

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF PENNSYLVANIA**

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| In re: |) |
| |) Chapter 11 |
| GULF CHEMICAL & METALLURGICAL CORPORATION, a Texas corporation, <i>et al.</i> , ¹ |) |
| |) Case No. 16-22192-JAD & 16-22195-JAD |
| |) (Jointly Administered under |
| Debtors. |) Case No. 16-22192-JAD) |
| |) |
| GULF CHEMICAL & METALLURGICAL CORPORATION, a Texas corporation, |) |
| |) Hearing Date: April 11, 2017, at 10:00 a.m. |
| |) |
| Movant, |) Response Date: April 10, 2017, at 12:00 p.m. |
| |) |
| v. |) Docket No. __ |
| |) |
| COMILOG HOLDING, BRAZORIA COUNTY, TEXAS, TEXAS COMPTROLLER, TEXAS ATTORNEY GENERAL ENVIRONMENTAL PROTECTION DIVISION, and HARRIS COUNTY, TEXAS, |) |
| |) |
| Respondents. |) |
| |) |
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EXPEDITED MOTION FOR AN ORDER (A) AUTHORIZING THE SALE OF CERTAIN EQUIPMENT TO AMG VANADIUM LLC FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS; AND (B) GRANTING RELATED RELIEF

Gulf Chemical & Metallurgical Corporation (“Gulf”), one of the above-captioned debtors, by and through its undersigned counsel, hereby moves the Court (this “Motion”), pursuant to sections 105 and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 6004-1 of the Local Rules of the United States Bankruptcy Court for the Western District of Pennsylvania (the “Local Rules”), for the entry of an order (the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: Gulf Chemical & Metallurgical Corporation, a Texas corporation (3600) and BMC Liquidation Company (f/k/a Bear Metallurgical Company), a Delaware corporation (1238).

“Sale Order”): (a) authorizing and approving Gulf’s entry into that certain Asset Purchase Agreement with AMG Vanadium LLC (“AMG”), together with all related documents, agreements, exhibits, schedules, and addenda thereto (as may be amended, the “AMG APA”), a copy of which is attached hereto as Exhibit A, pursuant to which Gulf has agreed to sell to AMG an SO₂ scrubber (the “Scrubber”) and certain other equipment, including roaster spares, laboratory equipment, and spare parts inventory all as more specifically described and set forth in the AMG APA (collectively with the Scrubber, the “AMG Equipment”); and (b) granting related relief.

In support of the Motion, Gulf represents as follows:

I. JURISDICTION

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The venue of these chapter 11 cases and this Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are sections 105 and 363 of the Bankruptcy Code, Bankruptcy Rules 2002 and 6004, and Local Rule 6004-1.

II. INTRODUCTION

3. After an extensive pre- and post-petition marketing process during which Gulf received no viable or qualified offers, Gulf has received the first such offer to purchase certain of its assets. Specifically, AMG has agreed to purchase the AMG Equipment for a purchase price of \$2,000,000 in cash. Gulf submits that, given the status and timing of its wind-down, it is imperative that Gulf close on this sale as soon as possible in order to maximize value for its estate. Gulf and its advisors, after consultation with the Official Committee of Unsecured

Creditors (the “Committee”), and Comilog Holding (“Comilog”), have determined that AMG’s offer to purchase the AMG Equipment is the highest and best offer for the AMG Equipment.

III. Background

4. On June 14, 2016 (the “Petition Date”), Gulf and BMC Liquidation Company (f/k/a Bear Metallurgical Company) (“BMC,” and together with Gulf, the “Debtors”) filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. Gulf is continuing in possession of its property and is operating and managing its business, as a debtor in possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code. BMC has confirmed a plan of liquidation that paid all creditors in full and is winding up its affairs pursuant to such plan.

5. On June 30, 2016, the Office of the United States Trustee for the Western District of Pennsylvania (the “U.S. Trustee”) appointed the Official Committee of Unsecured Creditors (the “Committee”). No request for the appointment of a trustee or examiner has been made in these chapter 11 cases.

6. The factual background regarding the Debtors, including their business operations, their capital and debt structure, and the events leading to the filing of the chapter 11 cases, is set forth in detail in the Declaration of Eric Caridroit in Support of Chapter 11 Petitions and First Day Motions, Docket No. 6.

A. Marketing and Sale Process for the AMG Equipment

7. Gulf’s assets have been marketed for sale since late-2015, when Rothschild Global Financial Advisory was retained to explore transactions for the sale of the Debtors’ businesses. Despite a thorough and extensive pre-petition marketing process, no viable purchasers for the Debtors’ assets were identified. Informed by that process, the Debtors concluded that it was in the best interests of the Debtors and their creditors to attempt to sell their assets through a chapter 11 process.

8. Accordingly, on the Petition Date, the Debtors filed a motion requesting, among other things, approval of bid procedures for the auction of substantially all of the Debtors' assets. The Court granted the Debtors' motion and entered a bid procedures order, Docket No. 184 (as amended by Docket No. 266, the "Procedures Order"). Pursuant to the Procedures Order, the Court approved, among other things, the Debtors' proposed bid procedures (the "Bid Procedures"), which provided a mechanism for interested parties to make qualified bids for either or both of the Debtors' assets.

9. On September 13, 2016, after completing the auction contemplated by the Procedures Order, the Court entered an order authorizing BMC to sell substantially all of its assets, Docket No. 376, which sale closed on October 4, 2016. Despite their best efforts, the Debtors did not receive any qualified bids for the purchase of Gulf's assets and therefore the auction did not go forward as to Gulf.

10. After the auction, Gulf analyzed its options and, on November 22, 2016, filed a motion with the Court (Docket No. 517) announcing Gulf's intention to wind down operations and idle its facilities and requesting Court authority to sell miscellaneous assets. On December 14, 2016, the Court entered an order granting the motion (Docket No. 575). Contemporaneously with implementing its idling plan, Gulf continued to market its assets for sale in an effort to maximize value for all stakeholders. As a result of this process, AMG expressed interest in purchasing the AMG Equipment.

B. AMG's Offer to Purchase the AMG Equipment

11. After arm's length, good faith negotiations, Gulf and AMG executed the AMG APA, which includes the below material terms:²

- a. Purchase Price. \$2,000,000 in cash.
- b. Deposit. \$100,000, which is fully refundable unless Gulf terminates the AMG APA because of AMG's breach of any representation, warranty, covenant, or agreement in the AMG APA and AMG either does not or cannot cure such breach.
- c. Purchased Assets. The AMG Equipment, which includes the Scrubber, certain other equipment, including roaster spares, laboratory equipment, and spare parts inventory.
- d. Assumed Liabilities. AMG will not assume any of Gulf's liabilities, including, without limitation, any liabilities associated with: (i) Gulf's employees; (ii) the operation of Gulf's Business, including any environmental liabilities; (iii) any of Gulf's executory contracts or unexpired leases; or (iv) any claims against Gulf.
- e. Conditions Precedent. Standard conditions precedent to closing.
- f. Termination. AMG may terminate the AMG APA if, among other things, (i) the Sale Order has not been entered on or before April 26, 2017, (ii) the Sale Order does not become a Final Order on or before May 10, 2017, or (iii) the Closing does not occur on or before May 12, 2017.

12. Contemporaneously with negotiating the terms of the AMG APA with AMG, Gulf was far along in negotiations with EcoRight Processing LLC ("EcoRight"), a party who had expressed interest in purchasing substantially all of Gulf's assets as a going-concern. However, to date, EcoRight has not been in a position to actually sign an asset purchase agreement. Understanding Gulf's desire for a going concern sale, AMG agreed to act as the back-up bidder for the AMG Equipment, meaning AMG would purchase the AMG Equipment if the going-concern sale did not close. Accordingly, the AMG APA includes reference to an "Alternative

² This following is intended to provide a summary of certain key terms of the APA. To the extent there is any conflict between the contents of this Motion and the APA, the APA shall control.

Transaction,” which is the going-concern sale. Prior to filing this Motion, Gulf notified AMG that the going-concern sale asset purchase agreement had not been signed. Because of: (a) Gulf’s commitment to AMG; (b) the need for any going concern sale to go forward, if at all, as soon as possible; and (c) the desire to ensure the value of the AMG Equipment for the estate, the parties decided to move forward and seek Court approval of the AMG transaction even though the EcoRight agreement has not been signed. If the EcoRight agreement is signed before the hearing on this Motion, Gulf will supplement this Motion. If not, the Motion will go forward with the AMG APA on a standalone basis.

13. Notably, the AMG APA provides for a Break-Up Fee of \$75,000 to AMG if the EcoRight sale closes. This is appropriate consideration for AMG agreement to be a base “back-up bidder” that is committed, while EcoRight is not. If this Motion is supplemented to include an EcoRight transaction, Gulf will seek Court approval of the Break-Up Fee at the Sale Hearing.

IV. RELIEF REQUESTED

14. Gulf respectfully requests that the Court enter an order: (a) authorizing the sale of the AMG Equipment to AMG, as set forth in the AMG APA, free and clear of all liens, claims, encumbrances, or other interests (collectively, the “Interests”), pursuant to section 363(b), (f), and (m) of the Bankruptcy Code, with such Interests to attach to the sale proceeds with the same validity, priority, extent, and perfection as existed immediately prior to the sale;³ and (b) granting such other relief as may be necessary or appropriate.

³ In the case caption to this Motion, Gulf listed as Respondents all parties who Gulf believes have asserted or may assert or hold an Interest in Gulf’s assets. Comilog Holding filed a UCC-1 Financing Statements prior to the Petition Date related to substantially all of Gulf’s Assets other than the real estate. The Texas Comptroller, Brazoria County, Texas, and Harris County, Texas have asserted liens on account of unpaid pre-petition taxes owed by Gulf. The Texas Attorney General Environmental Protection Division has asserted claims for fines, penalties, and injunctive relief relating to alleged violations by Gulf of various provisions of the Texas Health & Safety Code, the Texas Water Code, and the Texas Administrative Code. Gulf reserves its right to object to any Interest asserted against Gulf’s assets.

V. Basis for Relief

15. In the exercise of its sound business judgment, Gulf has determined that the sale of the AMG Equipment to AMG provides the highest and best opportunity for Gulf to maximize value for its estate and stakeholders.

A. The Sale Was Negotiated in Good Faith and Made for Sound Business Reasons; the Proposed Purchase Price Is Fair and Reasonable

16. Section 363(b) of the Bankruptcy Code specifically authorizes asset sales outside the ordinary course of business. See 11 U.S.C. § 363(b)(1) (“[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate”). To approve the use, sale, or lease of property outside of the ordinary course of business, the Court must find some articulated business justification for the proposed action. See In re Abbotts Dairies of Pa. Inc., 788 F.2d 143, 145-47 (3d Cir. 1986) (implicitly adopting the articulated business justification and good faith tests of Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1070 (2d Cir. 1983)); see also In re Del. & Hudson Ry. Co., 124 B.R. 169, 175-76 (D. Del. 1991) (concluding that the Third Circuit had adopted a “sound business purpose” test in Abbotts Dairies).

17. Generally, courts examine four factors when determining whether a sale of a debtor’s assets should be approved: (a) whether a sound business reason exists for the proposed transaction; (b) whether fair and reasonable consideration is provided; (c) whether the transaction has been proposed and negotiated in good faith; and (d) whether adequate and reasonable notice is provided. See Lionel, 722 F.2d at 1071 (setting forth the “sound business purpose” test); Abbotts Dairies, 788 F.2d at 145-57 (implicitly adopting the articulated business justification test and adding the “good faith” requirement); Del. & Hudson Ry., 124 B.R. at 176. A debtor’s showing of a sound business purpose need not be unduly exhaustive; rather, a debtor is “simply

required to justify the proposed disposition with sound business reasons.” In re Baldwin United Corp., 43 B.R. 888, 906 (Bankr. S.D. Ohio 1984). Whether or not there are sufficient business reasons to justify a transaction depends upon the facts and circumstances of each case. Lionel, 722 F.2d at 1071.

18. In the instant case, the potential sale of the AMG Equipment to AMG serves a sound business purpose. The AMG sale is designed to maximize the value of Gulf’s most valuable assets and provides a greater benefit to Gulf’s estate than any of the alternatives, including a liquidation of Gulf’s assets, or the conversion of this chapter 11 case to one under chapter 7.

19. Further, the AMG APA is the product of good faith and arms’ length negotiations and is on commercially reasonable terms. Gulf and AMG, with the assistance of their advisors, negotiated the terms of the AMG APA at arm’s length, and Gulf kept Comilog and the Committee apprised of the discussions at all times. In addition, as evidenced by the lengthy, and thus far unsuccessful, marketing efforts, including the Court-approved sale process authorized pursuant to the Procedures Order, the AMG APA is the highest and best offer for the AMG Equipment.

20. Moreover, no prejudice will result to any parties in interest because: (a) notice of the sale has been afforded to all creditors and parties in interest with adequate and reasonable notice of the Sale under the circumstances, and (b) such notice provided sufficient information regarding the sale of the assets and the time for filing objections to the sale.

21. There is more than ample business justification for the approval of the AMG APA and the sale of the AMG Equipment to AMG in accordance with the AMG APA. Gulf submits that the sale will inure to the benefit of Gulf’s estate and creditors, as it will further Gulf’s efforts

to successfully prosecute this chapter 11 case and, therefore, represents the exercise of Gulf's sound business judgment.

B. The Sale Satisfies the Requirements of Section 363(f) of the Bankruptcy Code for a Sale Free and Clear of Liens, Claims, and Interests

22. Pursuant to section 363(f) of the Bankruptcy Code, a debtor in possession may sell all or any part of its property free and clear of any and all liens, claims or interests in such property if (i) such a sale is permitted under applicable non-bankruptcy law, (ii) the party asserting such a lien, claim, or interest consents to such sale, (iii) the interest is a lien and the purchase price for the property is greater than the aggregate amount of all liens on the property, (iv) the interest is the subject of a *bona fide* dispute, or (v) the party asserting the lien, claim or interest could be compelled, in a legal or equitable proceeding, to accept a money satisfaction for such interest. 11 U.S.C. § 363(f); see In re Elliot, 94 B.R. 343, 345 (E.D. Pa. 1988) (section 363(f) written in disjunctive; court may approve sale “free and clear” provided at least one of the subsections is met).

23. Section 363(f) of the Bankruptcy Code provides for the sale of assets “free and clear of any interests.” The term “any interest,” as used in section 363(f), is not defined in the Bankruptcy Code. Folger Adam Security v. DeMatteis/MacGregor, JV, 209 F.3d 252, 259 (3d Cir. 2000). In Folger Adam Security, the Third Circuit specifically addressed the scope of the term “any interest” and observed that, while some courts have “narrowly interpreted that phrase to mean only *in rem* interests in Property,” the trend in modern cases is towards “a broader interpretation which includes other obligations that may flow from ownership of the Property.” Id. at 258. As the Fourth Circuit determined in In re Leckie Smokeless Coal Co., 99 F.3d 573, 581-582 (4th Cir. 1996), section 363(f) is not limited to *in rem* interests. Thus, a debtor “could sell [its] assets under § 363(f) free and clear of successor liability that otherwise would have

arisen under federal statute.” Id. at 581-582; see also In re Appalachia Fuels, LLC, 503 F.3d 538 (6th Cir. 2007) (approving a sale free and clear of “claims” arising as coal commission sales).

24. Section 363(f) is drafted in the disjunctive. Thus, satisfaction of any of the requirements enumerated therein will suffice to allow the sale of Gulf’s assets free and clear of all the Interests. See In re Gulf States Steel, Inc. of Ala., 285 B.R. 497, 506 (Bankr. N.D. Ala. 2002); Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot), 94 B.R. 343, 345 (E.D. Pa. 1988).

25. Gulf submits that each Interest satisfies at least one of the five conditions of section 363(f) of the Bankruptcy Code, and that any such Interest will be adequately protected by either being paid in full at the time of closing, or attaching to the proceeds of the sale, subject to any claims and defenses Gulf may possess with respect thereto. Gulf accordingly requests authority to convey the AMG Equipment to AMG, free and clear of all Interests under the express terms of the AMG APA, with such Interests to attach to the proceeds from the sale of Gulf’s assets, with the same validity, extent, priority, and perfection as existed immediately prior to the sale, subject to the terms of the relevant purchase agreement, as applicable, and the proposed Sale Order.

26. Gulf further submits that the sale should not expose AMG to any liability as a successor of Gulf or its estate. Courts have also consistently held that a buyer of a debtor’s assets pursuant to a Bankruptcy Code section 363 sale takes free and clear from successor liability relating to the debtor's business. See, e.g., In re Trans World Airlines, Inc., 322 F.3d 283, 288-90 (3d Cir. 2003) (sale of assets pursuant to section 363(f) barred successor liability claims for employment discrimination and rights under travel voucher program); In re Leckie Smokeless Coal Co., 99 F.3d at 585 (affirming the sale of debtors’ assets free and clear of certain

taxes); In re Insilco Techs., Inc., 351 B.R. 313, 322 (Bankr. D. Del. 2006) (stating that a 363 sale permits a buyer to take ownership of property without concern that a creditor will file suit based on a successor liability theory); see also In re Chrysler LLC, 405 B.R. 84, 111 (Bankr. S.D.N.Y. 2009) (“[I]n personam claims, including any potential state successor or transferee liability claims against New Chrysler, as well as in rem interests, are encompassed by section 363(f) and are therefore extinguished by the Sale Transaction.”).

27. Accordingly, the Court should approve the sale of the AMG Equipment to AMG, free and clear of Interests under section 363(f) of the Bankruptcy Code, and all potential claimants should be compelled to look exclusively to the proceeds of the sale for satisfaction of their claims.

C. The Proposed Sale Is in Good Faith Under Section 363(m) of the Bankruptcy Code and Not in Violation of Section 363(n) of the Bankruptcy Code

28. Section 363(m) of the Bankruptcy Code provides:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m). Section 363(n) of the Bankruptcy Code, among other things, provides, in turn, that a trustee may avoid a sale under such section if the sale price was controlled by an agreement among potential bidders at the sale. While the Bankruptcy Code does not define “good faith,” the Third Circuit in Abbotts Dairies has held that:

[t]he requirement that a Buyer act in good faith . . . speaks to the integrity of his conduct in the course of the sale proceedings. Typically, the misconduct that would destroy a Buyer’s good faith status at a judicial sale involves fraud, collusion between the Buyer and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.

788 F.2d at 147 (citations omitted).

29. As described above, the AMG APA is the product of good faith and free from self-dealing. Gulf intends to establish at the Sale Hearing that the AMG APA was a negotiated, arms' length transaction, in which AMG has acted in good faith, without collusion or fraud of any kind, and in compliance with the Abbotts Dairies standard. The evidence at the Sale Hearing will further establish that neither Gulf nor AMG has engaged in any conduct that would prevent the application of section 363(m) of the Bankruptcy Code or allow Gulf to avoid the sale pursuant to section 363(n) of the Bankruptcy Code with respect to the consummation of the sale transaction with AMG or the transfer of the AMG Equipment to AMG.

30. Accordingly, Gulf requests that the Court find that AMG has purchased the assets described in its respective purchase agreement in good faith within the meaning of section 363(m) of the Bankruptcy Code, and is entitled to the protections of sections 363(m) and 363(n) of the Bankruptcy Code.

VI. THIS MOTION SHOULD BE HEARD ON AN EXPEDITED BASIS

31. In accordance with Local Rule 9013-2, Gulf has requested that this Motion be heard on an expedited basis for just cause. This is an unusual transaction because Gulf and AMG agreed for AMG to serve as a back-up bidder to EcoRight, which could have been (and may still be) a deal that saves jobs and the going concern business. If the EcoRight deal does go forward (and the Motion is so supplemented), a hearing needs to be held on April 11, 2017, to reduce substantial expenses associated with the cost of retaining employees. On the other hand, if EcoRight does not go forward, moving forward with AMG as soon as possible will accelerate Gulf's wind down – while AMG will have substantial time to remove the AMG Equipment, it has agreed to do so on a faster timetable than the AMG APA's deadline if commercially

reasonable. Accordingly, having the hearing on an expedited basis guarantees a \$2 million purchase price for the AMG Equipment and retains the possibility of a going concern transaction.

32. The need for an expedited hearing has not been caused by any lack of due diligence on the part of Gulf or Gulf's counsel and has been brought solely by circumstances outside of their control. More specifically, the parties agreed to the terms of the AMG APA just prior to the filing of this Motion.

VII. WAIVER OF BANKRUPTCY RULE 6004

33. Bankruptcy Rule 6004(h) provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” FED. R. BANKR. P. 6004(h). Notwithstanding the possible applicability of Bankruptcy Rule 6004 or otherwise, Gulf requests the relief sought by this Motion be immediately effective and enforceable upon entry of the order requested hereby. In order to allow the immediate realization of value for the AMG Equipment, Gulf requests that any order granting this Motion be effective immediately and not subject to the 14-day stay imposed by Bankruptcy Rules 6004(h) and 6006(d).

VIII. NOTICE

34. No trustee or examiner has been appointed in Gulf's chapter 11 case. This Motion has been served on the following parties or, in lieu thereof, to their counsel, if known: (i) the United States Trustee for the Western District of Pennsylvania; (ii) counsel for the Committee; (iii) counsel to Comilog; (iv) the District Director of Internal Revenue; (v) TCEQ; (vi) the Texas Office of the Attorney General Environmental Protection Division; (vii) all entities known, as of the date of this Motion, to have a lien, or to have asserted a lien, on the AMG Equipment, including the above-captioned Respondents; and (viii) all other parties

requesting notice in the Debtors' chapter 11 cases. In addition, in accordance with Local Rule 6004-1, notice of the Sale will be served on all Gulf's creditors, uploaded to the Court's Electronic Access to Sales Information system, and published in the Houston Chronicle. In light of the nature of the relief requested herein, Gulf submits that no other or further notice need be given.

IX. NO PRIOR REQUEST

35. No prior request for the relief sought herein has been made to this Court or any other court.

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WHEREFORE, Gulf requests that the Court enter an order: (a) authorizing the sale of the AMG Equipment to AMG, free and clear of all Interests; and (b) granting such other relief as may be necessary or appropriate.

March 28, 2017

Respectfully submitted,

/s/ Sean D. Malloy

Sean D. Malloy (Ohio 0073157) (admitted *pro hac vice*)
Michael J. Kaczka (Ohio 0076548) (admitted *pro hac vice*)
Joshua A. Gadharf (Michigan P76860) (admitted *pro hac vice*)
Maria G. Carr (Ohio 0092412) (admitted *pro hac vice*)
McDONALD HOPKINS LLC
600 Superior Avenue, East, Suite 2100
Cleveland, OH 44114
Telephone: (216) 348-5400
Facsimile: (216) 348-5474
E-mail: smalloy@mcdonaldhopkins.com
mkaczka@mcdonaldhopkins.com
jgadharf@mcdonaldhopkins.com
mcarr@mcdonaldhopkins.com

-and-

William E. Kelleher, Jr. (Pa. I.D. No. 30747)
Thomas D. Maxson (Pa. I.D. No. 63207)
Helen S. Ward (Pa. I.D. No. 204088)
COHEN & GRIGSBY, P.C.
625 Liberty Avenue, 5th Floor
Pittsburgh, PA 15222
Telephone: (412) 297-4900
Facsimile: (412) 209-0672
Email: wkelleher@cohenlaw.com
tmaxson@cohenlaw.com
hward@cohenlaw.com

COUNSEL FOR DEBTORS
AND DEBTORS IN POSSESSION

EXHIBIT A

AMG Asset Purchase Agreement

ASSET PURCHASE AGREEMENT

dated as of March 27, 2017

between

AMG VANADIUM LLC

and

GULF CHEMICAL & METALLURGICAL CORPORATION

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EXHIBITS

Exhibit A - Bill of Sale

ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT, dated as of March 27, 2017 (the “**Agreement**”), between AMG VANADIUM LLC, a Delaware limited liability company (“**Buyer**”), and GULF CHEMICAL & METALLURGICAL CORPORATION, a Texas corporation (“**Seller**,” and together with Buyer, the “**Parties**”).

WHEREAS, Seller is engaged in the business of processing spent catalysts to create vanadium oxide and molybdenum oxide products (together, the “**Business**”);

WHEREAS, on June 14, 2016, Seller and its subsidiary, Bear Metallurgical Company, a Delaware corporation, filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101-1532, et seq. (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Western District of Pennsylvania (the “**Bankruptcy Court**”), thereby commencing the jointly administered Case No. 16-22192-JAD (the “**Bankruptcy Case**”), and Seller continues to manage its property as debtor and debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code;

WHEREAS, Seller is entering into an asset purchase agreement (the “**Alternative Transaction Agreement**”) with EcoRight Processing LLC (the “**Alternative Buyer**”) with respect to the sale of substantially all of the assets of Seller, including the Purchased Assets (as defined below) (the “**Alternative Transaction**”); and

WHEREAS, if the Alternative Transaction does not close, Seller wishes to sell to Buyer, and Buyer wishes to purchase from Seller, the Purchased Assets, all on the terms and conditions set forth in this Agreement and in accordance with Sections 105, 363 and 365 and other applicable provisions of the Bankruptcy Code (the “**Acquisition**”);

NOW, THEREFORE, in consideration of the foregoing premises and the respective representations and warranties, covenants and agreements contained herein, the Parties hereto, intending to be legally bound, agree as follows:

ARTICLE I

DEFINITIONS

1.1 Definitions. When used in this Agreement, unless otherwise defined herein, the following terms shall have the meanings assigned to them in this Section 1.1.

“**Affiliate**” means, with respect to any specified Person, any other Person directly or indirectly controlling, controlled by or under common control with such specified Person.

“**Authorization**” means any approval, consent, waiver, certificate, license, permit, franchise or similar authorization of or from any Governmental Entity or pursuant to any Law.

“**Business Day**” means a day other than a Saturday, Sunday or other day on which banks located in New York City are authorized or required by Law to close.

“Claims” means all known and unknown, liquidated or unliquidated, contingent or fixed claims (including, without limitation, any and all “claims” as defined in section 101(5) of the Bankruptcy Code), interests rights or causes of action which a Person has or may have, whether now existing or hereafter arising.

“Code” means the Internal Revenue Code of 1986, as amended.

“Contract” means any written agreement.

“Final Order” means an order, ruling, judgment, the operation or effect of a judgment or other decree issued and entered by the Bankruptcy Court or by any state, commonwealth or other federal court or other court of competent jurisdiction which has not been reversed, vacated, stayed, modified or amended in any manner and as to which (a) the time to appeal or petition for review, rehearing, certiorari, reargument or retrial has expired and as to which no appeal or petition for review, rehearing, certiorari or retrial is pending or (b) no appeal or petition for review, rehearing, certiorari or retrial can be taken or granted.

“Governmental Entity” means any entity or body exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to United States federal, state or local government or foreign, international, multinational or other government, including any department, commission, board, agency, bureau, official or other regulatory, administrative or judicial authority thereof or any arbitrator.

“Indebtedness” means all amounts (including the current portion thereof) owing by Seller (including principal, interest, prepayment penalties or fees, premiums, breakage amounts, expense reimbursements or other amounts payable in connection with any repayment) in respect of: (a) any indebtedness for borrowed money (including from Seller and its Affiliates), (b) any obligations evidenced by bonds, debentures, notes or other similar instruments, (c) any obligations to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business, (d) any obligations as lessee under capitalized leases, (e) any indebtedness created or arising under any conditional sale or other title retention agreement with respect to acquired property, (f) any obligations, contingent or otherwise, under acceptance credit, letters of credit or similar facilities, (g) any obligations of a Person, other than Seller, secured by a Lien against any of Seller’s properties or assets or (h) any guaranty of any of the foregoing.

“Knowledge” of Seller or any similar phrase means the current actual knowledge of Eric Caridroit.

“Law” means any federal, state, local or foreign statute, law, code, ordinance, rule, regulation, constitution, treaty, common law, compact, judgment decree, decision, order, ruling, or other requirement or rule of law of any Governmental Entity, administrative pronouncement having the effect of law, or legally binding or enforceable judicial or administrative guidance, pronouncement, or policy.

“Liability” means any liability, Indebtedness, obligation, commitment, expense, claim, commitment, deficiency or guaranty of or by any Person of any type whenever or however arising, and including all costs and expenses relating thereto.

“**Lien**” means, with respect to any property or asset, any mortgage, lien, pledge, interest, charge, security interest or other encumbrance or restriction of any kind (including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership) in respect of such property or asset.

“**Material Adverse Effect**” means any event, occurrence, fact, condition or change that has had, or would reasonably be likely to have, individually or in the aggregate, a material adverse effect on (a) the Purchased Assets taken as whole, or (b) the ability of Seller to consummate the Acquisition and the other transactions contemplated hereby or by the other Transaction Documents on a timely basis; provided, however, that none of the following shall be deemed (either alone or in combination) to constitute, and none of the following shall be taken into account in determining whether there has been or may be, a Material Adverse Effect: (i) the effect of any change that generally affects the United States or foreign economies or securities, financial, banking or credit markets or geopolitical conditions; (ii) the effect of any change that generally affects the industry in which the Business operates; (iii) the effect of any changes in applicable Laws; (iv) the effect of any change caused by hostilities, acts of war, sabotage or terrorism or military actions or any escalation or material worsening of any such hostilities, acts of war, sabotage or terrorism or military actions; (v) the Bankruptcy Case; or (vi) the execution of this Agreement.

“**Order**” means any award, injunction, judgment, decree, order, ruling, subpoena or verdict or other decision issued, promulgated or entered by or with any Governmental Entity of competent jurisdiction.

“**Organizational Documents**” means, with respect to any entity, the certificate of incorporation, the articles of incorporation, by-laws, articles of organization, partnership agreement, limited liability company agreement, formation agreement, joint venture agreement or other similar organizational documents of such entity (in each case, as amended through the date of this Agreement).

“**Permitted Liens**” means (a) Liens for current real or personal property taxes that are not yet due and payable, (b) workers’, carriers’ and mechanics’ or other like Liens incurred in the ordinary course of business and (c) Liens that are immaterial in character, amount and extent and which do not materially detract from the value or materially interfere with the present or proposed use of the properties they affect.

“**Person**” means an individual, a corporation, a partnership, a limited liability company, a trust, an unincorporated association, a Governmental Entity or any agency, instrumentality or political subdivision of a Governmental Entity, or any other entity or body.

“**Related to the Business**” means used or held for use in or otherwise relating primarily to the Business.

“**Tax**” or “**Taxes**” means any and all federal, state, local, or foreign net or gross income, gross receipts, net proceeds, sales, use, ad valorem, value added, franchise, bank shares, withholding, payroll, employment, excise, property, deed, stamp, alternative or add-on minimum, environmental, profits, windfall profits, transaction, transfer, customs duties,

registration, unclaimed property, escheat, license, lease, service, service use, occupation, severance, energy, unemployment, disability, social security, workers' compensation, capital, capital stock, premium, and other taxes of any kind whatsoever, including any interest, penalty or addition thereto, whether disputed or not.

“**Tax Returns**” means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof and also including Form TD F 90-22.1 and FinCen Form 114.

“**Transfer Taxes**” means sales, use, transfer, real property transfer, recording, documentary, stamp, registration and stock transfer taxes and fees incurred in connection with the transactions contemplated by this Agreement.

“\$” means United States dollars.

1.2 Other Defined Terms. The following terms have the meanings assigned to such terms in the Sections of the Agreement set forth below:

| | |
|-----------------------------------|----------|
| Acquisition | Recitals |
| Agreement | Preamble |
| Alternative Buyer | Recitals |
| Alternative Transaction | Recitals |
| Alternative Transaction Agreement | Recitals |
| Bankruptcy Case | Recitals |
| Bankruptcy Code | Recitals |
| Bankruptcy Court | Recitals |
| Bill of Sale | 3.2(b) |
| Business | Recitals |
| Buyer | Preamble |
| Buyer Closing Certificate | 10.3(d) |
| Cash Amount | 2.3 |
| Chapter 7 Case | 7.6 |
| Closing | 3.1 |
| Closing Date | 3.1 |
| Deposit | 2.4(a) |
| Early Closing Date | 3.1 |
| Excluded Assets | 2.1(b) |
| Excluded Liabilities | 2.2(b) |
| Names | 8.1 |
| Non-Party Affiliates | 12.14 |
| Parties | Preamble |
| Purchase Price | 2.3 |
| Pre-Closing Tax Period | 2.5 |
| Post-Closing Tax Period | 2.5 |
| Sale Motion | 6.1 |
| Sale Order | 6.1 |

Seller
Seller Closing Certificate
Transaction Documents

Preamble
10.2(d)
4.2

ARTICLE II

PURCHASE AND SALE

2.1 Purchase and Sale of Assets.

(a) Contemporaneously herewith, Seller has agreed to sell substantially all of its assets, including the Purchased Assets, to the Alternative Buyer pursuant to the Alternative Transaction Agreement. The Alternative Transaction is a going concern transaction, and Buyer acknowledges that the Alternative Transaction is subject to certain conditions that have not yet been satisfied but is Seller's primary goal. In light of the foregoing, the Parties agree that if the Alternative Transaction closes, Seller shall immediately return the Deposit (as defined below) and pay the Break-Up Fee (as defined below) to Buyer at the closing of the Alternative Transaction whereupon Seller shall have no other responsibilities or liabilities to Buyer hereunder. For the avoidance of doubt, if the Alternative Transaction closes and Seller returns the Deposit and pays the Break-Up Fee, Buyer shall have no interest in the Purchased Assets of any kind whatsoever. If Seller provides written notice to Buyer that the Alternative Transaction will not close, or the Alternative Transaction has not closed on or before May 10, 2017, then subject to the terms and conditions set forth herein, at the Closing, Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase from Seller, free and clear of all Liens and Claims, all of Seller's right, title and interest in and to Seller's specific equipment and other items of tangible personal property that are set forth on Schedule 2.1(a) (collectively, the "**Purchased Assets**").

(b) The Parties hereby acknowledge and agree that Seller is not selling and Buyer is not purchasing any assets, properties or rights of Seller other than the Purchased Assets. All assets, properties, and rights of any kind not specifically listed on Schedule 2.1(a) are "**Excluded Assets**."

2.2 No Assumption of Liabilities; Exclusion of Excluded Liabilities.

It is expressly agreed by the Parties that Buyer does not assume any of Seller's Liabilities. Buyer shall not assume or pay, perform or discharge any Liabilities of Seller, including without limitation the Liabilities set forth below (all such Liabilities being herein referred to as the "**Excluded Liabilities**"):

(i) Liabilities associated with any Excluded Assets;

(ii) Liabilities associated with or arising from the Seller's operation of its Business, including but not limited to liabilities associated with Seller's Real Property;

(iii) all Indebtedness of Seller;

- (iv) all trade accounts payable of Seller to third parties;
- (v) Liabilities under any Seller Contract;
- (vi) Liabilities under the Seller Benefit Plans;
- (vii) all Liabilities (A) for Taxes of Seller or any of their owners or for Taxes related to the Business other than the Purchased Assets; or (B) for Taxes arising as a result of or with respect to the Purchased Assets and Taxes that will arise as a result of the sale of the Purchased Assets pursuant to this Agreement other than as set forth in Section 2.5 hereof.
- (viii) all Liabilities arising from or related to any contract of Seller with any third party not related to Seller or any of Affiliate of Seller.
- (ix) all Liabilities arising out of or relating to the Business or the Purchased Assets to the extent such Liabilities relate to events or occurrences arising prior to the Closing, or any transactions entered into or any state of facts existing, or the use, ownership, possession or operation of the Purchased Assets or the conduct of the Business, prior to the Closing.

2.3 Purchase Price. The purchase price for the Purchased Assets (the “**Purchase Price**”) shall consist of TWO MILLION DOLLARS (\$2,000,000) in cash (the “**Cash Amount**”).

2.4 Buyer’s Deposit.

(a) Concurrently with the execution of this Agreement, Buyer shall deposit with Seller an amount equal to ONE HUNDRED THOUSAND DOLLARS (\$100,000) (the “**Deposit**”) in immediately available, good funds (which Deposit shall be held in a non- interest bearing trust account by counsel to Seller).

(b) If this Agreement is terminated pursuant to Section 11.1(a) other than pursuant to Section 11.1(a)(iv), Seller shall deliver the Deposit (without interest) to Buyer no later than the second Business Day following the termination of this Agreement.

(c) If this Agreement is terminated pursuant to Section 11.1(a)(iv) and Seller is not itself in breach of the Agreement in a manner that would permit Buyer to terminate this Agreement, Seller shall retain the Deposit.

(d) If the Closing occurs, the Deposit shall be credited against the Purchase Price.

2.5 Taxes and Proration. Unless excused pursuant to Section 1146 of the Bankruptcy Code, all personal property Taxes levied with respect to the Purchased Assets for a taxable period that includes (but does not end at) the Closing shall be apportioned based on the number of days of such taxable period included in the period ending with and including the Closing Date (the “**Pre-Closing Tax Period**”), and the number of days of such taxable period beginning after

the Closing Date (the “**Post-Closing Tax Period**”). If applicable, Seller shall be liable for the proportionate amount of such Taxes that is attributable to the Pre-Closing Tax Period, and Buyer shall be liable for the proportionate amount of such Taxes that is attributable to the Post-Closing Tax Period. Any transfer taxes resulting from this transaction, unless excused by Section 1146 of the Bankruptcy Code, shall be paid 50% by Seller and 50% by Buyer.

ARTICLE III

CLOSING

3.1 Closing. The closing of the Acquisition (the “**Closing**”) shall take place at the offices of Cohen & Grigsby, P.C., 625 Liberty Avenue, Pittsburgh, PA 15222-3152, at 9:00 a.m. on a date to be specified by the Parties which shall be no later than two Business Days after the later of (i) satisfaction (or waiver as provided herein) of the conditions set forth in Article X (other than those conditions that by their nature will be satisfied at the Closing), and (ii) the date on which the Sale Order becomes a Final Order, unless another time, date and/or place is agreed to in writing by the Parties. The date on which the Closing occurs is referred to in this Agreement as the “**Closing Date**.” Notwithstanding any other provision in this Agreement, Buyer shall not be obligated to close the Acquisition on any date that is prior to May 10, 2017 (any such date, an “**Early Closing Date**”), unless and until Seller has provided Buyer with not less than five Business Days’ written notice of such Early Closing Date.

3.2 Seller Closing Deliverables. At the Closing, Seller shall deliver to Buyer the following:

- (a) a copy of the Sale Order;
- (b) a bill of sale in substantially the form attached hereto as Exhibit A (the “**Bill of Sale**”) and duly executed by Seller;
- (c) the Seller Closing Certificate;
- (d) an executed statement from the Seller, certifying, pursuant to Treasury Regulations Section 1.1445-2(b)(2), that the Seller is not a non-U.S. person and otherwise in a form and substance reasonably acceptable to Buyer and its legal counsel, duly executed by the Seller; and
- (e) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to Buyer, as may reasonably be required to give effect to this Agreement.

3.3 Buyer Closing Deliverables. At the Closing, Buyer shall deliver to Seller the following:

- (a) the Purchase Price (less the Deposit which shall be credited and applied toward payment of the Purchase Price) as stated in Paragraph 2.3;
- (b) the Buyer Closing Certificate; and

(c) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to Seller and Buyer, as may reasonably be required to give effect to this Agreement.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Buyer that each statement contained in this Article IV is true and correct. EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE IV OR ANOTHER TRANSACTION DOCUMENT, IT IS UNDERSTOOD AND AGREED THAT SELLER IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PURCHASED ASSETS, INCLUDING BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

4.1 Organization and Good Standing. Seller is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation. Seller has all requisite corporate power to own, lease and operate its properties and to carry on its business as now being conducted, and is duly qualified to do business and is in good standing as a foreign corporation in each jurisdiction in which it owns or leases property or conducts any business so as to require such qualification, except where the failure to be so qualified would not have, and would not reasonably be expected to have, a Material Adverse Effect.

4.2 Authority and Enforceability. Subject to the entry of the Sale Order, Seller has the requisite power and authority to execute and deliver this Agreement and each other agreement, document, instrument and certificate contemplated by this Agreement (the "**Transaction Documents**"), and to fully and timely consummate the Acquisition and the other transactions contemplated by the Transaction Documents. Subject to the entry of the Sale Order, the execution and delivery of this Agreement and the other Transaction Documents to be executed by Seller and the consummation of the Acquisition have been duly authorized by all necessary corporate action on the part of Seller. This Agreement has been, and each of the other Transaction Documents to be executed by Seller will be, at or prior to the Closing, duly executed and delivered by Seller, and, subject to the entry of the Sale Order and assuming due authorization, execution and delivery by Buyer, constitutes or will constitute the valid and binding obligation of Seller.

4.3 No Conflicts; Consents.

(a) The execution and delivery of this Agreement and the other Transaction Documents by Seller do not, and the consummation of the Acquisition and the other transactions contemplated by the Transaction Documents by Seller will not, (i) violate the provisions of any of the Organizational Documents of Seller, (ii) subject to the entry of the Sale Order, conflict in any material respect with, or result in any material respect in any breach of, or constitute a default (or an event that with or without the giving of notice or lapse of time or both would become a default) under, impair Seller's rights or alter the rights or obligations of any third party

under, give to others any rights of termination, amendment, acceleration or cancellation of, or require a consent of any Person, or result in the creation of a Lien or Claim on any of the assets of Seller, (iii) violate any Law applicable to Seller or by which any of their respective properties or assets are bound or subject, (iv) be subject to any claims as to any executory Contracts related to the purchase assets (except any remaining warranties), or (v) be subject to any liens of any creditors.

(b) Subject to the entry of the Sale Order, no Authorization or Order of, registration, declaration or filing with, or notice to any Person, including any Governmental Entity, is required by Seller in connection with the execution and delivery of this Agreement and the other Transaction Documents, and the consummation of the Acquisition and the other transactions contemplated hereby and thereby. To the extent a permit is required to allow the sale or removal of any of the Purchased Assets, Seller shall acquire such permit prior to Closing.

4.4 Ownership of Purchased Assets. Seller has good, valid and marketable title to the Purchased Assets, and the Purchased Assets will be transferred to Buyer free and clear of Liens and Claims pursuant to the Sale Order.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller that each statement contained in this Article V is true and correct.

5.1 Organization and Good Standing. Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, has all requisite limited liability company power to own, lease and operate its properties and to carry on its business as now being conducted, and is duly qualified to do business and is in good standing as a foreign limited liability company in each jurisdiction in which it owns or leases property or conducts any business so as to require such qualification, except where the failure to be so qualified would not impair or delay in any material respect the ability of Buyer to perform its obligations under this Agreement.

5.2 Authority and Enforceability. Buyer has the requisite power and authority to execute and deliver this Agreement and each other Transaction Document, and to fully and timely consummate the Acquisition and the other transactions contemplated by the Transaction Documents. The execution and delivery of this Agreement and the other Transaction Documents and the consummation of the Acquisition have been duly authorized by all necessary limited liability company action on the part of Buyer. This Agreement has been, and each of the other Transaction Documents to be executed by Buyer will be, at or prior to Closing, duly executed and delivered by Buyer and, subject to the entry of the Sale Order and assuming due authorization, execution and delivery by Seller, constitutes or will constitute the valid and binding obligation of Buyer, enforceable against it in accordance with its terms, except as such enforceability may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting or relating to creditors' rights generally, and (b) the availability of injunctive relief and other equitable remedies.

5.3 No Conflicts; Consents.

(a) The execution and delivery of this Agreement and the other Transaction Documents by Buyer do not, and the consummation of the Acquisition and the other transactions contemplated by the Transaction Documents by Buyer will not, (i) violate the provisions of any Organizational Document of Buyer, (ii) violate any material Contract to which Buyer is a party, or (iii) assuming compliance by Buyer with the matters referred to in Section 5.3(b), violate any Law of any Governmental Entity applicable to Buyer, except in the cases of (ii) and (iii) where such violation would not impair or delay in any material respect the ability of Buyer to perform its obligations under this Agreement.

(b) Subject to the entry of the Sale Order, no Authorization, Order of, registration, declaration or filing with, or notice to any Person, including any Governmental Entity, is required by Buyer in connection with the execution and delivery of this Agreement and the other Transaction Documents, and the consummation of the Acquisition and the other transactions contemplated hereby and thereby, except for such Authorizations, Orders, registrations, declarations, filings and notices the failure to obtain which would not materially impair or delay the ability of Buyer to perform its obligations under this Agreement or consummate the Acquisition.

5.4 Litigation. There is no Action pending or, to the knowledge of Buyer, threatened, against Buyer which (a) challenges or seeks to enjoin, alter or materially delay the consummation of the Acquisition or (b) if determined adversely to Buyer, would materially impair or delay the ability of Buyer to perform its obligations under this Agreement or consummate the Acquisition.

5.5 Availability of Funds. Buyer has and will have at Closing cash available which is sufficient to enable it to consummate the Acquisition.

5.6 No Other Representations and Warranties. IN MAKING ITS DECISION TO ENTER INTO THIS AGREEMENT AND TO CONSUMMATE THE ACQUISITION, BUYER HAS RELIED SOLELY UPON ITS OWN INVESTIGATION AND THE EXPRESS REPRESENTATIONS AND WARRANTIES OF SELLER SET FORTH IN ARTICLE IV OF THIS AGREEMENT AND IN THE OTHER TRANSACTION DOCUMENTS. BUYER ACKNOWLEDGES AND AGREES THAT, SUBJECT TO SUCH REPRESENTATIONS AND WARRANTIES OF SELLER, UPON THE CLOSING, SELLER SHALL SELL AND CONVEY TO BUYER, AND BUYER SHALL ACCEPT, THE PURCHASED ASSETS "AS IS, WHERE IS, WITH ALL FAULTS." BUYER HAS NOT RELIED AND WILL NOT RELY ON, AND SELLER IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTEES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PURCHASED ASSETS OR RELATING THERETO MADE OR FURNISHED BY SELLER OR ITS REPRESENTATIVES, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING, EXCEPT AS EXPRESSLY STATED HEREIN OR IN THE OTHER TRANSACTION DOCUMENTS. BUYER ALSO ACKNOWLEDGES THAT THE PURCHASE PRICE REFLECTS AND TAKES INTO ACCOUNT THAT THE PURCHASED ASSETS ARE BEING SOLD "AS IS, WHERE IS, WITH ALL FAULTS," SUBJECT ONLY TO THE REPRESENTATIONS AND

WARRANTIES OF SELLER SET FORTH IN ARTICLE IV OF THIS AGREEMENT AND IN THE OTHER TRANSACTION DOCUMENTS.

ARTICLE VI

BANKRUPTCY COURT PROCEEDINGS

6.1 Definitions.

“**Breakup Fee**” means the amount of seventy-five thousand dollars (\$75,000).

“**Sale Motion**” means a motion seeking entry of the Sale Order.

“**Sale Order**” means an order of the Bankruptcy Court, in the form reasonably agreed by counsel to Buyer and counsel to Seller which, among other things: (i) approves (A) this Agreement, the other Transaction Documents and the execution, delivery, and performance by Seller of this Agreement, the other Transaction Documents and the other instruments and agreements contemplated hereby and thereby; and (B) the sale of the Purchased Assets to Buyer free and clear of all Liens, encumbrance or claim against the Seller or the bankruptcy estate of the Seller now existing or hereafter assessed; (ii) determines that Buyer is a good faith purchaser within the meaning of Section 363(m) of the Bankruptcy Code; (iii) provides that the Closing will occur in accordance with the terms and conditions hereof; (iv) provides for the waiver by the Parties of compliance with, and any claims related to non-compliance with, the provisions of any bulk sales, bulk transfer or similar Laws of any jurisdiction that may be applicable; and (v) approves the Break-Up Fee and the payment thereof pursuant to the terms hereof.

6.2 Bankruptcy Court Approvals.

(a) Seller shall file the Sale Motion no later than March 31, ~~2016~~²⁰¹⁷, on appropriate notice (which may include expedited notice if approved by the Bankruptcy Court) so that it can be heard at the Sale Hearing. Buyer shall cooperate in all reasonable respects in Seller’s efforts to obtain the Sale Order.

6.3 Competing Transactions. This Agreement is subject to the Alternative Transaction and Buyer’s right to receive the Break-Up Fee upon closing of the Alternative Transaction.

ARTICLE VII

COVENANTS OF SELLER

7.1 Conduct of Business. During the period from the date of this Agreement and continuing until the earlier of the termination of this Agreement or the Closing Date, except as may be required to comply with the Bankruptcy Code, any Order of the Bankruptcy Court or upon the consent of Buyer (which shall not be unreasonably withheld or delayed), Seller shall maintain its corporate existence and, to the extent determined by the Bankruptcy Court, pay all valid Taxes that could impact the Purchased Assets or arrange for an escrow of such Taxes to allow the Purchased Assets to be sold free and clear of Liens and Claims.

7.2 Negative Covenants. During the period from the date of this Agreement and continuing until the earlier of the termination of this Agreement and the Closing Date, except as may be required to comply with the Bankruptcy Code or any Order of the Bankruptcy Court, Seller shall not, without the consent of Buyer (which shall not unreasonably be withheld or delayed):

- (a) transfer, issue, subject to any Liens, lease, sell or dispose of any of the Purchased Assets other than pursuant to the Alternative Transaction;
- (b) fail to maintain, renew and pay premiums in full when due with respect to any insurance policy insuring any of the Purchased Assets in effect on the date hereof; or
- (c) agree to do anything prohibited by this Section 7.2.

7.3 Access to Information. Seller shall afford to Buyer and its representatives reasonable access, upon reasonable notice during normal business hours prior to the Closing, to the Purchased Assets of Seller; provided that such access does not unreasonably disrupt the normal operations of Seller

7.4 Bankruptcy Court Filings. Seller will pursue diligently the entry of the Sale Order. Buyer agrees that it will promptly take such actions as are reasonably requested by Seller to assist in obtaining entry of the Sale Order, including by furnishing affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among others, of demonstrating that Buyer is a “good faith” purchaser under section 363(m) of the Bankruptcy Code and taking such other actions that may be required by the Sales Procedures Order. If the entry of the Sale Order is appealed, Seller and Buyer will use their respective reasonable efforts to defend such appeal(s).

7.5 Notification. Seller shall promptly notify Buyer in writing of the existence or happening of any fact, event or occurrence which should be included in the Seller Disclosure Schedule in order to make the representations and warranties set forth in Article IV true and correct in all material respects as of the Closing Date, it being understood that the delivery of such information shall not in any manner constitute a waiver by Buyer of any of the conditions precedent to the Closing hereunder. Seller shall promptly notify Buyer in writing of any breach or non-compliance with any of the covenants or agreements set forth in this Agreement prior to the Closing.

7.6 Chapter 7. If Closing occurs, Seller shall not voluntarily convert the Bankruptcy Case to a case under chapter 7 of the Bankruptcy Code (a “**Chapter 7 Case**”) until the earlier of: (a) Buyer has completed removal of all of the Purchased Assets from Seller’s facility; and (b) 150 days after Closing, unless the failure to move to convert the Bankruptcy Case to a Chapter 7 case would be reasonably expected to result in a breach by Seller’s officers and/or directors of their fiduciary duties.

ARTICLE VIII

COVENANTS OF BUYER

8.1 No Use of Certain Names. In no event shall Buyer use any Names after the Closing in any manner or for any purpose. “Names” means “Gulf Chemical & Metallurgical Company” and “Eramet” or any name, logo or trademark that includes any variations and derivatives thereof and any other logos or trademarks of Seller or its Affiliates.

ARTICLE IX

COVENANTS OF BUYER AND SELLER

9.1 Public Announcements. Until the Closing, neither Buyer nor Seller shall, nor shall any of their respective Affiliates, without the approval of the other party, issue any press releases or otherwise make any public statements with respect to the transactions contemplated by this Agreement, except as may be required or permitted by any Order of the Bankruptcy Court, the Bankruptcy Code or other applicable Law or by obligations of such party or its Affiliates pursuant to any listing agreement with any national securities exchange or stock market, in which case the party required to make the release or announcement shall allow the other party reasonable time to comment on such release or announcement in advance of such issuance; provided that each of the Parties may make internal announcements to their respective employees that are consistent with the Parties’ prior public disclosures regarding the Acquisition, after reasonable consultation with the other party about the content and timing of such announcements.

9.2 Provisions for Transfer of the Purchased Assets. The Parties agree to the following provisions for transfer of the Purchased Assets, to begin immediately after the Closing Date, and Buyer agrees that as of the Closing Date, Seller and its Affiliates shall have no obligation to provide any support or other services except as set forth below:

(a) The Purchased Assets are being sold on an as-is where-is basis. Buyer inspected the Purchased Assets on February 2, 2017, and understands that the Purchased Assets have been used in connection with the storage, handling, and processing of various chemical and metallurgical products and that they may contain residues and pockets of such product. Buyer expects the condition of the Purchased Assets will be delivered in substantially the same condition as on the inspection date.

(b) Seller shall remove all baghouse bags, loose debris and any significant accumulation of material from Purchased Assets and dispose of these materials at Seller’s expense.

(c) To Seller’s knowledge, Seller shall deliver Purchased Assets in asbestos free condition.

(d) Seller shall provide Buyer an existing laydown area within its property during the entire timeline of the operation.

(e) Seller shall de-energize the Purchased Assets prior to the commencement of Buyer's activities including disconnecting electrical power, water lines, and compressed air systems.

(f) Seller shall provide Buyer with access to a dedicated office during removal activities, electrical power service and water service during Buyer's activities at the Seller's site.

(g) Seller shall provide Buyer existing TCLP data for all materials expected to be encountered during Buyer's removal of the Purchased Assets.

(h) Seller shall provide existing MSDS information relevant to the Purchased Assets.

(i) Buyer shall remove Purchased Assets from the site at its own risk and expense and in compliance with all applicable Federal, State and Local laws and regulations. In the event chemical product or residues or hazardous substances are encountered, Buyer shall properly dispose of such substance.

(j) Buyer shall be responsible for dismantling the equipment to the tops of the concrete foundation and removal of all equipment, scrap metal, unusable equipment and debris and trash generated by the Buyer's activities, from the site at Buyer's expense.

(k) Buyer shall blank off the open duct leading to the FGD with steel plate blanks provided by the Seller. Buyer will tie-off, close, bind or otherwise secure any connections to or from the Purchased Assets at its sole expense and in compliance with all applicable rules and regulations. Buyer will be responsible to leave all remaining equipment in a safe way, secured to remaining structures in a way that it cannot cause damage.

(l) Buyer shall comply with all GCMC contractor safety guidelines, must hire competent and trained contractors/subcontractors, and must carry the required insurance for its employees and/or contractors/subcontractors.

(m) Buyer shall utilize the current plant entrance and exit pathways. Buyer must return portions of the site which it accesses to the conditions in place upon arrival and is responsible for any damage to the current road and/or property.

(n) Buyer shall remove all the Purchased Assets from the Seller's premises no later than the date that is 150 days following the Closing and shall use commercially reasonable efforts to complete such removal prior to such date.

(o) Seller shall have the right to monitor Buyer's activities on Seller's premises. Buyer shall notify Seller when removal is complete, at which time Seller shall inspect the premises to ensure compliance with the procedures set forth in this Section 9.2. Seller shall provide written notice to Buyer of its inspection of the premises and the results thereof.

ARTICLE X

CONDITIONS TO CLOSING

10.1 Conditions to Obligations of Buyer and Seller. The obligations of Buyer and Seller to consummate the Acquisition are subject to the satisfaction on or prior to the Closing Date of the following conditions:

(a) No temporary restraining order, preliminary or permanent injunction or other Order preventing the consummation of the Acquisition shall be in effect.

(b) No Law shall have been enacted or shall be deemed applicable to the Acquisition which makes the consummation of the Acquisition illegal.

10.2 Conditions to Obligation of Buyer. The obligation of Buyer to consummate the Acquisition is subject to the satisfaction (or waiver by Buyer in its sole discretion) of the following further conditions:

(a) Each of the representations and warranties of Seller contained in Article IV (without regard to any materiality qualifications set forth in any such representations and warranties) shall be true and correct in all material respects, in each case on and as of date hereof and as of the Closing Date as though made on and as of the Closing Date (except for such representations and warranties expressly stated to relate to an earlier date, in which case, as of such earlier date).

(b) Seller shall have performed and complied in all material respects with all agreements and covenants required by this Agreement to be performed and complied with by it prior to or on the Closing Date.

(c) The Bankruptcy Court shall have entered the Sale Order and, as of the Closing Date, the Sale Order shall be a Final Order (unless waived in writing by Buyer and Seller) in full force and effect and shall not have been appealed, reversed, vacated, or stayed, and shall not have been amended, supplemented, or otherwise modified in any material respect without the prior written consent of Buyer.

(d) At the Closing, Seller shall have delivered to Buyer a certificate, signed by an executive officer of Seller (the "**Seller Closing Certificate**"), dated as of the Closing Date, certifying the matters set forth in Sections 10.2(a) and (b) and the other documents required to be delivered by Seller to Buyer pursuant to Section 3.2.

(e) From the date of this Agreement, there shall not have occurred any Material Adverse Effect, nor shall any event or events have occurred that, individually or in the aggregate, with or without the lapse of time, could reasonably be expected to result in a Material Adverse Effect.

10.3 Conditions to Obligation of Seller. The obligation of Seller to consummate the Acquisition is subject to the satisfaction (or waiver by Seller in its sole discretion) of the following further conditions:

(a) Each of the representations and warranties of Buyer contained in Article V (without regard to any materiality qualifications set forth in any such representations and warranties) shall be true and correct in all material respects, in each case on and as of the date hereof and on and as of the Closing Date as though made on and as of the Closing Date (except for such representations and warranties expressly stated to relate to an earlier date, in which case, as of such earlier date).

(b) Buyer shall have performed and complied in all material respects with all agreements and covenants required by this Agreement to be performed and complied with by it prior to or on the Closing Date.

(c) The Bankruptcy Court shall have entered the Sale Order and, as of the Closing Date, the Sale Order shall be a Final Order (unless waived in writing by Buyer) in full force and effect and shall not have been appealed, reversed, vacated, or stayed, and shall not have been amended, supplemented, or otherwise modified in any material respect without the prior written consent of Seller and Buyer.

(d) At the Closing, Buyer shall have delivered to Seller a certificate, signed by an executive officer of Buyer (the "**Buyer Closing Certificate**"), dated as of the Closing Date, certifying the matters set forth in Sections 10.3(a) and (b) and the other documents required to be delivered by Buyer to Seller pursuant to Section 3.3.

(e) Either: (i) Seller shall have provided a notice to Buyer that the Alternative Transaction will not close; or (ii) May 11, 2017 shall have occurred and the Alternative Transaction has not closed.

ARTICLE XI

TERMINATION

11.1 Termination.

(a) This Agreement may be terminated and the Acquisition abandoned at any time prior to the Closing:

(i) by mutual written consent of Buyer and Seller;

(ii) by Buyer or Seller if (A) the Sale Order has not been entered on or before April 26, 2017 and become a Final Order in the Bankruptcy Case on or before May 10, 2017 or (B) the Closing does not occur on or before May 12, 2017; provided that the right to terminate this Agreement under this clause (ii) shall not be available to any party whose breach of any representation, warranty, covenant or agreement under this Agreement has been the cause of or resulted in the failure of the Closing to occur on or before such date;

(iii) by Buyer if (A) there has been a breach by Seller of any representation, warranty, covenant or agreement contained in this Agreement or if any representation or warranty of Seller shall have become untrue such that the conditions set forth in Sections 10.2(a) or 10.2(b) would not be satisfied, and (B) such breach is not curable, or, if curable, is not cured within 30 days after written notice of such breach is given to Seller by Buyer;

(iv) by Seller if (A) there has been a breach by Buyer of any representation, warranty, covenant or agreement contained in this Agreement or if any representation or warranty of Buyer shall have become untrue and such that the conditions set forth in Sections 10.3(a) or 10.3(b) would not be satisfied, and (B) such breach is not curable, or, if curable, is not cured within 30 days after written notice of such breach is given to Buyer by Seller;

(v) automatically upon the Closing of the Alternative Transaction;

(vi) by Buyer or Seller in the event that the Bankruptcy Case is dismissed by the Bankruptcy Court or converted to a Chapter 7 Case; or

(vii) automatically with no further action by either Party if, prior to Closing, a Governmental Entity shall have issued an Order or taken any other action, in any case having the effect of permanently restraining, enjoining or otherwise prohibiting the Acquisition, which Order or other action is final and non-appealable.

(b) The party desiring to terminate this Agreement shall give written notice of such termination to the other party hereto.

(c) The Sale Order and Agreement shall survive a dismissal of the Bankruptcy Case by the Bankruptcy Court or a conversion to a Chapter 7 Case. It is expressly agreed that the Agreement and Order shall be binding on the Trustee in a post-Closing Chapter 7 Case.

11.2 Effect of Termination. In the event of termination of this Agreement as provided in Section 11.1, this Agreement shall immediately become void and there shall be no liability or obligation on the part of Buyer or Seller or their respective officers, directors, stockholders or Affiliates, except as set forth in Section 11.3; provided that the provisions of Sections 2.4(b) and (c) (Buyer's Bid Deposit), 9.1 (Confidentiality), 9.2 (Public Announcements) and Article XII of this Agreement shall remain in full force and effect and survive any termination of this Agreement; and provided further that upon termination pursuant to section 11.1(a)(v) hereof Seller shall immediately pay to Buyer the Break-Up Fee.

11.3 Remedies. Any party terminating this Agreement pursuant to Section 11.1 shall have the right to recover probable and reasonably foreseeable damages sustained by such party as a result of any fraudulent breach by the other party of any representation, warranty, covenant or agreement contained in this Agreement; provided, however, that the party seeking relief is not in breach of any representation, warranty, covenant or agreement contained in this Agreement under circumstances which would have permitted the other party to terminate the Agreement

under Section 11.1. The foregoing remedy is in addition to the Buyer's right to the return of the Deposit in accordance with the provisions of this Agreement.

ARTICLE XII

MISCELLANEOUS

12.1 Notices. Any notice, request, demand, waiver, consent, approval or other communication which is required or permitted hereunder shall be in writing and shall be deemed given: (a) on the date established by the sender as having been delivered personally, (b) on the date delivered by a private courier as established by the sender by evidence obtained from the courier, (c) on the fifth Business Day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid, or (d) if delivered by e-mail, when the recipient, by an e-mail sent to the e-mail address for the sender stated in this Section 12.1 or by a notice delivered by another method in accordance with this Section 12.1, acknowledges having received that e-mail, with an automatic "read receipt" not constituting acknowledgment of an e-mail for purposes of this Section 12.1. Such communications, to be valid, must be addressed as follows:

If to Buyer, to:

AMG Vanadium LLC
60790 Southgate Road
Cambridge, OH 43725 USA
Attn: Hoy E. Frakes, Jr.
E-mail: hfrakes@amg-v.com

With required copies to:

AMG Advanced Metallurgical Group N.V.
Building 200, 435 Devon Park Drive
Wayne, PA 19087 USA
Attn: Dennis Shea
E-Mail: dshea@AMG-NV.com

and

Curtin & Heefner
1040 Stony Hill Road, Suite 150
Yardley, PA 19067 USA
Attn: Robert Szwajkos
E-Mail: rsz@curtinheefner.com

If to Seller, to:

Gulf Chemical & Metallurgical Corporation
302 Midway Road
Freeport, TX 77542
Attn: Eric Caridroit
E-mail: eric.caridroit@eramet.gulf.com

With required copies to:

Alison R. Landis
Deputy General Counsel, Eramet Americas
Eramet North America, Inc.,
Airport Office Park, Bldg. 4, Ste 300,
333 Rouser Road, Coraopolis, PA 15108 USA
E-Mail: alison.landis@erametgroup.com

Sean D. Malloy
McDonald Hopkins LLC
600 Superior Avenue East
Suite 2100
Cleveland, OH 44114 USA
E-Mail: smalloy@mcdonaldhopkins.com

William E. Kelleher, Jr.
Cohen & Grigsby, P.C.
625 Liberty Avenue
Pittsburgh, PA 15222-3152 USA
E-Mail: wkelleher@cohenlaw.com

or to such other address or to the attention of such Person or Persons as the recipient party has specified by prior written notice to the sending party (or in the case of counsel, to such other readily ascertainable business address as such counsel may hereafter maintain). If more than one method for sending notice as set forth above is used, the earliest notice date established as set forth above shall control.

12.2 Amendments and Waivers.

(a) Any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by each party to this Agreement, or in the case of a waiver, by the party against whom the waiver is to be effective.

(b) No failure or delay by any party in exercising any right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

12.3 Expenses. Except as provided in Section 11.3 of this Agreement and except for the payment of the Break-up Fee, if applicable, each party shall bear its own costs and expenses in connection with this Agreement and the transactions contemplated hereby, including all legal, accounting, financial advisory, consulting and all other fees and expenses of third parties, whether or not the Acquisition is consummated.

12.4 Successors and Assigns. This Agreement may not be assigned by either Party hereto without the prior written consent of the other Party; provided, however, that (a) Buyer may assign its rights hereunder to an Affiliate of Buyer that exists on the date of this Agreement or that is formed by Buyer prior to the Closing, and upon and after such assignment, the term "Buyer" as used herein shall mean such Affiliate; provided that, as a condition of such assignment, Buyer hereby agrees that it shall continue to be bound by its obligations hereunder and under the other Transaction Documents and shall perform such obligations in accordance with the terms hereof and thereof to the extent such Affiliate does not perform such obligations, and (b) after the Closing, Seller may assign its rights hereunder to a successor entity pursuant to a plan of reorganization confirmed by the Bankruptcy Court. Subject to the foregoing, all of the terms and provisions of this Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

12.5 Governing Law. This Agreement and the exhibits and schedules hereto shall be governed by and interpreted and enforced in accordance with the Laws of the Commonwealth of Pennsylvania, without giving effect to any choice of Law or conflict of Laws rules or provisions (whether of the Commonwealth of Pennsylvania or any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than the Commonwealth of Pennsylvania, except to the extent that the Laws of such state are superseded by the Bankruptcy Code.

12.6 Consent to Jurisdiction. Each party irrevocably submits to the exclusive jurisdiction of the Bankruptcy Court for the purposes of any suit, action or other proceeding arising out of or relating to this Agreement or any transaction contemplated hereby. Each party irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement or the transactions contemplated hereby, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum. EACH PARTY HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF SUCH PARTY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT HEREOF.

12.7 Counterparts. This Agreement may be executed in counterparts, and either party hereto may execute such counterpart, each of which when executed and delivered shall be deemed to be an original and both of which counterparts taken together shall constitute but one and the same instrument. This Agreement shall become effective when each party hereto shall have received a counterpart hereof signed by the other party hereto. The Parties agree that the delivery of this Agreement may be effected by means of an exchange of pdf or facsimile signatures with original copies to follow by mail or courier service.

12.8 No Third Party Beneficiaries. No provision of this Agreement is intended to confer upon any Person other than the Parties hereto any rights or remedies hereunder.

12.9 Entire Agreement. This Agreement and the documents, instruments and other agreements specifically referred to herein or delivered pursuant hereto, including the Transaction Documents, Exhibits and Schedules, set forth the entire understanding of the Parties hereto with respect to the Acquisition. All Exhibits and Schedules referred to herein are intended to be and hereby are specifically made a part of this Agreement. Any and all previous agreements and understandings between or among the Parties regarding the subject matter hereof, whether written or oral, are superseded by this Agreement, except for the Confidentiality Agreement which shall continue in full force and effect in accordance with its terms.

12.10 Captions. All captions contained in this Agreement are for convenience of reference only, do not form a part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement.

12.11 Severability. Any provision of this Agreement which is invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

12.12 Specific Performance. Buyer and Seller each agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed by them in accordance with the terms hereof and that each party shall be entitled to specific performance of the terms hereof, in addition to any other remedy at Law or equity.

12.13 Survival. The representations and warranties contained in this Agreement shall not survive, and shall terminate at, the Closing, and the Parties shall have no liability, nor shall any party make a claim, after the Closing for any breach of any representation or warranty. None of the covenants or other agreements contained in this Agreement shall survive the Closing other than those which by their terms contemplate performance at or after the Closing, and each such surviving covenant or agreement shall survive the Closing for the period contemplated by its terms (or if no such survival period is contemplated, then indefinitely).

12.14 Non-Recourse. All claims or causes of action (whether in contract or in tort, in law or in equity, by statute or otherwise) that may be based upon, arise out of or relate in any manner to this Agreement or the other Transaction Documents, or the negotiation, execution or performance of this Agreement or the other Transaction Documents (including any representation or warranty made in or in connection with this Agreement or the other Transaction Documents), may be made only against (and are expressly limited to) the Persons that are expressly identified as parties hereto and thereto. No Person who is not a named party to this Agreement or the other Transaction Documents, including any past, present or future director, officer, employee, incorporator, member, partner, stockholder, equity holder, controlling person, Affiliate, agent, attorney or representative of any named party to this Agreement or the other Transaction Documents (the “**Non-Party Affiliates**”), shall have any liability (whether in contract or in tort, in law or in equity, by statute or otherwise, or based upon any theory that

seeks to impose liability of an entity party against its owners or Affiliates, including by or through theories of equity, agency, control, instrumentality, single business enterprise, piercing the veil or undercapitalization) for any obligations or liabilities arising under, in connection with or related to this Agreement or the other Transaction Documents (as the case may be) or for any claim based on, in respect of, or by reason of this Agreement or the other Transaction Documents (as the case may be) or the negotiation or execution hereof or thereof; and each Party waives and releases all such liabilities, claims and obligations against any such Non-Party Affiliates. The Parties acknowledge and agree that the Non-Party Affiliates are intended third-party beneficiaries of this Section 12.14.

12.15 Bulk Sales. Buyer and Seller hereby waive compliance with all “bulk sales,” “bulk transfer” and similar laws that may otherwise be applicable with respect to the sale and transfer of any or all of the Purchased Assets to Buyer.

12.16 Interpretation.

(a) The meaning assigned to each term defined herein shall be equally applicable to both the singular and the plural forms of such term and vice versa, and words denoting either gender shall include both genders as the context requires. Where a word or phrase is defined herein, each of its other grammatical forms shall have a corresponding meaning.

(b) The terms “hereof”, “herein” and “herewith” and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement.

(c) When a reference is made in this Agreement to an Article, Section, paragraph, Exhibit or Schedule, such reference is to an Article, Section, paragraph, Exhibit or Schedule to this Agreement unless otherwise specified.

(d) The word “include”, “includes”, and “including” when used in this Agreement shall be deemed to be the words “without limitation”, unless otherwise specified.

(e) A reference to any party to this Agreement or any other agreement or document shall include such party’s predecessors, successors and permitted assigns.


(f) Reference to any Law means such Law as amended, modified, codified, replaced or reenacted, and all rules and regulations promulgated thereunder.

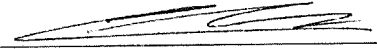
(g) The Parties have participated jointly in the negotiation and drafting of this Agreement. Any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any party by virtue of the authorship of this Agreement shall not apply to the construction and interpretation hereof.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the date first above written.

AMG VANADIUM LLC

GULF CHEMICAL & METALLURGICAL CORPORATION

By: 
Name: 郝, E. Fraker JK
Title: President

By: 
Name: Eric Caridroit
Title: Chief Executive Officer

Schedule 2.1(a)

Purchased Assets

Scrubber

1. The Electrostatic Precipitator (ESP) includes all equipment from the exit of the roasters to the inlet of the FGD off gas system. Includes all electrical MCCs, control and transformers for the ESP. *[note: AMG reserves the right to elect not to take the ESP if we determine we do not want it, and if so, title in this equipment will revert back to Gulf Chemical]*
2. FGD off gas system includes all equipment from the exit of ESP outlet to the top of the FGD stack. Includes 2 each 1750HP ID fans and their associated VFDs and step down transformers.
3. Electrical systems - includes all Motor Control Centers (MCC) and the prefabricated metal buildings they are housed in.
4. Hydrated lime system includes truck fill pipe through the CDS inlet.
5. Process water system includes inlet valve of process water tank through the CDS inlet.
6. FGD co- product recycle system includes inlet to baghouse through CDS inlet.
7. FGD co-product waste system includes baghouse outlet through truck loading spouts.
8. Process control system includes but not limited to all MMI's, DCS, PLCs, UPS and remote I/O.
9. Software includes all software on DCS, PLCs and MMIs as well as all original and revision documentation.
10. Emissions monitoring systems includes but not limited to all CEMS units, flow measurement equipment and calibration equipment.
11. Compressed air system includes but not limited to all compressors, dryers and controllers.
12. Structural steel systems includes all steel above foundation anchor bolts.
13. All drawings in hard copy or CAD format. Includes foundation drawings.
14. All operating and maintenance manuals for all of the above equipment.
15. All unused spares for all of the above equipment. Includes but not limited to consumables such as nozzles, lances, thermocouples, and bag house bags and cages.

Roaster Spares

1. Entire lot of palletized refractory brick, multiple pallets (photo)
2. Entire lot of rabble teeth, multiple bins and pallet boxes (photos)
3. Entire lot of spare rabble arms (photos)

Laboratory Equipment

1. xrFuse 6 Automatic Sample Bead Fuser (photo)
2. Thermo Scientific ARL Advant'X (photo) Sequential XRF Intellipower (photo)
3. Ametek Spectro Arc OS ICP (photo)
4. Ametek Spectro Ciros Vision ICP (photo)
5. Electra CS800 Carbon & sulfur Determinator (photo)

GCMC Spare Parts Inventory

1. See Attached .pdf

2. Set of spare bags for Scrubber Bag House

Exhibit A - Asset Purchase Agreement Page 30 of 32

| Whse | Bin | Bin Desc | Part Code | Desc1 | Desc2 | Prod Type | Prod Class | Master Detail Desc | UOM | Avg Cost | Ent Avg Cost | IC | MM | PO | Prod Group (Manufacturer) | DEM/Date Desc | DEM | Category |
|------|------------|------------------|-----------|-----------------------------|---------------------------------|-----------|------------|---|-----|-------------|--------------|------------|------------|------------|---------------------------|------------------------|---------------------|----------|
| SP | R8838 | Row 8 Bin 38 | ANL000005 | In-Situ Gas Analyzer Assy | GM32-1 S02 | GAS | ANALYZER | | EA | \$58,370.00 | \$58,370.00 | 2/14/2014 | 11/5/2015 | | Slick Mahabak | 2028796 1 | | Y |
| SP | R8843 | Row 8 Bin 43 | ARM000009 | Lever Arm Full-Up 13" | LZS5A | LEVER | ARM | | EA | \$22.00 | \$22.00 | 2/14/2014 | 2/16/2014 | 9/25/2013 | | LSZ5AN | | Y |
| SP | R8843 | Row 8 Bin 43 | ARM000010 | Lever Arm Slick Cable | 6Z2909A | LEVER | ARM | | EA | \$40.00 | \$40.00 | 2/14/2014 | 2/16/2014 | 9/25/2013 | | 6Z2909A | | Y |
| SP | BLTWH | BLTWH | BLT000133 | Belt A 42 | A42 | V | BELT | | EA | \$4.35 | \$9.10 | 12/17/2015 | 3/12/2016 | 3/29/2016 | | A42 | | Y |
| SP | OUTSIDE OS | OUTSIDE OS | CAG000013 | Cage 304 SS 5.75" x 31.5" | TBA | FILTER | CAGE | | EA | \$144.99 | \$45,962.27 | 2/14/2014 | 2/14/2016 | 1/8/2016 | | TBA | | Y |
| SP | R8843 | Row 8 Bin 43 | CBN00005 | Cable Sat Cone Horns | 6AU035G11 | SET | CABLE | | EA | \$160.00 | \$160.00 | 2/14/2014 | 2/16/2014 | 9/25/2013 | | 6AU035G11 | | Y |
| SP | R8843 | Row 8 Bin 43 | CBN00005 | Cable Sat Cone Horns | 6AU035G11 | SET | CABLE | | EA | \$240.00 | \$240.00 | 2/14/2014 | 2/16/2014 | 9/25/2013 | | 6AU035G11 | | Y |
| SP | R8843 | Row 8 Bin 43 | CNE00014 | Cone-Inner 200 AR | 6AU007A3 | Inlet | CONE | | EA | \$1,928.25 | \$1,928.25 | 11/7/2015 | 2/19/2015 | 4/15/2015 | | 6AU007A3 | | Y |
| SP | R8843 | Row 8 Bin 43 | CNE00015 | Cone-Inlet 200 AR | 6AU007G3 | Inlet | CONE | | EA | \$226.00 | \$226.00 | 2/14/2014 | 2/19/2015 | 4/15/2015 | | 6AU007G3 | | Y |
| SP | R8843 | Row 8 Bin 43 | DGC00001 | Discharge EV&OV | 211079401M04 UN800 | Lifting | Discharge | | EA | \$1,268.00 | \$1,268.00 | 2/14/2014 | 2/19/2015 | 4/15/2015 | | UN800 | | Y |
| SP | CFTSDR1 | Cabinet 5 Drawer | DSC000015 | Spillback Swirl Disc | 800.200.06.00.05.0 | | DISC | | EA | \$451.67 | \$3,613.36 | 2/14/2014 | | 12/28/2012 | | Lechler | | Y |
| SP | CLARK | Clark Industrial | FLT000180 | 5 7/8" x 31.5" Filter | 1-2052-154 | BAG | FILTER | 16 oz Polyester w/PTFE membrane (852030) Nominal 6" dia x | EA | \$282.79 | \$81,523.96 | 12/19/2014 | 12/18/2016 | 1/4/2013 | | | 1-2052-154 | Y |
| SP | CLARK | Clark Industrial | FLT000192 | Filter Bag PTFE 60 x 100 | 852030 | BAG | FILTER | 100" x 60" PTFE Membrane (852030) Nominal 6" dia x | EA | \$15.15 | \$499.35 | | | 7/8/2014 | | NATIONAL FILTER MEDIA | 852030 | Y |
| SP | CLARK | Clark Industrial | FLT000193 | Filter Bag PTFE 6 x 100 | 852080 | BAG | FILTER | 100" x 6" PTFE Membrane (852080) Nominal 6" dia x 100" | EA | \$32.31 | \$4,116.80 | 12/18/2015 | 4/29/2016 | 3/2/2016 | | NATIONAL FILTER MEDIA | 852080 | Y |
| SP | L1D | L1D | GKT000159 | Gear Reducer 140TC 1-1/8 | BMG26-60-L140 SC7646-AC | GEARBOX | GEARBOX | | EA | \$491.36 | \$491.36 | 2/14/2014 | 2/16/2014 | 9/25/2013 | | | 140 | Y |
| SP | CFTSDR1 | Cabinet 5 Drawer | GRT000160 | High Pressure Gasket | 099.056.17.00.00.0 | GASKET | GASKET | | EA | \$70.49 | \$1,057.35 | 12/9/2014 | | 3/11/2016 | | Lechler | | Y |
| SP | R8839 | Row 8 Bin 39 | GRT000161 | Annular High Temp Gasket | 399-214-02 3/8" 607 mm x female | GASKET | GASKET | | EA | \$10.00 | \$60.00 | 11/7/2015 | 1/5/2017 | 3/24/2016 | | Air Motion SPECIALTIES | 399-214-02 | Y |
| SP | R8815 | Row 8 Bin 15 | HOC000091 | Hose Pressure Washer | 9AP-020-40.21.00.0 | RUBBER | HOSE | | EA | \$115.36 | \$346.08 | 10/19/2015 | 12/27/2016 | 1/9/2017 | | COMPANY | 3/8" X50 MMF OC | Y |
| SP | R8815 | Row 8 Bin 15 | HOC000092 | Hose 1/2" x 64" w/Quick Con | 9AP-020-40.21.01.0 | HOSE | HOSE | | EA | \$280.95 | \$842.85 | 2/14/2014 | 2/14/2014 | 12/28/2012 | | Lechler | | Y |
| SP | R8815 | Row 8 Bin 15 | HOC000093 | Hose 1/2" x 64" w/Quick Con | 9AP-020-40.21.01.0 | HOSE | HOSE | | EA | \$280.95 | \$842.85 | 2/14/2014 | 2/14/2014 | 12/28/2012 | | Lechler | | Y |
| SP | R8815 | Row 8 Bin 15 | HOC000094 | Hose 1/2" x 64" w/Quick Con | 9AP-020.25.21.00.0 | HOSE | HOSE | | EA | \$147.62 | \$442.86 | 2/14/2014 | | 12/28/2012 | | Lechler | | Y |
| SP | R8829 | Row 8 Bin 29 | LNC000003 | Quench Spray Lance | 801.000.59.00.00.0 | SPRAY | LANCE | | EA | \$5,200.00 | \$26,000.00 | 2/14/2014 | 6/20/2012 | 8/27/2012 | | ENVIRO-CARE | 217-110-0 | Y |
| SP | LZE | LZE | LNC000001 | Link-Master #100 | 801.000.59.00.00.0 | SPRAY | LANCE | | EA | \$11,550.00 | \$23,100.00 | 2/14/2014 | 2/14/2014 | 12/19/2013 | | Lechler | | Y |
| SP | CFTSDR1 | Cabinet 5 Drawer | MFC000001 | Spillback Mouthpiece | 800.200.06.00.02.0 | DRIVE | LINK | LINK DRIVE CHAIN MASTER #100 | EA | \$3.28 | \$13.12 | 11/10/2015 | 1/6/2017 | 4/15/2016 | | RENNORO | 6521890 | Y |
| SP | CFTSDR1 | Cabinet 5 Drawer | NZD000019 | Spinning Nozzle | 706471 | SPRAY | NOZZLE | | EA | \$560.44 | \$4,483.52 | 2/14/2014 | | 12/28/2012 | | Lechler | | Y |
| SP | UC | UC | NZD000020 | NCL Spray Nozzle | NCM 2045 W | SPRAY | NOZZLE | | EA | \$177.34 | \$564.68 | 2/14/2014 | | 9/21/2012 | | Bete | 7448 NCM 2045 W PVC | Y |
| SP | CFTSDR1 | Lower Row 3 Bin | NZD000021 | Pneumatic Atomizing Nozzle | 170.961.1Y.84.00.0 | SPRAY | NOZZLE | | EA | \$1,173.00 | \$5,885.00 | 2/14/2014 | 4/7/2015 | 9/11/2016 | | Lechler | | Y |
| SP | L3A | L3A | NZD000022 | COOLING TOWER SPRAY NOZZLE | PART #RSN | SPRAY | NOZZLE | Old Part Number 800.200.06.20.00.0 | EA | \$200.00 | \$800.00 | 2/14/2014 | | 1/14/2013 | | Lechler | | Y |
| SP | R8815 | Row 8 Bin 15 | NZD000023 | spill back nozzle | 299.019.M9.00.00.0 | SPRAY | NOZZLE | | EA | \$1,584.00 | \$6,336.00 | 2/14/2014 | 9/13/2016 | 11/16/2016 | | Lechler | | Y |

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| SP | CRTSDR1 | Cabinet 3 Drawer | O-Ring 257 Buna | BUNA | O-RING | 17.00 | EA | \$0.14 | \$2.38 | 12/14/2015 | 12/10/2013 | 257 BUNA | O-Ring 257 Buna Outside Diameter: 57/16" Cross Section: 1/16" MATERIAL: NITRILE |
|----|---------|----------------------|---------------------------|-------------|--------------|-------|----|------------|------------|---|---|------------------------|--|
| SP | CRTSDR1 | Cabinet 3 Drawer | O-Ring 264 Buna | BUNA | O-RING | 13.00 | EA | \$0.36 | \$4.68 | 12/14/2015 <td>7/14/2016 <td>264 BUNA</td> <td>O-Ring 264 Buna Outside Diameter: 57/16" Cross Section: 1/16" MATERIAL: NITRILE</td> </td> | 7/14/2016 <td>264 BUNA</td> <td>O-Ring 264 Buna Outside Diameter: 57/16" Cross Section: 1/16" MATERIAL: NITRILE</td> | 264 BUNA | O-Ring 264 Buna Outside Diameter: 57/16" Cross Section: 1/16" MATERIAL: NITRILE |
| SP | RBB43 | Row 8 Bin 43 | Pin Cable Lifting Pulley | CABLE | PIN | 3.00 | EA | \$20.00 | \$60.00 | 2/14/2014 | 9/25/2013 <td>6AU012A1</td> <td>Sleeve Assembly - Urethane/Nylon Aluminum Iner/Outer Rings 0</td> | 6AU012A1 | Sleeve Assembly - Urethane/Nylon Aluminum Iner/Outer Rings 0 |
| SP | RBB43 | Row 8 Bin 43 | Pulley Lifting 8" HPS | ASSEMBLY | SLEEVE | 1.00 | EA | \$292.00 | \$292.00 | 2/14/2014 | 9/25/2013 <td>6AU008A1</td> <td>Sleeve Assembly - Urethane/Nylon Aluminum Iner/Outer Rings 0</td> | 6AU008A1 | Sleeve Assembly - Urethane/Nylon Aluminum Iner/Outer Rings 0 |
| SP | PR29 | Pump Back 29 | 342-10/8.5 MT COAM | CENTRIFUGAL | PUMP | 1.00 | EA | \$2,600.00 | \$2,600.00 | 8/28/2015 <td></td> <td>06550491</td> <td>Titan 342-10/8.5 MT COAM ANSI Pump No 544</td> | | 06550491 | Titan 342-10/8.5 MT COAM ANSI Pump No 544 |
| SP | RBB33 | Row 8 Bin 33 | VOLU-Probe W/Type ETC | Annubar | PROBE | 2.00 | EA | \$1,806.00 | \$3,612.00 | 4/27/2015 | 11/4/2014 <td>42 RECT SPCL 155 76"</td> <td>VOLU-probe/155 w/Temp probe EXCEPTION TO STANDARD CONSTRUCTION: FABRICATE FOR USE WITH EXISTING 33.06" LONG EXTENDED COMPANION MOUNTING PLATE AND EXISTING TEMPERATURE TRANSMITTER INCLUDED.</td> | 42 RECT SPCL 155 76" | VOLU-probe/155 w/Temp probe EXCEPTION TO STANDARD CONSTRUCTION: FABRICATE FOR USE WITH EXISTING 33.06" LONG EXTENDED COMPANION MOUNTING PLATE AND EXISTING TEMPERATURE TRANSMITTER INCLUDED. |
| SP | RBB33 | Row 8 Bin 33 | Annubar VOLU-Probe 76" | Annubar | PROBE | 4.00 | EA | \$1,131.00 | \$4,524.00 | 11/21/2014 | 10/7/2015 <td>42 RECT SPCL 155 76"</td> <td>VOLU-probe/155 w/Temp probe EXCEPTION TO STANDARD CONSTRUCTION: FABRICATE FOR USE WITH EXISTING 33.06" LONG EXTENDED COMPANION MOUNTING PLATE AND EXISTING TEMPERATURE TRANSMITTER INCLUDED.</td> | 42 RECT SPCL 155 76" | VOLU-probe/155 w/Temp probe EXCEPTION TO STANDARD CONSTRUCTION: FABRICATE FOR USE WITH EXISTING 33.06" LONG EXTENDED COMPANION MOUNTING PLATE AND EXISTING TEMPERATURE TRANSMITTER INCLUDED. |
| SP | RBB33 | Row 8 Bin 33 | Annubar VOLU-Probe 54" | Annubar | PROBE | 1.00 | EA | \$1,025.00 | \$1,025.00 | 3/15/2017 | 2/19/2015 <td>W76805A8</td> <td>VOLU-probe/155 54" diameter + 3D extension, direct replacement for W076805, dwg W76805A8 Quote DS-141027-2</td> | W76805A8 | VOLU-probe/155 54" diameter + 3D extension, direct replacement for W076805, dwg W76805A8 Quote DS-141027-2 |
| SP | RBB33 | Row 8 Bin 33 | Annubar VOLU-Probe 54" | Annubar | PROBE | 1.00 | EA | \$1,578.00 | \$1,578.00 | 1/15/2017 | 2/19/2015 <td>W76805A8</td> <td>VOLU-probe/155 w/Temp probe 54" diameter + 3D extension, direct replacement for W076805, dwg W76805A8, (no temp transmitter) Quote DS-141027-2</td> | W76805A8 | VOLU-probe/155 w/Temp probe 54" diameter + 3D extension, direct replacement for W076805, dwg W76805A8, (no temp transmitter) Quote DS-141027-2 |
| SP | RBB43 | Row 8 Bin 43 | Sheave Kit 3" w/Bearing | ASSEMBLY | SHEAVE | 1.00 | EA | \$240.00 | \$240.00 | 2/14/2014 | 2/6/2014 | SHEAVEASY-UN-1 | Sleeve Assembly - Urethane/Nylon Aluminum Iner/Outer Rings 1 |
| SP | RBB43 | Row 8 Bin 43 | Sleeve Assembly | ASSEMBLY | SLEEVE | 1.00 | EA | \$1,560.00 | \$1,560.00 | 10/21/2013 | 2/19/2015 | 6AU056G31 | Sleeve Assembly - Graphite Fiberglass Aluminum Iner/Outer Rings 6AU056G31 |
| SP | RBB43 | Row 8 Bin 43 | Sensor Vibration 20-250 | VIBRATION | SENSOR | 1.00 | EA | \$1,722.00 | \$1,722.00 | 2/14/2014 | 3/9/2016 | 9-8304-803 | Sensor - Vibration 20-250V AC/DC 9-8304-803 |
| SP | RBB43 | Row 8 Bin 43 | Switch Lever SW SPOT | LEVER | SWITCH | 2.00 | EA | \$153.00 | \$306.00 | 2/14/2014 | 2/6/2014 | LSYP81A | Switch - Lever SW - SPDT Low Temp/Low Temp 4-4X LSYP81A |
| SP | PLKR | PLKR | Speed Switch | SPEED | SWITCH | 1.00 | EA | \$990.49 | \$990.49 | 2/14/2014 | 6/17/2014 | CB1222-5-8 | Switch - Lever SW - SPDT Low Temp/Low Temp 4-4X CB1222-5-8 |
| SP | UF | UF | Load Cell 5200lb | LOAD CELL | TRANSDUCER | 3.00 | EA | \$755.00 | \$2,265.00 | 11/21/2015 | 7/30/2013 | 584-100166 | Qty.1 (P/N#100166) FUINTEC 584 Single ended beam load cell 5200lb 584-100166 |
| SP | ECTA | Electrical Conax 27A | Inconel Thermocouple Assy | JUNCTION | THERMOCOUPLE | 3.00 | EA | \$182.80 | \$548.40 | 2/14/2014 | | TH5-8BU1831A41 | TH5-8BU1831A41 |
| SP | EC28 | EC28 | Smart Timer | TIMER | TIMER | 1.00 | EA | \$710.00 | \$710.00 | 7/20/2015 | 8/11/2015 | DFK-T2310-010 | DFK-T2310-010 |
| SP | LAE | LAE | 3" Ball Valve Worcester | BALL | VALVE | 2.00 | EA | \$1,214.35 | \$2,428.70 | 2/14/2014 | 2/3/2014 | WORCHESTER 3" 4546T-SW | Worcester 7/16" 3" 4546T-SW 3" Ball valve, 3-piece reduced port, Carbon steel body, 316SS ball/seat, socket weld ends, TFE seat and seal |

BILL OF SALE

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, GULF CHEMICAL & METALLURGICAL CORPORATION a Texas corporation ("**Seller**"), does hereby sell, assign, transfer, convey and deliver to AMG Vanadium LLC, a Delaware limited liability company ("**Buyer**"), all of its right, title and interest in and to the Purchased Assets, as such term is defined in the Asset Purchase Agreement, dated as of March 27, 2017 (the "**Purchase Agreement**"), by and between Seller and Buyer, to have and to hold the same unto Buyer, its successors and assigns, forever.

Buyer acknowledges that, except as set forth in the Purchase Agreement and the other Transaction Documents (as defined in the Purchase Agreement), Seller makes no representation or warranty with respect to the Purchased Assets being conveyed hereby, and such assets are otherwise conveyed on an "AS IS," "WHERE IS," and "WITH ALL FAULTS" basis.

IN WITNESS WHEREOF, Seller has duly executed this Bill of Sale as of [____],
2017.

GULF CHEMICAL & METALLURGICAL
CORPORATION

By: _____
Name:
Title: