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Proposed Counsel to the Debtors and Debtors in Possession

**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' EMERGENCY MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) DETERMINING THAT UTILITY PROVIDERS HAVE BEEN PROVIDED WITH ADEQUATE ASSURANCE OF PAYMENT, (II) APPROVING PROPOSED ADEQUATE ASSURANCE PROCEDURES, (III) PROHIBITING UTILITY PROVIDERS FROM ALTERING, REFUSING, OR DISCONTINUING UTILITY SERVICES, (IV) DETERMINING THAT DEBTORS ARE NOT REQUIRED TO PROVIDE ANY ADDITIONAL ASSURANCE, (V) SCHEDULING A HEARING TO CONSIDER ENTRY OF A FINAL ORDER, AND (VI) GRANTING RELATED RELIEF

IF YOU ARE A PROVIDER OF UTILITY SERVICES, PLEASE REFER IMMEDIATELY TO EXHIBIT C TO DETERMINE IF THE RELIEF REQUESTED HEREIN IMPACTS YOU.

Republic Metals Refining Corporation ("Republic Refining"), Republic Metals Corporation ("Republic Metals"), and Republic Carbon Company, LLC ("Republic Carbon"), as

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).

debtors and debtors-in-possession (collectively, the "Debtors") in the above-captioned chapter 11 cases (the "Chapter 11 Cases" or "Cases"), by and through their undersigned counsel, hereby file this motion (the "Motion") for entry of an interim order, substantially in the form attached hereto as **Exhibit A** (the "Interim Order"), and a final order substantially in the form attached hereto as **Exhibit B** (the "Final Order"), pursuant to sections 105(a) and 366 of title 11 of the United States Code (the "Bankruptcy Code") and Rule 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), (i) determining that utility providers have been provided with adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code by virtue of the proposed adequate assurance, (ii) approving the adequate assurance procedures as proposed herein, (iii) prohibiting utility providers from altering, refusing, or discontinuing utility services on account of prepetition amounts outstanding or on account of any perceived inadequacy of the adequate assurance procedures, (iv) determining that the Debtors are not required to provide any additional assurance beyond what is proposed in this Motion, (v) scheduling a final hearing (the "Final Hearing") to consider entry of the Final Order, and (vi) granting such other and further relief as requested herein or as the Court (as defined herein) otherwise deems necessary or appropriate. In support of this Motion, the Debtors submit the *Declaration of Scott Avila in Support of Chapter 11 Petitions and First Day Motions* (the "First Day Declaration"),² which is being filed contemporaneously herewith and is incorporated herein by reference. 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 Application pursuant to 28 U.S.C. §§ 157 and 1334. This matter

² Unless otherwise defined herein, capitalized terms shall have the same meaning as those give in the First Day Declaration.

is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2) and the Debtors consent 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 statutory bases for the relief requested herein are sections 105(a) and 366 of the Bankruptcy Code, and as supplemented by Bankruptcy Rule 6004.

BACKGROUND

4. On November 2, 2018, the Debtors filed voluntary petitions for relief under chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code").

5. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to 11 U.S.C. §§ 1107(a) and 1108 and 1109. No trustee or statutory committee has been appointed.

THE BUSINESS

Overview of Company, Assets and Operations

6. 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.”

7. 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.

8. 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.

9. 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 reprocessed in this circuit as well.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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

(000's)

| 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 |
| | \$ 174,773 | | \$ 265,101 |

ORGANIZATIONAL STRUCTURE

15. 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.

16. 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.

17. Avila 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

18. 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.

19. 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.

20. 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.

21. 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

22. 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.

23. 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.

24. 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.

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

26. 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").

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

28. 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.

29. 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.

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

31. 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

32. 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.

33. 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.

34. 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

35. 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.

36. 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

37. 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

38. 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.

39. 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).

40. 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.

41. 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.

42. 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.

43. 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.

44. 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.

THE PROPOSED ADEQUATE ASSURANCE PROCEDURES

45. The Debtors incur utility expenses for electricity, telephone, water, waste disposal, internet, and other essential services (collectively "Utility Services") in the ordinary course of their business. The utility providers (as that term is used in section 366 of the Bankruptcy Code, collectively, the "Utility Providers") that deliver Utility Services to the Debtors as of the Petition Date include, but are not limited to, those listed on **Exhibit C** annexed hereto (the "Utility Provider List"). On average, the Debtors spend in the aggregate approximately \$120,000 each month on Utility Services. Further, prior to the Petition Date, the Debtors placed amounts on deposit with many of the Utility Providers as security for the Debtors' respective obligations (the "Pre-petition

Security Deposits"). As of the Petition Date, in the aggregate, the pre-petition Security Deposits total approximately \$57,171.32.

46. As of the Petition Date, the Debtors were current on their utility bills and obligations to Utility Providers.

47. Furthermore, for many of the Utility Providers, Utility Services are paid by checks written on one of the Debtors' bank accounts.

48. The Debtors estimate they pay a total of \$180,000 for Utility Services on a monthly basis.

49. Preserving Utility Services on an uninterrupted basis to the Debtors' offices and refinery is essential to the Debtors' ability to maximize the value for their estates and creditors. Any unplanned interruption of utility services for even a brief period of time will negatively impact the Debtors' operations and seriously jeopardize the value of their estates. Thus, it is imperative that the Utility Providers continue to provide its Utility Services without interruption.

50. Accordingly, the Debtors hereby seek approval of the proposed adequate assurance procedures described below in the event that any Utility Provider makes a demand for adequate assurance or otherwise threatens to alter, refuse, or discontinue Utility Service to the Debtors.

A. Proposed Adequate Assurance

51. Typically, a debtor would only pay postpetition utility services as part of a Chapter 11 case and make additional deposits with utilities as adequate protection, either as agreed to by the debtor and the service provider, or as otherwise ordered by the Bankruptcy Court. Here, however, the Debtors are current on all obligations for Utility Services to their Utility Providers. The Debtors intend to pay postpetition obligations owed to the Utility Providers in the ordinary course. The Debtors by this Motion seek to pay all pre-petition amounts, as well, as adequate assurance of payment for Utility Services, in lieu of an additional deposit. The Debtors believe

payment of prepetition amounts is in the best interest of the estates because the Debtors are current on all obligations to Utility Providers and posting, by way of example, one additional month of estimated service for each Utility Provider would far exceed and actually be a greater detriment to the Debtors' cash flow than simply paying the Utility Providers in the ordinary course of business, to include payment of prepetition amounts.

- (a) The Debtors also request, as additional adequate assurances, the Utility Providers be allowed to continue to debit the Debtors' bank accounts for Utility Services, in the ordinary course of business.
- (b) The Debtors assert that they have sufficient availability of funds to pay the amounts described herein in the ordinary course of business by virtue of cash reserves and expected cash flows from business operations as set forth in Budget (as defined in the Debtors' Motion to Use Cash Collateral).
- (c) The Debtors submit that payment of any prepetition amount owed, in the ordinary course of business, and in conjunction with the continued ability to debit the Debtors' accounts for amounts owed, demonstrates the Debtors' ability to pay for future Utility Services in the ordinary course of business and constitutes adequate assurance to the Utility Providers (the "Proposed Adequate Assurance").

B. Proposed Adequate Assurance Procedures

52. Notwithstanding the Proposed Adequate Assurance and the fact that many Utility Providers are holding individual pre-petition Security Deposits, if any Utility Provider believes that additional adequate assurance is required, it may request such additional assurance pursuant to the procedures described below (the "Adequate Assurance Procedures"):

- (a) Any Utility Provider requesting additional assurance of payment in the form of deposits, prepayments, or otherwise must serve a request for additional assurance (an "Additional Assurance Request") so that it is received by the following parties: (i) the Debtors, 12900 NW 38th Avenue, Miami, FL 33054; (ii) proposed counsel to the Debtors, Andrea Hartley and John E. Mitchell, Akerman LLP, 98 Southeast Seventh Street, Suite 1100, Miami, Florida 33131; and (iii) the Office of the United States Trustee for the Southern District of New York (the "U.S. Trustee"), U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, New York, 10014 (collectively, the "Notice Parties").

- (b) Any Additional Assurance Request must (i) be made in writing, (ii) set forth the location for which Utility Services are provided, (iii) include a summary of the Debtors' payment history relevant to the affected account(s), including any Pre-petition Security Deposits, and (iv) set forth why the Utility Provider believes that the Proposed Adequate Assurance is not sufficient adequate assurance of future payment in accordance with section 366 of the Bankruptcy Code.
- (c) Upon the Debtors' receipt of any Additional Assurance Request in accordance with the notice procedures described above, the Debtors shall have the greater of (i) twenty (20) calendar days from the receipt of such Additional Assurance Request or (ii) thirty (30) calendar days from the Petition Date (collectively, the "Resolution Period") to negotiate with the Utility Provider to resolve such Utility Provider's Additional Assurance Request.
- (d) The Debtors may, in their sole discretion, resolve any Additional Assurance Request by mutual agreement with the Utility Provider and without further order of the Court, and may, in connection with any such agreement, in its sole discretion, provide a Utility Provider with additional assurance of future payment, including, but not limited to, cash deposits, prepayments, or other forms of security, without further order of the Court if the Debtors believe that such additional assurance is reasonable. Any such agreement may include a recharacterization of some or all of the Debtors' payment for prepetition Utility Services as a post-petition Adequate Assurance deposit.
- (e) If the Debtors determine that the Additional Assurance Request is not reasonable and is not able to reach an alternative resolution with the Utility Provider during the Resolution Period, the Debtors, during or immediately after the Resolution Period, will request a hearing before the Court to determine the adequacy of assurances of payment with respect to such Utility Provider (the "Determination Hearing") pursuant to section 366(c)(3) of the Bankruptcy Code. Any Determination Hearing scheduled will be without prejudice to the Debtors to seek return of any prepetition payments for Utility Services provided as Adequate Assurance, should the Utility Provider request additional security deposits as adequate assurance.
- (f) Pending resolution of such dispute at the Determination Hearing, the relevant Utility Provider shall be prohibited from discontinuing, altering, or refusing service to the Debtors for any reason, to include on account of any objections to the Proposed Adequate Assurance.
- (g) The Debtors will either fax, e-mail, serve by first class mail, or otherwise expeditiously send a copy of this Motion and the Orders, which include the proposed Adequate Assurance Procedures, to each Utility Provider within five business days after entry of the Orders by the Court.

- (h) The Adequate Assurance Deposit attributable to each Utility Provider shall be returned to the Debtors on the earlier of (a) the Debtor's termination of such services from such provider; (b) the confirmation of a plan of reorganization; and (c) the conclusion of the Chapter 11 Cases, if not applied earlier.
- (i) The Debtors further propose that all Utility Providers that do not timely file an objection to this Motion, or make an Additional Assurance Request pursuant to the Adequate Assurance Procedures, be deemed to consent to the Proposed Adequate Assurance and be bound by any order entered by the Court granting this Motion.

C. Modifications to Utility Provider List

53. The Debtors may amend the Utility Provider List, in their sole discretion, to add any subsequently identified Utility Provider. The Debtors further propose that the Interim Order and Final Order (together, the "Orders") be deemed to apply to any such Utility Provider regardless of when a Utility Provider may be added to the Utility Provider List. The Debtors will serve a copy of this Motion on any Utility Provider that is subsequently added to the Utility Provider List. Such subsequently added Utility Providers who object to Orders or to the entry of the Orders must file an objection in accordance with the Bankruptcy Rules, the Local Rules of Court, and the Adequate Assurance Procedures.

RELIEF REQUESTED

54. By this Motion, the Debtors respectfully request entry of the Orders substantially in the forms attached as **Exhibit A** and **Exhibit B** hereto, pursuant to sections 105(a) and 366 of the Bankruptcy Code and Bankruptcy Rule 6004, (a) determining that the Utility Providers have been provided with adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code by virtue of the Proposed Adequate Assurance, (b) approving the Adequate Assurance Procedures as proposed herein, (c) prohibiting the Utility Providers from altering, refusing, or discontinuing Utility Services on account of prepetition amounts outstanding or on account of any perceived inadequacy of the Adequate Assurance Procedures, (d) determining that

the Debtors are not required to provide any additional assurance beyond what is proposed in this Motion, (e) scheduling the Final Hearing to consider entry of the Final Order, and (f) granting such other and further relief as requested herein or as the Court otherwise deems necessary or appropriate. The Debtors believe this relief is necessary to avoid immediate and irreparable harm to the Debtors and their estates.

BASIS FOR RELIEF

D. The Requested Relief Should be Approved Under Section 366 of Bankruptcy Code

55. The Court may grant the Debtors the relief requested in the Motion. Congress enacted section 366 of the Bankruptcy Code to protect debtors from utility service cutoffs upon a bankruptcy filing, while providing utility companies with adequate assurance that debtors will pay for post-petition services. *See* H.R. Rep. No. 95-595, at 350 (1978), *reprinted in* 1978 U.S.C.A.N. 5963, 6306. Pursuant to section 366 of the Bankruptcy Code, during the first 20 days after the commencement of a chapter 11 case, a utility is prohibited from altering, refusing, discontinuing service to, or discriminating against, a debtor solely based on either the commencement of the case or the failure of the debtor to pay a prepetition debt for utility services provided. Utility companies are, however, permitted to alter, refuse, or discontinue service after the 20-day period has ended, if a debtor has not furnished "adequate assurance of payment" for postpetition utility service obligations within the twenty 20-day period. 11 U.S.C. § 366. Additionally, following a 30-day period after the commencement of a bankruptcy case, utilities may alter, refuse, or discontinue service if a debtor does not provide adequate assurance of payment for postpetition utility service that is "satisfactory to the utility." Section 366 of the Bankruptcy Code provides, in relevant part:

- (a) Except as provided in subsections (b) and (c) of this section, a utility may not alter, refuse, or discontinue service to, or discriminate against, the trustee or the debtor solely on the basis of the commencement of a case

under this title or that a debt owed by the debtor to such utility for service rendered before the order for relief was not paid when due.

- (b) Such utility may alter, refuse, or discontinue service if neither the trustee nor the debtor, within 20 days after the date of the order for relief, furnishes adequate assurance of payment, in the form of a deposit or other security, for service after such date. On request of a party-in-interest and after notice and a hearing, the court may order reasonable modification of the amount of the deposit or other security necessary to provide adequate assurance of payment.

* * *

- (c) (2) Subject to paragraphs (3) and (4), with respect to a case filed under chapter 11, a utility referred to in subsection (a) may alter, refuse, or discontinue utility service, if during the 30-day period beginning on the date of the filing of the petition, the utility does not receive from the debtor or the trustee adequate assurance of payment for utility service that is satisfactory to the utility.

11 U.S.C. § 366.

56. As amended by the Bankruptcy Abuse Prevention and Consumer Protection Act (2005), section 366(c)(3)(B) restricts the factors a court can consider when determining whether an adequate assurance payment is, in fact, adequate. Specifically, courts may no longer consider (a) the absence of a security deposit before a debtor's petition date, (b) a debtor's history of timely payments, or (c) the availability of an administrative expense priority when determining the amount of a deposit. Notwithstanding these changes, it does not appear that Congress intended to, or did, abrogate the bankruptcy court's ability to determine the amount of assurance necessary, change the fundamental requirement that assurance of payment must simply be "adequate" or otherwise determine that payment of a prepetition amount owed was not "adequate."

57. It is well established that section 366(b) of the Bankruptcy Code permits the Court to find that no adequate assurance *payment* is necessary in order to provide a utility with "adequate assurance" of payment. *See Va. Elec. & Power Co. v. Caldor, Inc.*-NY, 117 F.3d 646, 650 (2d Cir. 1997) ("Even assuming that 'other security' should be interpreted narrowly . . . a bankruptcy court's

authority to 'modify' the level of the 'deposit or other security' provided for under § 366(b), includes the power to require 'no deposit or other security' where none is necessary to provide a utility supplier with 'adequate assurance of payment.'). Accordingly, even after the revisions to section 366, courts continue to have discretion to determine the amount of adequate assurance payments, the types of payments, and, where appropriate, to determine that no such payment is necessary.

58. In addition, section 366(c), like section 366(b), requires only that a utility provider's assurance of payment be "adequate." Courts recognize that adequate assurance of performance does not constitute an absolute guarantee of a debtor's ability to pay. *See, e.g., Long Island Lighting Co. v. The Great Atl. & Pac. Tea Co., Inc. (In re The Great Atl. & Pac. Tea Co., Inc.)*, No. 11-CV-1338, 2011 WL 5546954, at *5 (S.D.N.Y. Nov. 14, 2011) (in determining what constitutes adequate assurance of payment for continuing utility services, courts "are not required to give the equivalent of a guaranty of payment in full") (internal citation omitted); *Steinebach v. Tucson Elec. Power Co. (In re Steinebach)*, 303 B.R. 634, 641 (Bankr. D. Ariz. 2004) ("Adequate assurance of payment is not, however, absolute assurance ... 'a Bankruptcy Court is not required to give a utility company the equivalent of a guarantee of payment, but must only determine that the utility is not subject to any unreasonable risk of non-payment for postpetition services.'") (quoting *In re Adelpia Bus. Solutions, Inc.*, 280 B.R. 63, 80 (Bankr. S.D.N.Y. 2002)); *see also In re Caldor, Inc.-NY*, 199 B.R. 1, 3 (S.D.N.Y. 1996) (section 366(b) "does not require an 'absolute guarantee of payment'" (citation omitted), *aff'd sub nom. Va. Elec. & Power Co.*, 117 F.3d at 646.

59. Courts have also recognized that, in determining the requisite level of assurance, bankruptcy courts should "focus upon the need of the utility for assurance, and to require that the debtor supply *no more than that*, since the debtor almost perforce has a conflicting need to conserve scarce financial resources." *Virginia. Elec. & Power Co.*, 117 F.2d at 650 (emphasis in

original); *see also In re Penn Cent. Transp. Co.*, 467 F.2d 100, 103-04 (3d Cir. 1972) (affirming bankruptcy court's ruling that no utility deposits were necessary where such deposits would likely "jeopardize the continuing operation of the [debtor] merely to give further security to suppliers who already are reasonably protected"); *In re The Great Atl. & Pac. Tea Co., Inc.*, 2011 WL 5546954, at *5-6 (no additional adequate assurance deposit was necessary where such deposit would impose an unreasonable burden on reorganizing debtors). Accordingly, demands by a utility provider for a guarantee of payment should be refused where, as here, the Debtor's specific circumstances already provide adequate assurance of payment.

60. Here, the Debtors believe that the Utility Providers have "adequate assurance of payment" even without the proposed Adequate Assurance Deposit. As described above, the Debtors anticipate having sufficient resources to pay, and intend to pay, any and all valid post-petition obligations for Utility Services in a timely manner. In addition, the Debtors' reliance on Utility Services for the operation of its business provides them with a powerful incentive to stay current on its utility obligations. These factors, which the Court may (and should) consider when determining the amount of any adequate assurance payments, justify a finding that no adequate assurance payments other than staying current on both pre and post-petition amounts owed are required in the Chapter 11 Cases. The Debtors respectfully submit the Proposed Adequate Assurance is sufficient to assure the Utility Providers of future payment.

61. Notwithstanding the foregoing, the Debtors believe the Proposed Adequate Assurance and the Adequate Assurance Procedures are reasonable, satisfy the requirements of section 366 of the Bankruptcy Code, and are necessary for the Debtors to carry out their reorganization efforts. If they are not approved, the Debtors could be forced to address payment requests by Utility Providers in a disorganized manner, which would distract management from

focusing on maximizing the value of the Debtors' estates. Moreover, on the 30th day following the Petition Date, the Debtors could be surprised by a Utility Provider unilaterally (a) deciding that it is not adequately protected, (b) making an exorbitant demand for payment to continue service, or (c) discontinuing service. Such discontinuation of or higher payment demands for Utility Services could jeopardize the Debtors' ability to maximize value for their creditors.

E. The Court May Rely on Its General Equitable Powers to Grant the Motion

62. Section 105(a) of the Bankruptcy Code provides that the Court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." The proposed Adequate Assurance Procedures are necessary for the Debtors to effectively and efficiently administer their estates and maximize value for creditors. If the Court does not approve the proposed Adequate Assurance Procedures, the Debtors could be forced to address requests from Utility Providers in a disorganized manner at a critical point in these Chapter 11 Cases.

63. In this case, preserving Utility Services on an uninterrupted basis is essential to the Debtors' operations and efforts for maximize value. Indeed, any interruption in Utility Services, even for a brief period of time, would immediately and irreparably harm the Debtors' business. Accordingly, it is imperative that the Utility Providers continue to provide its Utility Services without interruption.

RESERVATION OF RIGHTS

64. To the extent that any contract or agreement in connection with any Utility Provider is deemed an executory contract within the meaning of section 365 of the Bankruptcy Code, the Debtors do not at this time intend to assume or reject such contract or agreement. As such, the Court's authorization of payment shall not be deemed to constitute an assumption of such contract or agreement pursuant to section 365 of the Bankruptcy Code. The Debtors are currently reviewing all of their contracts and agreements and reserve all of rights with respect thereto. Nothing herein

shall acknowledge, grant, or otherwise permit any right of offset or recoupment by a non-debtor with respect to any claim asserted against the Debtors. If the Court grants the relief sought herein, any payments made pursuant to the Court's order are not intended and should not be construed as an admission to the validity of any claim or a waiver of the rights of the Debtors to dispute such claim subsequently.

65. Additionally, except as expressly stated, nothing contained herein is intended or should be construed as (a) an agreement or admission by the Debtors as to the validity of any claim against the estates, (b) a waiver or impairment of the Debtors' right to dispute any claim on any grounds, (c) a promise by the Debtors to pay any claim, or (d) an implication or admission by the Debtors that such claim is payable pursuant to an order granting the relief requested in this Motion.

DEBTORS SATISFY BANKRUPTCY RULE 6003

66. 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). 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 BANKRUPTCY RULES 6004(A) AND 6004(H)

67. To implement the foregoing successfully, the Debtors respectfully request a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h). Pursuant to 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. 6004(h). As set forth above, the payments proposed herein are

essential to prevent potentially irreparable damage to the Debtors' business and to maximize the value of their assets for creditors. Accordingly, the Debtors submit that ample cause exists to justify a waiver of the 14-day stay imposed by Bankruptcy Rule 6004(h), to the extent it applies.

NO PREVIOUS REQUEST

68. No prior motion for the relief requested herein has been made by the Debtors to this or any other court.

NOTICE

69. The Debtors have provided expedited notice of this Motion to: (a) the Office of the U.S. Trustee for the Southern District of New York; (ii) the Utility Providers; (iii) the parties listed in the consolidated list of thirty (30) largest unsecured creditors filed by the Debtors in these Chapter 11 Cases;; (iv) the Internal Revenue Service; and (v) any other party entitled to notice pursuant to Local Rule 9013-1(b) (collectively, the "Notice Parties"). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

CONCLUSION

WHEREFORE, for the reasons set forth above and in the First Day Declaration, the Debtors respectfully request the Court enter the Orders substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (i) determining that the Utility Providers have been provided with adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code by virtue of the Proposed Adequate Assurance, (ii) approving the Adequate Assurance Procedures as proposed herein, (iii) prohibiting the Utility Providers from altering, refusing, or discontinuing Utility Services on account of prepetition amounts outstanding and on account of any perceived inadequacy of the Adequate Assurance Procedures, (iv) determining that the Debtors are not required to provide any additional assurance beyond what is proposed in this Motion, (v)

scheduling a Final Hearing to consider entry of the Final Order, and (vi) granting such other and further relief as requested herein or as the Court otherwise deems necessary and appropriate.

Dated: New York, New York
November 2, 2018

AKERMAN LLP

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Proposed Counsel for Debtors and Debtors-in-Possession

EXHIBIT A
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 (I) DETERMINING THAT UTILITY PROVIDERS HAVE BEEN PROVIDED WITH ADEQUATE ASSURANCE OF PAYMENT, (II) APPROVING PROPOSED ADEQUATE ASSURANCE PROCEDURES, (III) PROHIBITING UTILITY PROVIDERS FROM ALTERING, REFUSING, OR DISCONTINUING UTILITY SERVICES, (IV) DETERMINING THAT DEBTORS ARE NOT REQUIRED TO PROVIDE ANY ADDITIONAL ASSURANCE, (V) SCHEDULING A HEARING TO CONSIDER ENTRY OF A FINAL ORDER, AND (VI) GRANTING RELATED RELIEF

Upon the Motion (the "Motion")² of Republic Metals Refining Corporation and its debtor affiliates, as debtors and debtors-in-possession in the above-captioned chapter 11 cases (the "Chapter 11 Cases"), for entry of an interim order, pursuant to sections 105(a) and 366 of the Bankruptcy Code and Bankruptcy Rule 6004 (i) determining that the Utility Providers have been provided with adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code by virtue of the Proposed Adequate Assurance, (ii) approving the Adequate Assurance Procedures as proposed herein, (iii) prohibiting the Utility Providers from altering, refusing, or discontinuing Utility Services on account of prepetition amounts outstanding and on account of any perceived inadequacy of the Adequate Assurance Procedures, (iv) determining that the Debtors are not required to provide any additional assurance beyond what is proposed in this Motion, (v) scheduling a final hearing (the "Final Hearing") to consider entry of the Final

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 have the meanings set forth in the Motion or the First Day Declaration, as applicable.

Order, and (vi) granting such other and further relief as requested in the Motion or as the Court may otherwise deem necessary or appropriate; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court having found that the Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in the Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties-in-interest; and the Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and the Court having reviewed and considered the Motion and the First Day Declaration; and the Court having heard the statements in support of the relief requested in the Motion at an interim hearing before the Court (the "Interim Hearing"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Interim Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED that:

1. The Motion is granted on an interim basis as set forth herein.
2. Absent compliance with the procedures set forth herein, the Debtors' Utility Providers are prohibited from altering, refusing, or discontinuing Utility Service on account of any unpaid prepetition charges or the commencement of the Chapter 11 Cases.
3. The security deposits placed with the Debtors' Utility Providers prior to the Petition Date; the history and course of payment of any prepetition amount owed; the continued ability to debit the Debtors' accounts for amounts owed, if any; and the Adequate Assurance

Procedures (defined below), all in conjunction with the Debtors' cash position, (a) demonstrates the Debtors' ability to pay for future Utility Services in the ordinary course of business and (b) constitutes adequate assurance to the Utility Providers (the "Proposed Adequate Assurance").

4. The Debtors' Utility Providers are prohibited from requiring additional adequate assurance of payment other than in accordance with the following procedures (the "Adequate Assurance Procedures"):

- (a) Any Utility Provider requesting additional assurance of payment in the form of deposits, prepayments, or otherwise must serve a request for additional assurance (an "Additional Assurance Request") so that it is received by the following parties: (i) proposed counsel to the Debtors, Akerman LLP, 666 Fifth Avenue, New York, New York 10103 (Attn: Susan F. Balaschak, Esq.) and Akerman, LLP, 98 Southeast Seventh Street, Ste. 1100, Miami, Florida 33131 (Attn: Andrea S. Hartley, Esq.) and (ii) Office of the United States Trustee, 201 Varick Street, Ste. 1006, New York, New York 10014, so as to actually be received on or prior to **4:00 p.m. on _____, 2018.**
- (b) Any Additional Assurance Request must (i) be made in writing, (ii) set forth the location for which Utility Services are provided, (iii) include a summary of the Debtors' payment history relevant to the affected account(s), including any Pre-petition Security Deposits, and (iv) set forth why the Utility Provider believes that the Proposed Adequate Assurance is not sufficient adequate assurance of future payment in accordance with section 366 of the Bankruptcy Code.
- (c) Upon the Debtors' receipt of any Additional Assurance Request in accordance with the notice procedures described above, the Debtors shall have the greater of (i) twenty (20) calendar days from the receipt of such Additional Assurance Request or (ii) thirty (30) calendar days from the Petition Date (collectively, the "Resolution Period") to negotiate with the Utility Provider to resolve such Utility Provider's Additional Assurance Request.
- (d) The Debtors may, in their sole discretion, resolve any Additional Assurance Request by mutual agreement with the Utility Provider and without further order of the Court, and may, in connection with any such agreement, in its sole discretion, provide a Utility Provider with additional assurance of future payment, including, but not limited to, cash deposits, prepayments, or other forms of security, without further order of the Court if the Debtors believe that such additional assurance is reasonable. Any such agreement may include a recharacterization of some or all of the

Debtors' payment for prepetition Utility Services as a post-petition Adequate Assurance deposit.

- (e) If the Debtors determine that the Additional Assurance Request is not reasonable and is not able to reach an alternative resolution with the Utility Provider during the Resolution Period, the Debtors, during or immediately after the Resolution Period, will request a hearing before the Court to determine the adequacy of assurances of payment with respect to such Utility Provider (the "Determination Hearing") pursuant to section 366(c)(3) of the Bankruptcy Code. Any Determination Hearing scheduled will be without prejudice to the Debtors to seek return of any prepetition payments for Utility Services provided as Adequate Assurance, should the Utility Provider request additional security deposits as adequate assurance.
- (f) Pending resolution of such dispute at the Determination Hearing, the relevant Utility Provider shall be prohibited from discontinuing, altering, or refusing service to the Debtors for any reason, to include on account of any objections to the Proposed Adequate Assurance.
- (g) The Debtors will either fax, e-mail, serve by first class mail, or otherwise expeditiously send a copy of this Motion and the Orders, which include the proposed Adequate Assurance Procedures, to each Utility Provider within five business days after entry of the Orders by the Court.
- (h) The Adequate Assurance Deposit attributable to each Utility Provider shall be returned to the Debtors on the earlier of (a) the Debtors' termination of such services from such provider; (b) the confirmation of a plan of reorganization; and (c) the conclusion of the Chapter 11 Cases, if not applied earlier.

5. The Utility Providers have been provided with adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code by virtue of the Proposed Adequate Assurance. The Adequate Assurance Procedures as proposed are hereby approved. The Utility Providers are prohibited from altering, refusing or discontinuing Utility Services on account of any prepetition amounts outstanding, if any, and on account of any perceived inadequacy of the Adequate Assurance Procedures. The Debtors are not required to provide any additional adequate assurance beyond what is stated in this Interim Order.

6. A Utility Provider shall be deemed to have adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code unless and until (a) the Debtors, in their sole

discretion, agree to an alternative assurance of payment with the Utility Provider or (b) the Court enters an order requiring that additional adequate assurance of payment be provided.

7. The Debtors are authorized to amend the Utility Provider List, in their sole discretion, to add any subsequently identified Utility Provider. The Interim Order shall be deemed to apply to any such Utility Provider regardless of when a Utility Provider may be added to the Utility Provider List. The Debtors shall serve a copy of the Motion on any Utility Provider that is subsequently added to the Utility Provider List. Such subsequently added Utility Providers who object to the entry of this Interim Order must file an objection in accordance with the Bankruptcy Rules, the Local Rules, and the Adequate Assurance Procedures.

8. Nothing in this Interim Order or any action taken by the Debtors in furtherance of the implementation hereof shall be deemed to constitute an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code, and all of the Debtors' rights with respect to such matters are expressly reserved.

9. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall (a) create, nor is it intended to create, any rights in favor of, or enhance the status of any claim held by any person or entity or (b) be deemed to convert the priority of any claim from a prepetition claim into an administrative expense claim. Nothing in this Interim Order nor the Debtors' payment of claims pursuant to this Interim Order shall be construed as (w) an agreement or admission by the Debtors as to the validity of any claim on any grounds, (x) a waiver or impairment of Debtors' rights to dispute any claims on any grounds, (y) a promise by the Debtors to pay any claim, or (z) an implication or admission by the Debtors that such claim is payable pursuant to this Interim Order.

10. The requirements set forth in Bankruptcy 6003(b) are satisfied.

11. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion, and the requirements of Bankruptcy Rule 6004(a) are satisfied by such notice.

12. Notwithstanding the possible applicability of Bankruptcy Rules 6004(a) and 6004(h) or otherwise, the terms and conditions of this Interim Order shall be immediately effective and enforceable upon its entry and the requirements of Bankruptcy Rules 6004(a) and 6004(h) are hereby waived.

13. The Final Hearing to consider entry of the Final Order is scheduled for _____, (*Eastern time*) before the Court. On or before _____, the Debtors shall serve, by United States mail, first-class postage prepaid, notice of the entry of this Interim Order and of the Final Hearing (the "Final Hearing Notice"), together with copies of this Interim Order and the Motion, on (a) the parties having been given notice of the Interim Hearing, (b) any party which has filed prior to such date a request for notices with the Court, and (c) counsel to any statutory committee appointed in the Chapter 11 Cases. The Final Hearing Notice shall state that any party-in-interest objecting to the entry of the proposed Final Order shall file written objections with the Clerk of Court no later than on _____(*Eastern time*), which objections shall be served so as to be received on or before such date by the Notice Parties and all parties entitled to notice pursuant to the Bankruptcy Rules and Local Rules.

14. Any Utility Provider that fails to timely file an objection or make an Adequate Assurance Request pursuant to the Adequate Assurance Procedures is deemed to consent to the Proposed Adequate Assurance and shall be bound by this Interim Order.

15. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

16. The Court retains jurisdiction with respect to all matters arising from relating to the implementation, interpretation, and enforcement of this Interim Order.

Dated: New York, New York
November ____, 2018

PROPOSED

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B
FINAL 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) |

ORDER GRANTING DEBTORS' EMERGENCY MOTION FOR ENTRY OF FINAL ORDER (I) DETERMINING THAT UTILITY PROVIDERS HAVE BEEN PROVIDED WITH ADEQUATE ASSURANCE OF PAYMENT, (II) PROHIBITING UTILITY PROVIDERS FROM ALTERING, REFUSING, OR DISCONTINUING UTILITY SERVICES, (III) DETERMINING THAT DEBTORS ARE NOT REQUIRED TO PROVIDE ANY ADDITIONAL ASSURANCE, AND (IV) GRANTING RELATED RELIEF

Upon the Motion (the "Motion")² of Republic Metals Refining Corporation and its debtor affiliates, as debtors and debtors-in-possession in the above-captioned chapter 11 cases (collectively, the "Debtors"), for entry of a Final Order (i) determining that utility providers have been provided with adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code by virtue of the proposed adequate assurance, (ii) prohibiting utility providers from altering, refusing, or discontinuing utility services on account of prepetition amounts outstanding or on account of any perceived inadequacy of the adequate assurance procedures, (iii) determining that the Debtors are not required to provide any additional assurance beyond what is proposed in the Motion, and (iv) granting such other and further relief as requested herein or as otherwise deems necessary or appropriate, and the Court having heard the statements in support of

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 have the meanings set forth in the Motion or the First Day Declaration, as applicable.

the relief requested in the Motion at the Final Hearing, and (i) determining that the Utility Providers have been provided with adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code by virtue of the Proposed Adequate Assurance, (ii) prohibiting the Utility Providers from altering, refusing, or discontinuing Utility Services on account of prepetition amounts outstanding and on account of any perceived inadequacy of the Adequate Assurance Procedures and (iii) determining that the Debtors are not required to provide any additional assurance beyond what was proposed in the Motion; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court having found that the Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in the Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties-in-interest; and the Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and the Court having reviewed and considered the Motion and the First Day Declaration; and the Court having determined that the legal and factual bases set forth in the Motion and at the Final Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED that:

1. The Motion is GRANTED on a final basis as follows:
 - a. The security deposits placed with the Debtors' Utility Providers prior to the Petition Date; the history and course of payment of any prepetition amount owed, in the ordinary course of business; and the continued ability to debit the Debtors' accounts for amounts owed, if any, all in conjunction with the Debtors' cash position, (a) demonstrates the Debtors' ability to pay for future Utility Services in the ordinary course of business and (b) constitutes

adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code (the “Adequate Assurance”).

- b. The Debtors' Utility Providers are prohibited from altering, refusing or discontinuing Utility Services on account of prepetition amounts outstanding, if any, the commencement of the Chapter 11 Cases, or on account of any perceived inadequacy of the Adequate Assurance. The Debtors are not required to provide any additional adequate assurance beyond what is stated in this Final Order.
- c. The Debtors will either fax, e-mail, serve by first class mail, or otherwise expeditiously send a copy of this Final Order to each Utility Provider within five business days after entry of the Final Order by the Court.
- d. The Adequate Assurance Deposit attributable to each Utility Provider shall be returned to the Debtors on the earlier of (a) the Debtors' termination of such services from such Utility Provider; (b) the confirmation of a plan of reorganization; and (c) the conclusion of the Chapter 11 Cases, if not applied earlier.
- e. The Debtors are authorized to amend the Utility Provider List, in their sole discretion, to add any subsequently identified Utility Provider. This Final Order shall be deemed to apply to any Utility Provider regardless of whether a Utility Provider was listed on the Utility Provider List.

2. Nothing in this Final Order or any action taken by the Debtors in furtherance of the implementation hereof shall be deemed to constitute an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code, and all of the Debtors' rights with respect to such matters are expressly reserved.

3. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall (a) create, nor is it intended to create, any rights in favor of, or enhance the status of any claim held by any person or entity, except as may be expressly provided otherwise herein, or (b) be deemed to convert the priority of any claim from a prepetition claim into an administrative expense claim. Nothing in this Final Order nor the Debtors' payment of claims pursuant to this Final Order shall be construed as (a) an agreement or admission by the Debtors as to the validity of any claim on any grounds, (b) a waiver or impairment of the Debtors' rights to

dispute any claims on any grounds, (c) a promise by the Debtors to pay any claim, or (d) an implication or admission by the Debtors that such claim is payable pursuant to this Final Order.

4. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.

5. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion, and the requirements of Bankruptcy Rule 6004(a) are satisfied by such notice.

6. Notwithstanding the possible applicability of Bankruptcy Rules 6004(a) and 6004(h) or otherwise, the terms and conditions of this Final Order shall be immediately effective and enforceable upon its entry and the requirements of Bankruptcy Rules 6004(a) and 6004(h) are hereby waived.

7. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

8. The Court retains jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Final Order.

Dated: New York, New York
November ____, 2018

PROPOSED

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT C

UTILITY PROVIDER LIST

