;
- We may be unable to comply with covenants in the Convertible Notes, which could result in an event of default that, if not cured or waived, may result in acceleration of the Convertible Notes and any additional convertible notes issued under the Convertible Notes Purchase Agreement. An event of default would have an adverse effect on our business and prospects and could force us into bankruptcy or liquidation;
- Our ability to pay interest and repay principal in shares of our common stock, if so elected by us, and conversion of the Convertible Notes and any additional convertible notes issued under the Convertible Notes Purchase Agreement could result in significant dilution of our common stock, which could result in significant dilution to our existing stockholders and cause the market price of our common stock to decline; and
- We may be more vulnerable to an economic downturn or recession and adverse developments in our business.

Servicing our debt requires a significant amount of cash, and we may not have sufficient cash flow from our business to pay our debt.

Our ability to make scheduled payments on the Convertible Notes, depends on our future performance, which is subject to economic, financial, competitive and other factors beyond our control. If the assumptions underlying our cash flow guidance are incorrect, for example, due to the unknown impacts of the COVID-19 pandemic, our business may not continue to generate cash flow from operations in the future sufficient to service our debt, including the Convertible Notes, and make necessary capital expenditures. If we are unable to generate such cash flow, we may be required to adopt one or more alternatives, such as selling assets, restructuring debt or issuing additional equity, equity-linked or debt instruments on terms that may be onerous or highly dilutive. Our ability to refinance our indebtedness will depend on the capital markets and our financial condition at such time. If we are unable to engage in any of these activities or engage in these activities on desirable terms, we may be unable to meet our debt obligations under the Convertible Notes, which would materially and adversely impact our business, financial condition and operating results.

Our obligations to the purchaser under the Convertible Notes, and any additional convertible notes, are secured by a security interest in substantially all of our assets, and if we default on those obligations, the purchaser could foreclose on our assets.

Our obligations under the Convertible Notes, and any additional convertible notes, and the related transaction documents, are secured by a security interest in substantially all of our assets. As a result, if we default on our obligations under the Convertible Notes, or any additional convertible notes, the collateral agent on behalf of the purchaser could foreclose on the security interests and liquidate some or all of our assets, which would harm our business, financial condition and results of operations and could require us to reduce or cease operations and investors may lose all or part of their investment.

Conversion of the notes will dilute the ownership interest of our existing stockholders or may otherwise depress the price of our common stock.

The conversion of some or all of the notes will dilute the ownership interests of existing stockholders. Any sales in the public market of our common stock issuable upon such conversion of the notes could adversely affect prevailing market prices of our common stock. In addition, the existence of the notes may encourage short selling by market participants because the conversion of the notes could be used to satisfy short positions, or anticipated conversion of the notes into shares of our common stock could depress the price of our common stock.

We may require additional financing to sustain or grow our operations and such additional capital may not be available to us, or only available to us on unfavorable terms.

To the extent that revenues generated by our ongoing operations are insufficient to fund future requirements, we may need to raise additional funds through debt or equity financings or curtail our growth. The Convertible Notes contain limitations on our ability to raise money through equity offerings and to incur additional indebtedness. We cannot be sure that we will be able to raise equity or debt financing on terms favorable to us and our stockholders in the amounts that we require, or at all. Our inability in the future to obtain additional equity or debt capital on acceptable terms, or at all, could adversely impact our ability to execute our business strategy, which could adversely affect our growth prospects and future stockholder returns.

Risks Relating to our Reorganization

We may be unable to achieve some or all of the benefits that we expect to achieve from the Reorganization, which could materially adversely affect our business, financial condition and results of operations.

We have historically operated as a subsidiary of ABR. We may not be able to achieve the full strategic and financial benefits expected to result from the Reorganization, or such benefits may be delayed or not occur at all. The ABR Board of Director's formed the view that the U.S. market would more fully appreciate and understand Fort Cady and that Fort Cady is aligned with broader investment themes that are well received in the U.S. market regarding onshoring strategic commodities and decarbonizing the economy. We may not achieve these and other anticipated benefits for a variety of reasons, including, among others, because we may experience unanticipated competitive developments, including changes in the conditions of industry and the markets in which we operate, including fluctuations in the prices of borates and other minerals that could negate some or all of the expected benefits from the Reorganization.

If we do not realize some or all of the benefits expected to result from the Reorganization, or if such benefits are delayed, our business, expected future financial and operating results and our prospects could be adversely affected.

Item 1B. ***Unresolved Staff Comments***

Not applicable.

Item 3. Legal Proceedings

As of the date of this filing, we are not a party to any material pending legal proceedings, nor are we aware of any material civil proceeding or government authority contemplating any legal proceeding, and to our knowledge, no such proceedings by or against us have been threatened. We anticipate that we and our subsidiaries may from time to time in the future become subject to claims and legal proceedings arising in the ordinary course of business. It is not feasible to predict the outcome of any such proceedings, and we cannot assure that their ultimate disposition will not have a materially adverse effect on our business, financial condition, cash flows or results of operations.

Item 4. Mine Safety Disclosures

Not applicable.

PART II

Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

Market for Common Stock

Our Common Stock is currently listed on NASDAQ under the symbol "FEAM." The following table sets forth, for each of the periods indicated, the high and low reported sales price of our common stock on the NASDAQ.

The closing price of our Common Stock on September 21, 2022 was $14.88 per share. As of that date, there were 31 holders of record of our Common Stock according to Computershare Trust Company, N.A.. The actual number of stockholders is greater than these numbers and includes holders who are beneficial owners, but whose shares are held in street name by brokers and other nominees. These numbers of active holders of record also do not include holders whose shares may be held in trust by other entities.

Dividend Policy

We have not paid any cash dividends on our Common Stock to date. The payment of cash dividends in the future will be dependent upon our revenues and earnings, if any, capital requirements and general financial condition. The payment of any cash dividends will be within the discretion of the Board of Directors.

Securities authorized for issuance under equity compensation plans.

See information incorporated by reference in Note 11, "Share-Based Compensation," to our consolidated financial statements in Item 8 of this report and Item 12 of this report regarding securities authorized for issuance under our equity compensation plans.

Sales of Unregistered Securities

Date	Title of Security	Number	Consideration Received	Exemption from Registration Claimed	Security Holder
3/15/2022	Common Stock	400,000	$ — [1]	Section 4(a)(2)	Blue Horizon Advisors LLC
3/28/2022	Common Stock	250,000	— [1]	Section 4(a)(2)	Blue Horizon Advisors LLC
4/12/2022	Common Stock	150,000	— [1]	Section 4(a)(2)	Blue Horizon Advisors LLC
5/16/2022	Common Stock	50,000[2]	109,500	Section 4(a)(2)	Aaron Dean Bertolatti <ATF Bertolatti Family Trust>
5/16/2022	Common Stock	100,000[2]	219,000	Section 4(a)(2)	JAWAF Enterprises Pty Ltd <Hall Family A/C>
5/23/2022	Common Stock	50,000[2]	109,500	Section 4(a)(2)	Scor Go Luath Limited
6/7/2022	Common Stock	50,000[2]	182,500	Section 4(a)(2)	Mrs. Eileen Ann Shipes <HR & EA Shipes Revocable A/C>
		1,050,000	$ 620,500		

[1] Shares issued for services
[2] Shares issued upon option exercises

The transactions listed above are exempt from registration pursuant to Section 4(a)(2) of the Securities Act.

Item 6. [Reserved]

Item 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") summarizes the significant factors affecting the operating results, financial condition and liquidity, and cash flows of our Company and its predecessor for the years ended June 30, 2022 and 2021. The discussion is based on the historical financial statements of ABR as of and for the periods ending June 30, 2022 and 2021 and all periods prior to the Reorganization and of the Company for periods after the Reorganization. The Company was incorporated under the laws of the state of Delaware to become the holding company of our business pursuant to the Reorganization. Prior to completion of the Reorganization, the Company had no business or operations and following completion of the Reorganization, the business and operations of the Company consists solely of the business and operations of the subsidiaries of ABR. Accordingly, financial information for the Company and a discussion and analysis of its results of operations and financial condition for the period of its operation prior to the Reorganization would not be meaningful and are not presented. Following the Reorganization, the historical financial statements of ABR as of and for the periods ending June 30, 2022 and 2021 are our financial statements as a continuation of the predecessor. Our financial statements will continue to consolidate ABR as an operating subsidiary. This MD&A should be read in conjunction with our consolidated financial statements, the accompanying notes to consolidated financial statements and other financial information included in this annual report. Except for historical information, the matters discussed in this MD&A contain various forward-looking statements that involve risks and uncertainties and are based upon judgments concerning various factors beyond our control. Our actual results could differ materially from those anticipated in these forward-looking statements as a result of many factors, including those discussed under "Risk Factors" and elsewhere in this annual report. All forward-looking statements speak only as of the date on which they are made. We undertake no obligation to update such statements to reflect events that occur or circumstances that exist after the date on which they are made.

Overview

5E Advanced Materials, Inc. is an exploration stage company focused on becoming a vertically integrated global leader and supplier of boron specialty and advanced materials, complemented by lithium production capabilities. Our business is based on our large domestic boron and lithium resource which is located in Southern California.

Results of Operations

	Year Ended June 30		Change	
	2022	2021	$	%
	($ in thousands)			
COSTS AND EXPENSES				
Project expenses	$ 12,853	$ 5,966	$ 6,887	115%
General and administrative	54,733	11,637	43,096	*
Research and development	133	—	133	N/A
Depreciation and amortization expense	112	31	81	261%
Total costs and expenses	67,831	17,634	50,197	285%
LOSS FROM OPERATIONS	(67,831)	(17,634)	(50,197)	285%
NON-OPERATING INCOME (EXPENSE)				
Other income	65	45	20	44%
Interest income	3	9	(6)	-67%
Interest expense	(6)	(5)	(1)	20%
Net foreign exchange gain (loss)	1,056	(1,668)	2,724	-163%
Total non-operating income (expense)	1,118	(1,619)	2,737	-169%
NET INCOME (LOSS)	$(66,713)	$(19,253)	$(47,460)	247%

* Represents a percentage change of greater than +/- 300%

Project Expenses

Project expenses include drilling, environmental, site-prep, engineering, consumables, testing and sampling, hydrology, permits, surveys, and other expenses associated with further progressing Fort Cady. The $6.9 million increase in project expenses during 2022 compared to 2021 was due to increased activity related to the preparation for construction of the SSBF, primarily expenses related to drilling water monitoring wells and engineering and technical reports that were not eligible for capitalization as construction in progress.

General and administrative expense

General and administrative expenses include professional fees, costs associated with marketing, press releases, on-going SEC and public company costs, public relations, rent, salaries, sponsorships, share based compensation and other expenses. The $43.1 million increase in 2022 was primarily driven by $37.7 million of share based compensation costs, $4.3 million in costs related to the reorganization and subsequent listing of our shares on the NASDAQ, and increased salaries related to hiring additional employees. Our head count increased to 23 at the end of the current period from 11 at the end of the previous year. Share based compensation was driven by $31 million in shares issued as payment for consulting fees under our Advisory Agreement with Blue Horizon Advisors, LLC (“BHA”) for services related to assessing Fort Cady, recruiting a U.S. based management team, and advising in connection with our listing on the NASDAQ.

Research and development

Research and development expense includes costs incurred under our research agreement with Georgetown University that aims to enhance the performance of permanent magnets through increased use of boron.

Depreciation and amortization expense

The $81,000 increase in depreciation and amortization expense was primarily due to additional assets placed in service, including the addition of three hybrid trucks to our fleet, and the placement in service of field buildings included in construction in progress at the end of last year. Depreciation and amortization also increased as we had a full year of depreciation related to assets that were placed in service in the prior year.

Non-operating (income) expense

The change from net non-operating expense to non-operating income during the year ended June 30, 2022 was primarily driven by net foreign exchange gains of $1.1 million resulting from the impact of the strengthening U.S. dollar (vis a vis the Australian dollar) as we had no foreign cash holdings during the year ended June 30, 2022. All cash balances have been transferred to our bank account in the U.S. and were held in U.S. dollars at June 30, 2022.

Income Tax

We did not have any income tax expense or benefit for the years ended June 30, 2022 and 2021, as we did not generate any net income for either period.

Liquidity and Capital Resources

Overview

As of June 30, 2022, we had cash and cash equivalents of $31.1 million and working capital of $25.2 million compared to $40.8 and $39.3 million as of June 30, 2021, respectively. Our predominant source of cash has been generated through equity financing from issuances of our common stock. Since inception, we have not generated revenues, and as such, have relied on equity financing to fund our operating and investing activities.

Outlook

The full scope of our current business plan for the next 12 months includes, among other things: achieving mechanical completion and commissioning of the SSBF, potential additional drilling of wells to support operation of the SSBF, operation of the SSBF for several months and hiring additional personnel to support our development of Fort Cady. While the total cost is subject to change, we currently estimate the total cost of the SSBF (including the drilling and installation costs for our injection recovery wells of $3.4 million) to be between $45 million and $55 million, of which $25.6 million had been spent (including costs for our injection recovery wells of $3.4 million) as of June 30, 2022, and the remainder is expected to be incurred prior to March 31, 2023.

On August 11, 2022, we entered into Convertible Notes of $60.0 million through a private placement, which closed on August 26, 2022. We believe our current cash balances, which include the proceeds from the Convertible Notes, are sufficient to fund our cash requirements for at least the next 12 months. We expect our expenditures to increase in connection with our ongoing development activities and pursuit of our business plan, as we continue construction and operation of the SSBF and progress engineering of our proposed large- scale complex.

Accordingly, we will need to obtain substantial additional funding in connection with the development of our operations. There are many factors that could significantly impact our ability to raise funds through equity and debt financing as well as influence the timing of future cash flows. These factors include, but are not limited to, our ability to access capital markets, stock price volatility, uncertain economic conditions, unforeseen delays in our project, and access to labor. See “Part I. Item 1A. Risk Factors” in this report. A summary of our cash flows for the years ended June 30 follows.

	For the Year Ended June 30,		
	2022	2021	$ Change
	($ in thousands)		
Net cash used by operating activities	$ (28,976)	$ (10,888)	$(18,088)
Net cash used by investing activities	(11,400)	(12,958)	1,558
Net cash provided by financing activities	30,622	37,770	(7,148)
Net increase (decrease) in cash and cash equivalents	$ (9,754)	$ 13,924	$(23,678)

Cash Flows from Operating Activities

Net cash used in operating activities for each of the above periods was primarily the result of expenses incurred in preparing us for operations. During the year ended June 30, 2022, we used $18.1 million more from operations than in the previous year. The increase in cash used in operations during the current period was due to increased salaries and benefits resulting from increased headcount combined with an increase in project expenses related to the preparation for construction of the SSBF.

Cash Flows from Investing Activities

Our cash flows from investing activities did not change significantly from the prior year as we continued to invest in the SSBF. Substantially all our investing activities relate to equipment purchases, engineering, and the construction of our SSBF. Net cash used in investing activities for the fiscal year ended June 30, 2021 also included the purchase of $776,650 in reclamation bonds required by the Environmental Protection Agency.

Cash Flows from Financing Activities

Net cash provided by financing activities for the year ended June 30, 2022 consisted primarily of $25.5 million of proceeds (net of share issuance costs) from the issuance of 1.76 million shares of Common Stock and $5.2 million of proceeds from the exercise of stock options.

Net cash provided by financing activities for the year ended June 30, 2021 primarily consisted of $30.1 million of proceeds from the issuance of Common Stock and $9.2 million of proceeds from the exercise of stock options, less $1.6 million from share offering costs.

Future Capital Requirements

At June 30, 2022, we had sufficient cash on hand, and together with the subsequent $60 million private placement of Convertible Notes on August 11, 2022, we believe we have sufficient capital to fund our fiscal year 2023 capital budget and operating expenses.

If we complete a bankable feasibility study for the Project and decide to further develop and commercialize the Project, this will require substantial additional funds, which would require future debt or equity financings.

Contractual Obligations

Purchase Obligations

As of June 30, 2022, we had purchase order commitments of $28.6 million in respect of construction works in progress, drilling, and technical reports.

Mineral Lease Payments

We have a mineral lease agreement with Elementis for the purposes of obtaining exclusive rights to exploration at Fort Cady. The mineral lease agreement requires us to make an annual minimum royalty payment of $75 thousand, escalated annually based on inflation, until the expiration date of the lease. The initial expiration date of the lease agreement was October 1, 2021. FCCC and Elementis executed a lease extension until March 31, 2023. Payments made during the years ended June 30, 2022 and 2021 were $187 and $108 thousand, respectively.

Critical Accounting Policies and Estimates

Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets

and liabilities at the date of the consolidated financial statements, and the reported amounts of expenses during the reporting periods. Actual results could differ materially from those estimates. Our significant estimates and assumptions may include the estimated useful lives and valuation of properties, plant and equipment, mineral rights and properties, deferred tax assets, reclamation liabilities and share-based compensation. See Note 1, “Description of Company and Summary of Significant Accounting Policies,” to our consolidated financial statements in Item 8 of this report for a full description of the critical accounting policies and estimates below, as well as other accounting policies and estimates we make. Below are the most significant policies we apply in preparing our financial statements. We also describe the most significant estimates and assumptions we make in applying these policies.

Reclamation Liabilities

Our mining and exploration activities are subject to various laws and regulations, including legal and contractual obligations to reclaim, remediate, or otherwise restore properties at the time the property is removed from service. We estimate these costs based upon internally generated information and information obtained from outside sources. These estimates are then inflated and discounted based on when the expenditures are expected to be incurred and recorded at fair value as an asset and corresponding liability on our consolidated balance sheet. Because these costs typically extend many years into the future, estimation is difficult and requires judgments that are subject to revisions based upon numerous factors, including inflation, changing technology and the political and regulatory environment in which we operate. Changes in cost estimates, discount rates, timing of abandonment activities or inflation, among others, could have a significant impact on our future results of operations or liquidity. We review our assumptions and estimates of future development and abandonment costs annually, or more frequently if circumstances change. See Note 5, “Asset Retirement Obligations and Accrued Reclamation Liabilities,” to our consolidated financial statements in Item 8 of this report.

Share-Based Compensation

We apply a fair value-based method of accounting for stock-based compensation, which requires recognition in the financial statements of the cost of services received in exchange for equity awards. Compensation expense is based on the fair value on the grant or modification date and is recognized in our financial statements over the vesting period with a corresponding increase in additional paid-in capital. We utilize the Black-Scholes option-pricing model to measure the fair value of stock options and a Monte Carlo lattice-based model for our market-based restricted stock units. See Note 11, “Share Based Compensation,” to our consolidated financial statements in Item 8 of this report for a full discussion of our stock-based compensation.

New Accounting Requirements

See Note 1, “Organization and Summary of Significant Accounting Policies,” to our consolidated financial statements in Item 8 of this report for a discussion of new accounting requirements.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk

Not required.

Item 8. Financial Statements

Report of Independent Registered Public Accounting Firm

Shareholders and Board of Directors
5E Advanced Materials, Inc.
Houston, Texas

Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheets of 5E Advanced Materials, Inc. (the "Company") as of June 30, 2022 and 2021, the related consolidated statements of operations and comprehensive income (loss), stockholders' equity, and cash flows for each of the years then ended, and the related notes (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at June 30, 2022 and 2021, and the results of its operations and its cash flows for each of the years then ended, in conformity with accounting principles generally accepted in the United States of America.

Basis for Opinion

These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's consolidated financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) ("PCAOB") and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ BDO USA, LLP

We have served as the Company's auditor since 2021.

Spokane, Washington

September 28, 2022

5E ADVANCED MATERIALS, INC.
CONSOLIDATED BALANCE SHEET
(In thousands, except share data)

	June 30, 2022	June 30, 2021
ASSETS		
Current assets:		
Cash and cash equivalents	$ 31,057	$ 40,811
Prepaid expenses and other current assets	1,506	159
Total current assets	32,563	40,970
Mineral rights and properties, net	8,364	8,081
Construction in progress	25,625	12,765
Properties, plant and equipment, net	2,871	1,495
Reclamation bond deposit	1,086	1,085
Right of use asset	371	213
Other assets	6	—
Total Assets	$ 70,886	$ 64,609
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable and accrued liabilities	$ 7,212	$ 1,594
Lease liability, current	164	91
Total current liabilities	7,376	1,685
Long-term debt	148	93
Lease liability	211	125
Accrued reclamation liabilities	489	377
Total liabilities	8,224	2,280
Commitments and contingencies (Note 13)		
Stockholders' Equity:		
Common stock 43,305,315 and 38,391,412 shares outstanding at June 30, respectively	433	384
Additional paid-in capital	169,593	101,179
Accumulated other comprehensive income (loss)	—	1,417
Retained earnings (accumulated deficit)	(107,364)	(40,651)
Total stockholders' equity	62,662	62,329
Total liabilities and stockholders' equity	$ 70,886	$ 64,609

The accompanying notes are an integral part of these consolidated financial statements

5E ADVANCED MATERIALS, INC.
CONSOLIDATED STATEMENT OF OPERATIONS AND COMPREHENSIVE INCOME (LOSS)
(In thousands, except per share amounts)

	For the Year Ended June 30,	
	2022	2021
Operating expenses:		
Project expenses	$ 12,853	$ 5,966
General and administrative	54,733	11,637
Research and development	133	—
Depreciation expense	112	31
Total operating expenses	67,831	17,634
Income (loss) from operations	(67,831)	(17,634)
Non-operating income (expense)		
Other income	65	45
Interest income	3	9
Interest expense	(6)	(5)
Net foreign exchange gain (loss)	1,056	(1,668)
Total non-operating income (expense)	1,118	(1,619)
Income (loss) before income taxes	(66,713)	(19,253)
Income tax provision (benefit)		
Current	—	—
Deferred	—	—
Total income tax provision (benefit)	—	—
Net income (loss)	$ (66,713)	$ (19,253)
Net income (loss) per common share—basic and diluted	$ (1.63)	$ (0.56)
Weighted average common shares outstanding—basic and diluted	40,807	34,175
Comprehensive income (loss):		
Net income (loss)	$ (66,713)	$ (19,253)
Reporting currency translation gain (loss)	(1,417)	1,916
Comprehensive income (loss)	$ (68,130)	$ (17,337)

The accompanying notes are an integral part of these consolidated financial statements

5E ADVANCED MATERIALS, INC.
CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY
(In thousands)

	Common Stock		Additional Paid-in Capital	Accumulated Comprehensive Income (loss)	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount				
Balance at June 30, 2020	30,456	$ 305	$ 57,078	$ (499)	$ (21,398)	$ 35,486
Shares issued for:						
Cash	5,128	51	30,059	—	—	30,110
Exercise of stock options	2,799	28	9,208	—	—	9,236
Consulting fees	8	—	32	—	—	32
Share issuance costs	—	—	(1,574)	—	—	(1,574)
Share based compensation	—	—	6,376	—	—	6,376
Net income (loss)	—	—	—	—	(19,253)	(19,253)
Other comprehensive income (loss), net of tax	—	—	—	1,916	—	1,916
Balance at June 30, 2021	38,391	384	101,179	1,417	(40,651)	62,329
Shares issued for:						
Cash	1,760	18	26,291	—	—	26,309
Exercise of stock options	1,904	19	5,203	—	—	5,222
Consulting fees	1,250	12	31,021	—	—	31,033
Share issuance costs	—	—	(797)	—	—	(797)
Share based compensation	—	—	6,696	—	—	6,696
Net income (loss)	—	—	—	—	(66,713)	(66,713)
Other comprehensive income (loss), net of tax	—	—	—	(1,417)	—	(1,417)
Balance at June 30, 2022	43,305	$ 433	$169,593	$ —	$ (107,364)	$ 62,662

The accompanying notes are an integral part of these consolidated financial statements

5E ADVANCED MATERIALS, INC.
CONSOLIDATED STATEMENT OF CASH FLOWS
(In thousands)

	For the Year Ended June 30, 2022	2021
Cash Flows From Operating Activities:		
Net loss	$ (66,713)	$ (19,253)
Adjustments to reconcile net loss to net cash used by operating activities:		
Depreciation and amortization	112	31
Interest earned on reclamation bond	(1)	(3)
Share based compensation	6,696	6,376
Common stock issued for consulting fees	31,033	32
Accretion of reclamation liability	9	—
Amortization of right of use asset	125	—
Net foreign exchange (gain) loss	(1,056)	1,669
Change in:		
Prepaid expenses and other current assets	(1,347)	16
Accounts payable and accrued liabilities	2,533	244
Other assets	(6)	—
Net cash used by operating activities	(28,615)	(10,888)
Cash Flows From Investing Activities:		
Construction in progress	(9,994)	(12,029)
Mineral rights and properties	(186)	(113)
Properties, plant and equipment	(1,220)	(39)
Reclamation bonds	—	(777)
Net cash used by investing activities	(11,400)	(12,958)
Cash Flows From Financing Activities:		
Payments on note payable	(112)	(2)
Proceeds from issuance of common stock	26,309	30,110
Proceeds from exercise of stock options	5,222	9,236
Share issuance costs	(797)	(1,574)
Net cash provided by financing activities	30,622	37,770
Net increase (decrease) in cash and cash equivalents	(9,393)	13,924
Effect of exchange rate fluctuation on cash	(361)	247
Cash and cash equivalents at beginning of period	40,811	26,640
Cash and cash equivalents at end of period	$ 31,057	$ 40,811
Supplemental Disclosure Of Cash Flow Information:		
Interest paid in cash	$ 6	$ 3
Noncash Investing And Financing Activities:		
Accounts payable change related to construction in progress	$ 2,922	$ (1,404)
Construction in progress transferred to properties, plant and equipment	55	798
Recognition of operating lease liability and right of use asset	283	237
Notes payable issued for properties, plant and equipment	206	—
Increase (decrease) in asset retirement costs	103	—

The accompanying notes are an integral part of these consolidated financial statements

5E ADVANCED MATERIALS, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. Description of Company and Summary of Significant Accounting Policies

Nature of Business

5E Advanced Materials, Inc. ("5E," "we," "our," or "us" or the "Company") is an exploration stage company focused on becoming a vertically integrated global leader in boron specialty advanced materials and lithium with a focus on enabling decarbonization.

Reorganization

5E Advanced Materials, Inc. acquired all of the issued and outstanding shares of American Pacific Borates Limited ("ABR"), our Australian predecessor and wholly owned subsidiary, pursuant to a Scheme of Arrangement ("Scheme") under Australian law, which was approved by ABR's shareholders on December 2, 2021, and the Supreme Court of Western Australia on February 24, 2022. As part of the Scheme, we changed our place of domicile from Australia to the State of Delaware in the United States, effective on March 8, 2022.

In accordance with the Scheme, all ordinary shares of ABR have been transferred to us and pursuant to the Scheme, we issued to the shareholders of ABR, either one share of our common stock for every ten ordinary shares of ABR or one CHESS Depository Interest ("CDIs") over our common stock for every one ordinary share of ABR, in each case, as held on the Scheme record date. We maintain an Australian Stock Exchange ("ASX") listing for our CDIs, with each CDI representing 1/10th of a share of common stock. Holders of CDIs are able to trade their CDIs on the ASX under the symbol "5EA" and holders of shares of our common stock are able to trade their shares on NASDAQ under the symbol "FEAM." All share and per share data presented in our consolidated financial statements have been retroactively adjusted to reflect a one for ten (1:10) exchange ratio ("Exchange Ratio") of all of our issued and outstanding common stock. As a result of the reorganization, we became the parent company of ABR, and for financial reporting purposes the historical financial statements of ABR have become our historical financial statements as a continuation of the predecessor.

Basis of Presentation

The accompanying consolidated financial statements have been prepared in conformity with accounting principles generally accepted in the United States of America ("GAAP"). The financial statements are presented in U.S. dollars.

Basis of Consolidation

The consolidated financial statements comprise the financial statements of 5E and its wholly owned subsidiaries, ABR, Fort Cady Holdings Pty Ltd, and Fort Cady (California) Corporation ("FCCC"). In preparing the consolidated financial statements, all intercompany balances and transactions, income and expenses and profit and losses resulting from intra-company transactions have been eliminated in full.

Concentration of Risk

We maintain cash deposits at several major banks, which at times may exceed amounts covered by insurance provided by the United States Federal Deposit Insurance Corporation ("FDIC"). We monitor the financial health of the banks and have not experienced any losses in such accounts and believe we are not exposed to any significant credit risk.

Risk and Uncertainties

We are subject to a number of risks similar to those of other companies of similar size in our industry, including but not limited to, the success of our exploration activities, need for significant additional capital (or financing) to

fund operating losses, competition from substitute products and services from larger companies, protection of proprietary technology, patent litigation, and dependence on key individuals.

Use of Estimates

The preparation of consolidated financial statements in conformity with GAAP requires management to make estimates, assumptions, and allocations that affect amounts reported in the consolidated financial statements and related notes. Items that are subject to such estimates and assumptions include, but are not limited to, estimated useful lives and valuation of properties, plant and equipment, mineral rights and properties, deferred tax assets, estimation of future costs, useful life, and discount rates used to calculate our reclamation liabilities, and fair value of stock-based compensation. Actual results could differ due to the uncertainty inherent in the nature of these estimates.

Significant Accounting Policies

Foreign Currency Translation

Functional and reporting currency—Items included in our consolidated financial statements and each of our subsidiaries are measured using the currency of the primary economic environment in which the entity operates ("the functional currency"). As of June 30, 2022, the U.S. dollar was the functional currency of ABR and Fort Cady Holding Pty Ltd. The change in functional currency during fiscal year 2022 was due to all cash and cash equivalents, operating and capital costs being denominated in the U.S. dollar. The change in functional currency will be applied prospectively with effect from June 30, 2022 in accordance with U.S. GAAP. To give effect to the change in functional currency, the assets and liabilities of entities with an Australian dollar functional currency on June 30, 2022 were converted into U.S. dollars at a fixed exchange rate of 1.454 U.S. dollars to one AUD dollar and the stockholders' equity and accumulated deficit were converted at applicable historical rates. Our functional currency and the functional currency of FCCC is the U.S. dollar. The reporting currency for these consolidated financial statements is U.S. dollars.

During the fourth quarter ended June 30, 2022, ABR transferred substantially all of its assets to us and has no ongoing operations. Accordingly, we recognized the remaining accumulated foreign currency translation adjustment of $248 thousand as a gain in our consolidated statement of operations and comprehensive income (loss).

Transactions in foreign currency—Transactions made in a currency other than the functional currency are remeasured to the functional currency at exchange rates at the dates of the transactions. Monetary assets and liabilities denominated in foreign currencies at the reporting date are remeasured to the functional currency at the exchange rate at that date and non-monetary assets and liabilities are remeasured at historical rates. Foreign currency transaction gains and losses are included in profit or loss.

Translation to reporting currency—The results and financial position of entities that have a functional currency different from the reporting currency are translated into the reporting currency as follows:

- Assets and liabilities for each statement of financial position presented are translated at the closing rate at the end of the reporting date;
- Income and expenses for each statement of operations are translated at average exchange rates, unless this average is not a reasonable approximation of the cumulative effect of the rates prevailing on the transaction dates, in which case income and expenses are translated at the rate on the dates of the transactions; and
- All resulting exchange differences are recognized in other comprehensive income or loss.

5E ADVANCED MATERIALS, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Cash and Cash Equivalents—Cash and cash equivalents consist of cash and liquid investments with an original maturity when acquired of three months or less. As of June 30, 2022 and 2021, cash and cash equivalents consisted of $31.1 million and $431 thousand, respectively, of funds held in bank accounts with financial institutions in the United States and $0.0 and $40.38 million, respectively, of funds held in bank accounts with financial institutions in Australia.

Mineral Rights and Properties and Exploration and Evaluation Costs—Mineral property acquisition costs, including indirectly related acquisition costs, are capitalized when incurred. Acquisition costs include cash consideration. Mineral lease payments are capitalized.

Exploration and evaluation costs are classified as project expenses and expensed as incurred. When it is determined that a mining deposit can be economically and legally extracted or produced, development costs related to such reserves and incurred after such determination will be considered for capitalization. The establishment of proven and probable reserves is based on results of feasibility studies. Upon commencement of commercial production, capitalized costs will be amortized over their estimated useful lives or units of production, whichever is a more reliable measure. Capitalized amounts relating to a property that is abandoned or otherwise considered uneconomic for the foreseeable future will be written off.

Drilling, development and related costs are either classified as project expenses and charged to operations as incurred, or capitalized, based on the following criteria:

- whether the drilling or development costs relate to a project that has been determined to be economically feasible, and a decision has been made to put the project into production; and
- whether, at the time the cost is incurred: (a) the expenditure embodies a probable future benefit that involves a capacity, singly or in combination with other assets, to contribute directly or indirectly to future net cash inflows, (b) we can obtain the benefit and control others' access to it, and (c) the transaction or event giving rise to our right to or control of the benefit has already occurred.

Impairment of Long-Lived Assets—The carrying amount of long-lived assets is reviewed for impairment when events and circumstances indicate that such assets might be impaired. An asset is considered impaired when estimated future undiscounted cash flows are less than the carrying amount of the asset. In the event the carrying amount of such asset is not considered recoverable, the asset is adjusted to its fair value. Fair value is generally determined based on discounted future cash flows.

Properties, Plant and Equipment—Properties, plant and equipment are recorded at historical cost. Depreciation and amortization are provided in amounts sufficient to match the cost of depreciable assets to operations over their estimated service lives or productive value. Expenditures for improvements that significantly extend the useful life of an asset are capitalized. Expenditures for maintenance and repairs are charged to operations when incurred.

Assets under construction ("Construction in progress") include roads, fencing, tailings facility, equipment for our small-scale boron facility, injection-recovery wells, and land improvements and will be depreciated in accordance with our depreciation policy once placed in service.

Reclamation Liabilities—Our mining and exploration activities are subject to various laws and regulations, including legal and contractual obligations to reclaim, remediate, or otherwise restore properties at the time the property is removed from service. Reclamation obligations are recognized when incurred and recorded as liabilities at estimated costs of future expenditures. Reclamation obligations are based on when spending for an existing disturbance will occur. The disturbance from construction, exploration, and development activities is

reclaimed on an ongoing basis. Reclamation associated with environmental monitoring programs will be classified as a long-term liability; however, because we have not declared proven and probable reserves, the timing of these reclamation activities is uncertain as the reclamation areas will only be utilized once the mineral property is operating. For activities that do not qualify for asset capitalization, the costs associated with the obligation are charged to operations. For other activities, the costs will be added to the capitalized costs of the property and amortized over the useful life of the mineral property. The reclamation obligation in connection with mineral properties and interests are reviewed on an annual basis unless otherwise deemed necessary. Environmental compliance costs related to maintaining our existing permits are expensed in the period incurred.

Reclamation obligations are secured by certificate of deposits held for the benefit of the state of California in amounts determined by applicable federal and state regulatory agencies. Reclamation bond deposits as of June 30, 2022 and 2021 were $1,086 thousand and $1,085 thousand, respectively.

Fair Value Measurements—The fair value of a financial instrument is the amount that could be received upon the sale of an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The fair value should be calculated based on assumptions that market participants would use in pricing the asset or liability, not on assumptions specific to the entity. In addition, the fair value of liabilities should include consideration of non-performance risk, including the party's own credit risk.

Fair value measurements do not include transaction costs. A fair value hierarchy is used to prioritize the quality and reliability of the information used to determine fair values. Categorization within the fair value hierarchy is based on the lowest level of input that is significant to the fair value measurement. The fair value hierarchy is defined into the following three categories:

Level 1: Quoted market prices in active markets for identical assets or liabilities.

Level 2: Observable market-based inputs or unobservable inputs that are corroborated by market data.

Level 3: Unobservable inputs that are not corroborated by market data.

We use a Black-Scholes option valuation model to determine the grant date fair value our employee stock options and a Monte Carlo Simulation model to determine the grant date fair value of market-based stock grants. Both models use Level 2 inputs. See note 11—Share Based Compensation for a description of the inputs used.

Leases—We determine if a contractual arrangement is, or contains, a lease at the inception date. Right-of-use ("ROU") assets and liabilities related to operating leases are separately reported in the consolidated balance sheet. We have made an accounting policy election to exclude short-term leases (leases with a term of 12 months or less and which do not include a purchase option that we are reasonably certain to exercise) from the balance sheet presentation.

Right-of-use ("ROU") assets represent our right to use an underlying asset for the lease term and lease liabilities represent our obligation to make lease payments arising from the lease. ROU assets and lease liabilities are recognized at the lease commencement date based on the present value of the future lease payments over the lease term. When the rate implicit to the lease cannot be readily determined, we utilize our incremental borrowing rate in determining the present value of the future lease payments. The incremental borrowing rate is derived from information available at the lease commencement date and represents the rate of interest that we would have to pay to borrow on a collateralized basis over a similar term an amount equal to the lease payments in a similar economic environment. The ROU asset includes any lease payments made and lease incentives received prior to the commencement date. Operating lease ROU assets could also include any cumulative prepaid or accrued rent when the lease payments are uneven throughout the lease term. The ROU assets and lease liabilities may include options to extend or terminate the lease when it is reasonably certain that we will exercise that option.

Lease liabilities are increased by interest and reduced by payments each period, and the ROU asset is amortized over the lease term. For operating leases, interest on the lease liability and the amortization of the ROU asset result in straight-line rent expense over the lease term. Variable lease expenses are recorded when incurred.

***Financial Instruments*—**Our financial instruments consist of cash and cash equivalents, vehicle notes, and accounts payable and accrued liabilities. It is management's opinion that we are not exposed to significant interest, currency or credit risks arising from its financial instruments. The fair values of these instruments approximate their carrying value unless otherwise noted.

***Share Based Compensation*—**The fair value of share based compensation awards is measured at the date of grant and amortized over the requisite service period, which is generally the vesting period, with a corresponding increase in additional paid-in capital. In the case of a share based compensation award that is either cancelled or forfeited prior to vesting, the amortized expense associated with the unvested awards is reversed. A forfeiture rate is not estimated when determining the fair value of the options on the grant date.

***Loss per Common Share*—**Basic net loss per common share is computed by dividing net loss, by the weighted average number of common shares outstanding. Diluted loss per share includes any additional dilution from common stock equivalents. Diluted loss per share is not separately presented for the years ended June 30, 2022 and 2021, as the effect on the basic loss per share would be anti-dilutive.

***Income Taxes*—**We use the liability method of accounting for income taxes. Under this method, deferred income taxes are recorded to reflect the tax consequences in future years of differences between the tax basis of assets and liabilities and their financial reporting amounts at each year-end.

In evaluating our ability to recover our deferred tax assets, management considers all available positive and negative evidence, including scheduled reversals of deferred tax liabilities, projected future taxable income, tax planning strategies and recent financial operations. In projecting future taxable income, we develop assumptions including the amount of future state and federal pretax operating income, the reversal of temporary differences, and the implementation of feasible and prudent tax planning strategies. These assumptions require significant judgment about the forecasts of future taxable income and the assumptions are consistent with the plans and estimates that we use to manage the underlying businesses. A valuation allowance is recorded against deferred tax assets if we believe it is more likely than not the related tax benefits will not be realized.

We evaluate uncertain tax positions in a two-step process, whereby (i) it is determined whether it is more likely than not that the tax positions will be sustained based on the technical merits of the position and (ii) for those tax positions that meet the more-likely-than-not recognition threshold, the largest amount of tax benefit that is greater than 50% likely of being realized upon ultimate settlement with the related tax authority would be recognized.

Reclassifications

Certain reclassifications have been made to prior years' reported amounts in order to conform to the current year presentation. These reclassifications did not impact our previously reported net income (loss), stockholders' equity or cash flows.

Recently Issued Accounting Pronouncements

In August 2020, FASB issued ASU No. 2020-06–Debt–Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging—Contracts in Entity's Own Equity (Subtopic 815-40): Accounting for

5E ADVANCED MATERIALS, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Convertible Instruments and Contracts in an Entity's Own Equity. The update addresses issues identified as a result of the complexity associated with applying GAAP for certain financial instruments with characteristics of liabilities and equity. The update is effective for fiscal years beginning after December 15, 2021, including interim periods within those fiscal years and with early adoption permitted. We do not expect ASU 2020-06 to have a material effect on our consolidated financial statements.

In May 2021, FASB issued ASU No. 2021-04—Earnings Per Share (Topic 260), Debt—Modifications and Extinguishments (Subtopic 470-50), Compensation—Stock Compensation (Topic 718), and Derivatives and Hedging—Contracts in Entity's Own Equity (Subtopic 815-40) Issuer's Accounting for Certain Modifications or Exchanges of Freestanding Equity-Classified Written Call Options. The update is to clarify and reduce diversity in accounting for modifications or exchanges of freestanding equity-classified written call options (for example, warrants) that remain equity classified after modification or exchange. The update is effective for fiscal years beginning after December 15, 2021, including interim periods within those fiscal years and with early adoption permitted. We are currently evaluating the impact of adopting this standard on our consolidated financial statements.

2. Mineral Rights and Properties, Net

We own surface properties and the associated mineral rights for the Fort Cady Project ("Fort Cady"). We have capitalized the cost of drilling hydrology wells, which provide water for the Project. For the years ended June 30, 2022 and 2021, we recognized hydrology income of $62 thousand and $45 thousand, respectively.

On October 1, 2011, FCCC executed a 10-year net royalty lease agreement with Elementis Specialties, Inc. ("Elementis") to explore, develop and mine boron and lithium on claims held by Elementis. During the year ended June 30, 2022, we extended the mineral lease agreement with Elementis until March 31, 2023. Amounts paid prior to production are considered mineral lease payments and capitalized. For the years ended June 30, 2022 and 2021, we paid Elementis mineral lease payments of $186 thousand and $108 thousand, respectively.

Mineral Interests and Properties consisted of the following at June 30.

	2022	2021
	(in thousands)	
Mineral properties—Fort Cady	$6,733	$6,733
Hydrology wells	547	547
Mineral interest—Elementis lease	908	722
Asset retirement cost, net of accumulated amortization of $6 and $0 at June 30, 2022 and 2021, respectively [1]	176	79
	$8,364	$8,081

[1] Asset retirement costs represent the carrying value of capitalized costs associated with asset retirement obligations discussed in Note 5.

3. Construction in Progress

Construction work in progress represents the equipment which has been acquired and is not in use and prepayments for design, engineering, and construction services in relation to the development of Fort Cady.

Construction in Progress consisted of the following at June 30.

	2022	2021
	(in thousands)	
Engineering services	$ 9,073	$ 3,825
Equipment	13,131	8,940
Injection and recovery wells	3,421	—
	$25,625	$12,765

4. Properties, Plant and Equipment

Properties, plant, and equipment consisted of the following at June 30:

Asset category	Depreciation method	Estimated useful life (in years)	2022	2021
			(in thousands)	
Land	N/A	—	$1,533	$ 658
Buildings	Straight-line	7-15	873	717
Vehicles	Straight-line	5	276	73
Plant and equipment	Straight-line	5-10	340	92
			3,022	1,540
Less accumulated depreciation			(151)	(45)
Properties, plant and equipment, net			$2,871	$1,495

We recognized depreciation expense of $106 thousand and $31 thousand for the years ended June 30, 2022 and 2021, respectively.

5. Asset Retirement Obligations and Accrued Reclamation Liabilities

On June 30, 2021, we established an asset retirement obligation (“ARO”) relating to water monitoring wells and injection recovery wells as required by our Underground Injection Permit. Total estimated reclamation and closure costs for wells completed was $777 thousand and $299 thousand as of June 30, 2022 and 2021, respectively. These estimated costs were inflated using rates of 1.13% - 2.02% and then discounted using credit adjusted, risk-free interest rates of 6.6 – 11.3% from the time we incurred the obligation to the time we expect to pay the retirement obligation.

In addition to our asset retirement obligations, we have accrued reclamation costs of $298 thousand as a liability at June 30, 2022 and 2021 related to prior land disturbance at Fort Cady.

The change in our ARO for the years ended June 30 and the balance of our accrued reclamation liabilities at the end of each period, is set forth below.

	2022	2021
	(in thousands)	
Asset retirement obligation—beginning of period	$ 79	$—
Obligation incurred during the period	106	79
Revisions to previous estimates	(3)	—
Accretion	9	—
Asset retirement obligation—end of period	191	79
Accrued reclamation costs	298	298
Total accrued reclamation liabilities	$489	$377

6. Leases

We lease offices in Hesperia, CA and Houston, TX under operating lease agreements, which expire in February 2024 and December 2024, respectively. In June 2022, we entered into a three-year operating lease for the field office we have been utilizing in Newberry Springs, CA. Previously, the field office was leased on a month-to-month basis and was classified as a short-term lease. Other operating leases include lodging for employees working in the field. Rent expense is included in general and administrative expense on the consolidated statement of operations.

A summary of our leases including short-term leases follows.

	Lease inception	Weighted average remaining lease term (in years)	Weighted average discount rate	Cash Paid for Rent		Rent Expense	
				Years ended			
Operating Leases				2022	2021	2022	2021
				(in thousands)			
Office space	2021 - 2022	2.4	1.6%	$ 92	$ 22	$ 93	$ 24
Other operating leases	2021	0.3	0.1%	32	2	32	2
Total operating leases				124	24	125	26
Short term leases	N/A	N/A	N/A	57	55	57	55
Total for all leases				$ 181	$ 79	$ 182	$ 81

Future minimum annual lease payments under our existing lease agreements are as follows.

	2022
	(in thousands)
Year ending June 30,	
2023	$ 164
2024	143
2025	72
Total	379
Less imputed interest	(4)
Net lease liability	375
Current portion	164
Long-term portion	$ 211

5E ADVANCED MATERIALS, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

7. Accounts Payable and Accrued Liabilities

Accounts payable and accrued liabilities consisted of the following as of June 30.

	2022	2021
	(in thousands)	
Accounts payable—trade	$3,459	$1,188
Accrued expenses	2,935	265
Accrued payroll	780	141
Current portion of debt	38	—
Accounts payable and accrued liabilities	$7,212	$1,594

8. Debt

At June 30, our debt consisted of the following.

	2022	2021
	(in thousands)	
Note payable for land	$—	$ 93
Vehicle notes payable	186	—
Total debt	186	93
Current portion of debt	38	—
Long-term debt	$148	$ 93

Payments on the vehicle notes are $38, $40, $42, $44 and $22 (all thousands) over the next five years and bear interest at 3.9%. During the years ended June 30, 2022 and 2021, we recognized interest expense of $6 thousand and $5 thousand, respectively.

9. Equity

We are authorized to issue up to 180,000,000 shares of common stock, par value $0.01 per share, and 20,000,000 shares of preferred stock, par value, $0.01 per share. We have no outstanding shares of preferred stock. During the years ended June 30, 2022 and 2021, we issued 4.9 million and 7.9 million shares of our common stock for cash proceeds of $31.5 million and $39.4 million, respectively. Share issue costs of $797 thousand and $1,574 thousand were incurred, respectively.

10. Net Loss Per Common Share

Basic loss per share is computed by dividing net loss available to common stockholders by the weighted average number of shares of common stock outstanding during the period. Diluted loss per share reflects the potential dilution that could occur if stock options, warrants, and convertible securities were exercised or converted into common stock. Diluted loss per share equals basic loss per share as the effect of including dilutive securities in the calculation would be antidilutive. For the years ended June 30, 2022 and 2021, respectively, stock options of 5,092 thousand and 5,554 thousand were excluded from the computation of diluted loss per share as our reported net losses for those periods would cause their exercise to have no effect on the calculation of loss per share.

5E ADVANCED MATERIALS, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

11. Share Based Compensation

For the years ended June 30, our share based compensation expense included in general and administrative expense consisted of the following.

	2022	2021
	(in thousands)	
Share based compensation expense—service based		
Employee share option plan	$ 5,812	$4,653
2022 Equity compensation plan—RSU's	646	—
Total service based compensation	6,458	4,653
Options issued to suppliers	238	1,723
Consulting stock awards	31,033	—
Total share based compensation	$37,729	$6,376

As of June 30, 2022, we had approximately $5.0 million of total unrecognized stock-based compensation expense related to unvested stock-based compensation awards that vest within three years.

Employee Share Option Plan

Our predecessor parent company ABR established an employee share option plan ("ESOP"). The objective of the ESOP was to assist in the recruitment, reward, retention and motivation of employees and contractors. Individuals may receive the options or nominate a relative or associate to receive the options. The plan was open to executive officers, employees, and eligible contractors. Additionally, the board authorized the awards of options outside of the plan to suppliers and vendors. Vesting periods of options granted varied as determined by the ABR board of directors. The total number of shares authorized for award of share options under the ESOP was limited to 5% of common stock over a 3-year period. During fiscal year 2022, as part of reorganization, we canceled each of the outstanding options to acquire ordinary shares of ABR and issued replacement options representing the right to acquire shares of our common stock at an exchange ratio of one replacement option for every ten ABR options held. It is our policy to issue new shares of common stock to satisfy stock option exercises.

The fair value of stock option awards granted to directors, officers, employees and/or consultants are estimated on the grant date using the Black-Scholes option valuation model and the closing price of our common shares on the grant date. The significant assumptions used to estimate the fair value of stock option awards granted during the years ended June 30, 2022 and 2021, respectively, using the Black-Scholes option valuation model are as follows:

	2022	2021
Exercise price	$14.62 - $18.27	$6.58 - $18.27
Share price	$9.87 - $12.35	$4.20 - $14.76
Volatility	69% - 85%	73% - 110%
Expected term in years	0.9 to 3.9	1 to 4
Risk free interest rate	0.10% - 1.5%	0.75%
Dividend rate	Nil	Nil

The following table summarizes stock option activity for each of the periods presented. The number of options has been adjusted for the Exchange Ratio and exercise prices have been converted to U.S. dollars using a rate of 1.368 U.S. dollars to one AUD dollar, the exchange rate that existed on the date prior to implementation of the Scheme:

	Year ended June 30			
	2022		2021	
	Number of Options	Weighted Average Exercise Price	Number of Options	Weighted Average Exercise Price
	(In thousands, except per share data)			
Outstanding at beginning of the period	5,554	$ 5.19	6,742	$ 3.36
Granted	1,700	15.39	1,700	9.21
Exercised	(1,904)	2.75	(2,799)	3.22
Expired/forfeited	(476)	5.48	(89)	7.09
Outstanding at end of the period	4,874	9.67	5,554	5.19
Vested at the end of the period	3,367	$ 7.30	5,284	$ 4.75

	Number of Options	Weighted Average Grant Date Fair Value per share	Number of Options	Weighted Average Grant Date Fair Value per share
Unvested options at beginning of the period	270	$ 5.79	335	$ 1.20
Granted	1,700	6.26	1,700	4.65
Vested	(463)	4.65	(1,676)	3.79
Expired/forfeited	—	—	(89)	4.35
Unvested options at end of the period	1,507	6.05	270	5.79

The following table provides information about stock options outstanding and exercisable at the end of each period presented.

	Number of Shares	Weighted Average Exercise Price per Share	Weighted Average Remaining Contractual Life	Aggregate Intrinsic Value
	(In thousands)		(In years)	(In thousands)
Outstanding and exercisable at:				
June 30, 2022	3,367	$ 7.30	1.1	$ 24,568
June 30, 2021	5,284	4.75	1.8	21,200

2022 Equity Compensation Plan

In March 2022, our Board of Directors adopted the 5E Advanced Materials, Inc. 2022 Equity Compensation Plan (the “Incentive Plan”). A total of 2.5 million shares of common stock are reserved for issuance under the Incentive Plan. The Incentive Plan authorized the grant of stock options, restricted share units, performance share units, director share units, performance cash units and other equity-based awards. Our Compensation Committee

determines the exercise price for stock options and other equity-based awards, which may not be less than the fair market value of our common stock on the date of grant. As of June 30, 2022, approximately 2.4 million shares of common stock were available for issuance under the Incentive Plan.

The following table summarizes the activity for our Incentive Plan.

	Serviced-based Shares	Weighted Average Grant Date Fair Value per Share	Performance-Based Shares	Weighted Average Grant Date Fair Value per Share	Total Shares
	(In thousands, except per share data)				
Non-vested shares/units outstanding at July 1, 2021	—	$ —	—	$ —	—
Granted	48.8 [1]	18.03	19.2 [2]	—	68.0
Forfeited	—	—	—	—	—
Vested	—	—	—	—	—
Non-vested shares/units outstanding at June 30, 2022	48.8		19.2		68.0

(1) Includes approximately 29.6 thousand restricted share units issued to our directors.

(2) On June 29, 2022, we granted approximately 19.2 thousand performance share units, which based on the achievement of certain revenue targets, could vest within a range of 0% to 150%.

Consulting Stock Awards

Pursuant to an agreement ABR had in place with its U.S.-based advisory board Blue Horizon Advisors LLC (“BHA”), we issued 400,000 shares of common stock to BHA in March 2022 upon the listing of our shares on the NASDAQ. The fair value of these shares of $13.2 million was recognized as share based compensation and included in general and administrative expenses in the consolidated statement of operations for the year ended June 30, 2022.

Additionally, during the year ended June 30, 2022, we issued a total 600,000 shares to Blue Horizon Advisors LLC, pursuant to the terms of the Advisory Agreement dated April 16, 2021 and as consideration for Advisory Board services provided. Share based compensation recognized related to these issuances was $10.0 million and is included in general and administrative expense in our consolidated statement of operations.

The agreement also includes a provision enabling BHA to earn an additional 1,000,000 shares of common stock upon meeting four different market-based milestones (250,000 shares per milestone). The market-based milestones are based on our common stock achieving a ten-day volume weighted average price of $21.94, $29.25, $36.57, and $43.88 before December 31, 2022. The first milestone was reached in March 2022. The fair value of these awards was determined using a Monte Carlo Simulation valuation model, which incorporates assumptions as to stock price volatility, the expected life of awards, a risk-free interest rate and dividend yield. We recognized related share based compensation expense of $7.8 million in general and administrative expense in our consolidated statement of operations as all services required for the awards have been fulfilled.

The assumptions used to estimate the fair value of the market-based stock grants under the Monte Carlo Simulation model for the period ended June 30, 2022 are as follows:

Hurdle stock price	$ 21.94	$ 29.25	$ 36.57	$ 43.88
Volatility	76.82%	76.82%	76.82%	76.82%
Expected term in years	1.12	1.12	1.12	1.12
Risk-free interest rate	0.22%	0.22%	0.22%	0.22%
Expected dividend yield	0%	0%	0%	0%
Estimated fair value per share	$ 10.68	$ 9.01	$ 6.63	$ 4.88

12. Defined Contribution Plan

We sponsor a defined contribution plan under Section 401(k) of the Internal Revenue Code. This plan covers all of our employees that have attained the age of 21 and have completed three months service with us. We match employee deferrals 100% up to 4% and 50% up to 6% of an employee's eligible earnings, subject to limitations imposed by the IRS. Our contributions to this plan were $128 thousand and $41 thousand for the years ended June 30, 2022 and 2021, respectively.

13. Commitments and Contingencies

Purchase Obligations

As of June 30, 2022, we had purchase order commitments of $28.6 million in respect of construction works in progress, drilling, and technical reports.

14. Income Taxes

We did not record a U.S. federal or state income tax benefit for losses incurred during the years ended June 30, 2022 and 2021. We have concluded that it is more likely than not that our deferred tax assets will not be realized which resulted in the recording of a full valuation allowance during those periods.

Domestic and foreign components of loss before income taxes for the years ended June 30 are as follows:

	2022	2021
	(in thousands)	
Australia	$ 15,479	$ 11,214
United States	51,234	8,039
Total net loss	$ 66,713	$ 19,253

5E ADVANCED MATERIALS, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

The following table presents a reconciliation of the United States statutory income tax rate to our effective income tax rate for the years ended June 30:

	2022	2021
	(in thousands)	
Loss before income taxes	$ 66,713	$19,253
Statutory income tax rate	21%	21%
Income tax benefit at statutory tax rates	14,010	4,043
State income tax benefit	2,801	561
Foreign rate differential	822	379
Share based compensation	(751)	(1,376)
Disallowed exploration costs	(861)	—
Other	97	(97)
Change in valuation allowance	(16,118)	(3,510)
Income tax benefit	$ —	$ —

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. The significant components of deferred taxes at June 30 are as follows:

	2022	2021
Deferred tax assets:	(in thousands)	
Net operating loss carryforward	$ 14,282	$ 4,352
Amortization of exploration expenditures	6,423	3,225
Unrealized loss - translation	308	447
Share based compensation	1,946	—
Other deferred tax assets	867	429
Total deferred tax assets	23,826	8,453
Less: valuation allowance	(23,671)	(7,941)
Deferred tax assets, net of valuation allowance to offset	155	512
Deferred tax liabilities:		
Unrealized gain - translation	—	(425)
Other	(102)	(60)
Depreciation	(53)	(27)
Net deferred tax assets	$ —	$ —

As of June 30, 2022, we had U.S. federal, state, and Australian net operating loss (“NOL”) carryforwards of $35.1 million, $29.2 million and $16.2 million, respectively. As of June 30, 2021, we had U.S. federal and state NOL carryforwards of $7.5 million and Australian NOL carryforwards of $7.5 million. U.S. net operating loss carryforwards for the periods arising before December 31, 2018 have a 20 year carryforward, the earliest of which could expire in 2037. The amount of the post-tax reform U.S. federal NOL generated after tax year 2017, of approximately $34.9 million, can be carried forward indefinitely. California net operating losses have a 20-year carryforward, the earliest of which could expire beginning in 2037. Australia can carryforward all its NOL indefinitely.

The utilization of our net operating loss or tax attributes may be subject to annual limitations provided by the Internal Revenue Code and similar state provisions to the extent certain ownership changes are deemed to occur. Such an annual limitation could result in the expiration of the attributes before utilization. The tax attributes reflected above have not been reduced by any limitations. To the extent it is determined upon completion of the

analysis that such limitations so apply, we will adjust the tax attributes accordingly. We face the risk that our ability to use our tax attributes will be substantially restricted if we undergo an “ownership change” as defined in Section 382 of the U.S. Internal Revenue Code, or Section 382.

We evaluate both the positive and negative evidence available to determine the realizability of our deferred tax assets. As of June 30, 2022 and 2021, there is a valuation allowance of $23.7 million and $7.9 million, respectively, of which both primarily relate to net operating losses and exploration costs.

Changes in the balance of our deferred tax asset valuation allowance during the years ended June 30 related primarily to increases in net operating loss carryforwards and exploration costs and were as follows:

	2022	2021
	(in thousands)	
Valuation allowance	$15,730	$2,883

We had no unrecognized tax benefits as of June 30, 2022 or 2021. We recognize interest accrued related to unrecognized tax benefits and penalties in our income tax provision, if applicable. We have not recognized any interest or penalties in the fiscal years presented in these financial statements. We are subject to income tax in the U.S. federal jurisdiction and Australia. Tax years 2018 and forward remain subject to examination but there are currently no ongoing exams in any taxing jurisdictions.

15. Subsequent Events

On July 1, 2022, Fort Cady (California) Corporation converted from a Maryland corporation to a Delaware LLC, and changed its name to 5E Boron Americas, LLC.

On August 2, 2022, Great Basin Resources, Inc. agreed to amend our Salt Wells Earn-in Agreement. To fully realize the mineral interest rights under the Salt Wells Earn-In Agreement, we must incur exploration expenses of $900,000 by December 31, 2023, $800,000 by December 31, 2024, and approximately $756,000 by December 31, 2025.

On August 11, 2022, we secured a $60 million private placement of Senior Secured Convertible Notes (“the Notes”), with Bluescape Energy Partners (“Bluescape”). The Notes, which are convertible into our common stock and mature August 2027, closed on August 26, 2022. At our election, the Notes will bear interest at an annual rate of 4.50% if paid in cash, or at an annual rate of 6.00% if paid through the issuance of additional Notes. The purchaser may convert its notes at any time before August 2027 at a conversion price of $17.60 (“Conversion Price”). We have the right, at any time on or before the twenty-four (24) month anniversary of the closing date of the Notes (“Closing Date”), to convert the Notes to our common stock in whole or in part if the closing price of our common stock is at least 200% of the Conversion Price of the Notes (“Threshold Price”) for each of the twenty (20) consecutive trading days prior to the time we deliver a conversion notice. The Threshold Price for our right to convert the Notes decreases to 150% after the twenty-four (24) month anniversary of the Closing Date and on or before the thirty-six (36) month anniversary of the Closing, and to 130% at any time after the thirty-six (36) month anniversary of the Closing Date.

Item 9. Changes in and Disagreements With Accountants on Accounting and Financial Disclosure

None.

Item 9A. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

This annual report does not include a report of management's assessment regarding internal control over financial reporting or an attestation report of the company's registered public accounting firm due to a transition period established by rules of the Securities and Exchange Commission for newly public companies.

As required by Rule 13a-15(b) under the Exchange Act, we have evaluated, under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rule 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the fiscal year covered by this Annual Report on Form 10-K. Based on such evaluation, our principal executive officer and principal financial officer have concluded that as of such date, our disclosure controls and procedures were effective. Our disclosure controls and procedures are designed to provide reasonable assurance that the information required to be disclosed by us in reports that we file under the Exchange Act is accumulated and communicated to management, including our principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required disclosure and is recorded, processed, summarized, and reported within the time periods specified in the rules and forms of the SEC.

During our fiscal year end June 30, 2022, management identified a material weakness in our internal control over financial reporting related to a lack of segregation of duties in the administrative rights of our accounting system. As part of our procedures to remediate, we have hired additional accounting personnel and begun implementation of a more robust accounting system.

Changes in Internal Control Over Financial Reporting

Other than as set forth above, there were no changes in the system of internal control over financial reporting (as defined in Rule 13a-15(f) and Rule 15d-15(f) under the Exchange Act) during the quarter ended June 30, 2022 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Item 9B. Other Information

None.

Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections

Not applicable.

PART III

Item 10. Directors, Executive Officers and Corporate Governance

The information required by this item is hereby incorporated by reference to the 2022 Proxy Statement.

Item 11. Executive Compensation

The information required by this item is hereby incorporated by reference to the 2022 Proxy Statement.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

The information required by this item is hereby incorporated by reference to the 2022 Proxy Statement.

Item 13. Certain Relationships and Related Transactions, and Director Independence

The information required by this item is hereby incorporated by reference to the 2022 Proxy Statement.

Item 14. Principal Accountant Fees and Services

The information required by this item is hereby incorporated by reference to the 2022 Proxy Statement.

PART IV

Item 15. Exhibit and Financial Statement Schedules

Financial Statements and report of Independent Registered Public Accounting Firm (PCAOB ID 243)

Reference is made to Part II Item 8 of this report

Financial Statement Schedules

Financial statement schedules listed under SEC rules but not included in this report are omitted because they are not applicable or the required information is provided in the notes to our consolidated financial statements.

Exhibits

The following documents are filed as exhibits hereto:

Exhibit Number	Exhibit Title
2.1#	Scheme Implementation Agreement dated as of October 11, 2021 between American Pacific Borates Limited and 5E Advanced Materials, Inc. (incorporated by reference to Exhibit 2.1 to the Company's Registration Statement on Form 10-12B filed with the SEC on March 7, 2022)
3.1	Certificate of Incorporation of 5E Advanced Materials, Inc. (incorporated by reference to Exhibit 3.1 to the Company's Registration Statement on Form 10-12B filed with the SEC on March 7, 2022)
3.2	Amended and Restated Bylaws of 5E Advanced Materials, Inc. (incorporated by reference to Exhibit 3.2 to the Company's Registration Statement on Form 10-12B filed with the SEC on March 7, 2022)
4.1**	Description of Registrant's Securities
10.1+	5E Advanced Materials, Inc. 2022 Equity Compensation Plan (incorporated by reference to Exhibit 10.1 to the Company's Registration Statement on Form 10-12B filed with the SEC on March 7, 2022)
10.2	Form of Indemnification Agreement for Directors and Officers (incorporated by reference to Exhibit 10.2 to the Company's Registration Statement on Form 10-12B filed with the SEC on March 7, 2022)

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Exhibit Number	Exhibit Title
10.3	Mineral Lease Agreement between Fort Cady (California) Corporation and Elementis Specialties, Inc. (incorporated by reference to Exhibit 10.3 to the Company's Registration Statement on Form 10-12B filed with the SEC on March 7, 2022)
10.4	First Amendment to Mineral Lease Agreement between Fort Cady (California) Corporation and Elementis Specialties, Inc. (incorporated by reference to Exhibit 10.4 to the Company's Registration Statement on Form 10-12B filed with the SEC on March 7, 2022)
10.5#+*	Offer Letter from Fort Cady (California) Corporation to Mr. Tausch
10.6#+*	Offer Letter from Fort Cady (California) Corporation to Mr. Weibel
10.7#+*	Offer Letter from Fort Cady (California) Corporation to Mr. Hall
10.8+*	Promotion Letter from Fort Cady (California) Corporation to Mr. Weibel
10.9*	Letter dated November 4, 2021 by 5E Advanced Materials, Inc. to ASX Limited regarding acknowledgement of CHESS Depositary Nominee (CDN) Function
10.10+*	Offer Letter from 5E Advanced Materials, Inc. to Ms. Mehta
10.11+*	Offer Letter from 5E Advanced Materials, Inc. to Mr. Hunt
10.12+*	Offer Letter from 5E Advanced Materials, Inc. to Mr. Lim
10.13+*	Offer Letter from 5E Advanced Materials, Inc. to Mr. Salisbury
10.14**	Convertible Note Purchase Agreement dated August 11, 2022
10.15	Registration Rights Agreement (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the SEC on August 31, 2022)
21.1	Subsidiaries of the Company (incorporated by reference to Exhibit 21.1 to the Company's Registration Statement on Form 10-12B filed with the SEC on March 7, 2022)
23.1**	Consent of BDO USA, LLP
31.1**	Certification of the Principal Executive Officer required by Rule 13a-14(a) or Rule 15d-14(a).
31.2**	Certification of the Principal Financial Officer required by Rule 13a-14(a) or Rule 15d-14(a).
32.1**	Certification of the Principal Executive Officer required by Rule 13a-14(b) or Rule 15d-14(b) and 18 U.S.C. 1350.
32.2**	Certification of the Principal Financial Officer required by Rule 13a-14(b) or Rule 15d-14(b) and 18 U.S.C. 1350.
96.1	Initial Assessment Report of Millcreek Mining Group dated as of February 7, 2022 (incorporated by reference to Exhibit 96.1 to the Company's Registration Statement on Form 10-12B filed with the SEC on March 7, 2022)
101.INS*	XBRL Instance Document – the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
101.SCH*	Inline XBRL Taxonomy Extension Schema Document.
101.CAL*	Inline XBRL Taxonomy Extension Calculation Linkbase Document.
101.DEF*	Inline XBRL Taxonomy Extension Definition Linkbase Document.
101.LAB*	Inline XBRL Taxonomy Extension Label Linkbase Document.
101.PRE*	Inline XBRL Taxonomy Extension Presentation Linkbase Document.
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101).

#	Schedules have been omitted pursuant to Items 601(a)(5) and 601(b)(2) of Regulation S-K. The Company hereby undertakes to furnish supplemental copies of any of the omitted schedules upon request by the U.S. Securities and Exchange Commission. The Company may request confidential treatment pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended, for any schedules so furnished.
+	Management contract or compensatory plan, contract or arrangement.
*	Previously filed.
**	Furnished herewith

Item 16. Form 10–K Summary.

None.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

5E ADVANCED MATERIALS, INC.

By: /s/ Paul Weibel
Paul Weibel
Chief Financial Officer (Principal Financial Officer)

Date: September 28, 2022

POWER OF ATTORNEY AND SIGNATURES

We, the undersigned officers and directors of 5E Advanced Materials, Inc. hereby severally constitute and appoint Paul Weibel, our true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution for her or him and in her or his name, place and stead, and in any and all capacities, to sign any and all amendments to this Annual Report on Form 10-K, and generally to do all things in our names and on our behalf in such capacities to enable 5E Advanced Materials, Inc. to comply with the provisions of the Securities Exchange Act of 1934, as amended, and all the requirements of the Securities Exchange Commission.

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Signature	Capacity	Date
/s/ Henri Tausch Henri Tausch	Chief Executive Officer and Director (Principal Executive Officer)	September 28, 2022
/s/ Paul Weibel Paul Weibel	Chief Financial Officer (Principal Financial Officer)	September 28, 2022
/s/ George W. Fairchild Jr. George W. Fairchild Jr.	Chief Accounting Officer - (Principal Accounting Officer)	September 28, 2022
/s/ David Salisbury David Salisbury	Chairman of the Board	September 28, 2022
/s/ Stephen Hunt Stephen Hunt	Director	September 28, 2022
/s/ Sen Ming Lim Sen Ming Lim	Director	September 28, 2022
/s/ Palvi Mehta Palvi Mehta	Director	September 28, 2022

Exhibit 4.1

DESCRIPTION OF SECURITIES

Description of Capital Stock

The following description of our capital stock is a summary. The complete text of our Certificate of Incorporation and Bylaws are each included as exhibits to this Annual Report on Form 10-K and are incorporated by reference herein. Our authorized share capital is 200,000,000 divided into 180,000,000 shares of Common Stock, par value of $0.01 per share, and 20,000,000 shares of preferred stock, par value of $0.01 per share ("Preferred Stock"). Immediately after the completion of the Reorganization, based on the number of ABR ordinary shares outstanding as of March 2, 2022, we expect that there will be approximately 41,869,315 shares of our Common Stock issued and outstanding held by approximately 4,053 record holders. As of immediately after the completion of the Reorganization, we expect that no shares of Preferred Stock will be issued and outstanding. The actual number of stockholders will be considerably greater than the number of stockholders of record and will include stockholders who are beneficial owners but whose CDIs or shares of Common Stock are held in street name by brokers and other nominees.

Common Stock

Except as otherwise required by law, as provided in our Certificate of Incorporation or as provided in the resolution or resolutions, if any, adopted by our Board of Directors with respect to any series of the Preferred Stock, the holders of our Common Stock will exclusively possess all voting power. Each holder of shares of Common Stock will be entitled to one vote for each share held by such holder. Subject to the rights of holders of any series of outstanding Preferred Stock, holders of shares of our Common Stock will have equal rights of participation in the dividends and other distributions in cash, stock or property of the Company when, as and if declared thereon by our Board of Directors from time to time out of assets or funds legally available therefor and will have equal rights to receive the assets and funds of the Company available for distribution to stockholders in the event of any liquidation, dissolution or winding up of the affairs of the Company, whether voluntary or involuntary.

CDIs

CDIs confer the beneficial ownership of our Common Stock on each CDI holder, with the legal title to such securities held by an Australian depositary entity, CHESS Depositary Nominees Pty Ltd. (the "Depositary Nominee"). The Depositary Nominee will be the registered holder of those shares of our Common Stock held for the benefit of holders of CDIs. The Depositary Nominee does not charge a fee for providing this service. Ten CDIs will represent an interest in one share of our Common Stock. Holders of CDIs will not hold the legal title to the underlying shares of our Common Stock to which the CDIs relate, as the legal title will be held by the Depositary Nominee. Each holder of CDIs will, however, have a beneficial interest in the underlying shares in our Common Stock. Each holder of CDIs that elects to vote at a stockholders meeting will be entitled to one vote for every 10 CDIs held by such holder. In order to vote at a stockholder meeting, a CDI holder may:

- instruct the Depositary Nominee, as legal owner of the shares of Common Stock, to vote the Common Stock represented by their CDIs to vote the shares of our Common Stock represented by their CDIs in a particular manner. A voting instruction form will be sent to holders of CDIs and must be completed and returned to the share registry for the CDIs prior to a record date fixed for the relevant meeting, or the Voting Instruction Receipt Time, which is notified to CDI holders in the voting instructions included in a notice of meeting;
- inform us that they wish to appoint themselves or a third party as the Depositary Nominee's proxy with respect to our shares of Common Stock underlying the holder's CDIs for the purposes of attending and voting at the meeting. The instruction form must be completed and returned to the share registry for the CDI prior to the CDI Voting Instruction Receipt Time; or
- convert their CDIs into shares of our Common Stock and vote those shares at the meeting. The conversion must be undertaken prior to a record date fixed by the Board of Directors for determining the entitlement of members to attend and vote at the meeting. If the holder later wishes to sell their investment on the ASX, it would first be necessary to convert those shares of Common Stock back to CDIs. Further details on the conversion process are set out below.

Voting instruction forms and details of these alternatives are included in each notice of meeting sent to CDI holders by the Company.

Conversion of CDIs to shares of Common Stock

CDI holders may at any time convert their CDIs to a holding of shares of Common Stock by instructing the share registry for the CDIs, either:

- Directly in the case of CDIs held on the issuer sponsored sub-register operated by the Company (holders of CDIs will be provided with a CDI issuance request form to return to the share registry for the CDIs); or
- Through their "sponsoring participant" (usually their broker) in the case of CDIs which are held on the CHESS sub-register (in this case, the sponsoring broker will arrange for completion of the relevant form and its return to the share registry for the CDIs).

In both cases, once the share registry for the CDIs has been notified, it will arrange the transfer of the relevant number of shares of Common Stock from the Depositary Nominee into the name of the CDI holder in book entry form or, if requested, deliver the relevant shares of Common Stock to their DTC participant in the United States Central Securities Depositary. The share registry for the CDIs will not charge a fee for the conversion (although a fee may be payable by market participants). Holding shares of Common Stock will, however, prevent a person from selling their shares of Common Stock on the ASX, as only CDIs can be traded on that market.

Conversion of shares of Common Stock to CDIs

Shares of Common Stock may be converted into CDIs and traded on the ASX. Holders of shares of Common Stock may at any time convert those shares to CDIs by contacting the Company's transfer agent. The underlying shares of Common Stock will be transferred to the Depositary Nominee, and CDIs (and a holding statement for the corresponding CDIs) will be issued to the relevant security holder. No trading in the CDIs may take place on the ASX until this conversion.

The Company's transfer agent will not charge a fee to a holder of shares of Common Stock seeking to convert their shares of Common Stock to CDIs, although a fee may be payable by market participants.

In either case, it is expected that each of the above processes will be completed within 24 hours, provided that the Company's transfer agent is in receipt of a duly completed and valid request form. No guarantee can, however, be given about the time required for this conversion to take place.

Dividends and Other Shareholder Entitlements

Holders of CDIs are entitled to receive all the direct economic benefits and other entitlements in relation to the underlying shares of Common Stock that are held by the Depositary Nominee, including dividends and other entitlements that attach to the underlying shares of Common Stock.

It is possible that marginal differences may exist between the resulting entitlement of a holder of CDIs and the entitlements that would have accrued if a holder of CDIs held their holding directly as shares of Common Stock. As the ratio of CDIs to Common Stock is not one-to-one, and any entitlement will be determined on the basis of shares of Common Stock rather than CDIs, a holder of CDIs may not always benefit to the same extent (e.g. from the rounding up of fractional entitlements). We will, however, be required by the ASX Settlement Rules to minimize any such differences where legally permissible. If a cash dividend or any other cash distribution is declared in a currency other than Australian dollars, we currently intend to convert that dividend or other cash distribution to which a holder of CDIs is entitled to Australian dollars and distribute it to the relevant holder of CDIs in accordance with their entitlement.

Due to the need to convert dividends from United States dollars to Australian dollars in the above mentioned circumstances, holders of CDIs may potentially be advantaged or disadvantaged by exchange rate fluctuations, depending on whether the Australian dollar weakens or strengthens against the United States dollar during the period between the resolution to pay a dividend and conversion into Australian dollars.

Takeovers

If a takeover bid is made in respect of any of our Common Stock of which the Depositary Nominee is the registered holder, the Depositary Nominee is prohibited from accepting the offer made under the takeover bid except to the extent that acceptance is authorized by the CDI holders in respect of the shares of Common Stock represented by their holding of CDIs.

The Depositary Nominee must accept a takeover offer in respect of shares of Common Stock represented by a holding of CDIs if the relevant holder of CDIs instructs it to do so and must notify the entity making the takeover bid of the acceptance.

Preferred Stock

Our Board of Directors is authorized to provide, out of the unissued shares of Preferred Stock, for one or more series of Preferred Stock and, with respect to each such series, to fix the number of shares constituting such series and the designation of such series, the voting powers, if any, of the shares of such series, and the preferences and relative, participating, optional or other special rights, if any, and any qualifications, limitations or restrictions thereof, of the shares of such series, as are stated in the resolution or resolutions providing for the issuance of such series adopted by the Board of Directors. The authority of the Board of Directors with respect to each series of Preferred Stock includes determination of the following:

- the designation of the series;
- the number of shares of the series;
- the dividend rate or rates on the shares of that series, whether dividends will be cumulative and, if so, from which date or dates, and the relative rights of priority, if any, of payment of dividends on shares of that series;
- whether the series will have voting rights in addition to the voting rights provided by law and, if so, the terms of such voting rights;
- whether the series will have conversion privileges and, if so, the terms and conditions of such conversion, including provision for adjustment of the conversion rate in such events as the Board of Directors determines;
- whether or not the shares of that series will be redeemable, in whole or in part, at the option of the Company or the holder thereof and, if made subject to such redemption, the terms and conditions of such redemption, including the date or dates upon or after which they will be redeemable, and the amount per share payable in case of redemptions, which amount may vary under different conditions and at different redemption rates;
- the terms and amount of any sinking fund provided for the purchase or redemption of the shares of such series;
- the rights of the shares of that series in the event of voluntary or involuntary liquidation, dissolution or winding up of the Company, and the relative rights of priority, if any, of payment of shares of that series;
- the restrictions, if any, on the issue or reissue of any additional Preferred Stock; and
- any other relative rights, preferences and limitations of that series.

Exhibit 10.14

Execution Version

NOTE PURCHASE AGREEMENT

BY AND AMONG

5E ADVANCED MATERIALS, INC.,

THE GUARANTORS,

THE PURCHASERS,

AND

ALTER DOMUS (US) LLC

as Collateral Agent

Dated as of August 11, 2022

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Exhibits

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THIS NOTE PURCHASE AGREEMENT (as the same may be amended, restated, modified, or supplemented from time to time, this "**Agreement**"), dated as of August 11, 2022 (the "**Effective Date**") is entered into by and among, BEP Special Situations IV LLC ("**Bluescape**") and any other persons otherwise a party hereto from time to time (each a "**Purchaser**"), 5E Advanced Materials, Inc., a Delaware corporation with offices located at 19500 State Highway 249, Suite 125, Houston, TX, 77070 ("**Issuer**"), the Guarantors from time to time party hereto and Alter Domus (US) LLC ("**Alter Domus**"), as collateral agent (in such capacity, together with its successors and assigns in such capacity, "**Collateral Agent**"), provides the terms on which the Purchasers shall purchase the Notes (each as defined below) as set forth herein. The parties agree as follows:

1. DEFINITIONS AND OTHER TERMS

1.1 Terms. Capitalized terms used herein shall have the meanings set forth in Section 1.5 to the extent defined therein. All other capitalized terms used but not defined herein shall have the meaning given to such terms in the Code. Any accounting term used but not defined herein shall be construed in accordance with GAAP and all calculations shall be made in accordance with GAAP. The term "financial statements" shall include the accompanying notes and schedules. Notwithstanding anything to the contrary contained herein, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, (a) the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded, and (b) all obligations of any Person that are or would have been treated as operating leases for purposes of GAAP prior to the effectiveness of FASB ASC 842 shall continue to be accounted for as operating leases (whether or not such operating lease obligations were in effect on such date) notwithstanding the fact that such obligations are required in accordance with FASB ASC 842 or otherwise (on a prospective or retroactive basis or otherwise) to be treated as capital lease obligations in the financial statements.

1.2 Section References. Any section, subsection, schedule or exhibit references are to this Agreement unless otherwise specified.

1.3 Divisions. For all purposes under the Note Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its equity interests at such time.

1.4 Australian Banking Code of Practice. Each party to this Agreement agrees that the Australian Banking Code of Practice does not apply to the Note Documents and the transactions under them.

1.5 Definitions. The following terms are defined in the Sections or subsections referenced opposite such terms:

"**Additional Shares**"	Section 2.9(a)
"**Agreement**"	Preamble
"**Claims**"	Section 12.2(a)
"**Closing**"	Section 2.2(a)(ii)
"**Closing Date**"	Section 2.2(a)(ii)
"**Collateral Agent**"	Preamble
"**Collateral Agent Expenses**"	Exhibit B, Section 6
"**Collateral Agent Fees**"	Section 2.4(b)
"**Collateral Agent License**"	Section 9.8
"**Common Stock Change Event**"	Section 2.11(a)(iv)
"**Communications**"	Section 10
"**Connection Income Taxes**"	Exhibit C, Section 1
"**Conversion Consideration**"	Section 2.8(c)
"**Cure Period**"	Section 8.13
"**Cure Right**"	Section 8.13
"**Declined Amount**"	Section 2.2(c)
"**Default Rate**"	Section 2.3(b)
"**Degressive Issuance**"	Section 2.8(d)(vi)
"**Effective Date**"	Preamble
"**Environmental Laws**"	Section 5.21(a)
"**Environmental Permits**"	Section 5.21(a)
"**Event of Default**"	Section 8
"**Excess Funding Guarantor**"	Section 12.15(f)
"**Excluded Taxes**"	Exhibit C, Section 1
"**Expiration Date**"	Section 2.8(d)(v)
"**Expiration Time**"	Section 2.8(d)(v)
"**FATCA**"	Exhibit C, Section 1
"**Financial Covenant**"	Section 8.13.
"**Foreign Purchaser**"	Exhibit C, Section 1
"**Guaranteed Obligations**"	Section 12.15
"**Indemnified Person**"	Section 12.2(a)
"**Indemnified Taxes**"	Exhibit C, Section 1
"**Intended Tax Treatment**"	Section 12.17

"**Issuer**"	Preamble
"**Mandatory Prepayment Date**"	Section 2.2(c)
"**New Subsidiary**"	Section 6.10
"**Note**" and "**Notes**"	Section 2.2
"**Other Connection Taxes**"	Exhibit C, Section 1
"**Other Taxes**"	Exhibit C, Section 1
"**Participant Register**"	Section 12.1
"**Perfection Certificate**" and "**Perfection Certificates**"	Section 5.1
"**PIK Interest**"	Section 2.3(d)
"**Pre-Approved Director**"	Section 6.15
"**Purchase Price**"	Section 2.2(a)(i)
"**Purchaser**" and "**Purchasers**"	Preamble
"**Purchaser's Note Record**"	Section 2.6
"**Purchaser Transfer**"	Section 12.1
"**Recipient**"	Exhibit C, Section 1
"**Reference Property**"	Section 2.11(a)(iv)
"**Reference Property Unit**"	Section 2.11(a)(iv)
"**Register**"	Section 12.1
"**Spin-Off**"	Section 2.8(d)(iii)(2)
"**Spin-Off Valuation Period**"	Section 2.8(d)(iii)(2)
"**Successful Capital Raise**"	Section 1.4
"**Successor Person**"	Section 2.11(a)(iv)(2)
"**Tender/Exchange Offer Valuation Period**"	Section 2.8(d)(v)
"**Termination Date**"	Exhibit B, Section 8
"**U.S. Person**"	Exhibit C, Section 1
"**U.S. Tax Compliance Certificate**"	Exhibit C, Section 7
"**Weighted Average Issuance Price**"	Section 2.8(d)(vi)
"**Withholding Agent**"	Exhibit C, Section 1

In addition to the terms defined elsewhere in this Agreement, the following terms have the following meanings:

"**Account**" is any "account" as defined in the Code with such additions to such term as may hereafter be made under the Code, and includes, without limitation, all accounts receivable and other sums owing to Issuer.

"**Account Debtor**" is any "account debtor" as defined in the Code with such additions to such term as may hereafter be made under the Code.

"**Acquired Debt**" means, with respect to any specified Person:

(1) Indebtedness of any other Person existing at the time such other Person is merged with or into or became a Subsidiary of such specified Person, whether or not such Indebtedness is incurred in connection with, or in contemplation of, such other Person merging with or into, or becoming, a Subsidiary of, such specified Person; and

(2) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.

"**Additional Assets**" means:

(1) any assets (other than cash, Cash Equivalents, securities and notes) to be owned by Issuer or any Subsidiary and used in a Permitted Business; or

(2) Capital Stock of a Person that becomes a Subsidiary as a result of the acquisition of such Capital Stock by Issuer or another Subsidiary from any Person other than Issuer or a Subsidiary; *provided, however*, that, in the case of this clause (2), such Subsidiary is primarily engaged in a Permitted Business.

"**Affiliate**" means any person or entity that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a person or entity, as such terms are used in and construed under Rule 144 under the Securities Act. With respect to a Purchaser, any investment fund or managed account that is managed on a discretionary basis by the same investment manager as such Purchaser will be deemed to be an Affiliate of such Purchaser. As used in this definition of "Affiliate," the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities or partnership or other ownership interest, by contract, or otherwise.

"**Affiliate Transaction**" means a transaction in which Issuer or any Subsidiaries acts to, directly or indirectly, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction or series of transactions, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of Issuer or any Subsidiaries, unless:

(1) the Affiliate Transaction is on terms that are no less favorable to Issuer or the relevant Subsidiary, taken as a whole, than those that would have been obtained in a comparable transaction by Issuer or such Subsidiary with a Person that is not an Affiliate of Issuer or such Subsidiary;

(2) Issuer delivers to the Purchasers, with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of $1,000,000, a resolution of the Board of Directors set forth in an Officer's Certificate certifying that such Affiliate Transaction complies with Section 7.9 and that such Affiliate Transaction has been approved by a majority of the disinterested members of the Board of Directors; and

(3) Issuer delivers to the Purchasers, with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of $5.0 million, a favorable written opinion from a nationally recognized investment banking, appraisal or accounting firm (A) as to the fairness of the transaction to Issuer and the Subsidiaries from a financial point of view; or (B) stating that the terms of such transaction are, taken as a whole, no less favorable to Issuer or the relevant Subsidiary than those that would have been obtained in a comparable arm's-length transaction by Issuer or such Subsidiary with a Person that is not an Affiliate of Issuer or any Subsidiary.

The definition of "Affiliate Transaction" above is subject to the exceptions in Section 7.9.

"**Anti-Corruption Laws**" are any laws, rules, or regulations relating to bribery or corruption, including without limitation the Foreign Corrupt Practices Act and UK Bribery Act.

"**Anti-Terrorism Laws**" are any laws, rules, regulations or orders relating to terrorism, sanctions or money laundering, including without limitation Executive Order No. 13224 (effective September 24, 2001), the USA PATRIOT Act, the laws comprising or implementing the Bank Secrecy Act, the laws, regulations, and orders administered by OFAC and the U.S. State Department, and similar applicable laws, regulations and directives imposed or enforced by the United Nations Security Council, European Union, United Kingdom and Australia.

"**Asset Sale**" means any Transfer, excluding:

(1) Transfers involving assets having a Fair Market Value in an aggregate amount not to exceed Five Hundred Thousand Dollars ($500,000);

(2) a transfer of assets (including, without limitation, Capital Stock) between or among Issuer and the Subsidiaries;

(3) an issuance of Capital Stock by a Subsidiary to Issuer or to another Subsidiary;

(4) any sale or other disposition of damaged, worn-out or obsolete assets or assets otherwise unsuitable or no longer required for use (including the abandonment or other disposition of property that is, in the reasonable judgment of Issuer, no longer profitable, economically practicable to maintain or useful in the conduct of the business of Issuer and the Subsidiaries, taken as whole), in each case, in the ordinary course of the business of Issuer and the Subsidiaries;

(5) a Restricted Payment that does not violate Section 7.7, or a Permitted Investment;

(6) the sale, lease, sublease, license, sublicense, consignment, conveyance or other disposition of products, services, Intellectual Property, inventory and other assets in the ordinary course of business, including leases with respect to facilities that are temporarily not in use or pending their disposition;

(7) a disposition of leasehold improvements or leased assets in connection with the termination of any operating lease;

(8) (x) dispositions of receivables in connection with the compromise, settlement or collection thereof in the ordinary course of business or in bankruptcy or similar proceedings and exclusive of factoring or similar arrangements; or (y) the sale, settlement, termination, unwinding or other disposition of Hedging Obligations or other financial instruments in the ordinary course of business;

(9) any foreclosure, condemnation, expropriation or any similar action with respect to the property or other assets of Issuer or any Subsidiary;

(10) the sublease or assignment to third parties of leased facilities in the ordinary course of business;

(11) the transfer, sale or other disposition resulting from any involuntary loss of title, casualty event, involuntary loss or damage to or destruction of, or any condemnation or other taking of, any property or assets of Issuer or any Subsidiary;

(12) the creation of or realization on a Lien to the extent that the granting of such Lien was not in violation of Section 7.5;

(13) any surrender or waiver of contract rights or settlement, release, recovery on or surrender of contract, tort or other claims;

(14) the sale or other disposition of cash or Cash Equivalents pursuant to transactions not prohibited by this Agreement; and

(15) sales, transfers and other dispositions of Investments in joint ventures made in the ordinary course of business or to the extent required by, or made pursuant to, customary buy/sell arrangements between the joint venture parties set forth in joint venture arrangements and similar binding arrangements.

"**ASX**" means ASX Limited (ACN 008 624 691) or the securities exchange operated by it (as the context requires).

"**Attributable Debt**" means in respect of a sale and leaseback transaction means, at the time of determination, the present value of the obligation of the lessee for net rental payments during the remaining term of the lease included in such sale and leaseback transaction, including any period for which such lease has been extended or may, at the option of the lessor, be extended. Such present value shall be calculated using a discount rate equal to the rate of interest implicit in such transaction, determined in accordance with GAAP; *provided*, *however*, that if such sale and leaseback transaction results in a Capital Lease Obligation, the amount of Attributable Debt represented thereby will be the amount of liability in respect thereof determined in accordance with the definition of "Capital Lease Obligation".

"**Australia**" means the Commonwealth of Australia (and "**Australian**" shall be construed accordingly).

"**Australian Corporations Act**" means the Australian Corporations Act 2001 (Cth).

"**Australian Obligors**" means each Subsidiary of the Issuer established or incorporated in Australia that is, or is required to become, a Guarantor hereunder.

"**Australian Security Documents**" means the General Security Deed and the Operating Company Pledge Agreement.

"**Authorized Denomination**" means, with respect to a Note, a principal amount thereof equal to $1,000 or any integral multiple of $1,000 in excess thereof (or, if any PIK Interest has been paid, $1.00 or any integral multiple of $1.00 in excess thereof).

"**Banking Code of Practice**" means the Banking Code of Practice published by the Australian Bankers' Association, as amended, revised or amended and restated from time to time.

"**Beneficial Owner**" has the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular "person" (as that term is used in Section 13(d)(3) of the Exchange Act), such "person" will be deemed to have beneficial ownership of all securities that such "person" has the right to acquire by conversion or exercise of other securities, whether such right is currently exercisable or is exercisable only upon the occurrence of a subsequent condition. The terms "Beneficially Owns" and "Beneficially Owned" have correlative meanings.

"**Blocked Person**" is any Person: (a) listed in the annex to, or is otherwise the subject of Executive Order No. 13224; (b) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224; (c) a Person with which any Purchaser is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law; (d) a Person that commits, threatens or conspires to commit or supports "terrorism" as defined in Executive Order No. 13224; or (e) a Person that is named on any OFAC List or other similar list.

"**Board of Directors**" means the Board of Directors (or the functional equivalent thereof) of Issuer or any duly authorized committee of such Board of Directors.

"**Business Day**" is any day that is not a Saturday, Sunday or a day on which commercial banks in New York, New York are required or authorized to be closed.

"**Capital Lease Obligation**" means, at the time any determination is to be made, the amount of the liability in respect of a capital lease that would at that time be required to be capitalized on a balance sheet prepared in accordance with GAAP, and the Stated Maturity thereof shall be the date of the last payment of rent or any other amount due under such lease on or prior to the first date upon which such lease may be prepaid by the lessee without payment of a penalty; *provided* that such determination shall be made without giving effect to Accounting Standards Codification 842, *Leases* (or any other Accounting Standards Codification having similar result or effect) (and related interpretations) to the extent any lease (or similar arrangement) would be required to be treated as a capital lease thereunder where such lease (or arrangement) would have been treated as an operating lease under GAAP as in effect immediately prior to the effectiveness of such Accounting Standards Codification.

"**Capital Stock**" means, for any entity, any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) stock issued by that entity, but shall not include any debt securities convertible into or exchangeable for any securities otherwise constituting Capital Stock pursuant to this definition. Unless the context otherwise requires, Capital Stock shall refer to Capital Stock of Issuer.

"**Cash Equivalents**" means:

(1) any evidence of Indebtedness issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof with a final maturity not exceeding five years from the date of acquisition;

(2) deposits, certificates of deposit or acceptances of any financial institution that is a member of the Federal Reserve System and whose unsecured long term debt is rated at least "A" by Standard & Poor's Ratings, a division of McGraw Hill Financial, Inc. ("**S&P**"), or at least "A2" by Moody's Investors Service, Inc. ("**Moody's**") or any respective successor agency;

(3) commercial paper with a maturity of 365 days or less issued by a corporation (other than an Affiliate of Issuer) organized and existing under the laws of the United States of America, any state thereof or the District of Columbia and rated at least "A-1" by S&P and at least "P-1" by Moody's or any respective successor agency;

(4) repurchase agreements and reverse repurchase agreements relating to marketable direct obligations issued or unconditionally guaranteed by the United States or issued by any agency thereof and backed by the full faith and credit of the United States maturing within 365 days from the date of acquisition;

(5) readily marketable direct obligations issued by any state of the United States or any political subdivision of any such state or any public instrumentality thereof maturing within 365 days from the date of acquisition and, at the time of acquisition, having one of the two highest ratings obtainable from either S&P or Moody's or any respective successor agency;

(6) demand deposits, savings deposits, time deposits and certificates of deposit of any commercial bank having, or which is the principal banking subsidiary of a bank holding company organized under the laws of the United States, any state thereof or the District of Columbia having, capital and surplus aggregating in excess of $500,000,000 and a rating of "A" (or such other similar equivalent rating) or higher by at least one "nationally recognized statistical rating organization" (as defined in Section 3(a)(62) of the Exchange Act) with maturities of not more than 365 days from the date of acquisition;

(7) money market funds which invest substantially all of their assets in securities described in the preceding clauses (1) through (6); and

(8) in the case of a Foreign Subsidiary, instruments equivalent to those referred to in clauses (1) through (7) above denominated in a foreign currency, which are (i) substantially equivalent in tenor, (ii) issued by, or entered into with, foreign persons with credit quality generally accepted by businesses in the jurisdictions in which such Foreign Subsidiary operates and (iii) customarily used by businesses for short-term cash management purposes in any jurisdiction outside of the United States to the extent reasonably required in connection with any business conducted by such Foreign Subsidiary.

"**Change in Control**" means the occurrence of any of the following: (a) the direct or indirect sale, lease, transfer, conveyance or other disposition, in one or a series of related transactions, of all or substantially all of the properties or assets of the Issuer and its Subsidiaries, taken as a whole, to any Person, (b) the Common Stock (or other common stock underlying the Notes) ceases to be listed or quoted on any of The NASDAQ Global Select Market, The NASDAQ Global Market or The New York Stock Exchange (or any of their respective successors), (c) any recapitalization or change of the Common Stock as a result of which the Common Stock would be converted into stock, other securities, other property or assets, any share exchange, or any consolidation or merger or other transaction of the Issuer pursuant to which the Common Stock will be converted into cash, securities or other property or assets (or any combination thereof), unless the Beneficial Owners of the Common Stock immediately prior to such transaction Beneficially Own more than 50% of all classes of voting stock of the continuing or surviving company, (d) the Issuer's stockholders approve any plan or proposal for the liquidation or dissolution of the Issuer, (e) the consummation of any transaction or series of transactions (including, without limitation, pursuant to a merger or consolidation), the result of which any "person" or "group" within the meaning of Section 13(d) of the Exchange Act becomes the Beneficial Owner, directly or indirectly, of more than 50% of the voting power of the Voting Stock of the Issuer, (f) any transaction (other than a transaction permitted pursuant to Section 7.3) as a result of which Issuer ceases to own, directly or indirectly, 100% of the Capital Stock of the Operating Company, or (g) any "change of control" (or any comparable term) in any document pertaining to any Junior Indebtedness, the aggregate principal amount of which is in excess of One Million Dollars ($1,000,000) and such "change of control" allows the holders of such Indebtedness to redeem such Indebtedness or otherwise requires Issuer to prepay such Indebtedness.

"**Close of Business**" means 5:00 p.m., New York City time.

"**Code**" is the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the State of New York; *provided*, that, to the extent that the Code is used to define any term herein or in any Note Document and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern; *provided further*, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to, Collateral Agent's Lien on any Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than the State of New York, the term "Code" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions.

"**Collateral**" is any and all properties, rights and assets of Issuer and each Guarantor described on Exhibit A, subject to a Lien under the Note Documents in favor of the Collateral Agent, on behalf of the Secured Parties, to secure the Obligations.

"**Collateral Account**" is any Deposit Account, Securities Account, or Commodity Account, or any other bank account maintained by Issuer or any Guarantor at any time.

"**Collateral Agent**" is Alter Domus, not in its individual capacity, but solely in its capacity as collateral agent, together with its successors and assigns in such capacity, on behalf of and for the ratable benefit of the Secured Parties.

"**Commodity Account**" is any "commodity account" as defined in the Code with such additions to such term as may hereafter be made under the Code.

"**Common Stock**" means the common stock, par value $0.01, of Issuer.

"**Compliance Certificate**" is that certain certificate in substantially the form attached hereto as Exhibit D.

"**Control Agreement**" is any control agreement entered into among the depository institution at which Issuer or any Guarantor maintains a Deposit Account or the securities intermediary or commodity intermediary at which Issuer or any Guarantor maintains a Securities Account or a Commodity Account, Issuer or such Guarantor, as applicable, and Collateral Agent pursuant to which Collateral Agent, for the ratable benefit of the Secured Parties, obtains "control" (within the meaning of the Code) over such Deposit Account, Securities Account, or Commodity Account.

"**Conversion Date**" means, with respect to a Note, the first Business Day on which the requirements set forth in Section 2.8(b) to convert such Note are satisfied, including, for the avoidance of doubt, any Issuer Conversion Date.

"**Conversion Price**" means, as of any time, an amount equal to (A) one thousand dollars ($1,000) *divided by* (B) the Conversion Rate in effect at such time.

"**Conversion Rate**" initially means 56.8182 shares of Common Stock per $1,000 principal amount of Notes; *provided*, *however*, that the Conversion Rate is subject to adjustment pursuant to Section 2.8; *provided*, *further*, that whenever this Agreement refers to the Conversion Rate as of a particular date without setting forth a particular time on such date, such reference will be deemed to be to the Conversion Rate as of the Close of Business on such date.

"**Conversion Share**" means any share of Common Stock issued or issuable upon conversion of any Note.

"**Copyrights**" are any and all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret.

"**Default**" means any event that is, or after notice or passage of time, or both, would be, an Event of Default.

"**Deposit Account**" is any "deposit account" as defined in the Code with such additions to such term as may hereafter be made under the Code.

"**Disqualified Stock**" means any Capital Stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case, at the option of

the holder of the Capital Stock), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder of the Capital Stock, in whole or in part, on or prior to the earlier of (x) the date that is 91 days after the Maturity Date and (y) the date that is 91 days after the date the Notes cease to remain outstanding; *provided* that only the portion of the Capital Stock which so matures or is mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to such date will be deemed to be Disqualified Stock; *provided*, *further*, that if such Capital Stock is issued to any employee or to any plan for the benefit of employees of Issuer or the Subsidiaries or by any such plan to such employees, such Capital Stock will not constitute Disqualified Stock solely because it may be required to be repurchased by Issuer in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's termination, death or disability. Notwithstanding anything to the contrary in the preceding sentence, any Capital Stock that would constitute Disqualified Stock solely because the holders of the Capital Stock have the right to require Issuer to repurchase or redeem such Capital Stock upon the occurrence of a change of control or similar provision will not constitute Disqualified Stock if the change of control or similar provisions applicable to such Capital Stock are not more favorable to the holders of such Capital Stock than the terms applicable to the Notes; *provided* that Issuer may not repurchase or redeem any such Capital Stock pursuant to such provisions unless such repurchase or redemption complies with Section 7.7. The amount of Disqualified Stock deemed to be outstanding at any time for purposes of this Agreement will be the maximum amount that Issuer or any and the Subsidiaries may become obligated to pay upon the maturity of, or pursuant to any mandatory repurchase or redemption provisions of, such Disqualified Stock exclusive of accrued dividends (other than the accretion, accumulation or payment-in-kind of dividends).

"**Dollars,**" "**dollars**" and "**$**" each mean lawful money of the United States.

"**DTC**" means the Depository Trust Company.

"**Effective Price**" has the following meaning with respect to the issuance or sale of any shares of Common Stock or any Equity-Linked Securities:

(a) in the case of the issuance or sale of shares of Common Stock, the value of the consideration received by the Issuer for such shares, expressed as an amount per share of Common Stock; and

(b) in the case of the issuance or sale of any Equity-Linked Securities, an amount equal to a fraction whose:

(i) numerator is equal to sum, without duplication, of (x) the value of the aggregate consideration received by the Issuer for the issuance or sale of such Equity-Linked Securities; and (y) the value of the minimum aggregate additional consideration, if any, payable to purchase or otherwise acquire shares of Common Stock pursuant to such Equity-Linked Securities; and

(ii) denominator is equal to the maximum number of shares of Common Stock underlying such Equity-Linked Securities;

provided, however, that:

(w) for purposes of this definition, (I) the value of consideration received by the Issuer shall be determined without deduction of any customary underwriting or similar commissions, reasonable compensation or reasonable concessions paid or allowed by the Issuer in connection with such issue or sale and without deduction of any reasonable and documented expenses payable by the Issuer, (II) to the extent any such consideration consists of property other than cash, the value of such property shall be its fair market value as determined in good faith by the Board of Directors, and (III) if shares of Common Stock or Equity-Linked Securities are issued or sold together with other Capital Stock or securities or other assets of the Issuer for a consideration that covers both, the Board of Directors shall determine in good faith the portion of the consideration so received to be allocable to such shares of Common Stock or Equity-Linked Securities.

(x) for purposes of clause (b) above, if such minimum aggregate consideration, or such maximum number of shares of Common Stock, is not determinable at the time such Equity-Linked Securities are issued or sold, then (I) the initial consideration payable under such Equity-Linked Securities, or the initial number of shares of Common Stock underlying such Equity-Linked Securities, as applicable, will be used; and (II) at each time thereafter when such amount of consideration or number of shares becomes determinable or is otherwise adjusted (other than pursuant to "anti-dilution" or similar provisions consistent with those set forth in Sections 2.8(d)(i) through (v) herein), there will be deemed to occur, for purposes of Section 2.8(d)(vi) and without affecting any prior adjustments theretofore made to the Conversion Rate, an issuance of additional Equity-Linked Securities;

(y) for purposes of clause (b) above, the surrender, extinguishment, maturity or other expiration of any such Equity-Linked Securities will be deemed not to constitute consideration payable to purchase or otherwise acquire shares of Common Stock pursuant to such Equity-Linked Securities; and

(z) the "value" of any such consideration will be the fair value thereof, as of the date such shares or Equity-Linked Securities, as applicable, are issued or sold, determined in good faith by the Board of Directors (or, in the case of cash denominated in U.S. dollars, the face amount thereof).

"**Eligible Investor**" means a person who is able to acquire and hold each Note (and any shares of Common Stock issuable upon conversion of the Notes) without disclosure under section 708 of the Australian Corporations Act.

"**Equipment**" is all "equipment" as defined in the Code with such additions to such term as may hereafter be made under the Code, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

"**Equity-Linked Securities**" means any rights, options or warrants to purchase or otherwise acquire (whether immediately, during specified times, upon the satisfaction of any conditions or otherwise) any shares of Common Stock.

"**ERISA**" is the Employee Retirement Income Security Act of 1974, as amended, and its regulations.

"**Ex-Dividend Date**" means, with respect to an issuance, dividend or distribution on the Common Stock, the first date on which shares of Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive such issuance, dividend or distribution (including pursuant to due bills or similar arrangements required by the relevant stock exchange). For the avoidance of doubt, any alternative trading convention on the applicable exchange or market in respect of the Common Stock under a separate ticker symbol or CUSIP number will not be considered "regular way" for this purpose.

"**Exchange Act**" means the United States Securities and Exchange Act of 1934, as amended, and the rules and regulation promulgated thereunder.

"**Excluded Accounts**" shall mean (a) any Collateral Account of Issuer or any Guarantor that is used by such Person solely as a payroll account for the employees of Issuer or its Subsidiaries, provided that the aggregate balance maintained therein shall not exceed the aggregate amount of such payments to be paid in the then next two (2) payroll periods or the funds in which consist solely of funds held by Issuer or any Subsidiary in trust for any director, officer or employee of Issuer or any Subsidiary or any employee benefit plan maintained by Issuer or any Subsidiary in the ordinary course of business or funds representing deferred compensation for the directors and employees of Issuer or any Subsidiary, (b) escrow accounts, Collateral Accounts and trust accounts, in each case either securing Permitted Liens or otherwise entered into in the ordinary course of business and consistent with prudent business practice conduct where Issuer or the applicable Guarantor holds the funds exclusively for the benefit of an unaffiliated third party, provided that the amounts in such accounts (in the aggregate) do not exceed One Million Dollars ($1,000,000) at any time, (c) accounts that are swept to a zero balance on a daily basis to a Collateral Account that is subject to a Control Agreement, and (d) Collateral Accounts and securities accounts held in jurisdictions outside the United States.

"**Excluded Subsidiary**" shall mean (a) any subsidiary that is prohibited by any applicable law or, on the date such subsidiary is acquired (provided, that such prohibition is not be created in contemplation of such acquisition), its organizational documents, in each case, from guaranteeing the Obligations; (b) any subsidiary that is prohibited by any contractual obligation that existed on the date any such subsidiary is acquired (provided, that such prohibition is not created in contemplation of such acquisition) from guaranteeing the Obligations; (c) any subsidiary to the extent that the provision of any subsidiary guarantee of the Obligations would require the consent, approval, license or authorization of any governmental authority which has not been obtained, any subsidiary that is subject to such restrictions (provided that after such time that such restrictions on subsidiary guarantees are waived, lapse, terminate or are no longer effective, such subsidiary shall no longer be an Excluded Subsidiary by virtue of this clause (c)); (d) any Subsidiary organized under the laws of the United States, any state of the United States or the District of Columbia that (i) has no material assets other than capital stock of one or more subsidiaries that are "controlled foreign corporations" within the meaning of Section 957(a) of the Internal Revenue Code or (ii) is a subsidiary of a subsidiary that is a "controlled foreign corporation" within the meaning of Section 957(a) of the Internal Revenue Code (provided any subsidiary described in the foregoing clauses (d)(i) or (d)(ii) shall be an Excluded Subsidiary only with respect to the subsidiary guarantee of an obligation of a United States person); (e) any Subsidiary that is not incorporated or organized under the laws of the United States, any state of the United States, the District of Columbia or Australia; and (f) any subsidiary for which the provision of a subsidiary guarantee would result in a material adverse tax or regulatory consequence to Issuer or any Subsidiary as reasonably determined by Issuer in consultation with the Collateral Agent.

"**Exempt Issuance**" means (A) the Issuer's issuance or grant of shares of Common Stock or options to purchase shares of Common Stock to employees, directors or consultants of the Issuer or any of its Subsidiaries, pursuant to plans that have been approved by a majority of the independent members of the Board of Directors or that exist as of the Effective Date; (B) the Issuer's issuance of securities upon the exercise, exchange or conversion of any securities that are exercisable or exchangeable for, or convertible into, shares of Common Stock and are outstanding as of the Effective Date; *provided* that such exercise, exchange or conversion is effected pursuant to the terms of such securities as in effect on the Effective Date; (C) the Issuer's issuance of the Notes and any shares of Common Stock upon conversion of the Notes; (D) the Issuer's issuance of shares of Common Stock or any options or convertible securities issued in connection with a merger or other business combination or an acquisition of the securities or assets of another Person, business unit, division or business, other than in connection with the broadly marketed offering and sale of equity or convertible securities for third-party financing of such transaction; and (E) the Issuer's issuance of shares of Common Stock in an offering for cash for the account of the Issuer that is underwritten on a firm commitment basis and is registered with the SEC under the Securities Act. For purposes of this definition, "consultant" means a consultant that may participate in an "employee benefit plan" in accordance with the definition of such term in Rule 405 under the Securities Act.

"**Exigent Circumstance**" means any event or circumstance that, in the reasonable judgment of Collateral Agent, imminently threatens the ability of Collateral Agent to realize upon all or any material portion of the Collateral, such as, without limitation, fraudulent removal, concealment, or abscondment thereof, destruction or material waste thereof, or failure of Issuer or any of its Subsidiaries after reasonable demand to maintain or reinstate adequate casualty insurance coverage, or which, in the judgment of Collateral Agent, could reasonably be expected to result in a material diminution in value of the Collateral.

"**Existing Indebtedness**" means all Indebtedness of Issuer and its Subsidiaries in existence on the Effective Date in an amount greater than Five Hundred Thousand Dollars ($500,000) as set forth on Schedule 7.4 hereto.

"**Fair Market Value**" means the value that would be paid by a willing buyer to an unaffiliated willing seller in a transaction not involving distress or necessity of either party, determined in good faith by the Board of Directors.

"**FCH**" means Fort Cady Holdings Pty Ltd (ABN 56 617 760 746), a company incorporated under the laws of Australia with its registered office at 63 Summerhill Drive, Stake Hill, Western Australia 6181, Australia.

"**Fee Letter**" means that certain Fee Letter, dated as of the Closing Date, among the Issuer and Collateral Agent, as amended, amended and restated, supplemented or otherwise modified from time to time.

"**Foreign Subsidiary**" is a Subsidiary that is not an entity organized under the laws of the United States or any territory thereof.

"**Fort Cady Borate Project**" means the Operating Company's mining project in San Bernardino County, California, as described in filings with the SEC prior to the Effective Date.

"**GAAP**" is (a) in respect of the Australian Obligors only, the Australian Accounting Standards and Interpretations issued by the Australian Accounting Standards Board and the Australian Corporations Act, as appropriate for for-profit oriented entities, as in effect from time to time; and (b), in all other cases, generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other Person as may be approved by a significant segment of the accounting profession in the United States, which are applicable to the circumstances as of the date of determination.

"**General Intangibles**" are all "general intangibles" as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made under the Code, and includes without limitation, all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work, whether published or unpublished, any patents, trademarks, service marks and, to the extent permitted under applicable law, any applications therefor, whether registered or not, any trade secret rights, including any rights to unpatented inventions, payment intangibles, royalties, contract rights, goodwill, franchise agreements, purchase orders, customer lists, route lists, telephone numbers, domain names, claims, income and other tax refunds, security and other deposits, options to purchase or sell real or personal property, rights in all litigation presently or hereafter pending (whether in contract, tort or otherwise), insurance policies (including without limitation key man, property damage, and business interruption insurance), payments of insurance and rights to payment of any kind.

"**General Security Deed**" means the General Security Deed governed by Australian law and dated on or about the Closing Date, between the Australian Obligors and Collateral Agent, on behalf of the Secured Parties, as amended, amended and restated, supplemented or otherwise modified from time to time.

"**Governmental Approval**" is any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority.

"**Governmental Authority**" is any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank), any securities exchange and any self-regulatory organization.

"**Guarantor**" is any Person party hereto as of the date hereof (or from time to time) providing a Guaranty in favor of Collateral Agent for the ratable benefit of the Secured Parties (including without limitation pursuant to Section 6.10).

"**Guarantor's Books**" are each Guarantor's or any of its Subsidiaries' books and records including ledgers, federal, and state tax returns, records regarding such Guarantor's or its Subsidiaries' assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

"**Guaranty**" is any guarantee of all or any part of the Obligations, as the same may from time to time be amended, restated, modified or otherwise supplemented.

"**Hedging Obligations**" means, with respect to any specified Person, the obligations of such Person under:

(1) interest rate swap agreements (whether from fixed to floating or from floating to fixed), interest rate cap agreements and interest rate collar agreements, in each case, not entered into by such Person for speculative purposes;

(2) other agreements or arrangements designed to manage interest rates or interest rate risk, in each case, not entered into by such Person for speculative purposes;

(3) other agreements or arrangements designed to protect such Person against fluctuations in currency exchange rates or commodity prices, in each case, not entered into by such Person for speculative purposes; and

(4) any similar transaction or combination of the foregoing, in each case, not entered into by such Person for speculative purposes.

"**Indebtedness**" means, with respect to any specified Person, any indebtedness of such Person (excluding accrued expenses and trade payables), whether or not contingent and without duplication:

(1) in respect of borrowed money;

(2) evidenced by bonds, notes, debentures or similar instruments or letters of credit (or reimbursement agreements in respect thereof);

(3) in respect of banker's acceptances;

(4) representing Capital Lease Obligations or Attributable Debt in respect of sale and leaseback transactions; or

(5) representing the balance deferred and unpaid of the purchase price of any property or services, which purchase price is more than six months after the date of placing the property in service or taking delivery and title thereto;

if and to the extent any of the preceding items would appear as a liability upon a balance sheet (excluding the footnotes) of the specified Person prepared in accordance with GAAP. In addition, the term "Indebtedness" includes (i) to the extent not otherwise included, the guarantee by the specified Person of any Indebtedness of any other Person and (ii) all Indebtedness of others secured by a Lien on any asset of the specified Person (whether or not such Indebtedness is assumed by the specified Person) equal to the lesser of (x) the Fair Market Value of such asset as of the date of determination and (y) the amount of such Indebtedness.

Notwithstanding anything to the contrary in the foregoing paragraph, the term "Indebtedness" will not include (a) in connection with any Permitted Investment or other acquisition or any Transfer or other disposition, purchase price adjustments, indemnities or royalty, earn-out, contingent or other deferred payments of a similar nature, unless such payments are required under GAAP to appear as a liability on the balance sheet (excluding the footnotes); *provided* that at the time of closing, the amount of any such payment is not determinable or, to the extent such payment has become fixed and determined, the amount is paid within 30 days thereafter; (b) contingent obligations incurred in the ordinary course of business and not in respect of borrowed money; (c) deferred or prepaid revenues; (d) any Capital Stock other than Disqualified Stock; (e) purchase price holdbacks in respect of a portion of the purchase price of an asset to satisfy warranty or other unperformed obligations of the respective seller; or (f) deferred compensation and severance, pension, health and welfare retirement and equivalent benefits to current or former employees, directors or managers of such Person and its subsidiaries. Indebtedness shall be calculated without giving effect to the effects of Accounting Standards Codification Topic 815 "Derivatives and Hedging" and related interpretations to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose under this Agreement as a result of accounting for any embedded derivatives created by the terms of such Indebtedness.

"**Insolvency Proceeding**" is any proceeding by or against any Person under the United States Bankruptcy Code, or any other bankruptcy or insolvency law, including the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory administrator, provisional liquidator, receiver and manager, controller (in the case of appointments under Australian law, as defined in the Australian Corporations Act) or other similar officer, assignments for the benefit of creditors, compositions or proceedings seeking reorganization, arrangement, or other relief.

"**Insolvent**" means not Solvent.

"**Intellectual Property**" means all of Issuer's or any Guarantor's right, title and interest in and to the following:

(a) its Copyrights, Trademarks and Patents;

(b) any and all trade secrets, trade secret rights and corresponding rights in confidential information and other non-public or proprietary information (whether or not patentable), including, without limitation, any rights to unpatented inventions, know-how, operating manuals; ideas, formulas, compositions, inventor's notes, discoveries and improvements, manufacturing and production processes and techniques, testing information, research and development information,

invention disclosures, unpatented blueprints, drawings, specifications, designs, plans, proposals and technical data, business and marketing plans, market surveys, market know-how and customer lists and information;

(c) any and all Technology, including Software;

(d) any and all design rights which may be available to Issuer or such Guarantor;

(e) any and all claims for damages by way of past, present and future infringement of any of the foregoing, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the Intellectual Property rights identified above; and

(f) any and all amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents.

"**Interest Payment Date**" means, with respect to a Note, each February 15 and August 15 of each year, commencing on February 15, 2023 (or commencing on such other date specified in the certificate representing such Note). For the avoidance of doubt, the Maturity Date is an Interest Payment Date.

"**Internal Revenue Code**" means the Internal Revenue Code of 1986, as amended.

"**Inventory**" is all "inventory" as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made under the Code, and includes without limitation all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, including without limitation such inventory as is temporarily out of any Person's custody or possession or in transit and including any returned goods and any documents of title representing any of the above.

"**Investment**" means, with respect to any specified Person, all direct or indirect investments by such specified Person in other Persons (including Affiliates) in the forms of loans (including guarantees of Indebtedness), advances or capital contributions (excluding (i) commission, travel and similar advances to officers and employees made in the ordinary course of business and (ii) extensions of credit to customers or advances, deposits or payment to or with suppliers, lessors or utilities or for workers' compensation, in each case, that are incurred in the ordinary course of business), or purchases or other acquisitions for consideration of Indebtedness, Capital Stock or other securities. The acquisition by Issuer or any Subsidiary of a Person that holds an Investment in a third Person that was acquired in contemplation of the acquisition of such Person will be deemed to be an Investment by Issuer or such Subsidiary in such third Person in an amount equal to the Fair Market Value of the Investments held by the acquired Person in such third Person determined as provided in this Agreement. Except as otherwise provided in this Agreement, the amount of an Investment will be determined at the time the Investment is made and without giving effect to subsequent changes in value but after giving effect (without duplication) to all subsequent reductions in the amount of such Investment as a result of the repayment or disposition thereof for cash, not to exceed the original amount of such Investment.

"**IRS**" means the United States Internal Revenue Service.

"**Issuer Conversion Notice Date**" means the date on which an Issuer Conversion Notice is delivered pursuant to Section 2.8(b)(ii).

"**Issuer's Books**" are Issuer's or any of its Subsidiaries' books and records including ledgers, federal, and state tax returns, records regarding Issuer's or its Subsidiaries' assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

"**Junior Indebtedness**" means Indebtedness for borrowed money that is unsecured or contractually subordinated or lien subordinated to the Obligations or to any Guaranty (excluding (i) any intercompany Indebtedness between or among Issuer and any of the Subsidiaries, (ii) Indebtedness permitted by clauses (10), (12), (13), (15), (16), (17), (18), (19), (20), and (21) of the definition of "Permitted Debt", and (iii) revolving Indebtedness under any unsecured working capital lines of credit or overdraft facilities incurred in the ordinary course of business).

"**Knowledge**" means to the "best of" Issuer's knowledge, or with a similar qualification, knowledge or awareness means the actual knowledge, after reasonable investigation, of the Responsible Officers.

"**Last Reported Sale Price**" of the Common Stock for any Trading Day means the closing sale price per share (or, if no closing sale price is reported, the average of the last bid price and the last ask price per share or, if more than one in either case, the average of the average last bid prices and the average last ask prices per share) of Common Stock on such Trading Day as reported in composite transactions for the principal U.S. national or regional securities exchange on which the Common Stock is then listed. If the Common Stock is not listed on a U.S. national or regional securities exchange on such Trading Day, then the Last Reported Sale Price will be the last quoted bid price per share of Common Stock on such Trading Day in the over-the-counter market as reported by OTC Markets Group Inc. or a similar organization. If the Common Stock is not so quoted on such Trading Day, then the Last Reported Sale Price will be the average of the mid-point of the last bid price and the last ask price per share of Common Stock on such Trading Day from a nationally recognized independent investment banking firm selected by the Issuer.

"**Lien**" is a claim, mortgage, deed of trust, levy, charge, pledge, security interest, or other encumbrance of any kind, whether voluntarily incurred or arising by operation of law or otherwise against any property, and for the avoidance of doubt includes any other security interest securing any obligation of any Person or any other agreement or arrangement having a similar effect (including any "security interest" as defined in sections 12(1) and (2) of the PPSA, but excluding anything which is a "security interest" by operation of section 12(3) of the PPSA which does not in substance secure payment or performance of an obligation).

"**Make-Whole Fundamental Change**" means a Change in Control.

"**Make-Whole Fundamental Change Conversion Period**" means the period from, and including, the Make-Whole Fundamental Change Effective Date of such Make-Whole Fundamental Change to, and including, the thirty fifth (35th) Trading Day after such Make-Whole Fundamental Change Effective Date.

"**Make-Whole Fundamental Change Effective Date**" means the date on which a Make-Whole Fundamental Change occurs or becomes effective.

"**Market Disruption Event**" means, for the purposes of determining amounts due upon conversion, (a) a failure by the primary U.S. national or regional securities exchange or market on which the Common Stock is listed or admitted for trading to open for trading during its regular trading session or (b) the occurrence or existence prior to 1:00 p.m., New York City time, on any Scheduled Trading Day for the Common Stock for more than one half-hour period in the aggregate during regular trading hours of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant stock exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock.

"**Material Adverse Change**" is (a) a material adverse change in the business, operations or condition (financial or otherwise) of Issuer and its Subsidiaries, when taken as a whole; or (b) a material impairment of (i) the prospect of repayment of any portion of the Obligations, (ii) the legality, validity or enforceability of any Note Document, (iii) the rights and remedies of Collateral Agent or Purchasers under any Note Document except as the result of the action or inaction of the Collateral Agent or Purchasers or (iv) the validity, perfection or priority of any Lien in favor of Collateral Agent for the benefit of the Secured Parties on any of the Collateral except as the result of the action or inaction of the Collateral Agent or Purchasers.

"**Material Agreement**" is any license, agreement or other contractual arrangement required to be disclosed (including amendments thereto) under regulations promulgated under the Securities Act or the Exchange Act, as may be amended; *provided, however*, that "Material Agreements" shall exclude all real estate leases and all employee or director compensation agreements, arrangements or plans, or any amendments thereto.

"**Maturity Date**" means August 15, 2027.

"**Net Proceeds**" means the aggregate cash proceeds and Cash Equivalents received by Issuer or any of the Subsidiaries in respect of any Asset Sale (including, without limitation, any cash or Cash Equivalents received upon the sale or other disposition of any non-cash consideration received in any Asset Sale), net of the direct costs relating to such Asset Sale, including, without limitation, legal, accounting and investment banking fees and sales commissions, and any relocation expenses incurred as a result of the Asset Sale, taxes paid or payable as a result of the Asset Sale, in each case, after taking into account, without duplication, (1) any available tax credits or deductions and any tax sharing arrangements, and amounts required to be applied to the repayment of Indebtedness secured on a senior basis by a Permitted Lien (other than with respect to an all-assets Lien securing such Indebtedness) on the asset or assets that were the subject of such Asset Sale, and any reserve for adjustment in respect of the sale price of such asset or assets established in accordance with GAAP, (2) any reserve or payment with respect to liabilities associated with such asset or assets and retained by Issuer or any of the Subsidiaries after such sale or other disposition thereof, including, without limitation, severance costs, pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction, (3) any cash escrows in connection with purchase price adjustments, reserves or indemnities (until released) and (4) in the case of any Asset Sale by a Subsidiary that is not a Guarantor, payments to holders of Capital Stock in such

Subsidiary in such capacity (other than such Capital Stock held by Issuer or any Subsidiary) to the extent that such payment is required to permit the distribution of such proceeds in respect of the Capital Stock in such Subsidiary held by Issuer or any Subsidiary.

"**Note Documents**" are, collectively, this Agreement, the Notes, the Registration Rights Agreement, the Fee Letter, each Control Agreement, the Pledge Agreement, the Australian Security Documents, the Perfection Certificates, each Compliance Certificate, any guarantees, any subordination agreements or priority agreements, any note, or notes or guaranties executed by Issuer, a Guarantor or any other Person, any agreements creating or perfecting rights in the Collateral (including all insurance certificates and endorsements, landlord consents and bailee consents) and any other present or future agreement entered into by Issuer, any Guarantor or any other Person for the benefit of the Purchasers and Collateral Agent, as applicable, in connection with this Agreement; all as amended, restated, or otherwise modified.

"**Obligations**" are all of Issuer's and each Guarantor's obligations to pay when due any debts, principal, interest, Redemption Price, Purchasers' Expenses, Collateral Agent Fees, Collateral Agent Expenses, indemnification expenses, and any other amounts Issuer or any Guarantor owes the Collateral Agent or the Purchasers now or later, in connection with, related to, following, or arising from, out of or under, this Agreement or, the other Note Documents, or otherwise, and including interest accruing after Insolvency Proceedings begin (whether or not allowed) and debts, liabilities, or obligations of Issuer or any Guarantor assigned to the Purchasers and/or Collateral Agent in connection with this Agreement and the other Note Documents, and the performance of Issuer's and each Guarantor's duties under the Note Documents.

"**OFAC**" is the U.S. Department of Treasury Office of Foreign Assets Control.

"**OFAC Lists**" are, collectively, the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) and/or any other list of terrorists or other restricted Persons maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Executive Orders.

"**Open of Business**" means 9:00 a.m., New York City time.

"**Operating Company**" means 5E Boron Americas, LLC.

"**Operating Company Pledge Agreement**" means the pledge agreement dated on or about the Closing Date, between FCH and Collateral Agent, on behalf of the Secured Parties, as amended, amended and restated, supplemented or otherwise modified from time to time.

"**Operating Documents**" are, for any Person, such Person's formation documents (being, in the case of an Australian Obligor, its certificate of registration and certificate(s) of change of name, or similar documents), as certified by the Secretary of State (or equivalent agency) of such Person's jurisdiction of organization on a date that is no earlier than thirty (30) days prior to the Effective Date, and, (a) if such Person is a corporation, its bylaws in current form, (b) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), (c) if such Person is a partnership, its partnership agreement (or similar agreement), each of the foregoing with all current amendments or modifications thereto, and (d) if such Person is an Australian Obligor, its constitution.

"**Patents**" means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, continuations-in-part, renewals, reissues, re-examination certificates, utility models, extensions and continuations-in-part of the same.

"**Permitted Business**" means any business conducted by Issuer or any of the Subsidiaries on the Effective Date or disclosed in filings with the SEC on or prior to the Effective Date and any business that, in the good faith judgment of the Board of Directors, is similar or reasonably related, ancillary, supplemental or complementary thereto or a reasonable extension, development or expansion thereof.

"**Permitted Debt**" means:

(1) the incurrence by Issuer of unsecured Indebtedness in an aggregate principal amount at any one time outstanding under this clause (1), including, without duplication, all Permitted Refinancing Indebtedness incurred under clause (6) below to refinance any Indebtedness incurred pursuant to this clause, not to exceed an amount equal to Fifty Million Dollars ($50,000,000), less the principal amount of Permitted Debt under clauses (2) and (7) hereof, at any one time outstanding; *provided* that such Indebtedness (x) shall not have a Stated Maturity prior to the date that is 91 days after the Maturity Date, (y) the Weighted Average Life to Maturity of such Indebtedness shall not be shorter than the remaining Weighted Average Life to Maturity of the Notes, and (z) the other terms of such Indebtedness will not be materially more restrictive to the Issuer and its Subsidiaries (as reasonably determined by the Issuer acting in good faith) when taken as a whole, than the terms of this Agreement;

(2) the incurrence by Issuer or any of the Subsidiaries under the Notes and the Guaranties in respect thereof;

(3) the incurrence by Issuer or any of the Subsidiaries of Existing Indebtedness;

(4) the incurrence by Issuer or any of the Subsidiaries of Indebtedness represented by either (A) Capital Lease Obligations, or (B) mortgage financings or purchase money obligations, in either case of sub-clause (A) or (B), incurred for the purpose of financing or reimbursing all or any part of the purchase price or cost of design, development, construction, installation, expansion, repair or improvement of property (either real or personal), plant or equipment or other fixed or capital assets used or useful in the business of Issuer or any of the Subsidiaries (in each case, whether through the direct purchase of such assets or the purchase of Capital Stock of any Person owning such assets), in an aggregate principal amount, including, without duplication, all Permitted Refinancing Indebtedness incurred under clause (6) below to refinance any Indebtedness incurred pursuant to this clause (4), not to exceed at any one time outstanding, in the case of each of sub-clause (A) and (B), $2.0 million;

(5) the incurrence by the Operating Company or any of its Subsidiaries of secured Indebtedness in connection with project level activities not to exceed Four Hundred Twenty-Five Million Dollars $(425,000,000) in the aggregate at any one time outstanding (provided that such Indebtedness shall be for project level activities (i) customary for a business of the type the Operating Company engages in as of the Effective Date or (ii) disclosed in filings with the SEC on or prior to the Effective Date);

(6) Indebtedness constituting an extension or renewal of, replacement of, or substitution for, or issued in exchange for, or the net proceeds of which are used to repay, redeem, repurchase, refinance or refund, including by way of defeasance (all of the above, for purposes of Section 7.4, "refinance"), then outstanding Indebtedness ("**Permitted Refinancing Indebtedness**"), other than Permitted Debt under clause (2) hereof, in an amount not to exceed the principal amount or liquidation value of the Indebtedness so refinanced, plus premiums, fees and expenses; *provided*, that:

(i) in case the Obligations are refinanced in part or the Indebtedness to be refinanced is pari passu with the Obligations, the new Indebtedness, by its terms or by the terms of any agreement or instrument pursuant to which it is outstanding, is expressly made pari passu with or subordinated (x) in right of payment to the remaining Obligations or (y) is secured by Liens otherwise permitted under Section 7.5;

(ii) in case the Indebtedness to be refinanced is Junior Indebtedness, the new Indebtedness, by its terms or by the terms of any agreement or instrument pursuant to which it is outstanding, is expressly made subordinate in right of payment to the Obligations at least to the extent that the Junior Indebtedness to be refinanced is subordinated to the Obligations;

(iii) in case the Indebtedness to be refinanced is Junior Indebtedness secured by Liens, such new Indebtedness' Lien shall have the same or lower priority as the Junior Indebtedness to be refinanced and shall not be secured by a Lien on any collateral other than the collateral securing the Indebtedness being refinanced and shall be subject to an intercreditor agreement reasonably satisfactory to the Issuer, the Collateral Agent and the Required Purchasers;

(iv) in the case of Junior Indebtedness that is unsecured, such new Indebtedness shall also be unsecured;

(v) the new Indebtedness does not have a Stated Maturity prior to the Stated Maturity of the Indebtedness to be refinanced, and the Weighted Average Life to Maturity of the new Indebtedness is at least equal to the remaining Weighted Average Life to Maturity of the Indebtedness being refinanced;

(vi) if the Indebtedness being refinanced is unsecured Indebtedness, such Permitted Refinancing Indebtedness is unsecured Indebtedness;

(vii) in no event may Indebtedness of Issuer or any Guarantor be refinanced pursuant to this clause by means of any Indebtedness of any Subsidiary that is not a Guarantor; and

(viii) such new Indebtedness is incurred by the Person who is the obligor of the replaced Indebtedness and no additional obligors become liable for such new Indebtedness except to the extent such Person guaranteed the replaced Indebtedness;

(7) the incurrence by Issuer or any of the Subsidiaries of additional Indebtedness or Disqualified Stock, including, without duplication, all Permitted Refinancing Indebtedness incurred under clause (6) above to refinance any Indebtedness; *provided* that the aggregate principal amount (or accrued value, as applicable) of the Indebtedness incurred pursuant to clauses (1), (2) and (7) shall not exceed Fifty Million Dollars ($50,000,000) at any one time outstanding;

provided that under no circumstances shall Indebtedness incurred under this clause (7) be subject to Liens on Collateral securing the Obligations; *provided further* that such Indebtedness (x) shall not have a Stated Maturity prior to the date that is 91 days after the Maturity Date, (y) the Weighted Average Life to Maturity of such Indebtedness shall not be shorter than the remaining Weighted Average Life to Maturity of the Notes, and (z) the other terms of such Indebtedness will not be materially more restrictive to the Issuer (as reasonably determined by the Issuer acting in good faith) when taken as a whole, than the terms of this Agreement;

(8) the incurrence by Issuer or any of the Subsidiaries of intercompany Indebtedness (or the guarantees of any such intercompany Indebtedness) between or among Issuer or any of the Subsidiaries, in each case, to the extent constituting a Permitted Investment; *provided*, *however*, that if Issuer or any Guarantor is the obligor on such Indebtedness and the payee is not Issuer or a Guarantor, then such Indebtedness (other than Indebtedness incurred in the ordinary course in connection with the cash or tax management operations of Issuer and its Subsidiaries) must be expressly subordinated to the prior payment or conversion in full of all Obligations; *provided*, *further*, that (i) any subsequent issuance or transfer of Capital Stock that results in any such Indebtedness being held by a Person other than Issuer or a Subsidiary and (ii) any sale or other transfer of any such Indebtedness to a Person that is not either Issuer or a Subsidiary, will be deemed, in each case, to constitute an incurrence of such Indebtedness by Issuer or such Subsidiary, as the case may be, that was not permitted by this clause (8);

(9) the issuance by any of the Subsidiaries to Issuer or to any of the Subsidiaries of shares of any Disqualified Stock, preferred stock or preferred interest in each case, to the extent constituting a Permitted Investment; *provided*, *however*, that if any of the Subsidiaries is the issuer of such Disqualified Stock, preferred stock or preferred interest and such Disqualified Stock, preferred stock or preferred interest is not held by Issuer or a Guarantor, then such Disqualified Stock, preferred stock or preferred interest must be expressly subordinated to the prior payment or conversion in full of all Obligations then due with respect to the Notes, in the case of Issuer, or the Guaranty, in the case of a Guarantor; *provided*, *further*, that (i) any subsequent issuance or transfer of Capital Stock that results in any such Disqualified Stock, preferred stock or preferred interests, as applicable, being held by a Person other than Issuer or a Subsidiary and (ii) any sale or other transfer of any such Disqualified Stock, preferred stock or preferred interests, as applicable, to a Person that is not Issuer or a Subsidiary will be deemed, in each case, to constitute an issuance of such Disqualified Stock, preferred stock or preferred interests, as applicable, by such Subsidiary that was not permitted by this clause (9);

(10) Hedging Obligations that are not incurred for speculative purposes but for the purpose of (a) fixing or hedging interest rate risk with respect to any Indebtedness that is permitted by the terms of this Agreement to be outstanding; (b) fixing or hedging currency exchange rate risk with respect to any currency exchanges; or (c) fixing or hedging commodity price risk, including the price or cost of raw materials, emission rights, manufactured products or related commodities, with respect to any commodity purchases or sales;

(11) the guarantee by Issuer or any of the Guarantors of Indebtedness of Issuer or a Guarantor, and the guarantee by any Subsidiary that is not a Guarantor of Indebtedness of another Subsidiary that is not a Guarantor, in each case, to the extent that the guaranteed Indebtedness was permitted to be incurred by another provision of Section 7.4; *provided* that if the Indebtedness

being guaranteed is subordinated in right of payment to or pari passu with the Obligations, then the guarantee must be subordinated or pari passu, as applicable, in right of payment to the same extent as the Indebtedness guaranteed;

(12) the incurrence by Issuer or any of the Subsidiaries of Indebtedness in respect of workers' compensation claims, unemployment or other insurance or self-insurance obligations, health, disability or other benefits to employees or former employees and their families, bankers' acceptances and similar obligations in the ordinary course of business;

(13) the incurrence by Issuer or any of the Subsidiaries of Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn against insufficient funds, so long as such Indebtedness is covered within five (5) Business Days;

(14) the incurrence by Issuer or any of the Subsidiaries of Indebtedness arising from customary agreements of Issuer or any such Subsidiary providing for indemnification, adjustment of purchase price, earn-out, royalty, milestone or similar obligations, in each case, incurred or assumed in connection with the acquisition or sale or other disposition of any business, assets or Capital Stock of Issuer or any of the Subsidiaries, other than, in the case of any such disposition by Issuer or any of the Subsidiaries, guarantees of Indebtedness incurred by any Person acquiring all or any portion of such business, assets or Capital Stock;

(15) the incurrence of contingent liabilities arising out of endorsements of checks and other negotiable instruments for deposit or collection in the ordinary course of business;

(16) the incurrence of Indebtedness in the ordinary course of business under any agreement between Issuer or any of the Subsidiaries and any commercial bank or other financial institution relating to Treasury Management Arrangements;

(17) the incurrence of Indebtedness in respect of (A) letters of credit, bank guarantees, surety, indemnity, stay, customs, appeal, replevin or performance bonds and similar instruments issued for the account of Issuer or the account of any of the Subsidiaries, in each case, to the extent incurred in the ordinary course of business and in an aggregate amount not to exceed Two Million Dollars ($2,000,000), and (B) completion guarantees, statutory obligations, surety, environmental or appeal bonds, bids, leases, government contracts, contracts (other than for borrowed money), performance bonds or other obligations of a like nature, in each case, to the extent incurred in the ordinary course of business and in an aggregate amount not to exceed Two Million Five Hundred Thousand Dollars ($2,500,000);

(18) the incurrence of Indebtedness consisting of (a) the financing of insurance premiums in the ordinary course of business or (b) take-or-pay obligations contained in supply agreements in the ordinary course of business;

(19) to the extent constituting Indebtedness, Indebtedness representing any taxes, assessments or governmental charges to the extent such taxes are being contested in good faith and adequate reserves have been provided therefor in conformity with GAAP;

(20) customer deposits and advance payments received in the ordinary course of business from customers or vendors for goods or services purchased in the ordinary course of business;

(21) Indebtedness in the form of (a) guarantees of loans and advances to officers, directors and employees permitted under clause (8) of the definition of "Permitted Investments," and (b) reimbursements owed to officers, directors and employees of Issuer or any of its Subsidiaries; and

(22) Indebtedness consisting of guarantees of indebtedness or other obligations of joint ventures permitted under clause (21) of the definition of "Permitted Investments," in an amount incurred under this clause (22), not to exceed at any one time outstanding, One Million Dollars ($1,000,000).

"**Permitted Investments**" means:

(1) (i) any Investment in Issuer, any Guarantor or the Operating Company, (ii) any Investment by any Subsidiary that is not a Guarantor in Issuer or any Subsidiary (in each case, other than any Investment in any Capital Stock of Issuer) and (iii) any Investment by Issuer or any Subsidiary in any Excluded Subsidiary in an aggregate amount not to exceed One Million Dollars ($1,000,000) in the aggregate since the Effective Date;

(2) any Investment in Cash Equivalents;

(3) any Investment by Issuer or any Subsidiary in a Person, if, as a result of, or in connection with, such Investment:

(i) such Person becomes or will become a Guarantor; or

(ii) such Person is merged, consolidated or amalgamated with or into, or transfers or conveys all or substantially all of its assets to, or is liquidated into, Issuer or any Guarantor;

(4) any Investment made as a result of the receipt of non-cash consideration from a Transfer that was made pursuant to and in compliance with Section 7.1 or from a sale or other disposition of assets not constituting a Transfer;

(5) any Investments to the extent made in exchange for, or with the proceeds of, the issuance of Capital Stock (other than Disqualified Stock) of Issuer;

(6) any Investments received in compromise or resolution of (A) obligations of trade creditors or customers that were incurred in the ordinary course of business of Issuer or any of the Subsidiaries, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer; or (B) litigation, arbitration or other disputes;

(7) Investments represented by Hedging Obligations;

(8) loans and advances, and guarantees of such loans and advances, to officers, directors or employees (a) for business-related travel expenses, moving expenses and other similar expenses, including as part of a recruitment or retention plan, in each case incurred in the ordinary course of business or consistent with past practice or to fund any such Person's purchase of Capital Stock of Issuer or any direct or indirect parent entity of Issuer and (b) required by applicable employment laws;

(9) any Investment of Issuer or any of the Subsidiaries existing on the Effective Date in an amount greater than Five Hundred Thousand Dollars ($500,000) as set forth on Schedule 7.7 hereto, and any extension, modification or renewal of such existing Investments, to the extent not involving any additional Investment other than as the result of the accrual or accretion of interest or original issue discount or the issuance of pay-in-kind securities, in each case, pursuant to the terms of such Investments as in effect on the Effective Date; *provided* that the amount of any such Investment may be increased as otherwise permitted under this Agreement;

(10) guarantees of Indebtedness and lease and other ordinary course obligations otherwise permitted by the terms of this Agreement;

(11) receivables owing to Issuer or any of the Subsidiaries, prepaid expenses, and lease, utility, workers' compensation and other deposits, if created, acquired or entered into in the ordinary course of business;

(12) payroll, business-related travel and similar advances that are made in the ordinary course of business;

(13) Investments consisting of purchases and acquisitions of inventory, supplies, material or equipment pursuant to joint marketing, joint development or similar arrangements with other Persons in the ordinary course of business and entered with bona fide counterparties operating in the same industry as Issuer;

(14) advances, loans, rebates and extensions of credit (including the creation of receivables and endorsements for collection and deposit) to suppliers, customers and vendors, and performance guarantees, in each case in the ordinary course of business;

(15) Investments resulting from the acquisition of a Person otherwise permitted by this Agreement, which Investments at the time of such acquisition were held by the acquired Person and were not acquired in contemplation of the acquisition of such Person;

(16) stock, obligations or securities received in satisfaction of judgments and any renewal or replacement thereof;

(17) [reserved];

(18) other Investments in any Person having an aggregate Fair Market Value (measured on the date each such Investment was made and without giving effect to subsequent changes in value) that, when taken together with all other Investments made pursuant to this clause (18), do not, at any time outstanding, exceed One Million Dollars ($1,000,000), net of any cash return of capital with respect to such Investments received by Issuer or any Subsidiary;

(19) (i) lease, utility and other similar deposits, (ii) prepaid expenses, negotiable instruments held for collection and lease, utility and workers' compensation, performance and other similar deposits, and (iii) guaranties of business obligations owed to landlords, suppliers, customers, franchisees and licensees of Issuer and its Subsidiaries, in each case, in the ordinary course of business;

(20) Investments consisting of earnest money deposits required in connection with a purchase agreement, or letter of intent, or other acquisitions to the extent not otherwise prohibited by this Agreement; and

(21) Investments in joint ventures, corporate collaborations or strategic alliances in the ordinary course of business of Issuer or any of the Subsidiaries otherwise permitted by this Agreement; *provided* that any such cash Investments do not exceed One Million Dollars ($1,000,000).

"**Permitted Liens**" means:

(1) Liens on the Collateral securing any Indebtedness (and other related obligations) incurred pursuant to clauses (1), (2) and (5) of the definition of "Permitted Debt", including any Permitted Refinancing Indebtedness thereof;

(2) Liens on property of a Person existing at the time such Person becomes a Subsidiary or is merged with or into or consolidated with Issuer or any Subsidiary; *provided* that such Liens were in existence prior to such acquisition and not incurred in contemplation of such Person becoming a Subsidiary or such merger or consolidation and do not extend to any assets other than those of the Person that becomes a Subsidiary or is merged into or consolidated with Issuer or any Subsidiary (plus improvements and accessions to such property or proceeds or distributions thereof);

(3) Liens on property (including Capital Stock) existing at the time of acquisition of the property by Issuer or any Subsidiary (plus improvements and accessions to such property or proceeds or distributions thereof); *provided* that such Liens were in existence prior to such acquisition and not incurred in contemplation of such acquisition;

(4) Liens to secure Capital Lease Obligations or purchase money obligations, as permitted to be incurred pursuant to clause (4) of the definition of "Permitted Debt," and encumbering only the assets acquired with or financed by such Indebtedness (and other related Obligations) (plus improvements and accessions to such property or proceeds or distributions thereof);

(5) Liens in the form of licenses or sublicenses of Intellectual Property;

(6) (a) Liens in favor of Issuer or the Guarantors; (b) Liens on the property of any Subsidiary that is not a Guarantor in favor of any other Subsidiary and (c) Liens on the property of any Subsidiary of Issuer that is not a Subsidiary in favor of Issuer or any of the Subsidiaries;

(7) Liens (other than Liens imposed by the Employee Retirement Income Security Act of 1974, as amended) in the ordinary course of business to secure the performance of tenders,

statutory obligations (other than excise taxes), insurance, surety, bid, performance, stay, customs and appeal bonds, statutory bonds, bids, leases, government contracts, trade contracts, performance bonds and other similar obligations (in each case, exclusive of obligations for the payment of Indebtedness); *provided* that such Liens are for amounts not yet due and payable or delinquent or, to the extent such amounts are so due and payable, such amounts are being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP, which proceedings (or any order entered in connection with such proceedings) have the effect of preventing the forfeiture or sale of the property subject to any such Lien;

(8) Liens for taxes, assessments or governmental charges or claims that are not yet delinquent or that are being contested in good faith by appropriate proceedings promptly instituted and diligently concluded, which proceedings (or order entered in connection with such proceedings) have the effect of preventing the forfeiture or sale of the property subject to any such Lien; *provided* that any reserve or other appropriate provision as is required in conformity with GAAP has been made therefor;

(9) any state of facts an accurate survey would disclose, prescriptive easements or adverse possession claims, minor encumbrances, easements or reservations of, or rights of others for, or pursuant to any leases, licenses, rights-of-way or other similar agreements or arrangements, development, air or water rights, sewers, electric lines, telegraph and telephone lines and other utility lines, pipelines, service lines, railroad lines, improvements and structures located on, over or under, any property, drains, drainage ditches, culverts, electric power or gas generating or co-generation, storage and transmission facilities and other similar purposes, zoning or other restrictions as to the use of real property or minor defects in title, which were not incurred to secure payment of Indebtedness and that do not in the aggregate materially adversely affect the value or marketability of said properties or materially impair their use in the operation of the business of the owner or operator of such properties or business;

(10) (i) Liens incurred or pledges or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security and employee health and disability benefits, or casualty-liability insurance or self-insurance and (ii) deposits in respect of letters of credit, bank guarantees or similar instruments issued for the account of Issuer or any of the Subsidiaries in the ordinary course of business and supporting obligations of the type set forth in sub-clause (i); *provided* that such Liens are for amounts not yet due and payable or delinquent or, to the extent such amounts are so due and payable, such amounts are being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP, which proceedings (or any order entered in connection with such proceedings) have the effect of preventing the forfeiture or sale of the property subject to any such Lien;

(11) judgment and attachment Liens not giving rise to an Event of Default and notices of lis pendens and associated rights related to litigation being contested in good faith by appropriate proceedings and for which adequate reserves have been made in conformity with GAAP;

(12) Liens incurred by the Operating Company or any of its Subsidiaries securing Indebtedness under clause (5) of the definition of "Permitted Debt";

(13) Liens in favor of any collecting or payor bank having a right of setoff, revocation, refund or chargeback with respect to money or instruments of Issuer or any Subsidiary on deposit with or in possession of such bank;

(14) any obligations or duties affecting any of the property of Issuer or any of the Subsidiaries to any municipality or public authority with respect to any franchise, grant, license, or permit that do not materially impair the use of such property for the purposes for which it is held;

(15) Liens on any amounts held by a trustee in the funds and accounts under an indenture securing any bonds issued for the benefit of Issuer or any of the Guarantors;

(16) Liens on deposit accounts incurred to secure Treasury Management Arrangements pursuant to such Treasury Management Arrangements incurred in the ordinary course of business;

(17) any netting or set-off arrangements entered into by Issuer or any of the Subsidiaries in the ordinary course of its banking arrangements (including, for the avoidance of doubt, cash pooling arrangements) for the purposes of netting debit and credit balances of Issuer or any of the Subsidiaries;

(18) Liens imposed by law, which were incurred in the ordinary course of business and do not secure Indebtedness for borrowed money, such as carriers', warehousemen's, materialmen's, landlords', workmen's, suppliers', repairmen's and mechanics' Liens and other similar Liens arising in the ordinary course of business (including customary contractual landlords' liens under operating leases entered into in the ordinary course of business); and which do not in the aggregate materially detract from the value of the property of Issuer and the Subsidiaries, taken as a whole, and do not materially impair the use thereof in the operation of the business of Issuer and the Subsidiaries, taken as a whole;

(19) Liens on proceeds of insurance securing Indebtedness permitted pursuant to clause (17) and/or (18) of the definition of "Permitted Debt";

(20) to the extent constituting a Lien, escrow arrangements securing indemnification obligations in connection with an acquisition of a Person or a disposition that is otherwise permitted under this Agreement;

(21) security deposits under real property leases that are made in the ordinary course of business;

(22) Subject to Section 3.4, Liens in favor of Dundee Corporation; and

(23) Liens arising from UCC financing statement or PPSA financing statement filings regarding operating leases, bailments or consignments entered into by Issuer and the Subsidiaries and other precautionary UCC financing statements or similar filings.

"**Person**" is any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

"**Pledge Agreement**" means that certain Pledge Agreement dated as of the Closing Date, between Issuer and Collateral Agent, on behalf of the Secured Parties, as amended, amended and restated, supplemented or otherwise modified from time to time.

"**PPSA**" means the Australian Personal Property Securities Act 2009 (Cth) and any regulations in force at any time under that Act, including the Australian Personal Property Securities Regulations 2010 (Cth).

"**Pro Rata Share**" is, as of any date of determination, with respect to each Purchaser, a percentage (expressed as a decimal, rounded to the ninth decimal place) determined by dividing the outstanding principal amount of Notes held by such Purchaser by the aggregate outstanding principal amount of all Notes.

"**Prohibited Transaction**" means a 'prohibited transaction,' as defined in Section 406 of ERISA and Section 4975 of the Internal Revenue Code.

"**Property**" means any interest in any kind of property or asset, whether real, personal or mixed, and whether tangible or intangible.

"**Purchaser**" is any one of the Purchasers.

"**Purchasers**" are the Persons identified on Schedule 2.2 hereto and each successor and assignee that becomes a party to this Agreement pursuant to Section 12.1.

"**Purchasers' Expenses**" are (a) all reasonable audit fees and expenses, costs, and expenses (including reasonable and documented attorneys' fees and expenses (whether generated in house or by outside counsel), as well as appraisal fees, fees incurred on account of lien searches, inspection fees, and filing fees) for preparing, amending, negotiating and administering the Note Documents, and (b) all fees and expenses (including attorneys' fees and expenses, as well as appraisal fees, fees incurred on account of lien searches, inspection fees, and filing fees) for defending and enforcing the Note Documents (including, without limitation, those incurred in connection with appeals or Insolvency Proceedings) or otherwise incurred by Collateral Agent and/or the Purchasers in connection with the Note Documents.

"**Qualified Capital Stock**" means Capital Stock of Issuer that is not Disqualified Stock.

"**R&D Expenditure**" means any expenditure incurred by Issuer or any Subsidiary in research and development or clinical development efforts, or any license or distribution agreements, in connection with the Products or other potential product candidates that may be introduced by Issuer for carrying on the business of Issuer and its Subsidiaries that Issuer determines in good faith will enhance the income generating ability of Issuer and the Subsidiaries, taken as a whole.

"**Registered Organization**" is any "registered organization" as defined in the Code with such additions to such term as may hereafter be made under the Code.

"**Registration Rights Agreement**" means that certain Registration Rights Agreement, to be dated as of the Closing Date, between Issuer and the Purchasers.

"**Regulatory Action**" means an administrative, regulatory, or judicial enforcement action, proceeding, investigation or inspection, warning letter, untitled letter, other notice of violation letter, recall, seizure, injunction or consent decree, issued by a Governmental Authority.

"**Reinvestment Deferred Amount**" means, with respect to any Reinvestment Event, the aggregate Net Proceeds received by Issuer or any Subsidiary in connection therewith that are not applied to prepay the Notes pursuant to Section 2.2(c) as a result of the delivery of a Reinvestment Notice.

"**Reinvestment Event**" means any Asset Sale in respect of which Issuer has delivered a Reinvestment Notice.

"**Reinvestment Notice**" means a written notice executed by a Responsible Officer stating that no Default or Event of Default has occurred and that Issuer (directly or indirectly through a Subsidiary) intends and expects to use all or a specified portion of the Net Proceeds of an Asset Sale to reinvest in Additional Assets or R&D Expenditures.

"**Reinvestment Prepayment Amount**" means, with respect to any Reinvestment Event, the Reinvestment Deferred Amount relating thereto less any amount expended prior to the relevant Reinvestment Prepayment Date to reinvest in Additional Assets or R&D Expenditures.

"**Reinvestment Prepayment Date**" means, with respect to any Reinvestment Event, the earlier of (a) the date occurring 360 days after such Reinvestment Event and (b) the date on which Issuer shall have determined not to, or shall have otherwise ceased to, reinvest in Additional Assets or R&D Expenditures with all or any portion of the relevant Reinvestment Deferred Amount.

"**Related Persons**" means, with respect to any Person, each Affiliate of such Person and each director, officer, employee, agent, trustee, representative, attorney, accountant and each insurance, environmental, legal, financial and other advisor and other consultants and agents of or to such Person or any of its Affiliates.

"**Reportable Event**" means a reportable event described in Section 4043(c) of ERISA, unless the notice requirement has been duly waived.

"**Required Purchasers**" means Purchasers holding more than 50% in aggregate principal amount of the Notes.

"**Requirement of Law**" is as to any Person, the organizational or governing documents of such Person, and any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"**Responsible Officer**" is any of the President, Chief Executive Officer, Treasurer or Chief Financial Officer of Issuer acting alone.

"**Restricted Payment**" means Issuer or any Subsidiary acting to:

(1) declare or pay any dividend or make any other payment or distribution on or in respect of Issuer's or any Subsidiary's Capital Stock (including any such payment in connection with any merger or consolidation involving such Person), except (x) dividends or distributions payable solely in Capital Stock (other than Disqualified Stock) of Issuer or such Subsidiary, and (y) dividends or distributions payable solely to Issuer or any of the Subsidiaries (and, if such Subsidiary is not a wholly-owned subsidiary, to its other Capital Stock holders on a pro rata basis with respect to the class of Capital Stock on which such dividend or distribution is made, or on a basis that results in the receipt by Issuer or any of the Subsidiaries of dividends or distributions of at least its pro rata share of such dividend or distribution);

(2) purchase, redeem or otherwise acquire or retire for value, directly or indirectly, any Capital Stock of Issuer;

(3) make any principal payment on or with respect to, or purchase, redeem, defease or otherwise acquire or retire for value, any Indebtedness of Issuer or any Subsidiary that is Junior Indebtedness, except, (x) payments of principal at the Stated Maturity thereof, and (y) in the case of any Existing Indebtedness with a Stated Maturity prior to the Maturity Date, the purchase, repurchase, redemption, defeasance or other acquisition of any such Existing Indebtedness in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of such purchase, repurchase, redemption, defeasance or other acquisition; or

(4) make any Investment other than a Permitted Investment.

"**Revenue**" means, with respect to any period, revenue of the Issuer and its Subsidiaries as determined in accordance with GAAP for such period.

"**Scheduled Trading Day**" means a day that is scheduled to be a Trading Day on the principal U.S. national or regional securities exchange or market on which the Common Stock is listed or admitted for trading. If the Common Stock is not so listed or admitted for trading, "Scheduled Trading Day" means a Business Day.

"**SEC**" means the Securities and Exchange Commission.

"**Secured Parties**" means the Collateral Agent and the Purchasers.

"**Securities Account**" is any "securities account" as defined in the Code with such additions to such term as may hereafter be made under the Code.

"**Securities Act**" means the Securities Act of 1933, as amended.

"**Software**" means any and all (a) computer programs, including any and all software implementations of algorithms, models and methodologies, whether in source or object code; (b) databases and compilations in any form, including any and all data and collections of data, whether machine readable or otherwise; (c) descriptions, flow-charts and other work product used to design, plan, organize and develop any of the foregoing, including Internet web sites, web content and links, source code, object code, operating systems and specifications, data, databases, database management code, utilities, graphical user interfaces, menus, images, icons, forms, methods of

processing, software engines, platforms, development tools, library functions, compilers, and data formats, all versions, updates, corrections, enhancements and modifications thereof, and (d) all related documentation, user manuals, training materials, developer notes, comments and annotations related to any of the foregoing.

"**Solvent**" means, with respect to any Person, that (a) the fair salable value of such Person's consolidated assets exceeds the fair value of such Person's liabilities, (b) the fair salable value of such Person's consolidated property exceeds the fair value of such Person's liabilities, (c) such Person is not left with unreasonably small capital giving effect to the transactions contemplated by this Agreement and the other Note Documents, and (d) such Person is able to pay its debts (including trade debts) as they become due (whether at maturity or otherwise) (without taking into account any forbearance and extensions related thereto), provided that, in relation to any Person that is an Australian Obligor, such Person will not be "Solvent" to the extent that it is: (i) taken (under section 459F(1) of the Australian Corporations Act) to have failed to comply with a statutory demand; or (ii) the subject of an event described in section 459C(2)(b) or section 585 of the Australian Corporations Act.

"**Specified Contribution**" means (a) an equity contribution made by holders of Capital Stock in the Issuer or (b) the issuance of Junior Indebtedness, in either case, the proceeds of which are used in accordance with the provisions set forth in Section 8.13.

"**Stated Maturity**" means, with respect to any installment of interest or principal on any series of Indebtedness, the date on which the payment of interest or principal, as applicable, was scheduled to be paid in the documentation governing such Indebtedness, and will not include any contingent obligations to repay, redeem or repurchase any such interest or principal prior to the date originally scheduled for the payment thereof; *provided*, *however*, that, with respect to clause (3) of definition of Restricted Payments, the Stated Maturity of any Existing Indebtedness shall be the Stated Maturity as of the Effective Date or a later date to the extent the documents governing such Indebtedness shall have been amended or modified to provide for such later date.

"**Stock Price**" has the following meaning for any Make-Whole Fundamental Change: (A) if the holders of Common Stock receive only cash in consideration for their shares of Common Stock in such Make-Whole Fundamental Change and such Make-Whole Fundamental Change is pursuant to clause (a) or (c) of the definition of "Change in Control," then the Stock Price is the amount of cash paid per share of Common Stock in such Make-Whole Fundamental Change; and (B) in all other cases, the Stock Price is the average of the Last Reported Sale Prices per share of Common Stock for the five (5) consecutive Trading Days ending on, and including, the Trading Day immediately before the Make-Whole Fundamental Change Effective Date of such Make-Whole Fundamental Change.

"**Subsidiary**" is, with respect to any Person, any Person of which more than fifty percent (50%) of the voting stock or other equity interests (in the case of Persons other than corporations) is owned or controlled, directly or indirectly, by such Person or through one or more intermediaries. For purposes of Section 8 only, "Subsidiaries" shall exclude any single Subsidiary or group of Subsidiaries where such Subsidiary's revenue or such group of Subsidiaries' revenue (in each case in accordance with GAAP) or assets is less than five percent (5.0%) of the aggregate (A) revenue and (B) assets (including both tangible and intangible, and measured as the lower of

fair market value or book value), of Issuer and all its Subsidiaries, in each case measured on a consolidated basis for Issuer and all its Subsidiaries. Where such term is used without a referent Person, such term shall be deemed to mean a Subsidiary of Issuer, unless the context otherwise requires.

"**Taxes**" means all present or future taxes, VAT, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"**Technology**" means, collectively, all Software, information, designs, formulae, algorithms, procedures, methods, techniques, ideas, know-how, research and development, technical data, programs, subroutines, tools, materials, specifications, processes, inventions (whether patentable or unpatentable and whether or not reduced to practice), apparatus, creations, improvements, works of authorship and other similar materials, and all recordings, graphs, drawings, reports, analyses, and other writings, and other tangible embodiments of the foregoing, in any form whether or not specifically listed herein, and all related technology, that are used in, incorporated in, embodied in, displayed by or relate to, or are used in connection with the foregoing.

"**Threshold Price**" means (a) on or before the twenty-four (24) month anniversary of the Closing Date, 200% of the Conversion Price, (b) after the twenty-four (24) month anniversary of the Closing Date and on or before the thirty-six (36) month anniversary of the Closing Date, 150% of the Conversion Price, and (c) after the thirty-six (36) month anniversary of the Closing Date, 130% of the Conversion Price.

"**Trademarks**" means any trademarks, service mark rights, trade names and other identifiers indicating the business or source of goods or services, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Issuer and each Guarantor connected with and symbolized by such trademarks.

"**Trading Day**" means a day on which (a) there is no Market Disruption Event, and (b) trading in the Common Stock (or other security for which a closing sale price must be determined) generally occurs on The NASDAQ Global Select Market or, if the Common Stock (or such other security) is not then listed or quoted on The NASDAQ Global Select Market, on the principal other U.S. national or regional securities exchange on which the Common Stock (or such other security) is then listed or, if the Common Stock (or such other security) is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock (or such other security) is then traded; *provided* that if the Common Stock (or such other security) is not so listed or traded, "Trading Day" means a Business Day.

"**Transactions**" means the issuance of the Notes pursuant to this Agreement.

"**Transfer**" means (i) the sale, lease, conveyance or other disposition of any assets or rights (whether in a single transaction or a series of related transactions) outside of the ordinary course of business of Issuer or any Subsidiary, and (ii) the issuance of Capital Stock by any of Issuer's Subsidiaries or the sale of Capital Stock in any of Issuer's Subsidiaries (other than directors' qualifying Capital Stock or Capital Stock required by applicable law to be held by a Person other than Issuer or one of its Subsidiaries).

"**Treasury Management Obligations"** means any agreement or other arrangement governing the provision of treasury or cash management services, including, without limitation, deposit accounts, overdraft, overnight draft, credit cards, debit cards, p-cards (including purchasing cards, employee credit card programs and commercial cards), funds transfer, automated clearinghouse, direct debit, zero balance accounts, returned check concentration, check endorsement guarantees, controlled disbursement, lockbox, account reconciliation and reporting and trade finance services, netting services, cash pooling or sweep arrangements, payment processing, credit and debit card acceptance or merchant services and other treasury or cash management services.

"**Unqualified Opinion**" means an opinion on financial statements from an independent certified public accounting firm acceptable to the Required Purchasers in their reasonable discretion which opinion shall not include any qualifications or any going concern limitations other than (i) customary qualifications related to negative profits and debt maturities within one year of applicable maturity date and (ii) any going concern qualifications.

"**Unrestricted Cash**" means (a) unrestricted cash and Cash Equivalents of the Issuer and its Subsidiaries and (b) cash and Cash Equivalents of the Issuer and its Subsidiaries that are restricted only in favor of the Collateral Agent or subject to a Control Agreement in favor of the Collateral Agent; in each case whether cash or Cash Equivalents are "unrestricted" or "restricted" is to be determined in accordance with GAAP.

"**VAT**" means: (a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and (b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) above, or imposed elsewhere, including, for the avoidance of doubt, the goods and services tax under the Australian A New Tax System (Goods and Services Tax) Act 1999.

"**Weighted Average Life to Maturity**" means, when applied to any Indebtedness at any date, the number of years obtained by dividing:

(1) the sum of the products obtained by multiplying (a) the amount of each then-remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect of such Indebtedness, by (b) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by

(2) the then-outstanding principal amount of such Indebtedness.

2. NOTES AND TERMS OF PAYMENT

2.1 [Reserved]

2.2 Issuance of Notes.

(a) Purchase and Sale of Notes.

(i) Subject to the terms and conditions of this Agreement, on the Closing Date, the Issuer shall issue and sell to the Purchasers, and the Purchasers shall purchase and acquire from the Issuer, for a purchase price of Sixty Million Dollars ($60,000,000) (the "**Purchase Price**") Secured Promissory Notes (each a "**Note**" and, collectively, the "**Notes**") in an aggregate principal amount of Sixty Million Dollars ($60,000,000).

(ii) Schedule 2.2 hereto sets forth, with respect to each Purchaser, the aggregate principal amount of Notes to be issued by Issuer to such Purchaser. The closing purchase and sale of the Notes (the "**Closing**") shall occur on a date (the "**Closing Date**") no later than twelve (12) Trading Days after the Effective Date. On the Closing Date, (a) each Purchaser shall cause a wire transfer to be made in same day funds to an account of the Issuer designated in writing by the Issuer to the Purchaser in an amount equal to the Purchase Price, and (b) Issuer shall deliver to each Purchaser the principal amount of Notes specified on Schedule 2.2 hereto.

(b) Repayment. The Issuer shall make semi-annual payments of interest only on each Interest Payment Date, commencing on February 1, 2023, and continuing on each Interest Payment Date thereafter. All outstanding principal and accrued and unpaid interest with respect to the Notes is due and payable in full on the Maturity Date.

(c) Mandatory Prepayments.

(i) If the principal amount of the Notes is accelerated (including, but not limited to, upon the occurrence of a bankruptcy or insolvency event (including the acceleration of claims by operation of law)), Issuer shall immediately pay to Purchasers, payable to each Purchaser in accordance with its respective Pro Rata Share, an amount equal to the sum of: (i) the outstanding principal amount of the Notes, plus (ii) accrued and unpaid interest thereon through the prepayment date, plus (iii) all other Obligations that are due and payable, including Purchasers' Expenses and interest at the Default Rate, if applicable, with respect to any past due amounts.

(ii) If on any date Issuer or any Subsidiary shall receive Net Proceeds from any Asset Sale, Issuer shall apply an amount equal to one hundred percent (100%) of such Net Proceeds, to prepay the Notes; *provided* that,

(1) Issuer may deliver a Reinvestment Notice with respect to the percentage of such Net Proceeds in the Issuer Retention column below, and shall apply an amount equal to the percentage of such Net Proceeds in the Note Repayment column below, to prepay the Notes:

Proceeds (millions)	Note Repayment (%)	Issuer Retention (%)
First $10.0	25.0%	75.0%
Next $10.0	35.0%	65.0%
Next $10.0	45.0%	45.0%
Any remaining proceeds thereafter	50.0%	50.0%

and

(2) notwithstanding the foregoing, on each Reinvestment Prepayment Date, Issuer shall apply an amount equal to the Reinvestment Prepayment Amount with respect to the relevant Reinvestment Event to prepay the Notes (together with any applicable premium).

All Net Proceeds from Asset Sales shall be deposited in a Collateral Account pending repayment or reinvestment in accordance with the terms of this Section 2.2(c).

Amounts to be applied in connection with prepayments made pursuant to this Section 2.2(c)(ii) shall be payable to each Purchaser in accordance with its respective Pro Rata Share; *provided* that any Purchaser may decline any such prepayment (collectively, the "**Declined Amount**"), in which case the Declined Amount shall be retained by Issuer. Each prepayment of the Notes under this Section 2.2(c)(ii) shall be accompanied by accrued interest to the date of such prepayment on the amount prepaid. Issuer shall deliver to each Purchaser notice of each prepayment of Notes in whole or in part pursuant to this Section 2.2(c)(ii) not less than five (5) Business Days prior to the date such prepayment shall be made (each, a "**Mandatory Prepayment Date**"). Such notice shall set forth (i) the Mandatory Prepayment Date, (ii) the aggregate amount of such prepayment, and (iii) the option of each Purchaser to (x) decline its share of such prepayment or (y) accept Declined Amounts. Any Purchaser that wishes to exercise its option to decline such prepayment or to accept Declined Amounts shall notify Issuer not later than three (3) Business Days prior to the Mandatory Prepayment Date.

Issuer shall not, and shall not permit any of the Subsidiaries to, use any Net Proceeds received from any Asset Sale to repay any Junior Indebtedness.

2.3 Payment of Interest on the Notes.

(a) Interest Rate. Subject to Section 2.3(b), the principal amount outstanding under the Notes shall accrue interest at a per annum rate equal to (x) 4.5% for interest paid in cash or (y) 6.00% in the case of PIK Interest, which interest, in each case, shall be payable semi-annually in arrears in accordance with Section 2.2(b). Such interest shall accrue commencing on, and including, the Closing Date, and shall accrue on the principal amount outstanding under the Notes through and including the day on which the Notes are paid in full (or any payment is made hereunder).

(b) Default Rate. Immediately upon the occurrence and during the continuance of an Event of Default, all Obligations shall accrue interest at a fixed per annum rate equal to the rate that is otherwise applicable thereto plus two percentage points (2.00%) (the "**Default Rate**"). Payment or acceptance of the increased interest rate provided in this Section 2.3(b) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of the Purchasers.

(c) 360-Day Year. Interest shall be computed on the basis of a three hundred sixty (360) day year for the actual number of days elapsed.

(d) Payments. Except as otherwise expressly provided herein, all payments by Issuer under the Note Documents shall be made to the respective Purchaser to which such payments are owed, at such Person's office in immediately available funds on the date specified herein. Unless otherwise provided, interest is payable on each Interest Payment Date. Payments of

principal and/or interest or any Redemption Price received after 12:00 noon Eastern time are considered received at the opening of business on the next Business Day. When a payment is due on a day that is not a Business Day, the payment is due the next Business Day and additional fees or interest, as applicable, shall continue to accrue until paid. All payments to be made by Issuer hereunder or under any other Note Document, including payments of principal and interest, and all fees, expenses, indemnities and reimbursements, shall be made without set-off, recoupment or counterclaim, in lawful money of the United States and in immediately available funds. Notwithstanding the foregoing, Issuer may elect to pay the interest on the principal amount outstanding under the Notes payable pursuant to this Section 2.3 as paid-in-kind interest, added to the aggregate principal amount of the Note on the date such interest would otherwise be due hereunder (the amount of any such paid-in-kind interest being "**PIK Interest**"). The Issuer shall be deemed to have elected to pay PIK Interest unless it shall notify each Purchaser in writing of an election to pay interest in cash at least two (2) Business Days before applicable Interest Payment Date.

2.4 Fees. Issuer shall pay to Collateral Agent and/or the Purchasers (as applicable) the following fees, which shall be deemed fully earned and non-refundable upon payment:

(a) **Purchasers' Expenses**. All Purchasers' Expenses (including reasonable and documented attorneys' fees and expenses for documentation and negotiation of this Agreement) incurred through and after the Closing Date, when due.

(b) **Collateral Agent Fees**. All fees payable to Collateral Agent as set forth in the Fee Letter at the times and in the amounts specified therein (such fees being referred to herein collectively as the "**Collateral Agent Fees**"). The Collateral Agent Fees are in addition to reimbursement of the Collateral Agent Expenses in accordance with Section 12.2(a) and Exhibit B. The Collateral Agent Fees shall be fully earned when due and shall not be refundable for any reason whatsoever.

2.5 Taxes; Increased Costs. Issuer, Collateral Agent and the Purchasers each hereby agree to the terms and conditions set forth on Exhibit C attached hereto.

2.6 Notes. The Notes shall be substantially in the form attached as Exhibit E hereto, and the terms of this Agreement shall be incorporated by reference into the Notes as if set forth therein; *provided* that in the event of any conflict between the terms of this Agreement and the Notes, the terms of this Agreement shall control. Issuer irrevocably authorizes each Purchaser to make or cause to be made, on or about the Closing Date or at the time of receipt of any payment of principal on such Purchaser's Note, an appropriate notation on such Purchaser's Note (the "**Purchaser's Note Record**") reflecting the purchase of such Notes or (as the case may be) the receipt of such payment. The outstanding amount of the Notes set forth on such Purchaser's Note Record shall be, absent manifest error, prima facie evidence of the principal amount thereof owing and unpaid to such Purchaser, but the failure to record, or any error in so recording, any such amount on such Purchaser's Note Record shall not limit or otherwise affect the obligations of Issuer under any Note or any other Note Document to make payments of principal of or interest on, or any Redemption Price in respect of, any Note when due. Upon receipt of an affidavit of an officer of a Purchaser as to the loss, theft, destruction, or mutilation of its Note, Issuer shall issue, in lieu thereof, a replacement Note in the same principal amount thereof and of like tenor.

2.7 Reserved.

2.8 Conversion. Subject to the provisions of this Section 2.8, each Purchaser or the Issuer may, at its option, convert such Purchasers' Notes into Conversion Consideration. Notes may be converted in part, but only in Authorized Denominations, and provisions of this Section 2.8 applying to the conversion of a Note in whole will equally apply to conversions of a permitted portion of a Note.

(a) When Notes May Be Converted.

(i) *Purchaser Conversion*. A Purchaser may convert its Notes at any time until the Close of Business on the Scheduled Trading Day immediately before the Maturity Date.

(ii) *Issuer Conversion*.

(A) Subject to and upon compliance with the provisions of this Section 2.8 and upon satisfaction of the conditions described in Section 2.8(a)(ii)(B), at any time until the Close of Business on the Scheduled Trading Day immediately before the Maturity Date, the Issuer shall have the right (the "**Issuer Conversion Right**"), at the Issuer's option, to cause all, or any portion, of the Notes then outstanding to be converted (any such conversion, a "**Company Conversion**").

(B) The Issuer may not exercise the Issuer Conversion Right unless: (I) the Last Reported Sales Price per share of Common Stock exceeds the Threshold Price on each of the twenty (20) consecutive Trading Days in the period ending on, and including, the Trading Day immediately preceding the Issuer Conversion Notice Date; (II) on the Issuer Conversion Date, the Common Stock is listed or traded on The New York Stock Exchange, The NASDAQ Global Market or The NASDAQ Global Select Market; (III) either (i) a registration statement is effective under the Securities Act and available for use for resale of all Conversion Shares received by any Purchaser to whom the applicable Conversion Shares are to be issued, and the Issuer expects such registration statement to remain effective and so available for use from the date the Issuer sends the Issuer Conversion Notice through the date that is sixty (60) calendar days following such Issuer Conversion Date or (ii) the Conversion Shares to be issued are eligible for sale pursuant to Rule 144 under the Securities Act without volume or manner-of-sale restrictions and without the requirement for the Issuer to be in compliance with the current public information requirement under Rule 144(c)(1) under the Securities Act; (IV) [Reserved]; (V) the Issuer has not defaulted on its obligation to convert any Note before the date the Issuer sends the Issuer Conversion Notice, and no Default or Event of Default has occurred and is continuing; and (VI) such Issuer Conversion is with respect to at least $5,000,000 in principal amount of Notes.

(b) Conversion Procedures.

(i) To convert all or a portion of a Note, a Purchaser must (1) complete, manually sign and deliver to the Issuer the conversion notice attached to such Note or a facsimile of such conversion notice; and (2) deliver such Note to the Issuer (at which time such conversion will become irrevocable).

(ii) To exercise the Issuer Conversion Right, the Issuer must send notice of the Issuer's election (the "**Issuer Conversion Notice**"), which Issuer Conversion Notice shall be irrevocable, to the Purchasers and the Collateral Agent at least five (5), but not more than ten (10), Business Days prior to the date of such Issuer Conversion (the "**Issuer Conversion Date**"). The Issuer Conversion Notice must state (A) the principal amount of Notes that have been called for conversion, (B) the Issuer Conversion Date and (C) the current Conversion Rate.

(iii) At the Close of Business on the Conversion Date for a Note (or any portion thereof) to be converted, such Note (or such portion) will (unless there occurs a Default in the delivery of the Conversion Consideration due upon such conversion) be deemed to cease to be outstanding (and, for the avoidance of doubt, no Person will be deemed to hold such Note (or such portion thereof) as of the Close of Business on such Conversion Date).

(iv) The Person in whose name any share of Common Stock is issuable upon conversion of any Note will be deemed to become the holder of record of such share as of the Close of Business on the Conversion Date for such conversion.

(v) If a Note is converted, the Issuer will pay any documentary, stamp or similar issue or transfer tax or duty due on the issue of any shares of Common Stock upon such conversion; *provided*, *however*, that if any tax or duty is due because the applicable Purchaser requested such shares to be registered in a name other than such Purchaser's name, then such Purchaser will pay such tax or duty and, until having received a sum sufficient to pay such tax or duty, the Issuer may refuse to deliver any such shares to be issued in a name other than that of such Purchaser.

(c) Settlement Upon Conversion. The type and amount of consideration (the "**Conversion Consideration**") due in respect of each $1,000 principal amount of a Note (including, for the avoidance of doubt, any PIK Interest paid with respect thereto) to be converted will be a number of shares of Common Stock equal to the Conversion Rate in effect on the Conversion Date for such conversion.

(i) If the number of shares of Common Stock deliverable pursuant to Section 2.8(c) upon conversion of any Note is not a whole number, then such number will be rounded to the nearest whole number.

(ii) If a Purchaser converts more than one Note, or holds more than one Note subject to an Issuer Conversion, on a single Conversion Date, then the Conversion Consideration due in respect of such conversion will be computed based on the total principal amount of Notes converted on such Conversion Date by or with respect to such Purchaser.

(iii) The Issuer will pay or deliver, as applicable, the Conversion Consideration due upon the conversion of any Note to the Purchaser on or before the second Business Day immediately after the Conversion Date for such conversion.

(iv) At all times when any Notes are outstanding, the Issuer will reserve, out of its authorized but unissued and unreserved shares of Common Stock, a number of shares of Common Stock sufficient to permit the conversion of all then-outstanding Notes, assuming the Conversion Rate is increased by the maximum amount pursuant to which the Conversion Rate may be increased pursuant to Section 2.9.

(v) Each Conversion Share delivered upon conversion of any Note will be duly and validly issued, fully paid, non-assessable, free from preemptive rights and free of any lien or adverse claim (except to the extent of any lien or adverse claim created by the action or inaction of the Purchaser holding such Note or the Person to whom such Conversion Share will be delivered). If the Common Stock is then listed on any securities exchange, or quoted on any inter-dealer quotation system, then the Issuer will cause each Conversion Share, when delivered upon conversion of any Note, to be admitted for listing on such exchange or quotation on such system.

(vi) Upon conversion, a Purchaser shall not receive any separate cash payment for accrued and unpaid interest, if any. The Issuer's delivery of the Conversion Consideration shall be deemed to satisfy in full its obligation to pay the principal amount of the Note and accrued and unpaid interest, if any, to, but not including, the relevant Conversion Date. As a result, accrued and unpaid interest, if any (other than for the avoidance of doubt, PIK Interest), to, and including, the relevant Conversion Date shall be deemed to be paid in full rather than cancelled, extinguished or forfeited.

(d) Adjustments to the Conversion Rate. The Conversion Rate will be adjusted from time to time as follows:

(i) *Stock Dividends, Splits and Combinations*. If the Issuer issues solely shares of Common Stock as a dividend or distribution on all or substantially all shares of the Common Stock, or if the Issuer effects a stock split or a stock combination of the Common Stock (in each case excluding an issuance solely pursuant to a Common Stock Change Event, as to which Section 2.11 will apply), then the Conversion Rate will be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_1}{OS_0}$$

where:

CR_0 = the Conversion Rate in effect immediately before the Open of Business on the Ex-Dividend Date of such dividend or distribution, or immediately before the Open of Business on the effective date of such stock split or stock combination, as applicable;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date or effective date, as applicable;

OS_0 = the number of shares of Common Stock outstanding immediately before the Open of Business on such Ex-Dividend Date or effective date, as applicable, without giving effect to such dividend, distribution, stock split or stock combination; and

OS_1 = the number of shares of Common Stock outstanding immediately after giving effect to such dividend, distribution, stock split or stock combination.

Any adjustment made under this Section 2.8(d)(i) shall become effective immediately after the Open of Business on the Ex-Dividend Date for such dividend or distribution, or immediately after the Open of Business on the effective date for such share split or share combination, as applicable. If any dividend, distribution, stock split or stock combination of the type described in this Section 2.8(d)(i) is declared or announced, but not so paid or made, then the Conversion Rate will be readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution or to effect such stock split or stock combination, to the Conversion Rate that would then be in effect had such dividend, distribution, stock split or stock combination not been declared or announced.

(ii) *Rights, Options and Warrants*. If the Issuer distributes, to all or substantially all holders of Common Stock, rights, options or warrants (other than rights issued or otherwise distributed pursuant to a stockholder rights plan, as to which Section 2.8(d)(iii)(1) and Section 2.8(f) will apply) entitling such holders, for a period of not more than sixty (60) calendar days after the record date of such distribution, to subscribe for or purchase shares of Common Stock at a price per share that is less than the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date such distribution is announced, then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{OS + X}{OS + Y}$$

where:

CR_0 = the Conversion Rate in effect immediately before the Open of Business on the Ex-Dividend Date for such distribution;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date;

OS = the number of shares of Common Stock outstanding immediately before the Open of Business on such Ex-Dividend Date;

X = the total number of shares of Common Stock issuable pursuant to such rights, options or warrants; and

Y = a number of shares of Common Stock obtained by dividing (x) the aggregate price payable to exercise such rights, options or warrants by (y) the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date such distribution is announced.

Any increase made under this Section 2.8(d)(ii) shall be made successively whenever any such rights, options or warrants are distributed and shall become effective immediately after the Open of Business on the Ex-Dividend Date for such distribution. To the extent such rights, options or warrants are not so distributed, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the increase to the Conversion Rate for such distribution been made on the basis of only the rights, options or warrants, if any, actually distributed. In addition, to the extent that shares of Common Stock are not delivered after the expiration of such rights, options or warrants (including as a result of such rights, options or warrants not being exercised), the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the increase to the Conversion Rate for such distribution been made on the basis of delivery of only the number of shares of Common Stock actually delivered upon exercise of such rights, option or warrants.

For purposes of this Section 2.8(d)(ii), in determining whether any rights, options or warrants entitle holders of Common Stock to subscribe for or purchase shares of Common Stock at a price per share that is less than the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date the distribution of such rights, options or warrants is announced, and in determining the aggregate price payable to exercise such rights, options or warrants, there will be taken into account any consideration the Issuer receives for such rights, options or warrants and any amount payable on exercise thereof, with the value of such consideration, if not cash, to be determined by the Board of Directors.

(iii) *Spin-Offs and Other Distributed Property*.

(1) *Distributions Other than Spin-Offs*. If the Issuer distributes shares of its Capital Stock, evidences of its indebtedness or other assets or property of the Issuer, or rights, options or warrants to acquire Capital Stock of the Issuer or other securities, to all or substantially all holders of the Common Stock, excluding:

(a) dividends, distributions, rights, options or warrants for which an adjustment to the Conversion Rate is required pursuant to Section 2.8(d)(i) or 2.8(d)(ii);

(b) dividends or distributions paid exclusively in cash for which an adjustment to the Conversion Rate is required pursuant to Section 2.8(d)(iv);

(c) rights issued or otherwise distributed pursuant to a stockholder rights plan, except to the extent provided in Section 2.8(f);

(d) Spin-Offs for which an adjustment to the Conversion Rate is required pursuant to Section 2.8(d)(iii)(2);

(e) a distribution solely pursuant to a tender offer or exchange offer for shares of Common Stock, as to which Section 2.8(d)(v) will apply; and

(f) a distribution solely pursuant to a Common Stock Change Event, as to which Section 2.11 will apply,

then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP}{SP - FMV}$$

where:

CR_0 = the Conversion Rate in effect immediately before the Open of Business on the Ex-Dividend Date for such distribution;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date;

SP = the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before such Ex-Dividend Date; and

FMV = the fair market value (as determined by the Board of Directors), as of such Ex-Dividend Date, of the shares of Capital Stock, evidences of indebtedness, assets, property, rights, options or warrants distributed per share of Common Stock pursuant to such distribution;

Any increase made under the portion of this Section 2.8(d)(iii) above shall become effective immediately after the Open of Business on the Ex-Dividend Date for such distribution. If *FMV* is equal to or greater than *SP*, then, in lieu of the foregoing adjustment to the Conversion Rate, each Purchaser will receive, for each $1,000 principal amount of Notes (including, for the avoidance of doubt, any PIK Interest paid with respect thereto) held by such Purchaser on the Ex-Dividend Date for such distribution, at the same time and on the same terms as holders of Common Stock, the amount and kind of shares of Capital Stock, evidences of indebtedness, assets, property, rights, options or warrants that such Purchaser would have received if such Purchaser had owned, on such Ex-Dividend Date, a number of shares of Common Stock equal to the Conversion Rate in effect on such Ex-Dividend Date.

To the extent such distribution is not so paid or made, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the adjustment been made on the basis of only the distribution, if any, actually made or paid.

(2) *Spin-Offs*. If the Issuer distributes or dividends shares of Capital Stock of any class or series, or similar equity interests, of or relating to an Affiliate, a Subsidiary or other business unit of the Issuer to all or substantially all holders of the Common Stock (other than solely pursuant to (x) a Common Stock Change Event, as to which Section 2.11 will apply; or (y) a tender offer or

exchange offer for shares of Common Stock, as to which Section 2.8(d)(v) will apply), and such Capital Stock or equity interests are listed or quoted (or will be listed or quoted upon the consummation of the transaction) on a U.S. national securities exchange (a "**Spin-Off**"), then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{FMV + SP}{SP}$$

where:

CR_0 = the Conversion Rate in effect immediately before the Close of Business on the last Trading Day of the Spin-Off Valuation Period for such Spin-Off;

CR_1 = the Conversion Rate in effect immediately after the Close of Business on the last Trading Day of the Spin-Off Valuation Period;

FMV = the product of (x) the average of the Last Reported Sale Prices per share or unit of the Capital Stock or equity interests distributed in such Spin-Off over the ten (10) consecutive Trading Day period (the "**Spin-Off Valuation Period**") beginning on, and including, the Ex-Dividend Date for such Spin-Off (such average to be determined as if references to Common Stock in the definitions of Last Reported Sale Price, Trading Day and Market Disruption Event were instead references to such Capital Stock or equity interests); and (y) the number of shares or units of such Capital Stock or equity interests distributed per share of Common Stock in such Spin-Off; and

SP = the average of the Last Reported Sale Prices per share of Common Stock for each Trading Day in the Spin-Off Valuation Period.

The increase to the Conversion Rate under the preceding paragraph shall occur at the Close of Business on the last Trading Day of the Spin-Off Valuation Period; *provided* that if the Conversion Date for a Note occurs during the Spin-Off Valuation Period for such Spin-Off, then, solely for purposes of determining the Conversion Consideration for such conversion, such Spin-Off Valuation Period will be deemed to consist of the Trading Days occurring in the period from, and including, the Ex-Dividend Date for such Spin-Off to, and including, such Conversion Date.

To the extent any dividend or distribution of the type set forth in this Section 2.8(d)(iii)(2) is declared but not made or paid, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the adjustment been made on the basis of only the dividend or distribution, if any, actually made or paid.

(iv) *Cash Dividends or Distributions*. If any cash dividend or distribution is made to all or substantially all holders of Common Stock, then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP}{SP - D}$$

where:

CR_0 = the Conversion Rate in effect immediately before the Open of Business on the Ex-Dividend Date for such dividend or distribution;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date;

SP = the Last Reported Sale Price per share of Common Stock on the Trading Day immediately before such Ex-Dividend Date; and

D = the cash amount distributed per share of Common Stock in such dividend or distribution;

Any increase pursuant to this Section 2.8(d)(iv) shall become effective immediately after the Open of Business on the Ex-Dividend Date for such dividend or distribution. If D is equal to or greater than SP, then, in lieu of the foregoing adjustment to the Conversion Rate, each Purchaser will receive, for each $1,000 principal amount of Notes (including, for the avoidance of doubt, any PIK Interest paid with respect thereto) held by such Purchaser on the Ex-Dividend Date for such dividend or distribution, at the same time and on the same terms as holders of Common Stock, the amount of cash that such Purchaser would have received if such Purchaser had owned, on such Ex-Dividend Date, a number of shares of Common Stock equal to the Conversion Rate in effect on such Ex-Dividend Date.

To the extent such dividend or distribution is declared but not made or paid, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the adjustment been made on the basis of only the dividend or distribution, if any, actually made or paid.

(v) *Tender Offers or Exchange Offers*. If the Issuer or any of its Subsidiaries makes a payment in respect of a tender offer or exchange offer for shares of Common Stock, and the value (determined as of the Expiration Time by the Board of Directors) of the cash and other consideration paid per share of Common Stock in such tender or exchange offer exceeds the Last Reported Sale Price per share of Common Stock on the Trading Day immediately after the last date (the "**Expiration Date**") on which tenders or exchanges may be made pursuant to such tender or exchange offer (as it may be amended), then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{AC + (SP \times OS_1)}{SP \times OS_0}$$

where:

CR_0 = the Conversion Rate in effect immediately before the Close of Business on the last Trading Day of the Tender/Exchange Offer Valuation Period for such tender or exchange offer;

CR_1 = the Conversion Rate in effect immediately after the Close of Business on the last Trading Day of the Tender/Exchange Offer Valuation Period;

AC = the aggregate value (determined as of the time (the "**Expiration Time**") such tender or exchange offer expires by the Board of Directors) of all cash and other consideration paid for shares of Common Stock purchased or exchanged in such tender or exchange offer;

OS_0 = the number of shares of Common Stock outstanding immediately before the Expiration Time (including all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer);

OS_1 = the number of shares of Common Stock outstanding immediately after the Expiration Time (excluding all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer); and

SP = the average of the Last Reported Sale Prices per share of Common Stock over the ten (10) consecutive Trading Day period (the "**Tender/Exchange Offer Valuation Period**") beginning on, and including, the Trading Day immediately after the Expiration Date;

provided, *however*, that the Conversion Rate will in no event be adjusted down pursuant to this Section 2.8(d)(v), except to the extent provided in the immediately following paragraph. The increase to the Conversion Rate under this Section 2.8(d)(v) shall occur at the Close of Business on the last Trading Day of the Tender/Exchange Offer Valuation Period; *provided* that if the Conversion Date for a Note occurs during the Tender/Exchange Offer Valuation Period for such tender or exchange offer, then, solely for purposes of determining the Conversion Consideration for such conversion, such Tender/Exchange Offer Valuation Period will be deemed to consist of the Trading Days occurring in the period from, and including, the Trading Day immediately after the Expiration Date to, and including, such Conversion Date.

To the extent such tender or exchange offer is announced but not consummated (including as a result of the Issuer being precluded from consummating such tender or exchange offer under applicable law), or any purchases or exchanges of shares of Common Stock in such tender or exchange offer are rescinded, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the adjustment been made on the basis of only the purchases or exchanges of shares of Common Stock, if any, actually made, and not rescinded, in such tender or exchange offer.

(vi) If, on or after the Closing Date and on or prior to the 3-month anniversary of the Closing Date, the Issuer or any of its Subsidiaries issues or otherwise sells any shares of Common Stock, or any Equity-Linked Securities, in each case at an Effective Price per share of Common Stock that is less than the Conversion Price in effect (before giving effect to the adjustment required by this Section 2.8(d)(vi)) as of the date of the issuance or sale of such shares

or Equity-Linked Securities (such an issuance or sale, a "**Degressive Issuance**"), then, effective as of the Close of Business on such date, the Conversion Rate will be increased to an amount equal to (x) one thousand dollars ($1,000) *divided by* (y) the Weighted Average Issuance Price. For these purposes, the "**Weighted Average Issuance Price**" will be equal to:

$$\frac{(CP \times OS) + (EP \times X)}{OS + X}$$

where:

CP = such Conversion Price;

OS = the sum of (1) number of shares of Common Stock and (2) the number of shares into which the Notes could be converted if fully converted, in each case outstanding immediately before such Degressive Issuance;

EP = the Effective Price per share of Common Stock in such Degressive Issuance; and

X = the sum, without duplication, of (x) the total number of shares of Common Stock issued or sold in such Degressive Issuance; and (y) the maximum number of shares of Common Stock underlying such Equity-Linked Securities issued or sold in such Degressive Issuance;

provided, *however*, that (1) the Conversion Rate will not be adjusted pursuant to this Section 2.8(d)(vi) solely as a result of an Exempt Issuance or as a result of any transaction in respect of which an adjustment is made pursuant to Section 2.8(d)(i), (ii), (iii), (iv) and/or (v); (2) the issuance of shares of Common Stock pursuant to any such Equity-Linked Securities will not constitute an additional issuance or sale of shares of Common Stock for purposes of this Section 2.8(d)(vi) (it being understood, for the avoidance of doubt, that the issuance or sale of such Equity-Linked Securities, or any re-pricing or amendment thereof, will be subject to this Section 2.8(d)(vi)); and (3) in no event will the Conversion Rate be decreased pursuant to this Section 2.8(d)(vi). For purposes of this Section 2.8(d)(vi), any re-pricing or amendment of any Equity-Linked Securities (including, for the avoidance of doubt, any Equity-Linked Securities existing as of the Effective Date) will be deemed to be the issuance of additional Equity-Linked Securities, without affecting any prior adjustments theretofore made to the Conversion Rate. The Issuer will not effect any Degressive Issuance that would result in an adjustment to the Conversion Rate pursuant to this Section 2.8(d)(vi) that requires the approval of the Issuer's stockholders pursuant to the listing standards of The Nasdaq Global Select Market, unless the Issuer has obtained such stockholder approval before such Degressive Issuance.

(e) No Adjustments in Certain Cases. Notwithstanding anything to the contrary in this Section 2.8(d), the Issuer will not be obligated to adjust the Conversion Rate on account of a transaction or other event otherwise requiring an adjustment pursuant to this Section 2.8(d) (other than a stock split or combination of the type set forth in Section 2.8(d)(i), a tender or exchange offer of the type set forth in Section 2.8(d)(v) or a Degressive Issuance) if each Purchaser participates, at the same time and on the same terms as holders of Common Stock, and solely by

virtue of being a Purchaser of Notes, in such transaction or event without having to convert such Purchaser's Notes and as if such Purchaser held a number of shares of Common Stock equal to the product of (i) the Conversion Rate in effect on the related record date; and (ii) the aggregate principal amount (expressed in thousands) of Notes held by such Purchaser on such date.

(f) Stockholder Rights Plans. If any shares of Common Stock are to be issued upon conversion of any Note and, at the time of such conversion, the Issuer has in effect any stockholder rights plan, then the Purchaser holding such Note will be entitled to receive, in addition to, and concurrently with the delivery of, the Conversion Consideration otherwise payable under this Agreement upon such conversion, the rights set forth in such stockholder rights plan, unless such rights have separated from the Common Stock at such time, in which case, and only in such case, the Conversion Rate will be adjusted pursuant to Section 2.8(d)(iii)(1) on account of such separation as if, at the time of such separation, the Issuer had made a distribution of the type referred to in such Section to all holders of the Common Stock, subject to readjustment in accordance with such Section if such rights expire, terminate or are redeemed.

(g) Limitation on Effecting Transactions Resulting in Certain Adjustments. The Issuer will not engage in or be a party to any transaction or event that would require the Conversion Rate to be adjusted pursuant to Section 2.8(d) or Section 2.9 to an amount that would result in the Conversion Price per share of Common Stock being less than the par value per share of Common Stock or in a manner which is inconsistent with the listing rules of the ASX.

(h) Equitable Adjustments to Prices. Whenever any provision of this Agreement requires the Issuer to calculate the average of the Last Reported Sale Prices, or any function thereof, over a period of multiple days (including to calculate the Stock Price or an adjustment to the Conversion Rate), the Issuer will make proportionate adjustments, if any, to such calculations to account for any adjustment to the Conversion Rate pursuant to Section 2.8(d)(i) that becomes effective, or any event requiring such an adjustment to the Conversion Rate where the Ex-Dividend Date or effective date, as applicable, of such event occurs, at any time during such period.

(i) Calculation of Number of Outstanding Shares of Common Stock. For purposes of Section 2.8(d), the number of shares of Common Stock outstanding at any time will (i) include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock; and (ii) exclude shares of Common Stock held in the Issuer's treasury (unless the Issuer pays any dividend or makes any distribution on shares of Common Stock held in its treasury).

(j) Calculations. All calculations with respect to the Conversion Rate and adjustments thereto will be made to the nearest 1/10,000th of a share of Common Stock (with 5/100,000ths rounded upward).

(k) Notice of Conversion Rate Adjustments. Upon the effectiveness of any adjustment to the Conversion Rate pursuant to Section 2.8(d), the Issuer will promptly send notice to the Purchasers containing (i) a brief description of the transaction or other event on account of which such adjustment was made; (ii) the Conversion Rate in effect immediately after such adjustment; and (iii) the effective time of such adjustment.

(l) Voluntary Adjustments. To the extent permitted by law and applicable stock exchange rules, the Issuer, from time to time, may (but is not required to) increase the Conversion Rate by any amount if (i) the Board of Directors determines that such increase is either (x) in the best interest of the Issuer; or (y) advisable to avoid or diminish any income tax imposed on holders of Common Stock or rights to purchase Common Stock as a result of any dividend or distribution of shares (or rights to acquire shares) of Common Stock or any similar event; (ii) such increase is in effect for a period of at least twenty (20) Business Days; and (iii) such increase is irrevocable during such period.

(m) Notice of Voluntary Increase. If the Board of Directors determines to increase the Conversion Rate pursuant to Section 2.8(l), then, no later than the first Business Day of the related twenty (20) Business Day period referred to in Section 2.8(l), the Issuer will send notice to each Purchaser of such increase, the amount thereof and the period during which such increase will be in effect.

2.9 Adjustments to the Conversion Rate in Connection with a Make-Whole Fundamental Change.

(a) Generally. If a Make-Whole Fundamental Change occurs and the Conversion Date for the conversion of a Note occurs during the related Make-Whole Fundamental Change Conversion Period, then, subject to this Section 2.9, the Conversion Rate applicable to such conversion will be increased by a number of shares (the "**Additional Shares**") set forth in the table below corresponding (after interpolation as provided in, and subject to, the provisions below) to the Make-Whole Fundamental Change Effective Date and the Stock Price of such Make-Whole Fundamental Change:

	Stock Price													
Make-Whole Fundamental Change Effective Date	$16.00	$17.00	$17.60	$18.00	$20.00	$22.50	$25.00	$30.00	$40.00	$50.00	$60.00	$70.00	$90.00	$110.00
Closing Date	5.6818	5.1288	4.8352	4.6528	3.8765	3.1467	2.5984	1.8407	1.0133	0.5896	0.3448	0.1937	0.0388	0.0000
August 15, 2023	5.6818	4.9853	4.6534	4.4478	3.5845	2.7924	2.2164	1.4640	0.7355	0.4116	0.2367	0.1303	0.0221	0.0000
August 15, 2024	5.6818	4.9853	4.6534	4.4478	3.4840	2.5258	1.8116	0.8453	0.0128	0.0000	0.0000	0.0000	0.0000	0.0000
August 15, 2025	5.6818	4.9853	4.6534	4.4478	3.4840	2.5258	1.7984	0.8293	0.0128	0.0000	0.0000	0.0000	0.0000	0.0000
August 15, 2026	5.6818	4.9853	4.6534	4.4478	3.1390	2.0831	1.4196	0.6473	0.0128	0.0000	0.0000	0.0000	0.0000	0.0000
August 15, 2027	5.6818	2.0053	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

If such Make-Whole Fundamental Change Effective Date or Stock Price is not set forth in the table above, then:

(i) if such Stock Price is between two Stock Prices in the table above or the Make-Whole Fundamental Change Effective Date is between two dates in the table above, then the number of Additional Shares will be determined by straight-line interpolation between the numbers of Additional Shares set forth for the higher and lower Stock Prices in the table above or the earlier and later dates in the table above, based on a 365-day year; and

(ii) if the Stock Price is greater than $16.00 (subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table above are adjusted pursuant to Section 2.9(b)), or less than $110.00 (subject to adjustment in the same manner), per share, then no Additional Shares will be added to the Conversion Rate.

Notwithstanding anything to the contrary in this Agreement or the Notes, in no event will the Conversion Rate be increased to an amount that exceeds 62.5 shares of Common Stock per $1,000 principal amount of Notes, which amount is subject to adjustment in the same manner as, and at the same time and for the same events for which, the Conversion Rate is required to be adjusted pursuant to Section 2.8(d).

(b) Adjustment of Stock Prices and Number of Additional Shares. The Stock Prices in the first row (*i.e.*, the column headers) of the table set forth in Section 2.9(a) will be adjusted in the same manner as, and at the same time and for the same events for which, the Conversion Price is adjusted as a result of the operation of Section 2.8(d). The numbers of Additional Shares in the table set forth in Section 2.9(a) will be adjusted in the same manner as, and at the same time and for the same events for which, the Conversion Rate is adjusted pursuant to Section 2.8(d).

(c) Notice of the Occurrence of a Make-Whole Fundamental Change. If a Make-Whole Fundamental Change occurs, then, promptly and in no event later than the Business Day immediately after the Make-Whole Fundamental Change Effective Date of such Make-Whole Fundamental Change, the Issuer will notify the Purchasers of the occurrence of such Make-Whole Fundamental Change and of such Make-Whole Fundamental Change Effective Date, briefly stating the circumstances under which the Conversion Rate will be increased pursuant to this Section 2.9 in connection with such Make-Whole Fundamental Change.

(d) Overlapping Make-Whole Fundamental Change Conversion Periods. If a Conversion Date occurs during two or more Make-Whole Fundamental Change Periods, a Purchaser converting its Notes will be entitled to a single increase to the Conversion Rate with respect to the first to occur of the applicable Make-Whole Fundamental Changes, and the later Make-Whole Fundamental Change(s) will be deemed to not have occurred for purposes of this Section 2.9.

2.10 Reserved.

2.11 Effect of Common Stock Change Event.

(a) Generally. If there occurs any:

(i) recapitalization, reclassification or change of the Common Stock (other than (x) changes solely resulting from a subdivision or combination of the Common Stock, (y) a change only in par value or from par value to no par value or no par value to par value and (z) stock splits and stock combinations that do not involve the issuance of any other series or class of securities);

(ii) consolidation, merger, combination or binding or statutory share exchange involving the Issuer;

(iii) sale, lease or other transfer of all or substantially all of the assets of the Issuer and its Subsidiaries, taken as a whole, to any Person; or

(iv) other similar event,

and, as a result of which, the Common Stock is converted into, or is exchanged for, or represents solely the right to receive, other securities, cash or other property, or any combination of the foregoing (such an event, a "**Common Stock Change Event**," and such other securities, cash or property, the "**Reference Property**," and the amount and kind of Reference Property that a holder of one (1) share of Common Stock would be entitled to receive on account of such Common Stock Change Event (without giving effect to any arrangement not to issue or deliver a fractional portion of any security or other property), a "**Reference Property Unit**"), then, notwithstanding anything to the contrary in this Agreement or the Notes,

(1) from and after the effective time of such Common Stock Change Event, (I) the Conversion Consideration due upon conversion of any Note will be determined in the same manner as if each reference to any number of shares of Common Stock in this Section 2 (or in any related definitions) were instead a reference to the same number of Reference Property Units; (II) for purposes of Section 2.8(a), each reference to any number of shares of Common Stock in such Section (or in any related definitions) will instead be deemed to be a reference to the same number of Reference Property Units; and (III) for purposes of the definition of "Ex-Dividend Date," the term "Common Stock" will be deemed to refer to any class of securities forming part of such Reference Property; and

(2) for these purposes, the Last Reported Sale Price of any Reference Property Unit or portion thereof that does not consist of a class of securities will be the fair value of such Reference Property Unit or portion thereof, as applicable, determined in good faith by the Issuer (or, in the case of cash denominated in U.S. dollars, the face amount thereof).

If the Reference Property consists of more than a single type of consideration to be determined based in part upon any form of stockholder election, then the composition of the Reference Property Unit will be deemed to be the weighted average of the types and amounts of consideration actually received, per share of Common Stock, by the holders of Common Stock. The Issuer will notify the Purchasers of such weighted average as soon as practicable after such determination is made.

At or before the effective time of such Common Stock Change Event, the Issuer and the resulting, surviving or transferee Person (if not the Issuer) of such Common Stock Change Event (the "**Successor Person**") will execute and deliver to the Purchasers such supplemental instruments, if any, as the Issuer reasonably determines are necessary or desirable to (x) provide for subsequent conversions of Notes in the manner set forth in this Section 2.11; (y) provide for subsequent adjustments to the Conversion Rate pursuant to Section 2.8(d) in a manner consistent with this Section 2.11; and (z) contain such other provisions, if any, that the Issuer reasonably determines are appropriate to preserve the economic interests of the Purchasers and to give effect to the provisions of this Section 2.11(a). If the Reference Property includes shares of stock or other securities or assets of a Person other than the Successor Person, then such other Person will also execute such supplemental instrument(s) and such supplemental instrument(s) will contain such additional provisions, if any, that the Issuer reasonably determines are appropriate to preserve the economic interests of Purchasers.

(b) Notice of Common Stock Change Events. The Issuer will provide notice of each Common Stock Change Event to the Purchasers no later than the effective date of such Common Stock Change Event.

(c) Compliance Covenant. The Issuer will not become a party to any Common Stock Change Event unless its terms are consistent with this Section 2.11.

3. CONDITIONS OF NOTES

3.1 Conditions Precedent to the Effective Date. The effectiveness of this Agreement is subject to the condition precedent that each Purchaser shall consent to or shall have received, in form and substance satisfactory to each Purchaser, such documents, and completion of such other matters, as each Purchaser may reasonably deem necessary or appropriate, including, without limitation:

(a) a copy of this Agreement, duly executed by Issuer, each Purchaser and each Guarantor;

(b) delivery of the Notes, duly executed by Issuer; and

(c) to the extent requested by the Purchasers or Collateral Agent, a properly completed and duly executed IRS Form W-9 (or other applicable tax form) from Issuer and all other documentation and other information required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations.

3.2 Additional Conditions Precedent to Closing. In addition to the conditions precedent to Section 3.1 above, the Closing is solely subject to satisfaction of the following conditions precedent on the Closing Date:

(a) Note Documents (other than this Agreement), each duly executed by Issuer and each Guarantor, as applicable;

(b) a completed Perfection Certificate for Issuer and each Guarantor;

(c) the Operating Documents and good standing certificates of Issuer and each Guarantor certified by the Secretary of State (or equivalent agency) of Issuer's and such Guarantor's jurisdiction of organization or formation and each jurisdiction in which Issuer and each Guarantor is qualified to conduct business, each as of a date no earlier than thirty (30) days prior to the Closing Date;

(d) a certificate of Issuer executed by the Secretary of Issuer and each Guarantor executed by a director of the relevant Guarantor with appropriate insertions and attachments, including with respect to (i) the Operating Documents of Issuer or such Guarantor (which Certificate of Incorporation of Issuer shall be certified by the Secretary of State of the State of Delaware); (ii) the resolutions adopted by the Board of Directors or the board of directors (or the functional equivalent thereof) of such Guarantor for the purpose of approving the transactions contemplated by the Note Documents; (iii) (in the case of each Guarantor) the up-to-date share register of such Guarantor; and (iv) (in the case of each Guarantor) the identification by name and title, and the specimen signatures of, the officers of such Guarantor authorized to sign the Note Documents to which such Guarantor is party;

(e) Issuer shall have provided the applicable listing of additional shares notification to The NASDAQ Global Select Market and The NASDAQ Global Select Market shall not have made any objection (not subsequently withdrawn) that the consummation of the transactions contemplated by this Agreement would violate NASDAQ listing rules applicable to the Issuer and that if not withdrawn would result in the delisting of the Common Stock;

(f) a duly executed legal opinion of counsel to Issuer dated as of the Closing Date, in form and substance satisfactory to the Purchasers;

(g) a duly executed legal opinion of Australian counsel to Issuer and Guarantors dated as of the Closing Date, in form and substance satisfactory to the Purchasers;

(h) the representations and warranties in Section 5 hereof shall be true, accurate and complete in all material respects on the Closing Date; *provided*, *however*, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and *provided*, *further* that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date, and no Event of Default shall have occurred and be continuing or result from the purchase of Notes;

(i) no Event of Default or an event that with the passage of time could result in an Event of Default, shall exist;

(j) to the extent requested by Collateral Agent, a properly completed and duly executed IRS Form W-9 (or other applicable tax form) from each Purchaser and all other documentation and other information required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations;

(k) payment of the fees, Purchasers' Expenses, Collateral Agent Expenses and Collateral Agent Fees then due as specified in Section 2.4 hereof (and Collateral Agent shall have received a fully executed copy of the Fee Letter); and

(l) cause the Purchasers and Collateral Agent to receive (i) evidence that all financing statements in the jurisdiction of organization of each of Issuer and each Guarantor that the Purchasers or Collateral Agent may deem reasonably necessary (including, without limitation, registration of the Australian Security Documents on the "Personal Property Securities Register" established in connection with the PPSA) and (ii) each other document required by any Note Document or under any applicable Requirement of Law to be filed, registered or recorded in order to create in favor of the Collateral Agent, for the ratable benefit of the Secured Parties, a perfected Lien on the Collateral required to be delivered pursuant to such Note Document, in proper form for filing, registration or recordation.

3.3 Covenant to Deliver. Issuer agrees to deliver to the Purchasers each item required to be delivered to the Purchasers under this Agreement as a condition precedent to the purchase of Notes. Issuer expressly agrees that any purchase of Notes made prior to the receipt by any Purchaser of any such item shall not constitute a waiver by any Purchaser of Issuer's obligation to deliver such item, and any such Note in the absence of a required item shall be made in each Purchaser's sole discretion.

3.4 Post-Closing Obligations. Notwithstanding any provision herein or in any other Note Document to the contrary, to the extent not actually delivered on or prior to the Closing Date, Issuer shall, and shall cause each applicable Guarantor to:

(a) deliver to the Purchasers evidence satisfactory to the Purchasers that the insurance policies required by Section 6.5 hereof are in full force and effect, together with appropriate evidence showing loss payable and/or additional insured clauses or endorsements in favor of Collateral Agent, for the ratable benefit of the Secured Parties, no later than thirty (30) days after the Closing Date (or such later date as the Required Purchasers may agree);

(b) deliver to Collateral Agent and the Purchasers duly executed Control Agreements with respect to any Collateral Accounts maintained by Issuer or any Guarantor no later than thirty (30) days after the Closing Date (or such later date as the Required Purchasers may agree);

(c) within five (5) Business Days of the date of the General Security Deed (or such later date as the Required Purchasers may agree), deliver to Collateral Agent (a) all Certificates (as defined in the General Security Deed) evidencing any Shares (as defined in the General Security Deed) beneficially owned by each Guarantor at the date of the General Security Deed and (b) any number of Transfers (as defined in the General Security Deed) of Shares that Collateral Agent reasonably requires; and

(d) no later than thirty (30) days after the Closing Date (or such later date as the Required Purchasers may agree), deliver to Collateral Agent evidence reasonably satisfactory to Required Purchasers that the lien in favor of Dundee Corporation has been released.

4. CREATION OF SECURITY INTEREST

4.1 Grant of Security Interest. Without prejudice to the Liens granted by each Australian Obligor under each Australian Security Document to which it is party, upon the Closing Date, the Issuer and each Guarantor hereby grants Collateral Agent, for the ratable benefit of the Secured Parties, to secure the payment and performance in full of all of the Obligations and the Guaranteed Obligations, as applicable, a continuing first priority security interest in, and pledges to Collateral Agent, for the ratable benefit of the Secured Parties, the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products and supporting obligations (as defined in the Code) in respect thereof. In respect of the Australian Obligors only, to the extent there is any inconsistency between this Section 4.1 and any provision of any Australian Security Document, the relevant provision of such Australian Security Document shall prevail.

If Issuer or any Guarantor shall acquire any commercial tort claim (as defined in the Code), upon the Closing Date, Issuer or such Guarantor shall grant to Collateral Agent, for the ratable benefit of the Secured Parties, a first priority security interest therein and in the proceeds and products and supporting obligations (as defined in the Code) thereof, all upon the terms of this Agreement, with such writing to be in form and substance reasonably satisfactory to Collateral Agent and the Required Purchasers.

If this Agreement is terminated, Collateral Agent's Lien in the Collateral shall continue until the Obligations (other than inchoate indemnity obligations) are repaid or converted in full. Upon payment or conversion in full of the Obligations (other than inchoate indemnity obligations) and at such time as the Purchasers' obligation to purchase the Notes has terminated, Collateral Agent shall (acting at the direction of the Required Purchasers), at the sole cost and expense of Issuer, release its Liens in the Collateral and all rights therein shall revert to Issuer and the Guarantors.

4.2 Authorization to File Financing Statements. Upon the Closing Date, each of Issuer and the Guarantors hereby authorizes Collateral Agent to file financing statements or take any other action required to perfect Collateral Agent's security interests in the Collateral (held for the ratable benefit of the Secured Parties), without notice to Issuer or any Guarantor, with all appropriate jurisdictions to perfect or protect Collateral Agent's interest or rights under the Note Documents. Notwithstanding anything herein to the contrary, Collateral Agent shall have no obligation to file any financing statements or take any other actions required to perfect Collateral Agent's security interests in the Collateral unless expressly directed to do so in writing by the Required Purchasers.

5. REPRESENTATIONS AND WARRANTIES

Issuer and each Guarantor represents and warrants to Collateral Agent and the Purchasers as follows as of the Closing Date:

5.1 Due Organization, Authorization: Power and Authority. Issuer and each of its Subsidiaries is duly existing and in good standing as a Registered Organization in its jurisdictions of organization or formation and Issuer and each of its Subsidiaries is qualified and licensed to do business and is in good standing in any jurisdiction in which the conduct of its businesses or its ownership of property requires that it be so qualified except where the failure to do so could not reasonably be expected to have a Material Adverse Change. In connection with this Agreement, Issuer and each of the Guarantors has delivered to Collateral Agent and the Purchasers a completed perfection certificate and any updates or supplements thereto on, before or after the Closing Date (each a "**Perfection Certificate**" and collectively, the "**Perfection Certificates**"). For the avoidance of doubt, Collateral Agent and Purchasers agree that Issuer may from time to time update certain information in the Perfection Certificates after the Closing Date to the extent permitted by one or more specific provisions in this Agreement. Issuer represents and warrants that all the information set forth on the Perfection Certificates pertaining to Issuer and each of the Guarantors is accurate and complete, in all non-ministerial respects.

The execution, delivery and performance by Issuer and each Guarantor of the Note Documents to which it is, or they are, a party have been duly authorized, and do not (i) conflict

with any of Issuer's or such Guarantor's organizational documents, including its respective Operating Documents, (ii) contravene, conflict with, constitute a default under or violate any material Requirement of Law applicable thereto, (iii) contravene, conflict or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which Issuer or such Guarantor, or any of their property or assets may be bound or affected, (iv) require any action by, filing, registration, or qualification with, or Governmental Approval from, any Governmental Authority (except such Governmental Approvals which have already been obtained and are in full force and effect) or are being obtained pursuant to Section 6.1(b), or (v) constitute an event of default or material breach under any Material Agreement by which Issuer, any of its Subsidiaries or any of their respective properties, is bound. Neither Issuer nor any of its Subsidiaries is in default or material breach under any Material Agreement to which it is a party or by which it or any of its assets is bound in which such default could reasonably be expected to have a Material Adverse Change.

5.2 Collateral.

(a) Issuer and each Guarantor have good title to, have rights in, and the power to transfer each item of the Collateral upon which it purports to grant a Lien under the Note Documents, free and clear of any and all Liens except Permitted Liens, and neither Issuer nor any Guarantor has any Deposit Accounts, Securities Accounts, Commodity Accounts or other investment accounts other than the Collateral Accounts or the other investment accounts, if any, described in the Perfection Certificates delivered to Collateral Agent and the Purchasers in connection herewith in respect of which Issuer or such Guarantor has given Collateral Agent and the Purchasers notice and taken such actions as are necessary to give Collateral Agent a perfected security interest therein as required under this Agreement. The Accounts are bona fide, existing obligations of the Account Debtors.

(b) The security interest granted herein is and shall at all times continue to be a first priority perfected security interest in the Collateral, subject only to involuntary Permitted Liens that, under applicable law, have priority over Collateral Agent's Lien.

(c) On the Closing Date, and except as disclosed on the Perfection Certificate (i) the Collateral is not in the possession of any third party bailee, and (ii) no such third party bailee possesses components of the Collateral in excess of One Million Dollars ($1,000,000).

(d) All Inventory and Equipment is in all material respects of good and marketable quality, free from material defects.

(e) Issuer and each Guarantor is the sole owner of the Intellectual Property each respectively purports to own, free and clear of all Liens other than Permitted Liens and non-exclusive licenses for off-the-shelf software that is commercially available to the public. Except as noted on the Perfection Certificate (which, upon the consummation of a transaction not prohibited by this Agreement, may be updated to reflect such transaction), neither Issuer nor any of Guarantor is a party to, nor is bound by, any material license or other Material Agreement.

(f) Each employee and contractor of Issuer and its Subsidiaries involved in development or creation of any material Intellectual Property has assigned any and all inventions and ideas of such Person in and to such Intellectual Property to Issuer or such Subsidiary, except where failure to do so could not reasonably be expected to have a Material Adverse Change, in each case individually or in the aggregate.

(g) No settlement or consents, covenants not to sue, nonassertion assurances, or releases have been entered into by Issuer or any Guarantor or exist to which Issuer or such Guarantor is bound that adversely affect its rights to own or use any Intellectual Property except as could not be reasonably expected to result in a Material Adverse Change, in each case individually or in the aggregate.

5.3 Subsidiaries' Equity Interests. All of the issued ownership interests of each of the Subsidiaries of Issuer are duly authorized and validly issued, fully paid, nonassessable, and directly owned by Issuer or its applicable Subsidiary and are free and clear of all Liens other than Permitted Liens and not subject to any preemptive rights, rights of first refusal, option, warrant, call, subscription, and similar rights, other than as required by law.

5.4 Litigation. Except as disclosed on the Perfection Certificate or with respect to which Issuer has provided notice as required hereunder, there are no actions, suits, investigations, or proceedings pending or, to the Knowledge of the Responsible Officers, threatened in writing by or against Issuer or any of its Subsidiaries involving more than One Million Dollars ($1,000,000).

5.5 No Broker's Fees. None of Issuer nor any of its Subsidiaries are party to any contract, agreement or understanding with any Person that would give rise to a valid claim against them or the Purchasers for a brokerage commission, finder's fee or like payment in connection with the Note Documents and the transactions contemplated thereby (other than as disclosed to Bluescape prior to the Effective Date).

5.6 No Material Adverse Change; Financial Statements. All consolidated financial statements for Issuer and its consolidated Subsidiaries, delivered to the Purchasers fairly present, in conformity with GAAP, and in all material respects the consolidated financial condition of Issuer and its consolidated Subsidiaries, and the consolidated results of operations of Issuer and its consolidated Subsidiaries as of and for the dates presented. Since June 30, 2021, there has not been a Material Adverse Change.

5.7 No General Solicitation. Neither Issuer nor any of its Subsidiaries or any of their affiliates (as defined in Rule 501(b) of Regulation D) or any person or entity acting on its or their behalf has, directly or indirectly, sold, offered for sale, solicited offers to buy or otherwise negotiated in respect of, any security (as defined in the Securities Act), that is or will be integrated with the sale of the Notes in a manner that would require registration of the Notes under the Securities Act.

5.8 Accredited Investors. Neither Issuer nor any of its Subsidiaries has offered or sold any of the Notes to any person or entity whom it does not reasonably believe is an "accredited investor" (as defined in Rule 501(a) of Regulation D).

5.9 Solvency. Issuer is and each Guarantor is, and upon consummation of the transactions contemplated by the Note Documents will be, Solvent. Issuer and each of its Subsidiaries, when taken as a whole, is, and upon consummation of the transactions contemplated by the Note Documents will be, Solvent.

5.10 No Registration Required. Assuming the accuracy of the representations and warranties of each Purchaser contained in Section 12.16, the issuance and sale of the Notes pursuant to this Agreement is exempt from the registration requirements of the Securities Act, and neither Issuer nor, to the knowledge of the Company, any authorized representative or other agent acting on its behalf has taken or will take any action hereafter that would cause the loss of such exemption.

5.11 SEC Reports. All forms, registration statements, reports, schedules and statements required to be filed by Issuer under the Exchange Act or the Securities Act (all such documents, including the exhibits thereto, collectively the "**Issuer SEC Documents**") have been filed with the SEC on a timely basis. The Issuer SEC Documents, including, without limitation, any audited or unaudited financial statements and any notes thereto or schedules included therein (the "**Issuer Financial Statements**"), at the time filed (or in the case of registration statements, solely on the dates of effectiveness) (i) did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, (ii) complied as to form in all material respects with the applicable requirements of the Exchange Act and/or the Securities Act, as the case may be, (iii) complied as to form in all material respects with applicable accounting requirements and with the published rules and regulations of the SEC with respect thereto, (iv) with respect to the Issuer Financial Statements, were prepared in accordance with GAAP applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto or, in the case of unaudited statements, as permitted by Regulation S-X), and (v) with respect to the Issuer Financial Statements, fairly present (subject in the case of unaudited statements to normal and recurring audit adjustments) in all material respects the consolidated financial position of Issuer and its consolidated Subsidiaries as of the dates thereof and the consolidated results of its operations and cash flows for the periods then ended. BDO USA, LLP is an independent registered public accounting firm with respect to Issuer and has not resigned or been dismissed as independent registered public accountants of Issuer as a result of or in connection with any disagreement with Issuer on any matter of accounting principles or practices, financial statement disclosure or auditing scope or procedures.

5.12 Internal Controls. Issuer has disclosed, based on its most recent evaluation prior to the date hereof, to Issuer's outside auditors and the audit committee of the Board of Directors (a) any significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act) that are reasonably likely to adversely affect Issuer's ability to record, process, summarize and report financial information and (b) any fraud, whether or not material, that involves management or other employees who have a significant role in Issuer's internal control over financial reporting.

5.13 Disclosure Controls and Procedures. Issuer has established and maintains, and at all times since March 15, 2022, has maintained, disclosure controls and procedures and a system of internal controls over financial reporting (as such terms are defined in paragraphs (e) and (f), respectively, of Rule 13a-15 under the Exchange Act) that are (i) designed to provide reasonable assurance that material information relating to Issuer, including its Subsidiaries, that is required to

be disclosed by Issuer in the reports that it furnishes or files under the Exchange Act is reported within the time periods specified in the rules and forms of the SEC and that such material information is communicated to Issuer's management to allow timely decisions regarding required disclosure and (ii) sufficient to provide reasonable assurance that (a) transactions are executed in accordance with Issuer management's general or specific authorization, (b) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP, consistently applied, and to maintain accountability for assets, (c) access to assets is permitted only in accordance with Issuer management's general or specific authorization and (d) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences. There are no "significant deficiencies" or "material weaknesses" (as defined by the Public Company Accounting Oversight Board) in the design or operation of Issuer's internal controls over, and procedures relating to, financial reporting which would reasonably be expected to adversely affect in any material respect Issuer's ability to record, process, summarize and report financial data, in each case which has not been subsequently remediated. Since March 15, 2022, there has not been any fraud, whether or not material, that involves management or other employees of Issuer or any of its Subsidiaries who have a significant role in Issuer's internal controls over financial reporting. As of the date of this Agreement, to the knowledge of Issuer, there is no reason that its outside auditors and its chief executive officer and chief financial officer will not be able to give the certifications and attestations required pursuant to the rules and regulations adopted pursuant to Section 404 of the Sarbanes-Oxley Act of 2002, without qualification, when next due.

5.14 Regulatory Compliance. Neither Issuer nor any of its Subsidiaries is an "investment company" or a company "controlled" by an "investment company" under the Investment Company Act of 1940, as amended. Neither Issuer nor any of its Subsidiaries is engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). Issuer and each of its Subsidiaries has complied in all material respects with the Federal Fair Labor Standards Act. Neither Issuer nor any of its Subsidiaries is a "holding company" or an "affiliate" of a "holding company" or a "subsidiary company" of a "holding company" as each term is defined and used in the Public Utility Holding Company Act of 2005. Neither Issuer nor any of its Subsidiaries has violated any laws, order, ordinances or rules, the violation of which could reasonably be expected to have a Material Adverse Change. Neither Issuer's nor any of its Subsidiaries' properties or assets has been used by Issuer or such Subsidiary or, to Issuer's Knowledge, by previous Persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than in material compliance with material applicable laws. Issuer and each of its Subsidiaries has obtained all material consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all Governmental Authorities that are necessary to continue their respective businesses as currently conducted.

None of Issuer, any of its Subsidiaries, or any of Issuer's or its Subsidiaries' Affiliates or any of their respective directors, officers, employees, or agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement is (i) in violation of any Anti-Terrorism Law or Anti-Corruption Law, (ii) engaging in or conspiring to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law or Anti-Corruption Law, or (iii) is a Blocked Person. None of Issuer, any of its Subsidiaries, or to the Knowledge of Issuer and any of their

Affiliates, any of their respective directors, officers, employees, or agents, acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement, (x) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (y) deals in, or otherwise engages in any transaction relating to, any property or interest in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law. Issuer, its Subsidiaries and Affiliates, and to the Knowledge of Issuer each of their respective directors, officers, employees, or agents are and have been in compliance with all applicable Anti-Terrorism Laws and Anti-Corruption Laws.

5.15 Investments. Neither Issuer nor any of its Subsidiaries owns any stock, shares, partnership interests or other equity securities except for Permitted Investments.

5.16 Tax Returns and Payments; Pension Contributions. Issuer and each of its Subsidiaries have timely filed all required material tax returns and reports (or extensions thereof), and Issuer and each of its Subsidiaries, have timely paid all material foreign, federal, state, and local Taxes, assessments, deposits and contributions owed by Issuer and such Subsidiaries in an amount greater than Two Hundred Thousand Dollars ($200,000), in all jurisdictions in which Issuer or any such Subsidiary is subject to Taxes, including the United States and Australia, unless such Taxes are being contested in accordance with the next sentence. Issuer and each of its Subsidiaries, may defer payment of any contested Taxes, provided that Issuer or such Subsidiary, (a) in good faith contests its obligation to pay the Taxes by appropriate proceedings promptly and diligently instituted and conducted; (b) maintains adequate reserves or other appropriate provisions on its books in accordance with GAAP, and provided further that such action would not involve, in the reasonable judgment of the Required Purchasers, any risk of the sale, forfeiture or loss of any material portion of the Collateral. Neither Issuer nor any of its Subsidiaries is aware of any claims or adjustments proposed for any of Issuer's or such Subsidiary's, prior Tax years which could result in additional Taxes in an amount greater than Two Hundred Thousand Dollars ($200,000) becoming due and payable by Issuer or its Subsidiaries. Issuer and each of its Subsidiaries have paid all material amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms, and neither Issuer nor any of its Subsidiaries has, withdrawn from participation in, has permitted partial or complete termination of, or has permitted the occurrence of any other event with respect to, any such plan which could reasonably be expected to result in any liability of Issuer or its Subsidiaries, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other Governmental Authority.

5.17 Full Disclosure. No written representation, warranty or other statement of Issuer or any of its Subsidiaries in any certificate or written statement, when taken as a whole, given to Collateral Agent or any Purchaser, as of the date such representation, warranty, or other statement was made, taken together with all such written certificates and written statements given to Collateral Agent or any Purchaser, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained in the certificates or statements not misleading (it being recognized that projections and forecasts provided by Issuer in good faith and based upon reasonable assumptions are not viewed as facts and that actual results during the period or periods covered by such projections and forecasts may differ from the projected or forecasted results).

5.18 Enforceability. The Note Documents (other than the Notes) have been duly authorized by Issuer and the Guarantors and, upon the consummation of the transactions contemplated by the Note Documents, shall constitute the legal, valid, and binding obligations of Issuer and the Guarantors, enforceable against Issuer and the Guarantors in accordance with their terms, except as such enforceability may be limited by bankruptcy, fraudulent conveyance, insolvency, reorganization, transfer, moratorium, and other laws relating to or affecting creditors' rights generally and by general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law).

5.19 Valid Issuance of Notes and Guarantees.

(a) The Notes have been duly authorized by Issuer and the Guarantors and, when issued against payment of the Purchase Price in accordance with Section 2.2, will be validly issued and will constitute legal, valid and binding obligations of Issuer and the Guarantors, enforceable against Issuer and the Guarantors in accordance with their terms, except as such enforceability may be limited by bankruptcy, fraudulent conveyance, insolvency, reorganization, moratorium, and other laws relating to or affecting creditors' rights generally and by general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law). The shares of Common Stock issuable upon conversion of the Notes have been duly and validly authorized and reserved by Issuer (to the extent required to be converted under the terms hereof) and, when issued upon conversion in accordance with this Agreement and the Notes, will be validly issued, fully paid and non-assessable, and the issuance of any such shares shall not be subject to any preemptive or similar rights.

(b) The Guarantees provided to this Agreement have been duly authorized by the Guarantors and, when issued against payment of the Purchase Price in accordance with Section 2.2, will be validly issued and will constitute legal, valid and binding obligations of the Guarantors, enforceable against the Guarantors in accordance with the terms of this Agreement, except as such enforceability may be limited by bankruptcy, fraudulent conveyance, insolvency, reorganization, moratorium, and other laws relating to or affecting creditors' rights generally and by general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law).

5.20 Title Ownership. Each of the Issuer, the Guarantors and the Operating Company has good and marketable title to, or valid leasehold interest in, all of its real and personal property material to the operation of its business (including for the avoidance of doubt, all surface properties and associated mineral rights for the Fort Cady Borate Project), free and clear of Liens prohibited by this Agreement.

5.21 Environmental Matters.

(a) The Issuer and its Subsidiaries are and have been in compliance with all laws (including common law), statutes, rules, regulations, ordinances, judgements, orders, or decrees relating to public or worker health and safety (to the extent relating to exposure to any toxic or hazardous substances, materials, or wastes), pollution or protection of the environment or natural resources ("**Environmental Laws**") and all permits, licenses, certificates, authorizations, and other approvals required under Environmental Laws ("**Environmental Permits**"), unless the failure to do so has not resulted or would not result in a Material Adverse Change.

(b) Neither the Issuer nor any of its Subsidiaries have received any written notice of any violation of, or liability under, any Environmental Law, the subject of which is unresolved, and there are no pending, or to the Issuer's knowledge, threatened actions suits, investigations, or proceedings relating to a violation of, or liability under, Environmental Laws that has resulted or, if adversely determined, would, individually or in the aggregate, result in a Material Adverse Change.

(c) There has been no release, treatment, storage, disposal of, exposure of any Person to, or ownership or operation of any contaminated by, any toxic or hazardous materials, substances, or wastes, in each case as has given or would give rise to liability of the Issuer or its Subsidiaries under Environmental Law, in each case that has resulted or would, individually or in the aggregate, result in a Material Adverse Change.

5.22 Trustee. No Guarantor enters or has entered into any Note Document, or holds any property, as a trustee of any trust or settlement.

6. AFFIRMATIVE COVENANTS

From and after the Closing Date, so long as any Obligations (other than inchoate indemnification obligations) remain outstanding, Issuer shall, and shall cause each of its Subsidiaries to, and each Guarantor shall, and shall cause each of its Subsidiaries to, do all of the following:

6.1 Government Compliance.

(a) Other than specifically permitted hereunder, maintain its and all its Subsidiaries' legal existence and good standing in their respective jurisdictions of organization and maintain qualification in each jurisdiction in which the failure to so qualify could reasonably be expected to have a Material Adverse Change. Comply with all laws, ordinances and regulations to which Issuer or any of its Subsidiaries is subject, the noncompliance with which could reasonably be expected to have a Material Adverse Change.

(b) Obtain and keep in full force and effect, all of the material Governmental Approvals necessary for the performance by Issuer and its Subsidiaries of their respective businesses and obligations under the Note Documents and the grant of a security interest to Collateral Agent for the ratable benefit of the Secured Parties, in all of the Collateral.

6.2 Financial Statements, Reports, Certificates; Notices.

(a) Deliver to each Purchaser (and with respect to clauses (vii), (viii), (ix) and (xiii) below, also to the Collateral Agent):

(i) within ten (10) days upon a request by any Purchaser, with respect to any given month for which at least thirty (30) days have elapsed since the last day of such month, a company prepared consolidated balance sheet, income statement and cash flow statement,

subject to year-end adjustments and the absence of footnotes, covering the consolidated operations of Issuer and its consolidated Subsidiaries for such month certified by a Responsible Officer and in a form reasonably acceptable to the Required Purchasers;

(ii) as soon as available, but no later than forty-five (45) days after the last day of each of Issuer's first three fiscal quarters, a company prepared consolidated and, if prepared by Issuer, consolidating balance sheet, income statement and cash flow statement covering the consolidated operations of Issuer and its consolidated Subsidiaries for such fiscal quarter certified by a Responsible Officer and in a form reasonably acceptable to the Required Purchasers;

(iii) as soon as available, but no later than ninety (90) days after the last day of Issuer's fiscal year or within five (5) days of filing of the same with the SEC, audited consolidated financial statements covering the consolidated operations of Issuer and its consolidated Subsidiaries for such fiscal year, prepared under GAAP, consistently applied, together with an Unqualified Opinion on financial statements from an independent certified public accounting firm reasonably acceptable to the Required Purchasers (it being understood that any accounting firm of national standing is reasonably acceptable to the Required Purchasers);

(iv) within five (5) days of filing, all reports on Form 10-K, 10-Q and 8-K filed with the SEC;

(v) prompt delivery of (and in any event within five (5) days after the same are sent or received) copies of all material correspondence, reports, documents and other filings with any Governmental Authority that could reasonably be expected to have a material adverse effect on any of the Governmental Approvals material to Issuer's business or that otherwise could reasonably be expected to have a Material Adverse Change;

(vi) prompt notice of any event that (A) could reasonably be expected to materially and adversely affect the value of the Intellectual Property or (B) could reasonably be expected to result in a Material Adverse Change;

(vii) written notice delivered at least ten (10) days' prior to Issuer's creation of a New Subsidiary in accordance with the terms of Section 6.10);

(viii) written notice delivered at least twenty (20) days' (or such shorter period of time as Required Purchasers may agree) prior to Issuer's (A) adding any new offices or business locations, including warehouses (unless such new offices or business locations contain less than One Million Dollars ($1,000,000) in assets or property of Issuer or any of its Subsidiaries or are contract manufacturing sites), (B) changing its respective jurisdiction of organization, (C) changing its organizational structure or type, (D) changing its respective legal name, or (E) changing any organizational number(s) (if any) assigned by its respective jurisdiction of organization;

(ix) upon Issuer or any Guarantor becoming aware of the existence of any Event of Default or event which, with the giving of notice or passage of time, or both, would constitute an Event of Default, prompt (and in any event within three (3) Business Days) written notice of such occurrence, which such notice shall include a reasonably detailed description of

such Event of Default or event which, with the giving of notice or passage of time, or both, would constitute an Event of Default, and Issuer's proposal regarding how to cure such Event of Default or event;

(x) immediate notice if Issuer or such Subsidiary has Knowledge that Issuer, or any Subsidiary or Affiliate of Issuer, is a Blocked Person or (a) is convicted on, (b) pleads *nolo contendere* to, (c) is indicted on, or (d) is arraigned and held over on charges involving money laundering or predicate crimes to money laundering;

(xi) notice of any commercial tort claim (as defined in the Code) or letter of credit rights (as defined in the Code) held by Issuer or any Guarantor, in each case in an amount greater than One Million Dollars ($1,000,000) and of the general details thereof;

(xii) if Issuer or any of its Subsidiaries is not now a Registered Organization but later becomes one, written notice of such occurrence and information regarding such Person's organizational identification number within seven (7) Business Days of receiving such organizational identification number;

(xiii) an updated Perfection Certificate to reflect any amendments, modifications and updates, if any, to certain information in the Perfection Certificate after the Closing Date to the extent such amendments, modifications and updates are permitted by one or more specific provisions in this agreement; *provided* that delivery of such updated Perfection Certificate shall only be required once every six (6) months, starting with the month ending December 31, 2022;

(xiv) prompt written notice of any litigation or governmental proceedings pending or threatened (in writing) against Issuer or any of its Subsidiaries, which could reasonably be expected to result in damages or costs to Issuer or any of its Subsidiaries in an amount greater than One Million Dollars ($1,000,000); and

(xv) other information as reasonably requested by any Purchaser; *provided*, that Issuer and each Guarantor, and each of their respective Subsidiaries, as applicable, shall not be required to deliver any information to a Purchaser pursuant to subsections (v), (vi), (x), (xi), and (xiv) above unless a Purchaser has specifically requested the same in writing, in which case the Issuer and each Guarantor, and each of their respective Subsidiaries, as applicable, shall provide such information pursuant to this Section 6.2(a) unless and until such Purchaser withdraws such request by delivery of written notice to the applicable party; *provided, further*, that such Purchaser may withdraw its request by delivery of written notice to the applicable party at any time, including prior to delivery of any such information requested.

Notwithstanding the foregoing, (x) the financial statements required to be delivered pursuant to clauses (ii) and (iii) above may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which (A) Issuer posts such documents, or provides a link thereto, on Issuer's website on the internet at Issuer's website address or (B) such documents are filed of record with the SEC, and (y) a Purchaser may designate an entity to receive information provided under this Section 6.2(a) (other than any information filed with the SEC).Issuer will be deemed to comply with the delivery requirements of financial and other information pursuant to

Sections 6.2(a)(ii) and (iii) by timely filing, within the time periods (including any extension thereof) specified in the SEC's rules and regulations, its quarterly report on Form 10-Q and its annual report on Form 10-K for the corresponding period, as applicable, with the SEC via the SEC's EDGAR system (or any successor thereto).

Notwithstanding anything to the contrary herein, the Issuer or Guarantors shall not provide any information under this Section 6.2(a), if Bluescape informs the Issuer in writing that it does not wish to receive such information.

(b) No later than forty-five (45) days after the last day of each month, deliver to each Purchaser a duly completed Compliance Certificate signed by a Responsible Officer.

(c) Keep proper, complete and true books of record and account in accordance with GAAP in all material respects. Issuer shall, and shall cause each of its Subsidiaries to, allow, at the sole cost of Issuer, Collateral Agent or any Purchaser, during regular business hours upon reasonable prior notice (provided that no notice shall be required when an Event of Default has occurred and is continuing), to visit and inspect any of its properties, to examine and make abstracts or copies from any of its books and records, and to conduct a collateral audit and analysis of its operations and the Collateral. Such audits shall be conducted no more often than twice every year unless (and more frequently if) an Event of Default has occurred and is continuing.

6.3 Inventory; Returns. Keep all Inventory in good and marketable condition, free from material defects. Returns and allowances between Issuer, or any of its Subsidiaries, as applicable, and their respective Account Debtors shall follow Issuer's, or such Subsidiary's, customary practices as they exist as of the Effective Date. Issuer must promptly notify the Purchasers of all returns, recoveries, disputes and claims that involve more than One Million Dollars ($1,000,000) individually or in the aggregate in any calendar year.

6.4 Taxes; Pensions. Timely file, and require each of its Subsidiaries to timely file (or obtain timely extensions therefor), all material required tax returns and reports, and timely pay, and require each of its Subsidiaries to timely pay, all material foreign, federal, state, and local Taxes, assessments, deposits and contributions owed by Issuer or its Subsidiaries, except as otherwise permitted pursuant to the terms of Section 5.13 hereof; deliver to the Purchasers, upon reasonable written demand, appropriate certificates attesting to such payments; and pay all material amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with the terms of such plans.

6.5 Insurance. Within the timeframe specified in Section 3.4, keep Issuer's and its Subsidiaries' business and the Collateral insured for risks and in amounts standard for companies in Issuer's and its Subsidiaries' industry and location and as the Required Purchasers may reasonably request. Insurance policies shall be in a form, with companies, and in amounts that are reasonably satisfactory to the Purchasers. All property policies shall have a lender's loss payable endorsement showing Collateral Agent (for the ratable benefit of the Secured Parties) as lender loss payee and shall waive subrogation against Collateral Agent, and all liability policies shall show, or have endorsements showing, Collateral Agent (for the ratable benefit of the Secured Parties), as additional insured. Subject to Section 3.4, Collateral Agent shall be named as lender loss payee and/or additional insured with respect to any such insurance providing coverage in

respect of any Collateral, and each provider of any such insurance shall agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to the Purchasers, that it will give the Collateral Agent thirty (30) (ten (10) days for nonpayment of premium) days prior written notice before any such policy or policies shall be canceled. At the request of the Required Purchasers, Issuer shall deliver to the Purchasers certified copies of policies and evidence of all premium payments. Proceeds payable under any policy shall, at the option of the Required Purchasers, be payable to Collateral Agent, for the ratable benefit of the Secured Parties, on account of the then-outstanding Obligations. If Issuer or any of its Subsidiaries fails to obtain insurance as required under this Section 6.5 or to pay any amount or furnish any required proof of payment to third persons, Collateral Agent may make (but has no obligation to do so), at Issuer's expense, all or part of such payment or obtain such insurance policies required in this Section 6.5, and take any action under the policies Collateral Agent deems prudent.

6.6 Collateral Accounts.

(a) Subject to Section 3.4(b) with respect to Collateral Accounts maintained by the Issuer and Guarantors as of the Closing Date, maintain Issuer's and Guarantors' Collateral Accounts at depositary institutions that have agreed to execute Control Agreements in favor of Collateral Agent (for the ratable benefit of the Secured Parties) with respect to such Collateral Accounts. The provisions of the previous sentence shall not apply to Excluded Accounts.

(b) Subject to Section 6.6(a), Issuer shall provide the Purchasers and Collateral Agent ten (10) days' prior written notice (or such shorter period of time as Required Purchasers may agree) before Issuer or any Guarantor establishes any Collateral Account. In addition, for each Collateral Account that Issuer or any Guarantor, at any time maintains, Issuer or such Guarantor shall cause the applicable bank or financial institution at or with which such Collateral Account is maintained to execute and deliver a Control Agreement or other appropriate instrument with respect to such Collateral Account to perfect Collateral Agent's Lien in such Collateral Account (held for the ratable benefit of the Secured Parties) in accordance with the terms hereunder prior to the establishment of such Collateral Account. The provisions of the previous sentence shall not apply to Excluded Accounts.

(c) Neither Issuer nor any Guarantor shall maintain any Collateral Accounts except Collateral Accounts maintained in accordance with this Section 6.6.

6.7 Protection of Intellectual Property Rights. Issuer and each Guarantor shall use commercially reasonable efforts to: (a) protect, defend and maintain the validity and enforceability of its respective Intellectual Property that is material to its business; (b) promptly advise the Purchasers in writing of material infringement by a third party of its respective Intellectual Property; and (c) not allow any of its respective Intellectual Property material to its respective business to be abandoned, forfeited or dedicated to the public without the prior written consent of the Required Purchasers.

6.8 Litigation Cooperation. Commencing on the Closing Date and continuing through the termination of this Agreement, make available to Collateral Agent and the Purchasers, without expense to Collateral Agent or the Purchasers, Issuer, each Guarantor and each of their respective officers, employees and agents and Issuer's Books, to the extent that Collateral Agent or any

Purchaser may reasonably deem them necessary to prosecute or defend any third-party suit or proceeding instituted by or against Collateral Agent or any Purchaser with respect to any Collateral or relating to Issuer or any Guarantor.

6.9 Landlord Waivers; Bailee Waivers. In the event that Issuer or any Guarantor, after the Closing Date, intends to add any new offices or business locations, including warehouses but excluding contract manufacturing sites, or otherwise store any portion of the Collateral with, or deliver any portion of the Collateral to, a bailee, in each case pursuant to Section 7.2, then, in the event that the Collateral at any new location is valued (based on book value) in excess of One Million Dollars ($1,000,000) in the aggregate, at the election of the Required Purchasers, such bailee or landlord, as applicable, must execute and deliver a bailee waiver or landlord waiver, as applicable, in form and substance reasonably satisfactory to the Required Purchasers prior to the addition of any new offices or business locations, or any such storage with or delivery to any such bailee, as the case may be.

6.10 Creation/Acquisition of Subsidiaries. In the event any Issuer or any Subsidiary (including for the avoidance of doubt, the Operating Company) of any Issuer creates or acquires any Subsidiary after the Closing Date that is not an Excluded Subsidiary, Issuer or such Subsidiary shall promptly notify the Purchasers of such creation or acquisition, and Issuer or such Subsidiary shall take all actions reasonably requested by the Purchasers in writing to achieve any of the following with respect to such "**New Subsidiary**" (defined as a Subsidiary formed after the date hereof during the term of this Agreement): (i) to cause such New Subsidiary, if such New Subsidiary is organized under the laws of the United States, to become a secured guarantor with respect to the Obligations; and (ii) to grant and pledge to Collateral Agent (for the ratable benefit of the Secured Parties) a perfected security interest in (x) one hundred percent (100%) of the stock, units or other evidence of ownership held by Issuer or its Subsidiaries of any such New Subsidiary which is organized under the laws of the United States, and (y) no more than sixty-five percent (65%) of the presently existing and hereafter arising issued and outstanding equity interests, membership units, or other securities owned by Issuer or any Guarantor of any Foreign Subsidiary which shares entitle the holder thereof to vote for directors or any other matter, if adverse tax consequences would result from the pledge of one hundred percent (100%) of such equity interests (provided that the Collateral shall include one hundred percent (100%) of the issued and outstanding non-voting equity interests of such Foreign Subsidiary); *provided*, that any Person who guarantees any Indebtedness incurred by Issuer pursuant to any Junior Indebtedness (or, in the case of each of the preceding clauses (i) and (ii), any Permitted Refinancing Indebtedness thereof) shall be required to become a Guarantor hereunder.

6.11 Further Assurances. Execute any further instruments and take further action as Collateral Agent or any Purchaser reasonably requests to perfect or continue Collateral Agent's Lien in the Collateral or to effect the purposes of this Agreement.

6.12 Title Ownership. Each of the Issuer, the Guarantors and the Operating Company shall at all times maintain good and marketable title to, or valid leasehold interest in, all of its real and personal property material to the operation of its business (including for the avoidance of doubt, all surface properties and associated mineral rights for the Fort Cady Borate Project) free and clear of Liens prohibited by this Agreement; *provided* that this Section 6.12 shall not prohibit dispositions permitted by Section 7.1.

6.13 Environmental Matters.

(a) The Issuer and its Subsidiaries shall comply, and take all commercially reasonable actions to cause all lessees and other Persons currently operating or occupying its properties to comply, with all applicable Environmental Laws and all Environmental Permits.

(b) The Issuer and its Subsidiaries maintain and renew all Environmental Permits required under Environmental Laws for its operations and properties.

(c) In each case to the extent required by Environmental Laws, the Issuer and its Subsidiaries shall conduct any investigation, remedial or other corrective action required to address any release of, or contamination by, any toxic or hazardous materials, substances, or wastes.

6.14 Compliance Policies. Issuer and each of its Subsidiaries shall maintain compliance policies, procedures, and systems of internal controls as required by and in any event adequate to ensure compliance with all applicable Anti-Terrorism Laws and Anti-Corruption Laws.

6.15 Board of Directors. The Issuer shall, within six (6) months of the Closing Date, cause two new directors to be appointed to its Board of Directors, by action of its Board of Directors, and the appointment of at least one of such two new directors shall have been approved in writing by Bluescape in its reasonable discretion.

7. NEGATIVE COVENANTS

From and after the Closing Date, so long as any Obligations (other than inchoate indemnification obligations) remain outstanding, Issuer shall not, and shall not permit any of the Subsidiaries to, and each Guarantor shall not, and shall not permit any of its Subsidiaries to, do any of the following without the prior written consent of the Required Purchasers:

7.1 Dispositions. Effect any Transfer, except for (i) Transfers that do not constitute Asset Sales or (ii) Transfers, the proceeds of which are reinvested or applied as set forth in Section 2.2(c); *provided* that in the case of any Transfers pursuant to this clause (ii), (A) Issuer or such Subsidiary receives consideration at the time of such Transfer at least equal to the Fair Market Value of the asset subject to such Asset Sale, (B) at least 75% of the consideration paid to Issuer or such Subsidiary in connection with such Transfer is, or will be when paid (in the case of milestones, royalties and other deferred payment obligations), in the form of cash or Cash Equivalents, and (C) the aggregate Transfers in each fiscal year shall not exceed One Million Dollars ($1,000,000) per fiscal year. For the purposes of clause (ii) above, the amount (without duplication) of any Indebtedness (other than subordinated Indebtedness) of Issuer or such Subsidiary that is expressly assumed by the transferee in such Transfer and with respect to which Issuer or such Subsidiary, as the case may be, is unconditionally released by the holder of such Indebtedness shall be deemed cash.

7.2 Changes in Business or Business Locations. (a) Engage in or permit any of the Subsidiaries to engage in any business other than the Permitted Business, and (b) liquidate or dissolve. Issuer shall not, and shall not permit any of the Subsidiaries to, without at least seven (7) Business Days' (or such shorter period of time as Required Purchasers may agree in their sole

discretion) prior written notice to the Purchasers and Collateral Agent: (A) add any new offices or business locations, including warehouses (unless such new offices or business locations contain less than One Million Dollars ($1,000,000) in assets or property of Issuer or any of its Subsidiaries, as applicable or are contract manufacturing sites); (B) change its respective jurisdiction of organization, (C) except as permitted by Section 7.3, change its respective organizational structure or type, (D) change its respective legal name, or (E) change any organizational number(s) (if any) assigned by its respective jurisdiction of organization. Notwithstanding the foregoing, upon at least five (5) Business Days' prior written notice to the Purchasers and Collateral Agent, FCH may be liquidated or dissolved so long as FCH does not own any material assets.

7.3 Mergers or Acquisitions. Merge or consolidate, or permit any of the Subsidiaries to merge or consolidate, with any other Person, or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the capital stock, shares or property of another Person (other than pursuant to Permitted Investments, a Transfer permitted under Section 7.1 or as otherwise permitted pursuant to Section 7.7); *provided* that a Subsidiary may merge or consolidate into another Subsidiary (provided that in the case of a merger or consolidation of a Guarantor, the surviving Person has provided a secured Guaranty of Issuer's Obligations hereunder in accordance with Section 6.10) or with (or into) Issuer provided Issuer is the surviving legal entity, and as long as no Event of Default is occurring prior thereto or arises as a result therefrom.

7.4 Incurrence of Indebtedness and Issuance of Preferred Stock.

(a) Create, incur, issue, assume, enter into a guarantee of or otherwise become directly or indirectly liable, contingently or otherwise, with respect to (collectively, "incur") any Indebtedness (including Acquired Debt), and Issuer shall not issue any Disqualified Stock and shall not permit any of the Subsidiaries to, without the prior written consent of the Required Purchasers, issue any shares of preferred stock or preferred interests.

(b) Notwithstanding anything to contrary herein, Section 7.4(a) above will not prohibit the incurrence of any Permitted Debt.

(c) The accrual of interest, the accretion or amortization of original issue discount, the payment of interest on any Indebtedness in the form of additional Indebtedness with the same terms, the reclassification of preferred stock as Indebtedness due to a change in accounting principles, and the payment of dividends on Disqualified Stock in the form of additional shares of the same class of Disqualified Stock will not be deemed to be an incurrence of Indebtedness or an issuance of Disqualified Stock for purposes of this Section 7.4. For purposes of determining compliance with any U.S. dollar-denominated restriction on the incurrence of Indebtedness, the U.S. dollar-equivalent principal amount of any Indebtedness denominated in a foreign currency shall be utilized, calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred or first committed, in the case of revolving Indebtedness. Notwithstanding anything to the contrary in this Section 7.4, the maximum amount of Indebtedness that Issuer or any Subsidiary may incur pursuant to this Section 7.4 shall not be deemed to be exceeded solely as a result of fluctuations in exchange rates or currency values.

(d) The amount of any Indebtedness outstanding as of any date will be (i) the accreted value of the Indebtedness, in the case of any Indebtedness issued with original issue

discount; (ii) the principal amount of the Indebtedness, in the case of any other Indebtedness; and (iii) in respect of Indebtedness of another Person secured by a Lien on the assets of the specified Person, the lesser of (a) the Fair Market Value of such assets at the date of determination and (b) the amount of the Indebtedness of the other Person.

7.5 Encumbrance. Issuer shall not, and shall not permit any of the Subsidiaries to, directly or indirectly, create, incur, assume or suffer to exist any Lien securing Indebtedness of any kind on any asset now owned or hereafter acquired, except Permitted Liens.

7.6 Maintenance of Collateral Accounts. With respect to Issuer or any Guarantor, maintain any Collateral Account except pursuant to the terms of Section 6.6 hereof.

7.7 Restricted Payments.

(a) Effect a Restricted Payment;

(b) Notwithstanding anything to the contrary therein, Section 7.7(a) will not prohibit:

(i) the payment of any dividend or distribution on account of Capital Stock or the consummation of any redemption within 60 days after the date of declaration of the dividend or distribution on account of Capital Stock, if at the date of declaration or notice, the dividend, distribution or redemption payment would have complied with the provisions of this Section 7.7;

(ii) the purchase, repurchase, redemption, defeasance or other acquisition or retirement for value of Junior Indebtedness or Disqualified Stock of Issuer or any Guarantor in exchange for, by conversion into or out of, or with the net cash proceeds from, an incurrence of Permitted Refinancing Indebtedness, which incurrence occurs substantially concurrently with such purchase, repurchase, redemption, defeasance or other acquisition or retirement for value;

(iii) so long as no Default or Event of Default has occurred and is continuing, the repurchase, redemption or other acquisition or retirement for value of any Capital Stock of Issuer or any Subsidiary of Issuer held by any current or former officer, director, employee or consultant of Issuer or any Subsidiary or any permitted transferee of the foregoing pursuant to any equity subscription agreement, stock option agreement, shareholders' agreement, phantom stock plan or similar agreement; *provided* that the aggregate price paid for all such repurchased, redeemed, acquired or retired Capital Stock may not exceed Two Hundred Thousand Dollars ($200,000) in any twelve-month period; *provided*, *further*, that such amount in any twelve-month period may be increased by an amount not to exceed:

(1) the cash proceeds from the sale of Capital Stock (other than Disqualified Stock) of Issuer to officers, directors, employees or consultants of Issuer, of any of its Subsidiaries or of any of its direct or indirect parent companies that occurs after the Effective Date to the extent the cash proceeds from the sale of such Capital Stock have not otherwise been applied to the making of Restricted Payments pursuant to this Section 7.7; plus

(2) the cash proceeds of key man life insurance policies received by Issuer or any Subsidiary after the Effective Date; and, in addition, cancellation of Indebtedness owing to Issuer or any Subsidiary from any current or former officer, director or employee (or any permitted transferees thereof) of Issuer or any Subsidiary in connection with a repurchase of Capital Stock of Issuer or any Subsidiary from such Persons will not be deemed to constitute a Restricted Payment for purposes of this Section 7.7 or any other provisions of this Agreement;

(iv) the purchase, redemption or other acquisition or retirement for value of Capital Stock (x) deemed to occur upon the exercise or conversion of stock options, warrants, convertible notes or similar rights to acquire Capital Stock to the extent that such Capital Stock represent all or a portion of the exercise, exchange or conversion price of those stock options, phantom stock, warrants, convertible notes or similar rights, or (y) made in lieu of payment of withholding taxes in connection with the vesting of Capital Stock or any exercise or exchange of stock options, phantom stock, warrants, convertible notes or similar rights to acquire such Capital Stock;

(v) the making of any Restricted Payment in exchange for Capital Stock (other than Disqualified Stock) of Issuer;

(vi) cash payments in lieu of the issuance of fractional shares; and

(vii) so long as no Default or Event of Default has occurred and is continuing or would be caused thereby, other Restricted Payments in an aggregate amount not to exceed One Million Dollars ($1,000,000) in the aggregate since the Effective Date, plus if any such Restricted Payment under this clause (vii) was used to make an Investment, the cash return of capital with respect to such Investment (less the cost of disposition, if any).

(c) The amount of all Restricted Payments (other than cash), including for purposes of clauses (i) through (vii) above, will be the Fair Market Value on the date of the Restricted Payment of the asset(s) or securities proposed to be transferred or issued by Issuer or the relevant Subsidiary, as the case may be, pursuant to the Restricted Payment. The Fair Market Value of any assets or securities that are required to be valued by this Section 7.7 will be determined by Issuer or, if such Fair Market Value is in excess of Five Million Dollars ($5,000,000), by Board of Directors, whose resolution with respect thereto will be delivered to the Purchasers.

7.8 [Reserved].

7.9 Transactions with Affiliates.

(a) Complete an Affiliate Transaction.

(b) The following will be deemed not to be Affiliate Transactions and, therefore, will not be subject to this Section 7.9:

(i) any employment or severance agreement or other employee compensation agreement, arrangement or plan, or any amendment thereto, entered into by Issuer or any of the Subsidiaries in the ordinary course of business and approved by the Board of Directors;

(ii) transactions between or among Issuer and the Subsidiaries;

(iii) transactions with a Person that is an Affiliate of Issuer solely because Issuer owns any Capital Stock in such Person;

(iv) the payment of reasonable directors' fees or expenses, the payments of other reasonable benefits and the provision of officers' and directors' indemnification and insurance to the extent permitted by law, in each case in the ordinary course of business;

(v) sales of Capital Stock of Issuer to Affiliates of Issuer and the granting and performance of registration rights;

(vi) transactions pursuant to agreements in effect on the Effective Date;

(vii) Permitted Investments and Restricted Payments as permitted pursuant to Section 7.7;

(viii) any repurchases, redemptions or other retirements for value by Issuer or any of the Subsidiaries of Indebtedness of any class held by any Affiliate of Issuer, so long as such repurchase, redemption or other retirement for value is on the same terms as are made available to investors holding such class of Indebtedness generally, and Affiliates have an economic interest in no more than fifty percent (50%) of the aggregate principal amount of such class of Indebtedness;

(ix) purchases and sales of raw materials or inventory in the ordinary course of business on market terms;

(x) the entering into of a tax sharing agreement, or payments pursuant thereto, between Issuer and/or one or more Subsidiaries, on the one hand, and any other Person with which Issuer or such Subsidiaries are required to file a consolidated tax return or with which Issuer or such Subsidiaries are part of a consolidated group for tax purposes, on the other hand, which payments by Issuer and the Subsidiaries are not in excess of, and which are made in order to satisfy, the tax liabilities that would have been payable by them on a stand-alone basis unless expressly permitted under the definition of "Restricted Payments".

7.10 Dividend and Other Payment Restrictions Affecting Subsidiaries. Create or permit to exist or become effective any consensual encumbrance or restriction on the ability of any Subsidiary to: (i) pay dividends or make any other distributions on its Capital Stock, or with respect to any other interest or participation in, or measured by, its profits, or pay any Indebtedness owed to Issuer or any of the Subsidiaries; (ii) make loans or advances to Issuer or any of the Subsidiaries; or (iii) sell, lease or transfer any of its properties or assets to Issuer or any of the Subsidiaries.

(a) The restrictions in this Section 7.10(a) will not apply to encumbrances or restrictions existing under or by reason of:

(i) this Agreement, and any other Indebtedness (and other related obligations) incurred pursuant to clauses (1) and/or (7) of the definition of "Permitted Debt";

(ii) applicable law, rule, regulation, order, approval, license or permit or similar restriction;

(iii) restrictions existing on the Effective Date and any amendments or modifications thereof that do not materially expand the scope of any such restrictions;

(iv) any instrument governing Indebtedness or Capital Stock of a Person acquired by Issuer or any Subsidiaries as in effect at the time of such acquisition, except to the extent incurred in contemplation thereof;

(v) customary non-assignment provisions in contracts, leases, licenses and other commercial or trade agreements otherwise not prohibited under this Agreement;

(vi) Capital Lease Obligations, any agreement governing purchase money obligations, security agreements or mortgages securing Indebtedness of Issuer or a Subsidiary to the extent such encumbrance or restriction restricts the transfer of the property subject to such Capital Lease Obligations, purchase money obligations, security agreements or mortgages;

(vii) any agreement for the sale or other disposition of a Subsidiary that restricts distributions by that Subsidiary pending its sale or other disposition;

(viii) Permitted Refinancing Indebtedness with encumbrances or restrictions then contained in Indebtedness being refinanced that are not materially more restrictive, taken as a whole (as reasonably determined by Issuer), than those contained in the agreements governing the Indebtedness being refinanced;

(ix) other permitted Indebtedness of Issuer and Subsidiaries with terms that are customary and not materially more restrictive than terms of other Indebtedness of Issuer or any Subsidiaries;

(x) Permitted Liens that limit the right of the debtor to dispose of the assets subject to such Liens;

(xi) provisions with respect to the disposition or distribution of assets or property in joint venture agreements, asset sale agreements, stock sale agreements, agreements relating to investments in a Permitted Business and other similar agreements entered into in the ordinary course of business;

(xii) restrictions on cash or other deposits or net worth, which encumbrances or restrictions are imposed by customers or suppliers or required by insurance, surety or bonding companies, in each case, under contracts into in the ordinary course of business;

(xiii) any encumbrance or restriction arising in the ordinary course of business, not relating to any Indebtedness, that does not, individually or in the aggregate,

materially detract from the value of the property of Issuer and Subsidiaries, taken as a whole, or adversely affect Issuer's ability to make principal and interest payments under this Agreement, in each case, as determined in good faith by Issuer; and

(xiv) any amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing of an agreement or arrangement referred to in clauses (i) through (xiii) of this Section 7.10(a); *provided*, *however*, that such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing is not materially more restrictive, as reasonably determined by Issuer, with respect to such encumbrances and other restrictions taken as a whole than those prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

(b) For purposes of determining compliance with this Section 7.10, the subordination of loans or advances made to Issuer or a Subsidiary to other Indebtedness incurred by Issuer or any such Subsidiary shall not be deemed a restriction on the ability to make loans or advances.

7.11 Compliance. (a) Become an "investment company" or a company controlled by an "investment company", under the Investment Company Act of 1940, as amended, or undertake as one of its important activities extending credit to purchase or carry margin stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System), or use the proceeds of the issuance of Notes for that purpose; (b) fail to meet the minimum funding requirements of ERISA; (c) permit a Reportable Event or Prohibited Transaction, as defined in ERISA, to occur; (d) fail to comply with the Federal Fair Labor Standards Act or violate any other law or regulation, if the violation could reasonably be expected to have a Material Adverse Change, or permit any of its Subsidiaries to do so; or (e) withdraw or permit any Subsidiary to withdraw from participation in, permit partial or complete termination of, or permit the occurrence of any other event with respect to, any present pension, profit sharing and deferred compensation plan which could reasonably be expected to result in any liability of Issuer or any of its Subsidiaries, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other Governmental Authority.

7.12 Compliance with Anti-Terrorism Laws. (a) Enter into any documents, instruments, agreements or contracts with any Blocked Person, (b) offer, pay, promise to pay, or authorize the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (c) conduct any business or engage in any transaction or dealing with any Blocked Person, including, without limitation, the making or receiving of any contribution of funds, goods or services to or for the benefit of any Blocked Person, (d) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224 or any similar executive order or other Anti-Terrorism Law, or (e) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order No. 13224 or other Anti-Terrorism Law.

7.13 Limitation on Issuance of Capital Stock. No Guarantor may issue any Capital Stock of such Guarantor (including by way of sales of treasury stock or the issuance of any debt security that is convertible into, or exchangeable for, Capital Stock of such Guarantor) to any

Person other than (i) to Issuer or any other Guarantor, (ii) in connection with the transfer of all of the Capital Stock of such Guarantor otherwise permitted under this Agreement, or (iii) the issuance of director's qualifying shares or other nominal shares required by law to be held by a Person other than Issuer or a Guarantor.

7.14 Financial Covenant. Permit, at any time, Unrestricted Cash to be less than Ten Million Dollars ($10,000,000).

8. EVENTS OF DEFAULT

Any one of the following shall constitute an event of default (an "**Event of Default**") under this Agreement:

8.1 Payment Default. Issuer or, in respect of paragraph (b), any of its Subsidiaries, fails to (a) make any payment of principal or interest on the Notes on its due date, (b) pay any other Obligation within three (3) Business Days after such Obligations are due and payable (which three (3) Business Day grace period shall not apply to payments due on the Maturity Date or the date of acceleration pursuant to Section 9.1(a) hereof), or (c) comply with its obligation to convert a Note in accordance with Section 2 upon the exercise of the conversion right with respect thereto;

8.2 Covenant Default.

(a) Issuer or any of its Subsidiaries fails or neglects to perform any obligation in Sections 6.2 (Financial Statements, Reports, Certificates), 6.4 (Taxes; Pensions), 6.5 (Insurance), 6.6 (Operating Accounts), 6.7 (Protection of Intellectual Property Rights), 6.9 (Landlord Waivers; Bailee Waivers), 6.10 (Creation/Acquisition of Subsidiaries); 6.12 (Title Ownership of Operating Company) or Issuer violates any provision in Section 7; or

(b) Issuer, or any of its Subsidiaries, fails or neglects to perform, keep, or observe any other term, provision, condition, covenant or agreement contained in this Agreement or any other Note Document to which such person is a party, and as to any default (other than those specified in this Section 8) under such other term, provision, condition, covenant or agreement that can be cured, has failed to cure the default within thirty (30) days after the occurrence thereof; *provided*, *however*, that if the default cannot by its nature be cured within the thirty (30) day period or cannot after diligent attempts by Issuer or such Subsidiary, as applicable, be cured within such thirty (30) day period, and such default is likely to be cured within a reasonable time, then Issuer shall have an additional period (which shall not in any case exceed thirty (30) days) to attempt to cure such default, and within such reasonable time period the failure to cure the default shall not be deemed an Event of Default (but no Notes shall be made during such cure period);

8.3 Material Adverse Change. The occurrence of Material Adverse Change;

8.4 Attachment; Levy; Restraint on Business.

(a) (i) The service of process seeking to attach, by trustee or similar process, any funds of Issuer or any of its Subsidiaries or of any entity under control of Issuer or its Subsidiaries on deposit with any institution at which Issuer or any of its Subsidiaries maintains a Collateral

Account, or (ii) a notice of lien, levy, or assessment (other than a Permitted Lien) is filed against Issuer or any of its Subsidiaries or their respective assets by any government agency, and the same under subclauses (i) and (ii) of this clause (a) are not, within ten (10) days after the occurrence thereof, discharged or stayed (whether through the posting of a bond or otherwise); and

(b) (i) any material portion of Issuer's or any of its Subsidiaries' assets is attached, seized, levied on, or comes into possession of a trustee or receiver, or (ii) any court order enjoins, restrains, or prevents Issuer or any of its Subsidiaries from conducting any material part of its business;

8.5 Insolvency. (a) Issuer or any of its Subsidiaries is or becomes Insolvent; (b) Issuer or any of its Subsidiaries begins an Insolvency Proceeding; or (c) an Insolvency Proceeding is begun against Issuer or any of its Subsidiaries and not dismissed or stayed within forty-five (45) days (but no Notes shall be extended while Issuer or any Subsidiary is Insolvent and/or until any Insolvency Proceeding is dismissed);

8.6 Other Agreements. There is any default and such default continues (after the applicable grace, cure or notice period) in any agreement to which Issuer or any of its Subsidiaries is a party with a third party or parties resulting in a right by such third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness in an amount in excess of One Million Dollars ($1,000,000) or that could reasonably be expected to have a Material Adverse Change;

8.7 Judgments. One or more judgments, orders, or decrees for the payment of money in an amount, individually or in the aggregate, of at least One Million Dollars ($1,000,000) (not covered by independent third-party insurance as to which liability has been accepted by such insurance carrier) shall be rendered against Issuer or any of its Subsidiaries and shall remain unsatisfied, unvacated, or unstayed for a period of thirty (30) days after the entry thereof;

8.8 Misrepresentations. Issuer or any of its Subsidiaries or any Person acting for Issuer or any of its Subsidiaries makes any representation, warranty, or other statement now or later in this Agreement, any Note Document or in any writing delivered to Collateral Agent and/or the Purchasers or to induce Collateral Agent and/or the Purchasers to enter this Agreement or any Note Document, and such representation, warranty, or other statement, when taken as a whole, is incorrect in any material respect when made;

8.9 Change in Control. The occurrence of a Change in Control.

8.10 Guaranty. (a) Any Guaranty terminates or ceases for any reason to be in full force and effect other than as a result of a transaction permitted under this Agreement; (b) any Guarantor does not perform any obligation or covenant under any Guaranty, after any applicable grace or cure period; (c) any circumstance described in Section 8 occurs with respect to any Guarantor, beyond any applicable grace or cure period; or (d) a Material Adverse Change with respect to any Guarantor;

8.11 Governmental Approvals. (a) Any Governmental Approval shall have been revoked, rescinded, suspended, modified in an adverse manner, or not renewed in the ordinary course for a full term *and* such revocation, rescission, suspension, modification or non-renewal has resulted in or could reasonably be expected to result in a Material Adverse Change; or (b) (i) the DOJ or other Governmental Authority initiates a Regulatory Action or any other enforcement

action against Issuer or any of its Subsidiaries that causes Issuer or any of its Subsidiaries to recall, withdraw, remove or discontinue manufacturing, distributing, and/or marketing any of its products material to its business, even if such action is based on previously disclosed conduct; (ii) Issuer or any of its Subsidiaries conducts a mandatory or voluntary recall which could reasonably be expected to result in liability and expense to Issuer or any of its Subsidiaries of One Million Dollars ($1,000,000) or more; or (iii) Issuer or any of its Subsidiaries enters into a settlement agreement with the DOJ or other Governmental Authority that results in aggregate liability as to any single or related series of transactions, incidents or conditions, of One Million Dollars ($1,000,000) or more that is unsatisfied, or a Material Adverse Change, even if such settlement agreement is based on previously disclosed conduct.

8.12 Lien Priority. Except as the result of the action or inaction of the Collateral Agent or the Purchasers, any Lien created hereunder or by any other Note Document shall at any time fail to constitute a valid and perfected Lien on any of the Collateral purported to be secured thereby, subject to no prior or equal Lien, other than Permitted Liens arising as a matter of applicable law or that are permitted to have priority pursuant to this Agreement.

8.13 Cure Right. In the event that the Issuer fails to comply with the requirements of Section 7.14 (the "**Financial Covenant**") as of the last day of any calendar month as so required, then for the period beginning on the first day after the end of such fiscal month and ending on the thirtieth (30th) day after the end of such calendar month (the "**Cure Period**"), the Issuer shall be permitted to cure such failure to comply by receiving a Specified Contribution and by requesting that the Financial Covenant be recalculated by increasing Unrestricted Cash for such calendar month by an amount up to the amount of the Specified Contribution received by the Issuer during the Cure Period (the "**Cure Right**"). If, after giving effect to the foregoing recalculations, the Issuer shall then be in compliance with the requirements of the Financial Covenant, then Issuer shall be deemed to have satisfied the requirements of Sections 7.14 as of the last day of the applicable calendar month with the same effect as though there had been no failure to comply with such Financial Covenant on such date, and the applicable Default or Event of Default with respect to the Financial Covenant that had occurred shall be deemed not to have occurred for purposes of this Agreement and the other Note Documents; *provided* that (a) the Cure Right shall not be exercised more than five times during the term of this Agreement; and (b) the Cure Right shall not be exercised more than two times in any period of four consecutive fiscal quarters. After receipt by the Collateral Agent and the Purchasers of a written notice of the Issuer's intent to make a Specified Contribution prior to the date required by this Section 8.13, neither the Collateral Agent nor any Purchaser may exercise any rights or remedies under Section 9 (or under any other Note Document, including the imposition of interest at the Default Rate) on the basis of any actual or purported Event of Default arising solely as a result of a breach of the Financial Covenant until and unless the applicable Specified Contribution shall not have been made by the date required to be made under this Section 8.13.

9. RIGHTS AND REMEDIES

9.1 Rights and Remedies.

(a) Upon the occurrence and during the continuance of:

(i) an Event of Default (other than an Event of Default under Section 8.2(b)), the Required Purchasers may, without notice or demand, do any or all of the following: (x) deliver notice of the Event of Default to Issuer, or (y) by notice to Issuer declaring all Obligations immediately due and payable (but if an Event of Default described in Section 8.5 occurs all Obligations shall be immediately due and payable without any action by the Purchasers); or

(ii) an Event of Default under Section 8.2(b), the Required Purchasers may, without notice or demand: (x) deliver notice of the Event of Default to Issuer, and (y) after the date that is thirty (30) days after delivery of the notice of such Event of Default pursuant to the foregoing clause (x), by notice to Issuer declare all Obligations immediately due and payable.

(b) Without limiting the rights of the Purchasers set forth in Section 9.1(a) above, upon the occurrence and during the continuance of an Event of Default, the Required Purchasers may, without notice or demand, do any or all of the following:

(i) direct Collateral Agent to foreclose upon and/or sell or otherwise liquidate, the Collateral;

(ii) direct Collateral Agent to make a demand for payment upon any Guarantor pursuant to the Guaranty delivered by such Guarantor;

(iii) direct Collateral Agent to apply to the Obligations any (A) balances and deposits of Issuer that Collateral Agent or any Purchaser holds or controls, (B) any amount held or controlled by Collateral Agent or any Purchaser owing to or for the credit or the account of Issuer, or (C) amounts received from any Guarantors in accordance with the respective Guaranty delivered by such Guarantor; and/or

(iv) commence and prosecute an Insolvency Proceeding or consent to Issuer commencing any Insolvency Proceeding.

(c) Without limiting the rights of Collateral Agent and the Purchasers set forth in Sections 9.1(a) and (b) above, upon the occurrence and during the continuance of an Event of Default, Collateral Agent shall have the right to, at the written direction of the Required Purchasers, without notice or demand, to do any or all of the following:

(i) settle or adjust disputes and claims directly with Account Debtors for amounts on terms and in any order that Collateral Agent considers advisable, notify any Person owing Issuer money of Collateral Agent's security interest in such funds, and verify the amount of such account;

(ii) make any payments and do any acts it considers necessary or reasonable to protect the Collateral and/or its Liens in the Collateral (held for the ratable benefit of the Secured Parties). Issuer shall assemble the Collateral if Collateral Agent requests and make it available at such location as Collateral Agent reasonably designates. Collateral Agent may enter premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any Lien which appears to be prior or superior to its security interest and pay all expenses incurred. Issuer grants Collateral Agent a license to enter and occupy any of its premises, without charge, to exercise any of Collateral Agent's rights or remedies;

(iii) ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, and/or advertise for sale, any of the Collateral. Collateral Agent is hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Issuer's and each Guarantor's labels, patents, copyrights, mask works, rights of use of any name, trade secrets, trade names, trademarks, service marks, and advertising matter, or any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Collateral Agent's exercise of its rights under this Section 9.1, Issuer's and each Guarantor's rights under all licenses and all franchise agreements inure to Collateral Agent, for the benefit of the Purchasers;

(iv) place a "hold" on any Collateral Account maintained with Collateral Agent or any Purchaser or otherwise in respect of which a Control Agreement has been delivered in favor of Collateral Agent (for the ratable benefit of the Secured Parties) and/or deliver a notice of exclusive control, any entitlement order, or other directions or instructions pursuant to any Control Agreement or similar agreements providing control of any Collateral;

(v) demand and receive possession of Issuer's Books;

(vi) appoint a receiver to seize, manage and realize any of the Collateral, and such receiver shall have any right and authority as any competent court will grant or authorize in accordance with any applicable law, including any power or authority to manage the business of Issuer or any Guarantor; and

(vii) subject to clauses (a) and (b) of this Section 9.1, exercise all rights and remedies available to Collateral Agent and each Purchaser under the Note Documents or at law or equity, including all remedies provided under the Code (including disposal of the Collateral pursuant to the terms thereof).

Notwithstanding any provision of this Section 9.1 to the contrary, upon the occurrence of any Event of Default, Collateral Agent shall have the right (but not the obligation) to exercise any and all remedies referenced in this Section 9.1 without the written direction of Required Purchasers following the occurrence of an Exigent Circumstance.

9.2 Power of Attorney. Issuer hereby irrevocably appoints Collateral Agent as its lawful attorney-in-fact, exercisable upon the occurrence and during the continuance of an Event of Default, to: (a) endorse Issuer's or any Guarantor's name on any checks or other forms of payment or security; (b) sign Issuer's or any Guarantor's name on any invoice or bill of lading for any Account or drafts against Account Debtors; (c) settle and adjust disputes and claims about the Accounts of Issuer directly with the applicable Account Debtors, for amounts and on terms Collateral Agent determines reasonable; (d) make, settle, and adjust all claims under Issuer's insurance policies; (e) pay, contest or settle any Lien, charge, encumbrance, security interest, and adverse claim in or to the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; (f) transfer the Collateral into the name of Collateral Agent or a third party as the Code or any applicable law permits (including by filing assignment agreements

with the United States Patent and Trademark Office, United States Copyright Office or equivalent in any jurisdiction outside of the United States); and (g) in the case of any Intellectual Property, execute, deliver and have recorded any document that the Collateral Agent may request to evidence, effect, publicize or record the Collateral Agent's security interest in such Intellectual Property and the goodwill and General Intangibles of Issuer relating thereto or represented thereby. Issuer hereby appoints Collateral Agent as its lawful attorney-in-fact to sign Issuer's or any of Guarantor's name on any documents necessary to perfect or continue the perfection of Collateral Agent's security interest in the Collateral regardless of whether an Event of Default has occurred until all Obligations (other than inchoate indemnity obligations) have been satisfied in full and Purchasers are under no further obligation to purchase Notes hereunder. Collateral Agent's foregoing appointment as Issuer's or any Guarantor's attorney in fact, and all of Collateral Agent's rights and powers, coupled with an interest, are irrevocable until all Obligations (other than inchoate indemnity obligations) have been fully repaid and performed and the Purchasers' obligation to purchase the Notes terminates.

9.3 Protective Payments. If Issuer or any of its Subsidiaries fail to obtain the insurance called for by Section 6.5 or fails to pay any premium thereon or fails to pay any other amount which Issuer or any of its Subsidiaries is obligated to pay under this Agreement or any other Note Document, Collateral Agent may (but shall not be obligated to) obtain such insurance or make such payment, and all amounts so paid by Collateral Agent are Purchasers' Expenses and immediately due and payable, bearing interest at the Default Rate, and secured by the Collateral. Collateral Agent will make reasonable efforts to provide Issuer with notice of Collateral Agent obtaining such insurance or making such payment at the time it is obtained or paid or within a reasonable time thereafter. No such payments by Collateral Agent are deemed an agreement to make similar payments in the future or Collateral Agent's waiver of any Event of Default.

9.4 Application of Payments and Proceeds. Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence and during the continuance of an Event of Default, (a) Issuer irrevocably waives the right to direct the application of any and all payments at any time or times thereafter received by Collateral Agent or the Purchasers from or on behalf of Issuer or any Guarantor of all or any part of the Obligations, and, as between Issuer on the one hand and Collateral Agent and Purchasers on the other, Collateral Agent and the Purchasers shall have the continuing and exclusive right to apply and to reapply any and all payments received against the Obligations in such manner as Collateral Agent or the Purchasers may deem advisable notwithstanding any previous application by Collateral Agent or the Purchasers, and (b) the proceeds of any sale of, or other realization upon all or any part of the Collateral shall be applied by the Collateral Agent: *first*, to the Collateral Agent Expenses and Collateral Agent Fees; *second*, to the Purchasers' Expenses; *third*, to accrued and unpaid interest on the Obligations (including any interest which, but for the provisions of the United States Bankruptcy Code, would have accrued on such amounts); *fourth*, to the principal amount of the Obligations outstanding; and *fifth*, to any other Obligations owing to Collateral Agent or any Purchaser under the Note Documents. Any balance remaining shall be delivered to Issuer or to whoever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct. In carrying out the foregoing, (x) amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category, and (y) each of the Persons entitled to receive a payment in any particular category shall receive an amount equal to its pro rata share of amounts available to be applied pursuant thereto for such category. Any reference in this

Agreement to an allocation between or sharing by the Purchasers of any right, interest or obligation "ratably," "proportionally" or in similar terms shall refer to the Purchasers' Pro Rata Shares unless expressly provided otherwise. Each Purchaser shall promptly remit to the other Purchasers such sums as may be necessary to ensure the ratable repayment of each Purchaser's Pro Rata Share of the Notes and the ratable distribution of interest, fees and reimbursements paid or made by Issuer. Notwithstanding the foregoing, a Purchaser receiving a scheduled payment shall not be responsible for determining whether the other Purchasers also received their scheduled payment on such date; *provided, however*, if it is later determined that a Purchaser received more than its Pro Rata Share of scheduled payments made on any date or dates, then such Purchaser shall remit to other the Purchasers such sums as may be necessary to ensure the ratable payment of such scheduled payments. If any payment or distribution of any kind or character, whether in cash, properties or securities, shall be received by a Purchaser in excess of its Pro Rata Share, then the portion of such payment or distribution in excess of such Purchaser's Pro Rata Share shall be received and held by such Purchaser in trust for and shall be promptly paid over to the other Purchasers (in accordance with their respective Pro Rata Shares) for application to the payments of amounts due on such other Purchasers' claims. To the extent any payment for the account of Issuer is required to be returned as a voidable transfer or otherwise, the Purchasers shall contribute to one another as is necessary to ensure that such return of payment is on a pro rata basis. If any Purchaser shall obtain possession of any Collateral, it shall hold such Collateral for itself and as agent and bailee for the Secured Parties for purposes of perfecting Collateral Agent's security interest therein (held for the ratable benefit of the Secured Parties).

9.5 Liability for Collateral. So long as Collateral Agent and the Purchasers comply with reasonable practices regarding the safekeeping of the Collateral in the possession or under the control of Collateral Agent and the Purchasers, Collateral Agent and the Purchasers shall not be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; (c) any diminution in the value of the Collateral; or (d) any act or default of any carrier, warehouseman, bailee, or other Person. Issuer bears all risk of loss, damage or destruction of the Collateral.

9.6 No Waiver; Remedies Cumulative. Failure by Collateral Agent or any Purchaser, at any time or times, to require strict performance by Issuer of any provision of this Agreement or by Issuer or any other Note Document shall not waive, affect, or diminish any right of Collateral Agent or any Purchaser thereafter to demand strict performance and compliance herewith or therewith. No waiver hereunder shall be effective unless signed by Collateral Agent and the Required Purchasers and then is only effective for the specific instance and purpose for which it is given. The rights and remedies of Collateral Agent and the Purchasers under this Agreement and the other Note Documents are cumulative. Collateral Agent and the Purchasers have all rights and remedies provided under the Code, any applicable law, by law, or in equity. The exercise by Collateral Agent or any Purchaser of one right or remedy is not an election, and any Purchaser's waiver of any Event of Default is not a continuing waiver. Collateral Agent's or any Purchaser's delay in exercising any remedy is not a waiver, election, or acquiescence.

9.7 Demand Waiver. Issuer waives, to the fullest extent permitted by law, demand, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees held by Collateral Agent or any Purchaser on which Issuer or any Guarantor is liable.

9.8 Grant of Intellectual Property License. For the purpose of enabling the Collateral Agent (at the direction of the Required Purchasers) to exercise the rights and remedies under this Section 9 after the occurrence and during the continuance of an Event of Default as the Collateral Agent shall be lawfully entitled to exercise such rights and remedies (including in order to take possession of, collect, receive, assemble, process, appropriate, remove, realize upon, sell, assign, convey, transfer or grant options to purchase any Collateral), Issuer hereby (a) grants to the Collateral Agent, for the ratable benefit of the other Secured Parties, an irrevocable, nonexclusive worldwide license (exercisable without payment of royalty or other compensation to Issuer (or applicable grantor)) ("**Collateral Agent License**"), including in such license the right to use, license, sublicense or practice any Intellectual Property now owned or hereafter acquired by Issuer (or any applicable grantor), and wherever the same may be located, and including in such license access to all media in which any of the licensed items may be recorded or stored and to all Software and programs used for the compilation or printout thereof, *provided* that with respect to any licenses held by Issuer, such Collateral Agent License shall only be granted to the extent such assignment or grant is permitted under the terms of such license and if such assignment or grant is not permitted under the term of such license Issuer will or will cause the applicable guarantor to cooperate with Collateral Agent and the other Secured Parties to receive the benefits of such Collateral Agent License to the maximum extent possible and (b) irrevocably agrees that the Collateral Agent may sell any of such Issuer's Inventory directly to any person, including without limitation persons who have previously purchased Issuer's Inventory from Issuer and in connection with any such sale or other enforcement of the Collateral Agent's rights under this Agreement, may sell Inventory which bears any Trademark owned by or licensed to Issuer and any Inventory that is covered by any Copyright owned by or licensed to Issuer and the Collateral Agent may (but shall have no obligation to) finish any work in process and affix any Trademark owned by or licensed to Issuer (or any applicable grantor) and sell such Inventory as provided herein.

9.9 Setoff and Sharing of Payments. In addition to any rights now or hereafter granted under any applicable Requirement of Law and not by way of limitation of any such rights, upon the occurrence and during the continuance of any Event of Default, each Purchaser is hereby authorized at any time or from time to time upon the direction of the Required Purchasers, without notice to Issuer or any other Person, any such notice being hereby expressly waived, to setoff and to appropriate and to apply any and all balances held by it at any of its offices for the account of Issuer (regardless of whether such balances are then due to Issuer) and any other properties or assets at any time held or owing by that Purchaser or that holder to or for the credit or for the account of Issuer against and on account of any of the Obligations that are not paid when due. Any Purchaser exercising a right of setoff or otherwise receiving any payment on account of the Obligations in excess of its Pro Rata Share thereof shall purchase for cash (and the other Purchasers or holders shall sell) such participations in each such other Purchaser's or holder's Pro Rata Share of the Obligations as would be necessary to cause such Purchaser to share the amount so offset or otherwise received with each other Purchaser or holder in accordance with their respective Pro Rata Shares of the Obligations. Issuer agrees, to the fullest extent permitted by law, that (a) any Purchaser may exercise its right to offset with respect to amounts in excess of its Pro Rata Share of the Obligations and may purchase participations in accordance with the preceding sentence and

(b) any Purchaser so purchasing a participation in the Notes made or other Obligations held by other Purchasers or holders may exercise all rights of offset, bankers' liens, counterclaims or similar rights with respect to such participation as fully as if such Purchaser or holder were a direct holder of the Notes and the other Obligations in the amount of such participation. Notwithstanding the foregoing, if all or any portion of the offset amount or payment otherwise received is thereafter recovered from the Purchaser that has exercised the right of offset, the purchase of participations by that Purchaser shall be rescinded and the purchase price restored without interest.

10. NOTICES

Other than as specifically provided herein, all notices, consents, requests, approvals, demands, or other communication (collectively, "**Communications**") by any party to this Agreement or any other Note Document must be in writing and shall be deemed to have been validly served, given, or delivered: (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the U.S. mail, first class, registered or certified mail return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by facsimile transmission; (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address, facsimile number, or email address indicated below. Any of Collateral Agent, Purchaser or Issuer may change its mailing address or facsimile number by giving the other party written notice thereof in accordance with the terms of this Section 10.

If to Issuer:	5E Advanced Materials, Inc. 19500 State Highway 249, Suite 125 Houston, Texas 77070 Attn: Paul Weibel Email: pweibel@5eadvancedmaterials.com
If to the Australian Obligors:	American Pacific Borates Pty Ltd (ABN 68 615 606 114) 63 Summerhill Drive, Stake Hill, Western Australia 6181, Australia Attn: Paul Weibel Email: pweibel@5eadvancedmaterials.com Fort Cady Holdings Pty Ltd (ABN 56 617 760 746) 63 Summerhill Drive, Stake Hill, Western Australia 6181, Australia Attn: Paul Weibel Email: pweibel@5eadvancedmaterials.com

If to Collateral Agent or Purchaser:	Alter Domus (US) LLC Address: 225 W. Washington St., 9th Floor Chicago, Illinois 60606 Attn: Legal Department, Emily Ergang Pappas and Alexa Putnam Email:legal@alterdomus.com, emily.ergangpappas@alterdomus.com, Alexa.Putnam@alterdomus.com and Cortland_Successor_Agent@alterdomus.com
with a copy (which shall not constitute notice) to:	Holland & Knight LLP 150 N. Riverside Plaza, Suite 2700 Chicago, Illinois 60606 Attn: Joshua M. Spencer Email: joshua.spencer@hklaw.com
If to Purchaser:	BEP Special Situations IV LLC 300 Crescent Court, Suite 1860 Dallas, Texas 75201 Attn: Jonathan Siegler Email: jasiegler@bluescapegroup.com
with a copy (which shall not constitute notice) to:	Kirkland & Ellis LLP 609 Main Street Houston, Texas 77002 Attn: Andy Veit Email: andrew.veit@kirkland.com and: Kirkland & Ellis LLP 609 Main Street Houston, Texas 77002 Attn: Julian Seiguer Email: julian.seiguer@kirkland.com

11. CHOICE OF LAW, VENUE AND JURY TRIAL WAIVER

11.1 Waiver of Jury Trial. EACH OF ISSUER, EACH GUARANTOR, COLLATERAL AGENT AND PURCHASERS UNCONDITIONALLY WAIVES ANY AND ALL RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, ANY OF THE OTHER NOTE DOCUMENTS, ANY OF THE INDEBTEDNESS SECURED HEREBY, ANY DEALINGS AMONG ISSUER, COLLATERAL AGENT AND/OR PURCHASERS RELATING TO THE SUBJECT MATTER OF THIS TRANSACTION OR ANY RELATED TRANSACTIONS, AND/OR THE RELATIONSHIP THAT IS BEING ESTABLISHED AMONG ISSUER, COLLATERAL AGENT AND/OR PURCHASERS. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT. THIS WAIVER IS IRREVOCABLE. THIS WAIVER MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING. THE WAIVER ALSO SHALL APPLY TO ANY

SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT, ANY OTHER NOTE DOCUMENTS, OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THIS TRANSACTION OR ANY RELATED TRANSACTION.

11.2 Governing Law and Jurisdiction. THIS AGREEMENT, THE OTHER NOTE DOCUMENTS AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, REGARDLESS OF THE LOCATION OF THE COLLATERAL, *PROVIDED, HOWEVER*, THAT IF THE LAWS OF ANY JURISDICTION OTHER THAN NEW YORK SHALL GOVERN IN REGARD TO THE VALIDITY, PERFECTION OR EFFECT OF PERFECTION OF ANY LIEN OR IN REGARD TO PROCEDURAL MATTERS AFFECTING ENFORCEMENT OF ANY LIENS IN COLLATERAL, SUCH LAWS OF SUCH OTHER JURISDICTIONS SHALL CONTINUE TO APPLY TO THAT EXTENT.

11.3 Submission to Jurisdiction. Any legal action or proceeding with respect to the Note Documents shall be brought exclusively in the courts of the State of New York located in the City of New York, Borough of Manhattan, or of the United States of America for the Southern District of New York and, by execution and delivery of this Agreement, Issuer and each Guarantor hereby accepts for itself and in respect of its Property, generally and unconditionally, the jurisdiction of the aforesaid courts. Notwithstanding the foregoing, Collateral Agent and Purchasers shall have the right to bring any action or proceeding against Issuer (or any property of Issuer) and/or a Guarantor (or any property of any Guarantor) in the court of any other jurisdiction Collateral Agent or Purchasers deem necessary or appropriate in order to realize on the Collateral or other security for the Obligations. The parties hereto hereby irrevocably waive any objection, including any objection to the laying of venue or based on the grounds of *forum non conveniens*, that any of them may now or hereafter have to the bringing of any such action or proceeding in such jurisdictions.

11.4 Service of Process. Issuer and each Guarantor irrevocably waives personal service of any and all legal process, summons, notices and other documents and other service of process of any kind and consents to such service in any suit, action or proceeding brought in the United States of America with respect to or otherwise arising out of or in connection with any Note Document by any means permitted by applicable requirements of law, including by the mailing thereof (by registered or certified mail, postage prepaid) to the address of Issuer and/or any Guarantor specified herein (and shall be effective when such mailing shall be effective, as provided therein). Issuer and each Guarantor agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

11.5 Non-exclusive Jurisdiction. Nothing contained in this Section 11 shall affect the right of Collateral Agent or Purchasers to serve process in any other manner permitted by applicable requirements of law or commence legal proceedings or otherwise proceed against Issuer in any other jurisdiction.

12. GENERAL PROVISIONS

12.1 Successors and Assigns. This Agreement binds and is for the benefit of the successors and permitted assigns of each party. Issuer may not transfer, pledge or assign this Agreement or any rights or obligations under it without the prior written consent of the Required Purchasers (which may be granted or withheld in Required Purchasers' discretion, subject to Section 12.5). The Purchasers have the right, subject to any restrictions in the Note to the extent outstanding, without the consent of or notice to Issuer, to sell, transfer, assign, pledge or negotiate (any such sale, transfer, assignment, negotiation**,** or grant of a participation, a "**Purchaser Transfer**"), or grant participation in all or any part of, or any interest in, the Purchasers' obligations, rights, and benefits under this Agreement and the other Note Documents; *provided* that, except upon the occurrence and during the continuance of an Event of Default under Sections 8.1 or 8.5, to the extent that after giving effect to any such Purchaser Transfer, such Purchaser and/or its Affiliates shall hold fifty percent (50%) or less of the aggregate outstanding principal amount of the Notes, such Purchaser Transfer shall require the prior written consent of Issuer (not to be unreasonably withheld, delayed or conditioned); *provided further* that the Issuer shall be deemed to have consented to any such Purchaser Transfer unless it shall object thereto by written notice to the Purchaser within three (3) Business Days after having received notice thereof. Issuer and Collateral Agent shall be entitled to continue to deal solely and directly with such Purchaser in connection with the interests so assigned until the Required Purchasers shall have received and accepted an effective assignment agreement in form satisfactory to the Required Purchasers executed, delivered and fully completed by the applicable parties thereto (with a copy to the Collateral Agent), and shall have received such other information regarding such assignee as the Required Purchasers reasonably shall require. The assignee, if it is not a Purchaser, shall deliver to the Collateral Agent all documentation and information necessary to satisfy the Collateral Agent's "know your customer" requirements and all applicable tax forms (including, without limitation, a properly completed and duly executed IRS Form W-9 (or other applicable tax form). Issuer shall maintain at one of its offices in the United States a register for the recordation of the names and addresses of the Purchasers and principal amounts (and stated interest) of the Notes owing to each Purchaser pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and Issuer, Collateral Agent and Purchasers shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as Purchaser hereunder for all purposes of this Agreement. The Register shall be available for inspection by any Purchaser and the Collateral Agent at any reasonable time and from time to time upon reasonable prior notice. Notwithstanding any other language to the contrary contained herein or in any other Note Documents, as of any particular date, the Collateral Agent shall be entitled to rely conclusively upon the Register as most recently delivered by the Issuer to the Collateral Agent (including without limitation in connection with any determination as to which Purchasers constitute the Required Purchasers under this Agreement). Further notwithstanding anything to the contrary contained in this Agreement or in any other Note Documents, the Notes are registered obligations, the right, title and interest of the Purchasers and their assignees in and to such Notes, as the case may be, shall be transferable only upon notation of such transfer in the Register and no assignment thereof shall be effective until recorded therein. This Section 12.1 shall be construed so that the Notes are at all times maintained in "registered form" within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code. Any agreement or instrument pursuant to which a Purchaser sells a participation shall provide that such Purchaser shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver

of any provision of this Agreement; *provided* that such agreement or instrument may provide that such Purchaser will not, without the consent of the participant, agree to any amendment, waiver or other modification described in the first proviso to Section 12.5 that affects such Participant. The Issuer agrees that each participant shall be entitled to the benefits of Exhibit C (subject to the requirements and limitations therein, including the requirements under Section 7 of Exhibit C (it being understood that the documentation required under Section 7 of Exhibit C shall be delivered to the Purchaser who sells the participation)) to the same extent as if it were a Purchaser and had acquired its interest by assignment this Section 12.1. Each Purchaser that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of Issuer, maintain a register on which it enters the name and address of each participant and the principal amounts (and stated interest) of each participant's interest in the Notes or other obligations under the Note Documents (the "**Participant Register**"); *provided* that no Purchaser shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any participant or any information relating to a participant's interest in any commitments, loans or its other obligations under any Note Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan or other obligation is in registered form under Section 5f.103-1(c) or Proposed Section 1.163-5(b) (or, in each case, any amended or successor sections) of the United States Treasury Regulations. The entries in the Register or Participant Register shall be conclusive absent manifest error, and such Purchaser shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, Collateral Agent (in its capacity as Collateral Agent) shall have no responsibility for maintaining the Register or Participant Register.

12.2 Indemnification; Waivers.

(a) Indemnification by Issuer and Guarantors. Issuer and each Guarantor agrees to indemnify, reimburse, defend and hold each Secured Party and their respective directors, officers, employees, consultants, agents, attorneys, or any other Person affiliated with or representing such Secured Party (each, an "**Indemnified Person**") harmless against: (i) all obligations, demands, claims, and liabilities (collectively, "**Claims**") asserted by any other party in connection with; related to; following; or arising from, out of or under, the transactions contemplated by the Note Documents whether in contract, tort or otherwise; and (ii) all losses, Collateral Agent Expenses and Purchasers' Expenses incurred, or paid by Indemnified Person in connection with; related to; following; or arising from, out of or under, the transactions contemplated by the Note Documents (including reasonable attorneys' fees and expenses and, if necessary or appropriate, local counsel in each reasonably necessary and materially relevant jurisdiction for any Indemnified Person), except, in each case, for Claims and/or losses directly caused by such Indemnified Person's gross negligence or willful misconduct, in each case, as determined by a court of competent jurisdiction by final and non-appealable judgment. Issuer and each Guarantor hereby further agrees to indemnify, reimburse, defend and hold each Indemnified Person harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the fees and disbursements of any counsel for and, if necessary or appropriate, local counsel in each reasonably necessary and materially relevant jurisdiction for any Indemnified Person) in connection with any investigative, response, remedial, administrative or judicial matter or proceeding, whether or not such Indemnified Person shall be designated a party

thereto and including any such proceeding initiated by or on behalf of Issuer, a Guarantor or any of their respective shareholders, and the reasonable expenses of investigation by engineers, environmental consultants and similar technical personnel and any commission, fee or compensation claimed by any broker (other than any broker retained by Purchasers) asserting any right to payment for the transactions contemplated hereby which may be imposed on, incurred by or asserted against such Indemnified Person as a result of or in connection with the transactions contemplated hereby and the use or intended use of the proceeds of the loan proceeds except for liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements directly caused by such Indemnified Person's gross negligence or willful misconduct, in each case, as determined by a court of competent jurisdiction by final and non-appealable judgment. This Section 12.2(a) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(b) Waiver of Consequential Damages. To the fullest extent permitted by applicable law, no party hereto shall assert, and each party hereto hereby waives, any claim against any Indemnified Person or any other party hereto, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Note Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Commitment, or the use of the proceeds thereof. No Indemnified Person shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Note Documents or the transactions contemplated hereby or thereby.

12.3 Severability of Provisions. Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision.

12.4 Correction of Note Documents. The Required Purchasers may correct patent errors and fill in any blanks in this Agreement and the other Note Documents consistent with the agreement of the parties.

12.5 Amendments in Writing; Integration. (a) No amendment, modification, termination or waiver of any provision of this Agreement or any other Note Document, no approval or consent thereunder, or any consent to any departure by Issuer or any of its Subsidiaries therefrom, shall in any event be effective unless the same shall be in writing and signed by Issuer, Collateral Agent and the Required Purchasers provided that:

(i) no such amendment, waiver or other modification that would have the effect of increasing or reducing the amount outstanding under the Notes held by each Purchaser's shall be effective as to such Purchaser without such Purchaser's written consent;

(ii) no such amendment, waiver or modification that would affect the rights and duties of Collateral Agent shall be effective without Collateral Agent's written consent or signature; and

(iii) no such amendment, waiver or other modification shall, unless signed by all the Purchasers directly affected thereby, (A) reduce the principal of, rate of interest on, Redemption Price or any fees with respect to the Note or forgive any principal, Redemption Price, interest (other than default interest) or fees (other than late charges) with respect to the Note (B) postpone the date fixed for, or waive, any payment of principal of any Note or of interest on the Note (other than default interest) or any fees provided for hereunder (other than late charges or for any termination of any commitment); (C) change the definition of the term "Required Purchasers" or the percentage of Purchasers which shall be required for the Purchasers to take any action hereunder; (D) release all or substantially all of any material portion of the Collateral, authorize Issuer to sell or otherwise dispose of all or substantially all or any material portion of the Collateral or release any Guarantor of all or any portion of the Obligations or its Guaranty obligations with respect thereto, except, in each case with respect to this clause (D), as otherwise may be expressly permitted under this Agreement or the other Note Documents (including in connection with any disposition permitted hereunder); (E) amend, waive or otherwise modify this Section 12.5 or the definitions of the terms used in this Section 12.5 insofar as the definitions affect the substance of this Section 12.5; (F) consent to the assignment, delegation or other transfer by Issuer of any of its rights and obligations under any Note Document or release Issuer of its payment obligations under any Note Document, except, in each case with respect to this clause (F), pursuant to a merger or consolidation permitted pursuant to this Agreement; (G) amend any of the provisions of Section 9.4 or amend any of the definitions of Pro Rata Share or that provide for the Purchasers to receive their Pro Rata Shares of any fees, payments, setoffs or proceeds of Collateral hereunder; (H) subordinate the Liens granted in favor of Collateral Agent securing the Obligations; (I) amend any of the provisions of Section 12.5; (J) make any change that adversely affects the conversion rights of any Note. It is hereby understood and agreed that all Purchasers shall be deemed directly affected by an amendment, waiver or other modification of the type described in the preceding clauses (C), (D), (E), (F), (G) and (H) of the immediately preceding sentence.

(b) Other than as expressly provided for in Section 12.5(a)(i)-(iii), the Required Purchasers may from time to time designate covenants in this Agreement less restrictive by notification to a representative of Issuer.

(c) This Agreement and the Note Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements with respect to such subject matter. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of this Agreement and the Note Documents merge into this Agreement and the Note Documents.

12.6 Counterparts. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is an original, and all taken together, constitute one Agreement. Delivery of an executed counterpart of a signature page of this Agreement by facsimile, portable document format (.pdf) or other electronic transmission will be as effective as delivery of a manually executed counterpart hereof.

12.7 Survival. All covenants, representations and warranties made in this Agreement continue in full force and effect until this Agreement has terminated pursuant to its terms and all Obligations (other than inchoate indemnity obligations and any other obligations which, by their terms, are to survive the termination of this Agreement) have been satisfied. The obligation of

Issuer in Section 12.2 to indemnify each Purchaser and Collateral Agent, the withholding provision in Section 2.5 hereof, the confidentiality provisions in Section 12.8 below and Exhibit B of this Agreement shall survive the termination of the Note Documents and the payment in full of the Obligations hereunder.

12.8 Confidentiality. In handling any confidential information of Issuer, each of the Purchasers and Collateral Agent shall exercise the same degree of care that it exercises for their own proprietary information, but disclosure of information may be made: (a) subject to the terms and conditions of this Agreement, to the Purchasers' and Collateral Agent's Subsidiaries or Affiliates, or in connection with a Purchaser's own financing or securitization transactions and upon the occurrence of a default, event of default or similar occurrence with respect to such financing or securitization transaction; (b) to prospective transferees (other than those identified in (a) above) or purchasers of any interest in the Notes (*provided, however*, the Purchasers and Collateral Agent shall, except upon the occurrence and during the continuance of an Event of Default, obtain such prospective transferee's or purchaser's agreement to the terms of this provision or to similar confidentiality terms); (c) (other than disclosure of any information of the kind referred to in sections 275(1) and 275(4) of the PPSA (unless section 275(7) of the PPSA applies)) as required by law, rule, regulation, regulatory or self-regulatory authority, subpoena, or other order; (d) to Purchasers' or Collateral Agent's regulators or as otherwise required in connection with an examination or audit; (e) as Collateral Agent or the Required Purchasers may reasonably considers appropriate in exercising remedies under the Note Documents; and (f) to third party service providers of the Purchasers and/or Collateral Agent so long as such service providers have executed a confidentiality agreement or have agreed to similar confidentiality terms with the Purchasers and/or Collateral Agent, as applicable, with terms no less restrictive than those contained herein. Confidential information does not include information that either: (i) is in the public domain or in the Purchasers' and/or Collateral Agent's possession when disclosed to the Purchasers and/or Collateral Agent, or becomes part of the public domain after disclosure to the Purchasers and/or Collateral Agent through no breach of this provision by the Purchasers or the Collateral Agent; or (ii) is disclosed to the Purchasers and/or Collateral Agent by a third party, if the Purchasers and/or Collateral Agent does not know that the third party is prohibited from disclosing the information. Collateral Agent and the Purchasers may use confidential information for any purpose, including, without limitation, for the development of client databases, reporting purposes, and market analysis so long as the Collateral Agent and the Purchasers do not disclose the identity of Issuer or the identity of any person associated with Issuer. The provisions of the immediately preceding sentence shall survive the termination of this Agreement. The agreements provided under this Section 12.8 supersede all prior agreements, understanding, representations, warranties, and negotiations between the parties about the subject matter of this Section 12.8. Notwithstanding anything contained in this Section 12.8, Issuer and the initial Purchasers hereby acknowledge and agree that as of the Effective Date, after giving effect to the public announcement of the Transactions, none of Issuer nor any of its affiliates has provided such Purchasers with any material, nonpublic information.

12.9 Right of Set Off. Issuer and each Guarantor hereby grant to Collateral Agent and to each Purchaser, a Lien, security interest and right of set off as security for all Obligations to Secured Parties hereunder, whether now existing or hereafter arising upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of any Secured Party or any entity under the control of such Secured Party (including a Collateral

Agent Affiliate) or in transit to any of them. At any time after the occurrence and during the continuance of an Event of Default, without demand or notice, any Secured Party may set off the same or any part thereof and apply the same to any liability or obligation of Issuer even though unmatured and regardless of the adequacy of any other collateral securing the Obligations. ANY AND ALL RIGHTS TO REQUIRE COLLATERAL AGENT TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE OBLIGATIONS, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF ISSUER ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED BY ISSUER AND EACH GUARANTOR.

12.10 Cooperation of Issuer. If necessary, Issuer agrees to (i) execute any documents reasonably required to effectuate and acknowledge each assignment of the Notes (or portion thereof) to an assignee in accordance with Section 12.1, (ii) make Issuer's management personnel available to meet with the Purchasers and prospective participants and assignees of the Notes or portions thereof (which meetings shall be conducted no more often than twice every twelve months unless an Event of Default has occurred and is continuing), and (iii) assist the Purchasers in the preparation of information relating to the financial affairs of Issuer as any prospective participant or assignee of the Notes (or portions thereof) reasonably may request. Subject to the provisions of Section 12.8, Issuer authorizes each Purchaser to disclose to any prospective participant or assignee of the Notes (or portions thereof), any and all information in such Purchaser's possession concerning Issuer and its financial affairs which has been delivered to such Purchaser by or on behalf of Issuer pursuant to this Agreement, or which has been delivered to such Purchaser by or on behalf of Issuer in connection with such Purchaser's credit evaluation of Issuer prior to entering into this Agreement.

12.11 Public Announcement. Issuer hereby agrees that Collateral Agent and each Purchaser, after consultation with Issuer, may make a public announcement of the transactions contemplated by this Agreement, and may publicize the same in marketing materials, newspapers and other publications, and otherwise, and in connection therewith may use Issuer's name, tradenames and logos. Each Purchaser hereby agrees that Issuer, after consultation with the Purchasers, may make a public announcement of the transactions contemplated by this Agreement, and may publicize the same in marketing materials, newspapers and other publications, and otherwise, and in connection therewith may use Purchasers' names, tradenames and logos. Notwithstanding the foregoing, such consultation with Issuer shall not be required for any disclosures by Collateral Agent and the Purchasers may also make required disclosures to the SEC, ASX or other governmental agency and any other public disclosure with investors, other governmental agencies or other related persons.

12.12 Collateral Agent and Purchaser Agreement. Collateral Agent and the Purchasers hereby agree to the terms and conditions set forth on Exhibit B attached hereto. Issuer acknowledges and agrees to the terms and conditions set forth on Exhibit B attached hereto.

12.13 Time of Essence. Time is of the essence for the performance of Obligations under this Agreement.

12.14 Termination Prior to Maturity Date; Survival. All covenants, representations and warranties made in this Agreement continue in full force until this Agreement has terminated pursuant to its terms and all Obligations have been satisfied. So long as Issuer has satisfied the Obligations (other than inchoate indemnity obligations and any other obligations which, by their terms, are to survive the termination of this Agreement and for which no claim has been made) in accordance with the terms of this Agreement, this Agreement may be terminated prior to the Maturity Date by Issuer, effective five (5) Business Days after written notice of termination is given to the Collateral Agent and the Purchasers.

12.15 Guaranty.

(a) The Guarantors hereby jointly and severally guarantee to Collateral Agent and the Purchasers, and their successors and assigns, the prompt payment in full when due (whether at stated maturity, by acceleration or otherwise) of the principal of and interest on the Notes, all fees and other amounts and Obligations from time to time owing to Collateral Agent and the Purchasers by Issuer and each other Guarantor under the Notes, this Agreement or under any other Note Document (for the avoidance of doubt, including any obligations of the Issuer and any Guarantor under Exhibit C), in each case strictly in accordance with the terms hereof and thereof (such obligations being herein collectively called the "**Guaranteed Obligations**"). The Guarantors hereby further jointly and severally agree that if Issuer or any other Guarantor shall fail to pay in full when due (whether at stated maturity, by acceleration or otherwise) any of the Guaranteed Obligations, the Guarantors will promptly pay the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, by acceleration or otherwise) in accordance with the terms of such extension or renewal. The guarantee in this Section 12.15(a) is a continuing guarantee, and shall apply to all Guaranteed Obligations whenever arising. The Guarantors hereby further agree that the obligations of the Issuer as set forth on Exhibit C attached hereto apply mutatis mutandis as obligations of the Guarantors.

(b) Obligations Unconditional. The obligations of the Guarantors under Section 12.15(a) above are absolute and unconditional, joint and several, irrespective of the value, genuineness, validity, regularity or enforceability of the obligations of Issuer and each other Guarantor under the Notes, this Agreement or any other agreement or instrument referred to herein, or any substitution, release or exchange of any other guarantee of or security for any of the Guaranteed Obligations, and, to the fullest extent permitted by law, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of this Section 12.15(b) that the obligations of the Guarantors hereunder shall be absolute and unconditional, joint and several, under any and all circumstances. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability of the Guarantors hereunder, which shall remain absolute and unconditional as described above:

(i) at any time or from time to time, without notice to the Guarantors, the time for any performance of or compliance with any of the Guaranteed Obligations shall be extended, or such performance or compliance shall be waived;

(ii) any of the acts mentioned in any of the provisions of this Agreement or any other agreement or instrument referred to herein shall be done or omitted;

(iii) the maturity of any of the Guaranteed Obligations shall be accelerated, or any of the Guaranteed Obligations shall be modified, supplemented or amended in any respect, or any right under this Agreement or any other agreement or instrument referred to herein shall be waived or any other guarantee of any of the Guaranteed Obligations or any security therefor shall be released or exchanged in whole or in part or otherwise dealt with; or

(iv) any Lien or security interest granted to, or in favor of, Collateral Agent as security for any of the Guaranteed Obligations shall fail to be perfected.

(c) The Guarantors hereby expressly waive diligence, presentment, demand of payment, protest and all notices whatsoever, and any requirement that Collateral Agent or any Purchaser exhaust any right, power or remedy or proceed against Issuer under this Agreement or any other agreement or instrument referred to herein, or against any other Person under any other guarantee of, or security for, any of the Guaranteed Obligations.

(d) The obligations of the Guarantors under this Section 12.15 shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of Issuer in respect of the Guaranteed Obligations is rescinded or must be otherwise restored by any holder of any of the Guaranteed Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, and the Guarantors jointly and severally agree that they will indemnify and hold the Collateral Agent and the Purchasers harmless (on demand) for all reasonable costs and expenses (including fees of any counsel) incurred by such Persons in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law.

(e) The Guarantors hereby jointly and severally agree that, until the payment and satisfaction in full of all Guaranteed Obligations (other than inchoate indemnity obligations), they shall not exercise any right or remedy arising by reason of any performance by them of their guarantee in Section 12.15(a), whether by subrogation or otherwise, against Issuer or any other guarantor of any of the Guaranteed Obligations or any security for any of the Guaranteed Obligations.

(f) The Guarantors hereby agree, as between themselves, that if any Guarantor shall become an Excess Funding Guarantor (as defined below) by reason of the payment by such Guarantor of any Guaranteed Obligations, each other Guarantor shall, on demand of such Excess Funding Guarantor (but subject to the next sentence), pay to such Excess Funding Guarantor an amount equal to such Guarantor's Fair Share (as defined below and determined, for this purpose, without reference to the properties, debts and liabilities of such Excess Funding Guarantor) of the Excess Payment (as defined below) in respect of such Guaranteed Obligations. The payment obligation of a Guarantor to any Excess Funding Guarantor under this Section 12.15(f) shall be subordinate and subject in right of payment to the prior payment in full of the obligations of such Guarantor under the other provisions of Section 12.15 and such Excess Funding Guarantor shall not exercise any right or remedy with respect to such excess until payment and satisfaction in full

of all of such obligations. For purposes of this Section 12.15(f), (i) "**Excess Funding Guarantor**" means, in respect of any Guaranteed Obligations, a Guarantor that has paid an amount in excess of its Fair Share of such Guaranteed Obligations, (ii) "**Excess Payment**" means, in respect of any Guaranteed Obligations, the amount paid by an Excess Funding Guarantor in excess of its Fair Share of such Guaranteed Obligations and (iii) "**Fair Share**" means, for any Guarantor, the ratio (expressed as a percentage) of the amount by which the aggregate present fair saleable value of all properties of such Guarantor (excluding any shares of stock of any other Guarantor) exceeds the amount of all the debts and liabilities of such Guarantor (including contingent, subordinated, unmatured and unliquidated liabilities, but excluding the obligations of such Guarantor hereunder and any obligations of any other Guarantor that have been guaranteed by such Guarantor) to (y) the amount by which the aggregate fair saleable value of all properties of all of the Guarantors exceeds the amount of all the debts and liabilities (including contingent, subordinated, unmatured and unliquidated liabilities, but excluding the obligations of Issuer and the Guarantors hereunder and under the other Note Documents) of all of the Guarantors, determined (A) with respect to any Guarantor that is a party hereto on the Effective Date, as of the Effective Date, and (B) with respect to any other Guarantor, as of the date such Guarantor becomes a Guarantor hereunder.

(g) In any action or proceeding involving any provincial, territorial or state corporate law, or any state or federal bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of any Guarantor under Section 12.15(a) would otherwise, taking into account the provisions of Section 12.15(f), be held or determined to be void, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under Section 12.15(a), then, notwithstanding any other provision hereof to the contrary, the amount of such liability shall, without any further action by such Guarantor, Collateral Agent, any Purchaser or any other Person, be automatically limited and reduced to the highest amount that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding.

12.16 Representations and Warranties of the Purchasers. Each Purchaser, severally and not jointly, represents and warrants to Issuer as of the date such Person becomes a Purchaser and as of the Closing Date, that:

(a) Such Purchaser is duly organized, validly existing and in good standing, and has the power, authority and capacity to execute and deliver this Agreement, to perform its obligations hereunder.

(b) This Agreement has been duly executed and delivered by such Purchaser and constitutes a legal, valid and binding obligation of such Purchaser, enforceable against the Purchaser in accordance with its terms, except as such enforceability may be limited by bankruptcy, fraudulent conveyance, insolvency, reorganization, moratorium, and other laws relating to or affecting creditors' rights generally and by general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(c) This Agreement will not violate, conflict with or result in a breach of or default under (i) such Purchaser's organizational documents, (ii) any agreement or instrument to which such Purchaser is a party or by which such Purchaser or any of its assets are bound, or (iii) any laws, regulations or governmental or judicial decrees, injunctions or orders applicable to such Purchaser.

(d) Each of the Notes to be received by such Purchaser hereunder will be acquired for such Purchaser's own account, and not with a view to the resale or distribution of any part thereof in violation of the Securities Act, except pursuant to sales registered or exempted under the Securities Act, and such Purchaser has no present intention of selling, granting any participation in, or otherwise distributing the same in violation of the Securities Act without prejudice, however, to such Purchaser's right at all times to sell or otherwise dispose of all or any part of such Notes in compliance with applicable federal and state securities laws.

(e) Such Purchaser can bear the economic risk and complete loss of its investment in the Notes and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of the investment contemplated hereby.

(f) Such Purchaser has had an opportunity to receive, review and understand all information related to Issuer requested by it and to ask questions of and receive answers from Issuer regarding Issuer, its Subsidiaries, its business and the terms and conditions of the offering of the Notes, and has conducted and completed its own independent due diligence.

(g) Based on the information such Purchaser has deemed appropriate, it has independently made its own analysis and decision to enter into the Note Documents.

(h) Such Purchaser understands that the Notes are characterized as "restricted securities" under the U.S. federal securities laws inasmuch as they are being acquired from Issuer in a transaction not involving a public offering and that under such laws and applicable regulations such securities may be resold without registration under the Securities Act only in certain limited circumstances. Such Purchaser understands that no United States federal or state agency, or similar agency of any other country, has reviewed, approved, passed upon, or made any recommendation or endorsement of Issuer or the purchase of the Notes.

(i) Such Purchaser is (i) an "accredited investor" as defined in Regulation D promulgated under the Securities Act, (ii) an institutional account as defined in FINRA Rule 4512(c), (iii) an Eligible Investor, (iv) not acting on behalf of, or for the benefit of, any person who is not an Eligible Investor, and (v) is not acquiring the Notes (or shares of Common Stock issuable upon conversion of the Notes) with the purpose of selling or transferring, or granting, issuing, or transferring interests in, or options over, the Notes (or shares of Common Stock issuable upon conversion of the Notes) within 12 months of their purchase or issuance other than to an Eligible Investor.

(j) The Purchasers agree that the Notes and the shares of Common Stock issuable upon conversion of the Notes may not be sold or transferred unless (i) such Notes or the shares of Common Stock issuable upon conversion of the Notes are sold or transferred pursuant to an effective registration statement pursuant to the Securities Act and disclosure document pursuant to the *Corporations Act 2001* (Cth), (ii) such Notes or the shares of Common Stock issuable upon conversion of the Notes are sold or transferred in accordance with to Rule 144 or any other exemption from, or in a transaction not subject to, the registration requirements of the Securities

Act or the *Corporations Act 2001* (Cth), (iii) the Issuer has received an opinion of counsel reasonably satisfactory to it that such sale or transfer may lawfully be made without registration under the Securities Act or without disclosure under the *Corporations Act 2001* (Cth), or (iv) Notes or the shares of Common Stock issuable upon conversion of the Notes are transferred without consideration to an affiliate of such holder or a custodial nominee.

12.17 Tax Matters. For all U.S. federal and relevant state or local tax purposes, except as otherwise required by a Governmental Authority or change in applicable law, the parties hereto agree to: (1) treat the Notes as investment units within the meaning of Section 1.1273-2(h) of the United States Treasury Regulations, and accordingly, treat the Notes as having been issued on the Closing Date with an "issue price" (within the meaning of Section 1.1273-2 of the United States Treasury Regulations) equal to their initial principal amount, (2) treat the Notes as being subject to a single payment schedule that, as of the Closing Date, is significantly more likely than not to occur, and accordingly, treat the Notes as convertible debt instruments that are not "contingent payment debt instruments" under Section 1.1275-4 of the United States Treasury Regulations (or any corresponding provision of state income tax law), (3) treat the accrual of interest and original issue discount and any amounts received upon conversion, redemption or other disposition as not constituting "contingent interest" within the meaning of Sections 871(h) and 881(c) of the Internal Revenue Code (or within the meaning of a comparable exception under the "Interest" article of an applicable United States income tax treaty) (clauses (1), (2), (3), and (4), the "**Intended Tax Treatment**"), and (4) file all relevant Tax returns consistently with the Intended Tax Treatment. Notwithstanding the foregoing, if a Governmental Authority (other than as a result of a change in law after the date hereof) requires the Notes to be treated in a manner inconsistent with the Intended Tax Treatment and, as a result, amounts payable to or for the account of any Purchaser are subject to U.S. federal withholding Tax, such taxes shall be Excluded Taxes. If as a result of a change in circumstances within the meaning of Section 1.1272-1(c)(6) of the United States Treasury Regulations, payments are not made pursuant to the payment schedule described in the previous sentence, then the parties hereto agree, solely for purposes of Sections 1272 and 1273 of the Internal Revenue Code, to cooperate to make appropriate subsequent adjustments in accordance with Section 1.1272-1(c)(6) of the United States Treasury Regulations (and any corresponding provision of state income tax law). The Issuer acknowledges its obligations to file and/or publicly post (as applicable) an IRS Form 8937 if a conversion rate adjustment (or lack thereof) results in a distribution under Section 305(c) of the Internal Revenue Code and agrees to notify the Purchasers on a timely basis in the event of such an adjustment (or lack thereof) and consider, in good faith, any timely received, reasonable comments of the Purchasers in preparing such IRS Form 8937.

12.18 PPSA Provisions.

(a) Where any Secured Party has a security interest (as defined in the PPSA) under any Note Document, to the extent the law permits:

(i) for the purposes of sections 115(1) and 115(7) of the PPSA: each Secured Party with the benefit of the security interest need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4) of the PPSA; and sections 142 and 143 of the PPSA are excluded;

(ii) for the purposes of section 115(7) of the PPSA, each Secured Party with the benefit of the security interest need not comply with sections 132 and 137(3);

(iii) each party waives its right to receive from any Secured Party any notice required under the PPSA (including a notice of a verification statement);

(iv) if a Secured Party with the benefit of a security interest exercises a right, power or remedy in connection with it, that exercise is taken not to be an exercise of a right, power or remedy under the PPSA unless the Secured Party states otherwise at the time of exercise. However, this Section 12.18 does not apply to a right, power or remedy which can only be exercised under the PPSA; and

(v) if the PPSA is amended to permit the parties to agree not to comply with or to exclude other provisions of the PPSA, the Collateral Agent may notify the Issuer, the Australian Obligors and the Secured Parties that any of these provisions is excluded, or that the Secured Parties need not comply with any of these provisions.

This does not affect any rights a person has or would have other than by reason of the PPSA and applies despite any other clause in any Note Document.

(b) Whenever the Collateral Agent reasonably requests the Issuer or any Australian Obligor to do anything:

(i) to ensure any Note Document (or any security interest (as defined in the PPSA) or other Lien under any Note Document) is fully effective, enforceable and perfected with the contemplated priority;

(ii) for more satisfactorily assuring or securing to the Secured Parties the property the subject of any such security interest or other Lien in a manner consistent with the Note Documents; or

(iii) for aiding the exercise of any power in any Note Document,

the Issuer or that Australian Obligor (as applicable) shall do it promptly at its own cost. This may include obtaining consents, signing documents, getting documents completed and signed and supplying information, delivering documents and evidence of title and executed blank transfers, or otherwise giving possession or control with respect to any property the subject of any security interest or Lien.

[*Balance of Page Intentionally Left Blank*]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

ISSUER:

5E ADVANCED MATERIALS, INC.

By:
Name:
Title:

GUARANTORS:

AMERICAN PACIFIC BORATES PTY LTD

Executed by
American Pacific Borates Pty Ltd (ABN 68 615 606 114)
in accordance with section 127 of the Australian *Corporations Act 2001* (Cth)
by a director and director/company secretary:

Signature of director	Signature of director/ company secretary
Name of director (please print)	Name of director/ company secretary (please print)

FORT CADY HOLDINGS PTY LTD

[Signature Page to Note Purchase Agreement]

Executed by
Fort Cady Holdings Pty Ltd (ABN 56 617 760 746)
in accordance with section 127 of the Australian *Corporations Act 2001* (Cth)
by a director and company secretary:

Signature of director	Signature of company secretary
Name of director (please print)	Name of company secretary (please print)

[Signature Page to Note Purchase Agreement]

PURCHASER:

BEP SPECIAL SITUATIONS IV LLC

By:
Name:
Title:

[Signature Page to Note Purchase Agreement]

COLLATERAL AGENT:

ALTER DOMUS (US) LLC

By:
Name:
Title:

EXHIBIT A

Description of Collateral

EXHIBIT B

Collateral Agent and Purchaser Terms

EXHIBIT C

Taxes; Increased Costs

EXHIBIT D

Compliance Certificate

EXHIBIT E

Form of Note

[Attached]

[FORM OF NOTE]

THE OFFER AND SALE OF NOTES REPRESENTED HEREBY OR ANY SHARES OF COMMON STOCK ISSUABLE UPON CONVERSION THEREOF HAVE NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND SUCH NOTES AND SHARES MAY NOT BE OFFERED, SOLD, PLEDGED, HEDGED OR OTHERWISE TRANSFERRED, EXCEPT (X) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND A CURRENT PROSPECTUS, (Y) IN ACCORDANCE WITH RULE 144 UNDER THE SECURITIES ACT OR (Z) PURSUANT TO ANOTHER APPLICABLE EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT.

THE NOTES REPRESENTED HEREBY ARE GOVERNED BY THE PROVISIONS OF A NOTE PURCHASE AGREEMENT, DATED AS OF AUGUST 11, 2022 (THE "AGREEMENT"), AMONG THE COMPANY, THE GUARANTORS NAMED THEREIN AND THE PURCHASERS NAMED THEREIN. BY ACCEPTING ANY NOTE REPRESENTED HEREBY, THE HOLDER THEREOF WILL BE DEEMED TO AGREE TO BE BOUND BY THE TERMS OF THE AGREEMENT AS A PURCHASER.

THE ISSUE PRICE, ISSUE DATE AND YIELD TO MATURITY WITH RESPECT TO THIS NOTE MAY BE OBTAINED BY WRITING TO THE COMPANY AT THE FOLLOWING ADDRESS: 19500 STATE HIGHWAY 249, SUITE 125, HOUSTON, TX 77070; ATTENTION: PAUL WEIBEL; EMAIL: pweibel@5eadvancedmaterials.com.

Secured Promissory Note

No. [ ] U.S. $[ ]

5E Advanced Materials, Inc., a Delaware corporation (herein called the "**Company**"), which term includes any successor corporation under the Agreement referred to on the reverse hereof, for value received hereby promises to pay to [ ], or registered assigns, the principal sum of [ ] UNITED STATES DOLLARS (U.S. $[ ]) (which amount may from time to time be increased or decreased by adjustments made on the records of the Company in accordance with the below-referred Agreement) on August 11, 2022. The Company will pay all outstanding principal of any Note and accrued and unpaid interest thereon as provided in the below-referred Agreement.

Reference is made to the further provisions of this Note set forth on the reverse hereof. Such further provisions shall for all purposes have the same effect as though fully set forth at this place. Capitalized terms used but not defined herein shall have such meanings as are ascribed to such terms in the below-referred Agreement. In the case of any conflict between this Note and such Agreement, the provisions of such Agreement shall control.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed.

5E ADVANCED MATERIALS, INC.

Dated: _____ By: _____

Name:
Title:

[Signature Page to Form of Note]

[FORM OF REVERSE OF NOTE]
5E ADVANCED MATERIALS, INC.

Secured Promissory Note

This Note is one of a duly authorized issue of Notes of the Company, designated as its Secured Promissory Notes (the "**Notes**"), initially limited in aggregate principal amount to $[ ],000,000 all issued or to be issued under and pursuant to a Note Purchase Agreement dated as of August 11, 2022 (the "**Agreement**") among the Company, the Guarantors named therein, the Purchasers named therein and Alter Domus (US) LLC, as Collateral Agent, to which Agreement and all agreements supplemental thereto reference is hereby made for a description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Company and the Purchasers of the Notes.

Except as provided for in the Agreement, the principal amount on this Note shall be payable, when and if due, only against surrender therefor, while payments of interest on this Note shall be made, in accordance with the Agreement.

Interest. Stated Interest will accrue on this Note at a rate per annum equal to (i) 4.5% for interest paid in cash or (ii) 6.00% in the case of interest paid-in-kind, in each case, payable as set forth in the Agreement.

Conversion. The Notes are convertible into shares of Common Stock and cash subject to the terms of the Agreement.

Redemption. The Notes will be subject to Redemption as provided in the Agreement.

Acceleration of Maturity. The Agreement contains provisions for acceleration of the maturity of the unpaid principal amount of this Note upon the happening of certain stated events upon the terms and conditions specified therein.

Denominations. The Notes are issuable only in registered form in denominations of $1,000 and any integral multiple of $1,000 in excess thereof (or, if any PIK Interest has been paid, $1.00 or any integral multiple of $1.00 in excess thereof), as provided in the Agreement and subject to certain limitations therein set forth.

Transfer. This Note is assignable or transferable, in whole or in part, to the extent such assignment or transfer is permitted pursuant to the terms of the Agreement.

THIS NOTE, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS NOTE, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

CONVERSION NOTICE

If you want to convert all or any portion (which must be $1,000 or in integral multiples of $1,000 in excess thereof (or, if any PIK Interest has been paid, $1.00 or any integral multiple of $1.00 in excess thereof)) this Note, check the box: ☐ and specify the Principal Amount to be so converted: $,000.

Date:

(Legal Name of Holder)

By:
Name:
Title:

Signature Guaranteed:

Participant in a Recognized Signature
Guarantee Medallion Program

By:
Authorized Signatory

Note: Signatures must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Company or the transfer agent for the Company's Common Stock, as applicable, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("**STAMP**") or such other "signature guarantee program" as may be determined by the Company or the transfer agent for the Company's Common Stock in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

EXHIBIT F

Form of Registration Rights Agreement

[Attached]

Schedule 2.2

Purchasers

Purchaser	Aggregate Principal Amount of Secured Promissory Notes
BEP SPECIAL SITUATIONS IV LLC	$ 60,000,000.00
Total	$ 60,000,000.00

Schedule 7.4

Existing Indebtedness

None.

Schedule 7.7

Existing Investments

None.

Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

5E Advanced Materials, Inc.
Houston, Texas

We hereby consent to the incorporation by reference in the Registration Statement on Form S-8 (No. 333-264136) of 5E Advanced Materials, Inc. of our report dated September 28, 2022, relating to the consolidated financial statements, which appears in this Form 10-K.

/s/ BDO USA, LLP
Spokane, Washington

September 28, 2022

CERTIFICATION

I, Henri Tausch, certify that:

1. I have reviewed this annual report on Form 10-K of 5E Advanced Materials, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e) for the registrant and have:

    (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    (b) [Paragraph intentionally omitted];

    (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation;

    (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

    (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

    (b) Any fraud, whether or not material that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: September 28, 2022

/s/ Henri Tausch

Henri Tausch
Chief Executive Officer and Director
(Principal Executive Officer)

Exhibit 31.2

CERTIFICATION

I, Paul Weibel, certify that:

1. I have reviewed this annual report on Form 10-K of 5E Advanced Materials, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:

    (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    (b) [Paragraph intentionally omitted];

    (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation;

    (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

    (c) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

    (d) Any fraud, whether or not material that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: September 28, 2022

/s/ Paul Weibel

Paul Weibel
Chief Finance Officer
(Principal Financial Officer)

Exhibit 32.1

CERTIFICATION PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002,
18 U.S.C. SECTION 1350

In connection with the annual report of 5E Advanced Materials, Inc. (the "Company") on Form 10-K for the year ended June 30, 2022, as filed with the U.S. Securities and Exchange Commission on the date hereof (the "Report"), I, Henri Tausch, Chief Executive Officer and Director of the Company, certify, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350, that, to my knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: September 28, 2022

/s/ Henri Tausch

Henri Tausch
Chief Executive Officer and Director
(Principal Executive Officer)

CERTIFICATION PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002,
18 U.S.C. SECTION 1350

In connection with the annual report of 5E Advanced Materials, Inc. (the "Company") on Form 10-K for the year ended June 30, 2022, as filed with the U.S. Securities and Exchange Commission on the date hereof (the "Report"), I, Paul Weibel, Chief Financial Officer of the Company, certify, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350, that, to my knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: September 28, 2022

/s/ Paul Weibel
Paul Weibel
Chief Financial Officer
(Principal Financial Officer)