

**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 ()

Joint Administrated Requested

**VERIFIED PETITION FOR (I) RECOGNITION OF FOREIGN MAIN PROCEEDING,
(II) RECOGNITION OF FOREIGN REPRESENTATIVE, AND (III) RELATED
RELIEF UNDER CHAPTER 15 OF THE BANKRUPTCY CODE**

Hematite Holdings Inc. ("Hematite Holdings"), in its capacity as the Canadian Court-appointed and authorized foreign representative (the "Foreign Representative") for the above captioned debtors (the "Debtors"), which are the subjects of 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"), filed chapter 15 petitions for each of the Debtors (the chapter 15 petitions, together with this Verified Petition, the "Petitions for Recognition"), and respectfully states as follows:

RELIEF REQUESTED

1. The Foreign Representative has commenced these chapter 15 cases as ancillary proceedings to the CCAA Proceeding and respectfully files this Verified Petition

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.

contemporaneously with the required accompanying documentation pursuant to sections 1504 and 1515 of title 11 of the United States Code (the “Bankruptcy Code”).

2. The Foreign Representative requests that this Court enter an order, substantially in the form of the Proposed Order attached hereto as **Exhibit A**, pursuant to sections 105(a), 362, 363, 364(e), 365(e), 1504, 1507, 1509, 1510, 1515, 1517, 1520, and 1521 of the Bankruptcy Code that (collectively, the “Relief Requested”):

- (a) recognizes the CCAA Proceeding as a foreign main proceeding (as defined in section 1502(4) of the Bankruptcy Code), or in the alternative as a foreign nonmain proceeding (as defined in section 1502(5) of the Bankruptcy Code);
- (b) recognizes the Foreign Representative as a “foreign representative” as defined in section 101(24) of the Bankruptcy Code in respect of the CCAA Proceeding;
- (c) gives full force and effect in the United States to the Initial Order (defined below) and Amended Initial Order (defined below) (as applicable), including any and all extensions or amendments thereof authorized by the Canadian Court on a final basis;
- (d) grants the Debtors all of the relief afforded pursuant to section 1520 of the Bankruptcy Code, including but not limited to the “automatic stay” under section 362 of the Bankruptcy Code, which shall apply with respect to the Debtors and the Debtors’ property that is now or in the future located within the territorial jurisdiction of the United States;
- (e) grants further additional relief as authorized by section 1521 of the Bankruptcy Code (or section 1507 as the Court deems necessary), including extending on a final basis the provisional relief requested in the Provisional Relief Motion (as defined herein); and
- (f) provides such other and further relief as the Court deems just and proper.

JURISDICTION AND VENUE

3. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the

District of Delaware, dated February 29, 2012. Recognition of a foreign proceeding and other matters under chapter 15 of the Bankruptcy Code are core matters under 28 U.S.C. § 157(b)(2)(P).

4. The Foreign Representative, in its capacity as authorized foreign representative, consents to the entry of final orders or judgments by the Court if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

5. These Chapter 15 Cases have been properly commenced pursuant to section 1504 of the Bankruptcy Code by the filing of the Petitions for Recognition of the CCAA Proceeding in accordance with section 1515 of the Bankruptcy Code.

6. Venue in this district is proper pursuant to section 28 U.S.C. § 1410.

BACKGROUND

7. Hematite Holdings, along with its affiliated companies in Canada and the U.S. (collectively, "Hematite"), is primarily a tier 1 supplier of component parts to the automotive manufacturing industry and counts Toyota, Fiat Chrysler Automobiles ("FCA") and Ford among its major customers. *See* Nadeau Decl., ¶ 7. Hematite has operated in Canada since 1978, and currently operates in Canada from facilities in Brantford and Guelph, Ontario, where it maintains its headquarters. *Id.*

8. On September 18, 2020, the Debtors filed petitions under the CCAA to a commence restructuring proceeding under the supervision of the Canadian Court. That same day, the Canadian Court entered an initial order (the "Initial Order")² appointing KPMG Inc. ("KPMG," or the "Monitor") to monitor and assist the Debtors in their business and financial affairs in

² A copy of the Initial Order is attached to the Nadeau Declaration (as defined below) as Exhibit 1.

accordance with section 23 of the CCAA. The Canadian Court also appointed the Foreign Representative to assist the Debtors pursuant to paragraphs 48-49 of the Initial Order. *See* Nadeau Decl., ¶ 3, Exhibit 1. The Debtors further anticipate that the Canadian Court will enter an amended and restated Initial Order (the “Amended Initial Order”) on or around September 28, 2020.

9. A description of the relief provided in the Initial Order is set forth below and in the *Motion of Hematite Holdings Inc., as Foreign Representative, for an Order Granting Certain Provisional Relief* (the “Provisional Relief Motion”) filed contemporaneously herewith.

10. On the date hereof, the Foreign Representative filed the Petitions for Recognition under chapter 15 of the Bankruptcy Code for recognition of the CCAA Proceeding, thereby commencing the Debtors’ chapter 15 cases.

11. Additional information about the Debtors’ business and operations, the events leading up to the filing of the Petitions for Recognition, and the facts and circumstances surrounding the CCAA Proceeding and these Chapter 15 Cases are set forth in the contemporaneously filed *Declaration of Jacques Nadeau in Support of the Debtors’ Chapter 15 Petitions and First Day Pleadings in Foreign Proceeding* (the “Nadeau Declaration”), attached hereto as **Exhibit B**. The Nadeau Declaration is incorporated herein by reference.

BASES FOR RELIEF REQUESTED

12. The Relief Requested is based on the provisions of chapter 15 of the Bankruptcy Code. The purpose of chapter 15 is to “incorporate the Model Law on Cross-Border Insolvency (the “Model Law”) so as to provide effective mechanisms for dealing with cases of cross-border insolvency.” 11 U.S.C. § 1501(a). In interpreting chapter 15, a court is to “consider its international origin, and the need to promote an application of [chapter 15] that is consistent with the application of similar statutes adopted by foreign jurisdictions.” 11 U.S.C. § 1508.

13. Consistent with these principles, as provided in the Nadeau Declaration, the Foreign Representative commenced these Chapter 15 Cases as ancillary proceedings to obtain recognition of the CCAA Proceeding with the ultimate goal of giving effect in the United States to the Debtors' Canadian restructuring. Pursuant to this goal, the Foreign Representative intends to ultimately seek recognition from this Court consistent with principles of comity to give effect to an order from the Canadian Court sanctioning a plan of reorganization.

14. In the interim, as further set forth in the Provisional Relief Motion, the Foreign Representative seeks recognition of the Initial Order to, among other things (i) authorize the Debtors to enter into and grant liens and other lender protections with respect to a financing arrangement to provide the Debtors with necessary liquidity to continue operations (the "Interim DIP Financing"), (ii) provide a stay with respect to the Debtors' and their directors and officers, including to ensure that no dissident creditors can bypass the CCAA Proceeding by commencing litigation or taking other actions in the United States to obtain a greater recovery than other, similarly situated, creditors, and (iii) provide a limited charge to the directors and officers and certain of the Debtors' and the Monitor's professionals in connection with the restructuring.

15. Further, the Foreign Representative submits that recognition of the CCAA Proceeding will not undermine the rights of U.S. creditors. All creditors of the Debtors, including any in the United States, will have the opportunity to assert their claims or rights in the CCAA Proceeding and are sufficiently protected as they are expected to receive substantially similar treatment under the CCAA Proceeding as they would in bankruptcy proceedings in the United States. The Chapter 15 Cases will also provide U.S. creditors notice and time to assert their rights in the CCAA Proceeding.

A. Recognition of the CCAA Proceeding as a Foreign Main Proceeding and Hematite Holdings as Its Foreign Representative Is Appropriate

16. Section 1517(a) of the Bankruptcy Code provides that, after notice and a hearing, the Court shall enter an order recognizing a foreign proceeding as a foreign main proceeding if (1) such foreign proceeding is a foreign main proceeding within the meaning of section 1502 of the Bankruptcy Code, (2) the foreign representative applying for recognition is a person or body and (3) the petition meets the requirements of section 1515 of the Bankruptcy Code. As explained below, the CCAA Proceeding, the Foreign Representative and the Petitions for Recognition satisfy all of the foregoing requirements.

(i) *The CCAA Proceeding is a Foreign Main Proceeding or in the Alternative a Foreign Nonmain Proceeding*

17. The CCAA Proceeding is a foreign main proceeding and, as such, satisfy the first condition for the entry of an order recognizing such proceeding under section 1517(a) of the Bankruptcy Code.

(a) *The CCAA Proceeding is a “foreign proceeding”*

18. As an initial matter, the CCAA Proceeding comes within the general definition of a “foreign proceeding” set forth in section 101(23) of the Bankruptcy Code, which states as follows:

The term “foreign proceeding” means a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.

11 U.S.C. § 101(23).

19. Section 101(23) requires that a “foreign proceeding” (1) be a collective judicial or administrative proceeding relating to insolvency or adjustment of debt, (2) pending in a foreign

country, (3) under the supervision of a foreign court and (4) for the purpose of reorganizing or liquidating the assets and affairs of the debtor. *See* 11 U.S.C. § 101(23). The statute defines “foreign court” as “a judicial or other authority competent to control or supervise a foreign proceeding.” *See* 11 U.S.C. § 1502(3).

20. The CCAA Proceeding is a foreign proceeding that satisfies the requirements of section 101(23) of the Bankruptcy Code. As set forth in the Nadeau Declaration filed contemporaneously herewith, a proceeding under the CCAA is (1) a voluntary insolvency proceeding, (2) in Canada, (3) that occurs under the supervision of a Canadian court, (4) in which a debtor reorganizes or liquidates its business and distributes value to creditors pursuant to a plan.

21. In many ways, the CCAA is similar to a case under chapter 11. Absent exceptional circumstances, and subject to oversight by a court-appointed monitor and the consent of the Canadian court, the debtor’s management and board of directors remain in place and the board maintains its power under Canadian law to approve significant actions, including disposing of important assets, entering into financing arrangements and/or changing corporate structures. Upon the commencement of a CCAA proceeding, the Canadian court appoints a qualified monitor, who functions as an independent observer of the proceedings and the debtor’s business and (i) monitors the company’s ongoing operations, (ii) reports to the court on any major events affecting the company, (iii) notifies the company’s creditors and, if applicable, shareholders of any meetings and tabulates votes at these meetings, if held, (iv) assists with preparing, filing, and holding meetings for voting on the plan of arrangement, (v) approves the disclaimer of contracts and leases, (vi) may prepare reports in conjunction with any interlocutory motions by the company or other stakeholders, and (vii) prepares a report on the plan of arrangement, which is usually included in the mailing of the plan, if one is filed. Consent of the monitor is generally not required for the

debtor to manage its business, including the sale of assets in the ordinary course, but the monitor may request that the court enjoin any actions that may prove harmful to the debtor and/or its creditors.

22. Upon the commencement of a CCAA proceeding, all actions against the debtor and its assets are stayed, wherever located. The stay is granted for a maximum period of 10 days, but is typically extended where the debtor can show it continues to act with good faith and due diligence. There is no limit on the number or duration of these extensions of the stay. In CCAA proceedings, subject to limited exceptions, clauses triggering termination rights upon the debtor's commencement of an insolvency proceeding are not enforceable, so contract counterparties may not terminate contracts solely by virtue of the commencement of the proceedings.

23. During a CCAA proceeding, a debtor is also able to obtain postpetition financing (*i.e.*, DIP financing), subject to a hearing and court approval, after showing that the proposed financing is in the best interests of its estate. Such borrowings would typically have priority status in the CCAA proceeding, and, if unsecured financing is unavailable, the debtor is permitted to borrow on a secured basis. The Canadian Court may also approve priority charges against the company's assets, which take priority over existing secured creditors, where notice of the charge approval hearing is given to the potentially affected creditors and the court is of the opinion that such charges are necessary in the circumstances.

24. Given, among other things, the similarities between the CCAA and chapter 11, the Canadian court and monitor's significant oversight in CCAA proceedings and creditors' ability to meaningfully participate in such proceedings, U.S. courts have routinely and consistently held that Canadian restructuring proceedings under the CCAA qualify as "foreign proceedings" under section 101(23) of the Bankruptcy Code. *See, e.g., In re The Aldo Group, Inc.*, No. 20-11060

(KBO) (Bankr. D. Del. May 8, 2020); *In re U.S. Steel Canada Inc.*, No. 17-11519 (MG) (Bankr. S.D.N.Y. June 29, 2017) [Docket No. 12]; *In re Thane Int'l, Inc.*, No. 15-12186 (KG) (Bankr. D. Del. Dec. 1, 2015) [Docket No 41]; *In re Essar Steel Algoma Inc.*, No. 15-12271 (BLS) (Bankr. D. Del. Dec 2, 2015) [Docket No. 100].

(b) *The CCAA Proceeding is a “foreign main proceeding”*

25. In addition to qualifying as a “foreign proceeding” under section 101(23), the CCAA Proceeding should be recognized as a “foreign main proceeding,” as defined in sections 101(23) and 1502(4) of the Bankruptcy Code. A foreign proceeding will be recognized as a foreign main proceeding if “it is pending in the country where the debtor has the center of its main interests.” 11 U.S.C. § 1517(b)(1). Section 1516 of the Bankruptcy Code establishes a rebuttable presumption that the debtor’s registered office, which in this case is in Guelph, Ontario, is the debtor’s center of main interests (“COMI”). *See* 11 U.S.C. § 1516. When considering a debtor’s COMI, courts may consider the analogous concept of an entity’s “principal place of business” or “nerve center.” *Morning Mist Holdings Ltd. v. Krys (In re Fairfield Sentry Ltd.)*, 714 F.3d 127, 132 n.10 (2d Cir. 2013). As such, courts will look to factors such as the location of the debtor’s headquarters, the location of those who actually manage the debtor, and the location of the debtor’s primary assets, among other things, to determine the foreign debtor’s COMI. *Id.* at 130.

26. The above factors conclusively support a finding that the Debtors’ COMI is Canada. The Debtors’ headquarters is located in Guelph, Ontario, Canada (the “Head Office”). All corporate-level decision-making and corporate administrative functions affecting the Debtors were centralized at the Head Office in Guelph, Ontario and the Debtors’ management team is located in Guelph, Ontario. Specifically, all accounting functions, strategic decision-making, communication functions, marketing and pricing decisions, new business development initiatives, negotiations of material contracts and leases, acquisition of equipment, and other key functions

were coordinated and/or managed from the Head Office in Guelph, Ontario. Prior to recent workforce reductions, nearly two-thirds of the Debtors' employees were located at the Head Office or in other locations in Ontario, Canada. As such, the CCAA Proceeding constitutes a foreign main proceeding.

27. For all of the reasons set forth above, the CCAA Proceeding is, and should be recognized as, a foreign main proceeding.

(c) *In the Alternative, the CCAA Proceeding of the Non-Canadian Debtors Should Be Recognized as a Foreign Nonmain Proceeding*

28. In the alternative, this Court should (i) grant the CCAA Proceeding as a foreign main proceeding with respect to Debtors Hematite Holdings, Hematite Manufacturing Inc., Hematite Industrial Products Inc. and Canadian Pavaco Inc. (the "Canadian Debtors"), as they are incorporated and have their "nerve center" in Canada, and (ii) grant the CCAA Proceeding recognition as a foreign nonmain proceeding with respect to the U.S. incorporated Debtors Pavaco Holdings U.S. Inc., Hematite, Inc., and Hematite Automotive Products Inc. (the "Non-Canadian Debtors"). Other courts have granted dual recognition to a foreign proceeding as a main and nonmain proceeding, applying the separate forms of recognition to distinct groups of debtors that are parties to a single foreign proceeding. *See, e.g., In re Mega Brands Inc.*, No. 10-10485 (CSS) (Bankr. D. Del. Mar. 23, 2010) [Docket No. 39]; *In re Rock Well Petroleum (U.S.), Inc.*, No. 08-20797 (Bankr. D. Wyo. Feb. 27, 2009) [Docket No. 106].

29. Pursuant to the Bankruptcy Code, a "foreign nonmain proceeding" is defined as a "foreign proceeding" pending in a country where the debtor has an "establishment" within the meaning of section 1502. 11 U.S.C. § 1517(b)(2). "Establishment" is broadly defined in the Bankruptcy Code as "any place of operations where the debtor carries out a nontransitory economic activity." 11 U.S.C. § 1502(2). As described above, the Non-Canadian Debtors are

operationally and functionally integrated with the Canadian Debtors. Among other things, as discussed above, all the Debtors are organized under centralized senior management and utilize cash management and accounting functions whose nerve center resides in Canada. Given that the center of main interests of the Canadian Debtors is undoubtedly in Canada, and given the relationship among all the Non-Canadian Debtors and the Canadian Debtors, each Non-Canadian Debtor clearly has an “establishment” in Canada within the meaning of Bankruptcy Code section 1502(2).

(ii) *The Petitions for Recognition Meet the Requirements of Section 1515*

30. The third and final requirement for recognition of a foreign proceeding under section 1517(a) of the Bankruptcy Code is that the petition for recognition meets the procedural requirements of section 1515 of the Bankruptcy Code. *See* 11 U.S.C. § 1517(a)(3).

31. Here, all of the requirements of section 1515 of the Bankruptcy Code have been met. First, the Debtors’ Chapter 15 Cases were duly and properly commenced by the Foreign Representative through the filing of these Petitions for Recognition as required by section 1515(a) of the Bankruptcy Code.

32. Second, pursuant to section 1515(b) of the Bankruptcy Code, a petition for recognition must be accompanied by one of the following:

- (a) a certified copy of the decision commencing such foreign proceeding and appointing the foreign representative;
- (b) a certificate from the foreign court affirming the existence of such foreign proceeding and of the appointment of the foreign representative; or
- (c) in the absence of evidence referred to in paragraphs (1) and (2), any other evidence acceptable to the court of the existence of such foreign proceeding and of the appointment of the foreign representative.

33. Section 1515(b) of the Bankruptcy Code is satisfied. Attached to the Nadeau Declaration as Exhibit 1 and incorporated by reference herein, is a true and correct copy of the Initial Order.

34. Third, in accordance with section 1515(c) of the Bankruptcy Code, the Petitions for Recognition contain a statement identifying the CCAA Proceeding as the only foreign proceeding currently pending with respect to each of the Debtors. Accordingly, the Petitions for Recognition meet the requirements of section 1515 of the Bankruptcy Code in satisfaction of the third requirement under section 1517(a) of the Bankruptcy Code.

35. For the foregoing reasons, the Foreign Representative respectfully submits that all of the requirements of section 1517(a) have been satisfied and, thus, that the entry of an order recognizing the CCAA Proceeding as a foreign main proceeding (or, alternatively as to the Non-Canadian Debtors, as a foreign nonmain proceeding) is proper.

B. The Debtor Is Entitled to the Automatic Relief Under 11 U.S.C. § 1520

36. Section 1520(a) of the Bankruptcy Code sets forth a series of statutory protections that automatically result from the recognition of a foreign proceeding as a foreign main proceeding, *see* 11 U.S.C. § 1520(a), including the application of the protection afforded by the automatic stay under section 362(a) of the Bankruptcy Code to the Debtor and to the Debtor's property that is within the territorial jurisdiction of the United States. Given that the protections set forth in section 1520(a) flow automatically from the recognition of a foreign main proceeding under section 1517, the Foreign Representative respectfully submits that no further showing is required to the extent the Court recognizes the CCAA Proceeding as a foreign main proceeding.

37. Alternatively, to the extent Court determines to grant the CCAA Proceeding recognition (i) as a foreign main proceeding with respect to the Canadian Debtors and (ii) as a foreign nonmain proceeding with respect to the Non-Canadian Debtors, the Non-Canadian Debtors

hereby request that the protections afforded by the automatic stay under section 362(a) of the Bankruptcy Code be extended to the Non-Canadian Debtors and their property within the territorial jurisdiction of the United States pursuant to section 1521 of the Bankruptcy Code. Such relief is necessary and appropriate to protect the assets of the Non-Canadian Debtors, which serve critical roles in the Debtors' structure. Further, the Non-Canadian Debtors' creditors would be sufficiently protected because they can avail themselves of the CCAA Proceeding to assert any and all rights.

C. The Discretionary Relief Requested Is Necessary and Appropriate to Effect the Restructuring and Should Be Granted

38. Upon recognition of a foreign proceeding, section 1521(a) authorizes the Court to grant "any appropriate relief" at the request of the recognized foreign representative "where necessary to effectuate the purpose of [chapter 15] and to protect the assets of the debtor or the interests of the creditors." 11 U.S.C. § 1521(a). Such relief may include, among other things, "granting any additional relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550, and 724(a)." 11 U.S.C. §1521(a)(7). The Court may grant relief under section 1521(a) if the interests of "the creditors and other interested entities, including the debtor, are sufficiently protected." 11 U.S.C. § 1522(a).

39. For the reasons that follow and as set forth in the Provisional Relief Motion, incorporated herein by reference, the Foreign Representative asks this Court to exercise its discretion under section 1521(a) to extend on a final basis the following additional relief sought in the Provisional Relief Motion, including:

- (a) recognizing and enforcing in the United States, on a provisional basis, the Initial Order that, among other things:
 - i. authorizes the Debtors to enter into, perform and borrow, as an initial draw, up to CDN \$2,300,000 under that certain interim facility (the "Interim DIP Facility");

- ii. grants the Interim DIP Lender a priority charge on the Debtors' property (the "Interim DIP Lender Charge") as security for all obligations to the Interim DIP Lender under the Interim DIP Facility;
 - iii. grants the Debtors' directors and officers a charge against the Debtors' property for an aggregate amount of CDN \$300,000 (the "Directors' Charge") as security for the Debtors' indemnification obligations owed to the Debtors' directors and officers in their capacity as such; and
 - iv. grants the Monitor, the Monitor's legal counsel, the Debtors' (including the Foreign Representatives') legal counsel and the Monitor and Debtors' respective advisors a charge against the Debtors' property for an aggregate amount of CDN \$250,000 (the "Administration Charge," and together with the Directors' Charge and the Interim DIP Lender Charge, the "CCAA Charges") as security for the professional fees and expenses incurred in connection with the CCAA Proceeding and Chapter 15 Cases.
- (b) granting, on a provisional basis, to and for the benefit of the Interim DIP Lender, certain protections afforded by the Bankruptcy Code, including those protections provided by section 364(e) of the Bankruptcy Code; and
 - (c) applying sections 362 and 365(e) of the Bankruptcy Code in these chapter 15 cases on a provisional basis, pursuant to sections 105(a), 1519(a) and 1521(a)(7) of the Bankruptcy Code.

40. As mentioned above, the Debtors anticipate the Amended Initial Order will supersede the Initial Order and be entered by the Canadian Court prior to this Court's hearing on the Petitions for Recognition.

41. As further explained in the Provisional Relief Motion, the Interim DIP Lender has agreed to provide the Interim DIP Facility upon the terms outlined in the DIP Loan Agreement (as defined in the Nadeau Declaration and attached thereto as Exhibit 4). The Foreign Representative understands that the terms of the Interim DIP Facility were negotiated, proposed and entered into without collusion, in good faith and at arm's length. The Debtors will require access to a portion of the Interim DIP Facility to fund, among other things, working capital requirements, other general corporate expenditures and the costs of administering their bankruptcy cases. As discussed

in the Nadeau Declaration, the Debtors expect to run out of cash to continue operations in the week ending September 25, 2020, and potentially earlier, unless additional, immediate funding is provided through the Interim DIP Facility. The funding provided by the Interim DIP Facility is therefore necessary to give vendors, employees and other critical parties who deal with the Debtors confidence that the Debtors have access to funds to meet their post-filing obligations to such parties. Nadeau Declaration, ¶ 29. The Interim DIP Facility will preserve and maintain the going concern value of the Debtors' estates, which, in turn, is integral to maximizing value.

42. As explained in the Provisional Relief Motion, it is vital to the success of the Debtors' restructuring that actions against the Debtors' directors and officers and their assets within the territorial jurisdiction of the United States are enjoined. The Debtors' directors and officers have indemnification rights and have been granted a Directors' Charge against the Debtors, such that any judgment against them would be a *de facto* judgment against the Debtors and their assets—to the detriment of creditors.

43. As explained in the Provisional Relief Motion, section 365(e) of the Bankruptcy Code prohibits counterparties from terminating contracts with the debtor solely because of the debtor's bankruptcy filing. The Debtors could face significant harm resulting from the potential termination of critical contracts and leases. Absent the continued relief requested, counterparties may attempt to terminate these valuable contracts and leases.

44. Further, the purpose of chapter 15 is carried out by granting recognition of and giving effect in full to the Initial Order as, and to the extent, superseded by the Amended Initial

Order, as it will (a) maximize value of the Debtors' assets, (b) facilitate the fair and efficient cross-border restructuring; and (c) foster cooperation between courts in Canada and the United States.³

D. Relief Sought Herein is Consistent with the Purpose of Chapter 15 and U.S. Public Policy

45. Section 1506 of the Bankruptcy Code provides that nothing in chapter 15 shall prevent the court from refusing to take an action otherwise required therein if such action would be manifestly contrary to the public policy of the United States. 11 U.S.C. § 1506. The Foreign Representative submits that the relief requested herein is not manifestly contrary to, and is in fact entirely consistent with, the public policy of the United States.

46. It is well established that one of the fundamental goals of U.S. bankruptcy proceedings is the centralization of disputes involving the debtor. *See, e.g., Shugrue v. Air Line Pilots Ass'n, Int'l (In re Ionosphere Clubs, Inc.)*, 922 F. 2d 984, 989 (2d Cir. 1990) (“The Bankruptcy Code provides for centralized jurisdiction and administration of the debtor, its estates and its reorganization in the Bankruptcy Court....”) (internal quotations and citations omitted); *see also Maritime Elec. Co., Inc. v. United Jersey Bank*, 959 F.2d 1194, 1207 (3d Cir. 1991) (“Consolidating all pre-petition claims against the debtor in one collective proceeding before a bankruptcy court is the essence of bankruptcy.”); *In re Irish Bank Resolution Corp. Ltd.*, Case No. 13-12159 (CSS), 2014 WL 9953792, at *21 (Bankr. D. Del. Apr. 30, 2014) (emphasizing “recognition of the [foreign] proceeding . . . would support the strong public policy of the United States in favor of a universalism approach to complex multinational bankruptcy proceedings”). Indeed, as one court has noted, “the firm policy of American courts is the staying of actions against

³ To the extent this Court believes section 1507 of the Bankruptcy Code is the appropriate section to grant any relief requested herein, the Foreign Representative requests such relief be granted thereunder.

a corporation which is the subject of a bankruptcy proceeding in another jurisdiction.” *Cornfeld v. Investors Overseas Servs., Ltd.*, 471 F. Supp 1255, 1259 (S.D.N.Y. 1979).

47. Moreover, the purpose of chapter 15 is set forth in section 1501 and includes: (i) cooperation between courts of the United States and the courts and other competent authorities of foreign countries involved in cross-border insolvency cases; (ii) greater legal certainty for trade and investment; (iii) fair and efficient administration of cross-border insolvencies that protect the interests of all creditors, and other interested entities, including the debtor; (iv) protection and maximization of the value of the debtor’s assets; and (v) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment. *See* 11 U.S.C. § 1501.

48. Recognition of the CCAA Proceeding as a foreign main proceeding will, among other things, facilitate the orderly administration of the Debtors’ assets and foster cooperation between courts in Canada and the United States in respect of the Debtors’ restructuring. Such orderly administration is thus consistent with the public policy of the United States and the Bankruptcy Code.

49. Recognition of the CCAA Proceeding would also promote the fair and efficient administration of a cross-border reorganization procedure that protects the interests of all creditors and interested parties. By recognizing the CCAA Proceeding and granting the relief requested, the process of resolving claims against the Debtors would be centralized in Canada, from where the Debtors function. Claims would be treated in accordance with a restructuring plan that comports with Canada’s CCAA (which closely resembles a U.S. chapter 11), and any disputes would be subject to the uniform jurisdiction of one tribunal, the Canadian Court.

NOTICE

50. The Foreign Representative will provide notice of this Motion consistent with Bankruptcy Rule 2002(q) and Local Rule 9013-1(m). The Foreign Representative proposes to notify all creditors and parties in interest of the filing of the Petitions for Recognition and the Foreign Representative's request for entry of the Final Order in the form and manner set forth in the *Motion of Foreign Representative for 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*, filed contemporaneously herewith. The Foreign Representative submits that, in view of the facts and circumstances, such notice is sufficient and no other or further notice need be provided.

WHEREFORE, for the reasons set forth herein, the Foreign Representative respectfully requests that this Court enter an order (i) granting the relief requested herein and (ii) granting the Foreign Representative and the Debtors such other and further relief as the Court deems proper and just.

Dated: September 22, 2020
Wilmington, Delaware

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EXHIBIT A

Proposed Order

**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 ()

Joint Administrated Requested

Related Docket Nos.: ____

**ORDER GRANTING VERIFIED PETITION FOR (I) RECOGNITION OF FOREIGN
MAIN PROCEEDING (II) RECOGNITION OF FOREIGN REPRESENTATIVE,
AND (III) RELATED RELIEF UNDER CHAPTER 15 OF THE BANKRUPTCY CODE**

Upon consideration of the *Verified Petition for (I) Recognition of Foreign Main Proceeding (II) Recognition of Foreign Representative, and (III) Related Relief Under Chapter 15 of the Bankruptcy Code* [Docket No. ____] (together with the chapter 15 petitions filed for each of the Debtors, the “Petitions for Recognition”), the Nadeau Declaration,² and the Provisional Relief Motion (together with the Petitions for Recognition and the Nadeau Declaration, the “Chapter 15 Pleadings”), each filed on September 22, 2020 by or on behalf of the Foreign Representative, Hematite Holdings Inc. (“Hematite Holdings”), in its capacity as the duly-appointed foreign representative of the above captioned debtors (the “Debtors”), in a voluntary restructuring proceeding (the “CCAA Proceeding”) under the *Companies’ Creditors Arrangement Act* (the “CCAA”) currently pending before the Ontario Superior Court Of Justice (Commercial List) in Ontario, Canada (the “Canadian Court”); and it appearing that the Court has jurisdiction over this

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 have the meaning ascribed to such terms in the Verified Petition.

matter pursuant to 28 U.S.C. §§ 1334 and 157 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated as of February 29, 2012; and it appearing that venue is proper before this Court pursuant to 28 U.S.C. § 1410; and the Court having considered and reviewed the Chapter 15 Pleadings and having held a hearing to consider the relief requested in the Petitions for Recognition (the “Hearing”); and it appearing that timely notice of the filing of the Chapter 15 Pleadings and the Hearing has been given pursuant to the *Order Scheduling Hearing and Specifying Form and Manner of Service of Notice Pursuant to Sections 1515 and 105(a) of the Bankruptcy Code and Bankruptcy Rules 2002 and 9007* and that no other or further notice need be provided; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

THIS COURT HEREBY FINDS AND DETERMINES THAT:

- A. This case was properly commenced pursuant to sections 1504, 1509 and 1515 of the title 11 of the United States Code (the “Bankruptcy Code”).
- B. This Court has 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 as of February 29, 2012.
- C. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P).
- D. Venue is proper in this district pursuant to 28 U.S.C. § 1410.
- E. The CCAA Proceeding is a “foreign proceeding” within the meaning of section 101(23) of the Bankruptcy Code.
- F. The CCAA Proceeding is pending in Canada, which is the country in which the Debtors have their center of main interests and, as such, the CCAA Proceeding is a “foreign main

proceeding” within the meaning of sections 1502(4) and 1517(b)(1) of the Bankruptcy Code and entitled to recognition as a foreign main proceeding in respect of each of the Debtors.

G. The Foreign Representative, Hematite Holdings, is a “person,” as such term is defined in section 101(41) of the Bankruptcy Code, has been duly appointed by the Debtors and has been declared by the Canadian Court as authorized to act as the “foreign representative” with respect to the CCAA Proceeding within the meaning of section 101(24) of the Bankruptcy Code.

H. The Petitions for Recognition meets all of the requirements set forth in section 1515 of the Bankruptcy Code and Fed. R. Bankr. P. 1007(a)(4) and 2002(q).

I. The CCAA Proceeding is entitled to recognition by the Court pursuant to section 1517(a) of the Bankruptcy Code and the Debtors have satisfied the eligibility requirements of section 109(a) of the Bankruptcy Code, as applicable.

J. The Debtors and the Foreign Representative are entitled to all of the relief set forth in section 1520 of the Bankruptcy Code.

K. Appropriate notice of the filing of, and the Hearing on, the Petition for Recognition was given, which notice is deemed adequate for all purposes, and no other or further notice need be given.

L. The relief granted hereby is necessary and appropriate, in the interests of the public and of international comity, not inconsistent with the public policy of the United States, warranted pursuant to sections 105(a), 362, 363, 364, 365(e), 1507(a), 1509(b)(2)-(3), 1520, 1521, 1522 and 1525 of the Bankruptcy Code, and will not cause hardship to creditors of the Debtors or other parties in interests that is not outweighed by the benefits of granting that relief.

M. The relief granted hereby is necessary to effectuate the purposes and objectives of chapter 15 and to protect the Debtors and the interests of their creditors and other parties in interest.

N. Absent the relief granted hereby, the Debtors and their directors and officers may be subject to the prosecution of judicial, quasi-judicial, arbitration, administrative or regulatory actions or proceedings in connection with the CCAA Proceeding or otherwise against the Debtor and their directors and officers or their property, thereby interfering with and causing harm to, the Debtors, their creditors, and other parties in interest in the CCAA Proceeding and, as a result, the Debtors, its creditors and such other parties in interest would suffer irreparable injury for which there is no adequate remedy at law.

O. Absent the requested relief, the efforts of the Debtors, the Canadian Court and the Foreign Representative in conducting the CCAA Proceeding and effecting their restructuring therein may be thwarted by the actions of certain creditors, a result that will obstruct the purposes of chapter 15 as reflected in section 1501(a) of the Bankruptcy Code.

P. Each of the injunctions contained in this Order (i) is within the Court's jurisdiction, (ii) is essential to the success of the Debtors' restructuring in the CCAA Proceeding, (iv) confers material benefits on, and is in the best interests of, the Debtors and their creditors, and (v) is important to the overall objectives of the such restructuring.

NOW THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Petitions for Recognition and the Relief Requested are granted as set forth herein, and any objections thereto are overruled with prejudice.

2. The CCAA Proceeding is granted recognition with respect to each of the Debtors as a foreign main proceeding (as defined in section 1502 of the Bankruptcy Code) pursuant to sections 1517(a) and (b)(1) of the Bankruptcy Code.

3. Hematite Holdings is recognized as the "foreign representative" as defined in section 101(24) of the Bankruptcy Code in respect of the CCAA Proceeding.

4. The Debtors and the Foreign Representative are granted all of the relief set forth in section 1520 of the Bankruptcy Code including, without limitation, the application of the protection afforded by the automatic stay under section 362(a) of the Bankruptcy Code to the Debtors and to the Debtors' property that is now within or in the future is located within the territorial jurisdiction of the United States.

5. The Foreign Representative is authorized to exercise the powers of a trustee to the extent provided by for in the CCAA Proceeding and by 11 U.S.C. § 1520(a)(3).

6. The Initial Order or the Amended Initial Order (to the extent it supersedes the Initial Order), including any and all existing and future extensions, amendments, restatements, and/or supplements authorized by the Canadian Court, are hereby given full force and effect, on a final basis, with respect to the Debtors and the Debtors' and their property that now or in the future is located within the territorial jurisdiction of the United States.

7. Pursuant to 11 U.S.C. § 1521(a)(1)-(3), all persons and entities, other than the Foreign Representative and his representatives and agents, are hereby enjoined (to the extent they have not been stayed under section 1520(a)) 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.

8. Pursuant to 11 U.S.C. § 1521(a)(5), the administration or realization of the Debtors' assets within the territorial jurisdiction of the United States is entrusted to the Foreign Representative and the Foreign Representative is hereby established as the exclusive representative of the Debtors in the United States.

9. Pursuant to 11 U.S.C. §§ 1521(a)(6) and 1521(a)(7), all prior relief granted to the Debtors or the Foreign Representative by this Court pursuant to section 1519(a) or 1521 of the Bankruptcy Code shall be extended and that certain *Order Granting Provisional Relief* [D.I. ___] shall remain in full force and effect, notwithstanding anything to the contrary contained therein.

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

11. No action taken by the Foreign Representative, the Debtors, or their respective successors, agents, representatives, advisors, or counsel in preparing, disseminating, applying for, implementing, or otherwise acting in furtherance of or in connection with the CCAA Proceeding, this order, these Chapter 15 Cases, or any adversary proceeding herein, or any further proceeding

commenced hereunder, shall be deemed to constitute a waiver of the rights or benefits afforded such persons under sections 306 and 1510 of the Bankruptcy Code.

12. 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 (c) 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.

13. A copy of this Order shall be served within five business days of entry of this order, by electronic mail to the extent email addresses are available and otherwise by U.S. mail, overnight or first-class postage prepaid, upon the Notice Parties (as defined in the *Motion of Foreign Representative for Entry of Order Scheduling Hearing and Specifying Form and Manner of Service of Notice Pursuant to Sections 1515 and 105(a) of the Bankruptcy Code and Bankruptcy Rules 2002 and 9007*) and such other entities as the Court may direct. Such service shall be good and sufficient service and adequate notice for all purposes.

14. The Court shall retain jurisdiction with respect to the enforcement, amendment, or modification of this Order, any request for additional relief and any request by an entity for relief from the provisions of this Order, for cause shown, that is properly commenced and within the jurisdiction of the Court.

15. This Order shall be effective and enforceable immediately upon entry and shall constitute a final order within the meaning of 28 U.S.C. § 158(a).

EXHIBIT B

Nadeau Declaration

**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) ()

Joint Administration Requested

**DECLARATION OF JACQUES NADEAU IN SUPPORT OF THE
DEBTORS' CHAPTER 15 PETITIONS AND FIRST-DAY
PLEADINGS IN FOREIGN PROCEEDING**

I, Jacques Nadeau, hereby declare that the following is true and correct to the best of my knowledge, information, and belief.

1. I am the Chief Treasury Officer of Hematite Holdings Inc. ("Hematite Holdings" or the "Foreign Representative"). I am a Chartered Professional Accountant and have been involved in the financial and operational management of Hematite for over 25 years.

2. Hematite Holdings is the duly appointed and authorized foreign representative (the "Foreign Representative") for the above captioned debtors (collectively, "Hematite" or the "Debtors"), which Debtors are the subjects of reorganization proceedings (the "CCAA Proceeding") commenced before the Ontario Superior Court Of Justice (Commercial List) in Canada (the "Canadian Court") under Canada's *Companies' Creditors Arrangement Act* (the "CCAA").

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.

3. On September 18, 2020, the Debtors filed applications under the CCAA to commence restructuring proceedings under the supervision of the Canadian Court. That same day, the Canadian Court entered the Initial Order, a true and correct copy of which is attached hereto as Exhibit 1, appointing KPMG Inc. (“KPMG,” or the “Monitor”) to monitor and assist the Debtors in their business and financial affairs in accordance with section 23 of the CCAA. The Canadian Court also appointed the Foreign Representative to act as a representative in respect of the CCAA Proceeding for the purpose of having the CCAA Proceeding recognized in any other jurisdiction outside Canada, including the United States.

4. Contemporaneously with the filing of this declaration, Hematite Holdings caused to be filed, on behalf of the Debtors as authorized Foreign Representative of the Debtors, petitions for recognition of the CCAA Proceedings in the United States under chapter 15 of title 11 of the United States Code (the “Bankruptcy Code”), thereby commencing the Debtors’ chapter 15 cases (the “Chapter 15 Cases”). Hematite also caused to be filed 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 (together with the chapter 15 petitions, the “Petitions for Recognition”) and the Motion of the Foreign Representative for an Order Granting Certain Provisional Relief (the “Provisional Relief Motion”).

5. This declaration is filed in support of the Petitions for Recognition, the Provisional Relief Motion and other “first day” relief requested by the Foreign Representative. I am making this declaration in accordance with section 1515 of the Bankruptcy Code and Rule 1007(a)(4) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

6. In my role as Chief Treasury Officer of Hematite Holdings, I am familiar with the Debtors' history, day-to-day operations, assets, financial condition, business affairs, and books and records. I am fully aware of, and closely involved in, the financial affairs and overall restructuring of the Debtors. Except as otherwise indicated, all statements in this declaration are based upon my personal knowledge, my review of the Debtors' books and records, relevant documents and other information prepared or filed in connection with the CCAA Proceedings and the Chapter 15 Cases, information supplied to me by one or more of the Debtors' officers, directors, and/or employees or other professionals retained by the Debtors, or my experience and knowledge of the Debtors' operations and financial condition. If called to testify as a witness, I could and would competently testify to each of the facts set forth herein based upon my personal knowledge, review of documents, or opinion. I am authorized to submit this declaration on behalf of the Debtors.

A. Hematite Overview

7. Hematite is primarily a tier 1 supplier of component parts to the automotive manufacturing industry and counts Toyota, Fiat Chrysler Automobiles ("FCA") and Ford among its major customers. Hematite reduces the costs and carbon footprint of its customers by utilizing a closed-loop process (known as Reform™) which takes manufacturing scrap from customers and produces re-useable materials that are used in Hematite's products. Through this process, Hematite has diverted over 10 million pounds of trim scrap waste annually that was destined for landfill sites.

8. Hematite has operated in Canada since 1978, and currently operates from facilities in Brantford and Guelph, Ontario. Over the past several years, Hematite has pursued an expansion of its manufacturing operations into the United States to allow it to better serve

existing and new customers in that market. Hematite has begun production at a facility in Englewood, Ohio and has begun outfitting another facility in Fayetteville, Tennessee.

9. The COVID-19 pandemic and the resulting government-mandated shutdowns, including in the automotive industry, had a significant adverse impact on Hematite's financial position. From March 2020 through May 2020, Hematite's gross sales were approximately 70% below expectations due primarily to the impact of the COVID-19 pandemic and it experienced a significant and unexpected operating loss.

B. Hematite Corporate Structure

10. Hematite Holdings is incorporated and existing under the Ontario Business Corporations Act (the "OBCA"). Hematite Holdings is a holding company that is the direct or indirect parent of each of the Debtors, with the exception of Hematite Industrial Products Inc. ("Hematite Industrial") which is an affiliate of Hematite Holdings. Hematite Holdings is the direct parent of Canadian Pavaco and Hematite Manufacturing (each defined below).

11. Canadian Pavaco Inc. ("Canadian Pavaco") is incorporated and existing under the OBCA. Canadian Pavaco is a holding company that exists between Hematite Holdings and US Pavaco (defined below) in the Hematite organizational structure.

12. Hematite Manufacturing Inc. ("Hematite Manufacturing") is incorporated and existing under the OBCA. Hematite Manufacturing is the primary operating entity for the core businesses of Hematite in Canada, including the supply of component parts for the automotive industry.

13. Hematite Industrial is incorporated and existing under the OBCA. Hematite Industrial is the operating entity for the industrial products business of Hematite.

14. Pavaco Holdings U.S. Inc. ("US Pavaco") is incorporated and existing under the laws of the State of Delaware. US Pavaco is a holding company that is the direct parent of the two entities that operate the Hematite business in the United States, Hematite US and HAPI (each defined below).

15. Hematite, Inc. ("Hematite US") is incorporated and existing under the laws of the State of Ohio. Hematite US is the primary operating entity for the businesses of Hematite in the United States.

16. Hematite Automotive Products Inc. ("HAPI") is incorporated and existing under the laws of the State of Michigan. HAPI operates a small sales office for Hematite's US operations.

17. An organizational chart showing the organization structure of the foregoing entities is attached hereto as Exhibit 2.

C. Financial Position

18. As a result of its financial challenges, outlined above, and its inability to obtain further financing from its existing lenders and further advances from its customers, it became clear to Hematite that it would run out of liquidity. Hematite determined that it needed to restructure its business and financial picture if it was to survive. Hematite sought a strategic partner to provide the financial resources and expertise necessary to allow it to complete this restructuring.

19. In August 2020, Hematite Holdings entered into a letter of intent (the "LOI") with Woodbridge Foam Corporation ("Woodbridge"), which LOI summarized the terms and conditions pursuant to which Woodbridge or its affiliate were prepared to sponsor a court supervised financial restructuring of Hematite which would result in Woodbridge or its affiliate

acquiring the post-restructuring equity of Hematite Holdings. Since that time, Hematite and Woodbridge have negotiated with Hematite's key lenders (i.e., The Toronto-Dominion Bank and BDC Capital Inc.), its key customers (Toyota, FCA and Ford), and certain of its key suppliers in order to reach agreements and arrangements necessary to support the restructuring of Hematite contemplated in the LOI.

20. To further memorialize and finalize the terms of Woodbridge's investment in and support of Hematite's restructuring as set out in the LOI, Hematite has entered into a plan sponsor agreement with Woodbridge.

21. Woodbridge has also agreed to provide Hematite Holdings with the DIP Facility in an amount up to \$6 million for the purpose of allowing Hematite to meet its immediate cash needs during the pendency of these CCAA proceedings.

D. Recognition as a Foreign Main Proceeding

22. I am informed that in order to be recognized as a "foreign main proceeding," a proceeding must be pending in the country where the debtor has its "center of main interests," which I understand to be the functional equivalent of a headquarters, principal place of business or "nerve center." I believe that the CCAA Proceeding meets this requirement. As described below, all of the Debtors are headquartered in Canada where all of their executive and strategic functions occur and where management of the Debtors is located.

23. Hematite Holdings is duly incorporated under the law of Ontario, its registered office is in Ontario, and its principal place of business is located at 659 Speedvale Avenue West, Guelph, Ontario (the "Head Office").

24. The primary management and business operations of the Debtors were conducted from the Head Office with all of the Debtors' executive and senior management working at the

Head Office. The Head Office acted as the “nerve center” of the business in that all accounting functions, strategic decision-making, communication functions, marketing and pricing decisions, new business development initiatives, negotiations of material contracts and leases, acquisition of equipment, and other key functions were coordinated and/or managed from the Head Office in Ontario.

25. In other words, as set forth below, Canada is where the Debtors’ principal place of business and “nerve center” is located:

- A. The Debtors’ headquarters and the location where general supervision and management of the Debtors takes place is Ontario, Canada;
- B. All strategic and operational decisions for the Debtors, including the Debtors’ U.S. subsidiaries, are made in Canada;
- C. All accounting, purchasing and cash management functions for the Debtors occur in Canada;
- D. The Debtors’ accounting, financing and other operational books and records are located in Canada;
- E. All corporate services for the Debtors, including tax support, legal services (excluding U.S. restructuring counsel), and issuance of checks for accounts payable are rendered in Ontario, Canada;
- F. All terms of employment and related policies and procedures for the Debtors’ employees are established and directed out of the corporate headquarters in Canada;
- G. The Debtors’ operating lender and many of their other largest creditors are located in Canada under loan and other arrangements governed by the laws of Canada; and
- H. The ultimate shareholders of the Debtors are located in Canada.

26. In sum, the business operations of Hematite are carried on principally from its Head Office. The key management of Hematite and all corporate-level decision-making and corporate administrative functions affecting the Debtors are centralized at the Head Office.

Further, Hematite Holdings, the ultimate parent entity of Hematite, is duly incorporated under the laws of Ontario and its registered office is in Ontario.

27. Based on these facts, I believe the Canadian Proceeding is a “foreign main proceeding” as I have been advised that term is defined in Bankruptcy Code sections 101(23) and 1502(4). The Canadian Proceeding is pending in Toronto, Ontario, Canada. Moreover, Ontario is the “center of main interests” for the Debtors.

E. Need for Provisional Relief

28. In addition to seeking recognition on a final basis, the Foreign Representative also requests certain provisional relief. Pending recognition of the CCAA Proceedings, the Foreign Representative seeks provisional relief to enjoin collection efforts against the Debtors and their assets, as well as to protect potentially valuable contractual relationships. This relief is necessary to avoid immediate and irreparable harm to the Debtors and their assets if U.S. creditors and contract parties begin a "race to the courthouse" or resort to other self-help remedies resulting in a piece-meal and preferential liquidation and distribution of assets, rather than an orderly realization and distribution of value according to legal priorities.

29. It is also necessary for all actions against the Debtors' directors and officers, in their capacity as such, to be stayed on a provisional basis. The Debtors' directors and officers are essential to managing the Debtors' business and ability to implement a successful restructuring. Moreover, the Debtors' directors and officers have indemnification rights and have been granted a charge against the Debtors pursuant to the Initial Order, such that any judgment against them would be a *de facto* judgment against the Debtors and their assets-to the detriment of creditors.

30. As indicated by the 13-week cash flow projections, attached hereto as **Exhibit 3**, the Debtors expect to run out of cash to continue operations in the week ending September 25,

2020, and potentially earlier, unless additional, immediate funding is provided through the Interim DIP Facility. The funding provided by the Interim DIP Facility (defined below) is therefore necessary to give vendors, employees and other critical parties who deal with the Debtors confidence that the Debtors have access to funds to meet their post-filing obligations to such parties.

31. To provide the necessary funding to sustain operations, the Debtors have entered into an interim facility (the “Interim DIP Facility”) pursuant to the terms of that certain DIP Loan Agreement, dated September 17, 2020 (the “DIP Loan Agreement”) between the Debtors, as borrowers, and Woodbridge as the lender (in such capacity, the “Interim DIP Lender”). The Interim DIP Lender has agreed to provide the Interim Facility upon the terms outlined in the DIP Loan Agreement attached hereto as **Exhibit 4**. The terms of the DIP Loan Agreement were negotiated, proposed and entered into by the Debtors and the Interim DIP Lender without collusion, in good faith and at arm's length.

32. The Foreign Representative further requests provisional relief to grant the Interim DIP Lender certain protections under the Bankruptcy Code. This relief is necessary to prevent the Interim DIP Lender from refusing the Debtors access to the interim financing approved by the Canadian Court. Without the protections afforded to Interim DIP Lender under the Bankruptcy Code, 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.

33. This provisional relief is consistent with the Initial Order, which, among other things, stays all creditor collection actions against the Debtors, their assets and their directors and

officers (paragraph 16), prohibits contract counterparties from terminating contracts with the Debtors (paragraph 14), authorizes the Debtors to enter into and perform under the Interim DIP Facility and grants the Interim DIP Lender a charge in connection therewith (paragraph 32), grants the Debtors' directors and officers a charge against the Debtors' assets for the Debtors' indemnification obligations owed to the directors and officers (paragraph 18), and grants the Monitor, the Monitor's professionals and the Debtors' (including the Foreign Representative's) professionals and advisors a charge for professional fees and expenses incurred in connection with the CCAA Proceedings and Chapter 15 Cases (paragraph 28).

34. For the foregoing reasons, I believe that the provisional relief requested is necessary and appropriate and is in the best interests of the Debtors, their creditors, and other parties in interest.

E. Noticing Procedures

35. The Foreign Representative has also filed a motion requesting that the Court schedule a final recognition hearing and approval of related noticing procedures (the "Notice Procedures Motion"). I can attest that the Debtors have hundreds and potentially thousands of creditors, potential creditors, and other parties in interest, all of whom need to be provided with, among other things, notice of the entry of the provisional order, the proposed final order, the recognition objection deadline, and the recognition hearing. The Foreign Representative has prepared a form of notice advising of these and related matters (the "Recognition Hearing Notice"), a copy of which is annexed to the Notice Procedures Motion.

36. Under the facts and circumstances of the Debtors' Chapter 15 Cases, I submit that service of the Recognition Hearing Notice in the manner proposed in the Notice Procedures Motion will provide those parties identified as the Notice Parties in the Notice Procedures

Motion with due and sufficient notice of the relief requested in the Recognition and Relief Motion and associated objection deadlines and hearing dates.

37. Therefore, I believe that the relief requested in the Notice Procedures Motion is necessary and appropriate and is in the best interests of the Debtors, their creditors, and other parties in interest.

B. Joint Administration and Consolidated Rule 1007(a)(4) List

38. The Foreign Representative has also filed, contemporaneously herewith, a motion seeking entry of an order directing joint administration of these Chapter 15 Cases for procedural purposes only and authorizing the Foreign Representative to consolidate and maintain a list (the "Consolidated 1007(a)(4) List") of foreign proceeding administrators, parties to litigation pending in the United States involving the Debtors, if any, and all persons and entities against whom the Debtors seek provisional relief pursuant to section 1519 of the Bankruptcy Code.

39. I believe that joint administration of these Chapter 15 Cases is warranted because the Debtors' financial affairs and business operations are closely related, and because it will ease the administrative burden of these cases on the Court and interested parties. I can confirm that the Foreign Representative anticipates that the various notices, motions, hearings, orders, and other pleadings in these cases will affect all of the Debtors.

40. I believe that the relief requested with respect to the Consolidated 1007(a)(4) List is also necessary and appropriate and is in the best interests of the Court, the Debtors, their creditors, and other parties in interest. As the provisional and final relief sought in each of these cases is substantially similar, and any additional relief sought is likely to impact most or all of the Debtors, most, if not all, motions, notices, hearings, orders and other papers filed in these cases will likely affect most or all of the Debtors. Under these circumstances, filing and

maintaining separate lists under Bankruptcy Rule 1007(a)(4) would result in unnecessary confusion and wasteful duplication of effort and service.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: September 21, 2020



Jacques Nadeau
Chief Treasury Officer
Hematite

EXHIBIT 1

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST



THE HONOURABLE MR.
JUSTICE HAINES

)
)
)

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.

- 2 -

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

- 3 -

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

- 4 -

- (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.

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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;

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- (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

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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

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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

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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)

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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

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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.

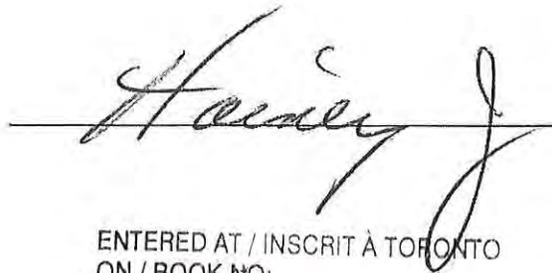
47. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

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.

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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.

A handwritten signature in black ink, appearing to read "Henry J.", is written over a horizontal line.

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

SEP 21 2020

PER / PAR:

Handwritten initials in blue ink, possibly "ML", are written next to the "PER / PAR:" label.

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

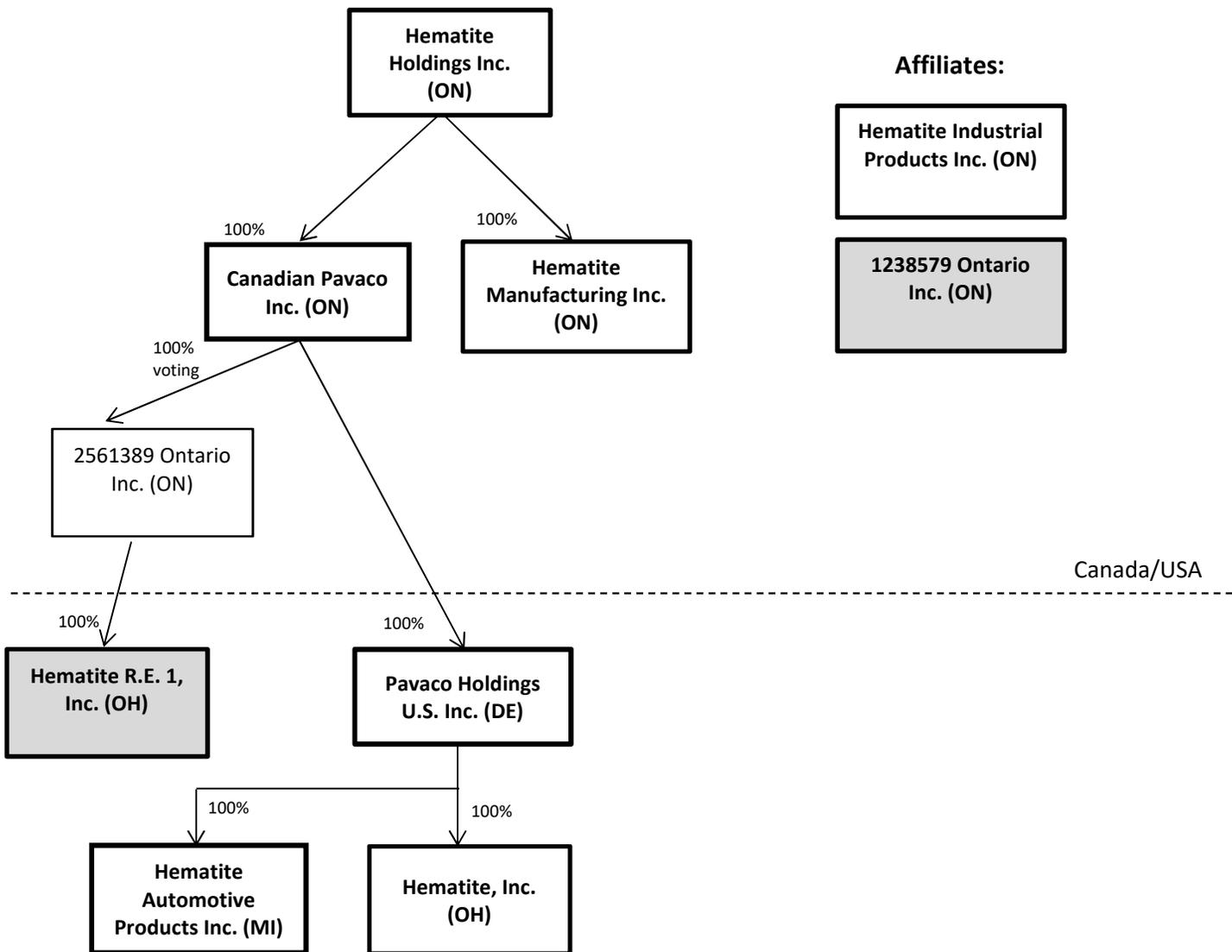
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EXHIBIT 2



Legend

Applicants

Affected Parties

Other Entities

EXHIBIT 3

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)													
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)									

Jacques Nadeau
Chief Treasury Officer
Hematite Group

EXHIBIT 4

REVOLVING DIP LOAN AGREEMENT

THIS REVOLVING DIP LOAN AGREEMENT (this "**Agreement**") effective as of September 17, 2020, is entered into by and between WOODBRIDGE FOAM CORPORATION (the "**Lender**"), as lender, HEMATITE HOLDINGS INC., a corporation incorporated pursuant to the laws of Ontario ("**HH**"), CANADIAN PAVACO INC., a corporation incorporated pursuant to the laws of Ontario ("**CP**"), HEMATITE MANUFACTURING INC., a corporation incorporated pursuant to the laws of Ontario ("**HM**"), HEMATITE INDUSTRIAL PRODUCTS INC., a corporation incorporated pursuant to the laws of Ontario ("**HP**"), HEMATITE AUTOMOTIVE PRODUCTS, INC., a corporation incorporated pursuant to the laws of Michigan ("**HAP**"), PAVACO HOLDINGS (U.S.) INC., a corporation incorporated pursuant to the laws of Delaware ("**PH**"), and HEMATITE, INC., a corporation incorporated pursuant to the laws of Ohio ("**HI**" and together with PH, CP, HM, HAP and HP, collectively, the "**Borrowers**"). The Borrowers and the Lender are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**".

WHEREAS HH has advised the Lender that the Borrowers intend to commence proceedings (the "**CCAA Proceedings**") under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") to seek, among other things, the granting of an initial order (the "**Initial Order**") from the Ontario Superior Court of Justice (Commercial List) (the "**Court**");

AND WHEREAS the Borrowers have requested, and the Lender has agreed to provide, certain debtor-in-possession ("**DIP**") financing to the Borrowers pursuant to a revolving DIP facility in the maximum principal amount of C\$6,000,000 (the "**Facility**") during the CCAA Proceedings, of which C\$2,300,000 is to be made available upon the Effective Date, and C\$3,700,000 is to be made available upon the granting of an amendment and restatement of the Initial Order from the Court (the "**Amended and Restated Initial Order**"), in each case on the terms and conditions contained herein;

AND WHEREAS the Borrowers and the Lender desire to enter into this Agreement to evidence the terms and conditions of the Facility;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree to be bound as follows:

ARTICLE 1 DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

For purposes of this Agreement (and the recitals above), unless otherwise indicated or defined herein, capitalized terms shall be defined as follows:

"**Applicable Interest Rate**" means 15% per annum.

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which commercial banks in Toronto, Ontario are required or authorized to be closed or are in fact closed.

"**DIP Charge**" has the meaning given thereto in Section 3.1.

"Drawdown" means an advance of a Loan by the Lender to the Borrowers pursuant to a Drawdown Notice.

"Drawdown Date" means the date on which a Drawdown is made by the Borrowers pursuant to the provisions hereof and which shall be a Business Day.

"Drawdown Notice" means a notice substantially in the form annexed hereto as Exhibit A to be given to the Lender by the Borrowers pursuant hereto.

"Effective Date" means the date upon which the conditions precedent in Section 5.1 have been satisfied (or to the extent not satisfied, waived by the Lender).

"Event of Default" has the meaning assigned to such term in Section 6.1 of this Agreement.

"GAAP" means Generally Accepted Accounting Principles, including any successor financial accounting standards as adopted by a recognized accounting board in the United States or in Canada that is currently in use by the Borrowers or their ultimate parent in the preparation of its financial statements.

"Loan" means a loan made by the Lender to the Borrowers pursuant to a Drawdown Notice.

"Loan Documents" means, collectively, this Agreement, the Note, and each certificate, agreement or document executed by one or more of the Borrowers and delivered to the Lender in connection with or pursuant to any of the foregoing.

"Material Adverse Effect" has the meaning given thereto in Section 4.1(d).

"Maturity Date" means September 30, 2022.

"Maximum Principal Amount" has the meaning given thereto in Section 2.1.

"Monitor" means KPMG Inc. in its capacity as monitor appointed under the Initial Order.

"Note" means the grid promissory note evidencing the Loans made in accordance with Section 2.2.

"Person" means any individual, corporation, body corporate, partnership, joint venture, limited liability company, association, joint-stock company, trust or unincorporated organization or government or any agency or political subdivision thereof.

"Plan Sponsor Agreement" means the plan sponsor agreement dated as of September 17, 2020 between HH and the Lender.

"Post-Filing Obligations" has the meaning given thereto in Section 3.1.

"Professional Expenses" has the meaning given thereto in Section 4.3.

1.2 Interpretations

In and for the purposes of this Agreement:

- (a) "this Agreement" means this Agreement as the same may from time to time be restated, modified, supplemented, or amended and in effect;
- (b) the words "herein", "hereof", "hereunder", and other words of similar import refer to this Agreement as a whole and not to any particular paragraph or other subdivision;
- (c) the headings in this Agreement are for convenience only and do not form a part of this Agreement and are not intended to interpret, define, or limit the scope, extent, or intent of this Agreement or any provision hereof;
- (d) the singular of any term includes the plural, and vice versa;
- (e) the use of any term is generally applicable to any gender, and where applicable, a body corporate;
- (f) the word "or" is not exclusive, and the word "including" is not limiting (regardless of whether non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto);
- (g) except as otherwise expressly provided herein, where the time for doing an act falls or expires on a day which is not a Business Day, the time for doing such act is extended to the next Business Day;
- (h) all references to "Dollars", "C\$" and "\$" in this Agreement will be references to the lawful currency of Canada;
- (i) a reference to any agreement, instrument, order or declaration means such agreement, instrument, order or declaration as the same may be amended, supplemented, modified, restated or replaced from time to time; and
- (j) a reference to any statute is to that statute as now enacted or as the same may from time to time be amended, re-enacted or replaced and includes any regulation made thereunder.

ARTICLE 2 REVOLVING FACILITY

2.1 The Facility

- (a) **Facility.** On the terms and subject to the conditions contained in this Agreement, on the Effective Date, the Lender shall make available to the Borrowers the Facility in the maximum principal amount of C\$6,000,000 (as such amount may be increased by the Lender in its sole discretion in accordance with Section 2.1(b) below, the "**Maximum**

Principal Amount"). The outstanding principal under the Facility shall not exceed the Maximum Principal Amount.

- (b) **Type of Availment.** Subject to the terms and conditions hereof, and prior to the Maturity Date, the Borrowers may, in Canadian Dollars, make Drawdowns under the Facility of Loans, in two tranches:
- (i) a first tranche (the "**First Tranche**") in the sum of C\$2,300,000; and
 - (ii) a second tranche (the "**Second Tranche**") in the sum of up to C\$3,700,000;

provided that if the Court has approved an increase in the amount of the DIP Charge (as defined below), the Lender may, in its sole discretion: (A) increase the Maximum Principal Amount by an amount not to exceed the amount of such increase to the DIP Charge, and (B) approve further Drawdowns hereunder.

- (c) **Nature of Facility.** Prior to the Maturity Date, the Facility shall be a revolving credit facility: that is, the Borrowers may increase or decrease Loans under the Facility by making Drawdowns, repayments and further Drawdowns.
- (d) **Use of the Proceeds.** The Facility is being made available to the Borrowers for the purpose of: (i) meeting the Borrowers' immediate cash needs for general operating purposes; and (ii) its restructuring, including payment of professional fees and expenses and its working capital requirements during the pendency of the CCAA Proceedings. The Borrowers shall use the proceeds of the Loans solely for the purposes set forth in this Section 2.1(d) and for no other purposes.

2.2 Drawdowns

Subject to the provisions hereof, the Borrowers may request a Drawdown by delivering a Drawdown Notice, to the Lender not later than 10:00 a.m. (Toronto time) three Business Days prior to the proposed Drawdown Date (or such shorter period as the Lender may agree); provided however, the initial Drawdown under the First Tranche will be advanced by the Lender on the same Business Day as the Effective Date.

2.3 Making the Note

The Borrowers shall execute and deliver the Note to the Lender evidencing Loans, made in accordance with Section 2.2, substantially in the form of Exhibit B. The Lender shall enter in the grid attached to the Note details of all amounts from time to time owing, paid or repaid by the Borrowers hereunder. The information entered in such grid shall, absent manifest error, constitute *prima facie* evidence of the obligations of the Borrowers to the Lender hereunder with respect to all Loans and all other amounts owing by the Borrowers to the Lender hereunder.

2.4 Repayment of Loans

The Borrowers shall repay to the Lender all Loans and other obligations outstanding under the Facility in full on the Maturity Date.

2.5 Interest

- (a) **Interest Amount.** The Borrowers shall pay interest on each Loan owing by it during each month applicable thereto in Canadian Dollars at a rate per annum equal to the Applicable Interest Rate, calculated daily and payable monthly in arrears on the last day of such month, commencing with the first interest payment being made on October 31, 2020. Such interest shall accrue daily from the date a Loan was advanced, and shall be calculated on the principal amount of such Loan outstanding during such period and on the basis of the actual number of days elapsed in a year of 365 days.
- (b) **Compound Interest.** Interest that is not paid when due shall be added to the principal amount of the Loan and itself bear interest as such.
- (c) **Usury Laws.** Notwithstanding any other provision of this Agreement, no interest or fee to be paid hereunder shall be paid at a rate exceeding the maximum rate permitted by applicable law. In the event any such interest or fee exceeds such maximum rate, such interest or fee shall be reduced or refunded, as the case may be, so as to be payable at the highest rate recoverable under applicable law.

2.6 Optional Prepayments

The Borrowers shall have the right to prepay any Loans, in whole or in part, at any time without penalty or premium. Any prepayment of principal shall be accompanied by a payment of all interest accrued and unpaid on the portion of the applicable Loan being prepaid.

2.7 Payments and Computations

- (a) The Borrowers shall make each payment hereunder not later than 11:00 A.M. (Toronto time), on the day when due, in Dollars, to the Lender at an account designated from time to time by the Lender in immediately available funds or by such other means as may be agreed between the Borrowers and the Lender, without set-off or counterclaim. Payments not paid by the Borrowers before 11:00 A.M. (Toronto time) shall be deemed to be received on the next Business Day.
- (b) All computations of interest shall be made by the Lender on the basis of a year of 365 days comprised of actual days in each calendar month. In the case of a leap year one day shall be added to 365 and to the month of February. Each computation by the Lender of interest hereunder shall be prima facie evidence of the amount at issue. For the purposes of the *Interest Act* (Canada), whenever any interest or fee under this Agreement or in any other Loan Document is calculated using a rate based on a number of days less than a full year, such rate determined pursuant to such calculation, when expressed as an annual rate, is equivalent to (x) the applicable rate based on a year of 360 (y) multiplied by the actual number of days in the calendar year in which the period for which such interest or fee is payable ends, and (z) divided by the number of days based on which such rate is calculated. All interest hereunder will be calculated using the nominal rate method, and not the effective rate method, and the deemed reinvestment principle shall not apply to any such

calculations. Each Borrower confirms that the interest payable hereunder and the calculation thereof has been adequately disclosed to it, and agrees not to plead to the contrary, whether pursuant to Section 4 of the *Interest Act* (Canada) or any other applicable law or legal principle.

2.8 Application of Payments

Notwithstanding any other provision of this Agreement or the Note to the contrary, all payments and prepayments of the principal amount in respect of any Loan shall be applied first to the costs and expenses of the Lender, second to the accrued but unpaid interest on such Loan and third to the principal amount of such Loan.

ARTICLE 3 SECURITY AND INITIAL ORDER

3.1 DIP Charge

All indebtedness, liabilities and obligations of the Borrowers to the Lender hereunder, and all obligations, indebtedness, fees (including professional fees), costs, and expenses of the Borrowers under the Loan Documents and the Facility (collectively, the "**Post-Filing Obligations**") shall be secured by super-priority DIP financing charge (the "**DIP Charge**") on all of the present and after-acquired real and personal property of the Borrowers as provided for herein and in the Initial Order.

3.2 Initial Order and Amended and Restated Initial Order

The Initial Order and the Amended and Restated Initial Order (including any amendment and restatement thereof) shall be satisfactory to the Lender in its sole discretion, including provisions addressing (among other things) the following:

- (a) approval of the financing provided for in this Agreement (including the Facility);
- (b) authorization and direction for the Borrowers to make all payments of principal, interest, fees, and expenses under this Agreement to the Lender;
- (c) the DIP Charge;
- (d) an administration charge in an amount not to exceed C\$250,000 under the Initial Order (to be increased to C\$500,000 under the Amended and Restated Initial Order) which ranks senior to the DIP Charge;
- (e) a director's charge in an amount not to exceed C\$300,000 under the Initial Order (to be increased to C\$500,000 under the Amended and Restated Initial Order) which ranks junior to the DIP Charge; and
- (f) that the Lender shall be treated as unaffected in any plan of arrangement or compromise filed by or in respect of any Borrower under the CCAA, or under any proposal filed by or in respect of any Borrower under the *Bankruptcy and Insolvency Act* (Canada), with respect to any Post-Filing Obligations.

ARTICLE 4
REPRESENTATIONS, WARRANTIES AND COVENANTS

4.1 Warranties

Each Borrower represents and warrants to the Lender that as of the date of this Agreement:

- (a) such Borrower has full corporate power and authority to execute and deliver, and to perform its obligations under, this Agreement and the Note;
- (b) this Agreement has been duly authorized by such Borrower and all consents and authorizations in relation thereto have been obtained;
- (c) this Agreement is a legally binding obligation of such Borrower that is enforceable in accordance with its terms (subject to the laws of bankruptcy and other laws affecting the rights of creditors generally), and does not conflict with any law, regulation, or document to which any Borrower is subject;
- (d) the authorization, execution, and delivery and performance of this Agreement by such Borrower will not violate any applicable law or any order, declaration, or judgment binding on such Borrower, or any consent, license, permit, or approval of such Borrower, or any agreement to which such Borrower is a party, and will not result in, or require, the creation or imposition of any prohibited lien on any assets or property of such Borrower except where such violation or creation or imposition would not have a material adverse effect on (i) the assets, properties, business, operations or the financial condition of HH, (ii) the assets, properties, business, operations or the financial condition of the Borrowers, taken as a whole, (iii) such Borrower's ability to pay any of the Post-Filing Obligations in accordance with the terms of the Loan Documents or (iv) the Lender's rights or remedies under the Loan Documents (a "**Material Adverse Effect**"); provided however, the commencement and continuation of the CCAA Proceedings shall not constitute a Material Adverse Effect for purposes of the Loan Documents; and
- (e) there is no matter, fact or event which is known to any Borrower which has not been disclosed to the Lender in writing which is likely to have a Material Adverse Effect on the performance of the respective obligations of such Borrower under this Agreement, and such Borrower has conducted such investigations as it considers reasonably necessary to make this representation and warranty.

4.2 Covenants

Each Borrower, jointly and severally, covenants and agrees with the Lender that while any amount owed to the Lender is outstanding under this Agreement:

- (a) each Borrower shall deliver to the Lender copies of all court materials and documents in connection with the CCAA Proceedings, and in the case of materials and documents to be filed by the Borrowers, shall provide the Lender with a reasonable opportunity to comment thereon and ensure the same are acceptable to the Lender;

- (b) HH shall be in compliance with the Plan Sponsor Agreement;
- (c) the Borrowers shall deliver weekly cash flow reports to the Lender, in form and substance satisfactory to the Lender, on or by the fourth Business Day of each calendar week;
- (d) the Borrowers shall deliver monthly financial statements to the Lender, in form and substance satisfactory to the Lender, on or by the 10th Business Day of each calendar month;
- (e) the Borrowers shall achieve the cash flow forecasts set out in the CCAA Proceedings, subject to allowed negative variances for up to 10% for any cash flow forecast, not to exceed an aggregate of C\$250,000 in excess of forecast aggregate cash flow needs during the term of this Agreement, or as otherwise agreed by the Lender in writing;
- (f) each Borrower shall maintain and comply with all of its material production contracts with its material customers;
- (g) each Borrower shall cooperate fully with the Lender and its respective agents and employees by providing all information requested by the Lender, and by providing access to its books, records, property, assets, and personnel wherever they may be situated in whatever medium they may be recorded, except for confidential or privileged information, at the request of and at times convenient to the Lender, acting reasonably, which right of access shall include the right to inspect and appraise such property and assets;
- (h) each Borrower shall as soon as practicable, and in any event within one Business Day after the occurrence thereof, notify the Lender in writing of the occurrence of any Event of Default or any event which, with the giving of notice or lapse of time or otherwise, might constitute an Event of Default and at the same time inform the Lender of any action taken or proposed to be taken by a Borrower in connection therewith;
- (i) each Borrower shall comply with all material laws and regulations;
- (j) each Borrower shall diligently obtain and maintain, where required, such licenses and permits necessary for its business;
- (k) subject to the Initial Order, each Borrower shall pay and discharge before the same shall become delinquent, all lawful governmental claims, taxes, assessments, charges, and levies, except where contested in good faith, by proper proceedings and with respect to which adequate reserves therefor have been established on the books of the Borrowers in conformity with GAAP; and
- (l) no Borrower may incur any new indebtedness for borrowed money that does not exist on the date hereof, other than (i) under the Loan Documents; (ii) corporate credit cards in the ordinary course of business not to exceed C\$25,000 in aggregate (net of any deposits in

accordance with the cash flow forecast); and (iii) with the prior written approval of the Lender.

4.3 Expenses

Each Borrower hereby covenants and agrees with the Lender to reimburse the Lender for all reasonable expenses incurred in connection with the Loan Documents and the CCAA Proceedings, including, without limitation, legal fees and other professional expenses that the Lender has incurred or will incur arising out of its dealings with the Borrowers in the CCAA Proceedings (collectively, the "**Professional Expenses**"). Each Borrower shall ensure that the Professional Expenses are provided for in its budget. Nothing in this Agreement shall derogate from any Borrower's obligation to pay for all of the Professional Expenses or shall constitute a cap on Professional Expenses. Notwithstanding the foregoing, the Lender shall add all of the Professional Expenses to the Post-Filing Obligations if the same are not paid when due. Each Borrower hereby acknowledges, confirms and agrees that the Professional Expenses which are added to the Post-Filing Obligations shall be secured and covered by the DIP Charge.

ARTICLE 5 CONDITIONS

5.1 Conditions to Effectiveness of this Agreement

The obligations of the Lender to make Loans shall not become effective until the date on which each of the following conditions is satisfied:

- (a) the Lender shall have received a fully-executed copy of this Agreement;
- (b) no Event of Default shall exist, and no event or circumstance which could reasonably be expected to result in a Material Adverse Effect shall have occurred;
- (c) there shall not be pending any litigation or other proceeding, other than the CCAA Proceedings, the result of which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect or form the basis for an appeal of the Initial Order;
- (d) all application materials and documents, including any service list, in connection with the commencement of the CCAA Proceedings shall be in form and substance satisfactory to the Lender;
- (e) the Initial Order shall have been entered and be in full force and effect and shall not have been reversed, vacated, or stayed, subject to appeal or modified or superseded or negatively impacted in any way in the Lender's sole discretion, without the Lender's prior written consent, and all necessary consents and approvals to the transaction contemplated in this Agreement and in the Initial Order shall have been obtained to the satisfaction of the Lender; and
- (f) the Initial Order shall be satisfactory to the Lender in its sole discretion.

5.2 Conditions to Drawdown under First Tranche

The obligations of the Lender to advance the Drawdown under the First Tranche shall not become effective until the date on which each of the following conditions is satisfied:

- (a) the Lender shall have received a Drawdown Notice for such Drawdown under the First Tranche in an amount not to exceed C\$2,300,000 in accordance with Section 2.2, and shall be satisfied with the proposed use of proceeds set out therein;
- (b) no Event of Default shall exist, and no event or circumstance which could reasonably be expected to result in a Material Adverse Effect shall have occurred since the date of the Initial Order;
- (c) the Borrowers shall have satisfied all conditions precedent set out in the Plan Sponsor Agreement that are to be satisfied by the date of such Drawdown;
- (d) the Lender shall be satisfied, in its sole discretion, with: (i) the Borrowers' compliance with the covenants in Section 4.2; and (ii) the contents of the cash flow reports, monthly financial statements and other materials delivered prior to the date of such Drawdown in accordance with Section 4.2; and
- (e) the Lender shall be satisfied that each of the conditions set forth in Section 5.1 continue to be satisfied as of the date of such Drawdown.

5.3 Conditions to Drawdowns under Second Tranche

The obligations of the Lender to advance a Drawdown under the Second Tranche shall not become effective until the date on which each of the following conditions is satisfied:

- (a) the Lender shall have advanced a Drawdown under the First Tranche in accordance with Section 5.2;
- (b) the Lender shall have received a Drawdown Notice for such Drawdown under the Second Tranche in accordance with Section 2.2, and shall be satisfied with the proposed use of proceeds set out therein;
- (c) after giving effect to the Drawdown, the total principal amount of Loans outstanding shall not exceed the Maximum Principal Amount;
- (d) no Event of Default shall exist, and no event or circumstance which could reasonably be expected to result in a Material Adverse Effect shall have occurred since the date of the Initial Order;
- (e) the Borrowers shall have satisfied all conditions precedent set out in the Plan Sponsor Agreement that are to be satisfied by the date of such Drawdown;
- (f) the Lender shall be satisfied, in its sole discretion, with: (i) the Borrowers' compliance with the covenants in Section 4.2; and (ii) the contents of the cash flow reports, monthly financial statements and other materials delivered prior to the date of such Drawdown in accordance with Section 4.2;

- (g) the Lender shall be satisfied that each of the conditions set forth in Section 5.1 continues to be satisfied; and
- (h) the Amended and Restated Order shall have been issued by the Court and be satisfactory to the Lender in its sole discretion.

5.4 Exclusive Benefit

The conditions set forth in this Article 5 are for the exclusive benefit for the Lender, and may be waived by the Lender, in its sole and absolute discretion, at any time and from time to time, with or without further conditions.

ARTICLE 6 EVENTS OF DEFAULT

6.1 Events of Default

The occurrence of any one or more of the following events (regardless of the reason therefor) shall constitute an event of default (each, an "**Event of Default**"):

- (a) entry of an order which stays, modifies (other than extensions of the Initial Order), or reverses the Initial Order or which otherwise materially adversely affects the effectiveness of the Initial Order without the express written consent of the Lender;
- (b) the entry of any order, without the prior written consent of the Lender, which provides relief from the automatic stay made under the Initial Order or the CCAA which permits any creditor to realize upon, or to exercise any right or remedy with respect to, any asset of a Borrower or to terminate any license, franchise, or similar agreement, where the exercise of such right or remedy or such realization or termination would reasonably be likely to have a Material Adverse Effect;
- (c) the filing of any application by a Borrower, without the express prior written consent of the Lender, for the approval of any super-priority claim or debtor in possession financing in the CCAA Proceedings which is pari passu with or senior to the priority of the DIP Charge, or there shall arise any such super-priority claim under the CCAA;
- (d) the payment or other discharge by a Borrower of any pre-petition indebtedness, except as expressly permitted hereunder, or generally permitted within the category and range in the Budget or by order in the CCAA Proceedings, to which payment or discharge the Lender has not provided its written prior consent;
- (e) the failure of a Borrower (i) to comply with each and all of the terms and conditions of the Initial Order, or (ii) to materially comply with any other order entered in the CCAA Proceedings, if such failure would reasonably likely result in a Material Adverse Effect;
- (f) (i) the filing of any motion by a Borrower or the entry of any order in the CCAA Proceedings: (A) permitting any financing (other than ordinary course trade credit or unsecured debt) for a Borrower from any Person other than the Lender, (B) granting a lien on, or security interest in any of the collateral of a Borrower equal or superior status to that of the DIP Charge, other than with respect to this Agreement or as otherwise permitted

herein, or (C) dismissing the CCAA Proceedings, or (ii) the filing of any motion by any Person (other than a Borrower) regarding matters specified in the foregoing clause (i) that is not immediately stayed and dismissed or denied within 30 days of the date of the filing of such motion;

- (g) the breach of any term, covenant or agreement by a Borrower in any Loan Document; provided however that if such breach is capable of being cured, such Borrower has failed to remedy such breach within 3 Business Days from the earlier of (i) the date such Borrower becomes aware of such breach, and (ii) the date the Lender delivers written notice of the breach to such Borrower;
- (h) any representation, warranty, certification or statement of fact made or deemed made by or on behalf of a Borrower, or in any document delivered in connection herewith or therewith shall be incorrect or misleading in any respect when made or deemed made, provided however that if such misrepresentation is capable of being cured to the Lender's satisfaction, such Borrower fails to remedy such misrepresentation within 3 Business Days of the occurrence of such event; or
- (i) a Borrower defaults in the payment of any principal, interest or fees under a Loan when the same becomes due and payable at its stated maturity, upon declaration or otherwise.

6.2 Remedies

- (a) During the continuance of any Event of Default, the Lender may, by notice to the Borrower, declare all Loans, all interest thereon (including any interest accrued to such date of acceleration) and all other amounts payable under this Agreement to be forthwith due and payable, whereupon the Loans, all such interest and all such amounts shall become and be forthwith due and payable, without presentment, demand or protest of any kind, all of which are hereby expressly waived by the Borrower.
- (b) The occurrence of an Event of Default that is continuing shall relieve the Lender of all obligations to provide any further Drawdowns to the Borrowers.
- (c) Further, during the continuance of any Event of Default, the Lender may, by notice to the Borrower, cancel all or a portion of the Facility.
- (d) In addition to the remedies set forth above, the Lender may exercise any remedies provided for by the Loan Documents in accordance with the terms thereof or any other remedies provided by applicable law.

ARTICLE 7 TRANSFERS; SUCCESSORS AND ASSIGNS

7.1 General

This Agreement shall be binding upon and inure to the benefit of the Borrowers, the Lender and their respective successors and assigns, except that no Borrower shall have the right to assign its rights hereunder

or any interest herein without the prior written approval of the Lender, in the Lender's sole and absolute discretion. Upon written notice to the Borrower, the Lender may freely assign and transfer its interest in this Agreement, the Note and any other Loan Documents to which it is a party to any Person; provided, however, that if the principal amount of Loans outstanding hereunder is an amount less than the Maximum Principal Amount and no Event of Default has occurred and is continuing, the Lender shall provide the Monitor with reasonable evidence that such assignee has the financial capacity to fulfil the obligations of the Lender hereunder prior to the making of such assignment. Upon assignment or other transfer of the Note, a transferee may request that the Borrowers reissue a promissory note in the name of such transferee.

ARTICLE 8 MISCELLANEOUS

8.1 Amendments, Waivers, Etc.

No amendment or waiver of any provision of this Agreement or any other Loan Document nor consent to any departure by any Borrower therefrom shall in any event be effective unless the same shall be in writing and signed by each Party against whom enforcement thereof would be sought, and then any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

8.2 Notices, Etc.

Any notice, request, instruction or other document to be given under any section of this Agreement shall be in writing and shall be deemed given upon receipt if delivered personally or by email or facsimile, the next day if by express mail or three days after being sent by registered or certified mail, return receipt requested, postage prepaid to the following addresses (or at such other address as shall be specified by like notice provided that such notice shall be effective only after receipt thereof):

If to the Lender:	Woodbridge Foam Corporation 4240 Sherwoodtowne Blvd. Mississauga, Ontario L4Z 2G6
	Attention: Corporate Secretary Email: marie_manseau@woodbridgegroup.com

And with a copy to (which shall not constitute notice):

Bennett Jones LLP One First Canadian Place, Suite 3400 P.O. Box 130 Toronto, Ontario M5X 1A4	Attention: Raj Sahni / Ian Michael Email : sahnir@bennettjones.ca/ michaeli@bennettjones.ca
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If to the Borrowers:	Hematite Holdings Inc.
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- 14 -

659 Speedvale Avenue W.
Guelph, Ontario N1K 1E6

Attention: John Pavanel, President
Email: johnp@hematite.ca

And with a copy to (which shall not constitute notice):

McCarthy Tétrault LLP
66 Wellington Street West
Suite 5300
Toronto, Ontario M5K 1E6

Attention: James D. Gage / Trevor Courtis
Email : jgage@mccarthy.ca / tcourtis@mccarthy.ca

8.3 Time

Time is of the essence of this Agreement.

8.4 No Waiver; Remedies

No failure on the part of the Lender to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

8.5 Lender's Right of Set-Off

Upon the occurrence and during the continuance of any Event of Default, the Lender is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by the Lender to, or for the credit or the account of, the Borrowers against the Note now or hereafter existing whether or not the Lender shall have made any demand under (i) this Agreement, or (ii) any other Loan Document and whether or not the Note is otherwise due. The Lender agrees promptly to notify the Borrowers after any such set-off and application made by the Lender; provided, however, that the failure to give such notice shall not affect the validity of such set-off and application. The rights of the Lender under this Section 8.5 are in addition to the other rights and remedies (including other rights of set-off) which the Lender may have.

8.6 Governing Law and Jurisdiction

The laws of the Province of Ontario (excluding its rules governing conflicts of laws) shall govern the construction, interpretation and other matters arising out of or in connection with this Agreement.

8.7 Execution in Counterparts; Electronic Execution

This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Transmission of an executed signature page by facsimile, e-mail or other electronic means is as effective as a manually executed counterpart of this Agreement. The words "execution," "execute", "signed," "signature," and words of like import in or related to any Loan Document to be signed in connection with this Agreement and the transactions contemplated hereby shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be.

8.8 Entire Agreement

This Agreement, together with all of the other Loan Documents, the Plan Sponsor Agreement and all certificates and documents delivered hereunder or thereunder, embodies the entire agreement of the Parties and supersedes all prior oral or written agreements and understandings relating to the subject matter hereof.

8.9 Lost or Destroyed Note

Upon receipt by the Borrowers of evidence reasonably satisfactory to the Borrowers of the loss, theft, destruction or mutilation of the Note, and in the case of any such loss, theft or destruction, upon delivery of an indemnity reasonably satisfactory to the Borrowers or, in case of any such mutilation, upon surrender and cancellation of the Note, the Borrowers will issue a new promissory note of like tenor in lieu of the Note.

8.10 Severability

Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction. The Parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal, or unenforceable provisions.

8.11 Joint and Several Liability

Each of the Borrowers shall be jointly and severally liable for each obligation hereunder. The Borrowers are engaged in related businesses and are integrated to such an extent that the financial strength and flexibility of each Borrower has a direct, tangible and immediate impact on the success of the other

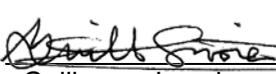
Borrowers. Each Borrower will derive substantial direct and indirect benefit from the extensions of the Facility to the Borrowers hereunder.

*[Remainder of Page Intentionally Left Blank -
Signature Page Follows]*

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year first above written.

LENDER:

WOODBIDGE FOAM CORPORATION

By:  
Name: Guillaume Lavoie Julie Mok
Title: Senior VP & CFO VP & Treasurer

BORROWERS:

HEMATITE HOLDINGS INC.

By: _____
Name: _____
Title: _____

CANADIAN PAVACO INC.

By: _____
Name: _____
Title: _____

HEMATITE MANUFACTURING INC.

By: _____
Name: _____
Title: _____

HEMATITE INDUSTRIAL PRODUCTS INC.

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year first above written.

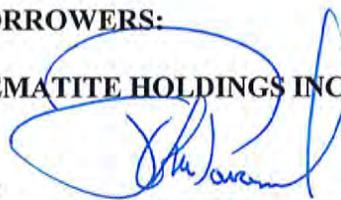
LENDER:

WOODBIDGE FOAM CORPORATION

By: _____
Name:
Title:

BORROWERS:

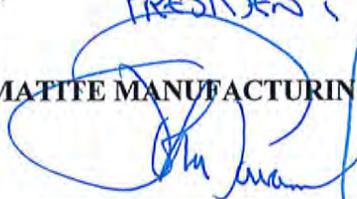
HEMATITE HOLDINGS INC.

By: 
Name: _____
Title: JOHN PAVANEL
PRESIDENT

CANADIAN PAVACO INC.

By: 
Name: _____
Title: JOHN PAVANEL
PRESIDENT

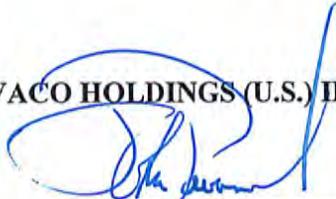
HEMATITE MANUFACTURING INC.

By: 
Name: _____
Title: JOHN PAVANEL
PRESIDENT

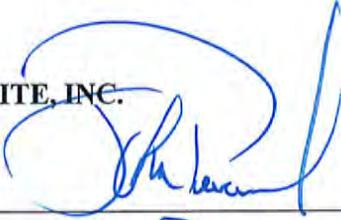
HEMATITE INDUSTRIAL PRODUCTS INC.

By: 
Name: _____
Title: JOHN PAVANEL
PRESIDENT

PAVACO HOLDINGS (U.S.) INC.

By: 
Name: _____
Title: JOHN PAVANEL
PRESIDENT

HEMATITE, INC.

By: 
Name: _____
Title: JOHN PAVANEL
PRESIDENT

**HEMATITE AUTOMOTIVE PRODUCTS,
INC.**

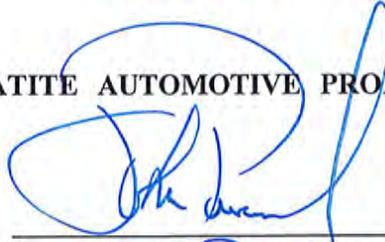
By: 
Name: _____
Title: JOHN PAVANEL
PRESIDENT

EXHIBIT A

FORM OF DRAWDOWN NOTICE

TO: Woodbridge Foam Corporation (the "**Lender**")
4240 Sherwoodtowne Blvd.
Mississauga, Ontario L4Z 2G6

Attention: Corporate Secretary
Email: marie_manseau@woodbridgegroup.com

DATE: _____

Reference is made to the revolving DIP loan agreement effective as of September 17, 2020 (as amended, modified, supplemented or restated, the "**Loan Agreement**") entered into by and between the Lender and Hematite Holdings Inc., Canadian Pavaco Inc., Hematite Manufacturing Inc., Hematite Industrial Products Inc., Hematite Automotive Products, Inc., Pavaco Holdings (U.S.) Inc., and Hematite, Inc. (collectively, the "**Borrowers**"), relating to the establishment of a revolving DIP facility in favour of the Borrowers. Unless otherwise expressly defined herein, capitalized terms set forth in this Drawdown Notice shall have the respective meanings set forth in the Loan Agreement.

1. This Drawdown Notice is delivered to the Lender pursuant to Section 2.2 of the Loan Agreement in connection with a Drawdown under the [**First/Second**] Tranche.
2. The Borrowers hereby request a Drawdown as follows:
 - (a) Purpose of Drawdown: _____
 - (b) Drawdown Date: _____
 - (c) Amount of Drawdown: CAD\$ _____
 - (d) Payment instructions (if any): _____

Yours very truly,

BORROWERS:

HEMATITE HOLDINGS INC.

By: _____
Name:
Title:

CANADIAN PAVACO INC.

By: _____
Name:
Title:

HEMATITE MANUFACTURING INC.

By: _____
Name:
Title:

**HEMATITE INDUSTRIAL PRODUCTS
INC.**

By: _____
Name:
Title:

PAVACO HOLDINGS (U.S.) INC.

By: _____
Name:
Title:

HEMATITE, INC.

By: _____
Name:
Title:

**HEMATITE AUTOMOTIVE PRODUCTS,
INC.**

By: _____
Name:
Title:

EXHIBIT B**FORM OF GRID PROMISSORY NOTE****C\$6,000,000**

September 17, 2020

FOR VALUE RECEIVED, the undersigned, HEMATITE HOLDINGS INC., a corporation incorporated pursuant to the laws of Ontario ("**HH**"), CANADIAN PAVACO INC., a corporation incorporated pursuant to the laws of Ontario ("**CP**"), HEMATITE MANUFACTURING INC., a corporation incorporated pursuant to the laws of Ontario ("**HM**"), HEMATITE INDUSTRIAL PRODUCTS INC. , a corporation incorporated pursuant to the laws of Ontario ("**HP**"), HEMATITE AUTOMOTIVE PRODUCTS, INC., a corporation incorporated pursuant to the laws of Michigan ("**HAP**"), PAVACO HOLDINGS (U.S.) INC. , a corporation incorporated pursuant to the laws of Delaware ("**PH**"), and HEMATITE, INC. , a corporation incorporated pursuant to the laws of Ohio ("**HI**" and together with HH, CP, HM, HP, HAP, and PH, collectively, the "**Borrowers**"), HEREBY PROMISES TO PAY TO WOODBRIDGE FOAM CORPORATION (the "**Lender**") the aggregate unpaid principal amount of SIX MILLION CANADIAN DOLLARS (\$6,000,000) (the "**Principal Amount**") or, if less, the ultimate unpaid principal balance of all advances made to the Borrowers from time to time pursuant to this Grid Promissory Note (this "**Note**") issued by the Borrowers to the Lender, payable at such times, and in such amounts, as are specified in the Revolving DIP Loan Agreement dated as of September 17, 2020 (said Revolving DIP Loan Agreement, as it may be amended or otherwise modified from time to time, being the "**Loan Agreement**"), between the Borrowers and the Lender. Unless otherwise defined herein or the context otherwise requires, all capitalized terms shall have the meanings ascribed thereto in the Loan Agreement.

The Borrowers promise to pay interest on the unpaid Principal Amount of this Note from the date above until such Principal Amount is paid in full, at the Applicable Interest Rate as provided in the Loan Agreement, and payable at such times, as are specified in the Loan Agreement. All computations of interest shall be made by the Lender on the basis of a year of 365 days comprised of actual days in each calendar month. In the case of a leap year one day shall be added to 365 and to the month of February. Both principal and interest are payable in lawful money of Canada to the Lender, at such bank as the Lender may designate from time to time in immediately available funds.

The Borrowers authorize and direct the Lender to endorse upon the grid attached to this Note as Schedule 1, the date and amount of each advance and repayment of principal under this Note, together with the unpaid principal balance outstanding from time to time, and, in the absence of manifest error, each such endorsement shall be *prima facie* evidence of the amounts so advanced and repaid and the balance of principal outstanding under this Note.

This Note is the Note referred to in, and is entitled to the benefits of, the Loan Agreement and the other Loan Documents referred to therein and entered into pursuant thereto. The Loan Agreement, among other things, (i) provides for the Note of the Borrowers in the Maximum Principal Amount and (ii) contains provisions for acceleration of the maturity of the unpaid Principal Amount of this Note upon the happening of certain stated events and also for prepayments on account of the principal hereof prior to the maturity hereof upon the terms and conditions therein specified. This Note is conditioned as provided in the Loan Documents.

Demand, presentment, protest and notice of nonpayment are hereby waived by the Borrowers. This Note, including the interpretation, construction, validity and enforceability thereof, shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein. Each of the Borrowers shall be jointly and severally liable for each obligation hereunder.

BORROWERS:

HEMATITE HOLDINGS INC.

By: _____
Name: _____
Title: _____

CANADIAN PAVACO INC.

By: _____
Name: _____
Title: _____

HEMATITE MANUFACTURING INC.

By: _____
Name: _____
Title: _____

**HEMATITE INDUSTRIAL PRODUCTS
INC.**

By: _____
Name: _____
Title: _____

PAVACO HOLDINGS (U.S.) INC.

By: _____
Name: _____
Title: _____

HEMATITE, INC.

By: _____
Name: _____
Title: _____

**HEMATITE AUTOMOTIVE PRODUCTS,
INC.**

By: _____
Name:
Title:

