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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
)	
REPUBLIC METALS REFINING CORPORATION, <i>et al.</i> , ¹)	Case No. 18-13359 (___)
)	
Debtors.)	(Joint Administration Pending)

**DEBTORS’ MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS
(I) AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL,
(II) GRANTING ADEQUATE PROTECTION TO THE SECURED PARTIES,
(III) SCHEDULING A FINAL HEARING AND (IV) GRANTING RELATED RELIEF**

Republic Metals Refining Corporation (“Republic Refining”), Republic Metals Corporation (“Republic Metals”), and Republic Carbon Company, LLC (“Republic Carbon”), as debtors and debtors-in-possession (each, a “Debtor” and collectively, the “Debtors”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”), by and through their undersigned counsel, hereby file this motion (this “Motion”) for entry of an order, substantially in the form attached

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: Republic Metals Refining Corporation, 15 West 47th Street, Suites 206 and 209, New York, NY 10036 (3194), Republic Metals Corporation, 12900 NW 38th Avenue, Miami, FL 33054 (4378), and Republic Carbon Company, LLC, 5295 Northwest 163rd Street, Miami Gardens, FL 33014 (5833).

hereto as **Exhibit A** (the “Interim Order”), pursuant to sections 105(a), 361, 362, 363, 503 and 507 of title 11 of the United States Code, 11 U.S.C. § 101, *et seq.* (the “Bankruptcy Code”), Rules 4001, 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 4001-2 of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”) (i) authorizing the Debtors to use Cash Collateral (as defined herein); (ii) granting adequate protection with respect to the diminution in value of the interests of the Secured Parties (as defined herein) as a result of the use of the Prepetition Collateral (as defined herein), including Cash Collateral; (iii) modifying the automatic stay; (iv) scheduling, pursuant to Bankruptcy Rule 4001, a final hearing (the “Final Hearing”) granting the relief requested in this Motion on a final basis pursuant to a final order (the “Final Order”); and (v) granting related relief. The facts and circumstances supporting this Motion are set forth in the *Declaration of Scott Avila in Support of Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”) filed contemporaneously herewith. In further support of this Motion, the Debtors respectfully state as follows:

JURISDICTION

1. The United States Bankruptcy Court for the Southern District of New York (the “Court”) has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the Southern District of New York, dated January 31, 2012. The Debtors confirm their consent, pursuant to Bankruptcy Rule 7008, to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

2. Venue in the Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The bases for the relief requested herein are sections 105(a), 361, 362, 363, 503 and 507 of the Bankruptcy Code, Bankruptcy Rules 4001, 6003 and 6004 and Local Rule 4001-2.

PRELIMINARY STATEMENT

4. By this Motion, the Debtors seek authority to use Cash Collateral with the consent of the Secured Parties. As detailed below, the Secured Parties hold blanket first-priority liens on substantially all of the Debtors' assets, including cash. All or substantially all of this cash constitutes Cash Collateral of the Secured Parties. Following extensive negotiations, the Debtors and the Secured Parties have reached an agreement for the consensual use of Cash Collateral during the course of the Chapter 11 Cases which will provide the Debtors with the necessary liquidity to (i) fund the Debtors' operating capital for a short period of time to allow the Debtors to operate while they attempt to effectuate a sale to a third party, (ii) liquidate, in the ordinary course of business and in a commercially reasonable manner, the Debtors' inventory, and (iii) implement and consummate a plan for the wind down of the Debtors' estates.

5. As described in detail in the First Day Declaration, the Debtors faced significant challenges leading to the commencement of the Chapter 11 Cases. Against this backdrop, the Debtors determined that the most value-maximizing approach was to proceed with a liquidation of their inventory under the protection of chapter 11. As the Debtors do not hold sufficient cash on hand, the Debtors must obtain the ability to use Cash Collateral in order to continue operating their business, including to fund payroll and professional fees and expenses—all with the aim of ensuring a value maximizing liquidation of their inventory and other assets. During the Chapter 11 Cases, the Debtors will continue to refine any remaining goods to precious metals and will explore opportunities to sale their assets other than the inventory. Without access to Cash Collateral at this critical point in their cases, however, the Debtors will be unable to pursue their

efforts to maximize value—efforts that will inure to the benefit of the Debtors’ estates, creditors and other stakeholders.

6. For these reasons and those set forth below, it is critical for the Debtors to be able to use Cash Collateral in order to efficiently wind down operations as they work to maximize the value of their assets. Accordingly, the relief requested in this Motion should be granted on both interim and final bases.

THE BUSINESS

Overview of Company, Assets and Operations

7. Founded in 1980 by Richard Rubin, the Debtors are an internationally-recognized “Good Delivery” refiner of precious metals with a primary focus on gold and silver. Products include delivery of refined bars of both gold and silver, grains, and minted and casted investment grade coins and bars in gold and silver of various designs and sizes. The Debtors have the capacity to produce approximately 80 million ounces of silver and 350 tons of gold, along with over 55 million pieces of minted products, per annum. Suppliers ship unrefined gold and silver to the Debtors for refining from all over the United States and the Western Hemisphere. Precious metal is refined and, depending on the arrangement with the applicable buyer, the Debtors pay for unrefined metal either by check or wire transfer or delivery of refined product (physical metal) in “metals credit” on the London metals exchange, commonly referred to as “Loco London.” Most often, customers request payment “Loco London.”

8. Debtor RMC's principal office is located at 12900 NW 38th Avenue, Miami, Florida 33054, where RMC runs fully integrated gold and silver refineries (the “Refinery”). The Debtors' books and records are primarily held at this location. Debtor RMRC's principal office and operations are located at 15 West 47th Street, Suites 206 and 209, New York, New York 10036. In New York, RMRC services smaller customers in the New York metropolitan area, such as

jewelry manufacturers, precious metal recyclers, and pawnshops, by purchasing metal from those suppliers, melting it, and sending the melted metals to RMC's Refinery in Florida. Debtor RCC's principal business office is located at 5295 NW 163rd Street, Miami Gardens, Florida 33014, where RCC processes spent carbon from metals mines by drying, homogenizing, sampling, analyzing, and sending to a third party low grade smelter for further processing. The Debtors also maintain offices at leased premises in Los Angeles, Toronto, Shanghai, and Mexico. Upon belief, no material assets are held outside the United States.

9. Collectively, from its two Debtor locations, as well as through non-debtor subsidiaries, the Debtors provide numerous products and services to a diverse base of global mining corporations, financial institutions and jewelry manufacturers. In addition to refining and minting, vaulting, assaying and risk management / hedging services. The Debtors also have a state of the art carbon sampling / processing facility and, prior to the Chapter 11 filing, looked to further develop their market-leading position through new growth opportunities in high technology precious metals products and services.

10. At the Refinery, the Debtors also maintain an ISO9001 and LBMA approved laboratory, as well as a fully-integrated fabricated products division including die design and production, extrusion, flameless casting, machining, and minting of precious metals investment grade products. The Debtors have a segregated small batch refinery within the Refinery where materials with diamonds and other precious stones are treated chemically, thus freeing the precious stones unharmed. The precious metals are refined and reoperated in this circuit as well.

11. The Debtors do not have an office in Lima, Peru, but do have a representative there who manages the Debtors' compliance in Peru and helps secure metal sourcing there.

12. The Debtors also maintain a leased sales office in Shanghai, China for RMC's wholly-owned subsidiary, Republic Metals Trading (Shanghai) Co., Ltd. ("Republic Shanghai") with two representatives who maintain direct contact with the Chinese banks in regards to the bar supply and sales, as well as sourcing consumables (chemicals, supplies, etc.) for the Refinery.

13. The Debtors do not have an office in Los Angeles, but employ a sales manager there who handles all west coast United States refining and product sales efforts. Republic Trans Mexico Metals ("RTMM"), an indirect, wholly-owned subsidiary of RMC, leases an office and melt facility in Mexico City (Madero district) where its 15 independent contractors melt/assay and finance the purchase of precious metals scrap that are sent to the Refinery weekly.

14. In the period prior to the Petition Date, there were approximately two hundred (200) salaried and hourly employees of Debtor Republic Metals, approximately four (4) salaried and hourly employees of Debtor Republic Refining, and approximately ten (10) salaried and hourly employees of Debtor Republic Carbon.

15. As required by Local Rule 1007(a)(6), a summary of the Debtors' assets and liabilities is as follows:

Summary of Assets & Liabilities

Estimated as of November 2, 2018

<i>(000's)</i>			
Assets		Liabilities	
Cash	\$ 8,562	Senior Debt	\$ 177,355
Inventory	141,211	Accounts Payable	1,400
Property. Plant and Equipment	25,000	Metal Obligations	86,346
	<u>\$ 174,773</u>		<u>\$ 265,101</u>

ORGANIZATIONAL STRUCTURE

16. RMRC and RMC are each owned 100% by the Amended and Restated Richard Rubin Revocable Trust (the “R. Rubin Trust”). RMC owns 100% of RCC.

17. RMC owns 100% of each of non-debtors Republic Shanghai, Republic High Tech Metals, RMC Diamonds, LLC, RMC2, J&L Republic, LLC, and R&R Metals, LLC. J&L Republic, LLC and R&R Metals, LLC each own 50% of RTMM.

18. I am the Chief Restructuring Officer of the Company. The other individuals who comprise the Debtors' existing senior management, and tenure (in years) with the Company, are:

- a. Jason Rubin, President and CEO (11);
- b. David Comite, Treasurer and CFO (20);
- c. Zachary Shair, Refinery Operations Director (7);
- d. James Gavilan, SVP, Business Development (5);
- e. Luis Pena, Head of Global Sales (21);
- f. Alan Silverstein, General Counsel (5);
- g. Richard Lani, Chief Compliance Officer (5);
- h. JR Rao, VP, Environmental Health & Safety (5);
- i. Lindsey Rubin, Corporate Secretary (7); and
- j. Rafael Carbonell, COO (4).

DEBT STRUCTURE

The Senior Lenders and the Second Amended and Restated Intercreditor Agreement

19. The Senior Lenders (defined below) are parties to that certain Second Amended and Restated Intercreditor Agreement dated February 19, 2016, as amended from time to time (the “Intercreditor Agreement”), by and among Bank Hapoalim B.M. (“Hapoalim”), Mitsubishi International Corporation (“Mitsubishi”), Coöperatieve Rabobank U.A., New York Branch

(“Rabobank”), Brown Brothers Harriman & Co. (“BBH”), ICBC Standard Bank Plc (“ICBCS”), Techemet Metal Trading LLC (“Techemet”), Woodforest National Bank (“Woodforest”), Bank Leumi USA (“Leumi”) (Leumi, Rabobank, BBH, Hapoalim, Mitsubishi, ICBCS, Techemet, and Woodforest are collectively, the “Senior Lenders”). RMC acknowledged and agreed to the Intercreditor Agreement.

20. Each Senior Lender is party to its own respective credit documents with the Company. Neither the Intercreditor Agreement nor the Senior Lenders’ credit documents provide for a syndication or consolidation of the obligations owed the Senior Lenders, and no administrative agent is appointed to act for the Senior Lenders.

21. The Senior Lenders assert blanket liens on all assets of RMC, RMRC, and RCC, including all personal and real property, instruments and intangibles. The security interest of each Senior Lender is deemed to be equal priority with the security interest of every other Senior Lender pursuant to the Intercreditor Agreement (except as otherwise expressly provided therein), without regard to the time of attachment or perfection of the security interests, the order of filing financing statements and the giving or failure to give notice of a purchase money security interest.

22. Furthermore, and pursuant the Intercreditor Agreement, after an event of default, with certain exceptions, the Senior Lenders shall share *pro rata* all amounts and collections realized by a Senior Lender from any of RMC's collateral, whether or not such Senior Lender is perfected.

RMC's Loans and Precious Metals Lease Agreements

23. Rabobank agreed to loan to RMC the principal amount of \$45,000,000 at a per annum contract rate of interest in the amount of a margin plus defined “Base Rate” or LIBOR and default rate of interest of 2% over the existing rate or 3.2% over the Base Rate, pursuant to a Promissory Note, Security Agreement and Line Letter Agreement dated on or about June 26, 2017.

24. BBH agreed to loan to RMC the principal amount of \$15,000,000 at a per annum contract rate of interest of Overnight LIBOR (or fixed up to 90 days, at Maker's option) plus 2.00% and default rate of interest of 120% of the rate payable on the due date or demand, pursuant to a Secured Demand Promissory Note and General Security Agreement Letter Agreement dated on or about May 20, 2016.

25. Hapoalim agreed to loan to RMC the principal amount of \$25,000,000 at a per annum contract rate of interest of LIBOR plus agreed margin and a default rate of interest of Hapoalim's prime rate pursuant to an Amended and Restated Promissory Note, Security Agreement and Letter Agreement dated on or about November 10, 2016.

26. Mitsubishi agreed to lease certain precious metals to RMC pursuant to a Metals Lease Agreement dated November 22, 2016.

27. ICBCS agreed to lease a certain amount of silver to RMC pursuant to the FOA Master Netting Agreement (including any annexes, schedules or exhibits thereto) entered into by ICBCS (formerly known as Standard Bank Plc) and RMC dated as of January 19, 2011, as amended and restated from time to time (the "ICBCS Master Netting Agreement").

28. Techemet agreed to lease certain precious metals to RMC a Lease Agreement dated on or about March 6, 2017.

29. Woodforest agreed to loan RMC the principal amount of \$15,000,000 at the per annum contract rate of interest of LIBOR plus 2.25% and default rate at the highest rate allowed by applicable law, pursuant to a Revolving Line of Credit Promissory Note, Security Agreement, and Guaranty of Payment and Performance dated on or about October 30, 2017.

30. Leumi agreed to loan RMC the principal amount of \$25,000,000 at a per annum interest rate of LIBOR plus 2.25% and default rate of the current rate plus 3% pursuant to the Line

of Credit Note (Discretionary) Security Agreement, Letter Agreement and Pledge Agreement dated on or about October 31, 2017.

31. The loan documents described in the foregoing paragraphs are referred to herein collectively, the “Individual Credit Documents”).

32. As required by Local Rule 1007 (a)(5), the name, address, claim amount, brief description of collateral, estimated value, and statement regarding liens of the Senior Lenders is attached to the First Day Declaration as **Attachment A**.

SUPPLIER AGREEMENTS

33. RMC is also a party to approximately 35 agreements (each a “Supplier Agreement”), providing for the supplier to deliver materials to RMC such as gold and silver dore bars or other similar raw materials (“Raw Materials”) for refining pursuant to the standards agreed upon in the Supplier Agreement.

34. Generally, upon completion of RMC's obligations to refine the Raw Materials under a Supplier Agreement, the Supplier has the option to elect that RMC transfer the value of the refined material to the Supplier's designated account, or alternatively, may have the “Recoverable Metals” due from each lot of Refined Material transferred to the Supplier's designated metal account.

35. It is estimated that total outstanding Supplier obligations are approximately \$86,346,000.

EVENTS LEADING TO THE CHAPTER 11 FILING

Liquidity Demands on the Company

36. In April 2018, the Debtors discovered a significant discrepancy in its inventory accounting as part of its preparation of 2017 year end financials and quarterly financials for the first quarter, 2018. This led to the Debtors retaining the accounting firm of Eisner-Amper to

conduct a physical inventory. On June 8, 2018, Eisner-Amper conducted the physical inventory and, thereafter, on June 20, 2018, delivered a final report that confirmed inventory discrepancies in the Debtors' books and records.

37. On June 24, 2018 in Miami, the Debtors organized a meeting of the Senior Lenders to discuss the inventory issue. The Debtors' request was for the Senior Lenders to give the Debtors the necessary breathing room to continue to operate as a going concern for the near future in order to further evaluate and understand the inventory issues and develop a plan to either immediately rectify the inventory issues or otherwise restructure the Debtors.

The Default Notices

38. On July 10, 2018, the Senior Lenders served termination, default and demand notices on RMC that among other things, accelerated all debt obligations and terminated lease obligations under the Individual Credit Documents pursuant to the Default Notices (as defined below). On or about July 10, 2018, ICBCS, one of the Senior Lenders, also exercised its rights under the ICBCS Master Netting Agreement and the Unallocated Precious Metals Accounts Agreement dated May 28, 2015 (as novated, amended, restated, modified or supplemented from time to time) between ICBCS and RMC (the "London Clearing Account Agreement") resulting in RMC's loss of access to and use of its London clearinghouse account maintained by ICBCS (the "London Clearing Account"), and for all intents and purposes, ended the Debtors' ability to service customer deliveries via "Loco London" credit transactions. On July 10, 2018, the Senior Lenders issued the following notices to the Debtor:

- a. By letter dated July 10, 2018, Rabobank sent RMC a Notice of Demand for Payment Under Line Letter Agreement;
- b. By letter dated July 10, 2018, Techemet sent RMC a Notice of Early Termination Date Under Lease Agreement;

- c. By letter dated July 10, 2018, BBH sent RMC a Notice of Demand for Payment Under Loan Documents;
- d. By letter dated July 10, 2018, Bank Hapoalim B.M., New York Branch sent RMC a Notice of Demand for Payment Under Line Letter Agreement;
- e. By letter dated July 10, 2018, Bank Leumi USA sent RMC a Notice of Demand for Payment Under Line Letter Agreement;
- f. By letter dated July 10, 2018, Woodforest National Bank sent RMC a Notice of Acceleration and Demand for Payment;
- g. By electronic mail dated July 10, 2018, Mitsubishi sent RMC a Notice of Event of Default; and
- h. By letter dated July 10, 2018, ICBCS sent RMC a Notice of Liquidation Date and Termination of Transactions Under Master Netting Agreement.

(each of the foregoing, collectively, the “Default Notices”).

The Forbearance Agreement and Sale Process

39. At or about that same time, the Debtors contacted a major, strategic metals refiner about the possible acquisition of the Debtors as a going concern (the “Potential Buyer”). Shortly thereafter, the Potential Buyer produced a letter of intent to acquire the Debtors' business. This lead to an immediate call between the Debtors, the Senior Lenders and the Potential Buyer. As a result of this call, among other reasons, the Senior Lenders agreed to forbear, temporarily, and allow the Debtors to operate in the ordinary course, pending negotiation of a more formal forbearance arrangement to allow the Debtors to pursue a sale with the Potential Buyer, or otherwise to pursue a sale on a broader scale. On or about July 16, 2018, an agreement was reached whereby RMC’s access to and use of its London Clearing Account, and the net credits therein, were restored allowing the Debtors to service customer deliveries via “Loco London” credit transactions.

40. Substantial, extensive negotiations ensued which ultimately resulted in the execution of a Forbearance Agreement on August 7, 2018 (the “Forbearance Agreement”), which

then became effective on August 17, 2018 (the “Forbearance Effective Date”). The Senior Lenders agreed, among other things, to forbear during the Forbearance Period (as defined therein) from making demand for payment under their respective Individual Credit Documents and exercising their respective rights and remedies under or in connection with any and all of the Individual Credit Documents and the Intercreditor Agreement, arising from all Existing Defaults (as defined therein).

41. With the Forbearance Agreement in place, the Company immediately retained SSG Capital (“SSG”) as investment banker to assist with the sale of the Debtors' business to the Potential Buyer, or otherwise market the Debtors' business on a broader scale.

42. Intense and good faith negotiations with the Potential Buyer continued for over three (3) months. No broader marketing effort was undertaken as all parties, including the Debtors and the Senior Lenders, agreed that a broader marketing effort would likely be detrimental to the Debtors' business in light of the nature of the metals refining and trading industry (a very small market and closed knit industry). Despite numerous, lengthy telephone calls, an in-person meeting in New York City, and multiple exchanges of term sheets and offers, the Debtors and the Senior Lenders were unable to reach terms with the Potential Buyer acceptable to the Senior Lenders. The Forbearance Agreement also terminated prior to the Petition Date.

43. On or about October 18, 2018, ICBCS exercised its right to suspend the Debtors' access to the London Clearing Account. Thereafter, the Senior Lenders informed the Debtors that the Senior Lenders were ceasing negotiations with the Potential Buyer.

44. Notwithstanding what appeared to be the cessation of discussions with the Potential Buyer, and concurrently during the Debtors' preparations for Chapter 11, the Debtors, Lenders and Potential Buyer continued to discuss what, if any, acquisition prior to and outside of a Chapter 11

might be possible. By October 26, 2018, the parties were extremely close to finalizing the material terms of an immediate, going concern acquisition of the Debtors by the Potential Purchaser, with the last open diligence items to be resolved by October 31, 2018.

45. Unfortunately, the Potential Buyer, Debtors and Lenders were unable to finalize the terms of an acquisition by the end of the day, October 31. With limited cash, and the inability to trade metals or deliver refined goods, the Debtors commenced these proceedings on November 2, 2018, to run an orderly sale process of their assets and operations. It is the Debtors intent to attempt to sell the Company as a going concern, but if unsuccessful, the Debtors will engage in a process to liquidate their assets and inventory for the ratable benefit of their creditors.

A. Prepetition Capital Structure

46. As discussed in more detail in the First Day Declaration, the Debtors' refining, selling and brokering operations are highly dependent on access to various lines of credit and leased metals. To that end, the Debtors are borrowers, lessees, obligors, or guarantors under those certain credit agreements, master netting agreements, and lease agreements (as amended, restated, supplemented or otherwise modified from time to time, the "Credit and Lease Agreements" and together with any and all related collateral and security documents, guarantees and other loan documents, the "Secured Credit/Lease Documents" and any and all related obligations thereunder, the "Secured Obligations"), by and among certain Debtors and Coöperatieve Rabobank U.A., New York Branch, Brown Brothers Harriman & Co., Bank Hapoalim B.M., Mitsubishi International Corporation, ICBCS Standard Bank Plc, Techemet Metal Trading LLC, Woodforest National Bank, and Bank Leumi USA (each, a "Secured Party" and collectively, the "Secured Parties").

47. The Secured Obligations are secured by substantially all assets of the Debtors (the "Prepetition Collateral" and all liens and security interests therein, the "Prepetition Liens"), including any and all of the Debtors' cash, including cash and other amounts on deposit or

maintained in any account or accounts by the Debtors, and any amounts generated by the collection of accounts receivable, the exercise of letter of credit rights, the sale of inventory or other disposition of the Prepetition Collateral, and the proceeds of any of the foregoing (the “Cash Collateral”).

48. The Secured Credit/Lease Documents include, without limitation:

- a. Coöperatieve Rabobank U.A., New York Branch: That certain Line Letter, dated as of June 26, 2017, by and between the Debtor Republic Metals, as borrower, and Coöperatieve Rabobank U.A., New York Branch, as lender, together with other loan documents (as amended, restated, supplemented or otherwise modified from time to time).
- b. Brown Brothers Harriman & Co.: That certain Letter of Credit Agreement, dated as of June 24, 2016, by and between the Debtor Republic Metals, as borrower, and Brown Brothers Harriman & Co., as lender, together with other loan documents (as amended, restated, supplemented or otherwise modified from time to time).
- c. Bank Hapoalim B.M.: That certain Line Letter, dated as of January 29, 2016, by and between the Debtor Republic Metals, as borrower, and Bank Hapoalim B.M., as lender, together with other loan documents (as amended, restated, supplemented or otherwise modified from time to time).
- d. Mitsubishi International Corporation: That certain Metals Lease Agreement, dated as of November 22, 2016, by and between the Debtor Republic Metals, as lessee, and Mitsubishi International Corporation, as lessor, together with other documents (as amended, restated, supplemented or otherwise modified from time to time).
- e. ICBCS Standard Bank Plc: That certain Master Netting Agreement, dated as of January 19, 2011, by and between the Debtor Republic Metals and ICBCS Standard Bank PLC together with other documents (as amended, restated, supplemented or otherwise modified from time to time).
- f. Techemet Metal Trading, LLC: That certain Lease Agreement, dated as of March 6, 2017, by and between the Debtor Republic Metals, as lessee, and Techemet Metal Trading LLC, as lessor, together with other documents (as amended, restated, supplemented or otherwise modified from time to time).
- g. Woodforest National Bank: That certain Loan Agreement, dated as of October 31, 2017, by and between the Debtor Republic Metals, as borrower, and Woodforest National Bank, as lender, together with other loan documents (as amended, restated, supplemented or otherwise modified from time to time).
- h. Bank Leumi USA: That certain Line Letter Agreement, dated as of October 31, 2017, by and between the Debtor Republic Metals, as borrower, and Bank Leumi

USA, as lender, together with other loan documents (as amended, restated, supplemented or otherwise modified from time to time).

49. Each Secured Party is party to that certain Second Amended and Restated Intercreditor Agreement, dated as of February 19, 2016 (as amended, restated, supplemented or otherwise modified from time to time, the “Intercreditor Agreement”), which governs the Secured Parties’ respective rights and interests in the Prepetition Collateral.

50. As of the Petition Date, the Debtors are indebted and liable to the Secured Parties under the Secured Credit/Lease Documents in the aggregate principal amount of not less than \$177,354,66.88, exclusive of accrued and unpaid interest, premiums, if any, and certain fees, costs, expenses, indemnification obligations, charges and all other obligations of whatever nature owing, whether or not contingent, whenever arising, accrued accruing, due, owing or chargeable in respect of any of the Secured Obligations.

RELIEF REQUESTED

51. By this Motion, the Debtors request entry of the Interim Order and the Final Order (ii) authorizing the Debtors’ use of Cash Collateral, (ii) granting adequate protection to the Secured Parties, (iii) scheduling a Final Hearing, and (iv) granting related relief.

CONCISE STATEMENT OF THE MATERIAL TERMS OF THE INTERIM ORDER

52. Pursuant to Fed. R. Bankr. P. 4001(b)(1) and Local Bankruptcy 4001-2(b), the Debtors provide the following summary and highlight the following provisions relating to the proposed use of Cash Collateral and the location of such provisions in the Interim Order:²

² The description of the terms of the proposed Interim Order provided in this Motion is intended only as a summary. In the event of any inconsistency between this summary and the Interim Order, the terms of the Interim Order will control.

Required Information / Highlighted Provision	Summary of Material Terms and Location
Entities Interest in the Cash Collateral <i>FRBP 4001(b)(1)(B)(i)</i>	The Secured Parties. (Interim Order, ¶[F])
Purposes for Use of Cash Collateral <i>FRBP 4001(b)(1)(B)(ii), (iii)</i> <i>LBR 4001-2(a)(2)</i>	The Debtors are authorized to use Cash Collateral in the manner set forth in the budget approved by the Secured Parties (as the same may be updated in accordance with the terms of the Interim Order, the “ <u>Budget</u> ”) and for no other purposes. (Interim Order ¶[3(a)], <u>Exhibit A</u>)
Amount of Cash Collateral to Be Used <i>LBR 4001-2(a)(1)</i>	See Budget annexed to the Interim Order as <u>Exhibit A</u> . (Interim Order, <u>Exhibit 1</u>)
Limitation on Use of Cash Collateral <i>LBR 4001-2(a)(9)</i>	<p><u>Limitation on Use of Cash Collateral.</u> No Prepetition Collateral, including Cash Collateral, may be used:</p> <ul style="list-style-type: none"> • to investigate (except as expressly provided below), initiate, prosecute, join, or finance the initiation or prosecution of any claim, counterclaim, action, suit, arbitration, proceeding, application, motion, objection, defense, or other litigation of any type (A) against any of the Secured Parties (in their capacities as such) or seeking relief that would impair the rights and remedies of the Secured Parties (in their capacities as such) under the Secured Credit/Lease Documents or this Interim Order, (B) invalidating, setting aside, avoiding, or subordinating, in whole or in part, the Secured Obligations or Secured Parties’ liens or security interests in the Prepetition Collateral, including challenging whether the Debtors’ inventory and/or raw material is property of the Debtors’ estates; or (C) for monetary, injunctive, or other affirmative relief against any of the Secured Parties, or their respective liens on or security interests in the Prepetition Collateral that would impair the ability of any of the Secured Parties to assert or enforce any lien, claim, right, or security interest or to realize or recover on the Secured Obligations; • for objecting to or challenging in any way the legality, validity, priority, perfection, or enforceability of the claims, liens, or interests (including the Prepetition Liens) held by or on behalf of each of the Secured Parties related to the Secured Obligations; • for asserting, commencing, or prosecuting any claims or causes of action whatsoever, including, without limitation, any Avoidance Actions (as defined below) related to the Secured Obligations or the Prepetition Liens; or • for prosecuting an objection to, contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of any of the Prepetition Liens or any other rights or interests of any of the Secured Parties related to the Secured

	<p>Obligations, the Prepetition Liens or the Secured Credit/Lease Documents.</p> <p>(Interim Order, ¶ 3(e))</p> <p><u>Investigation Budget Cap.</u> Up to \$25,000 in the aggregate of the Prepetition Collateral, including the Cash Collateral, may be used by the Creditors' Committee, if appointed, to investigate the Secured Credit/Lease Documents, Prepetition Liens and Secured Obligations.</p> <p>(Interim Order, ¶ 3(e))</p>
<p>Debtors' Stipulations and Releases <i>FRBP 4001(b)(1)(B)(iii)</i> <i>LBR 4001-2(g)(8), (9), (18)</i></p>	<p><u>Debtors' Stipulations and Releases.</u> The Interim Order contains certain stipulations and releases by the Debtors, including as to the amount and validity of the claims and Liens of the Secured Parties.</p> <p>(Interim Order, ¶ [F])</p>
<p>Adequate Protection Provided for Use of Cash Collateral <i>FRBP 4001(b)(1)(B)(iv)</i> <i>LBR 4001-2(a)(3), (4), (9)</i></p>	<p><u>Adequate Protection.</u> Subject only to the Carve-Out and the terms of the Interim Order, in consideration of the stipulations and consents set forth herein, as adequate protection of their interests in the Prepetition Collateral, including the Cash Collateral, for and equal in amount to the Diminution in Value (as defined in the Interim Order), the Secured Parties are granted the following:</p> <ul style="list-style-type: none"> • additional and replacement valid, binding, enforceable non-avoidable, and automatically perfected postpetition security interests in and liens (the "<u>Adequate Protection Liens</u>"), without the necessity of the execution by the Debtors (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages, or other similar documents, on all property (including any previously unencumbered property), whether now owned or hereafter acquired or existing and wherever located, of each Debtor and each Debtor's estate (as created pursuant to section 541(a) of the Bankruptcy Code), of any kind or nature whatsoever, real or personal, tangible or intangible, and now existing or hereafter acquired or created, including, without limitation, all cash, accounts, inventory, metals, goods, contract rights, instruments, documents, chattel paper, patents, trademarks, copyrights, and licenses therefor, accounts receivable, receivables and receivables records, general intangibles, payment intangibles, tax or other refunds, insurance proceeds, letters of credit, contracts, owned real estate, real property leaseholds, fixtures, deposit accounts, commercial tort claims, securities accounts, instruments, investment property, letter-of-credit rights, supporting obligations, machinery and equipment, real property, leases (and proceeds from the disposition thereof), all of the issued and outstanding capital stock of each Debtor, other equity or ownership interests, including equity interests in subsidiaries and non-wholly-owned subsidiaries, money, investment property, causes of action, including causes of action arising under section

	<p>549 of the Bankruptcy Code (but excluding any causes of action under sections 544, 545, 547, 548 and 550 of the Bankruptcy Code and any other avoidance actions under the Bankruptcy Code (collectively, the “<u>Avoidance Actions</u>”), all products, proceeds and supporting obligations of the foregoing, whether in existence on the Petition Date or thereafter created, acquired, or arising and wherever located, and subject to entry of the Final Order, all proceeds and property recovery in respect of Avoidance Actions (collectively, the “<u>Adequate Protection Collateral</u>”);</p> <ul style="list-style-type: none"> • an allowed superpriority administrative expense claim against each Debtor (jointly and severally) ahead of and senior to any and all other administrative expense claims and all other claims asserted against such Debtors (the “<u>Adequate Protection Superpriority Claim</u>”) other than the Carve-Out; • payment of all reasonable and documented fees and expenses of the Secured Parties (including attorneys and financial consultants); • interest on the outstanding Secured Obligations to the Secured Parties at a rate per annum equal to 4.50%, compounded daily; provided that interest at an additional 1.00% and, to the extent set forth in the applicable Secured Credit/Lease Documents, interest at the default rate in excess of 5.50% shall accrue from the Petition Date through the Termination Date; and • payment of the proceeds from the sale of the Debtors inventory, including, but not limited to, diamond inventory, precious metal inventory, and hydroxide inventory, which shall be liquidated in a commercially reasonable manner pursuant to a timeline as agreed to by and among the Debtors and the Secured Parties as set forth in the Budget. <p>(Interim Order, ¶ [8])</p>
<p>Carve-Out <i>LBR 4001-2(a)(5)</i></p>	<p><u>Carve-Out</u>. As used in the Interim Order, the “<u>Carve-Out</u>” means the sum of: (i) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee under 28 U.S.C. § 1930(a) plus interest at the statutory rate; <u>plus</u> (ii) fees and expenses up to \$35,000 incurred by a trustee under Bankruptcy Code section 726(b); <u>plus</u> (iii) to the extent allowed by the Court and remaining unpaid after application of any retainers, all fees, costs, and expenses (the “<u>Professional Fees</u>”) incurred by persons or firms retained by the Debtors or the Creditors’ Committee pursuant to section 327, 328, or 363 of the Bankruptcy Code (collectively, the “<u>Professional Persons</u>”) at any time before the delivery by the Secured Parties of a Carve-Out Trigger Notice; <u>plus</u> (iv) after the delivery by the Secured Parties of the Carve-Out Trigger Notice, to the extent allowed by the Court and remaining unpaid after application of any retainers, the payment of Professional Fees of Professional Persons in an aggregate amount not to exceed (x) with respect to Professional Persons retained by the Debtors, \$200,000 and (y) with respect to Professional Persons retained by the Creditors’ Committee, \$50,000.</p>

	<p>For purposes of the foregoing, “<u>Carve-Out Trigger Notice</u>” shall mean a written notice delivered by the Secured Parties to the Debtors and their lead counsel, the U.S. Trustee, and lead counsel to the Creditors’ Committee, if any, providing notice that the Termination Date has occurred.</p> <p>(Interim Order, ¶ [10])</p>
<p>Termination Events <i>FRBP 4001(b)(1)(B)(iii)</i> <i>LBR 4001-2(a)(10)</i></p>	<p><u>Termination Date</u>. The Debtors’ authorization, and the Secured Parties’ consent, to use Cash Collateral shall terminate without further notice or action by the Court on the earliest to occur of (the “<u>Termination Date</u>”) any of the following (each a “<u>Termination Event</u>”):</p> <ul style="list-style-type: none"> • the first business day that is 35 days after the Petition Date (unless such period is extended by the Secured Parties in their sole discretion) if the Final Order has not been entered by this Court on or before such date; • the first business day following expiration of a Budget (including, without limitation, the Initial Budget) unless the Debtors and the Secured Parties shall agree on an Amended Budget; • following three (3) business days written notice to the Debtors, the failure of the Debtors to pay the Adequate Protection Fees when such fees become due; • the failure of the Debtors to liquidate their inventory (other than any hydroxide inventory) by [_____], 2018. Date that is five (5) weeks from the Petition Date to be inserted] (unless such period is extended by the Secured Parties in their sole discretion); • following three (3) business days written notice to the Debtors, the failure of the Debtors to comply with any provision, covenant or agreement in the Interim Order (including, without limitation, any failure to comply with a Budget, subject to any permitted variances); • the Debtors shall grant, create, incur or suffer to exist any postpetition liens or security interests other than (i) those granted pursuant to the Interim Order; (ii) carriers’, mechanics’, operator’s, warehousemen’s, repairmen’s or other similar liens arising in the ordinary course of business for amounts outstanding as of the Petition Date, even if recorded after the Petition Date; (iii) pledges or deposits in connection with workers’ compensation, unemployment insurance and other social security legislation; and (iv) deposits to secure the payment of any postpetition statutory obligations, surety bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business; • the entry of an order dismissing any of the Chapter 11 Cases or converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code; • the entry of an order in these Chapter 11 Cases appointing a chapter 11 trustee or an examiner with “expanded powers” which shall mean the grant of additional powers to investigate the Debtors as to activities that are material and unrelated to those set forth in Section 1104(c) of the Bankruptcy Code;

- the Court shall terminate or reduce the period pursuant to section 1121 of the Bankruptcy Code during which the Debtors have the exclusive right to file a plan and solicit acceptances thereof;
- the entry of an order in the Chapter 11 Cases modifying, staying, reversing or vacating the Interim Order, without the prior consent of the Secured Parties;
- except as expressly allowed in the Interim Order, an order of this Court shall be entered granting any lien on, or security interest in, any Prepetition Collateral in favor of any party other than the Secured Parties, or granting an administrative claim payable by a Debtor to any party other than the Secured Parties, that is senior to, or pari passu with, the Adequate Protection Superpriority Claim (as defined herein), without the express written consent of the Secured Parties;
- the Debtors file or support a motion challenging the validity, extent or priority of any of the Prepetition Liens or Secured Obligations; or
- the entry of an order granting relief from any stay of proceeding (including, without limitation, the automatic stay) so as to allow a third party to proceed with foreclosure (or granting a deed in lieu of foreclosure) or other remedy against any asset with a value in excess of \$100,000.

(Interim Order, ¶[5])

Remedies upon the Termination Date. The Debtors shall immediately provide notice to counsel for the Secured Parties (with a copy to counsel for the Creditors' Committee (if any)), of the occurrence of any Termination Event. Upon the occurrence of the applicable Termination Date, (i) the adequate protection obligations shall become due and payable and (ii) the Secured Parties, upon not less than seven (7) days' advance written notice (the "Enforcement Notice") to counsel to the Debtors, counsel to the Creditors' Committee (if any), and the U.S. Trustee (the "Notice Period"), may exercise any remedies available to them under the Interim Order, the Secured Credit/Lease Documents and applicable non-bankruptcy law, including but not limited to revoking the Debtors' right, if any, to use Cash Collateral and collecting and applying any proceeds of the Prepetition Collateral and the Adequate Protection Collateral in accordance with the terms of the Interim Order and Secured Credit/Lease Documents. The only permissible basis for the Debtors, the Creditors' Committee (if any), or any other party to contest, challenge or object to an Enforcement Notice shall be solely with respect to the validity of the Termination Event(s) giving rise to such Enforcement Notice (i.e. whether such Termination Events validly occurred and have not been cured or waived in accordance with the Interim Order). The automatic stay pursuant to Bankruptcy Code section 362 shall be automatically terminated with respect to the Secured Parties at the end of the Notice Period, without further notice or order of the Court and the Secured Parties shall be permitted to exercise all rights and remedies, including with respect to the Prepetition Collateral (including, without limitation, any Cash Collateral) and the Adequate Protection Collateral set

	<p>forth in the Interim Order and the Secured Credit/Lease Documents and as otherwise available at law without further order or application or motion to the Court, and without restriction or restraint by any stay under Bankruptcy Code sections 105 or 362 or otherwise</p> <p>(Interim Order, ¶[12])</p>
<p>Deadline to Sell Property <i>LBR 4001-2(a)(12)</i></p>	<p>Pursuant to Section 5(d) of the Interim Order, the Debtors failure to liquidate their inventory (other than any hydroxide inventory) by [_____], 2018 (unless such period is extended by the Secured Parties in their sole discretion) shall constitute a Termination Event. the failure of the Debtors to liquidate 95% of their October 10, 2018 inventory consisting of finished goods, raw, work-in-progress and high content byproduct (excluding inventory consisting of sweeps, hydroxide and low content byproducts) by December 3, 2018 (unless such period is extended by the Secured Parties in their sole discretion).</p> <p><u>Liquidation of Debtors’ Inventory.</u> As further adequate protection, subject to entry of the Final Order, the Debtors shall liquidate their inventory, including, but not limited to, diamond inventory, precious metal inventory, and hydroxide inventory, in a commercially reasonable manner pursuant to a timeline as agreed to by and among the Debtors and the Secured Parties and set forth in the Budget. Proceeds from the sale of the inventory shall be paid to a segregated deposit account maintained with one of the Secured Parties and retained by the Secured Parties for application to the Secured Obligations without further Court order, subject to the rights of any party under <u>Paragraph 4</u> of this Interim Order and after the netting of amounts required to pay approved Operating Expenses and Non-Operating Disbursements, <u>as well as accrue for minimum cash, as provided for in Paragraph 3(b)(iii)</u>, in accordance with the Budget.</p> <p>(Interim Order, ¶[8(e)])</p>
<p>Joint Liability <i>LBR 4001-2(a)(14)</i></p>	<p>The Debtors are jointly and several liable for the Adequate Protection Super priority Claim.</p> <p>(Interim Order, ¶ [8(b)])</p>
<p>Challenge Period <i>FRBP 4001(b)(1)(B)(iii)</i></p>	<p><u>Challenge Period.</u> The Debtors’ acknowledgments, stipulations, admissions, waivers and releases set forth in the Interim Order, including in Paragraphs F and G thereof, shall be binding on (i) the Debtors, their estates and their respective representatives, successors, and assigns and (ii) all other parties in interest, including the Creditors’ Committee, if any, or any chapter 7 or chapter 11 trustee appointed or elected for any of the Debtors (a “<u>Trustee</u>”), and, in the case of clause (ii), subject to a challenge period which expires after the earlier of (A) with respect to any Creditors’ Committee, the date that is sixty (60) days after entry of a Final Order (or such longer period</p>

	<p>as the Court orders for cause shown before the expiration of such period), (B) with respect to other parties in interest, the date that is seventy-five (75) days after the entry of a Final Order (or such longer period as the Court orders for cause shown before the expiration of such period) or (C) any such later date agreed to in writing by the Secured Parties in their sole and absolute discretion.</p> <p>(Interim Order,[¶ 4(a)])</p>
<p>Waiver of Rights under Section 506(c), Doctrine of Marshalling, and Equities of the Case FRBP 4001(b)(1)(B)(iii) LBR 4001-2(g)(9)</p>	<p><u>Limitation on Charging Expenses Against Collateral.</u> Subject to and effective upon entry of the Final Order, no expenses of administration of the Chapter 11 Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, including, without limitation the conversion of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, shall be charged against or recovered from the Secured Parties, the Prepetition Collateral or the Adequate Protection Collateral (except to the extent of the Carve Out), and the Secured Parties pursuant to sections 105(a) or 506(c) of the Bankruptcy Code or any similar principle of law or equity and no such consent shall be implied from any other action, inaction, or acquiescence by the Secured Parties.</p> <p>(Interim Order,[¶ 17])</p> <p><u>Equities of the Case.</u> Subject to and effective upon entry of the Final Order, the Secured Parties shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to the Secured Parties with respect to (a) proceeds, products, offspring or profits of any of the Prepetition Collateral or the Adequate Protection Collateral or (b) the extension of the Adequate Protection Liens to cover proceeds of the Adequate Protection Collateral.</p> <p>(Interim Order,[¶ 18])</p> <p><u>No Marshalling/Application of Proceeds.</u> Subject to and effective upon entry of the Final Order, the Secured Parties shall be entitled to apply the payments or proceeds of the Prepetition Collateral in accordance with the provisions of the Secured Credit/Lease Documents, and in no event shall any of the Secured Parties be subject to the equitable doctrine of “marshalling” or any other similar doctrine with respect to any of the Prepetition Collateral.</p> <p>(Interim Order,[¶ 19])</p> <p>Consistent with Local Bankruptcy Rule 4001-2(g)(9), the waivers are subject to entry of the Final Order.</p>

BASIS FOR RELIEF

A. The Use of Cash Collateral Is Warranted and Should Be Approved

53. Section 363(c)(1) of the Bankruptcy Code authorizes a debtor in possession to use property of the estate in the ordinary course of business. To use cash collateral, however, one of two conditions must be satisfied: (1) each entity with an interest in the cash collateral consents to its use or (2) the court, after notice and a hearing, authorizes such use. 11 U.S.C. § 363(c)(2). In the latter instance, the court is instructed to prohibit or condition the use of cash collateral as is necessary to provide adequate protection for the interests of the secured party. 11 U.S.C. § 363(e).

54. In these cases, ample cause exists to grant the Debtors authority to use Cash Collateral pursuant to the Budget. Without the ability to use Cash Collateral, there will be no way for the Debtors to liquidate their assets and to maximize value. The Debtors have the consent of the Secured Parties to the use of Cash Collateral as described herein and in the Interim Order. Moreover, the Debtors' submit that the adequate protection provided to the Secured Parties pursuant to the Interim Order is sufficient to protect the interests of the Secured Parties against any diminution in the value of the Prepetition Collateral. Accordingly, the Debtors submit that the use of Cash Collateral is in the best interests of the Debtors' estates and should be approved.

55. In addition, pursuant to section 105(a) of the Bankruptcy Code, the Bankruptcy Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of the Bankruptcy Code. 11 U.S.C. § 105(a). The Debtors respectfully submit that the entry of an order authorizing use of Cash Collateral under the circumstances is necessary and appropriate to enable them to maximize the value of their assets and should be approved.

B. The Adequate Protection Provisions Are Appropriate

56. Section 363(e) of the Bankruptcy Code provides that, "on request of an entity that has an interest in property used . . . or proposed to be used . . . by the [debtor in possession], the

court . . . shall prohibit or condition such use . . . as is necessary to provide adequate protection of such interest.” 11 U.S.C. § 363(e). Although the Bankruptcy Code does not define the term “adequate protection,” it provides a non-exhaustive list of the types of adequate protection, including lump-sum or periodic cash payments, replacement liens, administrative priority claims and “other relief” resulting in the “indubitable equivalent” of the secured creditor’s interest in such property. See 11 U.S.C. § 361. What constitutes adequate protection is determined on a case-by-case basis. See, e.g., In re Mosello, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996) (“[T]he determination of adequate protection is a fact-specific inquiry . . . left to the vagaries of each case.”); In re Realty Southwest Assocs., 140 B.R. 360, 366 (Bankr. S.D.N.Y. 1992); In re Beker Indus. Corp., 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986).

57. The Debtors intend to provide the Secured Parties with adequate protection, which includes: (i) liens, including first-priority replacement liens on unencumbered property, junior priority liens on certain existing liens, and priming liens on the Prepetition Collateral, to the extent of any diminution in value of their interests in the Prepetition Collateral, including Cash Collateral, subject to the Carve Out; (ii) allowed super priority administrative claims against the Debtors pursuant to sections 503(b), 507(a)(2), and 507(b) of the Bankruptcy Code, subject to the Carve Out; (iii) payment of the fees and expenses of the Secured Parties, including the reasonable and documented fees and expenses of counsel and financial advisor; (iv) continued cash payments of interest; (v) payment of the proceeds of the sale of inventory; and (vi) the Debtors’ compliance with the Budget, subject to certain variances set forth in the Interim Order.

58. The Debtors submit that the proposed adequate protection will adequately protect the Secured Parties from any diminution in value of the Collateral during the pendency of the Chapter 11 Cases. Accordingly, the Debtors submit that the adequate protection is (i) fair and

reasonable, (ii) necessary to satisfy the requirements of sections 363(c)(2) and 363(e) of the Bankruptcy Code and (iii) in the best interests of the Debtors and their estates. Additionally, as noted above, the Secured Parties have consented to the Debtors' use of Cash Collateral in exchange for, among other things, the adequate protection.

59. Moreover, courts in this district have approved similar adequate protection packages in chapter 11 cases. *See, e.g., In re Cumulus Media Inc.*, No. 17-13381 (SCC) (Bankr. S.D.N.Y. Nov. 29, 2017); *In re Ultrapetrol (Bahamas) Ltd.*, No. 17-22168 (RDD) (Bankr. S.D.N.Y. Feb. 10, 2017); *In re Atlas Resource Partners, L.P.*, No. 16-12149 (SHL) (Bankr. S.D.N.Y. July 27, 2016); *In re Primorsk Int'l Shipping Ltd.*, No. 16-10073 (MG) (Bankr. S.D.N.Y. Jan. 21, 2016); *In re Quirky, Inc.*, No. 15-12596 (MG) (Bankr. S.D.N.Y. Sept. 25, 2015); *In re Sabine Oil & Gas Corp.*, No. 15-11185 (SCC) (Bankr. S.D.N.Y. July 17, 2015).

C. The Scope of the Carve-Out Is Appropriate

60. The Interim Order subjects the security interests and administrative expense claims provided to the Secured Parties to the Carve-Out. Courts have held that carve-outs for professional fees are reasonable and necessary to ensure that a debtor's estate and any statutory committee can retain assistance from their professionals in certain circumstances, including during an event of default. *See In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 39 (Bankr. S.D.N.Y. 1990). The Carve Out does not directly or indirectly deprive the Debtors' estates or other parties in interest of possible rights and powers. Additionally, the Carve-Out protects against administrative insolvency during the course of the Chapter 11 Cases by ensuring that assets remain for payment of the Clerk of the Court and U.S. Trustee fees and professional fees of the Debtors and the Creditors' Committee (as applicable).

D. The Automatic Stay Should Be Modified on a Limited Basis

61. Section 362 of the Bankruptcy Code provides for an automatic stay upon the filing of a bankruptcy petition. 11 U.S.C. § 362. The Debtors request, as contemplated in the Interim Order, a modification of the automatic stay to permit the Debtors to (i) grant the security interests, liens and claims described above as well as to perform such acts as may be requested to assure the perfection and priority of such security interests and liens and (ii) otherwise implement the terms of the Interim Order, including the termination and remedies provisions therein.

62. Stay modifications of this kind are ordinary and standard features of cash collateral orders and are, in the Debtors' business judgment, reasonable under the present circumstances. Accordingly, the Debtors respectfully request that the Court authorize the modification of the automatic stay in accordance with the terms set forth in the proposed Interim Order.

**IMMEDIATE INTERIM RELIEF IS NECESSARY TO AVOID
IMMEDIATE AND IRREPARABLE HARM**

63. Bankruptcy Rule 4001(b) provides that a final hearing on a motion to use cash collateral pursuant to Section 363 of the Bankruptcy Code may not be commenced earlier than 14 days after the service of such motion. Upon request, however, the court is empowered to conduct an interim expedited hearing on a motion to use cash collateral at which it may authorize a debtor to use cash collateral to the extent necessary to avoid immediate and irreparable harm to a debtor's estate. See Fed. R. Bankr. P. 4001(b)(2). Section 363(c)(3) of the Bankruptcy Code authorizes the court to conduct a preliminary hearing and to authorize the use of cash collateral "if there is a reasonable likelihood that the [debtor] will prevail at the final hearing under [section 363(e) of the Bankruptcy Code]." 11 U.S.C. § 363(c)(3). Local Bankruptcy Rule 4001-2(g) further requires that the Debtors show that immediate or irreparable harm will be caused to the Debtors' estates if immediate relief is not granted before the final hearing.

64. Absent the ability to use Cash Collateral, the Debtors would not have sufficient funds to pay their employees and professionals and otherwise satisfy their ongoing liquidity needs. The Debtors therefore have an immediate need to use Cash Collateral and the continued use of Cash Collateral is vital to preserve and maximize the value of the Debtors' estates. Accordingly, the Debtors request that the Court conduct a preliminary hearing on this Motion and authorize the Debtors to use Cash Collateral on an emergency interim basis on the terms set forth in the Interim Order to prevent immediate and irreparable harm to the Debtors' estates pending the Final Hearing pursuant to Bankruptcy Rule 4001(b).

DEBTORS SATISFY BANKRUPTCY RULE 6003

65. Bankruptcy Rule 6003 provides that, “[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, grant relief regarding . . . a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate” Fed. R. Bankr. P. 6003(b).

66. The Debtors have an immediate need to use the Prepetition Collateral, including Cash Collateral, to, among other things, preserve and maintain the value of the Debtors' assets, absent which immediate and irreparable harm will result to the Debtors and their estates. The preservation and maintenance of the Debtors' assets are necessary to maximize the value of the Debtors' estates. Absent the Debtors' ability to use the Prepetition Collateral, the Debtors would not have sufficient available sources of financing and would be unable to pay their operating expenses or maintain their assets, to the severe detriment of the estates and creditors.

67. The Debtors submit that, because the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors for the reasons set forth herein, Bankruptcy Rule 6003 has been satisfied.

WAIVER OF STAY UNDER BANKRUPTCY RULES 4001(A)(3) AND 6004(H)

68. The Debtors also request that the Court waive the stays imposed by Bankruptcy Rule 4001(a)(3) (“[a]n order granting a motion for relief from an automatic stay made in accordance with [a motion to use property of the estate pursuant to section 363(e)] is stayed until the expiration of fourteen days after entry of the order, unless the court orders otherwise”) and Bankruptcy Rule 6004(h) (“[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. 4001(a)(3), Fed. R. Bankr. P. 6004(h). As described above, the relief that the Debtors seek in this Motion is necessary for the Debtors to operate without interruption and to preserve value for their estates. Accordingly, the Debtors respectfully request that the Court waive the 14-day stays imposed by Bankruptcy Rules 4001(a)(3) and 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

REQUEST FOR A FINAL HEARING

69. Pursuant to Bankruptcy Rule 4001(b)(2), the Debtors request that the Court set a date for the Final Hearing that is as soon as practicable and fix the time and date prior to the Final Hearing for parties to file objections, if any, to this Motion.

MOTION PRACTICE

70. This Motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated and a discussion of their application to this Motion. Accordingly, the Debtors submit that this Motion satisfies Local Rule 9013-1(a).

NOTICE

71. The Debtors will provide notice of this Motion to: (a) the Office of the U.S. Trustee for the Southern District of New York; (b) counsel for the Secured Parties; (c) the parties listed in the consolidated list of thirty (30) largest unsecured creditors filed by the Debtors in these chapter

11 cases; (d) the Internal Revenue Service; (e) all parties who are known, after reasonable inquiry, to have asserted a lien, encumbrance, or claim in the Prepetition Collateral; (f) the Office of the United States Attorney for the Southern District of New York; and (g) any other party entitled to notice pursuant to Local Rule 9013-1(b). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

NO PRIOR REQUEST

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

CONCLUSION

WHEREFORE, for the reasons set forth above and in the First Day Declaration, the Debtors respectfully request the Court the Debtors respectfully request that the Court enter the Interim Order, substantially in the form annexed hereto, and the Final Order granting the relief requested in this Motion and granting such other and further relief as may be just and proper.

Dated: New York, New York
November 2, 2018

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EXHIBIT A

PROPOSED INTERIM ORDER

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
)	
REPUBLIC METALS REFINING)	
CORPORATION, <i>et al.</i> , ¹)	Case No. 18-13359 (___)
)	
Debtors.)	
)	(Joint Administration Pending)

**INTERIM ORDER PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363, 503 AND 507
(I) AUTHORIZING THE DEBTORS' TO USE CASH COLLATERAL,
(II) GRANTING ADEQUATE PROTECTION TO THE SECURED PARTIES,
(III) SCHEDULING A FINAL HEARING AND (IV) GRANTING RELATED RELIEF**

Upon the motion (the "Motion")² of the above-referenced debtors and debtors-in-possession (each, a "Debtor" and collectively, the "Debtors") in the above-captioned chapter 11 cases (the "Chapter 11 Cases") for entry of an interim order (this "Interim Order"):

- (I) authorizing the Debtors to use Cash Collateral (as defined herein);
- (II) granting adequate protection with respect to the diminution in value of the interests of the Secured Parties (as defined herein) as a result of the use of the Prepetition Collateral (as defined herein), including Cash Collateral;
- (III) modifying the automatic stay to the extent set forth herein;
- (IV) scheduling, pursuant to Bankruptcy Rule 4001, a final hearing (the "Final Hearing") granting the relief requested in the Motion on a final basis pursuant to the final order (the "Final Order"); and

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Republic Metals Refining Corporation, 15 West 47th Street, Suites 206 and 209, New York, NY 10036 (3194), Republic Metals Corporation, 12900 NW 38th Avenue, Miami, FL 33054 (4378), and Republic Carbon Company, LLC, 5295 Northwest 163rd Street, Miami Gardens, FL 33014 (5833).

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

(V) granting related relief;

and the interim hearing to consider the interim relief requested in the Motion having been held before the Court on November __, 2018 (the “Interim Hearing”); and good and sufficient notice of the Motion and the Interim Hearing on the Motion having been given; and the Court having considered the Motion, the First Day Declaration, and the evidence submitted or adduced and the arguments of counsel made at the Interim Hearing; and notice of the Interim Hearing having been given in accordance with Bankruptcy Rules 2002, 4001(b), (c), and (d), and 9014; and all objections, if any, to the interim relief requested in the Motion having been withdrawn, resolved, or overruled by the Court; and it appearing to the Court that granting the interim relief requested is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing, and otherwise is fair and reasonable, in the best interests of the Debtors, their estates, their creditors and all other parties-in-interest in the Chapter 11 Cases, and essential to maximize the value of the Debtors’ assets; and after due deliberation and consideration, and for good and sufficient cause appearing therefor:

THIS COURT HEREBY FINDS AND CONCLUDES AS FOLLOWS:³

A. Petition Date. On November 2, 2018 (the “Petition Date”), the Debtors filed voluntary petitions with this Court for relief under chapter 11 of the Bankruptcy Code.

B. Debtors in Possession. The Debtors are in possession of their properties and continue to operate their businesses as debtors and debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these Chapter 11 Cases.

³ Pursuant to Bankruptcy Rule 7052, any findings of fact contained herein may be treated as conclusions of law as if set forth below, and vice versa.

C. Jurisdiction and Venue. This Court has jurisdiction over these Chapter 11 Cases and the Motion pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

D. Creditors' Committee. As of the date hereof, the United States Trustee for the Southern District of New York (the "U.S. Trustee") has not appointed an official committee of unsecured creditors in these Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code (a "Creditors' Committee").

E. Adequate Notice. On November 2, 2018, the Debtors filed the Motion with the Court and pursuant to Bankruptcy Rules 2002, 4001 and 9014, and the Local Rules of this Court, the Debtors provided notice of the Motion and the Interim Hearing by electronic mail, facsimile, hand delivery or overnight delivery to the following parties and/or to their counsel as indicated below: (a) the U.S. Trustee, (b) counsel to the Secured Parties (as defined herein), (c) creditors holding the top thirty (30) largest unsecured claims as set forth in the consolidated list filed with the Debtors' petitions, (d) those parties requesting notice pursuant to Bankruptcy Rule 2002, (e) all parties who are known, after reasonable inquiry, to have asserted a lien, encumbrance, or claim in the Prepetition Collateral, (f) the Office of the United States Attorney for the Southern District of New York, and (g) the Internal Revenue Service (collectively, the "Notice Parties"). Given the nature of the relief sought in the Motion, this Court concludes that the foregoing notice was sufficient and adequate under the circumstances and complies with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any other applicable law, and no further notice relating to this proceeding and the Interim Hearing is necessary or required.

F. Debtors' Stipulations. Without prejudice to the rights of any party to assert Claims and Defenses (as defined herein) prior to expiration of the Challenge Period (as defined herein) as

more particularly set forth in Paragraphs 3(d) and 4 of this Interim Order, the Debtors represent, admit, stipulate, and agree (collectively, the “Debtors’ Stipulations”) as follows:

- i. Credit and Metal Lease Agreements. The Debtors are borrowers, lessees, obligors, or guarantors under those certain credit agreements, master netting agreements, and lease agreements (as such agreements may be amended, restated, supplemented or otherwise modified from time to time, the “Credit and Lease Agreements” and together with any and all related collateral and security documents, guarantees and other loan documents, the “Secured Credit/Lease Documents” and any and all related obligations thereunder, the “Secured Obligations”) by and among certain Debtors and Coöperatieve Rabobank U.A., New York Branch, Brown Brothers Harriman & Co., Bank Hapoalim B.M., Mitsubishi International Corporation, ICBC Standard Bank Plc, Techemet Metal Trading LLC, Woodforest National Bank, and Bank Leumi USA (each, a “Secured Party” and collectively, the “Secured Parties”), respectively. A schedule of the Credit and Lease Agreements is attached hereto as **Schedule 1**, and incorporated herein by reference.
- ii. Prepetition Collateral. The Credit and Lease Agreements are secured by substantially all assets of the Debtors (the “Prepetition Collateral” and all liens and security interests therein, the “Prepetition Liens”) and constitute the legal, valid and binding obligations of the Debtors, enforceable in accordance with the Secured Credit/Lease Documents (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code).
- iii. Intercreditor Agreement. The rights and obligations of the Secured Parties with respect to the Prepetition Collateral are governed by that certain Second Amended and Restated Intercreditor Agreement, dated as of February 19, 2016 (as amended, restated, supplemented or otherwise modified, the “Intercreditor Agreement”), among the Secured Parties and acknowledged by Debtor Republic Metals Corporation.
- iv. Cash Collateral. Any and all of the Debtors’ cash, including cash and other amounts on deposit or maintained in any account or accounts by the Debtors, and any amounts generated by the collection of accounts receivable, the exercise of letter of credit rights, the sale of inventory or other disposition of the Prepetition Collateral, and the proceeds of any of the foregoing is the Secured Parties’ cash collateral within the meaning of section 363(a) of the Bankruptcy Code (the “Cash Collateral”).
- v. Secured Obligations. As of the Petition Date, the Debtors, without defense, counterclaim, or offset of any kind are indebted and liable to the Secured Parties under the Secured Credit/Lease Documents in the respective principal amounts set forth on **Schedule 2** attached hereto and incorporated herein by reference, exclusive of accrued and unpaid interest, premiums, if any, and certain fees, costs, expenses, indemnification obligations, charges and all other obligations of whatever nature

owing, whether or not contingent, whenever arising, accrued accruing, due, owing or chargeable in respect of any of the Secured Obligations.

- vi. Prepetition Liens. The Prepetition Liens granted to the Secured Parties in the Prepetition Collateral pursuant to and in connection with the Secured Credit/Lease Documents, (i) are valid, binding, perfected, and enforceable first priority liens and security interests in the Prepetition Collateral, (ii) other than any liens and security interests granted during the 90-day period preceding the Petition Date, are not subject, pursuant to the Bankruptcy Code or other applicable law, to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense, or “claim” (as defined in the Bankruptcy Code) of any kind, and (iii) constitute the legal, valid, and binding obligation of the Debtors, enforceable in accordance with the terms of the applicable Secured Credit/Lease Documents.
- vii. No Claims Against Secured Parties. Other than with respect to any liens and security interests granted during the 90-day period preceding the Petition Date, the Debtors and their estates have no claims, objections, challenges, causes of action and/or choses in action, including, without limitation, avoidance claims under chapter 5 of the Bankruptcy Code, against any of the Secured Parties, or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees in respect of the Prepetition Liens, the Secured Obligations or the Secured Credit/Lease Documents.

The Debtors’ Stipulations shall not be considered findings of fact of this Court.

G. Releases. Subject to entry of a Final Order, and without prejudice to the rights of any party to assert Claims and Defenses prior to expiration of the Challenge Period as more particularly set forth in Paragraphs 3(d) and 4 of this Interim Order, each of the Debtors and the Debtors’ estates, on its own behalf and on behalf of its past, present, and future predecessors, successors, heirs and assigns hereby, to the maximum extent permitted by applicable law, unconditionally, irrevocably, and fully, forever waives and releases each of the Secured Parties, and each of their respective former, current, or future officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, and predecessors in interest of any and all claims (as defined in section 101(5) of the Bankruptcy Code), counterclaims, causes of action, defenses, or setoff rights that exist on the date hereof relating to any of the Prepetition Collateral,

any of the Secured Obligations or any of the Secured Credit/Lease Documents or the transactions contemplated under such documents, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending or threatened, arising at law or in equity, including, without limitation, any so-called “lender liability,” recharacterization, subordination, avoidance, or other claim arising under or pursuant to section 105 or chapter 5 of the Bankruptcy Code or under any other similar provisions of applicable state, federal, or international law and any and all claims and causes of action regarding the validity, priority, perfection, or avoidability of the liens or the claims of the Secured Parties. Subject to Paragraphs 3(d) and 4 of this Interim Order, the Debtors’ acknowledgements, stipulations, and releases (as set forth in this Paragraph) shall be binding on the Debtors and their respective fiduciaries, successors, and assigns and on each of the Debtors’ estates, all creditors thereof, and each of the respective fiduciaries, successors, and assigns, including, without limitation, any trustee or other fiduciary appointed in the Chapter 11 Cases, whether such trustee or representative is appointed in chapter 7 or chapter 11 of the Bankruptcy Code.

H. Necessity for Relief Requested; Immediate and Irreparable Harm. The Debtors requested entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(2). The Debtors have an immediate need to use the Prepetition Collateral, including Cash Collateral to, among other things, preserve and maintain the value of the Debtors’ assets, absent which immediate and irreparable harm will result to the Debtors, their estates, the creditors, and other stakeholders. The preservation and maintenance of the Debtors’ assets and business are necessary to maximize the value of the Debtors’ estates. Absent the Debtors’ ability to use the Prepetition Collateral, including Cash Collateral, the Debtors would not have sufficient available sources of working capital or financing and would be unable to pay their operating expenses or maintain their assets,

to the severe detriment of the estates and creditors. Accordingly, the relief requested in the Motion and the terms herein are (i) critical to the Debtors' ability to maximize the value of the estates, (ii) in the best interests of the Debtors and their estates, and (iii) necessary, essential, and appropriate to avoid immediate and irreparable harm to the Debtors, their creditors, their assets, remaining business, goodwill, and reputation.

I. Good Cause. Good cause has been shown for immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2) and the Local Rules, and the entry of this Interim Order is in the best interests of the Debtors, their estates, the creditors, and other stakeholders. Among other things, the relief granted herein will minimize disruption of the Debtors' business and permit the Debtors to preserve and maintain the value of the Debtors' assets. The stipulated terms of the Debtors' use of the Prepetition Collateral, including Cash Collateral and proposed adequate protection arrangements, as set forth in this Interim Order, are fair and reasonable under the circumstances, and reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties.

J. Good Faith. The Debtors' use of Cash Collateral has been negotiated in good faith and at arms' length among the Debtors and the Secured Parties and the Secured Parties' consent to the Debtors' use of Cash Collateral has been made in "good faith."

BASED UPON THE STIPULATED TERMS SET FORTH HEREIN AND THE FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. Motion Granted. The Motion is GRANTED to the extent provided herein on an interim basis. Any objection to the Motion to the extent not withdrawn or resolved is hereby overruled.

2. Authorization to Use Cash Collateral. The Debtors are authorized to use Cash Collateral during the period from the Petition Date through and including the Termination Date pursuant to the terms and conditions provided herein.

3. Budget.

- a. Except as otherwise provided herein, the Debtors may only use Cash Collateral in the manner set forth in the budget approved by the Secured Parties (as the same may be updated in accordance with the terms of this Interim Order, the "Budget") and for no other purposes. The initial Budget (the "Initial Budget"), attached hereto as Exhibit A, shall extend no further than January 19, 2019.
- b. The Debtors shall be deemed to be in compliance with the Budget so long as:
 - i. commencing for the week ending November 17, 2018, actual "Total Operating Receipts" are not less than 80% of the projected "Total Operating Receipts" line item in the Budget for any rolling four (4) week period, such variance tested on each Thursday for the period ending in the immediately preceding week;
 - ii. commencing for the week ending November 3, 2018, actual "Total Operating Expenses" are not more than 20% in excess of the projected "Total Operating Expenses" line item in the Budget for any rolling two (2) week period, such variance tested on each Thursday for the period ending in the immediately preceding week; and
 - iii. the aggregate amount of all cash and cash equivalents on deposit in the deposit accounts (excluding any futures brokerage accounts) of the Debtors on a consolidated basis is less than \$5,000,000 at any time.
- c. Commencing on the first Thursday following the week of the Petition Date and continuing every Thursday thereafter, the Debtors shall deliver to the Secured Parties a weekly variance report certified by the chief restructuring officer of the Debtors comparing the actual results from the previous week to the Initial Budget and providing revised projections for the remainder of the term of the Initial Budget.
- d. The Debtors shall remain bound by the Initial Budget, subject to the variances noted above. Any amendment to the Initial Budget (an "Amended Budget") shall require the consent of the Secured Parties in their sole discretion (it being understood and agreed that the Secured Parties shall be under no obligation to consent to an Amended Budget). Amendments to the Initial Budget need not be approved by nor

filed with the Court; provided that copies shall be provided to the U.S. Trustee and counsel to any Creditors' Committee.⁴

- e. Notwithstanding anything to the contrary set forth in this Interim Order, no Prepetition Collateral, including Cash Collateral, may be used: (i) to investigate (except as expressly provided herein), initiate, prosecute, join, or finance the initiation or prosecution of any claim, counterclaim, action, suit, arbitration, proceeding, application, motion, objection, defense, or other litigation of any type (A) against any of the Secured Parties (in their capacities as such) or seeking relief that would impair the rights and remedies of the Secured Parties (in their capacities as such) under the Secured Credit/Lease Documents or this Interim Order, including, without limitation, for the payment of any services rendered by professionals retained by the Debtors or the Creditors' Committee in connection with the assertion of or joinder in any claim, counterclaim, action, proceeding, application, motion, objection, defense, or other contested matter, the purpose of which is to seek, or the result of which would be to obtain, any order, judgment determination, declaration, or similar relief that would impair the ability of any of the Secured Parties to recover on the Secured Obligations or seeking affirmative relief against any of the Secured Parties related to the Secured Obligations; (B) invalidating, setting aside, avoiding, or subordinating, in whole or in part, the Secured Obligations or Secured Parties' liens or security interests in the Prepetition Collateral, including challenging whether the Debtors' inventory and/or raw material is property of the Debtors' estates; or (C) for monetary, injunctive, or other affirmative relief against any of the Secured Parties, or their respective liens on or security interests in the Prepetition Collateral that would impair the ability of any of the Secured Parties to assert or enforce any lien, claim, right, or security interest or to realize or recover on the Secured Obligations; (ii) for objecting to or challenging in any way the legality, validity, priority, perfection, or enforceability of the claims, liens, or interests (including the Prepetition Liens) held by or on behalf of each of the Secured Parties related to the Secured Obligations; (iii) for asserting, commencing, or prosecuting any claims or causes of action whatsoever, including, without limitation, any Avoidance Actions (as defined herein) related to the Secured Obligations or the Prepetition Liens; or (iv) for prosecuting an objection to, contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of any of the Prepetition Liens or any other rights or interests of any of the Secured Parties related to the Secured Obligations, the Prepetition Liens or the Secured Credit/Lease Documents; provided that no more than \$25,000 of the proceeds of the Prepetition Collateral, including the Cash Collateral, may be used by the Creditors' Committee, if appointed, solely to investigate the foregoing matters within the Challenge Period (as defined herein).

⁴ For purposes of this Interim Order, whenever notice is requested or required herein, such notice may be via electronic mail, unless such other form of notice is specified.

4. Effect of Stipulations on Third Parties.

a. The Debtors' acknowledgments, stipulations, admissions, waivers and releases set forth in this Interim Order, including in Paragraphs F and G hereof, shall be binding on the Debtors, their estates and their respective representatives, successors, and assigns. The acknowledgments, stipulations, admissions, waivers and releases contained in this Interim Order, including in Paragraphs F and G hereof, shall also be binding upon all other parties in interest, including the Creditors' Committee, if any, or any chapter 7 or chapter 11 trustee appointed or elected for any of the Debtors (a "Trustee"), unless (a) such party, in each case, with requisite standing, has duly filed an adversary proceeding challenging the validity, perfection, priority, extent or enforceability of the Prepetition Liens, the Secured Credit/Lease Documents or the Secured Obligations or otherwise asserting or prosecuting any Avoidance Actions or any other claims, counterclaims or causes of action, objections, contests or defenses (collectively, the "Claims and Defenses") against any Secured Party and/or the Secured Parties as a whole in connection with any matter related to the Prepetition Collateral, the Prepetition Liens, the Secured Credit/Lease Documents or the Secured Obligations by no later than (i) with respect to any Creditors' Committee, the date that is sixty (60) days after entry of a Final Order (or such longer period as the Court orders for cause shown before the expiration of such period), (ii) with respect to other parties in interest, the date that is seventy-five (75) days after the entry of a Final Order (or such longer period as the Court orders for cause shown before the expiration of such period) or (iii) any such later date agreed to in writing by the Secured Parties in their sole and absolute discretion (the time period established by the foregoing clauses (i), (ii) and (iii), the "Challenge Period"); and (b) an order is entered by a court of competent jurisdiction and becomes final and non-appealable in favor of the plaintiff sustaining any such challenge or claim in any such duly filed adversary proceeding. If no such

adversary proceeding is timely filed prior to the expiration of the Challenge Period, without further order of this Court (x) the Secured Obligations shall constitute allowed claims, not subject to any Claims and Defenses (whether characterized as a counterclaim, setoff, subordination, recharacterization, defense, avoidance, contest, attack, objection, recoupment, reclassification, reduction, disallowance, recovery, disgorgement, attachment, “claim” (as defined by Bankruptcy Code section 101(5)), impairment, subordination (whether equitable, contractual or otherwise), or other challenge of any kind pursuant to the Bankruptcy Code or applicable non-bankruptcy law), for all purposes in these Chapter 11 Cases and any subsequent chapter 7 case(s), if any; and (y) the Secured Obligations, the Prepetition Liens, the Secured Credit/Lease Documents and the Secured Parties (in their capacities as such) shall not be subject to any other or further challenge and any party in interest shall be forever enjoined and barred from seeking to exercise the rights of the Debtors’ estates or taking any such action, including any successor thereto (including any estate representative or a Trustee, whether such Trustee is appointed or elected prior to or following the expiration of the Challenge Period). If any such adversary proceeding is timely filed prior to the expiration of the Challenge Period, (a) the stipulations and admissions contained in this Interim Order, including in Paragraph F hereof, shall nonetheless remain binding and preclusive on the Creditors’ Committee, if any, and any other party in these Chapter 11 Cases, including any Trustee, except as to any stipulations or admissions that are specifically and expressly challenged in such adversary proceeding and (b) any Claims and Defenses not brought in such adversary proceeding shall be forever barred; provided that if and to the extent any challenges to a particular stipulation or admission are withdrawn, denied or overruled by a final, non-appealable order, such stipulation also shall be binding on the Debtors’ estates and all parties in interest.

b. Nothing in this Interim Order vests or confers on any person (as defined in the Bankruptcy Code), including any Creditors' Committee, standing or authority to pursue any claim or cause of action belonging to the Debtors or their estates, including, without limitation, any challenge with respect to the Secured Credit/Lease Documents, the Prepetition Liens, the Secured Obligations or the Secured Parties (in their capacities as such). Any motion seeking standing shall attach a draft complaint or other pleading that sets forth such claim or cause of action.

5. Termination Date. The Debtors' authorization, and the Secured Parties' consent, to use Cash Collateral shall terminate without further notice or action by the Court on the earliest to occur of (the "Termination Date") any of the following (each a "Termination Event"):

- a. the first business day that is 35 days after the Petition Date (unless such period is extended by the Secured Parties in their sole discretion) if the Final Order has not been entered by this Court on or before such date;
- b. the first business day following expiration of a Budget (including, without limitation, the Initial Budget) unless the Debtors and the Secured Parties shall agree on an Amended Budget;
- c. following three (3) business days written notice to the Debtors, the failure of the Debtors to pay the Adequate Protection Fees when such fees become due;
- d. the failure of the Debtors to liquidate 95% of their October 10, 2018 inventory consisting of finished goods, raw, work-in-progress and high content byproduct (excluding inventory consisting of sweeps, hydroxide and low content byproducts) by December 3, 2018 (unless such period is extended by the Secured Parties in their sole discretion);
- e. following three (3) business days written notice to the Debtors, the failure of the Debtors to comply with any provision, covenant or agreement in this Interim Order (including, without limitation, any failure to comply with a Budget, subject to any permitted variances);
- f. the Debtors shall grant, create, incur or suffer to exist any postpetition liens or security interests other than (i) those granted pursuant to this Interim Order; (ii) carriers', mechanics', operator's, warehousemen's, repairmen's or other similar liens arising in the ordinary course of business for amounts outstanding as of the Petition Date, even if recorded after the Petition Date; (iii) pledges or deposits in connection with workers' compensation, unemployment insurance and other social security legislation; and (iv) deposits to secure the payment of any postpetition

statutory obligations, surety bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

- g. the entry of an order dismissing any of the Chapter 11 Cases or converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code;
 - h. the entry of an order in these Chapter 11 Cases appointing a chapter 11 trustee or an examiner with “expanded powers” which shall mean the grant of additional powers to investigate the Debtors as to activities that are material and unrelated to those set forth in Section 1104(c) of the Bankruptcy Code;
 - i. the Court shall terminate or reduce the period pursuant to section 1121 of the Bankruptcy Code during which the Debtors have the exclusive right to file a plan and solicit acceptances thereof;
 - j. the entry of an order in the Chapter 11 Cases modifying, staying, reversing or vacating this Interim Order, without the prior consent of the Secured Parties;
 - k. except as expressly allowed in this Interim Order, an order of this Court shall be entered granting any lien on, or security interest in, any Prepetition Collateral in favor of any party other than the Secured Parties, or granting an administrative claim payable by a Debtor to any party other than the Secured Parties, that is senior to, or *pari passu* with, the Adequate Protection Superpriority Claim (as defined herein), without the express written consent of the Secured Parties;
 - l. the Debtors file or support a motion challenging the validity, extent or priority of any of the Prepetition Liens or Secured Obligations; or
 - m. the entry of an order granting relief from any stay of proceeding (including, without limitation, the automatic stay) so as to allow a third party to proceed with foreclosure (or granting a deed in lieu of foreclosure) or other remedy against any asset with a value in excess of \$100,000.
6. Reporting Requirements/Access to Records. The Debtors shall provide the Secured

Parties with all reporting and other information required to be provided to the Secured Parties under this Interim Order and such other reporting reasonably requested from time to time by the Secured Parties, including, without limitation, (i) on each business day following the Petition Date, a report listing the following as of the close of business on the preceding day: (A) the cash balance of all deposit and brokerage accounts maintained by the Debtors and (B) all shipments of inventory by the Debtors listed in both ounces and dollar value; and (ii) on each Thursday following the Petition Date, a report listing (A) the inventory balance of the Debtors broken out by type

(including sweeps, bars and finished product) and location (including the mint at the Debtors' refining facilities, the vault at the Debtors' refining facilities, in transit to/from the Debtors' refining facilities and all third party depository and consignment locations) listed in ounces and dollar value and, if available, content of precious metals and (B) all hydroxide barrels processed by or on behalf of the Debtors during the preceding week, including (1) the total number of barrels at the beginning and end of such week, (2) the status of barrels completed and in process and (3) the estimated dollar value and assays with respect to the metal content of all processed barrels.

7. Insurance. At all times the Debtors shall maintain casualty and loss insurance coverage for the Prepetition Collateral on substantially the same basis as maintained prior to the Petition Date.

8. Adequate Protection. Subject only to the Carve-Out and the terms of this Interim Order, pursuant to sections 361, 362, 363(e) and 507 of the Bankruptcy Code, and in consideration of the stipulations and consents set forth herein, as adequate protection of their interests in the Prepetition Collateral, including the Cash Collateral, for and equal in amount to the aggregate postpetition diminution in value of such interests, including any such diminution resulting from the use by the Debtors of the Prepetition Collateral, the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code and the use of the Cash Collateral pursuant to this Interim Order (each such diminution, a "Diminution in Value"), the Secured Parties are hereby granted the following:

- a. Adequate Protection Liens. As security for and solely to the extent of any Diminution in Value, the Secured Parties are hereby granted, pursuant to sections 361(2) and 363(c)(2) of the Bankruptcy Code, additional and replacement valid, binding, enforceable non-avoidable, and automatically perfected postpetition security interests in and liens (the "Adequate Protection Liens"), without the necessity of the execution by the Debtors (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages, or other similar documents, on all property (including any previously

unencumbered property), whether now owned or hereafter acquired or existing and wherever located, of each Debtor and each Debtor's estate (as created pursuant to section 541(a) of the Bankruptcy Code), of any kind or nature whatsoever, real or personal, tangible or intangible, and now existing or hereafter acquired or created, including, without limitation, all cash, accounts, inventory, metals, goods, contract rights, instruments, documents, chattel paper, patents, trademarks, copyrights, and licenses therefor, accounts receivable, receivables and receivables records, general intangibles, payment intangibles, tax or other refunds, insurance proceeds, letters of credit, contracts, owned real estate, real property leaseholds, fixtures, deposit accounts, commercial tort claims, securities accounts, instruments, investment property, letter-of-credit rights, supporting obligations, machinery and equipment, real property, leases (and proceeds from the disposition thereof), all of the issued and outstanding capital stock of each Debtor, other equity or ownership interests, including equity interests in subsidiaries and non-wholly-owned subsidiaries, money, investment property, causes of action, including causes of action arising under section 549 of the Bankruptcy Code (but excluding any causes of action under sections 544, 545, 547, 548 and 550 of the Bankruptcy Code and any other avoidance actions under the Bankruptcy Code (collectively, the "Avoidance Actions")), all products, proceeds and supporting obligations of the foregoing, whether in existence on the Petition Date or thereafter created, acquired, or arising and wherever located, and subject to entry of the Final Order, all proceeds and property recovery in respect of Avoidance Actions (collectively, the "Adequate Protection Collateral"). Subject to the terms of this Interim Order, the Adequate Protection Liens shall be subordinate only to the (A) Carve-Out and (B) valid, perfected, unavoidable and enforceable liens, if any, existing as of the Petition Date that are senior in priority to the Prepetition Liens of the Secured Parties pursuant to applicable law and as permitted by the terms of the Secured Credit/Lease Documents. Other than as specifically set forth above, the Adequate Protection Liens shall be senior to all other security interests in, liens on, or claims against any of the Adequate Protection Collateral. The Adequate Protection Liens shall not be (A) subject or junior to (i) any lien or security interest that is avoided and preserved for the benefit of the Debtors' estates under section 551 of the Bankruptcy Code or (ii) any lien or security interest arising on or after the Petition Date or (B) subordinated to or made *pari passu* with any other lien, claim or interest under sections 363 or 364 of the Bankruptcy Code or otherwise.

- b. Adequate Protection Superpriority Claim. To the extent of any Diminution in Value, as further adequate protection, and to the extent provided by sections 503(b), 507(a)(2) and 507(b) of the Bankruptcy Code, the Secured Parties are hereby granted an allowed superpriority administrative expense claim against each Debtor (jointly and severally) ahead of and senior to any and all other administrative expense claims and all other claims asserted against such Debtors (the "Adequate Protection Superpriority Claim") other than the Carve-Out. Other than the Carve-Out (which shall have priority over the Adequate Protection Superpriority Claim), the Adequate Protection Superpriority Claim will not be junior to any claims and shall have priority over all administrative expense claims and all other claims asserted against each of the Debtors, now existing or hereafter arising, of any kind

or nature whatsoever, including, without limitation, administrative expense claims of the kinds specified in or ordered pursuant to Bankruptcy Code sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c) (subject to entry of the Final Order), 507(a), 507(b), 546(d), 726, 1113 and 1114.

- c. Fees and Expenses. As further adequate protection, the Debtors are authorized and directed to pay within five (5) business days of presentment of an invoice to the Debtors describing in customary detail (redacted for privilege and work product), the reasonable and documented fees and expenses (the "Adequate Protection Fees") of the Secured Parties (and for each Secured Party), including attorneys and financial consultants retained by the Secured Parties (and for each Secured Party), including, without limitation, Luskin, Stern & Eisler LLP, Greenberg Traurig LLP, Haynes and Boone, LLP, RMI Consulting, LLC, and RPA Advisors, LLC, whether incurred before or after the Petition Date, in each case without further order of, or application to, the Court or notice to any party; provided that the Secured Parties shall concurrently provide such invoice by email to the U.S. Trustee and counsel to any Creditors' Committee. Notwithstanding the foregoing, in the event it is determined that the Secured Parties are undersecured, the Debtors and any other party with requisite standing may seek to have any payments made with respect to such fees, costs and expenses recharacterized as payments made with respect to the outstanding principal owing under the Secured Credit/Lease Documents and all parties reserve all rights with respect thereto.
- d. Postpetition Interest. As further adequate protection, Republic shall pay, in each case at the place and in the currency in which it is expressed to be payable pursuant to the applicable Secured Credit/Lease Documents, interest on the outstanding Secured Obligations to the Secured Parties at a rate per annum equal to 4.50%, compounded daily, which shall be payable in arrears on the first business day of each calendar week; provided that interest at an additional 1.00% and, to the extent set forth in the applicable Secured Credit/Lease Documents, interest at the default rate in excess of 5.50% shall accrue from the Petition Date through the Termination Date. Notwithstanding the foregoing, in the event it is determined that the Secured Parties are undersecured, the Debtors and any other party with requisite standing may seek to have any payments made with respect to such interest recharacterized as payments made with respect to the outstanding principal owing under the Secured Credit/Lease Documents and all parties reserve all rights with respect thereto.
- e. Liquidation of Debtors' Inventory. As further adequate protection, subject to entry of the Final Order, the Debtors shall liquidate their inventory, including, but not limited to, diamond inventory, precious metal inventory, and hydroxide inventory, in a commercially reasonable manner pursuant to a timeline as agreed to by and among the Debtors and the Secured Parties and set forth in the Budget. Proceeds from the sale of the inventory shall be paid to a segregated deposit account maintained with one of the Secured Parties and retained by the Secured Parties for application to the Secured Obligations without further Court order, subject to the rights of any party under Paragraph 4 of this Interim Order and after the netting of

amounts required to pay approved Operating Expenses and Non-Operating Disbursements, **as well as accrue for minimum cash, as provided for in Paragraph 3(b)(iii)**, in accordance with the Budget.

9. Perfection of Adequate Protection Liens.

- a. The Secured Parties are hereby authorized, but not required, to file or record financing statements, intellectual property filings, mortgages, depository account control agreements, notices of lien or similar instruments in any jurisdiction in order to validate and perfect the liens and security interests granted hereunder. Whether or not the Secured Parties shall, in their sole discretion, choose to file such financing statements, intellectual property filings, mortgages, notices of lien or similar instruments, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge, dispute or subordination as of the date of entry of this Interim Order. If the Secured Parties determine to file or execute any financing statements, agreements, notice of liens or similar instruments, the Debtors shall cooperate and assist in any such execution and/or filings as reasonably requested by the Secured Parties, and the automatic stay is hereby modified to allow such filings.
- b. A certified copy of this Interim Order may, in the sole discretion of the Secured Parties, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy of this Interim Order for filing and recording; *provided* that, notwithstanding the date of any such filing, the date of such perfection shall be the date of entry of this Interim Order.

10. Carve-Out. For purposes hereof, the “Carve-Out” shall mean the sum of: (i) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee under 28 U.S.C. § 1930(a) plus interest at the statutory rate; plus (ii) fees and expenses up to \$35,000 incurred by a trustee under Bankruptcy Code section 726(b); plus (iii) to the extent allowed by the Court and remaining unpaid after application of any retainers, all fees, costs, and expenses (the “Professional Fees”) incurred by persons or firms retained by the Debtors or the Creditors’ Committee pursuant to section 327, 328, or 363 of the Bankruptcy Code (collectively, the “Professional Persons”) at any time before the delivery by the Secured Parties of a Carve-Out Trigger Notice; plus (iv) after the delivery by the Secured Parties of the Carve-Out Trigger Notice, to the extent allowed by the Court and remaining unpaid after application of any retainers, the

payment of Professional Fees of Professional Persons in an aggregate amount not to exceed (x) with respect to Professional Persons retained by the Debtors, \$200,000 and (y) with respect to Professional Persons retained by the Creditors' Committee, \$50,000; provided, that nothing herein shall be construed to impair the ability of any party to object to the fees, expenses, reimbursement, or compensation described in preceding clauses (iii) and (iv). For purposes of the foregoing, "Carve-Out Trigger Notice" shall mean a written notice delivered by the Secured Parties to the Debtors and their lead counsel, the U.S. Trustee, and lead counsel to the Creditors' Committee, if any, providing notice that the Termination Date has occurred. For the avoidance of doubt and notwithstanding anything to the contrary herein or in the Secured Credit/Lease Documents, the Carve-Out shall be senior to all liens and claims securing the Secured Credit/Lease Documents and the Adequate Protection Superpriority Claims, and any and all other forms of adequate protection, liens, or claims securing the Secured Obligations.

11. Reversal, Modification, Vacatur, or Stay. Any reversal, modification, vacatur, or stay of any or all of the provisions of this Interim Order (other than in accordance with the Final Order) shall not affect the validity or enforceability of any Adequate Protection Lien, or any claim, lien, security interest, or priority authorized or created hereby with respect to any Adequate Protection Lien, incurred prior to the effective date of such reversal, modification, vacatur, or stay. Notwithstanding any reversal, modification, vacatur, or stay (other than in accordance with the Final Order), (a) this Interim Order shall govern, in all respects, any use of Cash Collateral or Adequate Protection Lien or Adequate Protection Superpriority Claim incurred by the Debtors prior to the effective date of such reversal, modification, vacatur, or stay, and (b) the Secured Parties shall be entitled to all the benefits and protections granted by this Interim Order with respect

to any such use of Cash Collateral (including payment of the Adequate Protection Fees) or such Adequate Protection Lien or Adequate Protection Superpriority Claim incurred by the Debtors.

12. Remedies upon the Termination Date. The Debtors shall immediately provide notice to counsel for the Secured Parties (with a copy to counsel for the Creditors' Committee (if any)), of the occurrence of any Termination Event. Upon the occurrence of the applicable Termination Date, (i) the adequate protection obligations shall become due and payable and (ii) the Secured Parties, upon not less than seven (7) days' advance written notice (the "Enforcement Notice") to counsel to the Debtors, counsel to the Creditors' Committee (if any), and the U.S. Trustee (the "Notice Period"), may exercise any remedies available to them under this Interim Order, the Secured Credit/Lease Documents and applicable non-bankruptcy law, including but not limited to revoking the Debtors' right, if any, to use Cash Collateral and collecting and applying any proceeds of the Prepetition Collateral and the Adequate Protection Collateral in accordance with the terms of this Interim Order and Secured Credit/Lease Documents. The only permissible basis for the Debtors, the Creditors' Committee (if any), or any other party to contest, challenge or object to an Enforcement Notice shall be solely with respect to the validity of the Termination Event(s) giving rise to such Enforcement Notice (*i.e.* whether such Termination Events validly occurred and have not been cured or waived in accordance with this Interim Order). The automatic stay pursuant to Bankruptcy Code section 362 shall be automatically terminated with respect to the Secured Parties at the end of the Notice Period, without further notice or order of the Court and the Secured Parties shall be permitted to exercise all rights and remedies, including with respect to the Prepetition Collateral (including, without limitation, any Cash Collateral) and the Adequate Protection Collateral set forth in this Interim Order and the Secured Credit/Lease Documents and as otherwise available at law without further order or application or motion to the Court, and

without restriction or restraint by any stay under Bankruptcy Code sections 105 or 362 or otherwise.

13. Reservation of Rights of the Secured Parties. Notwithstanding any other provision in this Interim Order to the contrary, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair: (a) any of the rights of any of the Secured Parties to seek any other or supplemental relief in respect of the Debtors including the right to seek additional adequate protection at the Final Hearing; (b) the Secured Parties' rights to seek modification of the grant of adequate protection provided under this Interim Order so as to provide different or additional adequate protection at any time; (c) any of the rights of any of the Secured Parties under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the right of any of the Secured Parties to (i) request modification of the automatic stay of section 362 of the Bankruptcy Code, (ii) request dismissal of any of the Chapter 11 Cases, conversion of any of the Chapter 11 Cases to cases under chapter 7, or appointment of a chapter 11 trustee or examiner with expanded powers in any of the Chapter 11 Cases, (iii) seek to propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans; or (d) any other rights, claims, or privileges (whether legal, equitable, or otherwise) of any of the Secured Parties.

14. No Waiver for Failure to Seek Relief. The failure or delay of any of the Secured Parties to seek relief or otherwise exercise any of their rights and remedies under this Interim Order, the Secured Credit/Lease Documents, or applicable law, as the case may be, shall not constitute a waiver of any rights hereunder, thereunder, or otherwise, by any or all of the Secured Parties.

15. Section 507(b) Reservation. Nothing herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to any of the Secured Parties hereunder is insufficient to compensate for any Diminution in Value of their interests in the Prepetition Collateral during the Chapter 11 Cases. Nothing contained herein shall be deemed a finding by the Court, or an acknowledgment by any of the Secured Parties, that the adequate protection granted herein does in fact adequately protect any of the Secured Parties against any diminution in value of their respective interests in the Prepetition Collateral (including the Cash Collateral).

16. Modification of the Automatic Stay. The Debtors are authorized and directed to perform all acts and to make, execute and deliver any and all instruments as may be reasonably necessary to implement the terms and conditions of this Interim Order and the transactions contemplated hereby. The stay of section 362 of the Bankruptcy Code is hereby modified to permit the Debtors and the Secured Parties to accomplish the transactions contemplated by this Interim Order including, without limitation, to (a) permit the Debtors to grant the Adequate Protection Liens and the Adequate Protection Superpriority Claim, as applicable, (b) permit the Debtors to perform such acts as the Secured Parties may request in their reasonable discretion to assure the perfection and priority of the liens granted herein, (c) permit the Debtors to incur all liabilities and obligations to the Secured Parties under this Interim Order and (d) authorize the Debtors to pay, and the Secured Parties to retain and apply, payments made in accordance with the terms of this Interim Order.

17. Limitation on Charging Expenses Against Collateral. Subject to and effective upon entry of the Final Order, no expenses of administration of the Chapter 11 Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings

under the Bankruptcy Code, including, without limitation the conversion of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, shall be charged against or recovered from the Secured Parties, the Prepetition Collateral or the Adequate Protection Collateral (except to the extent of the Carve Out), and the Secured Parties pursuant to sections 105(a) or 506(c) of the Bankruptcy Code or any similar principle of law or equity and no such consent shall be implied from any other action, inaction, or acquiescence by the Secured Parties.

18. Equities of the Case. Subject to and effective upon entry of the Final Order, the Secured Parties shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to the Secured Parties with respect to (a) proceeds, products, offspring or profits of any of the Prepetition Collateral or the Adequate Protection Collateral or (b) the extension of the Adequate Protection Liens to cover proceeds of the Adequate Protection Collateral.

19. No Marshalling/Application of Proceeds. Subject to and effective upon entry of the Final Order, the Secured Parties shall be entitled to apply the payments or proceeds of the Prepetition Collateral in accordance with the provisions of the Secured Credit/Lease Documents, and in no event shall any of the Secured Parties be subject to the equitable doctrine of “marshalling” or any other similar doctrine with respect to any of the Prepetition Collateral.

20. Preservation of Rights Granted Under This Interim Order.

- a. Notwithstanding any order dismissing any of the Chapter 11 Cases under section 1112 of the Bankruptcy Code or otherwise entered at any time, (x) the Adequate Protection Superpriority Claims, the other administrative claims granted pursuant to this Interim Order and the Adequate Protection Liens shall continue in full force and effect and shall maintain their priorities as provided in this Interim Order until all adequate protection obligations shall have been paid and satisfied in full in cash (and such Adequate Protection Superpriority Claims, the other administrative claims granted pursuant to this Interim Order and the Adequate Protection Liens shall, notwithstanding such dismissal, remain binding on all parties in interest); and (y) the Court shall retain jurisdiction, notwithstanding such

dismissal, for the purposes of enforcing the claims, liens and security interests referred to in clause (x) above.

- b. If any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated or stayed, such reversal, stay, modification or vacatur shall not affect: (i) the validity, priority or enforceability of any adequate protection obligations incurred prior to the actual receipt of written notice by the Secured Parties of the effective date of such reversal, stay, modification or vacatur; or (ii) the validity, priority or enforceability of the Adequate Protection Liens. Notwithstanding any such reversal, stay, modification or vacatur, any use of Prepetition Collateral (including the Cash Collateral) or any adequate protection obligations incurred by the Debtors hereunder, as the case may be, prior to the actual receipt of written notice by counsel to the Secured Parties of the effective date of such reversal, stay, modification or vacatur shall be governed in all respects by the original provisions of this Interim Order, and the Secured Parties shall be entitled to all of the rights, remedies, privileges and benefits granted in section 363(m) of the Bankruptcy Code with respect to all uses of the Prepetition Collateral (including the Cash Collateral) and all adequate protection obligations.
 - c. Except as expressly provided in this Interim Order, the Adequate Protection Liens, the Adequate Protection Superpriority Claims and all other rights and remedies of the Secured Parties granted by the provisions of this Interim Order shall survive, and shall not be modified, impaired or discharged by (i) the entry of an order converting any of the Chapter 11 Cases to cases under chapter 7, dismissing any of the Chapter 11 Cases, terminating the joint administration of these Chapter 11 Cases or by any other act or omission, (ii) the entry of an order approving the sale of any Prepetition Collateral or Adequate Protection Collateral pursuant to Bankruptcy Code section 363(b) or (iii) the entry of an order confirming a plan in any of the Chapter 11 Cases and, pursuant to Bankruptcy Code section 1141(d)(4), the Debtors have waived any discharge as to any remaining adequate protection obligations. The terms and provisions of this Interim Order shall continue in these Chapter 11 Cases, in any successor cases if these Chapter 11 Cases cease to be jointly administered, or in any superseding chapter 7 cases under the Bankruptcy Code. The Adequate Protection Liens, the Adequate Protection Superpriority Claims and all other rights and remedies of the Secured Parties granted by the provisions of this Interim Order shall continue in full force and effect until all adequate protection obligations are indefeasibly paid in full, in cash.
21. Good Faith. Pursuant to sections 105, 361, and 363 of the Bankruptcy Code, the Secured Parties are hereby found to be entities that have acted in “good faith” in connection with the negotiation and entry of this Interim Order, and the Secured Parties are entitled to the protections provided to such entities under section 363(m) of the Bankruptcy Code.

22. Proofs of Claim. None of the Secured Parties shall be required to file proofs of claim in any of the Chapter 11 Cases or successor cases in respect of the Secured Obligations, and the Debtors' stipulations in Paragraph F herein shall be deemed to constitute timely filed proofs of claim against the applicable Debtor(s). Any order entered by the Court in relation to the establishment of a bar date for any claim (including without limitation, administrative claims) in any of the Chapter 11 Cases or successor cases shall not apply to the Secured Parties with respect to the Secured Obligations.

23. DIP Financing. In the event any Debtor determines that it requires a postpetition debtor-in-possession credit facility or similar financing (a "DIP Facility"), the Debtors shall notify the Secured Parties and provide the Secured Parties the opportunity to provide a proposal to provide such DIP Facility.

24. Executory Contracts and Unexpired Leases. The Debtors will consult with the Secured Parties regarding the assumption or rejection of each Debtor's executory contracts and unexpired leases, and shall not file any motion to assume or reject any executory contracts or unexpired leases without consulting with the Secured Parties at least three (3) days, to the extent practicable, prior thereto.

25. Employee Retention/Incentive Plan. The Debtors shall consult with the Secured Parties regarding any key employee retention and/or incentive plan (a "KEIP"); provided, however, that any KEIP shall be subject to Court approval and any payments to employees thereunder shall be subject to the Budget in all respects.

26. Credit Bidding. The Secured Parties collectively and each Secured Party, individually or together with any other Secured Party(ies), shall have the unqualified right to credit bid up to the full amount of the Secured Obligations (or in the case of one or more Secured

Party(ies), their respective amount of the Secured Obligations) in any sale of the Prepetition Collateral or Adequate Protection Collateral to the full extent provided under section 363(k) of the Bankruptcy Code, without the need for further Court order authorizing the same and whether any such sale is effectuated through section 363(b) or 1129(b) of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise.

27. Limitation of Liability. In permitting the use of the Cash Collateral or in exercising any rights or remedies as and when permitted pursuant to this Interim Order, the Secured Parties shall not be deemed to be in control of the operations of the Debtors or to be acting as a “responsible person” or “owner or operator” with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601 *et seq.* as amended, or any similar federal or state statute), nor shall they owe any fiduciary duty to the Debtors, their creditors or estates, or shall constitute or be deemed to constitute a joint venture or partnership with the Debtors. Furthermore, nothing in this Interim Order shall in any way be construed or interpreted to impose or allow the imposition upon the Secured Parties of any liability for any claims arising from the prepetition or post-petition activities of the Debtors and their respective affiliates (as defined in section 101(2) of the Bankruptcy Code).

28. Final Hearing. A hearing on the Debtors’ request for a Final Order approving the Motion is scheduled for [●] [●], 2018, at [●] [a.m./p.m.] (prevailing Eastern time) before this Court. Within three (3) business days after entry of this Interim Order, the Debtors shall serve, or cause to be served, by first class mail or other appropriate method of service, a copy of the Motion (to the extent the Motion was not previously served on a party) and this Interim Order on (i) the Notice Parties, and (ii) counsel to any Creditors’ Committee. Any responses or objections to the

Motion shall be made in writing, conform to the applicable Bankruptcy Rules and Local Rules, be filed with the Bankruptcy Court, set forth the name of the objecting party, the basis for the objection, and the specific grounds therefor, and be served so as to be actually received no later than [●] [●], 2018, at 4:00 p.m. (prevailing Eastern time) by (i) the Debtors (ii) the Notice Parties and (ii) counsel to any Creditors' Committee.

29. Order Effective Upon Entry. Notwithstanding any applicability of any Bankruptcy Rules, the terms and conditions of this Interim Order shall be immediately effective and enforceable upon its entry.

30. Controlling Effects of Interim Order. To the extent any provision of this Interim Order conflicts or is inconsistent with any provision of the Motion, the provisions of this Interim Order shall control.

31. Survival of this Order. Without limiting anything in this Interim Order, the provisions of this Interim Order and any actions taken pursuant hereto shall survive entry of any order which may be entered: (a) confirming any Plan in the Chapter 11 Cases, (b) converting any of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, (c) dismissing any of the Chapter 11 Cases, (d) withdrawing of the reference of any of the Chapter 11 Cases from this Court, or (e) providing for abstention from handling or retaining of jurisdiction of any of the Chapter 11 Cases in this Court.

32. Bankruptcy Rules. The requirements of Bankruptcy Rules 4001, 6003 and 6004, in each case to the extent applicable, are satisfied by the contents of the Motion.

33. Retention of Jurisdiction. The Court has and will retain jurisdiction to enforce this Interim Order in accordance with its terms and to adjudicate any and all matters arising from or related to the interpretation or implementation of this Interim Order.

Dated: _____, 2018
New York, New York

[_____]
UNITED STATES BANKRUPTCY JUDGE

Schedule 1

Credit and Lease Agreements

That certain Line Letter, dated as of June 26, 2017, by and between Debtor Republic Metals Corporation, as borrower, and Coöperatieve Rabobank U.A., New York Branch, as lender, as amended, restated, supplemented or otherwise modified from time to time.

That certain Letter of Credit Agreement, dated as of June 24, 2016, by and between Debtor Republic Metals Corporation, as borrower, and Brown Brothers Harriman & Co., as lender, as amended, restated, supplemented or otherwise modified from time to time.

That certain Line Letter, dated as of January 29, 2016, by and between Debtor Republic Metals Corporation, as borrower, and Bank Hapoalim B.M., as lender, together with other loan documents, as amended, restated, supplemented or otherwise modified from time to time.

That certain Metals Lease Agreement, dated as of November 22, 2016, by and between Debtor Republic Metals Corporation, as lessee, and Mitsubishi International Corporation, as lessor, as amended, restated, supplemented or otherwise modified from time to time.

That certain Master Netting Agreement, dated as of January 19, 2011, by and between Debtor Republic Metals Corporation and ICBC Standard Bank Plc, as amended, restated, supplemented or otherwise modified from time to time.

That certain Lease Agreement, dated as of March 6, 2017, by and between Debtor Republic Metals Corporation, as lessee, and Techemet Metal Trading LLC, as lessor, as amended, restated, supplemented or otherwise modified from time to time.

That certain Loan Agreement, dated as of October 31, 2017, by and between Debtor Republic Metals Corporation, as borrower, and Woodforest National Bank, as lender, as amended, restated, supplemented or otherwise modified from time to time.

That certain Line Letter Agreement, dated as of October 31, 2017, by and between Debtor Republic Metals Corporation, as borrower, and Bank Leumi USA, as amended, restated, supplemented or otherwise modified from time to time.

Schedule 2

Principal Amount of Outstanding Secured Obligations

Bank Creditor	Amount
Coöperatieve Rabobank U.A., New York Branch	\$34,414,109.01
Brown Brothers Harriman & Co.	\$9,867,844.87
Bank Hapoalim B.M.	\$12,334,806.09
Mitsubishi International Corporation	\$58,868,985.45
ICBC Standard Bank Plc	\$21,728,491.79
Techemet Metal Trading LLC	\$15,669,046.15
Woodforest National Bank	\$14,801,767.32
Bank Leumi USA	\$24,669,612.20
Total	\$192,354,662.88

EXHIBIT 1

INITIAL BUDGET

Republic Metals Corporation
Cash Collateral Budget

DRAFT

(\$ in '000s)	1	2	3	4	5	6	7	8	9	10	11	12	13	Total
Week Ending	11/10	11/17	11/24	12/1	12/8	12/15	12/22	12/29	1/5	1/12	1/19	1/26	2/2	Total
Cash Receipts														
Sweeps / Other Accounts Receivable	\$ -	\$ 1,152	\$ 697	\$ -	\$ -	-	\$ 1,900	\$ -	\$ 1,900	\$ -	\$ -	\$ -	\$ -	\$5,650
Sale of Inventory	19,424	56,215	43,384	1,382	1,382	1,382	-	-	-	-	-	-	-	123,169
Legacy Silver Hydroxides	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Diamond Sales / Umicore / Other	-	-	614	-	-	-	-	-	-	-	-	-	-	614
Total Operating Receipts	19,424	57,367	44,695	1,382	1,382	1,382	1,900	-	1,900	-	-	-	-	129,433
Operating Expenses														
Shipping and Freight	194	562	434	14	14	14	-	-	-	-	-	-	-	1,232
Payroll	-	350	350	350	350	350	68	68	61	44	44	44	44	2,126
Supplies	300	300	300	100	100	100	25	25	25	25	-	-	-	1,300
Insurance	170	-	-	-	60	170	-	-	60	85	-	-	-	545
Utilities	-	142	-	-	-	142	-	-	-	-	71	-	-	355
Security	-	-	-	135	-	-	-	135	-	-	-	90	-	360
Accrued vacation	33	33	33	33	33	93	8	8	8	8	8	8	8	310
Contract Services	25	25	25	25	25	25	-	-	-	-	-	-	-	148
Repairs & Maintenance	25	25	25	25	25	25	-	-	-	-	-	-	-	150
Other Operating Expenses	163	77	112	47	98	112	5	5	72	20	5	5	37	757
Other	25	25	25	25	25	25	25	25	25	25	-	-	-	250
Total Operating Expenses	935	1,538	1,303	753	730	1,055	130	265	251	207	128	147	89	7,532
Operating Cash Flow	18,489	55,829	43,392	629	652	327	1,770	(265)	1,649	(207)	(128)	(147)	(89)	121,901
Cumulative Operating Cash Flow	18,489	74,318	117,710	118,339	118,992	119,319	121,088	120,823	122,472	122,265	122,137	121,990	121,901	
Non Operating Disbursements														
UST Fees	-	-	-	-	-	-	-	-	-	-	-	-	250	250
Restructuring Fees & Exp. (Lender)	-	-	660	-	-	-	660	-	-	-	660	-	-	1,980
Restructuring Fees & Exp. (RMC) ⁽³⁾	-	-	-	650	125	125	575	125	75	75	75	450	375	2,650
Claims Administrator	-	-	-	200	-	-	50	-	-	50	-	-	50	350
Unsecured Creditors Advisors and Counsel	-	-	-	200	42	42	192	42	25	25	25	150	125	867
Interest Expense	170	170	170	170	170	170	170	170	170	170	170	170	170	2,210
Total Non Operating Disbursements	170	170	830	1,220	337	337	1,647	337	270	320	930	770	970	8,307
Net Cash Flow	18,319	55,659	42,562	(591)	316	(10)	123	(602)	1,379	(527)	(1,058)	(917)	(1,059)	113,594
Cumulative Net Cash Flow	\$ 18,319	\$ 73,978	\$ 116,540	\$ 115,949	\$ 116,265	\$ 116,255	\$ 116,378	\$ 115,776	\$ 117,155	\$ 116,628	\$ 115,570	\$ 114,653	\$ 113,594	
Beginning Bank Cash ⁽²⁾	6,367	8,000	8,000	8,000	7,409	7,725	7,715	7,838	7,236	8,615	8,088	7,030	6,113	6,367
Increase/(Decrease) per Above	18,319	55,659	42,562	(591)	316	(10)	123	(602)	1,379	(527)	(1,058)	(917)	(1,059)	113,594
Ending Bank Cash ⁽¹⁾	24,686	63,659	50,562	7,409	7,725	7,715	7,838	7,236	8,615	8,088	7,030	6,113	5,054	119,961
Check issued not cleared	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Lender Pay Down / Escrow Funding	(16,686)	(55,659)	(42,562)	-	-	-	-	-	-	-	-	-	-	(114,907)
Ending Book Cash	\$ 8,000	\$ 8,000	\$ 8,000	\$ 7,409	\$ 7,725	\$ 7,715	\$ 7,838	\$ 7,236	\$ 8,615	\$ 8,088	\$ 7,030	\$ 6,113	\$ 5,054	\$ 5,054

Note:

- (1) Forecast excludes impact of market price and margin requirements with futures' brokers.
- (2) Approximate Beginning Cash based on cash receipts/disbursements for the w/e 11/3.
- (3) RMC restructuring fees and expenses are subject to Bankruptcy Court Fee Procedure Order.