SETTLEMENT AGREEMENT

This Settlement Agreement (this “Agreement”) is made and entered into as of February 15, 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”); (b) Wharf Resources (U.S.A.), Inc. (“Wharf”); 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 Debtors commenced chapter 11 cases under title 11 of the United States Code (the “Bankruptcy Code”) that are presently pending in the United States Bankruptcy Court for the Southern District of New York (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, on November 8, 2018, Wharf delivered a letter making a reclamation demand to the Debtors [Docket No. 124] (the “Reclamation Demand”) and on November 21, 2018, Wharf (along with certain of its affiliates) filed an objection to the Cash Collateral Motion [Docket No. 146] (the “Cash Collateral Objection”).

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, Wharf and Debtor Republic Metals Corporation ("RMC") are parties to a certain carbon Carbon Contract dated on or about February 12, 2018 (as amended, restated, supplemented, or otherwise modified, the “Carbon Contract”).

WHEREAS, Wharf and RMC agree that the Carbon Contract governs the refining and potential sale of precious metal bearing carbon (the “Carbon Material”) which is the subject of this Agreement.

WHEREAS, Wharf asserts that (i) on or about June 30, 2018, the Debtors received from Wharf two lots of Carbon Material divided into 10 “supersack” bags; (ii) in the aggregate, the Carbon Material in the June Containers weighed 10,554 kg; (iii) the Carbon Material in the June Containers was assayed and valued at $438,860; (iv) following assay, the Carbon Material from the June Containers was sold or otherwise disposed of in the ordinary course of business; and (v) RMC has not paid Wharf any amounts as to the June Containers.

WHEREAS, Wharf further asserts that (i) in addition to the June Containers, on or about October 4, 2018, the Debtors received from Wharf two lots of Carbon Material divided into 14 “supersack” bags (the “October Containers,” and together with the June Containers, the “Disputed Containers”); (ii) in the aggregate, the Carbon Material in the October Containers weighed 13,880.3 kg; (iii) the Carbon Material in the October Containers was assayed and valued at $342,356; (iv) following assay, the Carbon Material from the October Containers was not commingled with other Carbon Materials in the possession of the Debtors, and currently remains segregated by the Debtors at their facilities; and (v) RMC has not paid Wharf any amounts as to the October Containers.

WHEREAS, Wharf asserts that it retains title to the Carbon Materials in 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 Carbon Materials in 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 its Order Approving Uniform Procedures for Resolution of Ownership Disputes [Docket 395] approving uniform procedures (the “541 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 Carbon Materials in the Disputed Containers) are explicitly excluded from the 541 Procedures.

WHEREAS, notwithstanding the foregoing, on January 18, 2019, Wharf (along with certain of its affiliates) filed a Statement of Claimed Ownership and Claims [Docket No. 470] (the “Customer Statement”) which asserted, among other things, Wharf’s ownership claims to the Carbon Materials in the Disputed Containers and incorporated the Cash Collateral Objection by reference.

WHEREAS, the Debtors intend to strike the Customer Statement as the 541 Procedures specifically exclude carbons.
WHEREAS, Wharf intends to object to the Debtors' Remaining Assets Sale Motion. [Docket No. 563].

WHEREAS, absent approval of this Agreement, the Parties intend to litigate the ownership of the Carbon Materials in the Disputed Containers.

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. **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 through their undersigned counsel; 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 one (1) business day following execution of this Agreement, the Debtors shall file (i) a motion (the “9019 Motion”) with the Bankruptcy Court requesting approval of this Agreement pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure, and (ii) a motion with the Bankruptcy Court seeking to shorten the notice period associated with the 9019 Motion and requesting a hearing on the 9019 Motion on February 21, 2019.

2. **Treatment of Disputed Containers.** Upon the Effective Date:

   (a) Wharf shall disclaim any interest in the Carbon Materials in the June Containers valued at $438,860;

   (b) Wharf will disclaim any interest in 20% (measured by weight, approximately 2,776 kg) of the aggregate Carbon Materials in the October Containers;

   (c) the Debtors shall be entitled to liquidate their share in the Carbon Materials in the October Containers in the ordinary course of business or pursuant to Order of the Court, including by shipment to third party processors, and the proceeds thereof shall be deposited in a debtor-in-possession account with all liens thereon to attach to such proceeds to the same extent, order and priority in which they existed on the Petition Date;

   (d) the Debtors will disclaim any interest in the other 80% of the Carbon Materials in the October Containers (measured by weight, approximately 11,104 kg) and Wharf shall pick up on or before February 28, 2019 its share of the Carbon Material at its sole cost and expense; and

   (e) Wharf shall have the right to have its third party representative (Axium Scientific) present at the Debtors’ premises to inspect and witness the weighing, separation and shipment of the Carbon Materials pursuant to the terms of this Agreement.
3. **General Unsecured Claim.** Upon the Effective Date, Wharf shall have an allowed general unsecured claim against RMC in the amount of $507,331.00 (the “Allowed Claim”) on account of the June Containers and the Debtors’ share of the October Containers; provided that the Allowed Claim shall be subject to disallowance under Section 502(d) of the Bankruptcy Code. Wharf 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.

4. **Cash Collateral Objection.** Upon the entry of an order approving this Agreement, Wharf shall amend the Cash Collateral Objection and the Customer Statement to reflect the withdrawal with prejudice of Wharf’s participation in the 541 Procedures (however, the Cash Collateral Objection and Customer Statement shall remain pending and in full force and effect with respect to Wharf’s affiliates).

5. **Reservation of Rights.** Nothing in this Agreement shall prejudice (i) any Party’s rights against, or other dealings with, any non-Party or (ii) any Party’s (or any of Wharf’s affiliates’) respective claims, defenses and legal arguments in connection with the claims of Wharf’s affiliates in the 541 Procedures, the Customer Statement, the Cash Collateral Objection, and the Reclamation Demand.

6. **Party Representations.** Each Party hereby represents and warrants that: (a) such Party and the signatory hereto has the power and authority to execute, deliver and perform this Agreement; (b) such Party has taken all necessary actions to authorize the execution, delivery and performance of this Agreement; (c) this Agreement has been duly executed and delivered by such Party and constitutes the legal, valid, and binding obligations of such Party, enforceable against it in accordance with their respective terms; (d) such Party’s execution, delivery, and performance of this Agreement does not and will not conflict with, or constitute a violation or breach of, or constitute a default under any obligation of such Party and will not violate any applicable law, or any order or decree of any court or government instrumentality applicable to such Party; and (e) such Party has entered into this Agreement in reliance on its own independent investigation and analysis of the facts underlying the subject matter of this Agreement, and no representations, warranties, or promises of any kind have been made directly or indirectly to induce it to execute this Agreement other than those that are expressly set forth in this Agreement.

7. **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.

8. **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.
9. **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.

10. **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.

11. **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. 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.

12. **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.

13. **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.

14. **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.

15. **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.

16. **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.

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

18. 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.

GIBSON, DUNN & CRUTCHER LLP

By /s/ Keith Martorana
Keith Martorana
200 Park Avenue
New York, New York 10166
Email: kmartorana@gibsondunn.com
Attorneys for Wharf Resources (U.S.A.), Inc.

AKERMAN LLP

By /s/ Joanne Gelfand___________
Joanne Gelfand
AKERMAN LLP
98 Southeast Seventh Street, Suite 1100
Miami, Fl. 33131
Email: joanne.gelfand@akerman.com
Attorneys for the Debtors and Debtors in Possession

LUSKIN STERN & EISLER LLP

By: /s/ Michael Luskin___________
Michael Luskin
Eleven Times Square
New York, New York 10036
Email: luskin@lsellp.com
Attorneys for Senior Lenders