

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
HEMATITE HOLDINGS INC., HEMATITE MANUFACTURING INC.,
HEMATITE INDUSTRIAL PRODUCTS INC., CANADIAN PAVACO INC.,
PAVACO HOLDINGS U.S. INC., HEMATITE, INC. AND
HEMATITE AUTOMOTIVE PRODUCTS INC.**

Applicants

**MOTION RECORD
(Amended and Restated Initial Order)
(Returnable September 28, 2020)**

September 24, 2020

McCarthy Tétrault LLP
Suite 5300, Toronto Dominion Bank Tower
Toronto, ON M5K 1E6
Fax: 416-868-0673

James D. Gage LSO#: 34676I
Tel: 416-601-7539
E-mail: jgage@mccarthy.ca

Heather Meredith LSO#: 48354R
Tel: 416-601-8342
Email: hmeredith@mccarthy.ca

Trevor Courtis LSO#: 67715A
Tel: 416-601-7643
Email: tcourtis@mccarthy.ca

Lawyers for the Applicants

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MOTION RECORD

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Tab 1

**ONTARIO
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PAVACO HOLDINGS U.S. INC., HEMATITE, INC. AND
HEMATITE AUTOMOTIVE PRODUCTS INC.**

Applicants

**NOTICE OF MOTION
(Returnable September 28, 2020)**

The Applicants will make a motion before a judge of the Ontario Superior Court of Justice (Commercial List) on September 28, 2020 at 12:00 p.m., or as soon after that time as the motion can be heard, by judicial videoconference via Zoom at Toronto, Ontario due to the COVID-19 emergency. Please refer to the conference details attached as Schedule "A" hereto in order to attend. Please advise if you intend to join the motion by emailing Trevor Courtis at tcourtis@mccarthy.ca.

THE MOTION IS FOR:

1. An order, substantially in the form attached as Tab 3 to the Motion Record of the Applicants dated September 24, 2020 (the "**Proposed Amended and Restated Initial Order**"), amending and restating the initial order granted by the Honourable Mr. Justice Hainey on September 18, 2020 (the "**Initial Order**") to, among other things:
 - (a) extend the Stay Period (as defined in the Initial Order) to November 27, 2020;
 - (b) authorize the Applicants to pay certain pre-filing amounts owing to suppliers, subject to certain consents;

- (c) increase the maximum borrowings under the DIP Facility (as defined in the Initial Order); and
 - (d) increase the maximum amount and priority of the Charges (as defined in the Initial Order).
2. such other relief as this Honourable Court may allow.

THE GROUNDS FOR THE MOTION ARE:

1. Capitalized terms used and not defined herein have the meanings ascribed to them in the affidavit of Jacques Nadeau, sworn September 24, 2020.

Stay Extension

2. On September 18, 2020, the Honourable Mr. Justice Hainey granted the Initial Order in these proceedings pursuant to the *Companies' Creditors Arrangement Act* (“**CCAA**”) that, among other things, imposed a stay of proceedings until September 28, 2020.
3. In the brief period since the Initial Order was issued on September 18, 2020, Hematite has acted in good faith and with due diligence and has, among other things:
- (a) filed petitions and obtained provisional recognition and enforcement of these CCAA proceedings and the Initial Order in the United States from the United States Bankruptcy Court for the District of Delaware pursuant to chapter 15 of title 11 of the United States Code (the “**Chapter 15 Cases**”);
 - (b) continued to negotiate definitive documentation with its key secured lenders, The Toronto-Dominion Bank and BDC Capital Inc.;
 - (c) held town halls for employees on September 18, 2020;
 - (d) contacted suppliers, customers, banking and other service providers, landlords and others;
 - (e) worked with the Monitor to respond to inquiries from the above stakeholders

regarding the CCAA proceedings; and

- (f) assisted the Monitor in preparing and delivering notices to creditors and other stakeholders in accordance with the Initial Order.

4. Hematite seeks an extension of the Stay Period until November 27, 2020, which is necessary and appropriate in the circumstances to allow Hematite to, among other things:

- (a) commence and carry out a claims process to identify, quantify and resolve claims against Hematite;
- (b) continue the process to seek recognition of these CCAA proceedings in the Chapter 15 Cases;
- (c) develop a plan of compromise or arrangement to be filed with the Court and presented to the affected creditors of Hematite, and engage in further discussions with stakeholders in that respect; and
- (d) implement its restructuring plan supported by Woodbridge Foam Corporation (“**Woodbridge**”).

5. If the relief sought in the Proposed Amended and Restated Initial Order is granted, Hematite will have sufficient liquidity to meet its obligations during the proposed extension of the Stay Period.

Suppliers

6. Hematite is seeking authority to pay, in limited cases and with the approval of the Monitor and Woodbridge, in its capacity as DIP Lender, suppliers for amounts owing for goods or services actually supplied to Hematite prior to the date of the Initial Order, if the payment is necessary for the ongoing operations of Hematite, or the preservation of the Property, and the payment is required to ensure ongoing supply.

7. This relief is appropriate in the circumstances as it will facilitate Hematite ensuring the continued supply of goods and services that are essential to maintaining its operations and carrying out its restructuring plan.

DIP Facility

8. Hematite is seeking to increase the maximum borrowings under the DIP Facility to \$6 million. This is the amount that will be required by the Applicants to maintain their operations during the pendency of these CCAA proceedings and implement their restructuring plan.

9. The increase to the maximum borrowings under the DIP Facility is necessary and appropriate in the circumstances.

Charges

10. The Applicants are seeking to increase the maximum amount of the Administration Charge from \$250,000 to \$500,000 to secure the professional fees and disbursements of the Monitor, counsel to the Monitor and counsel to the Applicants over the pendency of these CCAA proceedings.

11. The increase to the Administration Charge is necessary and appropriate in the circumstances given the anticipated length and complexity of the CCAA proceedings and the extensive involvement of professional advisors that will be required.

12. The Applicants are also seeking to increase the maximum amount of the Directors' Charge from \$300,000 to \$500,000.

13. The increase to the Directors' Charge is necessary and appropriate in the circumstances given the anticipated length of the CCAA proceedings, the liabilities that its sole director and officer may incur over that period and the importance of keeping management in place during the restructuring.

14. The Initial Order provided for the Charges to rank in priority to all other security interests, trusts, liens, charges, encumbrances and claims of secured creditors, statutory or otherwise, other than certain specified exceptions where the applicable holder had not yet been

given notice of the Charges, such as purchase-money security interests, statutory deemed trusts for source deductions, certain pension plan amounts, municipal property tax and utility liens (each to the extent it is a super-priority) (the “**Priority Claims**”).

15. In the Proposed Amended and Restated Initial Order, the Applicants are requesting that the Charges rank in priority to the Priority Claims as well. This relief is necessary and appropriate in the circumstances.

16. The Applicants intend to provide notice of the hearing for the Proposed Amended and Restated Initial Order to each stakeholder potentially holding a Priority Claim.

17. The Monitor supports the relief requested in the Proposed Amended and Restated Initial Order.

18. Hematite also relies upon the following:

- (a) the provisions of the CCAA and the inherent and equitable jurisdiction of this Court;
- (b) Rules 2.03, 3.02, 16, 37, and 57 of the *Rules of Civil Procedure*, RRO 1990, Reg. 194; and
- (c) such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- 1. the Affidavit of Jacques Nadeau, sworn September 17, 2020;
- 2. the Affidavit of Jacques Nadeau, sworn September 24, 2020;
- 3. the First Report of the Monitor, to be filed; and
- 4. such further and other materials as counsel may advise and this Court may permit.

September 24, 2020

McCarthy Tetrault LLP
Suite 5300, TD Bank Tower
Toronto, ON M5K 1E6
Fax: 416-868-0673

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Tel: 416-601-7539
Email: jgag@mccarthy.ca

Heather Meredith LSO#: 48354R
Tel: 416-601-8342
Email: hmeredith@mccarthy.ca

Trevor Courtis LSO#: 67715A
Tel: 416-601-7643
E-mail: 416-601-7643

Lawyers for the Applicants

TO: THE SERVICE LIST

SCHEDULE "A"

Conference Details to join Motion via Zoom

Topic: Hematite Holdings Inc. (Court File No. CV-20-00647824-00CL)

Time: Sep 28, 2020 12:00 PM Eastern Time (US and Canada)

Join Zoom Meeting

<https://zoom.us/j/94087164947?pwd=cGNXMkEwcHB6SVEvMDI5WURVUlh1QT09>

Meeting ID: 940 8716 4947

Passcode: 665735

One tap mobile

+14388097799,,94087164947#,,,,,0#,,665735# Canada

+15873281099,,94087164947#,,,,,0#,,665735# Canada

Dial by your location

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+1 587 328 1099 Canada

+1 647 374 4685 Canada

+1 647 558 0588 Canada

+1 778 907 2071 Canada

+1 204 272 7920 Canada

+1 301 715 8592 US (Germantown)

+1 312 626 6799 US (Chicago)

+1 346 248 7799 US (Houston)

+1 669 900 6833 US (San Jose)

+1 929 205 6099 US (New York)

+1 253 215 8782 US (Tacoma)

Meeting ID: 940 8716 4947

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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
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OR ARRANGEMENT OF HEMATITE HOLDINGS INC. ET AL.

Court File No: CV-20-00647824-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at Toronto

**NOTICE OF MOTION
(Returnable September 28, 2020)**

McCarthy Tétrault LLP
Suite 5300, TD Bank Tower
Toronto ON M5K 1E6
Fax: 416-868-0673

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Tel: 416-601-7539
Eail: jgage@mccarthy.ca

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Tel: 416-601-8342
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Lawyers for the Applicants

- (c) increase the maximum borrowings under the DIP Facility (as defined in the Initial Order); and
 - (d) increase the maximum amount and priority of the Charges (as defined in the Initial Order).
2. such other relief as this Honourable Court may allow.

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1. Capitalized terms used and not defined herein have the meanings ascribed to them in the affidavit of Jacques Nadeau, sworn September 24, 2020.

Stay Extension

2. On September 18, 2020, the Honourable Mr. Justice Hainey granted the Initial Order in these proceedings pursuant to the *Companies' Creditors Arrangement Act* (“**CCAA**”) that, among other things, imposed a stay of proceedings until September 28, 2020.
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regarding the CCAA proceedings; and

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- (a) commence and carry out a claims process to identify, quantify and resolve claims against Hematite;
- (b) continue the process to seek recognition of these CCAA proceedings in the Chapter 15 Cases;
- (c) develop a plan of compromise or arrangement to be filed with the Court and presented to the affected creditors of Hematite, and engage in further discussions with stakeholders in that respect; and
- (d) implement its restructuring plan supported by Woodbridge Foam Corporation (“**Woodbridge**”).

5. If the relief sought in the Proposed Amended and Restated Initial Order is granted, Hematite will have sufficient liquidity to meet its obligations during the proposed extension of the Stay Period.

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6. Hematite is seeking authority to pay, in limited cases and with the approval of the Monitor and Woodbridge, in its capacity as DIP Lender, suppliers for amounts owing for goods or services actually supplied to Hematite prior to the date of the Initial Order, if the payment is necessary for the ongoing operations of Hematite, or the preservation of the Property, and the payment is required to ensure ongoing supply.

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15. In the Proposed Amended and Restated Initial Order, the Applicants are requesting that the Charges rank in priority to the Priority Claims as well. This relief is necessary and appropriate in the circumstances.

16. The Applicants intend to provide notice of the hearing for the Proposed Amended and Restated Initial Order to each stakeholder potentially holding a Priority Claim.

17. The Monitor supports the relief requested in the Proposed Amended and Restated Initial Order.

18. Hematite also relies upon the following:

- (a) the provisions of the CCAA and the inherent and equitable jurisdiction of this Court;
- (b) Rules 2.03, 3.02, 16, 37, and 57 of the *Rules of Civil Procedure*, RRO 1990, Reg. 194; and
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+15873281099,,94087164947#,,,,,0#,,665735# Canada

Dial by your location

+1 438 809 7799 Canada

+1 587 328 1099 Canada

+1 647 374 4685 Canada

+1 647 558 0588 Canada

+1 778 907 2071 Canada

+1 204 272 7920 Canada

+1 301 715 8592 US (Germantown)

+1 312 626 6799 US (Chicago)

+1 346 248 7799 US (Houston)

+1 669 900 6833 US (San Jose)

+1 929 205 6099 US (New York)

+1 253 215 8782 US (Tacoma)

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Tab 2

**ONTARIO
SUPERIOR COURT OF JUSTICE
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**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
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HEMATITE AUTOMOTIVE PRODUCTS INC.**

Applicants

**AFFIDAVIT OF JACQUES NADEAU
(Sworn September 24, 2020)**

I, Jacques Nadeau, of the City of Guelph, in the Province of Ontario, MAKE OATH

AND SAY:

1. I am the Chief Treasury Officer of Hematite.¹ I am a Chartered Professional Accountant and have been involved in the financial and operational management of Hematite for over 25 years. From 1988 to 2002, I was a controller and then the chief financial officer of Hematite. Upon returning to Hematite in 2007, I served as a general manager and then the chief operations officer until 2019. I resumed the role of chief financial officer in the summer of 2019 until June 2020 when my role became more focused on treasury and cash management, given Hematite's increasing challenges in that area, as set out herein.

2. Through my various roles, I am familiar with the operations, financial results and strategies of Hematite. As such, I have personal knowledge of the matters to which I depose in this affidavit. Where I do not possess personal knowledge, I have stated the source of my

¹ For ease of reference, the Applicants will be collectively referred to herein as "**Hematite**".

knowledge and believe it to be true.

3. All dollar references herein are Canadian dollars unless otherwise referenced.

(i) **Overview**

4. I previously swore an affidavit on September 17, 2020 (the “**September 17 Affidavit**”) in support of an application by Hematite for an initial order pursuant to the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA**”). The September 17 Affidavit is included at Tab 2 of the Application Record dated September 18, 2020. All terms used but not otherwise defined herein shall have the meanings given to them in the September 17 Affidavit.

5. On September 18, 2020, the Honourable Mr. Justice Hainey granted Hematite an initial order (the “**Initial Order**”) pursuant to the CCAA, including a stay of proceedings until September 28, 2020 (the “**Stay Period**”). A copy of the Initial Order is attached hereto as **Exhibit “A”**.

6. I swear this affidavit to provide further information to the Court in support of Hematite’s motion for an order (the “**Proposed Amended and Restated Initial Order**”), substantially in the form of the draft order included at Tab 2 of the Motion Record of the Applicants, which amends and restates the Initial Order to grant certain broader relief that is appropriate in the circumstances, including the following relief:

- (a) extending the Stay Period to November 27, 2020;
- (b) authorizing the Applicants, with the consent of the Monitor and Woodbridge

Foam Corporation (“**Woodbridge**”), in its capacity as DIP Lender, to pay pre-filing amounts owing to suppliers;

- (c) increasing the maximum borrowings under the DIP Facility; and
- (d) increasing the maximum amount and priority of the Charges.

(ii) Chapter 15 Proceedings

7. The Initial Order appointed Hematite Holdings as foreign representative in respect of these CCAA proceedings for the purpose of having these proceedings recognized in any other jurisdiction outside Canada, including the United States pursuant to chapter 15 of title 11 of the United States Code (the “**Bankruptcy Code**”).

8. On September 22, 2020, each of the Applicants filed petitions in the United States Bankruptcy Court for the District of Delaware (the “**U.S. Court**”) for recognition of these CCAA proceedings in the United States pursuant to chapter 15 of the Bankruptcy Code, thereby commencing the Applicants’ chapter 15 cases (the “**Chapter 15 Cases**”).

9. Hematite also filed, among other things, (i) a motion seeking joint administration of the Chapter 15 Cases, (ii) a motion scheduling a final hearing on the petitions for recognition and approving notice procedures for the hearing, and (iii) a motion seeking certain provisional relief, including provisional recognition and enforcement of the Initial Order in the United States pending a final recognition hearing on notice to creditors.

10. On September 23, 2020, the Honourable Justice Walrath of the U.S. Court issued the following orders:

- (a) Order Authorizing and Directing Joint Administration of Chapter 15 Cases for Procedural Purposes Only, a copy of which is attached hereto as **Exhibit “B”**;
- (b) Order (I) Scheduling Hearing on Verified Petition Under Chapter 15 of the Bankruptcy Code for Recognition of a Foreign Main Proceeding and for Additional Relief and Assistance Under 11 U.S.C. §§105(a), 1507, AND 1521 and (II) Specifying Form and Manner of Service and Notice of Hearing, a copy of which is attached hereto as **Exhibit “C”**; and
- (c) Order Granting Provisional Relief, a copy of which is attached hereto as **Exhibit “D”**.

11. A hearing has been scheduled for October 1, 2020 before the U.S. Court for the Applicants to seek provisional recognition and enforcement of the Proposed Amended and Restated Initial Order in the United States should it be granted by this Court.

12. The final hearing on the petitions for recognition has been scheduled for October 19, 2020 before the U.S. Court. The Applicants are required to provide 21 days’ notice of the hearing to all known creditors.

(iii) Stay Extension

13. In the brief period since the Initial Order was granted on September 18, 2020, Hematite has acted in good faith and with due diligence. Among other things, Hematite and its representatives, in consultation with the Monitor and Woodbridge, as appropriate, have:

- (a) as noted above, commenced the Chapter 15 Cases and obtained provisional

recognition and enforcement of these CCAA proceedings and the Initial Order in the United States pursuant to chapter 15 of the Bankruptcy Code on September 23, 2020;

- (b) negotiated and entered into an assignment and assumption agreement with TD and Woodbridge, among others, whereby Woodbridge will acquire part of the debt and all of the security of TD (other than in respect of capital leases) as against the Applicants;
- (c) continued to negotiate definitive documentation with BDC whereby BDC, among other things, will agree to amend its credit agreement to convert its debt into a post-restructuring facility, which negotiations remain ongoing as of the date of this affidavit;
- (d) held town halls for employees on September 18, 2020 to provide information and answer questions regarding the CCAA proceedings;
- (e) contacted suppliers, customers, banking and other service providers, landlords and others;
- (f) worked with the Monitor to respond to inquiries from the above stakeholders regarding the CCAA proceedings;
- (g) assisted the Monitor in preparing and delivering notices to creditors and other stakeholders in accordance with the Initial Order; and
- (h) prepared materials in support of the relief sought in the Proposed Amended

and Restated Initial Order.

14. Hematite seeks an extension of the Stay Period until November 27, 2020. As noted in the September 17 Affidavit, the Plan Sponsor Agreement between Hematite and Woodbridge requires that Hematite obtain an order establishing a claims process by October 9, 2020 and an order authorizing the filing of a CCAA Plan and the conduct of a meeting of affected creditors by November 13, 2020. The requested extension is necessary and appropriate in the circumstances to allow Hematite to, among other things:

- (a) commence and carry out a claims process to identify, quantify and resolve claims against Hematite;
- (b) continue the process to seek recognition of these CCAA proceedings in the Chapter 15 Cases;
- (c) develop a plan of compromise or arrangement to be filed with the Court and presented to the affected creditors of Hematite, and engage in further discussions with stakeholders in that respect; and
- (d) implement its restructuring plan supported by Woodbridge.

15. A projected 13-week cash flow forecast of Hematite for the period ending December 11, 2020 (the “**Cash Flow Forecast**”) was attached to the September 17 Affidavit as Exhibit “Q” and is attached again hereto as **Exhibit “E”**. The Cash Flow Forecast demonstrates that, if the relief sought in the Proposed Amended and Restated Initial Order is granted, Hematite will have sufficient liquidity to meet its obligations during the proposed extension of the Stay Period.

(iv) *Suppliers and Contractors*

16. Hematite is seeking authority to pay, in limited cases, suppliers for amounts owing for goods or services actually supplied to Hematite prior to the date of the Initial Order. Payments for these goods and services are subject to the approval of the Monitor and Woodbridge, in its capacity as DIP Lender, and will be based on a determination of whether payment is necessary for the ongoing operations of Hematite, or the preservation of the Property, and the payment is required to ensure ongoing supply.

17. Hematite is also seeking to clarify that it may pay pre-filing wages and other amounts to contractors as well as employees. Hematite engages contractors at some its facilities and payment of these pre-filing amounts may be required to ensure the ongoing provision of necessary services to these facilities.

18. This relief is appropriate in the circumstances as it will facilitate Hematite ensuring the continued supply of goods and services that are essential to maintaining its operations and carrying out its restructuring plan.

19. I understand that the Monitor supports this relief and will provide further information in that regard in its First Report to the Court.

(v) *Increase in DIP Facility and Charges*

DIP Facility

20. As noted in the September 17 Affidavit, pursuant to the DIP Loan Agreement, Woodbridge agreed to provide the DIP Facility in the maximum principal amount of \$6 million. In the Initial Order, advances under the DIP Facility were limited to \$2.3 million during the initial 10-day stay period. Hematite is seeking to increase the maximum borrowings under the DIP Facility to \$6 million. As outlined in the Cash Flow Forecast, this is the amount that will be required by the Applicants to maintain their operations during the pendency of these CCAA proceedings and implement their restructuring plan.

21. The DIP Facility is secured by the DIP Lender's Charge, which is a super-priority charge on all of the present and after-acquired real and personal property of the Applicants pursuant to the Initial Order.

Administration Charge

22. As noted in the September 17 Affidavit, the Applicants are seeking to increase the maximum amount of the Administration Charge from \$250,000 to \$500,000 to secure the professional fees and disbursements of the Monitor, counsel to the Monitor and counsel to the Applicants over the pendency of these CCAA proceedings. The Applicants believe that the increase to the Administration Charge is necessary given the anticipated length and complexity of the CCAA proceedings and the extensive involvement of professional advisors that will be required.

23. The amount of the proposed Administration Charge has been reviewed with the

Monitor.

Directors' Charge

24. As also noted in the September 17 Affidavit, the Applicants are also seeking to increase the maximum amount of the Directors' Charge from \$300,000 to \$500,000 to secure the indemnity to the sole director and officer of each of the Applicants, John Pavanel, in respect of liabilities that he may incur during the CCAA proceedings in those capacities. Hematite has limited or no directors and officers insurance.

25. The Applicants believe that the increase to the Directors' Charge is necessary given the anticipated length of the CCAA proceedings, the liabilities that Mr. Pavanel may incur over that period and the importance of keeping Mr. Pavanel in place during the restructuring. Mr. Pavanel will be actively involved in overseeing and directing, among other things, the operation of the Business during the CCAA proceedings, the progress of the restructuring transaction and efforts to resolve Hematite's current financial situation.

26. The amount of the proposed Directors' Charge has been reviewed with the Monitor.

Priority of Charges

27. The Initial Order provided for the Charges to rank in priority to all other security interest, trusts, liens, charges, encumbrances and claims of secured creditors, statutory or otherwise, other than certain specified exceptions where the applicable holder had not yet been given notice of the Charges, such as purchase-money security interests, statutory deemed trusts for source deductions, certain pension plan amounts, municipal property tax and utility liens (each to the extent it is a super-priority) (the "**Priority Claims**").

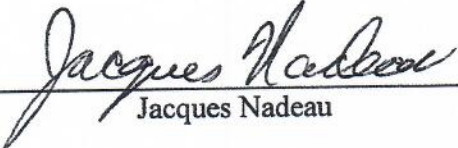
28. In the Proposed Amended and Restated Initial Order, the Applicants are requesting that the Charges rank in priority to the Priority Claims as well. The Applicants intend to provide notice of the hearing for the Proposed Amended and Restated Initial Order to each stakeholder potentially holding a Priority Claim, including creditors with registered security interests against the Applicants which are listed in the summary contained at Exhibit “N” to the September 17 Affidavit and on the Supplemental Service List attached hereto as **Exhibit “F”**.

29. The notice will be in the form of a letter substantially in the form attached as **Exhibit “G”** which, among other things, references the hearing date, briefly summarizes the relief sought in the Proposed Amended and Restated Initial Order, including the proposed priority of the Charges, and provides a link to the Monitor’s Website if the creditor wishes to obtain a complete copy of the Motion Record and any other materials in connection with these proceedings.

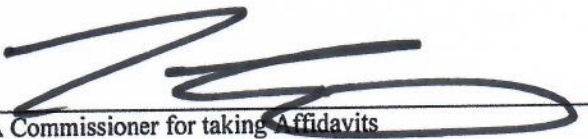
(vi) *Conclusion*

30. For the reasons stated above and in the September 17 Affidavit, the relief requested in the Proposed Amended and Restated Initial Order is in the best interests of Hematite and its stakeholders and appropriate in the circumstances.

SWORN BEFORE ME over videoconference on this 24th day of September, 2020. The affiant was located in the City of Guelph, in the Province of Ontario and the Commissioner was located in the Town of Whitchurch-Stouffville, in the Province of Ontario. This affidavit was commissioned remotely as a result of the COVID-19 pandemic.



Jacques Nadeau



A Commissioner for taking Affidavits
Name: Trevor Courtis (LSO# 67715A)

This is **Exhibit “A”** referred to in the
affidavit of **JACQUES NADEAU**
sworn before me this
24th day of September, 2020



A Commissioner for taking affidavits

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.
JUSTICE HAINES



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)
)

FRIDAY, THE 18TH
DAY OF SEPTEMBER, 2020

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
HEMATITE HOLDINGS INC., HEMATITE MANUFACTURING INC.,
HEMATITE INDUSTRIAL PRODUCTS INC., CANADIAN PAVACO INC.,
PAVACO HOLDINGS U.S. INC., HEMATITE, INC. AND
HEMATITE AUTOMOTIVE PRODUCTS INC.**

Applicants

INITIAL ORDER

THIS APPLICATION, made by the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), was heard this day by judicial videoconference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.

ON READING the affidavit of Jacques Nadeau sworn September 17, 2020 and the Exhibits thereto (the "**Nadeau Affidavit**"), the consent of KPMG Inc. ("**KPMG**") to act as the Monitor (in such capacity, the "**Monitor**"), and the Pre-Filing Report of KPMG in its capacity as the proposed Monitor, and on being advised that the secured creditors of the Applicants who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants and the Monitor.

SERVICE

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies.

POSSESSION OF PROPERTY AND OPERATIONS

3. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their businesses (the "**Business**") and Property. The Applicants are authorized and empowered to continue to retain and employ the employees, contractors, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

4. **THIS COURT ORDERS** that the Applicants shall be entitled to continue to utilize the central cash management system currently in place or, with the consent of the Monitor, replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected

creditor under any plan of arrangement or compromise filed by the Applicants with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

5. **THIS COURT ORDERS** that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the date of this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses (including, without limitation, in respect of expenses charged by employees to corporate credit cards) payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- (b) the fees and disbursements of any Assistants retained or employed by the Applicants, in respect of these proceedings, at their standard rates and charges.

6. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicants following the date of this Order.

7. **THIS COURT ORDERS** that the Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of

- (i) employment insurance, (ii) Canada Pension Plan (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, “Sales Taxes”) required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

8. **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Applicants shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicants and the landlord from time to time (“Rent”), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

9. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

10. **THIS COURT ORDERS** that until and including September 28, 2020 or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

11. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

12. **THIS COURT ORDERS** that, during the Stay Period, all rights and remedies of any Person against or in respect of Hematite R.E. 1, Inc. (the “**Affected Party**”) arising out of, relating to, or triggered by the insolvency of any of the Applicants, the making or filing of these proceedings or any allegation, admission or evidence in these proceedings (collectively, the “**Cross-Default Matters**”), are hereby stayed and suspended except with the written consent of the relevant Applicants, the Affected Party and the Monitor, or leave of this Court, and the operation of any provision of any agreement or other arrangement between any Person and the Affected Party whether written or oral that purports to accelerate, terminate, cancel, suspend or modify such agreement or arrangement or create a right to purchase, a right of first refusal or a lien with respect to any property of the Affected Party as a result of any of the Cross-Default Matters is hereby stayed and restrained pending further order of this Court.

NO INTERFERENCE WITH RIGHTS

13. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

14. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

15. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

16. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

17. **THIS COURT ORDERS** that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

18. **THIS COURT ORDERS** that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$300,000 unless permitted by further Order of this Court, as security for the indemnity provided in paragraph 17 of this Order. The Directors' Charge shall have the priority set out in paragraphs 35 and 37 herein.

19. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 17 of this Order.

APPOINTMENT OF MONITOR

20. **THIS COURT ORDERS** that KPMG is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

21. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lender and its advisers of financial and other information as agreed to between the Applicant and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;
- (d) advise the Applicants in the preparation of the Applicants' cash flow statements, which information shall be reviewed with the Monitor;
- (e) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;

- (f) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (g) perform such other duties as are required by this Order or by this Court from time to time.

22. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

23. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

24. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicants and the DIP Lender with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the

Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

25. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

ADMINISTRATION CHARGE

26. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a bi-weekly basis and, in addition, the Applicants are hereby authorized to pay to the Monitor, counsel to the Monitor and counsel to the Applicants, retainers to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

27. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

28. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$250,000 unless permitted by further Order of this Court, as security for their professional fees and disbursements incurred at their standard rates and charges, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 35 and 37 hereof.

DIP FINANCING

29. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to obtain and borrow under a credit facility from Woodbridge Foam Corporation (the “**DIP Lender**”) in order to finance the Applicants’ working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$2.3 million unless permitted by further Order of this Court.

30. **THIS COURT ORDERS THAT** such credit facility shall be on the terms and subject to the conditions set forth in the Revolving DIP Loan Agreement between the Applicants and the DIP Lender dated as of September 17, 2020 (the “**DIP Loan Agreement**”), filed.

31. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the “**Definitive Documents**”), as are contemplated by the DIP Loan Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Loan Agreement and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

32. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the “**DIP Lender’s Charge**”) on the Property, which DIP Lender’s Charge shall not secure an obligation that exists before this Order is made. The DIP Lender’s Charge shall have the priority set out in paragraphs 35 and 37 hereof.

33. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender’s Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender’s Charge, the DIP Lender, upon three (3) business days’ notice to the

Applicants and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the DIP Loan Agreement, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of the Applicants to the DIP Lender under the DIP Loan Agreement, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and

- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

34. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

35. **THIS COURT ORDERS** that the priorities of the Directors' Charge, the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum initial amount of \$250,000);

Second – DIP Lender's Charge; and

Third – Directors' Charge (to the maximum initial amount of \$300,000).

36. **THIS COURT ORDERS** that the filing, registration or perfection of the Directors' Charge, the Administration Charge or the DIP Lender's Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent

to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

37. **THIS COURT ORDERS** that each of the Charges (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges, encumbrances and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person, save and except for the following Encumbrances until further Order of this Court:

- (a) purchase-money security interests or the equivalent security interests under provincial or state legislation and financing leases (that, for greater certainty, shall not include trade payables);
- (b) statutory super-priority deemed trusts and liens for unpaid employee source deductions;
- (c) liens for unpaid municipal or state property taxes or utilities that are given first priority over other liens by statute; and
- (d) cash collateral deposited with a financial institution as security for letters of credit or bank guarantees issued by the financial institution at the request of an Applicant.

38. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants also obtains the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Administration Charge and the Directors' Charge, or further Order of this Court.

39. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e)

any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Loan Agreement or the Definitive Documents shall create or be deemed to constitute a breach by the Applicants of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants entering into the DIP Loan Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicants pursuant to this Order, the DIP Loan Agreement or the Definitive Documents, and the granting of the Charges do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

40. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants’ interest in such real property leases.

41. **THIS COURT ORDERS AND DECLARES** that this Order is subject to provisional execution and that if any of the provisions of this Order in connection with the DIP Loan Agreement, the Definitive Documents or the DIP Lender’s Charge shall subsequently be stayed, modified, varied, amended, reversed or vacated in whole or in part (collectively, a “**Variation**”) whether by subsequent order of this Court, on or pending an appeal from this Order, such Variation shall not in any way impair, limit or lessen the priority, protections, rights or remedies of the DIP Lender whether under this Order (as made prior to the Variation), under the DIP Loan Agreement and the Definitive Documents, with respect to any advances made prior to the DIP Lender being given notice of the Variation and the DIP Lender shall be entitled to rely on this

Order as issued (including, without limitation, the DIP Lender's Charge) for all advances so made.

SERVICE AND NOTICE

42. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in the Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, or cause to be sent, in the prescribed manner or by electronic message to the e-mail address as last shown on the records of the Applicants, a notice to every known creditor who has a claim against the Applicants of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

43. **THIS COURT ORDERS** that the Guide Concerning Commercial List E-Service (the "**Guide**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 13 of the Guide, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL: <http://home.kpmg/ca/hematitegroup>.

44. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile or other electronic transmission to the Applicants' creditors or other interested parties and their advisers at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery, facsimile

or other electronic transmission shall be deemed to be received on day of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

45. **THIS COURT ORDERS** that the balance of the relief sought by the Applicants in the Notice of Application dated September 18, 2020 be and is hereby reserved to be heard by this Court on September 28, 2020, or such other date as determined by this Court.

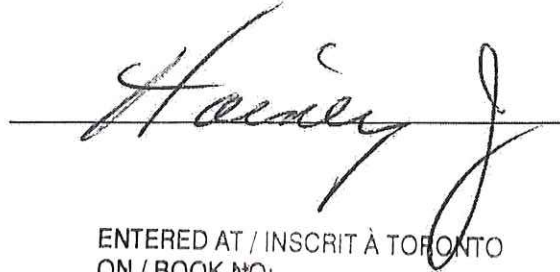
46. **THIS COURT ORDERS** that the Applicants or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their powers and duties hereunder.

47. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

48. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory body or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to Hematite Holdings Inc. in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

49. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that Hematite Holdings Inc. is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in any other jurisdiction outside Canada, including the United States pursuant to chapter 15 of title 11 of the United States Code.

50. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

SEP 21 2020

PER / PAR:



IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF CANNTRUST HOLDINGS INC. ET AL.

Court File No: CV-20-00647824-00CL

**ONTARIO SUPERIOR COURT OF
JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

INITIAL ORDER

McCarthy Tétrault LLP
Suite 5300, TD Bank Tower
Toronto ON M5K 1E6
Fax: 416-868-0673

James Gage ISO#: 346761
Tel: 416-601-7539
Email: jgage@mccarthy.ca

Heather Meredith ISO#: 48354R
Tel: 416-601-8342
Email: hmeredith@mccarthy.ca

Trevor Courtis ISO#: 67715A
Tel: 416-601-7643
Email: tcourtis@mccarthy.ca

This is **Exhibit "B"** referred to in the
affidavit of **JACQUES NADEAU**
sworn before me this
24th day of September, 2020

A handwritten signature in black ink, consisting of stylized initials and a surname, positioned above a horizontal line.

A Commissioner for taking affidavits

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: HEMATITE HOLDINGS INC., Debtor in a Foreign Proceeding.	Chapter 15 Case No. 20-12387 (MFW) Related Docket No.: 4
In re: HEMATITE INDUSTRIAL PRODUCTS INC., Debtor in a Foreign Proceeding.	Chapter 15 Case No. 20-12388 (MFW) Related Docket No.: 3
In re: HEMATITE MANUFACTURING INC., Debtor in a Foreign Proceeding.	Chapter 15 Case No. 20-12389 (MFW) Related Docket No.: 3
In re: CANADIAN PAVACO INC., Debtor in a Foreign Proceeding.	Chapter 15 Case No. 20-12390 (MFW) Related Docket No.: 3
In re: PAVACO HOLDINGS U.S. INC., Debtor in a Foreign Proceeding.	Chapter 15 Case No. 20-12386 (MFW) Related Docket No.: 3
In re: HEMATITE, INC., Debtor in a Foreign Proceeding.	Chapter 15 Case No. 20-12391 (MFW) Related Docket No.: 3

In re:

HEMATITE AUTOMOTIVE PRODUCTS
INC.,

Debtor in a Foreign Proceeding.

Chapter 15

Case No. 20-12392 (MFW)

Related Docket No.: 3

**ORDER AUTHORIZING AND DIRECTING JOINT ADMINISTRATION
OF CHAPTER 15 CASES FOR PROCEDURAL PURPOSES ONLY**

UPON CONSIDERATION of the motion (the “Motion”)¹ of the Foreign Representative for entry of an order authorizing and directing the joint administration of the Debtors’ related Chapter 15 Cases; and the Court having considered and reviewed the Motion and the Chapter 15 Petitions and all related documents filed contemporaneously therewith, including, but not limited to, the *Declaration of Jacques Nadeau in Support of the Debtors’ Chapter 15 Petitions and First Day Pleadings in Foreign Proceeding*, including all facts specifically alleged and verified therein; and upon the record herein; and due and sufficient cause appearing therefor; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012; this being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue of this proceeding and the Motion in this District being proper pursuant to 28 U.S.C. §§ 1401(1) and (3); and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their creditors, and other parties in interest in these Chapter 15 Cases; and the Foreign Representative provided an adequate opportunity for a hearing on the Motion under the circumstances; it is hereby ORDERED

1. The Motion is GRANTED, as set forth herein.

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

2. The above-captioned chapter 15 cases are consolidated for procedural purposes only and shall be jointly administered by the Court under the case of Hematite Holdings Inc., Case No. 20-12387.

3. The caption of the jointly administered Chapter 15 Cases shall read as follows:

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: HEMATITE HOLDINGS INC., <i>et al.</i> , ¹ Debtors in a Foreign Proceeding.	Chapter 15 Case No. 20-12387 (MFW) Jointly Administered
--	---

¹ The U.S. Debtors in these chapter 15 cases and the last four digits of their U.S. Federal Employer Identification Numbers are as follows: Pavaco Holdings U.S. Inc. (5569); Hematite, Inc. (3799); and Hematite Automotive Products Inc. (5382). The Canadian Debtors in these chapter 15 cases and the last four digits of their unique identifier are as follows: Hematite Holdings Inc. (8581); Hematite Manufacturing Inc. (4900); Hematite Industrial Products Inc. (7706); and Canadian Pavaco Inc. (5315). The U.S. Debtors and the Canadian Debtors are referred to herein, collectively, as the “Debtors.” The Debtors’ principal offices are located at 659 Speedvale Avenue West, Guelph, Ontario, N1K 1E6, Canada.

4. The foregoing caption shall satisfy the requirements set forth in sections 342(a) and (c)(1) of the Bankruptcy Code.

5. All original pleadings shall be captioned as set forth in paragraph 3, and all original docket entries shall be made in the case of Hematite Holdings Inc., Case No. 20-12387.

6. An entry shall be made on the docket of each of the other Debtors’ Chapter 15 Cases that is substantially similar to the following:

An order has been entered in accordance with Rule 1015(b) of the Federal Rules of Bankruptcy Procedure and Rule 1015-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware directing joint administration of this chapter 15 case with the chapter 15 case of Hematite Holdings Inc., Case No. 20-12387. All further pleadings and other papers filed in this case shall be filed in, and all further

docket entries shall be made in, the docket of Hematite Holdings Inc., Case No. 20-12387.

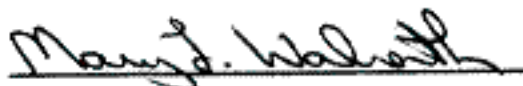
7. The Foreign Representative shall maintain, and the Clerk of the United States Bankruptcy Court for the District of Delaware shall keep, one consolidated docket, one file, and one consolidated service list in these Chapter 15 Cases.

8. Nothing contained in the Motion or this Order shall be deemed or construed as directing or otherwise effecting a substantive consolidation of these Chapter 15 Cases.

9. The Foreign Representative is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

10. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

Dated: September 23rd, 2020
Wilmington, Delaware



MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

This is **Exhibit “C”** referred to in the
affidavit of **JACQUES NADEAU**
sworn before me this
24th day of September, 2020



A Commissioner for taking affidavits

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

HEMATITE HOLDINGS INC., *et al.*,¹

Debtors in a Foreign Proceeding.

Chapter 15

Case No. 20-12387 (MFW)

Jointly Administered

Related Docket Nos.: 5, 11

**ORDER (I) SCHEDULING HEARING ON VERIFIED PETITION UNDER CHAPTER 15
OF THE BANKRUPTCY CODE FOR RECOGNITION OF A FOREIGN MAIN
PROCEEDING AND FOR ADDITIONAL RELIEF AND ASSISTANCE
UNDER 11 U.S.C. §§105(a), 1507, AND 1521 AND (II) SPECIFYING
FORM AND MANNER OF SERVICE OF NOTICE OF HEARING**

UPON CONSIDERATION of the motion (the “Motion”)² of the Foreign Representative for the Debtors for entry of an order scheduling a hearing on the Foreign Representative’s verified petition for recognition of a foreign main proceeding and the relief requested therein and specifying the form and manner of service of notice of the hearing; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and notice of the Motion having been given as provided in the Motion, and such notice having been adequate and appropriate under the circumstances; and it appearing that no other or further notice of the Motion need be provided; and the Court having

¹ The U.S. Debtors in these chapter 15 cases and the last four digits of their U.S. Federal Employer Identification Numbers are as follows: Pavaco Holdings U.S. Inc. (5569); Hematite, Inc. (3799); and Hematite Automotive Products Inc. (5382). The Canadian Debtors in these chapter 15 cases and the last four digits of their unique identifier are as follows: Hematite Holdings Inc. (8581); Hematite Manufacturing Inc. (4900); Hematite Industrial Products Inc. (7706); and Canadian Pavaco Inc. (5315). The U.S. Debtors and the Canadian Debtors are referred to herein, collectively, as the “Debtors.” The Debtors’ principal offices are located at 659 Speedvale Avenue West, Guelph, Ontario, N1K 1E6, Canada.

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

held a hearing to consider the relief requested in the Motion (the “Hearing”); and upon the record of the Hearing and all of the proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion and granted herein is in the best interests of the Debtors, their respective estates and creditors, and all parties in interest, and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED that:

1. The form of the Notice attached hereto as **Exhibit 1** is hereby APPROVED.
2. Copies of the Notice, the Chapter 15 Pleadings, including the Petitions for Recognition, related filings, and the documents filed in support thereof (collectively, the “Service Documents”) shall be served by United States mail, first-class postage pre-paid and electronic mail (where available) on or before the third business day after the entry of this order upon the Core Notice Parties and the Notice Parties, as set forth in the Motion, at their last known addresses.
3. If any party files a notice of appearance in this case, the Foreign Representative shall serve the Service Documents upon such party within five (5) business days of the filing of such notice of appearance if such documents have not already been served on such party (or its counsel).
4. Service of the Service Documents in accordance with this Order is hereby approved as adequate and sufficient notice and service of the Service Documents on all interested parties.
5. A hearing (the “Hearing”) on the relief sought in the Petitions for Recognition as well as responses or objections, if any, to the Service Documents shall be held on **October 19, 2020 at 2:00 p.m. (prevailing Eastern Time)**, before the Honorable Mary F. Walrath, United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of

Delaware (the “Bankruptcy Court”), 824 N. Market Street, 5th Floor, Courtroom #4, Wilmington, Delaware 19801, United States of America.

6. Responses or objections, if any, to the Petitions for Recognition or the Service Documents must be in writing describing the basis therefor and shall be (i) filed with the Clerk of the Bankruptcy Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801, United States of America; and (ii) served upon Womble Bond Dickinson (US) LLP, 1313 N. Market Street, Suite 1200, Wilmington, Delaware 19801, United States of America (Matthew P. Ward, Esq., matthew.ward@wbd-us.com; Morgan L. Patterson, Esq., morgan.patterson@wbd-us.com; and Todd A. Atkinson, Esq., todd.atkinson@wbd-us.com), United States counsel to the Foreign Representative, on or before **October 13, 2020 at 4:00 p.m. (prevailing Eastern Time)**.

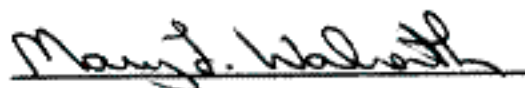
7. Replies in support of the relief sought in the Petitions for Recognition shall be filed with the Court on or before **October 14, 2020 at 4:00 p.m. (prevailing Eastern Time)**

8. The Hearing may be adjourned from time to time without notice other than an announcement in open court at the Hearing or the adjourned date of the hearing.

9. Notwithstanding section 1514(c) of the Bankruptcy Code, the Foreign Representative is not at this time setting a deadline for the filing of claims in these Chapter 15 cases but reserves the right to do so at a later date.

10. Service pursuant to this Order shall be good and sufficient service and adequate notice of the hearing to consider the Petitions for Recognition and the Foreign Representative's request for an order granting recognition of the foreign proceeding as a "foreign main proceeding" and for related relief.

Dated: September 24th, 2020
Wilmington, Delaware



MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

Notice

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:
HEMATITE HOLDINGS INC., *et al.*,¹
Debtors in a Foreign Proceeding.

Chapter 15
Case No. 20-12387 (MFW)
Jointly Administered
Related Docket Nos.: 1, 3, 6, 10, ____
Objection Deadline: October 13, 2020 at 4:00 p.m. (ET)
Hearing Date: October 19, 2020 at 2:00 p.m. (ET)

**NOTICE OF FILING AND HEARING ON VERIFIED PETITION
OF FOREIGN MAIN PROCEEDING AND RELATED RELIEF**

PLEASE TAKE NOTICE that on September 22, 2020, Hematite Holdings Inc., in its capacity as the Canadian Court-appointed and authorized foreign representative (the “Foreign Representative”) for the above-captioned debtors (collectively, the “Debtors”) in a reorganization proceeding (the “CCAA Proceeding”) commenced under Canada’s Companies’ Creditors Arrangement Act (the “CCAA”) pending before the Ontario Superior Court of Justice (Commercial List) (Court File No. CV-20-00647824-00CL) in Ontario, Canada, by the Foreign Representative’s undersigned United States counsel, filed an *Official Form Petition* for each of the Debtors, the *Verified Petition for (I) Recognition of Foreign Main Proceeding, (II) Recognition of Foreign Representative, (III) Recognition of Initial Order and Amended Initial Order, and (IV) Related Relief Under Chapter 15 of the Bankruptcy Code* [Docket No. 3], and the *Motion of Hematite Holdings Inc., as Foreign Representative, For an Order Granting Certain Provisional Relief* [Docket No. 6] (together with all exhibits, declarations and other documents appended thereto or filed in connection therewith, the “Petitions for Recognition”) commencing chapter 15 cases ancillary to the CCAA Proceeding and seeking (i) recognition of such foreign proceeding as “foreign main proceeding” and (ii) relief in aid of the CCAA Proceeding in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) with respect to the Debtors, including certain additional relief pursuant to sections 105, 362, 363, 365, 1507, and 1521 of the Bankruptcy Code.

PLEASE TAKE FURTHER NOTICE that, on September 23, 2020, the Bankruptcy Court entered the *Order Granting Provisional Relief* [Docket No. 10] (the “Provisional Relief Order”), granting certain provisional relief pursuant to sections 105(a), 362, 363, 364(e), 365(e), 1517, 1519, and 1521 of the Bankruptcy Code.

PLEASE TAKE FURTHER NOTICE that, pursuant to the *Order Scheduling Hearing on Verified Chapter 15 Petition and Specifying Form and Manner of Notice of Hearing* [Docket No. ____] (the “Scheduling Order”), the Bankruptcy Court has scheduled a hearing on **October 19, 2020 at 2:00 p.m. (prevailing Eastern Time)** (the “Hearing”) before the Honorable Mary F. Walrath, United States

¹ The U.S. Debtors in these chapter 15 cases and the last four digits of their U.S. Federal Employer Identification Numbers are as follows: Pavaco Holdings U.S. Inc. (5569); Hematite, Inc. (3799); and Hematite Automotive Products Inc. (5382). The Canadian Debtors in these chapter 15 cases and the last four digits of their unique identifier are as follows: Hematite Holdings Inc. (8581); Hematite Manufacturing Inc. (4900); Hematite Industrial Products Inc. (7706); and Canadian Pavaco Inc. (5315). The U.S. Debtors and the Canadian Debtors are referred to herein, collectively, as the “Debtors.” The Debtors’ principal offices are located at 659 Speedvale Avenue West, Guelph, Ontario, N1K 1E6, Canada.

Bankruptcy Judge, at the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, 5th Floor, Courtroom #4, Wilmington, Delaware 19801, United States of America.

PLEASE TAKE FURTHER NOTICE that any response or objection to the relief requested in the Petitions for Recognition must be (i) in writing describing the basis therefor; (ii) filed with the Clerk of the Bankruptcy Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801, United States of America, **on or before October 13, 2020 at 4:00 p.m. (prevailing Eastern Time)** (the “Objection Deadline”); and (iii) served upon Womble Bond Dickinson (US) LLP, 1313 N. Market Street, Suite 1200, Wilmington, Delaware 19801, United States of America (Attention: Matthew P. Ward, Esq., matthew.ward@wbd-us.com; Morgan L. Patterson, Esq., morgan.patterson@wbd-us.com; and Todd A. Atkinson, Esq., todd.atkinson@wbd-us.com), United States counsel to the Foreign Representative, on or before the Objection Deadline.

PLEASE TAKE FURTHER NOTICE that all parties in interest opposed to the Petitions for Recognition or the Foreign Representative’s request for relief must appear at the Hearing at the time and place set forth above. Further, the Hearing may be adjourned from time to time without further notice other than an announcement in open court at the Hearing of the adjourned date or dates or any further adjourned hearing.

PLEASE TAKE FURTHER NOTICE that the Foreign Representative intends to raise issues pertaining to foreign law, specifically Canadian insolvency law including the CCAA, in connection with the Petitions for Recognition: (i) recognizing the CCAA Proceeding as a foreign main proceeding pursuant to chapter 15 of the Bankruptcy Code and the Foreign Representative as the Debtors’ foreign representative under Bankruptcy Code sections 1509 and 1517; (ii) granting automatic relief pursuant to Bankruptcy Code section 1520; and (iii) granting other and additional relief pursuant to Bankruptcy Code sections 1507 and 1521(a) and (b).

PLEASE TAKE FURTHER NOTICE that if no response or objection is timely filed and served as provided above, the Bankruptcy Court may grant the recognition and relief requested by the Foreign Representative without further notice. Copies of the Petitions for Recognition, the Provisional Relief Order and the Scheduling Order may be obtained for a fee by visiting the Bankruptcy Court’s website at <https://www.deb.uscourts.gov/>, or free of charge by contacting the undersigned United States counsel to the Foreign Representative.

Dated: September __, 2020
Wilmington, Delaware

WOMBLE BOND DICKINSON (US) LLP

Matthew P. Ward (Del. Bar No. 4471)
Morgan L. Patterson (Del. Bar No. 5388)
Todd A. Atkinson (Del. Bar No. 4825)
1313 N. Market Street, Suite 1200
Wilmington, Delaware 19801
Telephone: (302) 252-4320
Facsimile: (302) 252-4330
Email: matthew.ward@wbd-us.com
morgan.patterson@wbd-us.com
todd.atkinson@wbd-us.com

*Counsel for Hematite Holdings Inc.,
in its capacity as Foreign Representative*

This is **Exhibit “D”** referred to in the
affidavit of **JACQUES NADEAU**
sworn before me this
24th day of September, 2020

A handwritten signature in black ink, appearing to be the initials 'JN' or similar, written in a cursive style.

A Commissioner for taking affidavits

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re :

HEMATITE HOLDINGS INC., *et al.*,¹

Debtors in a Foreign Proceeding.

Chapter 15

Case No. 20-12387 (MFW)

Jointly Administered

Related Docket No.: 6

ORDER GRANTING PROVISIONAL RELIEF

Upon the *Motion of Hematite Holdings Inc., as Foreign Representative, For an Order Granting Certain Provisional Relief* (the “Motion”),² in its capacity as the Canadian Court court-appointed and authorized foreign representative (the “Foreign Representative”) for the above-captioned debtors (the “Debtors”) in a reorganization proceeding (the “CCAA Proceeding”) commenced under Canada’s *Companies’ Creditors Arrangement Act* (the “CCAA”) pending before the Ontario Superior Court Of Justice (Commercial List) in Ontario, Canada (the “Canadian Court”), for entry of a provisional order (this “Order”), pursuant to sections 105(a), 362, 363, 364(e), 365(e), 1517, 1519, and 1521, of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”) granting the Requested Provisional Relief as defined and described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334, 11 U.S.C. §§ 109 and 1501, and the

¹ The U.S. Debtors in these chapter 15 cases and the last four digits of their U.S. Federal Employer Identification Numbers are as follows: Pavaco Holdings U.S. Inc. (5569); Hematite, Inc. (3799); and Hematite Automotive Products Inc. (5382). The Canadian Debtors in these chapter 15 cases and the last four digits of their unique identifier are as follows: Hematite Holdings Inc. (8581); Hematite Manufacturing Inc. (4900); Hematite Industrial Products Inc. (7706); and Canadian Pavaco Inc. (5315). The U.S. Debtors and the Canadian Debtors are referred to herein, collectively, as the “Debtors.” The Debtors’ principal offices are located at 659 Speedvale Avenue West, Guelph, Ontario, N1K 1E6, Canada.

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

Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated as of February 29, 2012; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P); and Debtors having consented to the Court's authority to enter a final order consistent with Article III of the U.S. Constitution; and venue being proper before this Court pursuant to 28 U.S.C. § 1410; and due and proper notice of the provisional relief sought in the Motion having been provided; and it appearing that no other or further notice need be provided; and a hearing having been held to consider the relief requested in the Motion (the "Hearing"); and upon the Nadeau Declaration, the verified chapter 15 petitions and all other pleadings filed contemporaneously with the Motion, the record of the Hearing and all of the proceedings had before the Court; and the Court having found and determined that the provisional relief sought in the Motion is in the best interests of the Debtors, creditors and all parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor;

THIS COURT HEREBY FINDS AND DETERMINES THAT:

A. The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedures (the "Bankruptcy Rules") made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012.

C. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P).

D. Venue for this proceeding is proper before this Court pursuant to 28 U.S.C. § 1410.

E. The Foreign Representative has demonstrated a substantial likelihood of success on the merits that (a) the CCAA Proceeding is a “foreign main proceeding” as that term is defined in section 1502(4) of the Bankruptcy Code or, alternatively, with respect to certain Debtors, the CCAA Proceeding is a “foreign nonmain proceeding” as defined in section 1502(5) of the Bankruptcy Code, (b) the Foreign Representative is a “foreign representative” as that term is defined in section 101(24) of the Bankruptcy Code, (c) all statutory elements for recognition of the CCAA Proceeding are satisfied in accordance with section 1517 of the Bankruptcy Code, (d) upon recognition of the CCAA Proceeding as a foreign main proceeding, section 362 of the Bankruptcy Code will automatically apply in these chapter 15 cases pursuant to section 1520(a)(1) of the Bankruptcy Code, and (e) that application of section 365(e) on an interim basis to prevent contract counterparties from terminating their prepetition contracts with the Debtors is entirely consistent with the injunctive relief afforded by the automatic stay under section 362.

F. The Foreign Representative has demonstrated that (a) the commencement of any proceeding or action in the U.S. against Debtors and its business and all of its assets should be stayed pursuant to sections 1519, 1521, and 105(a) of the Bankruptcy Code, which protections, in each case, shall be coextensive with the provisions of section 362 of the Bankruptcy Code, to permit the fair and efficient administration of the CCAA Proceeding, including a reorganization pursuant to a plan of compromise or arrangement, pursuant to the Initial Order and any other

applicable orders of the Canadian Court, for the benefit of all stakeholders, and (b) the relief requested in the Motion will neither cause an undue hardship nor create any hardship to parties in interest that is not outweighed by the benefits of the relief granted herein.

G. The Foreign Representative has demonstrated that without the protection of sections 362 and 365(e) of the Bankruptcy Code, there is a material risk that the Debtors' creditors, including counterparties to certain of the Debtors' leases and contracts, may take the position that the commencement of the CCAA Proceeding or these chapter 15 cases authorizes them to terminate such contracts or accelerate obligations or exercise remedies thereunder. Such termination or acceleration will severely impair the Debtors' restructuring efforts and result in irreparable damage to the Debtors' business and the value of Debtors' assets, and substantial harm to Debtors' creditors and other parties in interest.

H. The Foreign Representative has demonstrated that without the protections afforded to the Interim DIP Lender under section 364(e), there is a material risk that the Debtors will be unable to obtain the requisite financing to continue their business operations and fund their restructuring proceedings, which will significantly impair and potentially result in irreparable damage to the value of the Debtors' assets.

I. The Foreign Representative has demonstrated to the Canadian Court that the incurrence of indebtedness under the Interim DIP Facility and the granting of liens and charge negotiated in connection with the Interim DIP Facility is necessary to prevent irreparable harm to the Debtors because, without such financing, the Debtors will be unable to continue operations and fund their restructuring proceedings, which will significantly impair the value of their assets, and the Canadian Court has approved the Interim DIP Facility as being appropriate and the amount

that the Debtors have been authorized to borrow is reasonably necessary for the continued operations of the Debtors in the ordinary course of business.

J. The Foreign Representative has demonstrated to the Canadian Court that the terms of the Interim DIP Facility are fair and reasonable and were entered into in good faith by the Debtors and the Interim DIP Lender and that the Interim DIP Lender would not have extended financing without the provisions of this Order and the Court's recognition of the protections set forth in the Initial Order relating to the Interim DIP Facility.

K. The Foreign Representative has demonstrated to the Canadian Court that absent the relief granted herein, there is a material risk that one or more parties in interest will take action against the Debtors or their assets. As a result, the Debtors may suffer immediate and irreparable injury, loss, or damage for which there is no adequate remedy at law and therefore it is necessary that this Court grant the relief requested in the Motion with notice as provided in the motion. Further, unless this Order is entered, the Debtors' assets could be subject to efforts by creditors to control, possess, or execute upon such assets and such efforts could result in the Debtors suffering immediate and irreparable injury, loss or damage by, among other things, creditors (a) interfering with the jurisdictional mandate of this Court under chapter 15 of the Bankruptcy Code, and (b) interfering with or undermining the success of the CCAA Proceeding.

L. The Foreign Representative has demonstrated that no injury will result to any party that is greater than the harm to the Debtors' business, assets, and property in the absence of the relief requested in the Motion.

M. The Debtors' creditors will not suffer any significant harm by the requested provisional relief, as the relief will ensure the value of the Debtors' assets are preserved, protected and maximized for the benefit of all creditors.

N. The Foreign Representative has demonstrated that, in the interest of comity, the purpose of chapter 15 is carried out by granting recognition and giving effect to the Initial Order.

O. The interests of the public and public policy of the U.S. will be served by entry of this Order.

P. The Foreign Representative and Debtors are entitled to the full protections and rights available pursuant to section 1519(a)(1)-(3) of the Bankruptcy Code.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. The Initial Order is hereby given full force and effect on a provisional basis, including, without limitation, the sections of the Initial Order (a) authorizing the Debtors to obtain credit under the Interim DIP Facility in the amount of CND \$2,300,000 and granting to the Interim DIP Lender the Interim DIP Lender Charge to authorize the Debtors to enter into, perform and borrow under the Interim DIP Facility, (b) staying the commencement or continuation of any actions against the Debtors and their assets, (c) imposing a stay with respect to claims or actions against the Debtors' directors and officers or their assets in connection with the directors' or officers' positions at the Debtor, and (d) granting the Directors' Charge and Administration Charge.
3. While this Order is in effect, the Foreign Representative and the Debtors are entitled to the full protections and rights pursuant to section 1519(a)(1), which protections shall be coextensive with the provisions of section 362 of the Bankruptcy Code, and this Order shall operate as a stay of any execution against the Debtors' assets within the territorial jurisdiction of the United States.

4. While this Order is in effect, pursuant to sections 1519(a)(3) and 1521(a)(7) of the Bankruptcy Code, sections 362 and 365(e) of the Bankruptcy Code are hereby made applicable in these Chapter 15 Cases to the Debtors and their property within the territorial jurisdiction of the United States, and (b) section 362 of the Bankruptcy Code is hereby made applicable to the Debtors' directors and officers and their property within the territorial jurisdiction of the United States.

5. Pursuant to 11 U.S.C. § 1519(a) and 1521(a)(3) and (7), all persons and entities, other than the Foreign Representative and its representatives and agents, are hereby enjoined from:

- a. execution against any of the Debtors' and their directors and officers (the "Protected Parties") assets;
- b. the commencement or continuation, including the issuance or employment of process, of a judicial, quasi-judicial, administrative, regulatory, arbitral, or other action or proceeding, or to recover a claim, including, without limitation, any and all unpaid judgments, settlements or otherwise against the Debtors or other Protected Parties, which in either case is in any way related to, or would interfere with, the administration of the Debtors' estates in the CCAA Proceeding;
- c. taking or continuing any act to create, perfect or enforce a lien or other security interest, setoff or other claim against the Debtors or other Protected Parties or any of their property or proceeds thereof, other than the filing of any registration to preserve or protect a security interest;
- d. transferring, relinquishing or disposing of any property of the Debtors to any person or entity (as that term is defined in section 101(15) of the Bankruptcy Code) other than the Foreign Representative;
- e. commencing or continuing an individual action or proceeding concerning the Debtors' or other Protected Parties' assets, rights, obligations or liabilities; and
- f. declaring or considering the filing of the CCAA Proceeding or these Chapter 15 Cases a default or event of default under any agreement, contract or arrangement;

provided, in each case, that such injunctions shall be effective solely within the territorial jurisdiction of the United States; and provided further that nothing herein shall: (x) prevent any entity from filing any claims against the Debtors in the CCAA Proceeding or (y) prevent any entity

from seeking relief from the Canadian Court in the CCAA Proceeding or this Court in these Chapter 15 Cases, as applicable, for relief from the injunctions contained in the Order.

6. To the extent authorized under the Initial Order, the Court recognizes, on a provisional basis, that during the Stay Period, as defined in the Initial Order and except as permitted under subsection 11.03(2) of the CCAA, no Proceeding, as defined in the Initial Order, may be commenced or continued against any former, present or future director or officer of the Debtors, as defined in the Initial Order, nor against any person deemed to be a director or an officer of the Debtors under subsection 11.03(3) of the CCAA (each, a “Director”, and collectively, the “Directors”) in respect of any claim against such Director which arose prior to September 18, 2020, and which relates to any obligation of the Debtors where it is alleged that any of the Directors are liable under any law in such capacity for the payment of such obligation.

7. Notwithstanding anything to the contrary contained herein, this Order shall not be construed as (a) enjoining the police or regulatory act of a governmental unit, including a criminal action or proceeding, to the extent not stayed pursuant to section 362 of the Bankruptcy Code or (b) staying the exercise of any rights that section 362(o) of the Bankruptcy Code does not allow to be stayed.

8. To the extent provided in the Initial Order, and based on the finding therein and to promote cooperation between jurisdictions in cross-border insolvencies, the Debtors are hereby authorized to execute and deliver such term sheets, credit agreements, mortgages, charges, hypothecs and security documents, guarantees, and other definitive documents as are contemplated by the Interim DIP Facility (collectively, the “DIP Documents”) or as may be reasonably required by the Interim DIP Lender pursuant to the terms thereof, and the Debtors are hereby authorized to pay and perform all of its indebtedness, interest, fees, liabilities, and obligations to the Interim DIP

Lender under and pursuant to the Interim DIP Facility without any need for further approval from this Court.

9. To the extent authorized under the Initial Order, the Court recognizes, on a provisional basis, the Interim DIP Lender Charge, as defined in the Initial Order, granted in the Initial Order which applies to all of the Debtors' assets located in the United States, subject to the priorities, terms, and conditions of the Initial Order, to secure current and future amounts outstanding under the Interim DIP Facility.

10. This Order shall be sufficient and conclusive notice and evidence of the grant, validity, perfection, and priority of the liens granted to the Initial DIP Lender in the Initial Order without the necessity of filing or recording this Order or any financing statement, mortgage, or other instrument or document which may otherwise be required under the law of any jurisdiction; provided that the Debtors are authorized to execute, and the administrative agent under the Interim DIP Facility may file or record, any financing statements, mortgages, other instruments or any other DIP Document to further evidence the liens authorized, granted, and perfected hereby and by the Initial Order.

11. Pursuant to sections 364(e), 1519(a)(3), 1521(a)(7), and 105(a) of the Bankruptcy Code, the validity of the indebtedness, and the priority of the liens authorized by the Initial Order made enforceable in the United States by this Order, shall not be affected by any reversal or modification of this Order, on appeal or the entry of an order denying recognition of the CCAA Proceeding pursuant to section 1517 of the Bankruptcy Code.

12. No action, inaction or acquiescence by the Interim DIP Lender, including, without limitation, funding the Debtors' ongoing operations under this Order, shall be deemed to be or shall be considered as evidence of any alleged consent by the Interim DIP Lender to a charge

against the collateral pursuant to sections 506(c), 552(b) or 105(a) of the Bankruptcy Code. The Interim DIP Lender shall not be subject in any way whatsoever to the equitable doctrine of “marshaling” or any similar doctrine with respect to the collateral.

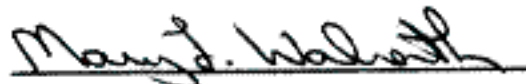
13. Effective on a provisional basis upon entry of this Order, to the extent precluded by or provided for under the Initial Order, no person or entity shall be entitled, directly or indirectly, whether by operation of sections 506(c), 552(b) or 105 of the Bankruptcy Code or otherwise, to direct the exercise of remedies or seek (whether by order of this Court or otherwise) to marshal or otherwise control the disposition of any collateral or property after a breach under the Interim DIP Facility, the DIP Documents, the Initial Order or this Order.

14. The Foreign Representative, Debtors, and their respective agents are authorized to serve or provide any notices required under the Bankruptcy Rules or local rules of this Court.

15. Notwithstanding any provision in the Bankruptcy Rules to the contrary, including, but not limited to, Bankruptcy Rules 7062 and 1018, (i) this Order shall be effective immediately and enforceable upon its entry; (ii) the Foreign Representative and the Interim DIP Lender are not subject to any stay in the implementation, enforcement or realization of the relief granted in this Order; and (iii) the Foreign Representative and the Debtors are authorized and empowered, and may in their discretion and without further delay, take any action and perform any act necessary to implement and effectuate the terms of this Order.

16. This Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order.

Dated: September 23rd, 2020
Wilmington, Delaware



MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

This is **Exhibit "E"** referred to in the
affidavit of **JACQUES NADEAU**
sworn before me this
24th day of September, 2020

A handwritten signature in black ink, appearing to be the initials 'JN' or similar, written in a cursive style.

A Commissioner for taking affidavits

Hematite Group														
Weekly Cash Flow Forecast for the Period September 14, 2020 to December 11, 2020														
in \$CAD														
	Forecast 1	Forecast 2	Forecast 3	Forecast 4	Forecast 5	Forecast 6	Forecast 7	Forecast 8	Forecast 9	Forecast 10	Forecast 11	Forecast 12	Forecast 13	
Week Ending	18-Sep-20	25-Sep-20	2-Oct-20	9-Oct-20	16-Oct-20	23-Oct-20	30-Oct-20	6-Nov-20	13-Nov-20	20-Nov-20	27-Nov-20	4-Dec-20	11-Dec-20	Total
Cash Receipts														
Accounts Receivable	1,363,653	763,694	1,151,020	719,384	3,291,466	2,333,557	2,642,014	1,856,050	1,553,343	1,465,837	1,465,837	1,496,812	1,496,812	21,599,477
Total Receipts	1,363,653	763,694	1,151,020	719,384	3,291,466	2,333,557	2,642,014	1,856,050	1,553,343	1,465,837	1,465,837	1,496,812	1,496,812	21,599,477
Cash Disbursements														
Inventory Purchases	1,326,530	1,417,157	867,157	867,157	867,157	867,157	884,501	884,501	884,501	884,501	822,905	822,905	822,905	12,219,035
Other Operating Expenses	50,000	187,540	459,420	179,801	71,122	75,923	72,784	330,682	195,631	88,864	135,725	309,518	174,077	2,331,087
Tooling Expense	300,000	-	-	-	-	-	-	-	-	-	-	-	-	300,000
Payroll and Benefits	331,067	486,111	253,029	794,680	290,529	475,780	311,667	411,387	359,967	467,487	392,748	335,770	264,842	5,175,067
Equipment and Auto leases	62,650	63,106	286,184	28,306	46,468	159,670	14,077	282,696	19,100	139,670	61,981	288,333	34,672	1,486,912
Tax Remittances	49,212	52,018	-	-	-	-	214,000	-	-	-	203,000	-	-	518,230
Capital Expenditures	-	-	-	96,300	112,500	372,500	62,500	127,550	293,750	293,750	93,750	127,550	93,750	1,673,900
DIP Financing Interest	-	-	-	-	-	-	84,740	-	-	-	-	73,973	-	158,712
Professional fees	119,780	631,560	353,500	180,000	245,000	115,000	140,000	65,000	180,000	170,000	190,000	195,000	175,000	2,759,840
Total Disbursements	2,239,240	2,837,492	2,219,290	2,146,244	1,632,776	2,066,030	1,784,269	2,101,817	1,932,949	2,044,272	1,900,108	2,153,048	1,565,246	26,622,783
Net Cash Flow	(875,587)	(2,073,799)	(1,068,270)	(1,426,861)	1,658,689	267,527	857,746	(245,767)	(379,606)	(578,436)	(434,271)	(656,237)	(68,434)	(5,023,306)
Opening Cash	-	-	126,201	757,932	531,071	3,089,760	3,357,287	4,215,033	3,969,265	3,589,659	3,011,224	2,576,952	1,920,716	-
Revolver Draw	875,587	-	-	-	-	-	-	-	-	-	-	-	-	875,587
DIP Loan Draw	-	2,200,000	1,700,000	1,200,000	900,000	-	-	-	-	-	-	-	-	6,000,000
Closing Cash	-	126,201	757,932	531,071	3,089,760	3,357,287	4,215,033	3,969,265	3,589,659	3,011,224	2,576,952	1,920,716	1,852,281	1,852,281
Opening revolver balance	(13,548,031)	(14,423,618)	(14,423,618)	(14,423,618)	(14,423,618)	(14,423,618)	(14,423,618)	(14,423,618)	(14,423,618)	(14,423,618)	(14,423,618)	(14,423,618)	(14,423,618)	(13,548,031)
Net Cash Flow	(875,587)	-	-	-	-	-	-	-	-	-	-	-	-	(875,587)
Closing revolver balance	(14,423,618)	(14,423,618)	(14,423,618)	(14,423,618)	(14,423,618)	(14,423,618)	(14,423,618)	(14,423,618)	(14,423,618)	(14,423,618)	(14,423,618)	(14,423,618)	(14,423,618)	(14,423,618)
Opening DIP Loan Balance	-	-	(2,200,000)	(3,900,000)	(5,100,000)	(6,000,000)	(6,000,000)	(6,000,000)	(6,000,000)	(6,000,000)	(6,000,000)	(6,000,000)	(6,000,000)	-
DIP Draw	-	(2,200,000)	(1,700,000)	(1,200,000)	(900,000)	-	-	-	-	-	-	-	-	(6,000,000)
Closing DIP Loan Balance	-	(2,200,000)	(3,900,000)	(5,100,000)	(6,000,000)	(6,000,000)	(6,000,000)	(6,000,000)	(6,000,000)	(6,000,000)	(6,000,000)	(6,000,000)	(6,000,000)	(6,000,000)

Jacques Nadeau
Chief Treasury Officer
Hematite Group

This is **Exhibit “F”** referred to in the
affidavit of **JACQUES NADEAU**
sworn before me this
24th day of September, 2020

A handwritten signature in black ink, appearing to be the initials 'JN' or similar, written in a cursive style.

A Commissioner for taking affidavits

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT
ACT, R.S.C. 1985, c. C-36, AS AMENDED***

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
HEMATITE HOLDINGS INC., HEMATITE MANUFACTURING INC.,
HEMATITE INDUSTRIAL PRODUCTS INC., CANADIAN PAVACO INC.,
PAVACO HOLDINGS U.S. INC., HEMATITE, INC. AND
HEMATITE AUTOMOTIVE PRODUCTS INC.**

Applicants

**SUPPLEMENTAL SERVICE LIST
(as at September 24, 2020)**

Ontario PPSA Registrations

CLE CAPITAL INC.
3390 SOUTH SERVICE ROAD, SUITE 301
BURLINGTON ON L7N 3J5

COAST CAPTIAL EQUIPMENT FINANCE LTD.
500-4180 LOUGHEED HWY
BURNABY BC V5C 6A7

CONCENTRA BANK
C/O COMM LEASING
BOX 3030 REGINA SK S4P 3G8

CWB NATIONAL LEASING INC.
1525 BUFFALO PLACE
WINNIPEG MB R3T 1L9

DE LAGE LANDEN FINANCIAL SERVICES CANADA INC.
3450 SUPERIOR COURT, UNIT 1
OAKVILLE ON L6L 0C4

ENTERPRISE BRANT
330 WEST ST
BRANTFORD ON N3R 7V5

FIFTH THIRD BANK
PO BOX 5089
EVANSVILLE, IN 47716

HONDA CANADA FINANCE INC.
180 HONDA BLVD
MARKHAM ON L6C 0H9

HSBC BANK CANADA
300-2001 MCGILL COLLEGE AVENUE
MONTREAL QC H3A 1G1

PENSKE TRUCK LEASING CANADA INC
RT 10 GREEN HILLS, PO BOX 791
READING PA 19603

RCAP LEASING INC.
5575 NORTH SERVICE RD, STE 300
BURLINGTON ON L7L 6M1

ROYAL BANK OF CANADA
10 YORK MILLS ROAD
TORONTO ON M2P 0A2

ROYAL BANK OF CANADA
300-5575 NORTH SERVICE RD
BURLINGTON ON L7L 6M1

ROYNAT INC.
SUITE 1500, 4710 KINGSWAY ST.
BURNABY BC V5H 4M2

SCHERER LEASING INC.
1225 COURTLAND AVENUE EAST
KITCHENER ON N2C 2N8

TOYOTA CREDIT CANADA INC.
80 MICRO COURT, SUITE 200
MARKHAM ON L3R 9Z5

ULI CANADA INC.
3700 MORGAN AVE.
EVANSVILLE, IN 47715

VW CREDIT CANADA INC.
4865 MARC-BLAIN ST., SUITE 300
ST-LAURENT QC H4R 3B2

UCC Registrations

DEERE & COMPANY
6400 NW 86TH STREET, P.O. BOX 6600
JOHNSON CITY IW 50131-6600 UNITED STATES

DE LAGE LANDEN FINANCIAL SERVICES, INC.
1111 OLD EAGLE SCHOOL ROAD
WAYNE, PA, 19087 UNITED STATES

ENGS COMMERCIAL FINANCE CO.
P.O. BOX 128
ITASCA, IL, 60143—012 UNITED STATES

KEY EQUIPMENT FINANCE, A DIVISION OF KEYBANK NA
1000 S. MCCASLIN BLVD
SUPERIOR, CO, 80027 UNITED STATES

JOBSOHIO
41 S. HIGH STREET, SUITE 1500
COLUMBUS, OH, 43215 UNITED STATES

MAJESTIC INDUSTRIES, LLC
15378 HALLMARK
MACOMB TOWNSHIP, MI, 48042 UNITED STATES

REKO INTERNATIONAL GROUP INC.
469 SILVER CREEK INDUSTRIAL DR.
LAKESHORE, ON N8N4W2

SIEMENS FINANCIAL SERVICES, INC.
170 WOOD AVENUE SOUTH
ISELIN, NJ, 08830 UNITED STATES

TOYOTA INDUSTRIES COMMERCIAL FINANCE, INC.
P.O. BOX 9050
DALLAS, TX, 75019—905 UNITED STATES

WELLS FARGO BANK, N.A.
300 TRI-STATE INTERNATIONAL STE 400
LINCOLNSHIRE, IL, 60069 UNITED STATES

Municipalities

CITY OF BRANTFORD – PROPERTY TAX OFFICE
100 WELLINGTON SQUARE
BRANTFORD, ONTARIO N3T 2M2

CITY OF GUELPH – TAX OFFICE
CITY HALL, 1 CARDEN STREET
GUELPH ON N1H 3A1

MONTGOMERY COUNTY TREASURER
451 WEST THIRD STREET
DAYTON OH 45422 UNITED STATES

This is **Exhibit “G”** referred to in the
affidavit of **JACQUES NADEAU**
sworn before me this
24th day of September, 2020

A handwritten signature in black ink, appearing to be the initials 'JN' or similar, written in a cursive style.

A Commissioner for taking affidavits



McCarthy Tétrault LLP
PO Box 48, Suite 5300
Toronto-Dominion Bank Tower
Toronto ON M5K 1E6
Canada
Office Phone
Fax: 416-868-0673

Trevor Courtis
Associate
Direct Line: (416) 601-7643
Direct Fax: (416) 868-0673
Email: tcourtis@mccarthy.ca

September 24, 2020

Via Overnight Courier

**To Certain Creditors of Hematite Holdings Inc.,
Hematite Manufacturing Inc., Hematite Industrial
Products Inc., Canadian Pavaco Inc., Pavaco Holdings
U.S. Inc., Hematite, Inc. and Hematite Automotive
Products, Inc. (collectively, "Hematite")**

Dear Sir/Madam:

**Re: *Companies' Creditors Arrangement Act* Proceedings of Hematite Holdings Inc. et al.
Ontario Superior Court of Justice File No. CV-20-00647824-00CL**

We are counsel to Hematite. On September 18, 2020, the Ontario Superior Court of Justice (Commercial List) (the "**Court**") issued an order (the "**Initial Order**") granting Hematite protection under the *Companies' Creditors Arrangement Act* ("**CCAA**"). In the Initial Order, the Court granted the following charges (the "**Charges**") on all of the present and after-acquired real and personal property of Hematite:

- (i) an Administration Charge, in the maximum amount of \$250,000, to secure the professional fees and disbursements of the Monitor, counsel to the Monitor and counsel to Hematite;
- (ii) a DIP Lender's Charge, to secure advances made to Hematite in the maximum amount of \$2.3 million and any related interest and other amounts under the debtor-in-possession financing facility provided by Woodbridge Foam Corporation (the "**DIP Facility**"); and
- (iii) a Directors' Charge, in the maximum amount of \$300,000, to secure the indemnity to the directors and officers of Hematite in respect of liabilities that they may incur during the CCAA proceedings in those capacities.

The Initial Order provided for the Charges to rank in priority to all other security interests, trusts, liens, charges, encumbrances and claims of secured creditors, statutory or otherwise, other than certain specified exceptions where the applicable holder had not yet been given notice of the Charges, such as purchase-money security interests, financing leases, statutory deemed trusts for source deductions, certain pension plan amounts, municipal property tax and utility liens (each to the extent it is a super-priority) (the "**Priority Claims**").

On September 28, 2020, Hematite will be making a motion to the Court for an order amending and restating the Initial Order (the “**Proposed Order**”) to, among other things:

- (i) increase the maximum amount of:
 - a. the Administration Charge to \$500,000;
 - b. the permitted borrowing under the DIP Facility to \$6 million; and
 - c. the Directors’ Charge to \$500,000; and
- (ii) provide that the Charges rank in priority to the Priority Claims as well.

You are receiving this letter because you have been identified as someone potentially holding a Priority Claim that may be affected by the Proposed Order.

A copy of Hematite’s notice of motion is attached hereto. The full motion record and other documents and information in respect of the motion and Hematite’s CCAA proceedings are available on the website maintained by KPMG Inc. in its capacity as the court-appointed monitor of Hematite (the “**Monitor**”) at <http://home.kpmg/ca/hematitegroup>. If you have any questions, you may contact the Monitor directly at (416) 777-3978 or hematitegroup@kpmg.ca.

Yours truly,

McCarthy Tétrault LLP

Per:



Trevor Courtis

TC/emdk
Enclosure

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF HEMATITE HOLDINGS INC. ET AL.

Court File No: CV-20-00647824-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**AFFIDAVIT OF JACQUES NADEAU
(Sworn September 24, 2020)**

McCarthy Tétrault LLP
Suite 5300, TD Bank Tower
Toronto ON M5K 1E6
Fax: 416-868-0673

James Gage LSO#: 346761
Tel: 416-601-7539
Email: jgage@mccarthy.ca

Heather Meredith LSO#: 48354R
Tel: 416-601-8342
Email: hmeredith@mccarthy.ca

Trevor Courtis LSO#: 67715A
Tel: 416-601-7643
Email: tcourtis@mccarthy.ca

Lawyers for the Applicants

DOC#: 20771972

Tab 3

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) MONDAY, THE 28TH
)
JUSTICE HAINEY) DAY OF SEPTEMBER, 2020

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
HEMATITE HOLDINGS INC., HEMATITE MANUFACTURING INC.,
HEMATITE INDUSTRIAL PRODUCTS INC., CANADIAN PAVACO INC.,
PAVACO HOLDINGS U.S. INC., HEMATITE, INC. AND
HEMATITE AUTOMOTIVE PRODUCTS INC.**

Applicants

AMENDED AND RESTATED INITIAL ORDER

THIS MOTION, made by the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") for an order amending and restating the initial order (the "**Initial Order**") issued on September 18, 2020 (the "**Initial Filing Date**") was heard this day by judicial videoconference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.

ON READING the affidavit of Jacques Nadeau sworn September 17, 2020 and the Exhibits thereto, the affidavit of Jacques Nadeau sworn September 24, 2020 and the Exhibits thereto, the consent of KPMG Inc. ("**KPMG**") to act as the Monitor (in such capacity, the "**Monitor**"), the Pre-Filing Report of KPMG in its capacity as the proposed Monitor, and the First Report of the Monitor dated September ●, 2020; on being advised that the secured creditors of the Applicants who are likely to be affected by the charges created herein were given notice; on hearing the submissions of counsel for the Applicants, the Monitor and those other parties listed on the counsel slip; and on being advised that those parties listed in the affidavit of service, filed, were given notice of the Motion.

INITIAL ORDER AND INITIAL FILING DATE

1. **THIS COURT ORDERS** that the Initial Order, reflecting the Initial Filing Date, shall be amended and restated as provided for herein.

SERVICE

2. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

3. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies.

PLAN OF ARRANGEMENT

4. **THIS COURT ORDERS** that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “**Plan**”),

POSSESSION OF PROPERTY AND OPERATIONS

5. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their businesses (the “**Business**”) and Property. The Applicants are authorized and empowered to continue to retain and employ the employees, contractors, consultants, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by them, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. **THIS COURT ORDERS** that the Applicants shall be entitled to continue to utilize the central cash management system currently in place or, with the consent of the Monitor, replace it with another substantially similar central cash management system (the “**Cash Management System**”) and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

7. **THIS COURT ORDERS** that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the Initial Filing Date:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses (including, without limitation, in respect of expenses charged by employees to corporate credit cards) payable on or after the Initial Filing Date in respect of employees and contractors, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) the fees and disbursements of any Assistants retained or employed by the Applicants, in respect of these proceedings, at their standard rates and charges; and
- (c) with the consent of the Monitor and the DIP Lender (as defined below), amounts owing for goods or services actually supplied to the Applicants prior to the Initial Filing Date by suppliers or other third parties if in the opinion of the Applicants such payment is necessary for the ongoing operations of the Applicants or preservation of the Property, and the payment is required to ensure ongoing supply, up to an aggregate limit of \$700,000 for all such payments without further Order of this Court.

8. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course on or after the Initial Filing Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicants following the Initial Filing Date (and, in respect of expenses incurred by credit card, the Applicants may provide cash collateral to the credit card issuer with the consent of the Monitor and DIP Lender).

9. **THIS COURT ORDERS** that the Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the Initial Filing Date, or where such Sales Taxes were accrued or collected prior to the Initial Filing Date but not required to be remitted until on or after the Initial Filing Date; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured

creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

10. **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Applicants shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicants and the landlord from time to time (“**Rent**”), for the period commencing from and including the Initial Filing Date, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the Initial Filing Date shall also be paid.

11. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of the Initial Filing Date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

12. **THIS COURT ORDERS** that the Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the plan sponsor agreement between the Applicants and Woodbridge Foam Corporation dated September 17, 2020 and the Definitive Documents (as hereinafter defined) have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of the business or operations, and, with the consent of the DIP Lender, to dispose of redundant or non-material assets not exceeding \$250,000 in any one transaction or \$1,000,000 in the aggregate;
- (b) terminate the employment of such employees or temporarily lay off such employees as they deem appropriate; and

- (c) pursue all avenues of refinancing the Business or Property in connection with the implementation of the Plan,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the “**Restructuring**”).

13. **THIS COURT ORDERS** that the Applicants shall provide each of the relevant landlords with notice of the Applicants’ intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicants’ entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicants, or by further Order of this Court upon application by the Applicants on at least two (2) days notice to such landlord and any such secured creditors. If the Applicants disclaim the lease governing such leased premises in accordance with Section 32 of the CCAA, they shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicants’ claim to the fixtures in dispute.

14. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

15. **THIS COURT ORDERS** that until and including November 27, 2020 or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court

or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

16. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

17. **THIS COURT ORDERS** that, during the Stay Period, all rights and remedies of any Person against or in respect of Hematite R.E. 1, Inc. (the “**Affected Party**”) arising out of, relating to, or triggered by the insolvency of any of the Applicants, the making or filing of these proceedings or any allegation, admission or evidence in these proceedings (collectively, the “**Cross-Default Matters**”), are hereby stayed and suspended except with the written consent of the relevant Applicants, the Affected Party and the Monitor, or leave of this Court, and the operation of any provision of any agreement or other arrangement between any Person and the Affected Party whether written or oral that purports to accelerate, terminate, cancel, suspend or modify such agreement or arrangement or create a right to purchase, a right of first refusal or a lien with respect to any property of the Affected Party as a result of any of the Cross-Default Matters is hereby stayed and restrained pending further order of this Court.

NO INTERFERENCE WITH RIGHTS

18. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

19. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the Initial Filing Date are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

20. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the Initial Filing Date, nor shall any Person be under any obligation on or after the Initial Filing Date to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

21. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the Initial Filing Date and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

22. **THIS COURT ORDERS** that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

23. **THIS COURT ORDERS** that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$500,000 as security for the indemnity provided in paragraph 22 of this Order. The Directors' Charge shall have the priority set out in paragraphs 40 and 42 herein.

24. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 22 of this Order.

APPOINTMENT OF MONITOR

25. **THIS COURT ORDERS** that KPMG is hereby appointed as of the Initial Filing Date pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

26. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lender and its advisers of financial and other information as agreed to between the Applicant and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;
- (d) advise the Applicants in the preparation of the Applicants' cash flow statements, which information shall be reviewed with the Monitor;
- (e) advise the Applicants in their development of the Plan and any amendments to the Plan;
- (f) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the

Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;

- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (i) perform such other duties as are required by this Order or by this Court from time to time.

27. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

28. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

29. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicants and the DIP Lender with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor

shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential or privileged, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

30. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

ADMINISTRATION CHARGE

31. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a bi-weekly basis and, in addition, the Applicants are hereby authorized to pay to the Monitor, counsel to the Monitor and counsel to the Applicants, retainers to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

32. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

33. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$500,000 as security for their professional fees and disbursements incurred at their standard rates and charges, both before and after the making of the Initial Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 40 and 42 hereof.

DIP FINANCING

34. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to obtain and borrow under a credit facility from Woodbridge Foam Corporation (the “**DIP Lender**”) in order to finance the Applicants’ working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$6.0 million unless permitted by further Order of this Court.

35. **THIS COURT ORDERS THAT** such credit facility shall be on the terms and subject to the conditions set forth in the Revolving DIP Loan Agreement between the Applicants and the DIP Lender dated as of September 17, 2020 (the “**DIP Loan Agreement**”), filed.

36. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, including the DIP Loan Agreement, the “**Definitive Documents**”), as are contemplated by the DIP Loan Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Loan Agreement and the other Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

37. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the “**DIP Lender’s Charge**”) on the Property, which DIP Lender’s Charge shall not secure an obligation that exists before the Initial Order was made. The DIP Lender’s Charge shall have the priority set out in paragraphs 40 and 42 hereof.

38. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender’s Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender’s Charge, the DIP Lender, upon three (3) business days’ notice to the

Applicants and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the DIP Loan Agreement, the other Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of the Applicants to the DIP Lender under the DIP Loan Agreement, the other Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and

- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

39. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

40. **THIS COURT ORDERS** that the priorities of the Directors' Charge, the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum initial amount of \$500,000);

Second – DIP Lender's Charge; and

Third – Directors' Charge (to the maximum initial amount of \$500,000).

41. **THIS COURT ORDERS** that the filing, registration or perfection of the Directors' Charge, the Administration Charge or the DIP Lender's Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent

to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

42. **THIS COURT ORDERS** that each of the Charges (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges, encumbrances and claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any Person.

43. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants also obtains the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Administration Charge and the Directors’ Charge, or further Order of this Court.

44. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “**Chargees**”) shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Loan Agreement or the other Definitive Documents shall create or be deemed to constitute a breach by the Applicants of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants entering into

the DIP Loan Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and

- (c) the payments made by the Applicants pursuant to this Order, the DIP Loan Agreement or the other Definitive Documents, and the granting of the Charges do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

45. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

46. **THIS COURT ORDERS AND DECLARES** that this Order is subject to provisional execution and that if any of the provisions of this Order in connection with the DIP Loan Agreement, the other Definitive Documents or the DIP Lender's Charge shall subsequently be stayed, modified, varied, amended, reversed or vacated in whole or in part (collectively, a "**Variation**") whether by subsequent order of this Court, on or pending an appeal from this Order, such Variation shall not in any way impair, limit or lessen the priority, protections, rights or remedies of the DIP Lender whether under this Order (as made prior to the Variation), under the DIP Loan Agreement and the other Definitive Documents, with respect to any advances made prior to the DIP Lender being given notice of the Variation and the DIP Lender shall be entitled to rely on this Order as issued (including, without limitation, the DIP Lender's Charge) for all advances so made.

SERVICE AND NOTICE

47. **THIS COURT ORDERS** that the Monitor shall (i) without delay from the Initial Filing Date, publish in the Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA in respect of the Initial Order, (ii) within five days after the Initial Filing Date, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, or cause to be sent, in the prescribed manner or by electronic message to the e-mail address as last shown on the records of the Applicants, a notice to every known creditor who has a claim against the Applicants of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly

available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

48. **THIS COURT ORDERS** that the Guide Concerning Commercial List E-Service (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 13 of the Guide, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL: <http://home.kpmg/ca/hematitegroup>.

49. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile or other electronic transmission to the Applicants’ creditors or other interested parties and their advisers at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery, facsimile or other electronic transmission shall be deemed to be received on day of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

50. **THIS COURT ORDERS** that the Applicants or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their powers and duties hereunder.

51. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

52. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory body or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to Hematite Holdings Inc. in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

53. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that Hematite Holdings Inc. is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in any other jurisdiction outside Canada, including the United States pursuant to chapter 15 of title 11 of the United States Code.

54. **THIS COURT ORDERS** that this Order and all of its provisions are effective from the date it is made without any need for entry and filing.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF HEMATITE HOLDINGS INC. ET AL.

Court File No: CV-20-00647824-00CL

**ONTARIO SUPERIOR COURT OF
JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**AMENDED AND RESTATED
INITIAL ORDER**

McCarthy Tétrault LLP
Suite 5300, TD Bank Tower
Toronto ON M5K 1E6
Fax: 416-868-0673

James Gage LSO#: 346761
Tel: 416-601-7539
Email: jgage@mccarthy.ca

Trevor Courtis LSO#: 67715A
Tel: 416-601-7643
Email: tcourtis@mccarthy.ca

Tab 4

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.) ~~FRIDAY~~MONDAY, THE ~~18~~28TH
JUSTICE HAINEY) DAY OF SEPTEMBER, 2020
)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
HEMATITE HOLDINGS INC., HEMATITE MANUFACTURING INC.,
HEMATITE INDUSTRIAL PRODUCTS INC., CANADIAN PAVACO INC.,
PAVACO HOLDINGS U.S. INC., HEMATITE, INC. AND
HEMATITE AUTOMOTIVE PRODUCTS INC.

Applicants

AMENDED AND RESTATED INITIAL ORDER

THIS ~~APPLICATION~~MOTION, made by the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"); for an order amending and restating the initial order (the "Initial Order") issued on September 18, 2020 (the "Initial Filing Date") was heard this day by judicial videoconference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.

ON READING the affidavit of Jacques Nadeau sworn September 17, 2020 and the Exhibits thereto, ~~(the "Nadeau Affidavit")~~the affidavit of Jacques Nadeau sworn September 24, 2020 and the Exhibits thereto, the consent of KPMG Inc. ("KPMG") to act as the Monitor (in such capacity, the "Monitor"), ~~and~~ the Pre-Filing Report of KPMG in its capacity as the proposed Monitor, and the First Report of the Monitor dated September 1, 2020; on being advised that the secured creditors of the Applicants who are likely to be affected by the charges created herein were given notice, ~~and~~; on hearing the submissions of counsel for the Applicants-

~~and the Monitor~~, the Monitor and those other parties listed on the counsel slip; and on being advised that those parties listed in the affidavit of service, filed, were given notice of the Motion.

INITIAL ORDER AND INITIAL FILING DATE

1. THIS COURT ORDERS that the Initial Order, reflecting the Initial Filing Date, shall be amended and restated as provided for herein.

SERVICE

2. ~~1.~~ THIS COURT ORDERS that the time for service and filing of the Notice of Application Motion and the Application Motion Record is hereby abridged and validated so that this Application Motion is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

3. ~~2.~~ THIS COURT ORDERS AND DECLARES that the Applicants are companies to which the CCAA applies.

PLAN OF ARRANGEMENT

4. THIS COURT ORDERS that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan").

POSSESSION OF PROPERTY AND OPERATIONS

5. ~~3.~~ THIS COURT ORDERS that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their businesses (the "Business") and Property. The Applicants are authorized and empowered to continue to retain and employ the employees, contractors, consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by them, with liberty to retain such

further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. ~~4.~~ **THIS COURT ORDERS** that the Applicants shall be entitled to continue to utilize the central cash management system currently in place or, with the consent of the Monitor, replace it with another substantially similar central cash management system (the “**Cash Management System**”) and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under ~~any plan of arrangement or compromise filed by the Applicants~~ the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

7. ~~5.~~ **THIS COURT ORDERS** that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the ~~date of this Order~~ Initial Filing Date:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses (including, without limitation, in respect of expenses charged by employees to corporate credit cards) payable on or after the ~~date of this Order~~ Initial Filing Date in respect of employees and contractors, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; ~~and~~
- (b) the fees and disbursements of any Assistants retained or employed by the Applicants, in respect of these proceedings, at their standard rates and charges; ~~and~~
- (c) with the consent of the Monitor and the DIP Lender (as defined below), amounts owing for goods or services actually supplied to the Applicants prior to the Initial

Filing Date by suppliers or other third parties if in the opinion of the Applicants such payment is necessary for the ongoing operations of the Applicants or preservation of the Property, and the payment is required to ensure ongoing supply, up to an aggregate limit of \$700,000 for all such payments without further Order of this Court.

8. ~~6.~~ **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course on or after ~~this Order~~ the Initial Filing Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicants following the ~~date of this Order~~ Initial Filing Date (and, in respect of expenses incurred by credit card, the Applicants may provide cash collateral to the credit card issuer with the consent of the Monitor and DIP Lender).

9. ~~7.~~ **THIS COURT ORDERS** that the Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the ~~date of this Order~~ Initial Filing Date, or where such Sales Taxes were accrued

or collected prior to the ~~date of this Order~~[Initial Filing Date](#) but not required to be remitted until on or after the ~~date of this Order~~[Initial Filing Date](#); and

- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

10. ~~8.~~ **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Applicants shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicants and the landlord from time to time (“**Rent**”), for the period commencing from and including the ~~date of this Order~~[Initial Filing Date](#), twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the ~~date of this Order~~[Initial Filing Date](#) shall also be paid.

11. ~~9.~~ **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of ~~this date~~[the Initial Filing Date](#); (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

12. **THIS COURT ORDERS** that the Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the plan sponsor agreement between the Applicants and Woodbridge Foam Corporation dated September 17, 2020 and the Definitive Documents (as hereinafter defined) have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of the business or operations, and, with the consent of the DIP Lender, to dispose of redundant or non-material assets not exceeding \$250,000 in any one transaction or \$1,000,000 in the aggregate;
- (b) terminate the employment of such employees or temporarily lay off such employees as they deem appropriate; and
- (c) pursue all avenues of refinancing the Business or Property in connection with the implementation of the Plan.

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the “Restructuring”).

13. **THIS COURT ORDERS** that the Applicants shall provide each of the relevant landlords with notice of the Applicants’ intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicants’ entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicants, or by further Order of this Court upon application by the Applicants on at least two (2) days notice to such landlord and any such secured creditors. If the Applicants disclaim the lease governing such leased premises in accordance with Section 32 of the CCAA, they shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicants’ claim to the fixtures in dispute.

14. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord

may have against the Applicants in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

15. ~~10.~~ **THIS COURT ORDERS** that until and including ~~September 28,~~ November 27, 2020 or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

16. ~~11.~~ **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

17. ~~12.~~ **THIS COURT ORDERS** that, during the Stay Period, all rights and remedies of any Person against or in respect of Hematite R.E. 1, Inc. (the “**Affected Party**”) arising out of, relating to, or triggered by the insolvency of any of the Applicants, the making or filing of these proceedings or any allegation, admission or evidence in these proceedings (collectively, the “**Cross-Default Matters**”), are hereby stayed and suspended except with the written consent of the relevant Applicants, the Affected Party and the Monitor, or leave of this Court, and the operation of any provision of any agreement or other arrangement between any Person and the

Affected Party whether written or oral that purports to accelerate, terminate, cancel, suspend or modify such agreement or arrangement or create a right to purchase, a right of first refusal or a lien with respect to any property of the Affected Party as a result of any of the Cross-Default Matters is hereby stayed and restrained pending further order of this Court.

NO INTERFERENCE WITH RIGHTS

18. ~~13.~~ **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

19. ~~14.~~ **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the ~~date of this Order~~ Initial Filing Date are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

20. ~~15.~~ **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the ~~date of this Order~~ Initial Filing Date, nor shall any Person be under any obligation on or after the ~~date of this~~

~~Order~~[Initial Filing Date](#) to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

[21.](#) ~~16.~~ **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the ~~date hereof~~[Initial Filing Date](#) and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

[22.](#) ~~17.~~ **THIS COURT ORDERS** that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

[23.](#) ~~18.~~ **THIS COURT ORDERS** that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of ~~\$300,000 unless permitted by further Order of this Court,~~[500,000](#) as security for the indemnity provided in paragraph ~~17~~[22](#) of this Order. The Directors' Charge shall have the priority set out in paragraphs ~~35~~[40](#) and ~~37~~[42](#) herein.

[24.](#) ~~19.~~ **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under

any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph ~~17~~22 of this Order.

APPOINTMENT OF MONITOR

25. ~~20.~~ **THIS COURT ORDERS** that KPMG is hereby appointed as of the Initial Filing Date pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

26. ~~21.~~ **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lender and its advisers of financial and other information as agreed to between the Applicant and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;
- (d) advise the Applicants in the preparation of the Applicants' cash flow statements, which information shall be reviewed with the Monitor;
- (e) advise the Applicants in their development of the Plan and any amendments to the Plan;
- (f) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' meetings for voting on the Plan;

- (g) ~~(e)~~ have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;
- (h) ~~(f)~~ be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (i) ~~(g)~~ perform such other duties as are required by this Order or by this Court from time to time.

27. ~~22.~~ **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

28. ~~23.~~ **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

29. ~~24.~~ **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicants and the DIP Lender with information provided by the Applicants in response to

reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential or privileged, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

30. ~~25.~~ **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

ADMINISTRATION CHARGE

31. ~~26.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a bi-weekly basis and, in addition, the Applicants are hereby authorized to pay to the Monitor, counsel to the Monitor and counsel to the Applicants, retainers to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

32. ~~27.~~ **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

33. ~~28.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount of ~~\$250,000 unless permitted by further Order of this Court,~~ 500,000 as security for their professional fees and disbursements incurred at their standard rates and charges, both before and

after the making of ~~this~~[the Initial](#) Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs [3540](#) and [3742](#) hereof.

DIP FINANCING

[34.](#) ~~29.~~ **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to obtain and borrow under a credit facility from Woodbridge Foam Corporation (the “**DIP Lender**”) in order to finance the Applicants’ working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$~~2.36.0~~ million unless permitted by further Order of this Court.

[35.](#) ~~30.~~ **THIS COURT ORDERS THAT** such credit facility shall be on the terms and subject to the conditions set forth in the Revolving DIP Loan Agreement between the Applicants and the DIP Lender dated as of September 17, 2020 (the “**DIP Loan Agreement**”), filed.

[36.](#) ~~31.~~ **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, [including the DIP Loan Agreement](#), the “**Definitive Documents**”), as are contemplated by the DIP Loan Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Loan Agreement and the [other](#) Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

[37.](#) ~~32.~~ **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the “**DIP Lender’s Charge**”) on the Property, which DIP Lender’s Charge shall not secure an obligation that exists before ~~this~~[the Initial](#) Order ~~is~~[was](#) made. The DIP Lender’s Charge shall have the priority set out in paragraphs [3540](#) and [3742](#) hereof.

[38.](#) ~~33.~~ **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender’s Charge or any of the Definitive Documents;

- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon three (3) business days' notice to the Applicants and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the DIP Loan Agreement, the other Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of the Applicants to the DIP Lender under the DIP Loan Agreement, the other Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

39. ~~34.~~ **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

40. ~~35.~~ **THIS COURT ORDERS** that the priorities of the Directors' Charge, the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum initial amount of ~~\$250,000~~500,000);

Second – DIP Lender's Charge; and

Third – Directors' Charge (to the maximum initial amount of ~~\$300,000~~500,000).

41. ~~36.~~ **THIS COURT ORDERS** that the filing, registration or perfection of the Directors' Charge, the Administration Charge or the DIP Lender's Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

42. ~~37.~~ **THIS COURT ORDERS** that each of the Charges (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges, encumbrances and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person, ~~save and except for the following Encumbrances until further Order of this Court:~~

- ~~(a) — purchase-money security interests or the equivalent security interests under provincial or state legislation and financing leases (that, for greater certainty, shall not include trade payables);~~
- ~~(b) — statutory super-priority deemed trusts and liens for unpaid employee source deductions;~~
- ~~(c) — liens for unpaid municipal or state property taxes or utilities that are given first priority over other liens by statute; and (d) — cash collateral deposited with a financial institution as security for letters of credit or bank guarantees issued by the financial institution at the request of an Applicant.~~

43. ~~38.~~ **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants also obtains the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Administration Charge and the Directors' Charge, or further Order of this Court.

44. ~~39.~~ **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") shall not otherwise be limited or impaired in any way by (a) the

pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Loan Agreement or the other Definitive Documents shall create or be deemed to constitute a breach by the Applicants of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants entering into the DIP Loan Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicants pursuant to this Order, the DIP Loan Agreement or the other Definitive Documents, and the granting of the Charges do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

45. ~~40.~~ **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants’ interest in such real property leases.

46. ~~41.~~ **THIS COURT ORDERS AND DECLARES** that this Order is subject to provisional execution and that if any of the provisions of this Order in connection with the DIP Loan Agreement, the other Definitive Documents or the DIP Lender’s Charge shall subsequently be stayed, modified, varied, amended, reversed or vacated in whole or in part (collectively, a “**Variation**”) whether by subsequent order of this Court, on or pending an appeal from this Order, such Variation shall not in any way impair, limit or lessen the priority, protections, rights

or remedies of the DIP Lender whether under this Order (as made prior to the Variation), under the DIP Loan Agreement and the other Definitive Documents, with respect to any advances made prior to the DIP Lender being given notice of the Variation and the DIP Lender shall be entitled to rely on this Order as issued (including, without limitation, the DIP Lender's Charge) for all advances so made.

SERVICE AND NOTICE

47. ~~42.~~ **THIS COURT ORDERS** that the Monitor shall (i) without delay from the Initial Filing Date, publish in the Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA in respect of the Initial Order, (ii) within five days after the ~~date of this Order~~ Initial Filing Date, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, or cause to be sent, in the prescribed manner or by electronic message to the e-mail address as last shown on the records of the Applicants, a notice to every known creditor who has a claim against the Applicants of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

48. ~~43.~~ **THIS COURT ORDERS** that the Guide Concerning Commercial List E-Service (the "Guide") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 13 of the Guide, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL: <http://home.kpmg/ca/hematitegroup>.

49. ~~44.~~ **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicants and the Monitor are at liberty to

serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile or other electronic transmission to the Applicants' creditors or other interested parties and their advisers at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery, facsimile or other electronic transmission shall be deemed to be received on day of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

50. ~~45. THIS COURT ORDERS that the balance of the relief sought by the Applicants in the Notice of Application dated September 18, 2020 be and is hereby reserved to be heard by this Court on September 28, 2020, or such other date as determined by this Court.~~ ~~46.~~ **THIS COURT ORDERS** that the Applicants or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their powers and duties hereunder.

51. ~~47.~~ **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

52. ~~48.~~ **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory body or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to Hematite Holdings Inc. in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

53. ~~49.~~ **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in

carrying out the terms of this Order, and that Hematite Holdings Inc. is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in any other jurisdiction outside Canada, including the United States pursuant to chapter 15 of title 11 of the United States Code.

54. ~~50.~~ **THIS COURT ORDERS** that this Order and all of its provisions are effective ~~as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order~~ from the date it is made without any need for entry and filing.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF HEMATITE HOLDINGS INC. ET AL.

Court File No: CV-20-00647824-00CL

**ONTARIO SUPERIOR COURT OF
JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**AMENDED AND RESTATED
INITIAL ORDER**

McCarthy Tétrault LLP
Suite 5300, TD Bank Tower
Toronto ON M5K 1E6
Fax: 416-868-0673

James Gage LSO#: 346761
Tel: 416-601-7539
Email: jgage@mccarthy.ca

~~**Heather Meredith**~~ LSO#: 48354R
~~Tel: 416-601-8342~~
~~Email: hmeredith@mccarthy.ca~~

Trevor Courtis LSO#: 67715A
Tel: 416-601-7643
Email: tcourtis@mccarthy.ca

Tab 5

Court File No. CV-20-00647824-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.) ~~WEEKDAY~~MONDAY, THE #28TH
JUSTICE HAINES) DAY OF ~~MONTH~~SEPTEMBER, ~~20YR~~2020

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
~~{APPLICANT'S NAME}~~ (the "Applicant")
HEMATITE HOLDINGS INC., HEMATITE MANUFACTURING INC.,
HEMATITE INDUSTRIAL PRODUCTS INC., CANADIAN PAVACO INC.,
PAVACO HOLDINGS U.S. INC., HEMATITE, INC. AND
HEMATITE AUTOMOTIVE PRODUCTS INC.

Applicants

AMENDED AND RESTATED INITIAL ORDER

THIS ~~APPLICATION~~MOTION, made by the ~~Applicant~~Applicants pursuant to the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the ~~"CCAA"~~"CCAA") for an order amending and restating the initial order (the "Initial Order") issued on September 18, 2020 (the "Initial Filing Date") was heard this day ~~at 330 University Avenue~~by judicial videoconference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.

ON READING the affidavit of ~~[NAME]~~Jacques Nadeau sworn ~~[DATE]~~September 17, 2020 and the Exhibits thereto, ~~and~~the affidavit of Jacques Nadeau sworn September 24, 2020 and the Exhibits thereto, the consent of KPMG Inc. ("KPMG") to act as the Monitor (in such capacity, the "Monitor"), the Pre-Filing Report of KPMG in its capacity as the proposed Monitor, and the First Report of the Monitor dated September 9, 2020; on being advised that the secured creditors of the Applicants who are likely to be affected by the charges created herein were given notice, ~~and~~; on hearing the submissions of counsel for ~~[NAMES], no one appearing~~

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~~for [NAME]¹ although duly served as appears from~~ the Applicants, the Monitor and those other parties listed on the counsel slip; and on being advised that those parties listed in the affidavit of service ~~of [NAME] sworn [DATE] and on reading the consent of [MONITOR'S NAME] to act as the Monitor,~~ filed, were given notice of the Motion.

INITIAL ORDER AND INITIAL FILING DATE

1. THIS COURT ORDERS that the Initial Order, reflecting the Initial Filing Date, shall be amended and restated as provided for herein.

SERVICE

2. ~~1.~~ THIS COURT ORDERS that the time for service and filing of the Notice of ~~Application~~ Motion and the ~~Application~~ Motion Record is hereby abridged and validated² so that this ~~Application~~ Motion is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

3. ~~2.~~ THIS COURT ORDERS AND DECLARES that the ~~Applicant is a company~~ Applicants are companies to which the CCAA applies.

PLAN OF ARRANGEMENT

4. ~~3.~~ THIS COURT ORDERS that the ~~Applicant~~ Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan");

POSSESSION OF PROPERTY AND OPERATIONS

5. ~~4.~~ THIS COURT ORDERS that the ~~Applicant~~ Applicants shall remain in possession and control of ~~its~~ their current and future assets, undertakings and properties of every nature and kind

¹ ~~Include names of secured creditors or other persons who must be served before certain relief in this model Order may be granted. See, for example, CCAA Sections 11.2(1), 11.3(1), 11.4(1), 11.51(1), 11.52(1), 32(1), 32(3), 33(2) and 36(2).~~

² ~~If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in appropriate circumstances.~~

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whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to further Order of this Court, the ~~Applicant~~Applicants shall continue to carry on business in a manner consistent with the preservation of ~~its business~~their businesses (the "Business") and Property. The ~~Applicant is~~Applicants are authorized and empowered to continue to retain and employ the employees, contractors, consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by ~~it~~them, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. ~~5.~~ **THIS COURT ORDERS** that the ~~Applicant~~Applicants shall be entitled to continue to utilize the central cash management system³ currently in place ~~as described in the Affidavit of [NAME] sworn [DATE] or~~or, with the consent of the Monitor, replace it with another substantially similar central cash management system (the "Cash Management System") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the ~~Applicant~~Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the ~~Applicant~~Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.~~†~~

7. ~~6.~~ **THIS COURT ORDERS** that the ~~Applicant~~Applicants shall be entitled but not required to pay the following expenses whether incurred prior to, on or after ~~this Order~~the Initial Filing Date:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses (including, without limitation, in respect of expenses charged by employees to corporate credit cards) payable on or after the ~~date of this Order~~Initial

³~~This provision should only be utilized where necessary, in view of the fact that central cash management systems often operate in a manner that consolidates the cash of applicant companies. Specific attention should be paid to cross-border and inter-company transfers of cash.~~

Filing Date in respect of employees and contractors, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; ~~and~~

(b) the fees and disbursements of any Assistants retained or employed by the ~~Applicant~~Applicants, in respect of these proceedings, at their standard rates and charges; and

(c) with the consent of the Monitor and the DIP Lender (as defined below), amounts owing for goods or services actually supplied to the Applicants prior to the Initial Filing Date by suppliers or other third parties if in the opinion of the Applicants such payment is necessary for the ongoing operations of the Applicants or preservation of the Property, and the payment is required to ensure ongoing supply, up to an aggregate limit of \$700,000 for all such payments without further Order of this Court.

8. ~~7.~~ **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the ~~Applicant~~Applicants shall be entitled but not required to pay all reasonable expenses incurred by the ~~Applicant~~Applicants in carrying on the Business in the ordinary course on or after ~~this Order~~the Initial Filing Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and

(b) payment for goods or services actually supplied to the ~~Applicant following the date of this Order~~Applicants following the Initial Filing Date (and, in respect of expenses incurred by credit card, the Applicants may provide cash collateral to the credit card issuer with the consent of the Monitor and DIP Lender).

9. ~~8.~~ **THIS COURT ORDERS** that the ~~Applicant~~Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the ~~Applicant~~Applicants in connection with the sale of goods and services by the ~~Applicant~~Applicants, but only where such Sales Taxes are accrued or collected after the ~~date of this Order~~Initial Filing Date, or where such Sales Taxes were accrued or collected prior to the ~~date of this Order~~Initial Filing Date but not required to be remitted until on or after the ~~date of this Order~~Initial Filing Date; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the ~~Applicant~~Applicants.

10. ~~9.~~ **THIS COURT ORDERS** that until a real property lease is disclaimed ~~for resiliated~~⁴ in accordance with the CCAA, the ~~Applicant~~Applicants shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the ~~Applicant~~Applicants and the landlord from time to time ("Rent"), for the period commencing from and including the ~~date of this Order~~Initial Filing Date, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent

⁴The term "resiliate" should remain if there are leased premises in the Province of Quebec, but can otherwise be removed.

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relating to the period commencing from and including the ~~date of this Order~~Initial Filing Date shall also be paid.

11. ~~10.~~ **THIS COURT ORDERS** that, except as specifically permitted herein, the ~~Applicant~~Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the ~~Applicant~~Applicants to any of ~~its~~their creditors as of ~~this date~~the Initial Filing Date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of ~~its~~their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

12. ~~11.~~ **THIS COURT ORDERS** that the ~~Applicant~~Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the plan sponsor agreement between the Applicants and Woodbridge Foam Corporation dated September 17, 2020 and the Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of ~~its~~the business or operations, ~~and,~~ with the consent of the DIP Lender, to dispose of redundant or non-material assets not exceeding \$~~250,000~~1,000,000 in any one transaction or \$~~1,000,000~~ in the aggregate⁵;
- (b) ~~terminate~~ the employment of such ~~of its~~ employees or temporarily lay off such ~~of its~~ employees as ~~it deems~~they deem appropriate; and
- (c) pursue all avenues of refinancing ~~of its~~the Business or Property, ~~in whole or part,~~ subject to prior approval of this Court being obtained before any material refinancing in connection with the implementation of the Plan,

all of the foregoing to permit the ~~Applicant~~Applicants to proceed with an orderly restructuring of the Business (the "Restructuring").

⁵~~Section 36 of the amended CCAA does not seem to contemplate a pre-approved power to sell (see subsection 36(3)) and moreover requires notice (subsection 36(2)) and evidence (subsection 36(7)) that may not have occurred or be available at the initial CCAA hearing.~~

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13. ~~12.~~ **THIS COURT ORDERS** that the ~~Applicant~~Applicants shall provide each of the relevant landlords with notice of the ~~Applicant's~~Applicants' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the ~~Applicant's~~Applicants' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the ~~Applicant~~Applicants, or by further Order of this Court upon application by the ~~Applicant~~Applicants on at least two (2) days notice to such landlord and any such secured creditors. If the ~~Applicant disclaims [or resiliates]~~Applicants disclaim the lease governing such leased premises in accordance with Section 32 of the CCAA, ~~it~~they shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer ~~[or resiliation]~~ of the lease shall be without prejudice to the ~~Applicant's~~Applicants' claim to the fixtures in dispute.

14. ~~13.~~ **THIS COURT ORDERS** that if a notice of disclaimer ~~[or resiliation]~~ is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer ~~[or resiliation]~~, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the ~~Applicant~~Applicants and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer ~~[or resiliation]~~, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the ~~Applicant~~Applicants in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE ~~APPLICANT~~APPLICANTS OR THE PROPERTY

15. ~~14.~~ **THIS COURT ORDERS** that until and including ~~[DATE—MAX. 30-~~DAYS], November 27, 2020 or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the ~~Applicant~~Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the

~~Applicant~~Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the ~~Applicant~~Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

16. ~~15.~~ **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the ~~Applicant~~Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the ~~Applicant~~Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the ~~Applicant~~Applicants to carry on any business which the ~~Applicant is~~Applicants are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

17. **THIS COURT ORDERS** that, during the Stay Period, all rights and remedies of any Person against or in respect of Hematite R.E. 1, Inc. (the "**Affected Party**") arising out of, relating to, or triggered by the insolvency of any of the Applicants, the making or filing of these proceedings or any allegation, admission or evidence in these proceedings (collectively, the "**Cross-Default Matters**"), are hereby stayed and suspended except with the written consent of the relevant Applicants, the Affected Party and the Monitor, or leave of this Court, and the operation of any provision of any agreement or other arrangement between any Person and the Affected Party whether written or oral that purports to accelerate, terminate, cancel, suspend or modify such agreement or arrangement or create a right to purchase, a right of first refusal or a lien with respect to any property of the Affected Party as a result of any of the Cross-Default Matters is hereby stayed and restrained pending further order of this Court.

NO INTERFERENCE WITH RIGHTS

18. ~~16.~~ **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the ~~Applicant~~Applicants,

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except with the written consent of the ~~Applicant~~Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

19. ~~17.~~ **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the ~~Applicant~~Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the ~~Applicant~~Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the ~~Applicant~~Applicants, and that the ~~Applicant~~Applicants shall be entitled to the continued use of ~~its~~their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the ~~date of this Order~~Initial Filing Date are paid by the ~~Applicant~~Applicants in accordance with normal payment practices of the ~~Applicant~~Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the ~~Applicant~~Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

20. ~~18.~~ **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of ~~lease~~leased or licensed property or other valuable consideration provided on or after the ~~date of this Order~~Initial Filing Date, nor shall any Person be under any obligation on or after the ~~date of this Order~~Initial Filing Date to advance or re-advance any monies or otherwise extend any credit to the ~~Applicant~~Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.⁶

⁶This non-derogation provision has acquired more significance due to the recent amendments to the CCAA, since a number of actions or steps cannot be stayed, or the stay is subject to certain limits and restrictions. See, for example, CCAA Sections 11.01, 11.04, 11.06, 11.07, 11.08, 11.1(2) and 11.5(1).

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

21. ~~19.~~ **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the ~~former,~~ current or future directors or officers of the ~~Applicant~~Applicants with respect to any claim against the directors or officers that arose before the ~~date hereof~~Initial Filing Date and that relates to any obligations of the ~~Applicant~~Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the ~~Applicant~~Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the ~~Applicant~~Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

22. ~~20.~~ **THIS COURT ORDERS** that the ~~Applicant~~Applicants shall indemnify ~~its~~their directors and officers against obligations and liabilities that they may incur as directors or officers of the ~~Applicant~~Applicants after the commencement of the within proceedings,⁷ except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's² or officer's² gross negligence or wilful misconduct.

23. ~~21.~~ **THIS COURT ORDERS** that the directors and officers of the ~~Applicant~~Applicants shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge")⁸ on the Property, which charge shall not exceed an aggregate amount of \$~~500,000~~500,000 as security for the indemnity provided in paragraph ~~{20}~~22 of this Order. The Directors' Charge shall have the priority set out in paragraphs ~~{38}~~40 and ~~{40}~~42 herein.

24. ~~22.~~ **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors's² Charge, and (b) the ~~Applicant's~~Applicants' directors and officers shall only be entitled to the benefit of the Directors's² Charge to the extent that they do not have

⁷~~The broad indemnity language from Section 11.51 of the CCAA has been imported into this paragraph. The granting of the indemnity (whether or not secured by a Directors' Charge), and the scope of the indemnity, are discretionary matters that should be addressed with the Court.~~

⁸~~Section 11.51(3) provides that the Court may not make this security/charging order if in the Court's opinion the Applicant could obtain adequate indemnification insurance for the director or officer at a reasonable cost.~~

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coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph ~~20~~22 of this Order.

APPOINTMENT OF MONITOR

25. ~~23.~~ THIS COURT ORDERS that ~~[MONITOR'S NAME]~~KPMG is hereby appointed as of the Initial Filing Date pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the ~~Applicant~~Applicants with the powers and obligations set out in the CCAA or set forth herein and that the ~~Applicant~~Applicants and ~~its~~their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the ~~Applicant~~Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

26. ~~24.~~ THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the ~~Applicant's~~Applicants' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lender and its ~~counsel on a [TIME INTERVAL] basis~~advisers of financial and other information as agreed to between the Applicant and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;
- (d) advise the ~~Applicant~~Applicants in ~~its~~the preparation of the ~~Applicant's~~Applicants' cash flow statements ~~and reporting required by the DIP Lender~~, which information shall be reviewed with the Monitor ~~and delivered to the DIP Lender and its counsel on a periodic basis, but not less than [TIME INTERVAL], or as otherwise agreed to by the DIP Lender~~;

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- (e) advise the ~~Applicant~~Applicants in ~~its~~their development of the Plan and any amendments to the Plan;
- (f) assist the ~~Applicant~~Applicants, to the extent required by the ~~Applicant~~Applicants, with the holding and administering of creditors'~~or shareholders~~' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the ~~Applicant~~Applicants, to the extent that is necessary to adequately assess the ~~Applicant's~~Applicants' business and financial affairs or to perform its duties arising under this Order;
- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (i) perform such other duties as are required by this Order or by this Court from time to time.

27. ~~25.~~ **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

28. ~~26.~~ **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder

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(the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

29. ~~27.~~ **THIS COURT ORDERS** ~~that~~ that the Monitor shall provide any creditor of the ~~Applicant~~ Applicants and the DIP Lender with information provided by the ~~Applicant~~ Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the ~~Applicant~~ Applicants is confidential or privileged, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the ~~Applicant~~ Applicants may agree.

30. ~~28.~~ **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

ADMINISTRATION CHARGE

31. ~~29.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the ~~Applicant~~ Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the ~~Applicant~~ Applicants as part of the costs of these proceedings. The ~~Applicant is~~ Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the ~~Applicant~~ Applicants on a ~~[TIME-INTERVAL]~~ bi-weekly basis and, in addition, the ~~Applicant is~~ Applicants are hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the ~~Applicant~~ Applicants, retainers ~~in the amount[s] of \$●[-], respectively,~~ to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

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32. ~~30.~~ **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

33. ~~31.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, ~~if any,~~ and ~~the Applicant's~~ counsel to the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of \$~~500,000~~ as security for their professional fees and disbursements incurred at ~~the~~their standard rates and charges ~~of the Monitor and such counsel~~, both before and after the making of ~~this~~the Initial Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs ~~{38} and {40}~~ and 42 hereof.

DIP FINANCING

34. ~~32.~~ **THIS COURT ORDERS** that the ~~Applicant is~~Applicants are hereby authorized and empowered to obtain and borrow under a credit facility from ~~{DIP LENDER'S NAME}~~Woodbridge Foam Corporation (the "DIP Lender") in order to finance the ~~Applicant's~~Applicants' working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$~~6.0~~6.0 million unless permitted by further Order of this Court.

35. ~~33.~~ **THIS COURT ORDERS THAT** such credit facility shall be on the terms and subject to the conditions set forth in the ~~commitment letter~~Revolving DIP Loan Agreement between the ~~Applicant~~Applicants and the DIP Lender dated as of ~~{DATE}~~ (the "Commitment Letter"September 17, 2020 (the "DIP Loan Agreement")), filed.

36. ~~34.~~ **THIS COURT ORDERS** that the ~~Applicant is~~Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, including the "DIP Loan Agreement, the 'Definitive Documents'"), as are contemplated by the ~~Commitment Letter~~DIP Loan Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the ~~Applicant is~~Applicants are hereby authorized and directed to pay and perform all of ~~its~~their indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the ~~Commitment Letter~~DIP Loan Agreement and the other Definitive

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Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

37. ~~35.~~ **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "DIP Lender's Charge") on the Property, which DIP Lender's Charge shall not secure an obligation that exists before ~~this~~the Initial Order ~~is~~was made. The DIP Lender's Charge shall have the priority set out in paragraphs ~~38~~40 and ~~40~~42 hereof.

38. ~~36.~~ **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon ~~●~~three (3) business days' notice to the ~~Applicant~~Applicants and the Monitor, may exercise any and all of its rights and remedies against the ~~Applicant~~Applicants or the Property under or pursuant to the ~~Commitment Letter~~DIP Loan Agreement, the other Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the ~~Applicant~~Applicants and set off and/or consolidate any amounts owing by the DIP Lender to the ~~Applicant~~Applicants against the obligations of the ~~Applicant~~Applicants to the DIP Lender under the ~~Commitment Letter~~DIP Loan Agreement, the other Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the ~~Applicant~~Applicants and for the appointment of a trustee in bankruptcy of the ~~Applicant~~Applicants; and
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the ~~Applicant~~Applicants or the Property.

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39. ~~37.~~ **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the ~~Applicant~~Applicants under the CCAA, or any proposal filed by the ~~Applicant~~Applicants under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

40. ~~38.~~ **THIS COURT ORDERS** that the priorities of the Directors' Charge, the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows⁹:

First – Administration Charge (to the maximum initial amount of \$~~●~~500,000);

Second – DIP Lender's Charge; and

Third – Directors' Charge (to the maximum initial amount of \$~~●~~500,000).

41. ~~39.~~ **THIS COURT ORDERS** that the filing, registration or perfection of the Directors' Charge, the Administration Charge or the DIP Lender's Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

42. ~~40.~~ **THIS COURT ORDERS** that each of the ~~Directors' Charge, the Administration Charge and the DIP Lender's Charge~~Charges (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges ~~and~~, encumbrances, and claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person.

43. ~~41.~~ **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the ~~Applicant~~Applicants shall not grant any Encumbrances

⁹~~The ranking of these Charges is for illustration purposes only, and is not meant to be determinative. This ranking may be subject to negotiation, and should be tailored to the circumstances of the case before the Court. Similarly, the quantum and caps applicable to the Charges should be considered in each case. Please also note that the CCAA now permits Charges in favour of critical suppliers and others, which should also be incorporated into this Order (and the rankings, above), where appropriate.~~

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over any Property that rank in priority to, or *pari passu* with, any of the ~~Directors' Charge, the Administration Charge or the DIP Lender's Charge~~Charges, unless the ApplicantApplicants also obtains the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the ~~Directors' Administration~~ Charge and the ~~Administration~~Directors' Charge, or further Order of this Court.

44. ~~42.~~ **THIS COURT ORDERS** that the ~~Directors' Charge, the Administration Charge, the Commitment Letter, the Definitive Documents and the DIP Lender's Charge~~Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Charges") ~~and/or the DIP Lender thereunder~~) shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the ApplicantApplicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the ~~Commitment Letter~~DIP Loan Agreement or the other Definitive Documents shall create or be deemed to constitute a breach by the ApplicantApplicants of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the ApplicantApplicants entering into the ~~Commitment Letter~~DIP Loan Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the ApplicantApplicants pursuant to this Order, the ~~Commitment Letter~~DIP Loan Agreement or the other Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent

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conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

45. ~~43.~~ **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the ~~Applicant's~~Applicants' interest in such real property leases.

46. **THIS COURT ORDERS AND DECLARES** that this Order is subject to provisional execution and that if any of the provisions of this Order in connection with the DIP Loan Agreement, the other Definitive Documents or the DIP Lender's Charge shall subsequently be stayed, modified, varied, amended, reversed or vacated in whole or in part (collectively, a "Variation") whether by subsequent order of this Court, on or pending an appeal from this Order, such Variation shall not in any way impair, limit or lessen the priority, protections, rights or remedies of the DIP Lender whether under this Order (as made prior to the Variation), under the DIP Loan Agreement and the other Definitive Documents, with respect to any advances made prior to the DIP Lender being given notice of the Variation and the DIP Lender shall be entitled to rely on this Order as issued (including, without limitation, the DIP Lender's Charge) for all advances so made.

SERVICE AND NOTICE

47. ~~44.~~ **THIS COURT ORDERS** that the Monitor shall (i) without delay from the Initial Filing Date, publish in ~~[newspapers specified by the Court]~~the Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA in respect of the Initial Order, (ii) within five days after the ~~date of this Order~~Initial Filing Date, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, or cause to be sent, in the prescribed manner or by electronic message to the e-mail address as last shown on the records of the Applicants, a notice to every known creditor who has a claim against the ~~Applicant~~Applicants of more than ~~\$1000,1,000~~, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

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48. ~~45.~~ **THIS COURT ORDERS** that the ~~E-Service Protocol of the~~ Guide Concerning Commercial List E-Service (the "~~Protocol~~ Guide") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the ~~Protocol~~ Guide (which can be found on the Commercial List website at ~~<http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>~~ <https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph ~~21~~ 13 of the ~~Protocol~~ Guide, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the ~~Protocol~~ Guide with the following URL: ~~'@'~~ <http://home.kpmg/ca/hematitegroup>.

49. ~~46.~~ **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the ~~Applicant~~ Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery ~~or~~, facsimile or other electronic transmission to the ~~Applicant's~~ Applicants' creditors or other interested parties and their advisers at their respective addresses as last shown on the records of the ~~Applicant~~ Applicants and that any such service or distribution by courier, personal delivery ~~or~~, facsimile or other electronic transmission shall be deemed to be received on ~~the next business day following the date~~ day of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

50. ~~47.~~ **THIS COURT ORDERS** that the ~~Applicant~~ Applicants or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of ~~its~~ their powers and duties hereunder.

51. ~~48.~~ **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the ~~Applicant~~ Applicants, the Business or the Property.

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52. ~~49.~~ **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory body or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the ~~Applicant~~Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the ~~Applicant~~Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to ~~the~~ ~~Monitor~~Hematite Holdings Inc. in any foreign proceeding, or to assist the ~~Applicant~~Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

53. ~~50.~~ **THIS COURT ORDERS** that each of the ~~Applicant~~Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that ~~the Monitor~~Hematite Holdings Inc. is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in ~~any other~~ jurisdiction outside Canada, including the United States pursuant to chapter 15 of title 11 of the United States Code.

~~51.— THIS COURT ORDERS that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.~~

54. ~~52.~~ **THIS COURT ORDERS** that this Order and all of its provisions are effective ~~as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order~~from the date it is made without any need for entry and filing.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE,
OR ARRANGEMENT OF HEMATITE HOLDINGS INC. ET AL.

Court File No: CV-20-00647824-00CL

**ONTARIO SUPERIOR COURT OF
JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto.

**AMENDED AND RESTATED
INITIAL ORDER**

McCarthy Tétrault LLP
Suite 5300, TD Bank Tower
Toronto ON M5K 1E6
Fax: 416-868-0673

James Gage LSO#: 346761
Tel: 416-601-7539
Email: gage@mccarthy.ca

Trevor Courtis LSO#: 67715A
Tel: 416-601-7643
Email: tcourtis@mccarthy.ca

**ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at Toronto

**MOTION RECORD
(Amended and Restated Initial Order)
(Returnable September 28, 2020)**

McCarthy Tétrault LLP
Suite 5300, TD Bank Tower
Toronto ON M5K 1E6
Fax: 416-868-0673

James Gage LSO#: 34676I
Tel: 416-601-7539
Eail: jgage@mccarthy.ca

Heather Meredith LSO#: 48354R
Tel: 416-601-8342
Email: hmeredith@mccarthy.ca

Trevor Courtis LSO#: 67715A
Tel: 416-601-7643
Email: tcourtis@mccarthy.ca

Lawyers for the Applicants