

**SUPERIOR COURT
(Commercial Division)**

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: March 16, 2023

BEFORE THE HONOURABLE CHRISTIAN IMMER, J.S.C.

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:

**XEBEC ADSORPTION INC.
XEBEC RNG HOLDINGS INC.
APPLIED COMPRESSION SYSTEMS LTD.
COMPRESSED AIR INTERNATIONAL INC.
XEBEC HOLDING USA INC.
ENERPHASE INDUSTRIAL SOLUTIONS, INC.
CDA SYSTEMS, LLC
XEBEC ADSORPTION USA INC.
THE TITUS COMPANY
NORTEKBELAIR CORPORATION
XBC FLOW SERVICES – WISCONSIN INC.
CALIFORNIA COMPRESSION, LLC
XEBEC SYSTEMS USA, LLC
Debtors / Petitioners**

and
DELOITTE RESTRUCTURING INC.
Monitor

and

FAD PENNSYLVANIA INC.
Impleaded Party (Buyer)

**APPROVAL, VESTING AND ASSIGNMENT ORDER IN RESPECT OF THE ASSETS
OF THE TITUS COMPANY**

- [1] **CONSIDERING** the *Application for the Issuance of an Approval, Vesting and Assignment Order* (the “**Application**”) pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (“**CCAA**”) and the exhibits thereto and the affidavit of Mr. Dimitrios Vounassis, filed in support thereof;
- [2] **CONSIDERING** the Seventh Report of the Monitor dated March 15, 2023;
- [3] **CONSIDERING** the submissions of counsel and the testimony of Jean-François Nadon on behalf of the Monitor as of result of which the Court concludes that no bids were received during the SISP bidding process and in particular up to the Phase 2 Bid Deadline for the assets of The Titus Company, that further discussions and negotiations lead by NBF and the Petitioners generated an offer from FAD Pennsylvania Inc. and that this offer is the most advantageous for all stakeholders, as, amongst other factors, it preserves the positions of a minimum of 80% of Titus’ employees, generates significant cash and ensures continuity of service Titus’ clients;
- [4] **GIVEN** the provisions of the CCAA;
- [5] **CONSIDERING** that it is appropriate to issue an order approving the sale transaction (the “**Transaction**”) contemplated by the agreement entitled Asset Purchase Agreement dated March [9], 2023 (the “**Purchase Agreement**”) between **The Titus Company** (the “**Seller**”), and **FAD Pennsylvania Inc.**, as buyer, (the “**Buyer**”), a copy of which was filed under seal as **Exhibit P-5A** to the Application, and vesting in the Buyer the Purchased Assets.

THE COURT HEREBY:

- [6] **GRANTS** the Application.

DEFINITIONS

- [7] **DECLARES** that, unless otherwise defined, all capitalized terms in this Order shall have the meaning ascribed thereto in the Purchase Agreement.

SERVICE

- [8] **ORDERS** that any prior delay for the presentation of the Application is hereby abridged and validated so that the Application is properly returnable today and dispenses with further service thereof.
- [9] **PERMITS** service of this Order at any time and place and by any means whatsoever.

TRANSACTION APPROVAL

- [10] **ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Purchase Agreement by the Seller is hereby authorized and approved *nunc pro tunc*, with such minor alterations, changes, amendments, deletions or additions thereto as may be agreed to by the Seller and the Buyer, with the consent of the Monitor.

EXECUTION OF DOCUMENTATION

- [11] **AUTHORIZES** the Seller and the Buyer to perform all acts, sign all documents and take any necessary action to execute any agreement, contract, deed, provision, transaction or undertaking stipulated in the Purchase Agreement and any other ancillary document which could be required or useful to give full and complete effect thereto, including the Transaction.

AUTHORIZATION

- [12] **ORDERS and DECLARES** that this Order shall constitute the only authorization required by the Petitioners to proceed with the Transaction and that no shareholder or regulatory approval, if applicable, shall be required in connection therewith.

VESTING OF PURCHASED ASSETS

- [13] **ORDERS AND DECLARES** that upon the issuance of a Monitor's certificate substantially in the form appended as **Schedule "A"** hereto (the "**Monitor's Certificate**"), all rights, title and interest in and to the Purchased Assets shall vest absolutely and exclusively in and with the Buyer, free and clear of and from any

and all claims, liabilities (direct, indirect, absolute or contingent), obligations, interests, prior claims, security interests (whether contractual, statutory or otherwise), liens, charges, hypothecs, mortgages, pledges, deemed trusts, assignments, judgments, executions, writs of seizure or execution, notices of sale, options, adverse claims, levies, rights of first refusal or other pre-emptive rights in favour of third parties, restrictions on transfer of title, taxes or other claims or encumbrances, whether or not they have attached or been perfected, registered, published or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**"), including, without limiting the generality of the foregoing, all encumbrances created by order of this Court, all charges or security evidenced by registration, publication or filing pursuant to any applicable legislation providing for a security interest in personal or movable property, and those Claims listed on **Schedule "B"** hereto (all of which are collectively referred to as the "**Encumbrances**") which term shall not include the permitted encumbrances, easements and restrictive covenants listed in **Schedule "C"**.

- [14] For greater certainty, **ORDERS** that all of the Encumbrances, other than those listed on Schedule "C" hereto, affecting or relating to the Purchased Assets be cancelled and discharged as against the Purchased Assets, in each case effective as of the issuance of the Monitor's Certificate.
- [15] **ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Monitor's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.
- [16] **ORDERS** that the Monitor may rely on written notice from the Seller and the Buyer regarding the fulfillment of conditions to closing under the Purchase Agreement and shall have no liability with respect to the delivery of the Monitor's Certificate.
- [17] **ORDERS** the Monitor to file with the Court a copy of the Monitor's Certificate, as soon as practicable after issuance thereof.
- [18] **ORDERS AND DIRECTS** the Monitor to serve on the service list in the within CCAA proceedings, post on the Monitor's website and file with the Court a copy of the Monitor's Certificate, as soon as practicable after the issuance thereof.

CANCELLATION OF SECURITY REGISTRATIONS

- [19] **ORDERS** that upon the issuance of the Monitor's Certificate, the Petitioners shall be authorized to take all such steps as may be necessary to effect the discharge of all Encumbrances registered against the Purchased Assets from any registration filed against the Petitioners, provided that the Petitioners shall not be authorized to effect any discharge that would have the effect of releasing any collateral other than the Purchased Assets, and the Petitioners shall be authorized to take any further steps by way of further application to this Court.

ASSIGNMENT OF CONTRACTS

- [20] **ORDERS** and **DECLARES** that upon the issuance of the Monitor's Closing Certificate, the rights and obligations of the Seller under the agreements listed in **Schedule "D"** hereto, as they may have been amended or restated from time to time (the "**Assumed Contract(s)**"), are automatically and irrevocably assigned to the Buyer without any further consents or approvals of this Court.
- [21] **ORDERS** that all Cure Costs in relation to the Assumed Contracts, which are set out in Schedule D, shall be remedied by the Buyer no later than thirty (30) days following issuance of the Monitor's Closing Certificate.
- [22] **ORDERS** that any anti-assignment, consent-to-assignment or any other provisions restricting or affecting the assignment by either Seller in any of the Assumed Contracts shall not restrict, limit, impair, prohibit or otherwise affect the assignment of any Assumed Contracts or of any Post-Closing Assigned/Assumed Contracts provided by this Order.
- [23] **ORDERS** that the Assumed Contracts shall be valid and binding and in full force and effect and enforceable by the Buyer in accordance with their terms for the benefit of the Buyer.
- [24] **ORDERS** and **DIRECTS** the Monitor to notify a copy of this Order to each of the counterparties to the Assumed Contracts, if any.
- [25] **AUTHORIZES** the Petitioners, the Buyer and the Monitor to perform all acts, sign all documents and take any other action that could be required or useful to give full effect to the assignment of the Assumed Contracts to the Buyer in accordance with this Order.

PROTECTION OF PERSONAL INFORMATION

- [26] **ORDERS** that, pursuant to sub-section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5 or any similar provision of any applicable provincial legislation (collectively, the "**Applicable Privacy Laws**"), the Petitioners and the Monitor are authorized to disclose and transfer to the Buyer

the personal information in the custody or control of the Petitioners set out in the Purchase Agreement (the “**Disclosed Information**”). The Buyer shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Petitioners.

[27] **ORDERS** that the Buyer shall:

- (a) maintain and protect the Disclosed Information with security safeguards appropriate to the Disclosed information and as may otherwise be required by Applicable Privacy Laws;
- (b) use and disclose the Disclosed Information for the purposes for which the Disclosed Information was collected by the Petitioners and as may otherwise be permitted by Applicable Privacy Laws; and
- (c) give effect to any withdrawals of consent of the individuals to whom the Disclosed Information relates.

VALIDITY OF THE TRANSACTION

[28] **ORDERS** that notwithstanding:

- (a) the pendency of these proceedings;
- (b) any petition for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act.*, RSC 1985, c B-3 BIA and any order issued pursuant to any such petition; or
- (c) the provisions of any federal or provincial legislation;

the vesting of Purchased Assets contemplated in this Order, as well as the execution of the Purchase Agreement and the assignment of the Assumed Contracts authorized by this Order, and the payments, distributions and disbursements made pursuant to or in connection with this Order are to be binding on any trustee in bankruptcy that may be appointed, and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, as against the Petitioners, the Buyer, or the Monitor, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

THE MONITOR

- [29] **DECLARES** that the Monitor shall incur no liability as a result of acting in accordance with this Order, other than any liability arising out of or in connection with the gross negligence or wilful misconduct of the Monitor.
- [30] **DECLARES** that no action lies against the Monitor by reason of this Order or the performance of any act authorized by this Order, except by leave of the Court. The entities related to the Monitor or belonging to the same group as the Monitor shall benefit from the protection arising under the present paragraph.
- [31] **DECLARES** that nothing contained herein shall require the Monitor to occupy or to take control, or to otherwise manage all or any part of the assets of the Petitioners. The Monitor shall not, as a result of this Order, be deemed to be in possession of any assets of the Petitioners within the meaning of environmental legislation, the whole pursuant to the terms of the CCAA.
- [32] **ORDERS AND DECLARES** that no provision of this Order is intended to appoint the Monitor as an officer, director or employee of any of the Petitioners, de facto or otherwise, or to create a fiduciary duty to any party, including any creditor or shareholder of the Petitioners. Additionally, nothing in this Order shall constitute or be deemed to constitute the Monitor as a receiver, assignee, liquidator, or receiver and manager of any of the Petitioners and any distribution made to the creditors of the Petitioners will be deemed to have been made by the Petitioners.

SEALING

- [33] **ORDERS** that Exhibit P-5A to the Application shall be filed under seal and kept confidential until further order of this Court.

GENERAL

- [34] **DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada.
- [35] **DECLARES** that the Petitioners or the Monitor may, from time to time, apply to this Court for directions concerning the exercise of their respective powers, duties and rights hereunder or in respect of the proper execution of this Order on notice only to each other and the Buyer.
- [36] **DECLARES** that the Petitioners and the Monitor shall be entitled to seek leave to vary this Order upon such terms and such notice as this Court deems just.

- [37] **REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body in any Province of Canada and any Canadian federal court or in the United States of America, including without limitation the United States Bankruptcy Court for the District of Delaware, and any court or administrative body elsewhere, to give effect to this Order, and to assist the Petitioners, 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 Petitioners and the Monitor as may be necessary or desirable to give effect to this Order in any foreign proceeding, to assist the Petitioners, the Monitor and their respective agents in carrying out this Order.
- [38] **ORDERS** provisional execution of this Order notwithstanding any appeal and without security.
- [39] **THE WHOLE** without costs.



Christian Immer, JCS

MTRE. SANDRA ABITAN
MTRE. JULIEN MORISSETTE
MTRE. ILIA KRAVTSOV
MTRE. SOPHIE COURVILLE
(OSLER HOSKIN & HARCOURT LLP)
Attorneys for the Petitioners

Hearing date: **March 16, 2023**

**SCHEDULE A
CERTIFICATE OF THE MONITOR**

CANADA

**PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL**

**SUPERIOR COURT
(Commercial Division)**

(Sitting as a court designated pursuant to
the *Bankruptcy and Insolvency Act*, RSC
1985, c B-3)

No.: 500-11-061483-224

**IN THE MATTER OF THE NOTICE OF
INTENTION TO MAKE A PROPOSAL OF:**

**XEBEC ADSORPTION INC.
XEBEC RNG HOLDINGS INC.
APPLIED COMPRESSION SYSTEMS
LTD.
COMPRESSED AIR INTERNATIONAL
INC.
XEBEC HOLDING USA INC.
ENERPHASE INDUSTRIAL SOLUTIONS,
INC.
CDA SYSTEMS, LLC
XEBEC ADSORPTION USA INC.
THE TITUS COMPANY
NORTEKBELAIR CORPORATION
XBC FLOW SERVICES - WISCONSIN INC.
CALIFORNIA COMPRESSION, LLC
XEBEC SYSTEMS USA, LLC**

Debtor/Petitioners

-and-

DELOITTE RESTRUCTURING INC.

Monitor

CERTIFICATE OF THE MONITOR

RECITALS:

WHEREAS on September 29, 2022, the Debtors/Petitioners Xebec Adsorption Inc. & Al. filed an Application pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended ("**CCAA**") and Deloitte Restructuring Inc. was appointed as monitor thereto (the "**Monitor**").

WHEREAS on March [16], 2023, the Court issued an Order (the "**Approval, Vesting and Assignment Order**") authorizing and approving, *inter alia*, the execution of a Asset Purchase Agreement dated March [9], 2023 by and among **The Titus Company** (the "**Seller**") and **FAD Pennsylvania Inc.** as buyer (the "**Buyer**"), a copy of which was filed in the Court record (the "**Purchase Agreement**"), and into all the transactions contemplated therein (the "**Transaction**") with such non-material alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the Monitor.

WHEREAS the Approval, Vesting and Assignment Order contemplates the issuance of this Certificate of the Monitor once (a) the Purchase Agreement has been executed and delivered; and (b) the Purchase Price (as defined in the Purchase Agreement) has been paid by the Buyer to the Seller; and (c) all the conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

THE MONITOR CERTIFIES THAT IT HAS BEEN ADVISED BY THE SELLER AND THE BUYER AS TO THE FOLLOWING:

- (a) the Purchase Agreement has been executed and delivered;
- (b) the Purchase Price (as defined in the Purchase Agreement) payable upon the closing of the Transaction and all applicable taxes have been paid; and
- (c) all conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

This Certificate was issued by the Monitor on _____ [DATE].

Deloitte Restructuring Inc., in its capacity as Monitor
to the Petitioners, and not in its personal capacity.

Per: _____

Name: _____

Title: _____

SCHEDULE B
ENCUMBRANCES TO BE VESTED

SCHEDULE C

PERMITTED ENCUMBRANCES

1. Encumbrances associated with, and financing statements evidencing, the rights of equipment lessors under any Personal Property Leases.
2. Encumbrances affecting a landlord's, lessor's, licensor's or sublandlord's, as applicable, interest in any applicable Real Property Leases, including for greater certainty any registered servitudes, easements or rights of way by a utility provider to install any circuits, poles and necessary equipment.
3. Notices registered on title in respect of the Real Property Leases.
4. Reservations, limitations, provisos and conditions, if any, expressed in any original grants of land from the State and any statutory limitations, exceptions, reservations and qualifications.
5. Any rights of expropriation, eminent domain, access or use or any other similar rights conferred or reserved by Applicable Law.
6. Applicable municipal by-laws, development agreements, subdivision agreements, site plan agreements, other agreements, building and other restrictions, easements, servitudes, rights of way and licences.
7. Minor survey exceptions, minor encumbrances, easements or reservations of, or rights of other for, rights-of-way, sewers, electric lines, telephone lines and other similar purposes, or zoning or similar restriction as to the use of any applicable Real Property Leases.
8. Encumbrances permitted in writing by the Buyer.

SCHEDULE D
ASSUMED CONTRACTS

Assumed Contract	Cure Costs (US\$)
Lease agreement between Southgate Lease Services, Inc. and Xebec Adsorption USA, Inc. dated February 15, 2022 regarding a 2019 Ford Transit T250, VIN 1FTYR2CM6KKA87848, License Plate ZVD-4351.	[nil]
Rental Agreement dated August 12, 2020, between Pure Water Technology of Central PA, Inc. and The Titus Company.	\$477.00
Lease Agreement dated December 11, 2018, between Stratix Systems, Inc. and The Titus Company.	[nil]
Lease dated June 19, 2017, between Titus Properties, LLC and The Titus Company in respect of premises located at 36 Mountain View Road, Morgantown, PA 17543, USA.	[nil]
Indemnity Agreement for Negotiable Instruments, Cas and/or Other Valuable Goods dated November 14, 2022, between CareersUSA and The Titus Company.	\$855.05 in the aggregate
Personnel Services Agreement dated November 15, 2022, between CareersUSA and The Titus Company.	
Customer Service Agreement signed August 23, 2022, between Republic Services and The Titus Company.	\$236.06
Janitorial Services Agreement dated August 22, 2022, between J&M Janitorial Services, Inc. and The Titus Company.	[nil]
Promissory note dated August 1, 2020 between Christopher Titus and The Titus Company for loan principal \$13,700.	[nil]
Promissory note dated August 1, 2020 between James Good and The Titus Company for loan principal \$9,558.	[nil]
Promissory note dated August 1, 2020 between James Bowers and The Titus Company for loan principal \$7,745.	[nil]
Promissory note dated August 1, 2020 between Sean Patrick Dempsey and The Titus Company for loan principal \$9,815.	[nil]
Promissory note dated August 1, 2020 between Brian Titus and The Titus Company for loan principal \$17,996.	[nil]