

AEP OHIO COMMENTS

EXHIBIT A PART 2

supplements or amendments will not be deemed to modify any Disclosure Schedules other than the Disclosure Schedules required under and with respect to Article V. Notwithstanding the foregoing, from and after the date of this Agreement and a period of one (1) month thereafter, Sellers may supplement or amend Schedule 2.01(a)(vi), and any such supplements or amendments will not be deemed to modify any Disclosure Schedules other than Schedule 2.01(a)(vi); provided, that in no event may Sellers add to Schedule 2.01(a)(vi) any agreement set forth, or required to be set forth, on Schedule 5.16(n).

#### **7.08 Bankruptcy Court Matters.**

(a) Sale Motion. On or prior to the third Business Day following the Petition Date, Sellers shall file with the Bankruptcy Court, a motion in the form attached hereto as Exhibit 7.08(a) (the "*Sale Motion*") seeking entry of the Bid Procedures Order and the Transaction Approval Order, and provided that any changes thereto shall be in form and substance acceptable to Buyer, in its sole discretion. Sellers shall affix a true and complete copy of this Agreement to the Sale Motion filed with the Bankruptcy Court (which shall be, subject to the approval of the Bankruptcy Court, without schedules).

(b) Bankruptcy Court Orders. In connection with the transactions contemplated by this Agreement, Sellers shall file with the Bankruptcy Court after the execution of this Agreement by each of the parties hereto, applications for, and shall use their reasonable best efforts to obtain the following orders:

(i) an order (the "*Bid Procedures Order*"), to be entered on or prior to the later of (A) the date that is thirty (30) days following the Petition Date or (B) the date that is fifteen (15) days following the formation of the unsecured creditors committee (which date Buyer may waive or extend in its sole discretion) (i) fixing the date, time and location of the hearing to approve consummation of the Asset Acquisition, (ii) fixing the time, date and location of an auction, which date shall be no later than forty five (45) days after the entry of the Bid Procedures Order (the "*Auction*"), (iii) approving the Expense Reimbursement, (iv) containing such other appropriate buyer protections as may be mutually agreed upon by Buyer and Sellers, and (v) otherwise approving the Bidding Procedures, in substantially the form of Exhibit 7.08(b)(i), and with only such changes as may be acceptable to Buyer in its sole discretion; and

(ii) an order (the "*Transaction Approval Order*"), to be entered no later than four (4) Business Days after the conclusion of the Auction contemplated by the Bid Procedures Order, in form and substance reasonably acceptable to the Parties, and with only such changes as may be acceptable to Buyer in its sole discretion, among other things, (i) approving the Asset Acquisition by Buyer, (ii) approving the assumption by (and, if applicable, assignment to) Buyer of the Assumed Contracts pursuant to section 365 of the Bankruptcy Code, and (iii) containing findings of fact and conclusions of law that: (x) Buyer is a good faith purchaser entitled to the protections of Bankruptcy Code section 363(m), (y) this Agreement constitutes a "plan" of Ormet and Buyer solely for purposes of Sections 368 and 354 of the Code, and (z) the Asset Acquisition and subsequent liquidation of Sellers pursuant to the procedures provided in the Bid Procedures Order and Transaction Approval Order (the "*Reorganization Transactions*")

are intended to constitute a plan of reorganization of Ormet pursuant to Section 368(a)(1)(G) of the Code.

(c) Consultation with Buyer. Sellers shall provide Buyer with drafts of any and all material pleadings, including without limitation, the Sale Motion, the Bid Procedures Order and the Transaction Approval Order, and proposed orders to be filed or submitted in connection with this Agreement for Buyer's prior review and comment. Sellers shall provide Buyer with a reasonable opportunity to review such documents in advance of their service and filing to the extent reasonably practicable under the circumstances. Sellers shall consult and cooperate with Buyer, and consider in good faith the views of Buyer with respect to all such filings. In the event the entry of the Bid Procedures Order or the Transaction Approval Order shall be appealed, Sellers shall use their reasonable best efforts to defend such appeal. Sellers shall comply with all notice requirements (i) of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure or (ii) imposed by Transaction Approval Order, in each case, in connection with any pleading, notice or motion to be filed in connection herewith.

#### **7.09 Assumption and Rejection of Contracts and Leases.**

(a) At least fifteen (15) days prior to the anticipated date of the hearing to approve the Transaction Approval Order, Buyer shall give Sellers a tentative list (which shall in no way bind Buyer) of the executory contracts or unexpired leases to which any Seller is a party or is otherwise bound and which Buyer anticipates it will require Sellers to assume or reject pursuant to the next sentence. At the election of Buyer pursuant to written notice given to Sellers at any time not later than five (5) Business Days before the Closing and upon approval of the Bankruptcy Court, Sellers shall assume or reject, as directed by Buyer, any executory contracts (other than the Power Agreement, which can only be rejected pursuant to subsection (b) below) or unexpired leases to which any Seller is a party or is otherwise bound.

(b) This Agreement (including without limitation Sections 2.01(c)(ii) and 2.01(a)(vi) hereof) constitutes Buyer's consent to assume the Power Agreement, subject only to the terms of this Agreement (including Section 10.13) and the following:

(i) in the event the conditions set forth in Section 9.02(g) have not been satisfied prior to one hundred fifty (150) days following the Petition Date (the "**Action Date**"), Buyer may at any time thereafter (but is not required to) elect (A) to terminate this Agreement pursuant to Sections 4.03(b) or (m) hereof (provided that such election shall be made in writing to Sellers within ten (10) Business Days after such conditions have failed, or such right to terminate shall be deemed waived) or (B) proceed with the Closing but, pursuant to written notice given to Sellers not later than five (5) Business Days before the Closing, not assume the Power Agreement, in which event Sellers shall reject such contract; and/or

(ii) in the event that all of the conditions set forth in Article IX hereof have been satisfied (or waived) except the conditions set forth in Section 9.02(g), without limiting its right of termination with respect to this Agreement Buyer may at any time thereafter (but is not required to) elect (A) not to proceed with the Closing until the conditions set forth in Section 9.02(g) are satisfied or (B) proceed with the Closing but,

pursuant to written notice given to Sellers not later than five (5) Business Days before the Closing, not assume the Power Agreement as of the Closing Date, provided, however, that the Power Agreement shall be governed by the provisions of Section 2.01(e) pending a ruling by the PUCO and (x) if the PUCO subsequently issues a ruling satisfying the conditions set forth in Section 9.02(g), Buyer shall then assume the Power Agreement and Seller shall give any required notices to third parties of the assumption and assignment thereof and the Cure Costs associated therewith or (y) if the PUCO issues a ruling that does not satisfy the conditions set forth in Section 9.02(g) hereof, Buyer shall not assume the Power Agreement and Sellers shall reject such contract.

Notwithstanding any other provision in this Agreement to the contrary, in the event the Power Agreement has not yet been amended in accordance with Section 9.02(g) hereof, Buyer may elect, pursuant to written notice given to Sellers at any time not later than five (5) Business Days before the Closing, to waive the condition set forth in Section 9.02(g) and assume the existing Power Agreement without material amendment or modification thereto. For the avoidance of doubt, nothing in this Section 7.09(b) will be construed to modify or limit Buyer's rights to terminate this Agreement at any time in accordance with Section 4.03 hereof or the provisions of Section 10.13 hereof.

(c) Sellers shall give written notice to Buyer prior to the submission of any motion in their Chapter 11 Case to assume or reject any executory contracts or unexpired leases, and, without the prior written consent of Buyer in its sole discretion, Sellers shall not assume or reject any executory contract or unexpired lease. Any executory contracts or unexpired leases that are assumed subject to Bankruptcy Court approval after complying with the provisions of this Section 7.09 shall constitute Assets at Closing (subject to the rights of Buyer and Sellers in subsection (c) below) and any executory contracts or unexpired leases that are rejected subject to Bankruptcy Court approval after complying with the provisions of this Section 7.09 (subject to rights of Buyer and Sellers in subsection (c) below) shall constitute Excluded Assets at Closing. Promptly, but, in any event, no later than thirty (30) days after the Petition Date, Sellers shall provide Buyer with a written schedule (the "***Contract & Cure Schedule***") containing a list of, and Sellers' best estimate of the Cure Costs for, each executory contract or unexpired lease to which each Seller is a party or is otherwise bound (and if no Cure Cost is estimated to be applicable with respect to any particular Assumed Contract, the amount of such Cure Cost has been designated for such Assumed Contract as "\$0.00"). From the date the Contract & Cure Schedule is provided through (and including) the Closing, promptly following any changes to the information set forth on such schedule (including any new Contracts included in the Assets to which any Seller becomes a party and any change in the Cure Cost of any such Contract), Sellers shall provide Buyer with a schedule that updates and corrects the Contract & Cure Schedule. Buyer may, at any time and from time to time but not later than five (5) Business Days before the Closing, include or exclude any Contract (other than the Power Agreement, which can only be excluded pursuant to subsection (b) above) from the Contract & Cure Schedule and require Sellers to give notice to the third parties to any such Contract of Sellers' assumption and assignment thereof to Buyer and the amount of Cure Costs associated with such Contract or the rejection thereof. If any Contract is added to (or excluded from) the Contract & Cure Schedule as permitted by this Section 7.09, then Buyer and Sellers shall make appropriate additions, deletions or other changes to any applicable schedule to this Agreement to reflect such addition or exclusion. Sellers shall be responsible for the verification of all Cure Costs for each Assumed

Contract and shall use best efforts to establish the proper Cure Costs, if any, for each Assumed Contract prior to the Closing Date. Buyer shall not be required to make any payment for Cure Costs for, or otherwise have any liabilities with respect to, any Contract that is not an Assumed Contract as of the Closing Date.

(d) Any monetary amount by which any of the executory contracts or unexpired leases is in default shall be satisfied, in accordance with section 365(b)(1) of the Bankruptcy Code, except as otherwise specified herein, by payment of such amount in Cash, on or as soon as reasonably practicable after the Closing Date, or upon such other terms as Sellers (with the consent of Buyer), and the non-debtor party to such executory contract or unexpired lease may otherwise agree. In the event of a dispute regarding (i) Cure or (ii) the ability of Buyer or Sellers to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the contract or lease to be assumed, the assumption of such executory contract or unexpired lease shall be conditioned upon resolution of such dispute by the Bankruptcy Court. Sellers (with the consent of Buyer) or Buyer, as applicable, reserve the right either to reject or nullify the assumption of an executory contract or unexpired lease (other than the Power Agreement, which can only be rejected or have the assumption nullified pursuant to subsection (b) above) no later than ten (10) days after a Final Order determining Cure or any request for adequate assurance of future performance.

#### **7.10 Certain Tax Matters.**

(a) If a Party determines, based on advice from outside tax counsel, that amending or otherwise modifying the provisions of this Agreement would result in a tax benefit or a reduction of adverse tax consequences for such Party without having a material adverse tax or material adverse economic impact on any other Party, such Party may propose such amendments or modifications to the other Parties by providing written notice containing the text of the proposed amendments or modifications and, upon the request of a Party, a reasonably detailed tax analysis of their impact on all of the Parties. Each of the Parties agrees, for a period of twenty (20) days after the date of such notice, to negotiate in good faith amendments or modifications to this Agreement to achieve the tax benefits, or reduce the adverse tax consequences, as outlined in such notice, provided that no party shall be obligated to agree to any amendment or modification that such party determines, in its own judgment after consulting with its tax advisors, would have an adverse tax impact, adverse economic impact, or other adverse impact on such Party and, provided further that the foregoing covenant to negotiate in good faith shall not relieve any Party of its other obligations contained in this Agreement nor shall it be construed as a waiver of the performance by any other Party hereunder.

(b) Unless Buyer notifies Sellers otherwise in writing no later than 5 days prior to the Closing Date:

(i) Buyer shall treat the Reorganization Transactions as a reorganization pursuant to Section 368(a)(1)(G) of the Tax Code with any actual or deemed distribution by Buyer qualifying solely under Sections 354 and 356 of the Tax Code but not under Section 355 of the Tax Code (a "*G Transaction*").

(ii) Sellers shall use their reasonable best efforts, and Buyer shall use reasonable best efforts to assist Sellers to effectuate such treatment of the Reorganization Transactions as a G Transaction and the Parties shall not take any action or position inconsistent with, or fail to take any necessary action in furtherance of, such treatment.

(iii) The Parties agree that this Agreement shall constitute a “plan” of Ormet and Buyer for purposes of Sections 368 and 354 of the Tax Code. The board of directors of Ormet has approved, and Buyer shall approve, in each case by resolution, the execution of this Agreement and expressly recognize its treatment as a “plan” of Ormet and Buyer for purposes of Sections 368 and 354 of the Tax Code, and the treatment of the Reorganization Transactions as a G Transaction for federal income Tax purposes. No Party shall take any position with respect to the Reorganization Transactions that is inconsistent with the position determined in accordance with this Section 7.10.

(iv) Sellers shall provide Buyer with a statement setting forth the adjusted Tax basis of the Assets and the amount of net operating losses and other material Tax attributes of Sellers and any Purchased Assets that are available as of the Closing Date and after the close of any taxable year of any Seller that impacts the numbers previously provided, all based on the best information available, but with no Liability to Sellers, for any errors or omissions in information.

(v) Sellers shall provide Buyer with an estimate of the cancellation of Indebtedness income that Sellers anticipate realizing for the taxable year that includes the Closing Date, and shall provide revised numbers after the close of any taxable year of any Seller or Seller Group member that impacts this number.

(vi) Each Seller shall liquidate, as determined for U.S. federal income Tax purposes and to the satisfaction of Buyer, no later than 60 days (or such longer time as Buyer may agree in writing) after the Closing Date, and each such liquidation may include a distribution of assets to a “liquidating trust” within the meaning of Treas. Reg. § 301.7701-4, the terms of which shall be satisfactory to Buyer.

(vii) Sellers shall consult with Buyer with respect to the timing, manner, recipients and means of the distribution of the Buyer Securities Consideration, and shall not take any action with respect to such distribution that could be inconsistent with the treatment of the Reorganization Transactions as a G Transaction.

(viii) Effective no later than the Closing Date, Buyer shall cause itself to be treated as a corporation for federal income Tax purposes

**7.11 Permits.** Sellers shall provide commercially reasonable assistance to Buyer to assist Buyer in (i) obtaining or (ii) transferring Permits from Sellers to Buyer. Any and all fees required by any Governmental Entity or any Person to obtain or for the transfer of a Permit shall be the sole responsibility of Buyer.

**7.12 HSR Act.**

(a) Subject to the terms and conditions of this Agreement, each party shall use its commercially reasonable efforts to (i) if required, file a Notification and Report Form pursuant to the HSR Act with respect to the transactions contemplated hereby within five Business Days after entry of the Transaction Approval Order; (ii) supply as promptly as practicable any additional information and documentary material that may be requested or required pursuant to any Antitrust Law, including the HSR Act and (iii) if applicable, cause the expiration or termination of the applicable waiting periods under the HSR Act or any other Antitrust Law as soon as practicable.

(b) Each of the parties shall use commercially reasonable efforts to (a) cooperate with each other in connection with any filing or submission and in connection with any investigation or other inquiry, including any proceeding initiated by a private party; (b) keep the other parties informed in all material respects of any material communication received by such party from, or given by such party to, any Governmental Entity and of any material communication received or given in connection with any proceeding by a private party, in each case regarding any of the transactions contemplated hereby and (c) permit the other party to review any material communication given to it by, and consult with each other in advance of any meeting or conference with any Governmental Entity, including in connection with any proceeding by a private party. The foregoing obligations in this Section 7.12 shall be subject to any confidentiality agreement in place between any Seller and any affiliate of Buyer and any attorney-client, work product or other privilege, and each of the parties hereto shall coordinate and cooperate fully with the other parties hereto in exchanging such information and providing such assistance as such other parties may reasonably request in connection with the foregoing and in seeking early termination of any applicable waiting periods under Antitrust Law. The parties will not take any action that will have the effect of delaying, impairing or impeding the receipt of any required authorizations, consents, Orders or approvals. Notwithstanding this Section 7.12, none of the Parties is obligated to (i) hold separately (in trust or otherwise), divest itself of, or otherwise rearrange the composition of, any of its assets; (ii) agree to any limitations on such Person's freedom of action with respect to future acquisitions of assets or with respect to any existing or future business or activities or on the enjoyment of the full rights or ownership, possession and use of any asset now owned or hereafter acquired by such Person; or (iii) agree to any of the foregoing or any other conditions or requirements of any Governmental Entity or to take, or to cause to be taken, any other steps or to make any other undertakings to avoid or eliminate impediments under any Antitrust Law that may be asserted by any Governmental Entity with respect to consummation of the transactions contemplated by this Agreement. "**Antitrust Law**" means the Sherman Act, as amended, the Clayton Act, as amended, the HSR Act, the Federal Trade Commission Act, as amended, and all other applicable Laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or lessening of competition through merger or acquisition. Fees incurred in connection with complying with any Antitrust Law shall be borne solely by Buyer.

(c) If any objections are asserted with respect to the transactions contemplated hereby under any Antitrust Law or if any suit is instituted by any Governmental Entity or any private party challenging any of the transactions contemplated hereby as violative of any Antitrust Law or if the filing pursuant to Section 7.12 is reasonably likely to be rejected or conditioned by federal or a state Governmental Entity, each of the parties shall use commercially

reasonable efforts to resolve such objections or challenge as such Governmental Entity or private party may have to such transactions, including to vacate, lift, reverse or overturn any Order, whether temporary, preliminary or permanent, so as to permit consummation of the transactions contemplated by this Agreement.

**7.13 Casualty Loss.** Notwithstanding any provision in this Agreement to the contrary, if, before the Closing, any portion of the Assets or Business is (a) condemned or taken by eminent domain or (b) is damaged or destroyed by fire, flood or other casualty, Sellers shall notify Buyer promptly in writing of such fact, and (i) in the case of condemnation or taking, Sellers shall assign or pay, as the case may be, any proceeds thereof to Buyer at the Closing, and (ii) in the case of fire, flood or other casualty, Sellers shall, at Buyer's option, either restore such damage or assign the insurance proceeds therefrom to Buyer at Closing. Notwithstanding the foregoing, the provisions of this Section 7.13 shall not in any way modify Buyer's other rights under this Agreement, including any applicable right to terminate the Agreement if any condemnation, taking, damage or other destruction resulted in a Material Adverse Effect.

**7.14 Alternative Transactions.** From the date hereof until the date of entry or denial of the Bid Procedures Order, the Sellers shall not (i) execute an agreement with respect to an Alternative Transaction, or (ii) seek or support Bankruptcy Court approval of a motion or order inconsistent in any material respect with the transactions contemplated hereby.

**7.15 Compliance with WARN Act.** Sellers shall comply with the covenants set forth on Schedule 7.15 hereto.

**7.16 Certain Benefit Plans.** Sellers shall comply with the covenants set forth on Schedule 7.16 hereto.

## ARTICLE VIII

### EMPLOYEE MATTERS

#### **8.01 Offers of Employment.**

(a) Buyer will offer to employ, upon compensation and terms and conditions of employment determined by Buyer in its sole discretion and/or any collective bargaining agreement in effect pursuant to Section 9.02(f), commencing immediately after the Closing Date, a majority of the Employees of Sellers who are, as of immediately prior to the Closing Date, (i) actively at work in connection with the Business, (ii) on short term disability or workers' compensation in connection with the Business, (iii) on layoff (with or without recall rights) in connection with the Business, or (iv) on a leave of absence approved by Sellers in connection with the Business, but not including any person on long term disability, layoff, or leave of absence with no prior agreement or understanding to return to employment with the Sellers at the end of such disability, layoff or leave.

(b) With respect to each Non-Union Employee of Seller Buyer will offer to employ, such Non-Union Employees of Sellers as Buyer shall determine in its sole discretion, provided, however, that Buyer shall provide to Sellers as soon as practicable, but in no event

later than 5 days before the Closing, a list of the Non-Union Employees to whom Buyer will offer employment commencing as of the Closing Date.

(c) Employees who accept such offers of employment will be referred to in this Agreement as “**Buyer Employees**”. Schedule 8.01(c) sets forth all Employees who are on long term disability, layoff or leave of absence with a prior agreement or understanding to return to employment with the Sellers at the end of such disability, layoff, or leave. Notwithstanding the foregoing, nothing in this Agreement will, after the Closing Date, impose on the Buyer any obligation to retain any Buyer Employee in its employment.

**8.02 Prior Service Credit.** Except as described elsewhere in this Article VIII, the employment of each such Buyer Employee with Buyer will commence immediately upon the Closing Date. In the case of any individual who is absent from active employment and receiving short term disability or workers’ compensation benefits, the employment of such individual with Buyer will commence upon his or her return to active work, and such individual will become a Buyer Employee as of such date.

**8.03 Employee Benefits Matters.**

(a) Buyer shall assume all obligations under or Liabilities with respect to any Benefit Plans set forth on Schedule 8.03(a) (such plans, the “**Transferred Benefit Plans**”) consistent with Section 2.01(c)(iv) of this Agreement as Assumed Liabilities. The Transferred Benefit Plans shall be assumed by and assigned to Buyer on the Closing Date in the manner described in this Agreement. Sellers shall make good faith efforts to consult with, and give reasonable assistance (including with respect to making amendments) to Buyer and its Affiliates in respect of any Transferred Benefit Plans, prior to and following the Closing Date. To the extent that service is relevant for purposes of eligibility and vesting, but not accrued under any benefit plan of Buyer or its Affiliates, including any Transferred Benefit Plan, Buyer shall credit (or cause to be credited) Buyer Employees for service earned prior to the Closing with Sellers in addition to service earned with Buyer on and after the Closing. To the extent the Buyer Employees and their eligible dependents enroll in any welfare benefit plan sponsored by Buyer or its Affiliates (including any Transferred Benefit Plan as applicable), unless prohibited such plan or by applicable Law, Buyer shall waive, or cause such waiver of, any preexisting condition limitations applicable to such Buyer Employees to the extent that the Buyer Employee’s or eligible dependent’s condition would not have operated as a preexisting condition under the applicable welfare benefit plan maintained by Sellers. In addition, unless prohibited by such plan or by applicable Law, Buyer shall (i) waive all waiting periods otherwise applicable to the Buyer Employees and their eligible dependents, other than waiting periods that are in effect with respect to such individuals as of the Closing to the extent not satisfied under the Transferred Benefit Plans or such other corresponding Benefit Plans of the Sellers and (ii) provide each Buyer Employee and his or her dependents with corresponding credit for any co-payments and deductibles paid by them under such Transferred Benefit Plans or corresponding Benefit Plans of Sellers during the portion of the respective plan year prior to the Closing. At any time and from time to time after the date hereof, the Sellers and Buyer shall take, or cause to be taken, any and all actions necessary to effectuate the terms of this Section 8.03(a), including taking all action necessary to assign and assume and adopt each Transferred Benefit Plan in the manner contemplated by this Agreement effective as of the Closing. Sellers will reasonably cooperate

with Buyer and its Affiliates and take, or cause to be taken, all reasonable actions as Buyer may reasonably request in order to effectuate the foregoing. Nothing herein shall prohibit Buyer or its Affiliates, as applicable, from terminating, amending, or otherwise affecting any Transferred Benefit Plan, at any time and from time to time following the Closing.

(b) As of the Closing Date, all of Buyer Employees will cease participation in any of the Company Benefit Plans that such Buyer Employees participated in immediately prior to the Closing Date that are not Transferred Benefits Plans.

(c) In accordance with Treasury Regulation Section 54.4980B-9 Q&A-7, as of the Closing Date, Buyer will assume all liability for providing and administering all required notices and benefits under Section 4980B of the Code and Part 6 of Subtitle B of Title I of ERISA (usually referred to as "COBRA") to all current and former Employees of Sellers (including, without limitation, Buyer Employees). Prior to the Closing Date, Sellers shall provide to Buyer detailed information (including, without limitation, all pertinent information concerning individuals who have elected or continue to have a right to elect COBRA continuation coverage sufficient to enable Buyer to carry out its obligations under this Section 8.02(b)). Sellers will have no COBRA liability or obligations to such current and former Employees after the Closing Date, except with respect to any violations of law that occurred prior to the Closing Date.

**8.04 Buyer's Right to Participate in Labor Negotiations.** From and after the date of this Agreement, if so requested in writing, Buyer shall have the right to directly participate in any substantive negotiations or discussions, and/or conduct its own substantive negotiations or discussions between the USW (or any other Union), the Sellers and other parties in connection with active bargaining over the terms and conditions of any Collective Bargaining Agreement, and the Sellers shall keep Buyer informed on a regular basis of any such negotiations or discussions.

## ARTICLE IX

### CONDITIONS TO OBLIGATIONS OF PARTIES

**9.01 Conditions to Obligations of Sellers.** The obligation of Sellers to consummate the transactions contemplated by this Agreement are subject to the fulfillment at or prior to the Closing of each of the following conditions (any or all of which may be waived in whole or in part by Sellers):

(a) Representations and Warranties. Each representation and warranty of Buyer contained herein shall have been true and correct in all material respects (except that any such representation or warranty that is qualified by reference to materiality or Material Adverse Effect shall, to the extent it is so qualified, have been true and correct in all respects) as of the date hereof and as of the Closing Date, as if made on the Closing Date (unless, in each case, such representations and warranties are expressly made as of a different date, in which case such representations and warranties shall have been so true and correct as of such other date); provided that the representations and warranties of Buyer contained in Sections 6.01 and

6.02(a)(i) shall be true and correct in all respects, and Buyer shall have delivered to Sellers a certificate, executed by the appropriate officer of Buyer, to such effect.

(b) Performance. Buyer shall have performed and complied, in all material respects, with all agreements, obligations and covenants required by this Agreement to be so performed or complied with by Buyer at or prior to the Closing Date, and Buyer shall have delivered to Sellers a certificate, executed by the appropriate officer of Buyer, to such effect.

(c) Closing Documents. On or prior to the Closing Date, Buyer shall have delivered to Sellers each of the documents listed in Section 4.02(a) hereof.

(d) Judgments, Decrees and Litigation. There shall not be in effect or exist any judgment, order, injunction or decree issued by a Governmental Entity restraining or prohibiting the consummation of or imposing material modifications on the transactions contemplated by this Agreement to the detriment of Sellers.

**9.02 Conditions to Obligations of Buyer.** The obligations of Buyer to consummate the transactions contemplated by this Agreement are subject to the fulfillment at or prior to the Closing Date of each of the following conditions (any or all of which may be waived in whole or in part by Buyer).

(a) Representations and Warranties. Each representation and warranty of Sellers contained herein shall have been true and correct in all material respects (except that any such representation or warranty that is qualified by reference to materiality or Material Adverse Effect shall, to the extent it is so qualified, have been true and correct in all respects) as of the date hereof and as of the Closing Date, as if made on the Closing Date (unless, in each case, such representations and warranties are expressly made as of a different date, in which case such representations and warranties shall have been so true and correct as of such other date); provided that the representations and warranties of Sellers contained in Sections 5.01(a) and (b), the second sentence of Section 5.01(d), 5.02(i)(A), 5.07(i) and the first sentence of Section 5.24 shall be true and correct in all respects, and Sellers shall have delivered to Buyer one or more certificates, executed by the senior executive officer of each Seller, to such effect.

(b) Performance. Sellers shall have performed and complied, in all material respects, with all agreements, obligations and covenants required by this Agreement to be so performed and complied with by Sellers at or prior to the Closing, and Sellers shall have delivered to Buyer one or more certificates, executed by the President (or if there is no President, another senior executive officer) of each Seller, to such effect.

(c) Closing Documents. On the Closing Date, Sellers shall have executed and delivered to Buyer at the Closing each of the documents listed in Section 4.02(b) hereof.

(d) Approvals and Consents. Each of the approvals, authorizations, and consents of, and all filings with and notifications or declarations to, any Governmental Entity or third party as set forth on Schedule 9.02(d) hereto, shall have been obtained or effected, and all applicable waiting periods, if any, including any extensions thereof, under any law, statute, rule or regulation applicable to the consummation of the transactions contemplated hereby, shall have expired or terminated, if applicable.

(e) Judgments, Decrees and Litigation. There shall not be in effect or exist any judgment, order, injunction or decree issued by a Governmental Entity restraining or prohibiting the consummation of or imposing material modifications on the transactions contemplated by this Agreement or any pending or threatened litigation by a Governmental Entity or other third party seeking to restrain, prohibit or impose material modifications on the consummation of the transactions contemplated hereby or on the benefits Buyer expects herefrom.

(f) Collective Bargaining Agreements. Either:

(i) Sellers shall have completed negotiation and execution of new or amended Collective Bargaining Agreements with the Sellers' labor unions, including the USW, on terms and conditions acceptable to Buyer in its sole discretion, and such new or amended Collective Bargaining Agreements shall have been ratified by the labor unions and be fully effective in all respects prior to the Closing; or

(ii) if so requested by Buyer in its sole discretion after March 31, 2013, Sellers shall have obtained an Order from the Bankruptcy Court rejecting any Collective Bargaining Agreement(s) which Buyer has requested Sellers to reject pursuant to Section 1113 of the Bankruptcy Code and Buyer shall have entered into new collective bargaining agreements with the Sellers' labor unions, including the USW, on terms and conditions acceptable to Buyer in its sole discretion, and such new collective bargaining agreements shall have been ratified by the labor unions and be fully effective in all respects prior to the Closing

(g) Amendment/Modification of Power Agreement. The Power Agreement shall have been amended to reflect (and only to reflect) the modifications set forth on Schedule 9.02(g) hereto, and the PUCO shall have issued an order, in form and substance reasonably satisfactory to the Buyer, approving the Power Agreement as so amended, and such order shall be unmodified and in full force and effect.

(h) Material Adverse Effect. Since the date of this Agreement, there has not been any Material Adverse Effect.

## ARTICLE X

### MISCELLANEOUS

**10.01 Fees and Expenses.** Except to the extent expressly provided in this Agreement, each of Sellers and Buyer shall each respectively pay all fees and expenses incurred by it, or on behalf of it, in connection with, or in anticipation of, this Agreement and the consummation of the transactions contemplated hereby.

**10.02 Further Assurances.** From time to time after the Closing, if Buyer or Sellers consider or are advised that any deeds, bills of sale, instruments of conveyance, assignments, assurances or any other actions or things are necessary or desirable to vest, perfect or confirm ownership (of record or otherwise) in Buyer or one or more Buyer Designees, its right, title or interest in, to or under any or all of the Assets or otherwise to carry out this Agreement, including

the assumption of the Assumed Liabilities, Buyer or Seller shall execute and deliver all deeds, bills of sale, instruments of conveyance, powers of attorney, assignments, assumptions and assurances and take and do all such other actions and things as may be requested by the other party in order to vest, perfect or confirm any and all right, title and interest in, to and under such rights, properties or assets in Buyer or one or more Buyer Designees or otherwise to carry out this Agreement. Sellers and Buyer shall cooperate with each other and provide each other with such assistance as reasonably may be requested by either of them, including with respect to the prosecution and defense of claims. The party requesting assistance hereunder shall reimburse the party providing assistance for all reasonable third-party out-of-pocket expenses incurred in providing such assistance.

**10.03 Notices.** All notices, requests, demands, waivers and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally or sent by nationally recognized overnight courier, facsimile transmission or electronic mail:

If to Sellers to:

Ormet Corporation  
43840 State Route 7  
Hannibal, OH 43931  
Attention: James Burns Riley  
Telephone: 740-483-2602  
Facsimile: 740-483-2622  
Email: Jim.Riley@ormet.com

with copies to:

Dinsmore & Shohl LLP  
255 East Fifth Street, Suite 1900  
Cincinnati, OH 45202  
Attention: Kim Martin Lewis, Esq.  
Telephone: 513-977-8200  
Facsimile: 513-977-8141  
Email: [kim.lewis@dinsmore.com](mailto:kim.lewis@dinsmore.com)

and

Morris, Nichols, Arsht & Tunnell LLP  
1201 North Market Street, 18<sup>th</sup> Floor  
P.O. Box 1347  
Wilmington, DE 19899-1347  
Attention: Robert J. Dehney  
Telephone: 302.351.9353  
Facsimile: 302.425.4673  
Email: [rdehney@mnat.com](mailto:rdehney@mnat.com)

If to Buyer, to:

c/o Wayzata Investment Partners LLC  
701 East Lake St., Suite 300  
Wayzata, MN 55391  
Attention: Ray Wallander  
Telephone: (952) 345-0727  
Facsimile: (952) 345-8901  
Email: rwallander@wayzpartners.com

with a copy to:

Akin Gump Strauss Hauer & Feld LLP  
1333 New Hampshire Avenue, N.W.  
Washington, DC 20036  
Attention: Scott Alberino, Esq.  
Facsimile: 202-887-4288  
Email: salberino@akingump.com

or to such other person or address as any Party shall specify by notice in writing to the other Party. All such notices, requests, demands, waivers and communications shall be deemed to have been received on the date on which so personally-delivered, faxed, emailed or delivered by overnight courier.

**10.04 Entire Agreement.** This Agreement, the Other Agreements, the Schedules and the Exhibits contain the entire understanding of the parties hereto with respect to their subject matter. This Agreement supersedes all prior agreements and understandings, oral and written, with respect to its subject matter.

**10.05 Severability.** Should any provision of this Agreement for any reason be declared invalid or unenforceable by a court of competent jurisdiction, such decision shall not affect the validity or enforceability of any of the other provisions of this Agreement, which other provisions shall remain in full force and effect and be enforced to the fullest extent permitted by Law.

**10.06 Binding Effect.** This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

**10.07 Assignment.** Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned, directly or indirectly, by any party hereto without the prior written consent of the other Parties; provided, however, that Buyer may assign its rights under this Agreement and the Other Agreements to a Buyer Designee without the prior consent of Sellers, however, any such assignment shall not relieve Buyer of its obligations (financial or otherwise) hereunder or under any Other Agreement.

**10.08 No Third-Party Beneficiaries.** This Agreement, the Other Agreements, and the Schedules and Exhibits hereto and thereto are not intended, and shall not be deemed, to confer upon or give any Person (including, without limitation, any past or current Business Employee) except the Parties hereto and their respective successors and permitted assigns any remedy, claim, benefit, liability, reimbursement, cause of action or other right under or by reason of this Agreement.

**10.09 Counterparts.** This Agreement may be executed by facsimile or PDF signature and in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**10.10 Interpretation.** The article and section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the Parties and shall not in any way affect the meaning or interpretation of this Agreement.

**10.11 Governing Law.** This Agreement and any claim related directly or indirectly to this Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to the principles of conflicts of law thereof that would defer to the substantive laws of any other jurisdiction. The Parties agree that, during the period from the date hereof until the date on which Sellers' the Chapter 11 Case is closed or dismissed (the "*Bankruptcy Period*"), the Bankruptcy Court shall have exclusive jurisdiction to resolve any controversy, claim or dispute arising out of or relating to this Agreement or any other agreement entered into in connection herewith, other than any financing arrangements provided to Buyer. The Parties further agree that, following the Bankruptcy Period, any action or proceeding with respect to such controversy, claim or dispute shall be brought against any of the Parties exclusively in either the United States District Court for the Southern District of New York or any state court of the State of New York located in such district, and each of the parties hereby consents to the personal jurisdiction of such court and the Bankruptcy Court (and to the appropriate appellate courts) in any such action or proceeding and waives any objection, including, without limitation, any objection to the laying of venue or on the grounds of forum non conveniens, which any of them may now or hereafter have to the bringing of such action or proceeding in such respective jurisdictions. Each Party hereby irrevocably consents to the service of process of any of the aforesaid courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to the other Parties to such action or proceeding. Each Party acknowledges and agrees that any controversy which may arise under this Agreement is likely to involve complicated and difficult issues, and therefore each Party hereby irrevocably and unconditionally waives any right such party may have to a trial by jury.

**10.12 Remedies.** Neither the exercise of nor the failure to exercise a right of set-off or to give notice of a claim under this Agreement will constitute an election of remedies or limit Sellers or Buyer in any manner in the enforcement of any other remedies that may be available to any of them, whether at law or in equity.

### **10.13 Amendments; Waivers.**

(a) This Agreement may not be amended, modified or supplemented except pursuant to an instrument in writing signed by each of the Parties hereto. Any failure of Sellers to comply with any term or provision of this Agreement may be waived by Buyer at any time by an instrument in writing signed on behalf of Buyer and any failure of Buyer to comply with any term or provision of this Agreement may be waived by Sellers at any time by an instrument in writing signed on behalf of Sellers, but any such waiver or failure to insist upon strict compliance with such term or provision shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure to comply.

(b) Notwithstanding the foregoing, in the event that any of the conditions in Section 9.02(f) are not satisfied by the Auction Date or any of the conditions in Section 9.02(g) are not satisfied by the Action Date, then, upon Buyer's request, Sellers will negotiate in good faith to amend this Agreement to take into account the failure of such conditions to be satisfied, including amendments to provide, among other things, that (x) Buyer shall have no obligation to hire any Employees or otherwise assume any employee-related liabilities incurred prior to the Petition Date (including any Transferred Benefit Plans), provided that, in the event the condition set forth in Section 9.02(f) hereof is not satisfied, and Buyer nonetheless elects to amend this Agreement and proceed with the Closing, Buyer shall provide Sellers with sixty-five (65) days' prior notice of Closing, (y) Buyer shall have no obligation to assume the Power Agreement and/or (z) Buyer shall have no obligation to operate the Business as a going concern. For the avoidance of doubt, nothing in this Section 10.13 will be construed to modify or limit Buyer's rights to terminate this Agreement at any time in accordance with Section 4.03 hereof.

**10.14 Litigation Support.** In the event and for so long as any Party hereto is actively contesting or defending any action, suit, grievance, arbitration, proceeding, hearing, investigation, charge, complaint, claim or demand with respect to any third party in connection with (i) any transaction contemplated under this Agreement or (ii) any fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act or transaction on or prior to Closing relating to or involving the Business, the Assets, the Employees or the Assumed Liabilities, the other Parties will reasonably cooperate with such contest or defense and make reasonably available its personnel, records and information applicable to such matter as may be necessary in connection with prudent handling of such contest or defense, at the contesting or defending Party's expense.

**10.15 Terms Generally.** As used in this Agreement (a) words in the singular shall be held to include the plural and vice versa, (b) words of one gender shall be held to include the other genders as the context requires, (c) the terms "hereof", "herein" and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement and not to any particular provision of this Agreement, (d) references to Article, Section, paragraph, Annex, Exhibit and Schedule are references to the Articles, Sections, paragraphs, Annexes, Exhibits and Schedules to this Agreement, unless otherwise specified, (e) the word "including" and words of similar import when used in this Agreement, shall mean "including, without limitation", unless otherwise specified, (f) the word "or" shall not be exclusive, and (g) the word "days" shall mean calendar days.

**10.16 Mutual Drafting.** This Agreement is the result of the joint efforts of Buyer and Sellers, and each provision hereof has been subject to the mutual consultation, negotiation and agreement of the Parties and there is to be no construction against either Party based on any presumption of that Party's involvement in the drafting thereof.

**10.17 No Survival of Representations, Warranties and Covenants.** The representations and warranties of Buyer and Sellers contained in this Agreement and the covenants and agreements of Buyer and Sellers contained in this Agreement that, by their terms, are to be performed prior to the Closing shall not survive the Closing.

**10.18 Specific Performance.** It is understood and agreed by Buyer and Sellers that money damages would be an insufficient remedy for any breach of this Agreement by Buyer or Sellers and as a consequence thereof, after the entry of the Transaction Approval Order, each non-breaching Party shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach, including, without limitation, an order of the Bankruptcy Court or other court of competent jurisdiction requiring Buyer or any of Sellers to comply promptly with any of its obligations hereunder.

**10.19 Sellers' Representative.** Sellers, jointly and severally, hereby represent and warrant that the statements in this Section 10.19 and in Section 10.20 are correct and complete as of the date of this Agreement:

(a) Ormet has been appointed, and is authorized, and empowered to act, subject to Bankruptcy Court approval as necessary and required by Law, in connection with, and to facilitate the consummation of, the transactions contemplated by this Agreement and the Other Agreements and in connection with any activities to be performed by the Sellers under this Agreement and the Other Agreements, for the purposes and with the powers, and authority set forth in this Agreement, which will include the sole power and authority:

(i) to receive and distribute the Purchase Price or any other amount paid in connection with this Agreement or the Other Agreements to Sellers;

(ii) to enforce and protect the rights and interests of Sellers arising out of or under or in any manner relating to this Agreement and the Other Agreements (including in connection with any claims related to the transactions contemplated hereby and thereby) and, in connection therewith, to (A) assert any claim or institute any action, (B) investigate, defend, contest or litigate any action initiated by Buyer or any other Person pursuant to this Agreement and the Other Agreements and receive process on behalf of each Seller in any such action and compromise or settle on such terms as Ormet will determine to be appropriate, give receipts, releases and discharges on behalf of all or any Seller with respect to any such action, (C) file any proofs, debts, claims and petitions as Ormet may deem advisable or necessary, (D) settle or compromise any claims related to the transactions contemplated by this Agreement and the Other Agreements, (E) assume, on each Sellers' behalf, the defense of any claims related to the transactions contemplated by this Agreement and the Other Agreements, and (F) file and prosecute appeals from any decision, judgment or award rendered in any of the foregoing actions;

(iii) to enforce or refrain from enforcing any right of any Seller (prior to the Closing) and/or of Ormet arising out of or under or in any manner relating to this Agreement or the Other Agreements;

(iv) to take any action to be taken by one or more Sellers under or in connection with this Agreement or any Other Agreement; or

(v) to make, execute, acknowledge and deliver all such other Contracts, guarantees, orders, receipts, endorsements, notices, requests, instructions, certificates, stock powers, letters and other writings, and, in general, to do any and all things and to take any and all action that Ormet, in its sole and absolute discretion, may consider necessary or proper or convenient in connection with or to carry out the activities described Section 10.19(a)(i) through Section 10.19(a)(iii) and the transactions contemplated by this Agreement and the Other Agreements.

(b) Ormet's power and grant of authority is (i) coupled with an interest and is irrevocable and survives the bankruptcy or liquidation of any Seller and will be binding on any successor thereto; and (ii) may be exercised by Ormet acting by signing as the representative of any Seller.

**10.20 Reliance.** Buyer and its Affiliates and representatives may conclusively and absolutely rely, without inquiry, upon the action of Ormet as the action of each Seller (and may ignore any action taken or notice given by any Seller other than Ormet) in all matters relating to this Agreement, the Other Agreements or the transactions contemplated hereby and thereby. Any document delivered or notice delivered by or on behalf of Buyer or its Affiliates to, or action taken by or on behalf of Buyer or its Affiliates with respect to, Ormet shall be deemed to have been delivered to, or taken with respect to, all Sellers. Any amounts to be paid by Buyer to Sellers pursuant to this Agreement shall be divided by Sellers among themselves, but may be paid by Buyer to Ormet. Sellers shall be jointly and severally liable for any amounts due to be paid or owed by Sellers to Buyer pursuant to this Agreement.

**10.21 Change of Name.** As soon as practicable following the Closing, and subject to approval of the Bankruptcy Court, each Seller shall discontinue the use of its current name (and any other tradenames currently utilized by any Seller) and shall not subsequently change its name to or otherwise use or employ any name which includes the words "Ormet" or any similar designation without the prior written consent of Buyer, and each Seller shall cause the names of Sellers in the caption of the Chapter 11 Cases to be changed to the new names of each Seller in accordance with this Section 10.21. From and after the Closing, each of Sellers covenants and agrees not to use or otherwise employ any of the trade names, corporate names, "d/b/a" names or any mark that is confusingly similar to the Intellectual Property rights utilized by any of Sellers in the conduct of the Business or any Asset, which rights shall be included in the Assets purchased hereunder. As soon as practicable following the Closing, Sellers shall file all necessary organizational amendments with the applicable Secretary of State of each Seller's jurisdiction of formation and in each State in which each such Seller is qualified to do business and with the Bankruptcy Court to effectuate the foregoing.

**10.22 Time of Essence.** With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

**10.23 Amendment to Asset Purchase Agreement.** If, from and after the execution of this Agreement, all of the following conditions are satisfied, the Parties shall promptly execute the Amendment to Asset Purchase Agreement attached as Exhibit 10.23(a) hereto (the “*APA Amendment*”):

(a) Each representation and warranty of Sellers contained herein shall be true and correct in all material respects (except that any such representation or warranty that is qualified by reference to materiality or Material Adverse Effect shall, to the extent it is so qualified, have been true and correct in all respects); provided that the representations and warranties of Sellers contained in Sections 5.01(a) and (b), the second sentence of Section 5.01(d), 5.02(i)(A), 5.07(i) and the first sentence of Section 5.24 herein shall be true and correct in all respects;

(b) Sellers shall have performed and complied, in all material respects, with all agreements, obligations and covenants required by this Agreement to be so performed and complied with by Sellers; and

(c) The Restructuring Memorandum of Agreement between Ormet Corporation (Hannibal, Ohio) and the USW, dated as of the date hereof and attached as Exhibit 10.23(c) hereto (the “*Hannibal Restructuring Memorandum of Agreement*”), shall have been ratified by the USW representing Sellers’ Hannibal, Ohio facility, and be fully effective but for the Closing.

**10.24 No Consequential or Punitive Damages.** WITHOUT LIMITING ANY RIGHTS OF ANY PARTY TO RECEIVE EXPENSE REIMBURSEMENT IN ACCORDANCE WITH SECTION 4.05 OF THIS AGREEMENT, NO PARTY (OR ITS AFFILIATES OR REPRESENTATIVES) SHALL, UNDER ANY CIRCUMSTANCE, BE LIABLE TO THE OTHER PARTY (OR ITS AFFILIATES OR REPRESENTATIVES) FOR ANY CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES CLAIMED BY SUCH OTHER PARTY UNDER THE TERMS OF OR DUE TO ANY BREACH OF THIS AGREEMENT, INCLUDING LOSS OF REVENUE OR INCOME, DAMAGES BASED ON ANY MULTIPLIER OF PROFITS OR OTHER VALUATION METRIC, COST OF CAPITAL, DIMINUTION OF VALUE OR LOSS OF BUSINESS REPUTATION OR OPPORTUNITY.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Mutual Release of Claims as of the date first set forth above.

**SELLERS:**

ORMET CORPORATION

By: James B. Riley  
Name: JAMES B. RILEY  
Title: CEO

ORMET PRIMARY ALUMINUM  
CORPORATION

By: James B. Riley  
Name: JAMES B. RILEY  
Title: CEO

[ORMET ALUMINUM MILL PRODUCTS  
CORPORATION

By: James B. Riley  
Name: JAMES B. RILEY  
Title: CEO ]

ORMET RAILROAD CORPORATION

By: James B. Riley  
Name: JAMES B. RILEY  
Title: CEO

**BUYER:**

SMELTER ACQUISITION LLC

By: Wayzata Investment Partners, LLC, its Manager

By: 

Name: Joseph M. Delgan

Title: Authorized Signatory

[Signature page to Purchase Agreement]

ANNEX A

Definitions

***"Accounts Receivable"*** shall have the meaning ascribed to it in Section 2.01(a)(iv) hereof.

***"Action Date"*** shall have the meaning ascribed to it in Section 7.09(b)(ii) hereof.

***"Acquisition"*** shall have the meaning ascribed to it in the recitals hereof.

***"Administrative Claims"*** shall mean all claims against any Debtor for costs and expenses of administration under Section 503(b)(1) of the Bankruptcy Code.

***"Affiliate"*** shall mean, with respect to any Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such Person, and the term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by contract or otherwise.

***"Agreement"*** shall have the meaning ascribed to it in the first paragraph of this agreement.

***"Allocation Statement"*** shall have the meaning ascribed to it in Section 3.03 hereof.

***"Allowed"*** shall mean, with respect to any Claim, such Claim or portion thereof: (a) as to which no objection or request for estimation has been filed, no litigation has commenced, and the Buyer otherwise has assented to the validity of such Claim; (b) as to which any objection or request for estimation that has been filed has been settled, waived, withdrawn or denied by Final Order; or (c) that is allowed by (i) a Final Order or (ii) an agreement between the holder of such Claim and the Buyer.

***"Alternative Transaction"*** shall mean (i) any investment in, financing of, capital contribution or loan to, or restructuring or recapitalization of all or any portion of Sellers (including, without limitation, any exchange of Sellers' outstanding debt obligations for equity securities of Sellers), (ii) any merger, consolidation, share exchange or other similar transaction to which Sellers are a party, (iii) any sale of all or substantially all of the assets of, or any issuance, sale or transfer of any equity interests in, Sellers, or (iv) any other transaction, including a plan of liquidation or reorganization, that transfers or vests ownership of, economic rights to, or benefits in all or a substantial portion of the assets to any party other than Buyer or one or more Buyer Designee.

***"Amendment to APA"*** shall have the meaning ascribed to it in Section 10.23 hereof.

***"Asset Acquisition"*** shall have the meaning ascribed to it in the recitals hereof.

***"Assets"*** shall have the meaning ascribed to it in Section 2.01(a) hereof.

***“Assignment and Assumption Agreement”*** shall have the meaning ascribed to it in Section 4.02(a)(ii).

***“Assumed Contracts”*** shall have the meaning ascribed to it in Section 2.01(a)(vi) hereof.

***“Assumed Liabilities”*** shall have the meaning ascribed to it in Section 2.01(c) hereof.

***“Auction”*** shall have the meaning ascribed to it in Section 7.08(b)(i) hereof.

***“Auction Date”*** shall have the meaning ascribed to it in Section 4.03(m) hereof.

***“Bankruptcy Code”*** shall mean 11 U.S.C. §§ 101 et seq., as amended.

***“Bankruptcy Court”*** shall have the meaning ascribed to it in the recitals hereof.

***“Bankruptcy Period”*** shall have the meaning ascribed to it in Section 10.11 hereof.

***“Bidders”*** shall have the meaning set forth in Section 7.08(a).

***“Bidding Procedures”*** shall mean the Bidding Procedures as approved by and contained in or annexed to the Bid Procedures Order (as may be amended by Order of the Bankruptcy Court in accordance with this Agreement).

***“Bid Procedures Order”*** shall have the meaning ascribed to it in Section 7.08(b)(i).

***“Bids”*** shall have the meaning set forth in Section 7.08(a).

***“Bill of Sale and Assignment”*** shall have the meaning ascribed to it in Section 4.02(b)(ii).

***“Books and Records”*** shall have the meaning ascribed to it in Section 2.01(a)(viii) hereof.

***“Burnside CBA”*** shall mean the Agreement between Ormet Corporation (Burnside Louisiana Plant) and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy Allied Industrial and Service Workers International Union on behalf of Local Union 14465, dated March 1, 2011, as subsequently amended by the Restructuring Memorandum of Agreement dated the date hereof between the Company and the USW.

***“Business”*** shall have the meaning set forth in the recitals hereof.

***“Business Day”*** shall mean any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by law to be closed in the city of New York.

***“Business Plan”*** shall have the meaning ascribed to it in the DIP Financing Agreement.

***“Business Related Avoidance Actions”*** shall mean any claim, right or cause of action of any Seller arising under Chapter 5 of the Bankruptcy Code against any person or entity (including trade vendors, suppliers, employees or customers) with whom the Buyer (or any of its

Affiliates that is engaged in substantially the same business that any of the Debtors are engaged in as of the date entry of the Transaction Approval Order) continues to do business following the Closing, but shall not include any such action (i) against Buyer (all such claims to be released at Closing); (ii) related to Assumed Contracts; or (iii) in connection with any setoffs related to Assets.”

“**Buyer**” shall have the meaning ascribed to it in the first paragraph of this Agreement and shall also include any Buyer Designee.

“**Buyer Designee**” shall have the meaning ascribed to it in Section 2.01(a) hereof.

“**Buyer Employee**” shall have the meaning ascribed to it in Section 8.01(c) hereof.

“**Buyer Securities Consideration**” shall have the meaning ascribed to it in Section 2.02(e)(ii) hereof.

“**Chapter 11 Cases**” shall have the meaning ascribed to it in the recitals hereof.

“**Claim**” shall mean a “claim” as defined in Section 101(5) of the Bankruptcy Code against any Seller.

“**Closing**” shall have the meaning ascribed to it in Section 4.01 hereof.

“**Closing Date**” shall have the meaning ascribed to it in Section 4.01 hereof.

“**COBRA**” shall have the meaning ascribed to it in Section 5.16(f) hereof.

“**Code**” shall mean the Internal Revenue Code of 1986, as amended.

“**Collective Bargaining Agreement**” shall have the meaning ascribed to it in Section 5.16(n) hereof.

“**Company Benefit Plan**” shall have the meaning ascribed to it in Section 5.16(a) hereof.

“**Contract**” shall have the meaning ascribed to it in Section 5.12(a) hereof.

“**Contract and Cure Schedule**” shall have the meaning ascribed to it in Section 7.09(a) hereof.

“**Critical Vendor Claims**” shall mean a pre-petition claim of a vendor that has been authorized to be paid pursuant to: (a) Final Order Granting the Debtors’ Motion for an Order Authorizing, on an Emergency Basis, Payment of Certain Prepetition Claims of Critical Vendors; (b) Final Order Granting the Debtors’ Motion for an Order Authorizing, on an Emergency Basis, Payment of Certain Prepetition Claims of Foreign Vendors; or (c) Order Authorizing the Debtors to (A) Pay in the Ordinary Course of Business Prepetition Claims of Shippers and Warehousemen and (B) Satisfy Custom Duties Imposed on Shipments From Foreign Suppliers.

“**Cure**” shall mean all monetary liabilities, including pre-petition monetary liabilities, of Sellers that must be paid or otherwise satisfied to cure all of Sellers’ monetary defaults under the

Assumed Contracts at the time of the assumption thereof and assignment, and all non-monetary defaults that must be cured at the time of the assumption thereof and assignment under the Assumed Contracts, each as determined by the Bankruptcy Court.

**“Cure Costs”** shall mean all monetary liabilities, including pre-petition monetary liabilities, of Sellers that must be paid or otherwise satisfied to cure all of Sellers’ monetary defaults under the Assumed Contracts at the time of the assumption thereof and assignment to Buyer as provided hereunder as such amounts are determined by the Bankruptcy Court.

**“Deeds”** shall mean those certain limited warranty deeds (with release of dower if applicable) necessary to convey the Owned Real Property in form and substance satisfactory to Buyer in its sole discretion.

**“Defined Benefit Plan”** shall mean any defined benefit pension plan sponsored by Sellers or any ERISA Affiliate which is subject to the requirements of Title IV of the Employee Retirement Income Security Act of 1974, as amended, or Section 412 of the Code.

**“DIP Financing”** shall have the meaning set forth in the recitals hereof.

**“DIP Obligations”** shall mean all obligations of Sellers under the Senior DIP Financing Agreement and Term DIP Financing Agreement, and ancillary documents related thereto.

**“Disclosure Schedule”** shall mean the Disclosure Schedule attached hereto, dated as of the date hereof, delivered by Sellers to Buyer in connection with this Agreement.

**“DOL”** shall have the meaning ascribed to it in Section 5.16(c) hereof.

**“Effective Date”** shall have the meaning set forth in the Plan.

**“Employee”** shall have the meaning ascribed to it in Section 5.16(a).

**“Encumbrances”** shall mean any Interest, Claim, Lien, mortgage, pledge, security interest, obligation, encumbrance, lien (statutory or other), liability, charge, lease, covenant, easement, option, right of others, hypothecation, conditional sale agreement or restriction (whether on voting, sale, transfer, defenses, set-off or recoupment rights, disposition, or otherwise), whether imposed by agreement, understanding, law, equity, or otherwise.

**“End Date”** shall have the meaning set forth in Section 4.03(h) hereof.

**“Environmental Claim”** shall mean all liabilities, damages, obligations, claims or losses of any kind whatsoever imposed, incurred or arising from or under any Environmental Law or resulting from the presence of any Hazardous Substance.

**“Environmental Laws”** shall mean any federal, state, local or foreign statute, law, ordinance or promulgated rule, regulation, code or directive, any duties imposed under common law, any judicial or administrative decree, order or judgment (whether or not by consent), any request or demand from a Governmental Entity which request or demand is currently uncontested by Sellers, or any provision or condition of any permit, license or other operating

authorization relating to (i) the protection of the environment or human, worker or public health and welfare, or the protection of the health and safety of any workers, employees, and the public or (ii) the manufacture, processing, distribution, use, treatment, storage, disposal, transport, handling or actual or potential release, discharge or emission of any Hazardous Substance, including but not limited to the Clean Water Act, the Toxic Substances Control Act, the Clean Air Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the River and Harbor Act, the Federal Insecticide, Fungicide and Rodenticide Act, the Toxic Substances Control Act, the Federal Mine Safety and Health Act, the Occupational Safety and Health Act, and any state or local law, ordinance, rule, regulation, code or directive regulating the same or similar matters.

***“Environmental Permits”*** shall mean any and all Permits issued in accordance with or pursuant to any Environmental Law.

***“Equipment”*** shall have the meaning ascribed to it in Section 2.01(a)(ii) hereof.

***“ERISA”*** shall mean the Employee Retirement Income Security Act of 1974, as amended.

***“ERISA Affiliate”*** shall have the meaning ascribed to it in Section 5.16(a) hereof.

***“Excluded Assets”*** shall have the meaning ascribed to it in Section 2.01(b) hereof.

***“Excluded Benefit Plans”*** shall mean all Company Benefit Plans of the Sellers other than the Transferred Benefit Plans set forth on Schedule 8.03(a).

***“Excluded Liabilities”*** shall have the meaning ascribed to it in Section 2.01(d) hereof.

***“Exit Facility”*** shall mean the new financing facility to be entered into by the Buyer on the Closing Date, as the same may be subsequently modified, amended or supplemented, together with all instruments and agreements related thereto.

***“Expense Reimbursement”*** shall have the meaning ascribed to it in Section 4.05(a) hereof.

***“FCPA”*** shall mean the Foreign Corrupt Practices Act of 1977.

***“Final Order”*** shall mean an order of the Bankruptcy Court (a) as to which the time to appeal shall have expired and as to which no appeal shall then be pending, or (b) if an appeal shall have been filed or sought, either (i) no stay of the order shall be in effect or (ii) if such a stay shall have been granted by the Bankruptcy Court, then (A) the stay shall have been dissolved or (B) a final order of the district court having jurisdiction to hear such appeal shall have affirmed the order and the time allowed to appeal from such affirmance or to seek review or rehearing thereof shall have expired and the taking or granting of any further hearing, appeal or petition for certiorari shall not be permissible, and if a timely appeal of such district court order or timely motion to seek review or rehearing of such order shall have been made, any court of appeals having jurisdiction to hear such appeal or motion (or any subsequent appeal or motion to seek review or rehearing) shall have affirmed the district court's (or lower appellate court's)

order upholding the order of the Bankruptcy Court and the time allowed to appeal from such affirmance or to seek review or rehearing thereof shall have expired and the taking or granting of any further hearing, appeal or petition for certiorari shall not be permissible.

***"Final DIP Financing Orders"*** means, collectively, (i) entry of a Final Order approving the Senior DIP Financing Agreement and (ii) entry by the Bankruptcy Court of a Final Order approving the Term DIP Financing Agreement, each of which order is in effect and not stayed and is in form and substance satisfactory to the Buyer.

***"Financial Statements"*** shall have the meaning ascribed to it in Section 5.03 hereof.

***"G Transaction"*** shall have the meaning set forth in Section 7.10(b)(i).

***"GAAP"*** shall have the meaning ascribed to it in Section 5.03 hereof.

***"Governmental Entity"*** shall mean any court, administrative or regulatory agency or commission or other foreign, federal, state or local governmental authority or instrumentality.

***"Hannibal CBA"*** shall mean the Agreement between Ormet Corporation (Hannibal, Ohio) and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy Allied Industrial and Service Workers International Union, dated June 6, 2011, as subsequently amended by the Memorandum of Agreement dated January 13, 2013, which was subsequently modified by that certain Addendum to Memorandum of Agreement dated the same date hereof.

***"Hannibal Restructuring Memorandum of Agreement"*** shall have the meaning ascribed to it in Section 10.23(c) hereof.

***"Hazardous Substances"*** shall mean any substance, waste, contaminant, pollutant or material regulated or governed by any Environmental Law, including, but not limited to, (a) all substances, wastes, contaminants, pollutants and materials defined or designated as hazardous, dangerous or toxic pursuant to any applicable Environmental Law and (b) asbestos, mold, polychlorinated biphenyls ("PCBs") and petroleum.

***"HSR Act"*** shall mean the Hart-Scott-Rodino Antitrust Improvement Act of 1976, as amended.

***"Improvements"*** shall mean the buildings, improvements, structures and fixtures on the Real Property and/or demised under any lease of, or other contract or agreement for the use of, Real Property.

***"Indebtedness"*** shall mean, at any time and with respect to any Person: (a) all indebtedness of such Person for borrowed money; (b) all indebtedness of such Person for the deferred purchase price of property or services (other than trade payables, other expense accruals and deferred compensation items arising in the ordinary course of business, consistent with past practice); (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments (other than performance, surety and appeal bonds arising in the ordinary course of business in respect of which such Person's liability remains contingent); (d) all indebtedness of such Person created or arising under any conditional sale or other title retention

agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property); (e) all obligations of such Person under leases which have been or should be, in accordance with GAAP, recorded as capital leases, to the extent required to be so recorded; (f) all reimbursement, payment or similar obligations of such Person, contingent or otherwise, under acceptance, letter of credit or similar facilities; (g) all Indebtedness of others referred to in clauses (a) through (f) above guaranteed directly or indirectly by such Person, or in effect guaranteed directly or indirectly by such Person through an agreement (i) to pay or purchase such Indebtedness or to advance or supply funds for the payment or purchase of such Indebtedness, (ii) to purchase, sell or lease (as lessee or lessor) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such Indebtedness, (iii) to supply funds to or in any other manner invest in the debtor (including any agreement to pay for property or services irrespective of whether such property is received or such services are rendered) or (iv) otherwise to assure a creditor against loss in respect of such Indebtedness; and (h) all Indebtedness referred to in clauses (a) through (g) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Encumbrance upon or in property (including accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness.

***“Intellectual Property”*** shall have the meaning ascribed to it in Section 2.01(a)(v) hereof.

***“Interest”*** shall mean “interest” as that term is used in Section 363(f) of the Bankruptcy Code.

***“Interim DIP Financing Orders”*** means, collectively, (i) entry by the Bankruptcy Court of an order approving, on an interim basis, the Senior DIP Financing Agreement and (ii) entry by the Bankruptcy Court of an order approving, on an interim basis, the Term DIP Financing Agreement, each of which order is in effect and not stayed and is in form and substance satisfactory to the Buyer.

***“Interim Financial Statements”*** shall have the meaning ascribed to it in Section 5.03 hereof.

***“Inventory”*** shall have the meaning ascribed to it in Section 2.01(a)(iii) hereof.

***“IRS”*** shall have the meaning ascribed to it in Section 5.16(c) hereof.

***“Law”*** shall mean any domestic, foreign, federal, state, local or other law, statute, ordinance, writ, rule, regulation or governmental requirement of any kind, and the rules, regulations and orders promulgated thereunder and any final orders, decrees, judgments or injunction of any regulatory agency, court or other Governmental Entity.

***“Leases”*** shall have the meaning ascribed to it in Section 5.17(a) hereof.

***“Legacy Workers Compensation Claims”*** shall mean any Workers Compensation Claims related to sold or inactive facilities of Sellers or their Affiliates, including without limitation, Workers Compensation Claims from the Burnside Marine Terminal, located adjacent to the

Burnside refinery; the Hannibal Rolling Mill, located adjacent to the Hannibal Reduction Plant; the Jackson Coated Sheet and Foil Facility, located in Jackson, Tennessee; the Bens Run Recycling Plant, located in Friendly, West Virginia; the SBI Facility, located in Terre Haute, Indiana; or the Formcast Facility, located in Denver, Colorado.

**“Lien”** shall mean any mortgage, deed of trust, pledge, assignment, security interest, encumbrance, lien, mechanics lien, hypothecation, deemed trust, Action, easement, charge or otherwise, or claim of any kind or nature whatsoever in respect of any property, other than any license of Intellectual Property, including any of the foregoing created by, arising under, or evidenced by any conditional sale or other title retention agreement, the interest of a lessor under a capital lease, any financing lease having substantially the same economic effect as any of the foregoing, or the filing of a financing statement naming the owner of the property as to which such lien relates as the debtor under the Uniform Commercial Code or any comparable Law in any other jurisdiction.

**“Louisiana Economic Development Agreement”** shall mean the Cooperative Endeavor Agreement in connection with Economic Development Award Program (EDAP) and the Economic Development Loan Program (EDLOP) entered into by and between Louisiana Economic Development Corporation, acting through the Louisiana Department of Economic Development and Ormet Primary Aluminum Corporation.

**“Material Adverse Effect”** shall mean any change, effect, event, occurrence, development, circumstance or state of facts occurs which by itself or together with all other changes, effects, events, occurrences, developments, circumstances or states of facts, has had or would reasonably be expected to have (a) a materially adverse effect on the business, properties, operations, assets, financial condition or results of operations of Sellers (including its subsidiaries and their respective businesses), taken as a whole, or (b) which would materially impair Sellers’ ability to perform its obligations under this Agreement or have a materially adverse effect on or prevent or materially delay the consummation of the transactions contemplated by this Agreement, except, in each case, for any such effects resulting from (i) the announcement or pendency of the Acquisition (including any loss of or adverse change in the relationship of the Sellers with their respective employees, customers, partners or suppliers related thereto), (ii) general economic or political conditions (including acts of terrorism or war) to the extent that such conditions do not disproportionately affect the Sellers, taken as a whole, as compared to other companies participating in the same industry as the Sellers, (iii) any changes (after the date hereof) in GAAP or Law (other than changes in labor, pension, benefits or similar Laws), (iv) any specific action at the written direction of Buyer from and after the execution of this Agreement, (v) any failure of the Sellers to meet any internal projections, budgets, plans or forecasts, including the Business Plan, in and of itself.

**“Material Contracts”** shall have the meaning ascribed to it in Section 5.12(a) hereof.

**“Material Customers”** shall have the meaning ascribed to it in Section 5.08(c) hereof.

**“Material Suppliers”** shall have the meaning ascribed to it in Section 5.08(a) hereof.

**“Multiemployer Plan”** shall have the meaning ascribed to it in Section 5.16(b) hereof.

***“Non-Union Employees of Sellers”*** shall mean those employees of Sellers who are, immediately prior to the Closing, not subject to a Collective Bargaining Agreement.

***“OPAC”*** shall have the meaning ascribed to it in the first paragraph of this Agreement.

***“Order”*** shall mean any order, ruling, decision, verdict, decree, writ, subpoena, mandate, precept, command, directive, consent, approval, award, judgment, injunction, or other similar determination or finding by, before, or under the supervision of any governmental body, or any arbitrator, mediator, or other quasi-judicial or judicially sanctioned Person or body.

***“Ormet”*** shall have the meaning ascribed to it in the first paragraph of this Agreement.

***“Ormet Mill”*** shall have the meaning ascribed to it in the first paragraph of this Agreement.

***“Ormet Railroad”*** shall have the meaning ascribed to it in the first paragraph of this Agreement.

***“Other Agreements”*** shall mean the Deeds, the Bill of Sale and Assignment and the Assignment and Assumption Agreement.

***“Owned Real Property”*** shall have the meaning ascribed to it in Section 5.17(f) hereof.

***“Parties”*** shall mean the Buyer and the Sellers.

***“Party”*** shall mean any of the Buyer or any Seller.

***“Permits”*** shall have the meaning ascribed to it in Section 2.01(a)(x) hereof.

***“Permitted Encumbrances”*** shall mean liens for Taxes which are not yet due and payable and, in connection with the consummation of the transactions contemplated by this Agreement, any lien or encumbrance granted or expressly permitted pursuant to the Exit Facility.

***“Person”*** shall mean an individual, corporation, partnership, association, limited liability company, trust, joint venture, unincorporated organization, other legal entity or group (as defined in Section 13(d)(3) of the Securities and Exchange Act of 1934, as amended).

***“Petition Date”*** shall have the meaning set forth in the recitals hereof.

***“Power Agreement”*** shall mean the Power Agreement between Ormet Primary Aluminum Corporation and Ohio Power Company and Columbus Southern Power Company, as amended by order of the Public Utility Commission of Ohio entered on October 17, 2012.

***“Pre-Petition Term Loan A”*** shall mean the loan evidenced by the Term Loan and Security Agreement by and among Ormet Corporation, Ormet Primary Aluminum Corporation, Ormet Aluminum Mill Products Corporation as Borrowers and Specialty Blanks Holding Corporation, Ormet Railroad Corporation as Guarantors, the Lenders from time to time Party

Hereto and The Bank of New York Mellon, as Agent, dated March 1, 2010, as amended and modified.

***"Pre-Petition Term Loan B"*** shall mean the loan evidenced by the First Amendment to Term Loan and Security Agreement, by and among Ormet Corporation, Ormet Primary Aluminum Corporation, Ormet Aluminum Mill Products Corporation as Borrowers and Specialty Blanks Holding Corporation, Ormet Railroad Corporation as Guarantors, the Lenders from time to time Party Hereto and The Bank of New York Mellon, as Agent, dated May 6, 2011, as amended and modified.

***"PUCO"*** shall mean the Public Utilities Commission of Ohio.

***"Purchase Price"*** shall have the meaning ascribed to it in Section 3.02 hereof.

***"Real Property"*** shall have the meaning ascribed to it in Section 2.01(a)(i) hereof.

***"Release"*** shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, seeping, migrating, dumping or disposing of any Hazardous Substance (including the abandonment or discarding of barrels, containers and other closed receptacles containing any Hazardous Substance) into the indoor or outdoor environment, including, without limitation, the movement of Hazardous Substances through or in the ambient air, soil, surface or ground water, or property.

***"Reorganization Transactions"*** shall have the meaning ascribed to it in Section 7.08(b)(ii) hereof.

***"Sale Motion"*** shall have the meaning ascribed to it in Section 7.08(a) hereof.

***"Schedule of Leases"*** shall have the meaning ascribed to it in Section 5.17(b).

***"Schedule Update"*** shall have the meaning ascribed to it in Section 7.07.

***"Sellers"*** shall have the meaning ascribed to it in the first paragraph of this Agreement.

***"Senior DIP Agent"*** shall have the meaning ascribed to it in the recitals hereof.

***"Senior DIP Financing"*** shall have the meaning ascribed to it in the recitals hereof.

***"Senior DIP Financing Agreement"*** shall have the meaning ascribed to it in the recitals hereof.

***"Specialty Holding"*** shall have the meaning ascribed to it in the recitals hereof.

***"Steelworkers Pension Trust"*** shall mean the Steelworkers Pension Trust, a Multi-Employer Plan.

***"Taxes"*** shall mean all taxes, charges, fees, levies, penalties or other assessments imposed by any United States federal, state, local or foreign taxing authority, including, but not limited to, income, gross receipts, license, stamp, occupation, premium, windfall profits,

environmental (including taxes under Code Sec. 59A), custom duty, capital stock or other equity, excise, real property, personal property, water and sewer charges, municipal utility district, ad valorem, sales, use, transfer, franchise, payroll, employment, withholding, severance, social security or other tax of any kind whatsoever, including any interest, penalties or additions attributable thereto, whether disputed or not.

**"Tax Return"** shall mean any return, declaration, report, claim for refund, information return or other document (including any related or supporting information) required to be filed with respect to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

**"Term DIP Agent"** shall have the meaning ascribed to it in the recitals hereof.

**"Term DIP Financing"** shall have the meaning ascribed to it in the recitals hereof.

**"Term DIP Financing Agreement"** shall have the meaning ascribed to it in the recitals hereof.

**"Transaction Approval Order"** shall have the meaning ascribed to it in Section 7.08(b)(ii) hereof.

**"Transferred Benefit Plans"** shall have the meaning ascribed to it in Section 8.03(a) hereof.

**"Transfer Taxes"** shall mean any transfer, documentary, excise, sales, use, real property transfer or recording, gains, value-added, stamp, registration and other Taxes, any conveyance fees, any recording charges and any other similar fees and charges (including penalties and interest in respect thereof) attributable to the sale or transfer of the Acquired Assets, but excluding any taxes imposed on or measured by income or gross receipts.

**"Union"** shall have the meaning ascribed to it in Section 5.16(n) hereof

**"USW"** shall mean the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy Allied Industrial and Service Workers International Union.

**"WARN Act"** shall mean, collectively, the Worker Adjustment and Retraining Notification Act of 1988, as amended, and any other similar statutes or regulations of any jurisdiction relating to any plant closing or mass layoff.

**"Welfare Plan"** shall have the meaning ascribed to it in Section 5.16(f) hereof.

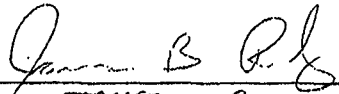
**"Wind Down Budget"** means a budget prepared in good faith by Sellers and acceptable to Buyer of the out of pocket administrative costs and expenses that Sellers expect to incur in connection with winding down their bankruptcy estates, setting forth a reasonably detailed breakdown of such costs and expenses by category, the initial form of which shall be provided in writing by Sellers to Buyer on or prior to the date of this Agreement, and the final form of which shall be delivered at Closing.

***“Year End Financial Statements”*** shall have the meaning ascribed to it in Section 5.03 hereof.

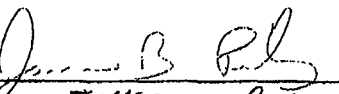
IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first above written.

**SELLERS:**

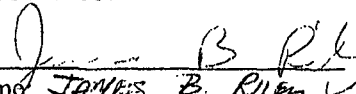
ORMET CORPORATION

By:   
Name: JAMES B. RILEY  
Title: CEO

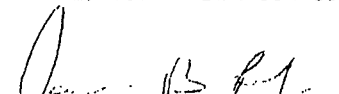
ORMET PRIMARY ALUMINUM CORPORATION

By:   
Name: JAMES B. RILEY  
Title: CEO

ORMET ALUMINUM MILL PRODUCTS CORPORATION

By:   
Name: JAMES B. RILEY  
Title: CEO

ORMET RAILROAD CORPORATION

By:   
Name: JAMES B. RILEY  
Title: CEO

## FIRST AMENDMENT TO ASSET PURCHASE AGREEMENT

This FIRST AMENDMENT TO ASSET PURCHASE AGREEMENT (this "Amendment"), dated as of June 3, 2013, is entered into by and among Smelter Acquisition LLC, a Delaware limited liability company ("**Buyer**"), Ormet Corporation, a Delaware corporation ("**Ormet**"), Ormet Primary Aluminum Corporation, a Delaware corporation ("**OPAC**"), Ormet Aluminum Mill Products Corporation, a Delaware Corporation ("**Ormet Mill**"), and Ormet Railroad Corporation, a Delaware corporation ("**Ormet Railroad**") and collectively with Ormet, OPAC and Ormet Mill, each a "**Seller**" and together, "**Sellers**". Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed thereto in the Asset Purchase Agreement (as defined below).

### RECITALS

WHEREAS, the Buyer and Sellers have previously entered into that certain Asset Purchase Agreement, dated as of February 25, 2013 (and as may be further amended, restated, supplemented or otherwise modified from time to time, the "**Asset Purchase Agreement**");

WHEREAS, pursuant to Section 10.13 of the Asset Purchase Agreement, the Asset Purchase Agreement may be amended by a written agreement executed by each of the Parties thereto, and Section 10.23 directs the Parties to execute an amendment to the Asset Purchase Agreement upon the satisfaction of certain conditions detailed in such section; and

WHEREAS, the parties hereto wish to enter into this Amendment to modify and amend certain provisions of the Asset Purchase Agreement as provided herein.

NOW THEREFORE, in consideration of the foregoing, the terms, conditions and covenants contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Amendment to Section 3.02(d)(i) of the Asset Purchase Agreement. Section 3.02(d)(i) of the Asset Purchase Agreement is hereby amended by replacing it in its entirety with the following:

"Payment by Buyer of \$130,000,000, payable in the form of the exercise of credit bid rights under Section 363(k) of the Bankruptcy Code with respect to all or a portion (as determined by Buyer) of the aggregate obligations then outstanding under Pre-Petition Term Loan A, Pre-Petition Term Loan B and the Term DIP Financing Agreement (the "**Credit Bid**"); provided that the Credit Bid shall be reduced dollar-for-dollar to the extent that Buyer assumes (in its sole discretion) any portion of the indebtedness under the Pre-Petition Term Loan A or Pre-Petition Term Loan B;"

2. Amendment to Section 4.01 of the Asset Purchase Agreement. Section 4.01 of the Asset Purchase Agreement is hereby amended by replacing it in its entirety with the following:

“Subject to the satisfaction of each of the conditions set forth in Article IX hereof (or the waiver thereof by the party entitled to waive that condition), the closing of the purchase and sale of the Assets and the assumption of the Assumed Liabilities, provided for in Article II hereof, as applicable (the “**Closing**”), shall take place at 10:00 a.m., local time, at the offices of Dinsmore & Shohl LLP located at 255 E. 5<sup>th</sup> Street, Suite 1900, Cincinnati, OH 45202 (or at such other place as the Parties may mutually agree in writing) within five (5) Business Days after the date on which all of the conditions set forth in Article IX hereof have been satisfied or waived by the party entitled to waive that condition (other than conditions which, by their terms, may only be satisfied at the Closing), but no earlier than July 31, 2013, or on such other date and time as Sellers and Buyer may mutually agree in writing. The date on which the Closing shall be held is referred to in this Agreement as the “**Closing Date**.” The Closing shall be deemed effective at 12:01 a.m., local time, on the Closing Date.”

3. Amendment to Section 4.03 of the Asset Purchase Agreement. Section 4.03 of the Asset Purchase Agreement is hereby amended as follows:

(a) Section 4.03(f) is hereby amended by replacing it in its entirety with the following:

“(f) By Buyer or Sellers if the Auction, if any, has not begun by the date that is fifty five (55) days following the entry of the Bid Procedures Order.”

(b) Section 4.03(g) is hereby amended by replacing it in its entirety with the following:

“By Buyer if (i) the Bankruptcy Court shall not have entered the Transaction Approval Order by the date that is one hundred (100) days following the Petition Date, (ii) the Transaction Approval Order shall not have become a Final Order on or prior to the date that is fourteen (14) days after the entry of such Order or (iii) the Transaction Approval Order shall have been stayed, vacated, modified or supplemented without Buyer’s prior written consent;”

(c) Section 4.03(h) is hereby amended by replacing it in its entirety with the following:

“(h) Subject to Section 4.03(l), by Buyer or Sellers if for any reason the Closing has not occurred by July 31, 2013 (the “**End Date**”); provided that, if Buyer provides written notice to Seller at least two (2) days prior to the then-applicable End Date, the End Date shall be extended for a period of one (1) month, up to a total of six (6) additional months; and provided further that, at the time of such termination, the terminating party is not then in material breach (or if

any Seller is the terminating party, no Seller is in then in material breach) of its obligations contained in this Agreement;”

(d) Section 4.03(l) is hereby amended by replacing it in its entirety with the following:

“(l) By Buyer or Sellers if, at the end of the Auction contemplated by the Bidding Procedures, Buyer is not determined by Sellers to be the Successful Bidder (as defined in the Bidding Procedures); provided, however, that if Buyer is designated as the Backup Bidder (as defined in the Bidding Procedures), Buyer and/or Sellers shall not terminate this Agreement pursuant to this Section 4.03(l) until the earlier of 5:00 p.m. (prevailing Eastern Time) on the date that is thirty (30) days after the entry of the Sale Order (as defined in the Bidding Procedures) or the closing of the transaction with the Successful Bidder; provided, further, that, if the Buyer is designated as the Backup Bidder and consents in writing to the selection of a third party as the Successful Bidder, then Buyer and/or Sellers shall not terminate this Agreement pursuant to this Section 4.03(l) until the earlier of (i) ninety (90) days from entry of the Sale Order or (ii) the closing of the transaction with the Successful Bidder (or, if such third party Successful Bidder is unable to consummate the transaction within such 90 day period, such later date as Buyer may consent to in writing);”

4. Amendment to Section 7.08 of the Asset Purchase Agreement. Section 7.08 of the Asset Purchase Agreement is hereby amended as follows:

(a) Section 7.08(a) is hereby amended by replacing it in its entirety with the following:

“(a) Motions.

(i) Bidding Procedures Motion. On or prior to the third Business Day following the Petition Date, Sellers shall file with the Bankruptcy Court, a motion in the form attached hereto as Exhibit 7.08(a)(i) (the “*Bidding Procedures Motion*”) seeking entry of the Bid Procedures Order, and provided that any changes thereto shall be in form and substance acceptable to Buyer, in its sole discretion. Sellers shall affix a true and complete copy of this Agreement to the Bidding Procedures Motion filed with the Bankruptcy Court (which shall be, subject to the approval of the Bankruptcy Court, without schedules).

(ii) Transaction Approval Motion. Within fifty (50) days of the Petition Date, Sellers shall file with the Bankruptcy Court, a motion in the form attached hereto as Exhibit 7.08(a)(ii) (the “*Transaction Approval Motion*”) seeking entry of the Transaction Approval Order, and provided that any changes thereto shall be in form and substance acceptable to Buyer, in its sole discretion. Sellers shall affix a true and complete copy of this Agreement to the Transaction Approval Motion filed with the

Bankruptcy Court (which shall be, subject to the approval of the Bankruptcy Court, without schedules).”

(b) Section 7.08(b)(i) is hereby amended by replacing it in its entirety with the following:

“(i) an order (the “*Bid Procedures Order*”), to be entered on or prior to the later of (A) the date that is thirty (30) days following the Petition Date or (B) the date that is fifteen (15) days following the formation of the unsecured creditors committee (which date Buyer may waive or extend in its sole discretion) (i) fixing the date, time and location of the hearing to approve consummation of the Asset Acquisition, (ii) fixing the time, date and location of an auction, if any, which date shall be no later than fifty five (55) days after the entry of the Bid Procedures Order (the “*Auction*”), (iii) approving the Expense Reimbursement, (iv) containing such other appropriate buyer protections as may be mutually agreed upon by Buyer and Sellers, and (v) otherwise approving the Bidding Procedures, in substantially the form of Exhibit 7.08(b)(i), and with only such changes as may be acceptable to Buyer in its sole discretion; and”

(c) Section 7.08(b)(ii) is hereby amended by replacing it in its entirety with the following:

“(ii) an order (the “*Transaction Approval Order*”), to be entered no later than one hundred days after the Petition Date, in substantially the form of Exhibit 7.08(b)(ii), and with only such changes as may be acceptable to Buyer in its sole discretion, among other things, (i) approving the Asset Acquisition by Buyer, (ii) approving the assumption by (and, if applicable, assignment to) Buyer of the Assumed Contracts pursuant to section 365 of the Bankruptcy Code, and (iii) containing findings of fact and conclusions of law that: (x) Buyer is a good faith purchaser entitled to the protections of Bankruptcy Code section 363(m), (y) this Agreement constitutes a “plan” of Ormet and Buyer solely for purposes of Sections 368 and 354 of the Code, and (z) the Asset Acquisition and subsequent liquidation of Sellers pursuant to the procedures provided in the Bid Procedures Order and Transaction Approval Order (the “*Reorganization Transactions*”) are intended to constitute a plan of reorganization of Ormet pursuant to Section 368(a)(1)(G) of the Code.”

(d) Section 7.08(c) is hereby amended by replacing the phrase “the Sale Motion” with “the Bidding Procedures Motion and the Transaction Approval Motion”.

5. Amendment to Section 7.09(b)(i) of the Asset Purchase Agreement. In Section 7.09(b)(i) the definition of the term “Action Date” is changed to read in its entirety “July 31, 2013.”

6. Amendment to Section 8.01(a) of the Asset Purchase Agreement. Section 8.01(a) of the Asset Purchase Agreement is hereby replaced in its entirety with the following:

“(a) If the conditions set forth in Section 10.23 of this Agreement are satisfied, including, without limitation, ratification of the Hannibal Restructuring Memorandum of Agreement, then, upon Closing, the Buyer will assume the Hannibal CBA, as amended by the Hannibal Restructuring Memorandum of Agreement, and the Burnside CBA (provided such Collective Bargaining Agreements have not been amended, altered or otherwise modified in any respect, without Buyer’s written consent, after the date of execution of the Hannibal Restructuring Memorandum of Agreement), and Buyer will: (a) retain in employment all bargaining unit employees who, immediately prior to the Effective Date, retained or were accruing seniority under the Hannibal CBA and Burnside CBA, as applicable, without regard to whether or not such person was actively at work; (b) provide for all bargaining unit employees to retain seniority or accrued service for all purposes under the Hannibal CBA and Burnside CBA, as applicable; (c) to recognize the USW as the bargaining agent for the relevant bargaining unit; and (d) continue to pay all obligations owing under the Hannibal CBA and Burnside CBA, as applicable, including, but not limited to, obligations arising before the Effective Date (as defined in the Hannibal Restructuring Memorandum of Agreement), except as they relate to the Defined Benefit Plans, claims asserted by the Steelworkers Pension Trust relating to withdrawal liability and the cessation of contributions thereto, and the Benefit Trust (as defined in the Hannibal CBA).”

7. Amendment to Section 9.02 of the Asset Purchase Agreement. Section 9.02(g) of the Asset Purchase Agreement is hereby amended as follows:

“The PUCO shall have issued an interim order to reflect (and only to reflect) the modifications set forth on Schedule 9.02(g) hereto, and such interim order shall be unmodified and in full force and effect but for becoming a final order.”

8. No Further Obligations. To the extent that the Memorandum of Agreement is not ratified or the Closing does not occur, Buyer shall (i) have no obligation to hire any employees or assume the Hannibal CBA, the Burnside CBA, any Defined Benefits Plans, obligations under the Steel Workers Pension Trust, or any other similar or related agreements or understandings related to the USW, and (ii) shall have no liability to the Sellers or the USW with respect thereto.

9. Amendment to Annex A of the Asset Purchase Agreement – Definitions.

- (a) The definition of “***Sale Motion***” is deleted in its entirety.
- (b) In the definition of “***Buyer Securities Consideration***”, the reference to “Section 2.02(e)(ii)” is changed to read in its entirety “Section 3.02(d)(ii)”
- (c) New definitions are added as follows:

“***Bidding Procedures Motion***” shall have the meaning ascribed to it in Section 7.08(a)(i).

“***Transaction Approval Motion***” shall have the meaning ascribed to it in Section 7.08(a)(ii).

10. Amendment to the Exhibits to the Asset Purchase Agreement. The Exhibits to the Asset Purchase Agreement are hereby amended as follows:

- (a) The reference to “Exhibit 7.08(a) Form of Sale Motion” is hereby deleted in its entirety.
- (b) A new “Exhibit 7.08(a)(i) Bidding Procedures Motion” is hereby added.
- (c) A new “Exhibit 7.08(a)(ii) Transaction Approval Motion” is hereby added.
- (d) A new “Exhibit 7.08(b)(ii) Transaction Approval Order” is hereby added.

11. Amendment to Schedule 9.02(g) of the Asset Purchase Agreement. Schedule 9.02(g) is deleted and replaced in its entirety with the attached Schedule 9.02(g).

12. Miscellaneous.

(a) Full Force and Effect. The miscellaneous provisions of Article X of the Asset Purchase Agreement shall apply to this Amendment *mutatis mutandis*. Except as expressly modified or waived by this Amendment, all of the terms, covenants, agreements, conditions and other provisions of the Asset Purchase Agreement shall remain in full force and effect in accordance with their respective terms. As used in the Asset Purchase Agreement, the terms “this Agreement,” “herein,” “hereinafter,” “hereto,” and words of similar import shall mean and refer to, from and after the date of this Amendment, unless the context requires otherwise, the Asset Purchase Agreement as amended by this Amendment.

(b) No Waiver of Rights. For the avoidance of doubt, nothing herein shall limit or otherwise modify any: (i) rights of the Buyer under the Asset Purchase Agreement or (ii) any obligations of the Sellers to the Buyer under the Asset Purchase Agreement.

(c) Counterparts; Electronic Signatures. This Amendment may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall constitute one and the same instrument. Delivery of an executed counterpart to this Amendment by telecopy, e-mail or other electronic means (e.g., "pdf" or "rtf") shall be effective as an original and shall constitute a representation that an original will be delivered.

(d) Governing Law; Consent to Jurisdiction and Venue; Jury Trial Waiver.

(i) Except to the extent the mandatory provisions of the Bankruptcy Code apply, this Amendment shall be governed by and construed in accordance with the laws of the State of New York, without regard to the principles of conflicts of law thereof that would defer to the substantive laws of any other jurisdiction.

(ii) The Parties agree that, during the Bankruptcy Period, the Bankruptcy Court shall have exclusive jurisdiction to resolve any controversy, claim or dispute arising out of or relating to this Amendment. The Parties further agree that, following the Bankruptcy Period, any action or proceeding with respect to such controversy, claim or dispute shall be brought against any of the Parties exclusively in either the United States District Court for the Southern District of New York or any state court of the State of New York located in such district, and each of the parties hereby consents to the personal jurisdiction of such court and the Bankruptcy Court (and to the appropriate appellate courts) in any such action or proceeding and waives any objection, including, without limitation, any objection to the laying of venue or on the grounds of forum non conveniens, which any of them may now or hereafter have to the bringing of such action or proceeding in such respective jurisdictions. Each Party hereby irrevocably consents to the service of process of any of the aforesaid courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to the other Parties to such action or proceeding (in accordance with Section 10.03 of the Asset Purchase Agreement).

(iii) **Each Party acknowledges and agrees that any controversy which may arise under this Amendment is likely to involve complicated and difficult issues, and therefore each Party hereby irrevocably and unconditionally waives any right such party may have to a trial by jury.**

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed and delivered by their duly authorized representatives as of the date first above written.

**SELLERS:**

**ORMET CORPORATION**

By: James B. Riley  
Name: JAMES B. RILEY  
Title: CFO

**ORMET PRIMARY ALUMINUM CORPORATION**

By: James B. Riley  
Name: JAMES B. RILEY  
Title: CFO

**ORMET ALUMINUM MILL PRODUCTS CORPORATION**

By: James B. Riley  
Name: JAMES B. RILEY  
Title: CFO

**ORMET RAILROAD CORPORATION**

By: James B. Riley  
Name: JAMES B. RILEY  
Title: CFO

**BUYER:**

SMELTER ACQUISITION LLC

By: Wayzata Investment Partners, LLC, its  
Manager

By: 

Name: Joseph M. Deignan

Title: Authorized Signatory

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Summary: Memorandum in Opposition (Part 2 of 3) electronically filed by Mr. Steven T Nourse on behalf of Ohio Power Company