

SETTLEMENT AGREEMENT

This Settlement Agreement (this “Agreement”) is made and entered into as of February 5, 2019, by and among the following “Parties”: (a) Republic Metals Refining Corporation, on behalf of itself and its affiliated debtors and debtors in possession (each, a “Debtor” and collectively, the “Debtors”), including without limitation, Republic Trans Mexico Metals, S.R.L. (“RTMM”); (b) Desarrollos Mineros San Luis S.A. de C.V. (“DMSL”); and (c) 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 (collectively, the “Senior Lenders”).

RECITALS

WHEREAS, On November 2, 2018 (the “Petition Date”), certain of the Debtors filed voluntary petitions for relief under chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”), initiating these Chapter 11 Cases in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”). On November 21, 2018, certain additional Debtors filed voluntary petitions for relief under the Bankruptcy Code, initiating their Chapter 11 Cases in the Bankruptcy Court.

WHEREAS, each of the Senior Lenders is party to a credit agreement, master netting agreement or lease agreement with the Debtors entered into prior to the Petition Date (each, a “Credit and Lease Agreement”).

WHEREAS, the Debtors and the Senior Lenders assert that the obligations under the Credit and Lease Agreements are secured by valid and perfected liens on substantially all of the Debtors’ assets (the “Prepetition Liens”), including the Debtors’ inventory and the Debtors’ cash.

WHEREAS, on the Petition Date, the Debtors filed the *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* (the “Initial Cash Collateral Motion”) [Docket No. 10].

WHEREAS, on November 13, 2018, the Debtors and the Senior Lenders filed the *Joint Supplement of the Debtors and the Senior Lenders to the Cash Collateral Motion* (together with the Initial Cash Collateral Motion, the “Cash Collateral Motion”) [Docket No. 78].

WHEREAS, the Bankruptcy Court has entered four interim cash collateral orders [Docket Nos. 54, 277, 372 and 538] (collectively, the “Interim Cash Collateral Orders”). Pursuant to the Interim Cash Collateral Orders, among other things, the Senior Lenders consented to the Debtors’ use of their cash collateral to fund the costs and expenses of administering the chapter 11 cases, and the Senior Lenders were granted superpriority claims and adequate protection liens on substantially all of the Debtors’ assets (the “Adequate Protection Liens”) to protect against any diminution in value of their prepetition collateral.

WHEREAS, DMSL and RTMM are parties to a certain agreement for the refining and forward/spot sales of precious metals dated on or about November 9, 2017 (as amended, restated, supplemented, or otherwise modified, the “Refining Agreement”).

WHEREAS, the Parties acknowledge and agree that the Debtors are currently in possession of 14 containers governed by the Refining Agreement (collectively, "Located Containers").

WHEREAS, the Parties acknowledge and agree that the Debtors received 22 shipments from or on behalf of, DMSL, which have not been located by the Debtors (collectively, the "Missing Containers") and together with the Located Containers, the "Disputed Containers").

WHEREAS, the Parties acknowledge and agree that Disputed Containers with shipment reference numbers FB-8012, FB-8013 and FB-8014 (collectively, the "Unpaid Containers") have not been provisionally assayed and that no provisional payment for the Unpaid Containers to DMSL has been made pursuant to the Refining Agreement.

WHEREAS, the Parties acknowledge and agree that that the Disputed Containers other than the Unpaid Containers (collectively, the "Paid Containers") have been provisionally assayed and that an 80% provisional payment to DMSL for the Paid Containers has been made pursuant to the Refining Agreement.

WHEREAS, DMSL asserts that it retains title to the Disputed Containers and that such materials are not property of the Debtors' estates.

WHEREAS, the Debtors and the Senior Lenders assert that the Debtors have title to the Disputed Containers and that such materials are property of the Debtors' estates and are subject to the Prepetition Liens and Adequate Protection Liens of the Senior Lenders.

WHEREAS, on January 11, 2019 the Bankruptcy Court entered the *Order Approving Uniform Procedures for Resolution of Ownership Disputes* (collectively, the "541 Procedures") [Docket 395] approving uniform procedures to resolve disputes concerning whether certain materials are property of the Debtors' estates or that of the Debtors' customers.

WHEREAS, ownership disputes regarding carbon materials (including the Disputed Containers) are explicitly excluded from the 541 Procedures.

WHEREAS, absent approval of this Agreement, the Parties intend to litigate the ownership of the Disputed Containers which consists of carbon materials.

WHEREAS, to avoid the expense and uncertainty of protracted litigation, the Parties desire to settle their disputes according to the terms of this Agreement.

AGREEMENT

NOW, THEREFORE, after good faith, arms' length negotiations without collusion, and for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the following terms:

1. The foregoing recitals are true and correct.
2. Effective Date. This Agreement is conditioned upon occurrence of the "Effective Date," which means the first date by which each of the following conditions has occurred: (a) this Agreement is executed by each of the Parties; and (b) the Bankruptcy Court

enters an order approving this Agreement in a form acceptable to the Parties, provided that such order has not been stayed. Within two (2) business days following execution of this Agreement, the Debtors shall file a motion with the Bankruptcy Court requesting approval of this Agreement pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure.

3. Treatment of Disputed Containers. Promptly following the Effective Date:

(a) the Debtors shall disclaim any interest in the Unpaid Containers and allow DMSL to pick up the Unpaid Containers at DMSL's sole cost and expense; and

(b) Subject to Section 4 below, DMSL shall disclaim any interest in the Paid Containers and the Debtors shall be free to process the Paid Containers in the ordinary course of business, including by shipment to third party processors, and the proceeds thereof shall be deposited in a debtor-in-possession account.

4. General Unsecured Claim. Upon the Effective Date, DMSL shall have an allowed general unsecured claim against RTMM in the amount of US\$964,670 (the "Allowed Claim") on account of the unpaid portion of the Paid Containers. DMSL shall not be required to file a proof of claim for the Allowed Claim. The Debtors shall instruct their claims agent Donlin Recano & Company, Inc. to enter the Allowed Claim in the claims register.

5. Cash Collateral Objection. Upon the Effective Date, DMSL, on behalf of itself and its affiliates, agrees not to file, join or support any objection to the Cash Collateral Motion.

6. Reservation of Rights. All rights of the Parties shall be preserved and nothing in this Agreement shall be construed as limiting or affecting the rights or interests of any Party except as explicitly set forth herein with respect to the Disputed Containers, the Allowed Claim and the Cash Collateral Motion.

7. INTENTIONALLY DELETED.

8. Continuing Bankruptcy Court Jurisdiction. Each Party agrees that the Bankruptcy Court shall have exclusive jurisdiction over any disputes regarding the validity, interpretation, or performance of this Agreement so long as the Bankruptcy Cases are pending, and each of the Parties consents to personal jurisdiction and venue in the Bankruptcy Court in connection with any such disputes; provided, however, that if the Bankruptcy Cases are no longer pending, or if the Bankruptcy Court cannot or does not exercise jurisdiction, such jurisdiction and venue shall belong to the federal courts in the Southern District of New York.

9. Voluntary Agreement. Each Party acknowledges that it has read all of the terms of this Agreement, has had an opportunity to consult with counsel of its own choosing, or has voluntarily waived such right and enters into this Agreement voluntarily and without duress.

10. Further Assurances. Each Party agrees, without further consideration, to execute and deliver such other documents and to take such other action as may be necessary to consummate the purposes of this Agreement.

11. No Admission. This Agreement is for settlement purposes only and shall not be construed or deemed an admission by any Party to this Agreement of wrongdoing, liability, fault, or the validity of any claims.

12. Valid Provisions Remain Effective. If any provision in this Agreement shall be invalid, inoperative or unenforceable, the remaining provisions of this Agreement shall remain in effect if both the economic and legal substance of the terms contemplated hereby are not materially affected in any manner adverse to any Party, provided, however, that, if section 2(a) is not performed, then the Agreement is null and void. Otherwise, the Parties shall negotiate in good faith to rewrite any such provision so as to, as nearly and fairly as possible, approach the economic and legal substance originally intended.

13. Construction. The language used in this Agreement will be deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction will be applied against any Party. Nor will any rule of construction that favors a non-draftsman be applied. A reference to any statute will be deemed also to refer to all rules and regulations promulgated under the statute, unless the context requires otherwise. Unless specifically otherwise provided or the context otherwise requires, the singular includes the plural and the plural the singular; the word "or" is deemed to include "and/or", the words "including", "includes" and "include" are deemed to be followed by the words "without limitation", and references to sections are to those of this Agreement. Headings in this Agreement are included for convenience of reference only and do not constitute a part of this Agreement for any other purpose.

14. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same Agreement. Delivery of a signature page to this Agreement by facsimile or other electronic means shall be effective as delivery of the original signature page to this Agreement.

15. Applicable Law. The validity, interpretation, and performance of this Agreement shall be construed and interpreted according to the laws of the State of New York, except to the extent that (a) provisions of the Bankruptcy Code apply, in which event the Bankruptcy Code shall control, or (b) applicable federal law preempts state law.

16. Entire Agreement. This document contains the entire Agreement among the Parties as to the matters addressed herein, and may only be modified in writing signed by the Parties or their duly appointed agents. All prior agreements and understandings among the Parties concerning the subject matter hereof are superseded by the terms of this Agreement.

17. Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the Parties and their respective agents, employees, affiliates, successors, and assigns (including any chapter 11 or chapter 7 trustee hereafter appointed or elected for the estates of any of the Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary appointed as a legal representative of any Debtor or with respect to the property of the estate of any Debtor). In addition, this Agreement shall be binding on any and all representatives of the Debtors' bankruptcy estates, including any chapter 11 or chapter 7 trustee or any party that has or is granted standing to pursue claims or causes of action on behalf of the Debtors' estates.

18. Third Party Beneficiaries. There are no third party beneficiaries of this Agreement.

19. Notices. All notices, consents, waivers, and other communications under this Agreement must be in writing and shall be deemed to have been duly given when: (a) delivered by hand (with written confirmation of receipt) or (b) received by the addressee, if sent by email, in each case to the appropriate addresses and representative (if applicable) set forth in the signature page(s) attached hereto (or to such other addresses and representative as a Party may designate by notice to the other Parties in accordance with this paragraph).

[Remainder of Page Intentionally Left Blank; Signature Pages Follow]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date written in the opening paragraph hereof.

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