

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:

XEBEC HOLDING USA INC., *et al.*,

Debtors in a foreign proceeding.¹

Chapter 15

Case No. 22- 10934 (KBO)

Jointly Administered

**FOREIGN REPRESENTATIVE’S MOTION FOR ENTRY OF
ORDER (I) RECOGNIZING AND ENFORCING FIFTH AMENDED AND
RESTATED CCAA ORDER; AND (II) AUTHORIZING THIRD DIP FINANCING**

FormerXBC Inc. (f/k/a Xebec Adsorption Inc.), in its capacity as the authorized foreign representative (the “**Foreign Representative**”) for the above-captioned debtors (collectively, the “**Debtors**”) in a proceeding (the “**Canadian Proceeding**”) commenced under Canada’s Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), and pending before the Superior Court of Québec, in the Province of Québec, District of Montréal (the “**Canadian Court**”), respectfully submits this motion (this “**Motion**”), pursuant to sections 105, 364, and 1521 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”), for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “**Order**”): (i) recognizing and enforcing the terms, conditions, and provisions of an order issued by the Canadian Court (the “**Fifth Amended and Restated CCAA Order**”), which authorizes the Debtors to obtain a debtor-in-possession loan (the “**Third DIP Loan**”) from Export Development Canada (“**EDC**” or the “**Lender**”) and granting a charge and security

¹ The Debtors in the chapter 15 proceedings and the last four digits of their federal tax identification numbers are: FormerXBC Inc. (f/k/a Xebec Adsorption Inc.) (0228), 11941666 Canada Inc. (f/k/a Xebec RNG Holdings Inc.) (N/A), Applied Compression Systems Ltd. (N/A), 1224933 Ontario Inc. (f/k/a Compressed Air International Inc.) (N/A), Xebec Holding USA Inc. (8495), Enerphase Industrial Solutions Inc. (1979), CDA Systems, LLC (6293), Xebec Adsorption USA, Inc. (0821), The Titus Company (9757), Nortekbelair Corporation (1897), XBC Flow Services – Wisconsin Inc. (7493), California Compression, LLC (4752), and Xebec Systems USA LLC (4156). The location of the Debtors’ corporate headquarters and the Debtors’ foreign representative is: 730 Industriel Boulevard, Blainville, Quebec, J7C 3V4, Canada.

(the “**Third DIP Charge**”) to the Lender; (ii) authorizing the Debtors to enter into the new senior secured superpriority debtor in possession financing facility (the “**Third DIP Facility**”) and granting to the Lender the Third DIP Charge; (iii) granting the Lender certain protections afforded by the Bankruptcy Code, including those protections provided by sections 364(c), 364(d), and 364(e) of the Bankruptcy Code, as made applicable to these chapter 15 cases by section 1521(a)(7) of the Bankruptcy Code; and (iv) granting such other and further relief as the Court deems just and proper.

In support of this Motion, the Foreign Representative refers the Court to: (a) the *Declaration of Dimitrios “Jim” Vounassis in Support of Motion for Recognition of Foreign Main Proceeding* (the “**Vounassis First Day Declaration**”) [Docket No. 3], filed on September 30, 2022 (the “**Petition Date**”); (b) the *Declaration of Dimitrios “Jim” Vounassis in Support of Foreign Representative’s Motion for Entry of Order (I) Recognizing and Enforcing Fifth Amended and Restated CCAA Order; and (II) Authorizing Third DIP Financing* (the “**Vounassis DIP Declaration**,” or the “**Vounassis DIP Decl.**”), filed contemporaneously herewith; (c) the *Declaration of Julien Morissette, as Canadian Counsel to the Debtors, in Support of Foreign Representative’s Motion for Entry of Order (I) Recognizing and Enforcing Fifth Amended and Restated CCAA Order; and (II) Authorizing Third DIP Financing* (the “**Morissette Declaration**,” or the “**Morissette Decl.**”), filed contemporaneously herewith. The Vounassis First Day Declaration, the Vounassis DIP Declaration, and the Morissette Declaration each are incorporated herein by reference.

In further support of the relief requested herein, the Foreign Representative respectfully represents as follows:

JURISDICTION

1. The 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 as of February 29, 2012.

2. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P). Venue for this proceeding is proper before this Court pursuant to 28 U.S.C. § 1410.

3. The Foreign Representative, in its capacity as authorized foreign representative, has properly commenced these chapter 15 cases pursuant to sections 1504, 1509, and 1515 of the Bankruptcy Code and Bankruptcy Rules 2002 and 9007.

4. The statutory predicates for the relief requested herein are sections 105, 364, and 1521 of the Bankruptcy Code and Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

BACKGROUND

5. The Debtors and certain non-U.S. based subsidiaries and affiliates of the Debtors (the “**Xebec Group**”) primarily supply a wide range of renewable and low-emission gas products and services globally through several channels, including direct sales, channel partners, project developers, and e-commerce. The Xebec Group portfolio includes proprietary technologies for the on-site and distributed production of renewable and low-emission natural gas, oxygen and nitrogen, and proprietary technologies that transform raw gases into clean sources of renewable energy. The Xebec Group’s operations include manufacturing, research and development, service, and sales. The Xebec Group operates in North America, Europe, the Middle East, and Asia.²

² Detailed information about the Debtors’ business and operations, the events leading to the filing of these chapter 15 cases, and the facts and circumstances surrounding the Canadian Proceeding, are set forth in the Vounassis First Day Declaration.

I. Commencement of the Canadian Proceeding

6. On September 29, 2022, pursuant to an application made by the Debtors in the Canadian Proceeding, the Canadian Court issued that certain First Day Initial Order (the “**Initial CCAA Order**”). Pursuant to the Initial CCAA Order, the Canadian Court, among other things: (a) ordered a broad stay of proceedings in respect of the Debtors and their directors and officers (the “**Canadian Stay**”); (b) appointed Deloitte Restructuring Inc. as monitor (the “**Monitor**”) in the Canadian Proceeding; (c) declared that Québec is the “centre of main interest” of the Debtors, and (d) authorized the Debtors to apply to any other court, tribunal, regulatory, administrative, or other body, wherever located, for orders to recognize and assist in carrying out the terms of the Initial CCAA Order and any subsequent orders rendered by the Canadian Court in the context of the Canadian Proceeding, including orders under chapter 15 of the Bankruptcy Code. (Morissette Decl. ¶ 6; *see also* Initial CCAA Order at ¶¶ 16-20, 40-48, 65, 67.)

7. On October 20, 2022, the Canadian Court issued an Amended and Restated Initial Order (the “**Amended and Restated CCAA Order**”), pursuant to which, the Canadian Court, among other things: (a) authorized the Debtors to obtain debtor-in-possession financing in the aggregate amount not to exceed CAD\$3,000,000.00 (“**Original DIP Loan**”); and (b) granted a charge and security jointly to National Bank of Canada (“**NBC**”) and EDC (NBC and EDC in their capacity as lenders under the Original DIP Loan, the “**Original DIP Lenders**”), in the amount of CAD\$3,600,000.00 (“**Original DIP Charge**”). (Morissette Decl. ¶ 9.)

8. On February 13, 2023, the Canadian Court issued a Third Amended and Restated Initial Order (the “**Third Amended and Restated CCAA Order**”), pursuant to which, the Canadian Court, among other things: (a) authorized the Debtors to obtain debtor-in-possession financing in the aggregate amount not to exceed CAD\$2,500,000.00 (“**Second DIP Loan**”); and (b) granted a charge and security to EDC (EDC in its capacity as lender under the Second DIP

Loan, the “**Second DIP Lender**”), in the amount of CAD\$3,000,000.00 (“**Second DIP Charge**”). (Morissette Decl. ¶ 10.)

9. On March 16, 2023, the Canadian Court issued a Fourth Amended and Restated Initial Order, pursuant to which, the Canadian Court, among other things, extended the Canadian Stay to an including May 5, 2023. (Morissette Decl. ¶ 11.)

10. On March 16, 2023, the Canadian Court issued an Order Authorizing the Monitor to Pay Certain Amounts Owed to Beneficiaries of CCAA Charges (the “**Monitor Payments Order**”), which, among other things, authorized the Monitor to pay all amounts due and owing under the Original DIP Charge and the Second DIP Charge from the net proceeds of the previously closed sale transactions. (Morissette Decl. ¶ 12.)

11. On March 22, 2023, the Debtors filed that certain Application for the Issuance of a Fifth Amended and Restated Initial Order (Interim Financing) (the “**Canadian Application**”) in the Canadian Proceeding, pursuant to which the Debtors seek, among other things: (a) authority to obtain the Third DIP Loan in the aggregate amount not to exceed CAD\$3,450,000.00; and (b) approval of the grant of the Third DIP Charge to the Lender in the maximum amount of CAD\$4,100,000.00, junior only to the Administration Charge³ and the D&O Charge.⁴ A copy of the Canadian Application is attached hereto as **Exhibit B** and incorporated herein by reference.⁵ The Canadian Court has scheduled a hearing for March 27,

³ The Administration Charge was established to provide security for the payment of professional fees and disbursements incurred by the Monitor, the Monitor’s legal counsel, and the Debtors’ legal counsel. The Administration Charge currently equals CAD\$1,500,000.00. When the Third DIP Loan is fully funded, the Administration Charge will be reduced to CAD\$1,000,000.00. (Morissette Decl. ¶ 14.)

⁴ The D&O Charge was established to provide security for the Debtors’ obligation to indemnify their directors and officers for certain obligations and liabilities that such directors and officers may incur. The D&O Charge currently equals CAD\$3,700,000.00. (Morissette Decl. ¶ 15.)

⁵ The voluminous exhibits to the Canadian Application are available upon request to counsel for the Foreign Representative.

2023, to consider the Canadian Application. (Morissette Decl. ¶ 13.)

12. The Foreign Representative expects that all amounts due under the Original DIP Facility and the Second DIP Facility will be repaid prior to the hearing on the Canadian Application. (Vounassis DIP Decl. ¶ 9.)

II. The Chapter 15 Cases

13. On the Petition Date, the Foreign Representative commenced these chapter 15 cases by filing, among other things, verified chapter 15 petitions seeking recognition by the Court of the Canadian Proceeding as a foreign main proceeding under chapter 15 of the Bankruptcy Code. On the Petition Date, the Court entered that certain *Order (A) Directing Joint Administration of Cases Under Chapter 15 of the Bankruptcy Code and (B) Authorizing the Filing of a Consolidated List Under Bankruptcy Rule 1007* [Docket No. 8].

14. On October 27, 2022, the Court entered that certain *Order Granting Recognition of Foreign Main Proceeding and Certain Related Relief* [Docket No. 36] (the “**Recognition Order**”). Pursuant to the Recognition Order, the Court recognized the Canadian Proceeding as a “foreign main proceeding,” recognized the Foreign Representative as the “foreign representative” in respect of the Canadian Proceeding, and recognized and granted comity to, and gave full force and effect in the United States to the Canadian Proceeding and the orders entered in the Canadian Proceeding, including enforcing the automatic stay in the United States.

15. On November 22, 2022, the Court entered that certain *Order Granting Final Relief Recognizing and Enforcing DIP Financing Authorized under Amended and Restated CCAA Order* [Docket No. 48] (the “**First DIP Recognition Order**”). Pursuant to the First DIP Recognition Order, the Court, among other things, recognized and enforced the terms, conditions, and provisions of the Amended and Restated CCAA Order, including the authority of the Debtors to obtain the Original DIP Loan and grant the Original DIP Charge, and granted

certain protections to the Original DIP Lenders under section 364 the Bankruptcy Code.

16. On February 16, 2023, the Court entered that certain *Order (I) Recognizing and Enforcing Third Amended and Restated CCAA Order; and (II) Authorizing Junior DIP Financing* [Docket No. 103] (the “**Second DIP Recognition Order**”). Pursuant to the Second DIP Recognition Order, the Court, among other things, recognized and enforced the terms, conditions, and provisions of the Third Amended and Restated CCAA Order, including the authority of the Debtors to obtain the Second DIP Loan and grant the Second DIP Charge, and granted certain protections to the Second DIP Lender under section 364 the Bankruptcy Code.

17. As referenced above, the Canadian Court has scheduled a hearing for March 27, 2023, to consider the Canadian Application and approval of the Third DIP Loan. To the extent the Canadian Court enters the Fifth Amended and Restated CCAA Order and authorizes the Debtors to enter into the Third DIP Facility, the Foreign Representative will submit it to the Court in advance of the hearing on this Motion.

III. The Sale Process

18. On September 29, 2022, the Canadian Court entered the Bidding Procedures Order (the “**CCAA Bidding Procedures Order**”), pursuant to which the Canadian Court, among other things: (a) approved the Debtors’ proposed Sale and Investment Solicitation Process (the “**SISP**”); and (b) approved the engagement of National Bank Financial Inc. (the “**Financial Advisor**”) to serve as the Debtors’ financial advisor in the context of the sale process. (Morissette Sale Decl. ¶ 7.)

19. The Debtors, with the assistance of the Monitor and the Financial Advisor, and under the oversight of the Canadian Court, conducted a sale process in accordance with the SISP. In addition to seeking bids to purchase substantially all of the Debtors’ assets as a going concern, the SISP also authorized the Debtors to sell certain of their assets as part of separate one-off sale

transactions. (Morissette Sale Decl. ¶ 8.)

20. On February 16, 2023, the Court entered an order [Docket No. 102] (the “**Sullair Sale Order**”), which among other things: (a) recognized and enforced a February 13, 2023 CCAA vesting order that approved the sale of certain of the Debtors’ assets located in California to Sullair, LLC (“**Sullair**”); (b) approved the sale of such assets to Sullair free and clear of all liens, claims, and encumbrances pursuant to section 363 of the Bankruptcy Code; (c) approved the assumption and assignment of certain executory contracts and unexpired leases to Sullair pursuant to section 365 of the Bankruptcy Code.

21. On March 15, 2023, the Foreign Representative filed three separate motions [Docket Nos. 108, 112, and 116] (the “**Sale Motions**”), pursuant to which the Foreign Representative seeks, among other things: (a) recognition and enforcement of three CCAA vesting orders approving the sale of certain of the Debtors’ assets free and clear of liens, claims, and encumbrances (the “**March 2023 Sales**”) and; (b) approval of the March 2023 Sales.

22. As discussed in the Sale Motions, the Debtors are continuing to engage in the SISP and are working to complete the transactions described in the Sale Motions. (Vounassis DIP Decl. ¶ 7.) The Third DIP Facility will fund certain obligations of the Debtors during the remaining pendency of the Canadian Proceeding and these chapter 15 cases and allow the Debtors to continue the SISP. (*Id.*)

IV. The Third DIP Facility

23. The Debtors have determined that they require additional funding because they have fully drawn the Original DIP Loan and the Second DIP Loan and need additional liquidity to continue operations and the SISP. Accordingly, on March 22, 2023, after good faith and arm’s length negotiations, the Debtors and the Lender entered into an interim financing term sheet (the “**Third DIP Term Sheet**”), that sets forth the agreed upon terms for the Third DIP

Facility. (Vounassis DIP Decl. ¶ 8.)

24. In accordance with Canadian law and practice, the Debtors filed the Third DIP Loan Term Sheet under seal with the Canadian Court. (Morissette Decl. ¶ 16.) However, as discussed in the Canadian Application, the Lender has committed to fund the Third DIP Loan in the amount of CAD\$3,450,000.00, payable in two tranches of CAD\$1,500,000.00 and CAD\$1,950,000.00. The Third DIP Loan will be secured by the Third DIP Charge, which will be junior only to the Administration Charge and the D&O Charge (after payment of amounts secured by the Original DIP Charge, the Second DIP Charge, and the Transaction Charge (as defined in the Third Amended and Restated CCAA Order), each payment as authorized by the Monitor Payments Order). The proceeds of the Third DIP Facility will be used to fund the Debtors' restructuring efforts, including to continue the SISF and complete the transactions resulting therefrom. One of the conditions precedent to the Lender's funding the second tranche of the Third DIP Loan is entry of the Order by this Court. (Morissette DIP Decl. ¶ 15.)

RELIEF REQUESTED

25. By this Motion, the Foreign Representative seeks entry of an order: (a) recognizing and enforcing the terms of the Fifth Amended and Restated CCAA Order as it relates to the Third DIP Facility and the Third DIP Charge; (b) authorizing the Debtors to enter into the Third DIP Facility and granting the Lender the Third DIP Charge; (c) granting the Lender certain protections afforded by the Bankruptcy Code, including under sections 364(c), 364(d), and 364(e) of the Bankruptcy Code, pursuant to sections 1521(a)(7) of the Bankruptcy Code; and (d) granting such other and further relief as the Court deems just and proper.

BASIS FOR RELIEF

26. As noted above, the Court entered the Recognition Order, thereby recognizing the Canadian Proceeding as a "foreign main proceeding" pursuant to chapter 15 of the Bankruptcy

Code. Accordingly, pursuant to section 1521(a)(7) of the Bankruptcy Code, “where necessary to effectuate the purpose of [chapter 15] and to protect the assets of the debtor or the interest of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including . . . any additional relief that may be available to a trustee[.]” 11 U.S.C. § 1521(a)(7); *see also* 11 U.S.C. § 1522(a) (court may grant relief under section 1521 only if the interests of “the creditors and the other interested entities, including the debtor, are sufficiently protected”).

27. Therefore, pursuant to section 1521(a)(7) of the Bankruptcy Code, the Foreign Representative may seek relief under section 364 of the Bankruptcy Code. Here, specifically with respect to section 364 of the Bankruptcy Code, the Debtors are required, pursuant to the terms of the Third DIP Facility, to seek approval from this Court of the Third DIP Facility, the Third DIP Charge, and the good faith protections of sections 364(c), 364(d), and 364(e) of the Bankruptcy Code.

28. The Debtors have a similar requirement to obtain Canadian Court approval of the Third DIP Loan. Accordingly, on proper notice by the Debtors under the CCAA, the Canadian Court has set a hearing on March 27, 2023, to consider the Canadian Application, including whether to authorize the Debtors to enter into the Third DIP Facility and grant the Third DIP Charge. (Morissette Decl. ¶ 16.) Therefore, assuming the Canadian Court approves the Third DIP Loan, granting the relief requested herein will promote cooperation between jurisdictions in cross-border insolvencies, an express purpose of chapter 15 of the Bankruptcy Code. *See* 11 U.S.C. § 1501(a).

29. In addition, the Debtors will suffer immediate and irreparable harm if they cannot access the Third DIP Loan. Because the Debtors have no further availability under the Original DIP Facility and the Second DIP Facility, they have insufficient means by which to fund

operations or the SISP without the Third DIP Loan. However, if approved by the Canadian Court and this Court, the Third DIP Facility will allow the Debtors to fund their operations and the SISP, thereby maximizing value for their constituents, which fulfills the requirements of section 1521(a)(7) of the Bankruptcy Code. (*See* Vounassis DIP Decl. ¶ 8.)

30. Therefore, granting the relief requested herein is consistent with the purposes of chapter 15 of the Bankruptcy Code and public policy of the United States. Moreover, as noted above, the Debtors' restructuring efforts cannot succeed without the support of the Lender, who will not fund the all draws under Third DIP Loan absent entry of the Order.

31. Courts in this District have granted similar relief in other chapter 15 cases. *See, e.g., Yatsen Grp. of Cos. Inc.*, Case No. 21-10073 (Bankr. D. Del. Jan. 27, 2021) (order granting provisional DIP relief in chapter 15 case); *In re Hematite Holdings Inc.*, No. 20-12387 (Bankr. D. Del. Oct. 15, 2020) (same); *In re The Aldo Grp. Inc.*, No. 20-11060 (Bankr. D. Del. June 3, 2020) (same); *In re Cinram Int'l Inc.*, No. 12-11882 (Bankr. D. Del. July 25, 2012); *In re Arctic Glacier Int'l Inc.*, Case No. 12-10605 (Bankr. D. Del. Feb. 23, 2012) (same).

NOTICE

32. Notice of this Motion will be provided to the following parties or their counsel: (a) the Office of the United States Trustee for the District of Delaware; (b) all parties to litigation in which any Debtor is a party and that is pending in the United States as of the date that the Chapter 15 Petitions were filed; (c) NBC and EDC; (d) the Monitor; (e) the 20 largest unsecured creditors of the Debtors in these cases; (f) the Debtors' counsel in the Canadian Proceeding; (g) all other parties that have requested notice in these cases. In light of the relief requested herein, the Foreign Representative respectfully submits that no other or further notice of this Motion is necessary under the circumstances.

NO PRIOR REQUEST

33. No previous request for the relief requested herein has been made to this or any other court.

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CONCLUSION

WHEREFORE, the Foreign Representative respectfully requests that the Court enter the Order, substantially in the form attached hereto as Exhibit A, and grant such other and further relief as may be just and proper.

Dated: March 23, 2023
Wilmington, Delaware

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Exhibit A

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:

FORMERXBC HOLDING USA INC.
(f/k/a XEBEC HOLDING USA INC.), *et al.*,

Debtors in a foreign proceeding.¹

Chapter 15

Case No. 22-10934 (KBO)

Jointly Administered

**ORDER (I) RECOGNIZING AND ENFORCING FIFTH AMENDED AND
RESTATED CCAA ORDER; AND (II) AUTHORIZING THIRD DIP FINANCING**

Upon the motion (the “**Motion**”)² of FormerXBC Inc. (f/k/a Xebec Adsorption Inc.), in its capacity as authorized foreign representative (the “**Foreign Representative**”) for the above-captioned debtors (collectively, the “**Debtors**”), in a proceeding (the “**Canadian Proceedings**”) commenced under Canada’s Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), and pending before the Superior Court of Québec, in the Province of Québec, District of Montréal (the “**Canadian Court**”), seeking entry of an order granting additional relief (this “**Order**”) pursuant to sections 105(a), 364, and 1521 of title 11 of the United States Code, as amended from time to time (the “**Bankruptcy Code**”): (a) recognizing and enforcing the terms, conditions, and provisions of that certain *Fifth Amended and Restated Initial Order*, issued by the Canadian Court (the “**Fifth Amended and Restated CCAA Order**”), a copy of which is

¹ The Debtors in the chapter 15 proceedings and the last four digits of their federal tax identification numbers are: FormerXBC Inc. (f/k/a Xebec Adsorption Inc.) (0228), 11941666 Canada Inc. (f/k/a Xebec RNG Holdings Inc.) (N/A), Applied Compression Systems Ltd. (N/A), 1224933 Ontario Inc. (f/k/a Compressed Air International Inc.) (N/A), FormerXBC Holding USA Inc. (f/k/a Xebec Holding USA Inc.) (8495), Enerphase Industrial Solutions Inc. (1979), CDA Systems, LLC (6293), FormerXBC Adsorption USA Inc. (f/k/a Xebec Adsorption USA Inc.) (0821), The Titus Company (9757), Nortekbelair Corporation (1897), FormerXBC Flow Services – Wisconsin Inc. (f/k/a XBC Flow Services – Wisconsin Inc.) (7493), California Compression, LLC (4752), and FormerXBC Systems USA, LLC (f/k/a Xebec Systems USA LLC) (4156). The location of the Debtors’ corporate headquarters and the Debtors’ foreign representative is: 730 Industriel Boulevard, Blainville, Quebec, J7C 3V4, Canada.

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

attached hereto as **Exhibit A**, which authorizes the Debtors to obtain a debtor-in-possession loan (the “**Third DIP Loan**”) from Export Development Canada (“**EDC**” or the “**Lender**”) and granting a charge and security (the “**Third DIP Charge**”) to the Lender, (b) authorizing the Debtors to enter into the new senior secured superpriority debtor in possession financing facility (the “**Third DIP Facility**”) and granting to the Lender the Third DIP Charge; (iii) granting the Lender certain protections afforded by the Bankruptcy Code, including those protections provided by sections 364(c), 364(d), and 364(e) of the Bankruptcy Code, as made applicable to these chapter 15 cases by section 1521(a)(7) of the Bankruptcy Code; and (iv) granting such other and further relief as the Court deems just and proper; and it appearing that this Court has jurisdiction to consider the Motion pursuant to sections 157 and 1334 of title 28 of the United States Code; venue being proper before the Court pursuant to 28 U.S.C. § 1410; and this Court having entered, on March __, 2023, the *Order Approving Motion to Shorten Notice With Respect to Foreign Representative’s Motion for Entry of Order (I) Recognizing and Enforcing Fifth Amended and Restated CCAA Order; and (II) Authorizing Third DIP Financing* [Docket No. __], setting a hearing on the Motion for April 5, 2023, at 1:00 p.m. (prevailing Eastern Time) (the “**Hearing**”), and setting the deadline for filing responses, answers, or objections to the Motion for _____, 2023, at __:__ .m. (prevailing Eastern Time) (the “**Objection Deadline**”); and the Court having determined that appropriate and timely notice of the filing of the Motion, the Objection Deadline, and the Hearing having been given; and this Court having reviewed the Motion and having considered the statements of counsel with respect to the Motion at the Hearing; and it appearing that the relief requested in the Motion is necessary and beneficial to the Debtors; and no other or further notice being necessary or required; and this Court having determined that the legal and factual bases set forth in the Motion, and all other pleadings and papers in these cases establish just cause to grant

the relief ordered herein, and no objections or other responses having been filed that have not been overruled, withdrawn, or otherwise resolved, and after due deliberation therefor;

THIS COURT HEREBY FINDS AND DETERMINES THAT:

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

B. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P). Venue for this proceeding is proper before this Court pursuant to 28 U.S.C. § 1410.

C. The Foreign Representative is the duly appointed “foreign representative” of the Debtors within the meaning of section 101(24) of the Bankruptcy Code.

D. This Court entered an order on October 27, 2022 recognizing, among other things, that the Canadian Proceedings constitute “foreign main proceedings” as defined in section 1502(4) of the Bankruptcy Code.

E. On October 20, 2022, the Canadian Court entered the *Amended and Restated Initial Order of the Canadian Court* (the “**Amended and Restated CCAA Order**”), pursuant to which the Canadian Court (i) authorized the Debtors to borrow from National Bank of Canada (“**NBC**”) and EDC (together with NBC, the “**Original DIP Lenders**”) an aggregate amount not to exceed

CAD\$3,000,000.00 (the “**Original DIP Loans**”), and (iii) granted the Original DIP Charge to the Original DIP Lenders.

F. On November 2, 2022, this Court entered an order recognizing and enforcing the Amended and Restated CCAA Order and approving the Original DIP Loans and Original DIP Charge on an interim basis [Docket No. 42], and on November 22, 2022, this Court granted such approval on a final basis [Docket No. 48].

G. On February 13, 2023, the Canadian Court entered the *Third Amended and Restated Initial Order* (the “**Third Amended and Restated CCAA Order**”), pursuant to which, the Canadian Court, among other things: (a) authorized the Debtors to obtain debtor-in-possession financing from EDC in the aggregate amount not to exceed CAD\$2,500,000.00 (“**Second DIP Loan**”); and (b) granted a charge and security to EDC in the amount of CAD\$3,000,000.00 (“**Second DIP Charge**”), junior only to the Original DIP Charge.

H. On February 16, 2023, this Court entered an order recognizing and enforcing the Third Amended and Restated CCAA Order and approving the Second DIP Loan and Second DIP Charge [Docket No. 103].

I. On March 22, 2023, the Debtors filed that certain *Application for the Issuance of a Fifth Amended and Restated Initial Order (Interim Financing)* in the Canadian Proceeding, pursuant to which the Debtors sought, among other things: (a) authority to obtain the Third DIP Loan in the aggregate amount not to exceed CAD\$3,450,000.00; and (b) approval of the grant of the Third DIP Charge to the Lender in the maximum amount of CAD\$4,100,000.00 that is junior only to the Administration Charge and the D&O Charge (after payment of amounts secured by the Original DIP Charge, the Second DIP Charge, and the Transaction Charge, each payment as authorized by the Monitor Payments Order).

J. On March __, 2023, the Canadian Court entered the *Fifth Amended and Restated CCAA Order* approving, among other things, the Debtors' entry into the Third DIP Facility and the granting of the Third DIP Charge.

K. The Foreign Representative has demonstrated that the incurrence of indebtedness under the Third DIP Facility, as authorized by the Fifth Amended and Restated CCAA Order, is necessary to prevent irreparable harm to the Debtors, because without such financing, they will be unable to continue operations or the SISP, which will significantly impair the value of the Debtors' assets.

L. The Foreign Representative has demonstrated that the terms of the Third DIP Facility, as approved in the Fifth Amended and Restated CCAA Order, are fair and reasonable and were entered into in good faith by the Debtors and the Lender and that the Lender would not have extended financing without the protections provided by sections 364 of the Bankruptcy Code, made applicable by section 1521(a)(7) of the Bankruptcy Code. The Foreign Representative has demonstrated that the terms of the Third DIP Facility are reasonable under the circumstances.

M. The Foreign Representative is further entitled to the discretionary relief expressly set forth in section 1521(a) of the Bankruptcy Code.

N. The relief granted herein is necessary and appropriate, in the interests of the public and international comity, consistent with the public policy of the United States, and warranted pursuant to section 1521 of the Bankruptcy Code.

BASED ON THE FOREGOING FINDINGS OF FACT AND AFTER DUE DELIBERATION AND SUFFICIENT CAUSE APPEARING THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is Granted as set forth herein.

2. The terms of the Third DIP Facility and the Third DIP Loan as approved in the Fifth Amended and Restated CCAA Order shall be given full force and effect as to the Debtors and their property in the United States.

3. Pursuant to section 1521 of the Bankruptcy Code, the Fifth Amended and Restated CCAA Order, and the transactions consummated or to be consummated thereunder, including without limitation, entry into and performance under the Third DIP Facility and Third DIP Loans, shall be granted and given full force and effect in the United States to the same extent that they are given effect in Canada, and each is binding on all creditors of the Debtors and any of their successors or assigns.

4. Pursuant to sections 1521 and 364 of the Bankruptcy Code, to the extent authorized under the Fifth Amended and Restated CCAA Order, the Court grants the Third DIP Charge on all of the Debtors' property located in the United States on the same priority set forth in the Fifth Amended and Restated CCAA Order.

5. Upon entry of this Order, the Foreign Representative and the Debtors, as applicable, shall comply with the terms, conditions, and provisions of the Fifth Amended and Restated CCAA Order including, without limitation, the provisions relating to the Third DIP Facility, Third DIP Loan and the Third DIP Charge.

6. Without further order of this Court, to the extent authorized under the Fifth Amended and Restated CCAA Order, and to promote cooperation between jurisdictions in cross-border insolvencies, the Debtors are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees, and other documents and filings, and to pay all fees and expenses, and to perform all other obligations, under the Third DIP Facility.

7. The Third DIP Facility and related financing and security documents have been negotiated in good faith between the Debtors and the Lender. Any financial accommodations made to the Debtors by the Lender pursuant to the Fifth Amended and Restated CCAA Order and the Third DIP Facility shall be deemed to have been made by the Lender in good faith, as that term is used in section 364(e) of the Bankruptcy Code. Accordingly, pursuant to sections 364(e), 1521(a)(7), and 105(a) of the Bankruptcy Code, section 364(e) of the Bankruptcy Code hereby applies for the benefit of the Lender, and the validity of the indebtedness, and the priority of the liens in respect of the Third DIP Charge authorized by the Fifth Amended and Restated CCAA Order made enforceable in the United States by this Order, shall not be affected by any reversal or modification of this Order on appeal or the entry of an order denying recognition of the CCAA Proceeding pursuant to section 1517 of the Bankruptcy Code.

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

9. Notwithstanding any provision in the Bankruptcy Rules to the contrary: (a) this Order shall be effective immediately and enforceable upon entry; (b) neither the Foreign Representative nor the Lender are subject to any stay in the implementation, enforcement, or realization of the relief granted in this Order; and (c) the Foreign Representative is authorized and

empowered, and may in its discretion and without further delay, take any action and perform any act necessary to implement and effectuate the terms of this Order.

10. Notwithstanding any stay, injunction or similar relief granted in these chapter 15 cases, the Lender is authorized to exercise all remedies and take any and all enforcement steps permitted under the Fifth Amended and Restated CCAA Order.

11. The Foreign Representative is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.

12. This Court may communicate directly with, or request information or assistance directly from, the Canadian Court or the Foreign Representative, subject to the rights of a party in interest to notice and participation.

13. This Court shall retain jurisdiction with respect to the enforcement, amendment or modification of this Order, any requests for additional relief or any adversary proceeding or contested matter brought in and through these chapter 15 cases, 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 this Court.

EXHIBIT A

Fifth Amended and Restated CCAA Order

Exhibit B

**CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL**

SUPERIOR COURT
(Commercial Division)

(Sitting as a court designated pursuant to the
Companies' Creditors Arrangement Act, RSC 1985,
c. C-36)

No.: 500-11-061483-224

**IN THE MATTER OF THE COMPROMISE OR
ARRANGEMENT OF:**

FORMERXBC INC. (formerly **XEBEC ADSORPTION
INC.**)

-and-

11941666 CANADA INC. (formerly **XEBEC RNG
HOLDINGS INC.**)

-and-

APPLIED COMPRESSION SYSTEMS LTD.

-and-

1224933 ONTARIO INC. (formerly **COMPRESSED
AIR INTERNATIONAL INC.**)

-and-

FORMERXBC HOLDING USA INC. (formerly
XEBEC HOLDING USA INC.)

-and-

ENERPHASE INDUSTRIAL SOLUTIONS, INC.

-and-

CDA SYSTEMS, LLC

-and-

FORMERXBC ADSORPTION USA INC. (formerly
XEBEC ADSORPTION USA INC.)

-and-

THE TITUS COMPANY

-and-

NORTEKBELAIR CORPORATION

-and-

**FORMERXBC FLOW SERVICES – WISCONSIN
INC.** (formerly **XBC FLOW SERVICES –
WISCONSIN INC.**)

- 2 -

-and-

CALIFORNIA COMPRESSION, LLC

-and-

FORMERXBC SYSTEMS USA, LLC (formerly
XEBEC SYSTEMS USA, LLC)

Debtors / Petitioners

-and-

DELOITTE RESTRUCTURING INC.

Monitor

**APPLICATION FOR THE ISSUANCE OF A FIFTH AMENDED AND
RESTATED INITIAL ORDER (INTERIM FINANCING)**
**(Sections 11 and 11.2 of the *Companies' Creditors Arrangement
Act*, RSC 1985, c C-36)**

**TO THE HONOURABLE JUSTICE CHRISTIAN IMMER, J.S.C., SITTING IN
COMMERCIAL DIVISION, IN THE JUDICIAL DISTRICT OF MONTRÉAL, THE
DEBTORS / PETITIONERS RESPECTFULLY SUBMIT AS FOLLOWS:**

I. INTRODUCTION

1. The Debtors / Petitioners FormerXBC Inc. (formerly Xebec Adsorption Inc.), 11941666 Canada Inc. (formerly Xebec RNG Holdings Inc.), Applied Compression Systems Ltd., 1224933 Ontario Inc. (formerly Compressed Air International Inc.), FormerXBC Holding USA Inc. (formerly Xebec Holding USA Inc.), Enerphase Industrial Solutions, Inc., California Compression, LLC, CDA Systems, LLC, FormerXBC Adsorption Inc. (formerly Xebec Adsorption USA Inc.), The Titus Company, Nortekbelair Corporation, FormerXBC Systems USA, LLC (formerly Xebec Systems USA, LLC), FormerXBC Flow Services – XBC Wisconsin Inc. (formerly XBC Flow Services – Wisconsin Inc.) (collectively, the “**Petitioners**”) form part of a global provider of sustainable gas solutions used in energy, mobility and industry applications, headquartered in Montréal, Québec.
2. By the present Application, the Petitioners are seeking the issuance of an order (the “**Fifth Amended and Restated Initial Order**”), substantially in the form of the draft order communicated herewith as **Exhibit P-1** (the “**Draft Fifth ARIO**”):
 - (a) approving the Third DIP Facility (as defined below) to be provided to the Petitioners pursuant to a Third DIP Term Sheet (as defined below) dated as of March 22, 2023, negotiated between the Petitioners and Export Development Canada (“**EDC**”) pursuant to which EDC agreed to provide interim financing to the Petitioners, and granting a Third DIP Charge (as

defined below) in an amount sufficient to cover the potential exposure of EDC under the Third DIP Facility; and;

- (b) declaring that upon the disbursement of the initial advance of \$1,500,000 by EDC as contemplated in the Third DIP Term Sheet and the issuance by the Monitor of a certificate confirming same, the Administration Charge shall be reduced by an amount equal to \$250,000 to an amount equal to \$1,250,000 and upon the disbursement of the second advance of \$1,950,000 by EDC and the issuance by the Monitor of a certificate confirming same, further reduced by an amount equal to \$250,000 to an amount equal to \$1,000,000.

A comparison of the Fifth Amended and Restated Initial Order and the Fourth ARIO (as defined below) is communicated herewith as **Exhibit P-1A**.

II. PROCEDURAL BACKGROUND

- 3. On September 29, 2022, at the Petitioners' request, the Court issued a First Day Initial Order (the "**FDIO**") pursuant to the CCAA and a Bidding Procedures Order (the "**Bidding Procedures Order**"), as appears from the Court record.
- 4. The FDIO, *inter alia*:
 - (a) appointed Deloitte Restructuring Inc. as monitor of the Petitioners' CCAA proceedings (the "**Monitor**");
 - (b) ordered a stay of proceedings in respect of the Petitioners and their directors and officers until October 7, 2022, as extended thereafter pursuant to the ARIO (as defined below), (the "**Stay**"); and
 - (c) declared that Québec is the "center of main interest" of the Petitioners and, accordingly, authorized the Petitioners to apply, as they may consider necessary or desirable, to any other court, tribunal, regulatory, administrative or other body, wherever located, for orders to recognize and/or assist in carrying out the terms of the Initial Order and any subsequent Orders rendered by this Court in the context of these proceedings, including, without limitation, orders under Chapter 15 of the United States Bankruptcy Code 11 U.S.C. §§ 101-1532.
- 5. The Bidding Procedures Order, *inter alia*, approved the proposed Sale and Investment Solicitation Process (the "**SISP**") and its implementation in accordance with the Procedures for the Sale and Investment Solicitation Process annexed thereto as Schedule "A" (the "**Bidding Procedures**"), as appears from the Court record.
- 6. The Bidding Procedures Order also approved the engagement of National Bank Financial Inc. ("**NBF**") to assist in the implementation of the SISP.

7. Subsequent proceedings and orders of this Court germane to this Application are described below.
8. On October 20, 2022, at the Petitioners' request, the Court issued an Amended and Restated Initial Order (the "**ARIO**") pursuant to the CCAA, as appears from the Court record.
9. The ARIO, *inter alia*:
 - (a) extended the Stay until November 28, 2022; and
 - (b) approved the debtor-in-possession evolving multiple draw credit facility (the "**First DIP Facility**") provided by the National Bank of Canada ("**NBC**") and Export Development Canada ("**EDC**", and collectively with NBC, the "**Interim Lenders**") in accordance with the Interim Financing Term Sheet filed under seal as Exhibit P-2A in support of the Application for the Issuance of an Amended and Restated Initial Order and granted a Court-ordered charge (the "**First DIP Charge**") in an amount sufficient to cover the potential exposure of the Interim Lenders under the First DIP Facility.
10. On February 3, 2023, at the Petitioners' request, the Court issued a Second Amended and Restated Initial Order (the "**Second ARIO**"), pursuant to the CCAA, as appears from the Court record.
11. The Second ARIO, *inter alia*:
 - (a) extended the Stay until February 13, 2023; and
 - (b) increased the Administration Charge to a maximum amount of \$3,000,000.
12. On February 13, 2023, at the Petitioners' request, the Court issued a Third Amended and Restated Initial Order (the "**Third ARIO**"), pursuant to the CCAA, as appears from the Court record.
13. The Third ARIO, *inter alia*:
 - (a) extended the Stay until March 17, 2023;
 - (b) approved the Second DIP Facility (collectively with the First DIP Facility, the "**DIP Facilities**") provided by EDC and approved the execution by the Petitioners of the Second DIP Term Sheet (as defined in the Third ARIO) and granted a Court-ordered charge (the "**Second DIP Charge**"); and
 - (c) declared that at the earliest between the disbursement of the initial advance of \$1,250,000 by EDC or payments in the aggregate amount of \$1,100,000 by the Monitor of outstanding invoices to the beneficiaries of the Administration Charge (as defined in the Third ARIO) out of the net proceeds from the Ivys Transaction, the Sullair Transaction and/or the

FSTQ Transaction, the Administration Charge shall be reduced by an amount equal to \$750,000 to an amount equal to \$2,250,000 and upon the disbursement of the second advance of \$1,250,000 by EDC, further reduced by an amount equal to \$750,000 to an amount equal to \$1,500,000.

14. On February 21, 2023, in accordance with the Third ARIO, the Monitor issued a certificate confirming that the initial advance contemplated by the Second DIP Facility had been received and that the amount of the Administration Charge had been accordingly reduced to \$2,250,000.
15. On March 16, 2023, at the Petitioners' request, the Court issued a Fourth Amended and Restated Initial Order (the "**Fourth ARIO**"), pursuant to the CCAA, as appears from the Court record.
16. The Fourth ARIO, *inter alia*:
 - (a) extended the Stay until May 5, 2023;
 - (b) declared that the certificates of the Monitor to be issued and filed in the Court record pursuant to the Monitor Payments Order (as defined below) shall validly reduce and/or discharge the CCAA Charges (as defined in the Fourth ARIO), as applicable, without the necessity of any amendment to the Monitor Payments Order or of any other orders of the Court.
 - (c) approved an amendment to the list of participants in the KERPs.
17. On the same date, the Court also issued:
 - (a) an Approval, Vesting and Assignment Order (the "**Fluid-Aire AVO**") with respect to the sale of substantially all assets of the Titus Company (the "**Fluid-Aire Transaction**");
 - (b) an Approval, Vesting and Assignment Order (the "**Total Energy AVO**") with respect to the sale of substantially all assets of the XBC Flow Services – Wisconsin Inc. (the "**Total Energy Transaction**"); and
 - (c) an Approval, Vesting and Assignment Order (the "**EnergyLink AVO**") with respect to the sale of substantially all assets of Xebec Systems USA, LLC (the "**EnergyLink Transaction**");

the whole as appears from the Court record.
18. On March 16, 2023, at the Monitor's request, the Court issued an Order Authorizing the Monitor to Pay Certain Amounts Owed to Beneficiaries of CCAA Charges (the "**Monitor Payments Order**"), as appears from the Court record.
19. The Monitor Payments Order, *inter alia*:

- (a) authorized the Monitor to pay from the net proceeds of the previously closed transactions, amounts owed under the DIP Charge, Second DIP Charge and the Transaction DIP Charge, as and when they become due;
 - (b) declared that upon making payments under the DIP Charge, Second DIP Charge and Transaction Charge, and receiving confirmation, respectively of the Interim Lenders, EDC and NBF of the reimbursement of the obligations secured by these charges, the Monitor shall notify and file with the Court record a certificate confirming and effecting the cancellation and discharge of the DIP Charge, the Second DIP Charge and the Transaction Charge;
 - (c) authorized the Monitor to pay from the net proceeds of the previously closed transactions, amounts owed under the KERP as and when they become due; and
 - (d) declared that upon making payments under the KERP Charge, the Monitor shall notify and file with the Court record a certificate confirming and effecting the reduction and/or cancellation and discharge of the KERP Charge, as the case may be, in an amount equivalent to the payments made.
20. On March 17, 2023, in accordance with the Third ARIO, the Monitor issued a certificate confirming that the second advance contemplated by the Second DIP Facility had been received on March 16, 2023, and that the amount of the Administration Charge had been accordingly reduced to \$1,500,000.
21. On the effective date of March 21, 2023, the Fluid-Aire Transaction closed, and the Monitor issued a certificate confirming same on March 21, 2023.

III. GROUNDS FOR THE ISSUANCE OF THE FIFTH AMENDED AND RESTATED INITIAL ORDER

A. Approval of the Third DIP Facility

22. Pursuant to the First DIP Facility approved by the ARIO, the Petitioners have been authorized to borrow from the Interim Lenders up to a maximum principal amount of \$3,000,000. As at the date hereof, the First DIP Facility has been fully drawn by the Petitioners.
23. The First DIP Facility is secured by the First DIP Charge for an aggregate amount of \$3,600,000 in favour of the Interim Lenders.
24. Pursuant to the Second DIP Facility approved by the Third ARIO, the Petitioners have been authorized to borrow from EDC up to a maximum principal amount of \$2,500,000. As at the date hereof, the Second DIP Facility has been fully drawn by the Petitioners.

25. The Second DIP Facility is secured by the Second DIP Charge for an aggregate maximum amount of \$3,000,000 in favour of EDC, ranking behind the First DIP Charge but before the Transaction Charge and the KERP Charge.
26. In accordance with the Monitor Payments Order:
 - (a) upon confirmation by the Interim Lenders that the First DIP Facility has been repaid in full, the Monitor will issue a certificate which will terminate the First DIP Charge; and
 - (b) upon confirmation by EDC that the Second DIP Facility has been repaid in full, the Monitor will issue a certificate which will terminate the Second DIP Charge.
27. It is currently expected that all amounts due under the First DIP Facility and the Second DIP Facility will have been repaid by the Monitor, in accordance with the Monitor Payments Order, prior to the hearing on the present Application.
28. As of the date hereof, the Administration Charge is equal to an aggregate amount of \$1,500,000.
29. As previously reported to the Court and as will appear from the cash-flow to be filed in support of the Eight Report of the Monitor, the Petitioners require additional financing in the approximate amount of \$1,500,000 to continue their operations in the week ending April 1, 2023, and an additional approximate amount of \$1,950,000 in the week ending April 8, 2023.
30. Following discussions with the Petitioners and the Monitor, subject to certain terms and conditions, EDC has agreed to continue to support the Petitioners through their restructuring efforts, with a view to maximizing recoveries for all stakeholders, and has agreed to provide the Petitioners with a third debtor-in-possession facility (the "**Third DIP Facility**"). The related term sheet (the "**Third DIP Term Sheet**"), which remains subject to final credit approval by EDC, will be filed, under seal, as **Exhibit P-2**, prior to or during the hearing on the present Application.
31. The Third DIP Facility includes the following commercial terms:
 - (a) Facility size: a multiple draw credit facility up to a maximum principal amount of \$3,450,000, payable in two tranches of \$1,500,000 and \$1,950,000, respectively, subject to the terms and conditions of the Third DIP Term Sheet;
 - (b) Term: May 8, 2023; and
 - (c) Administration Charge: reduction of the Administration Charge in the amount of \$250,000 (to an amount of \$1,250,000) concurrently with the disbursement of the first tranche and a further reduction of the Administration Charge in the amount of \$250,000 (to an amount of

\$1,000,000) concurrently with the disbursement of the second tranche, the whole in accordance with the terms set out in the Third DIP Term Sheet.

32. The DIP Facility is proposed to be secured by a Court-ordered charge (the “**Third DIP Charge**”) on all of the present and future assets, property and undertaking of the Petitioners up to a maximum amount of \$4,100,000. The DIP Charge will have priority over all other security interests, hypothecs, charges and liens, except the Administration Charge and the D&O Charge.
33. EDC has indicated that the Third DIP Charge is a key condition of the Third DIP Term Sheet, and that it is not prepared to provide further interim financing to the Petitioners without the Third DIP Charge.
34. The Third DIP Facility will notably allow the Petitioners to conclude the SISF, address various legal issues, analyse whether a plan of arrangement is appropriate with respect to certain entities, perform an orderly wind-down of operations and legal entities and determine the disposition strategy for remaining assets, the whole for the benefit of all stakeholders.
35. The Petitioners respectfully submit that it is in the interest of all stakeholders that the Third DIP Facility and related Third DIP Charge be approved by this Court.

B. Sealing of Confidential Documents

36. The Petitioners are seeking an order declaring that the Third DIP Term Sheet (Exhibit P-2) be kept strictly confidential and under seal, considering that it contains commercially sensitive information.

C. Execution Notwithstanding Appeal

37. The Petitioners respectfully submit that they are justified to seek provisional execution of the orders to be rendered on the present Application notwithstanding appeal, considering that the relief sought herein is beneficial for their stakeholders, and a stay of execution thereof would be detrimental to the value of their assets and to the potential recovery of their respective creditors.

IV. CONCLUSION

38. The Monitor has informed the Petitioners that it supports the present Application.
39. For the reasons set forth above, the Petitioners respectfully submit that it is both appropriate and necessary that this Honourable Court render the order sought herein.

FOR THESE REASONS, MAY IT PLEASE THIS HONOURABLE COURT TO:

GRANT the present *Application for the Issuance of a Fifth Amended and Restated Initial Order (Interim Financing)* (the “**Application**”);

ISSUE an order substantially in the form of the draft order communicated in support of the Application as **Exhibit P-1**;

ORDER the provisional execution of the order to be rendered on the Application notwithstanding appeal and without security;

THE WHOLE WITHOUT COSTS, save in the event of contestation.

MONTREAL, March 22, 2023

Osler, Hoskin & Harcourt LLP

Osler, Hoskin & Harcourt LLP

Mtre. Sandra Abitan | Mtre. Julien Morissette |
Mtre. Ilia Kravtsov | Mtre. Sophie Courville
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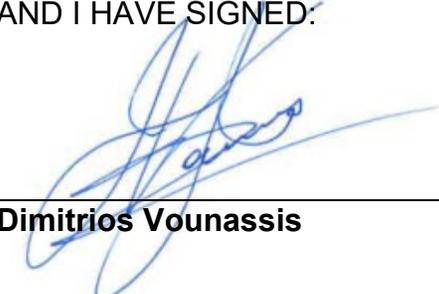
Our file: 1233913

AFFIDAVIT

I the undersigned, Dimitrios Vounassis, domiciled for the purpose hereof at 730 Industriel Boulevard, in the city of Blainville, district of Terrebonne, Québec, J7C 3V4, solemnly declare the following:

1. I am the President and CEO of FormerXBC Inc. (formerly Xebec Adsorption Inc.) and a duly authorized representative of the Debtors / Petitioners for the purposes hereof.
2. I have taken cognizance of the attached *Application for the Issuance of a Fifth Amended and Restated Initial Order (Interim Financing)* (the “**Application**”).
3. All of the facts alleged in the Application of which I have personal knowledge are true.
4. Where the facts alleged in the Application have been obtained from others, I believe them to be true.

AND I HAVE SIGNED:



Dimitrios Vounassis

SOLEMNLY DECLARED BEFORE ME BY
VIRTUAL MEANS IN MONTRÉAL, QUÉBEC,
ON MARCH 22, 2023.



Danielle Bherer
Commissioner for Oaths for the Province of
Québec

**NOTICE OF PRESENTATION
COMMERCIAL DIVISION**

TO: SERVICE LIST (See attached)

1. PRESENTATION OF THE PROCEEDING

TAKE NOTE that the *Application for the Issuance of a Fifth Amended and Restated Initial Order (Interim Financing)* will be presented for adjudication before the Commercial Division of the Superior Court of Québec, in Courtroom 16.04 of the Montréal Courthouse during the virtual calling of the roll on **March 27, 2023, at 14:15 p.m.**

2. HOW TO JOIN THE VIRTUAL CALLING OF THE ROLL

The contact information to join the virtual calling of the roll in room 16.04 is as follows:

By Teams: by clicking on the link available at <http://www.tribunaux.qc.ca> ("*Liens TEAMS pour rejoindre les salles du Palais de justice*"):

You must then enter your name and click «Join now» («*Rejoindre maintenant*»). To facilitate the process and the identification of participants, we ask that you enter your name in the following manner:

Attorneys: Mtre Name, Surname (name of party represented)

Trustees: Name, Surname (trustee)

Superintendent: Name, Surname (superintendent)

Parties not represented by an attorney: Name, Surname (specify: plaintiff, defendant, applicant, respondent, creditor, opposing party, or other)

Persons attending a public hearing may simply indicate "public".

By telephone:

Canada, Québec (Charges will apply): +1 581-319-2194

Canada (Toll-free): (833) 450-1741

Conference ID: 516 211 860#

By VTC videoconference: teams@teams.justice.gouv.qc.ca

Videoconference ID: 1149478699

In person: If and only if you do not have access to one of the above-mentioned technological means. You may then go to room 16.04 of the Montréal Courthouse located at:

1, Notre-Dame Street East, Montréal, Québec.

3. DEFAULT TO PARTICIPATE IN THE VIRTUAL CALLING OF THE ROLL

TAKE NOTICE that in accordance with the Second Amended and Restated Initial Order, if you wish to contest this Application, you must serve responding materials or a notice stating the objection to the Application and the grounds for such objection in writing to the Petitioners and the Monitor, with a copy to all persons on the Service List, no later than **5:00 P.M. on March 24, 2023**, and participate at the virtual calling of the roll, failing which, judgment may be rendered during the presentation of the proceeding, without further notice or delay.

4. OBLIGATIONS

4.1 Duty of cooperation

TAKE NOTE that the parties are duty-bound to cooperate and, in particular, to keep one another informed at all times of the facts and particulars conducive to a fair debate and make sure that relevant evidence is preserved (s. 20, *Code of Civil Procedure*).

4.2 Dispute prevention and resolution processes

TAKE NOTE that the parties must consider private prevention and resolution processes before referring their dispute to the courts, which are namely negotiation, mediation or arbitration, for which the parties call on a third party (*Code of Civil Procedure*, art. 2).

DO GOVERN YOURSELF ACCORDINGLY.

MONTRÉAL, March 22, 2023

Osler, Hoskin & Harcourt LLP

Osler, Hoskin & Harcourt LLP
Attorneys for the Debtors / Petitioners

**CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL**

SUPERIOR COURT
(Commercial Division)

(Sitting as a court designated pursuant to the
Companies' Creditors Arrangement Act, RSC 1985,
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No.: 500-11-061483-224

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THE TITUS COMPANY

-and-

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-and-

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-and-

CALIFORNIA COMPRESSION, LLC

-and-

FORMERXBC SYSTEMS USA, LLC (formerly
XEBEC SYSTEMS USA, LLC)

Debtors / Petitioners

-and-

DELOITTE RESTRUCTURING INC.

Monitor

| |
|-------------------------|
| LIST OF EXHIBITS |
|-------------------------|

- P-1: Draft Fifth ARIO
- P-1A: Comparison between the Fifth Amended and Restated Initial Order and the Fourth ARIO
- P-2: Third DIP Term Sheet (*confidential and under seal*)

MONTRÉAL, March 22, 2023

Osler, Hoskin & Harcourt LLP

Osler, Hoskin & Harcourt LLP
Attorneys for Debtors / Petitioners