

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

In re:

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

Debtors in a foreign proceeding.<sup>1</sup>

Chapter 15

Case No. 22- 10934 (KBO)

Joint Administration Requested

**NOTICE OF MOTION FOR ORDER (I) RECOGNIZING AND ENFORCING CCAA VESTING ORDER; (II) APPROVING THE SALE OF CERTAIN OF THE DEBTORS' ASSETS FREE AND CLEAR OF LIENS, CLAIMS, AND ENCUMBRANCES; (III) APPROVING ASSUMPTION AND ASSIGNMENT OF CERTAIN CONTRACTS; AND (IV) GRANTING RELATED RELIEF**

**PLEASE TAKE NOTICE** that on February 10, 2023, Xebec Adsorption Inc., in its capacity as the authorized foreign representative (the “Foreign Representative”) for the above-captioned debtors (collectively, the “Debtors”) filed the *Motion for Order (I) Recognizing and Enforcing CCAA Vesting Order; (II) Approving the Sale of Certain of the Debtors’ Assets Free and Clear of Liens, Claims, and Encumbrances; (III) Approving Assumption and Assignment of Certain Contracts; and (IV) Granting Related Relief* (the “U.S. Sale Motion”), seeking entry of an order (a) approving the sale of certain of the Debtors’ assets located in the United States, free and clear of liens, claims, encumbrances, and interests under section 363 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”); (b) authorizing the assumption and assignment of executory contracts and unexpired leases; and (c) recognizing and enforcing an order approving a sale of the Debtors’ assets, entered by the Superior Court of Québec, in the Province of Québec, District of Montréal, in a proceeding commenced under Canada’s Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended. A true and correct copy of the U.S. Sale Motion is attached to this Notice as **Exhibit A**.

**PLEASE TAKE FURTHER NOTICE** that copies of the U.S. Sale Motion and related filings in these chapter 15 cases are also available (a) on the Monitor’s case-specific website: <https://www.insolvencies.deloitte.ca/en-ca/pages/Xebec.aspx>; (b) on the Bankruptcy Court’s Electronic Case Filing System, which can be accessed from the Bankruptcy Court’s website at <http://www.ecf.deb.uscourts.gov> (a PACER login and password are required) or (c) upon request to counsel to the Foreign Representative, via email ([jgadhaf@mcdonaldhopkins.com](mailto:jgadhaf@mcdonaldhopkins.com)), McDonald Hopkins LLC, 300 North LaSalle Street, Suite 1400, Chicago, Illinois 60654, Attn: Josh Gadhaf.

<sup>1</sup> The Debtors in the chapter 15 proceedings and the last four digits of their federal tax identification numbers are: Xebec Adsorption Inc. (0228), Xebec RNG Holdings Inc. (N/A), Applied Compression Systems Ltd. (N/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.

**PLEASE TAKE FURTHER NOTICE** that the Bankruptcy Court has scheduled a hearing for **February 16, 2023, at 11:00 a.m. (prevailing Eastern time)** before the Honorable Karen B. Owens (the “U.S. Sale Hearing”) to consider the relief requested in the U.S. Sale Motion.

**PLEASE TAKE FURTHER NOTICE** that any party in interest wishing to submit a response, answer, or objection to the U.S. Sale Motion must do so pursuant to the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, and such response, answer, or objection must (a) be in writing, (b) set forth in detail the factual and legal bases therefor, (c) be filed with the Office of the Clerk of the Court, 824 Market Street, Wilmington, Delaware 19801, and (d) be served upon counsel for the Foreign Representative, McDonald Hopkins LLC, 300 North LaSalle Street, Suite 1400, Chicago, Illinois 60654, Attn: Josh Gadharf, jgadharf@mcdonaldhopkins.com, and Bielli & Klauder, LLC, 1204 North King Street, Wilmington, Delaware 19801, Attn: David M. Klauder, dklauder@bk-legal.com, so as to be received **on or before February 14, 2023, at 5:00 p.m. (prevailing Eastern time)**.

**PLEASE TAKE FURTHER NOTICE** that all parties in interest opposed to the U.S. Sale Motion must appear at the U.S. Sale Hearing at the time and place set forth herein, which may be adjourned from time to time without further notice except for an “in court” announcement at the U.S. Sale Hearing or a filing on the docket of these chapter 15 cases of the date and time to which the U.S. Sale Hearing has been adjourned.

**PLEASE TAKE FURTHER NOTICE THAT IF NO RESPONSES OR OBJECTIONS ARE RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED BY THE FOREIGN REPRESENTATIVE WITHOUT FURTHER NOTICE OR HEARING.**

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Dated: February 10, 2023  
Wilmington, Delaware

BIELLI & KLAUDER, LLC

/s/ David M. Klauder

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- and -

MCDONALD HOPKINS LLC

David A. Agay (*pro hac vice* admission pending)  
Joshua A. Gadharf (*pro hac vice* admission pending)  
Ashley J. Jericho (*pro hac vice* admission pending)  
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*Counsel for the Foreign Representative*

**Exhibit A**

U.S. Sale Motion

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

In re:

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

Debtors in a foreign proceeding.<sup>1</sup>

Chapter 15

Case No. 22- 10934 (KBO)

Jointly Administered

**MOTION FOR ORDER (I) RECOGNIZING AND ENFORCING  
CCAA VESTING ORDER; (II) APPROVING THE SALE OF CERTAIN OF  
THE DEBTORS' ASSETS FREE AND CLEAR OF ANY AND ALL LIENS, CLAIMS,  
AND ENCUMBRANCES; (III) APPROVING ASSUMPTION AND ASSIGNMENT  
OF CERTAIN CONTRACTS; AND (IV) GRANTING RELATED RELIEF**

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**”) requesting the entry of an order substantially in the form attached hereto as **Exhibit A** (the “**Sale and Recognition Order**”): (i) recognizing and enforcing the Canadian Court’s order (the “**Vesting Order**”) authorizing Debtor CDA System, LLC (“**CDA**”) and Debtor California Compression, LLC (“**California Compression**,” and together, the “**Sellers**”) to sell substantially all of their assets (the “**Purchased Assets**”) and to assume and assign certain of their contracts (the “**Assigned Contracts**”) to Sullair,

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<sup>1</sup> The Debtors in the chapter 15 proceedings and the last four digits of their federal tax identification numbers are: Xebec Adsorption Inc. (0228), Xebec RNG Holdings Inc. (N/A), Applied Compression Systems Ltd. (N/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.

LLC (“**Sullair**”), pursuant to that certain Asset Purchase Agreement by and between the Sellers and Sullair, dated February 8, 2023 (the “**Purchase Agreement**”); (ii) approving the sale of the Purchased Assets free and clear of any and all liens, claims, and encumbrances (the “**Sullair Transaction**”); (iii) approving the assumption and assignment of the Assigned Contracts; and (iv) granting related relief.

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* [Docket No. 3] (the “**Vounassis First Day Declaration**”), filed on September 30, 2022; (b) *Declaration of Sandra Abitan, as Canadian Counsel to the Debtors, in Support of Motion for Entry of Order (A) Approving Noticing Procedures for Debtors’ Motion for (I) Approval of the Sale of Debtors’ Assets; and (II) Recognition and Enforcement of Canadian Court Order Approving the Sale; (B) Setting a Sale Hearing; and (C) Granting Related Relief* [Docket No. 61] (the “**Abitan Noticing Procedures Declaration**”), filed on December 21, 2022; (c) the *Declaration of Dimitrios “Jim” Vounassis in Support of Foreign Representative’s Motion for Order (I) Recognizing and Enforcing the CCAA Vesting Order; (II) Approving the Sale of Certain of the Debtors’ Assets Free and Clear of Any and All Liens, Claims, and Encumbrances; (III) Approving the Assumption and Assignment of Certain Contracts; and (IV) Granting Related Relief* (the “**Vounassis Sale Declaration**,” or the “**Vounassis Sale Decl.**”), filed contemporaneously herewith; and (d) the *Declaration of Sandra Abitan in Support of Foreign Representative’s Motion for Order (I) Recognizing and Enforcing the CCAA Vesting Order; (II) Approving the Sale of Certain of the Debtors’ Assets Free and Clear of Any and All Liens, Claims, and Encumbrances; (III) Approving the Assumption and Assignment of Certain Contracts; and (IV) Granting Related Relief* (the “**Abitan Sale Declaration**,” or the “**Abitan Sale Decl.**”),

filed contemporaneously herewith. The Vounassis First Day Declaration, the Abitan Noticing Procedures Declaration, the Vounassis Sale Declaration, and the Abitan Sale Declaration each are incorporated herein by reference.

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

### **JURISDICTION AND VENUE**

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. 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 title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”).

3. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), the Foreign Representative consents to the entry of a final order by the Court in connection with this Motion to the extent it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

4. Venue is proper before the Court pursuant to 28 U.S.C. § 1410.

5. The statutory predicates for the relief requested herein are sections 105(a), 363, 365, 1501, 1507, 1520, 1521, 1525, and 1527 of the Bankruptcy Code, Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedures (the “**Bankruptcy Rules**”), and Local Rules 2002-1, 6004-1, and 9006-1.

## **BACKGROUND**

6. 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. A more detailed description of the Debtors and their businesses can be found in the Foreign Representative’s Motion for Recognition of Foreign Main Proceeding and Request for Certain Related Relief [Docket No. 7] (the “**Recognition Motion**”).

7. California Compression is a compressed air distributor and provides the Debtors with distribution and service capabilities for customers located in Northern California. CDA sells, rents, and services compressed air products and supports the Debtors’ products in California. (Vounassis Sale Decl. ¶ 7.).

### **A. The Canadian Proceeding**

8. On September 29, 2022, pursuant to an application made by the Debtors in the Canadian Proceeding, the Canadian Court entered: (a) the First Day Initial Order (the “**Initial CCAA Order**”); and (b) the Bidding Procedures Order (the “**CCAA Bidding Procedures Order**”). A copy of the Initial CCAA Order was attached as Exhibit D to the Recognition Motion. (Abitan Sale Decl. ¶ 7.)

9. 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**”);<sup>2</sup> (b) appointed Deloitte Restructuring Inc. (the “**Monitor**”) as monitor in the Canadian Proceeding; (c) declared that Québec is the “centre of main interest” of the Debtors, and, accordingly, 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. (Abitan Sale Decl. ¶ 8; *see also* Initial CCAA Order at ¶¶ 16-20, 40-48, 65, 67.)

**B. The Chapter 15 Cases**

10. On September 30, 2022 (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.

11. 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].

12. On October 27, 2022, the Court entered that certain *Order Granting Recognition of Foreign Main Proceeding and Certain Related Relief* [Docket No. 36] (the “**Original Recognition Order**”). Pursuant to the Original Recognition Order, the Court recognized the Canadian Proceeding as a “foreign main proceeding” pursuant to chapter 15 of the Bankruptcy Code, 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

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<sup>2</sup> On February 3, 2023, the Canadian Court entered an order extending the Canadian Stay until February 13, 2023. (Abitan Sale Decl. ¶ 9.) By the Canadian Application (as defined below), the Debtors requested an extension of the stay to March 17, 2023. (*Id.*)

States to the Canadian Proceeding and the orders entered in the Canadian Proceeding, including enforcing the automatic stay in the United States.

13. On December 21, 2022, the Foreign Representative filed that certain *Motion for Entry of Order (A) Approving Noticing Procedures for Debtors' Motion for (I) Approval of the Sale of Debtors' Assets; and (II) Recognition and Enforcement of Canadian Court Order Approving the Sale; (B) Setting a Sale Hearing; and (C) Granting Related Relief* [Docket No. 60] (the “**Noticing Procedures Motion**”), pursuant to which the Foreign Representative sought, among other things, approval of noticing procedures for a motion to approve the sale of the Debtors' assets and for recognition and enforcement of a Canadian Court order approving such sale (the “**Noticing Procedures**”). The Foreign Representative served the Noticing Procedures Motion via U.S. Mail (the “**U.S. Mail Notice**”) on, among others, any party with a United States mailing address that had been served with filings in the Canadian Proceeding or who had previously received notice by mail from the Foreign Representative in these chapter 15 cases. (*See Notice of Service* [Docket No. 62].) The Noticing Procedures provided for the Foreign Representative to serve a copy of this Motion, via overnight mail, on any party that requested service in accordance with the procedures set forth in the U.S. Mail Notice.

14. On January 9, 2023, the Court entered that certain *Order (A) Approving Noticing Procedures for Debtors' Motion for (I) Approval of the Sale of Debtors' Assets; and (II) Recognition and Enforcement of Canadian Court Order Approving the Sale; (B) Setting a Sale Hearing; and (C) Granting Related Relief* [Docket No. 65] (the “**Noticing Procedures Order**”). Pursuant to the Noticing Procedures Order, the Court held, among other things, that notice of the Noticing Procedures Motion was (i) appropriate, (ii) reasonably calculated to provide timely and proper notice and an opportunity to object to the Noticing Procedures Motion, (iii) in compliance

with all applicable requires of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, and (iv) adequate and sufficient under the circumstances. (Noticing Procedures Order ¶ 3.) In addition, the Court approved the Noticing Procedures generally, including as they relate to this Motion, and held that they “are necessary and appropriate to facilitate the Debtors’ efforts to close a sale within the timeline required by the Bidding Procedures and the Debtors’ business.” (*Id.* ¶ 8.) The Court also held that the Noticing Procedures are appropriate and reasonably calculated to provide timely and proper notice and an opportunity to object to this Motion. (*Id.* ¶ 9.)

**C. Sale Process**

15. Pursuant to the CCAA Bidding Procedures Order, 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. (Abitan Sale Decl. ¶ 10.)

16. 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. Similar to a traditional sale process in a case under section 363 of the Bankruptcy Code, the SISP established a clear and open process for the solicitation, receipt, and evaluation of bids on a timeline that will provided parties with sufficient time and information to submit competitive bids. 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. (Abitan Sale Decl. ¶ 11.)

17. At the commencement of the sale process, the Financial Advisor distributed teasers to 479 potential targets, including potential investors and strategic acquirers. A confidential virtual data room was made available to potential targets who executed non-disclosure agreements. Initially, 67 parties were deemed “Phase 1” qualified bidders, of which 32 submitted non-binding

letters of intent. The Debtors, in consultation with the Monitor and the Financial Advisor, determined that 19 Phase 1 qualified bidders were “Phase 2” qualified bidders, and invited them to participate in Phase 2 of the SISP. (Abitan Sale Decl. ¶ 12.)

18. On January 6, 2023, certain Phase 2 qualified bidders submitted binding offers. After consultation with the Monitor and the Financial Advisors, the Debtors directed the Financial Advisor to engage with and obtain clarifications from these bidders. Subsequently, on January 16, 2023, such Phase 2 qualified bidders submitted revised binding offers. Thereafter, the Debtors engaged in further negotiations with the bidders. In light of the revised binding offers, the Debtors, in consultation with the Monitor and the Financial Advisor, determined that it would be in the Debtors’ best interests to not hold an auction. Sustained conversations are ongoing with several Phase 2 qualified bidders in respect of various transactions, designed to ensure the SISP results in the highest and best transactions available, for the benefit of all stakeholders. However, the Debtors, after consultation with the Monitor and the Financial Advisor, have determined that no actionable offers were received for the purchase of substantially all of the Debtors’ assets as a going concern in one single transaction. (Abitan Sale Decl. ¶ 13.)

**D. The Sullair Transaction**

19. On February 8, 2023, the Debtors filed that certain Application for the Issuance of a Third Amended and Restated Initial Order and Approval and Vesting Orders (the “**Canadian Application**”) in the Canadian Proceeding. Pursuant to the Canadian Application, the Debtors seek, among other things, entry of a proposed Vesting Order approving the Sullair Transaction. (Abitan Sale Decl. ¶ 14.) A copy of the Canadian Application is attached hereto as **Exhibit B.**<sup>3</sup>

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<sup>3</sup> The voluminous exhibits to the Canadian Application are available upon request to counsel for the Foreign Representative.

The Proposed Vesting Order is attached as exhibit P-3 to the Canadian Application. A copy of the Purchase Agreement is attached hereto as Exhibit C.<sup>4</sup>

20. As detailed in the Canadian Application, during the SISP process, Sullair made a binding offer to purchase the Sellers' assets, conditioned on the completion of certain remaining due diligence and other conditions. Subsequently, the Debtors, with the assistance of the Financial Advisor, worked with Sullair and its advisors to complete the remaining due diligence items and ultimately to negotiate and document a revised and improved offer from Sullair, in the form of the Purchase Agreement. In light of their current circumstances and after careful consideration of all alternatives, the Debtors determined, in consultation with the Monitor and the Financial Advisor, that the revised Sullair offer was the most advantageous to the stakeholders of the Sellers and of the Debtors generally. (Canadian Application ¶¶ 49-51.)

21. The Sullair Transaction contemplates the sale of substantially all the Sellers' assets on an "as is, where is" basis and the assignment to Sullair of the Assigned Contracts. (Abitan Sale Decl. ¶ 15.) The Foreign Representative understands that Sullair intends on hiring all or substantially all of the Sellers' current employees. (Vounassis Sale Decl. ¶ 8.)

22. In accordance with Canadian law and practice, the Debtors filed the Purchase Agreement under seal in the Canadian Proceeding and did not publicly disclose the purchase price in their Canadian Proceeding filings. (Abitan Sale Decl. ¶ 16.) As stated in the Canadian Application, the Purchase Agreement requires entry of the Vesting Order and the Sale and Recognition Order as a condition to closing, which closing must occur prior to February 20, 2023. (Canadian Application ¶¶ 54-55.)

23. The Purchase Agreement also requires the Vesting Order to approve the assignment

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<sup>4</sup> Contemporaneously with the filing of this Motion, the Foreign Representative has filed a motion for authority to file the Purchase Agreement under seal.

of the Assigned Contracts to Sullair, and the payment of any and all cure costs within 30 days of the issuance of the Monitor's closing certificate. (Canadian Application ¶ 56.)

24. In addition, by the proposed Vesting Order, the Debtors are seeking releases in favor of each Seller's directors and officers with respect to any and all claims, liabilities, or obligations related directly or indirectly to the Sellers, including with respect to their business, affairs, or operations, their assets and liabilities, the Canadian Proceeding, but excepting certain claims that cannot be released under the CCAA (the "**D&O Releases**"). (Abitan Sale Decl. ¶ 17.) The Foreign Representative believes the D&O Releases are warranted because the Sellers' directors and officers continuously worked towards maximizing the Sellers' value and, in turn, recovery for their creditors. (Vounassis Sale Decl. ¶ 9.) Given the outcome of the SISF, the Debtors do not anticipate sufficient funds will be available to finance a plan of arrangement or a plan of compromise, which would customarily include releases in favor of the Sellers' directors and officers. (*Id.*; Abitan Sale Decl. ¶ 17.) However, the D&O Releases contained in the proposed Vesting Order are consistent with releases granted by Canadian courts in similar CCAA proceedings. (Abitan Sale Decl. ¶ 17.) The Foreign Representative understands that the Monitor is supportive of the D&O Releases. (Vounassis Sale Decl. ¶ 9.)

25. The Foreign Representative believes that the terms of the Purchase Agreement and Vesting Order are reasonable and fair under the circumstances, and that the Sullair Transaction provides the highest and best return for the Sellers' assets. Further, the Foreign Representative believes that an expedited closing of the Sullair Transaction would benefit all stakeholders. If they cannot consummate the Sullair Transaction, the Sellers will not have sufficient liquidity to continue operations in the ordinary course, and the Debtors may be forced to liquidate the Sellers' business. The Foreign Representative understands that the Monitor and the Debtors' DIP Lenders

are supportive of the Sellers' entry into the Sullair Transaction. (Vounassis Sale Decl. ¶ 10.)

26. A hearing on the Canadian Application is scheduled for February 13, 2023, at which time the Debtors will request entry of the Vesting Order. (Abitan Sale Decl. ¶ 18.)

27. In anticipation of the hearing on the Canadian Application, the Foreign Representative files this Motion in accordance with the Noticing Procedures Order to facilitate the Debtors' and Sullair's ability to close the Sullair Transaction in accordance with the deadlines imposed by the Purchase Agreement.

28. The Foreign Representative believes that consummating the Sullair Transaction in accordance with the deadlines set forth in the Purchase Agreement is critical to preserving the going-concern value of the Purchased Assets. In short, the Sullair Transaction is the best transaction for the Purchased Assets available to the Debtors under the circumstances, and ensures that the Sellers' business can continue as a going-concern, which will benefit a broad array of stakeholders, includes the Sellers' customers, employees, and suppliers. (Vounassis Sale Decl. ¶ 11.)

### **RELIEF REQUESTED**

29. As set out above, the Sullair Transaction is conditioned on the Court's recognition and enforcement of the Vesting Order. Accordingly, the Foreign Representative seeks entry of the Order, (i) recognizing and enforcing the Vesting Order; (ii) approving the proposed Sullair Transaction, including the assumption and assignment of the Assigned Agreements; and (iii) granting related relief.

### **BASIS FOR RELIEF**

#### **A. The Court Should Recognize and Enforce the Vesting Order and Authorize the Sale of the Purchased Assets Pursuant to Section 363 of the Bankruptcy Code**

30. Upon a bankruptcy court's granting recognition of a foreign representative and of

a foreign proceeding as a foreign main proceeding, relief is available to the petitioner under section 1520 of the Bankruptcy Code. *See* 11 U.S.C. § 1520. Section 1520(a)(2) of the Bankruptcy Code provides, in relevant part, that, “[u]pon recognition of a foreign proceeding that is a foreign main proceeding . . . section[] 363 [of the Bankruptcy Code] appl[ies] to a transfer of an interest of the debtor in property that is within the territorial jurisdiction of the United States to the same extent that the section[] would apply to property of an estate.” 11 U.S.C. § 1520(a)(2); *see also* 11 U.S.C. § 1521(a)(5) (providing that a U.S. bankruptcy court may “entrust[] the administration or realization of all or part of the debtor’s assets within the territorial jurisdiction of the United States to the foreign representative or another person, including an examiner, authorized by the court.”).

31. Moreover, section 1520(a)(3) of the Bankruptcy Code provides that, upon recognition of a foreign main proceeding, “unless the court orders otherwise, the foreign representative may operate the debtor’s business and may exercise the rights and powers of a trustee under and to the extent provided by section[] 363 [of the Bankruptcy Code].” 11 U.S.C. § 1520(a)(3); *see also In re Elpida Memory, Inc.*, No. 12-10947, 2012 WL 6090194, at \*5 (Bankr. D. Del. Nov. 20, 2012) (holding that section 363 of the Bankruptcy Code applies to transfers of assets located within the United States outside of the ordinary course of business in connection with cases commenced under chapter 15 of the Bankruptcy Code).

32. Section 363 of the Bankruptcy Code provides, in relevant part, that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Although section 363 of the Bankruptcy Code does not specify a standard for determining when it is appropriate for a court to authorize the use, sale, or lease of property of a debtor’s estate, courts have approved the authorization of a sale of a debtor’s assets if such sale is based upon the sound business judgment of the debtor. *See, e.g.*,



*Meyers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) (citing *In re Schipper*, 933 F.2d 513 (7th Cir. 1991)); *In re Chateaugay Corp.*, 973 F.2d 141, 143 (2d Cir. 1992); *Stephen Indus., Inc. v. McClung*, 789 F.2d 386 (6th Cir. 1986); *Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983).

33. Courts typically consider the following factors in determining whether a proposed sale satisfies this standard: (a) whether a sound business justification exists for the sale; (b) whether adequate and reasonable notice of the sale was provided to interested parties; (c) whether the sale will produce a fair and reasonable price for the property; and (d) whether the parties have acted in good faith. *See In re Decora Indus., Inc.*, No. 00-4459, 2002 WL 32332749, at \*2 (D. Del. May 20, 2002) (citing *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991)).

34. Where a debtor demonstrates a valid business justification for a decision, it is presumed that “in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” *In re Integrated Res., Inc.*, 147 B.R. at 656. A sound business purpose for the sale of a debtor’s assets outside the ordinary course of business exists where such sale is necessary to preserve the value of the estate for the benefit of creditors and interest holders. *See, e.g., In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143 (3d Cir. 1986); *In re Lionel Corp.*, 722 F.2d at 1063; *In re Food Barn Stores, Inc.*, 107 F.3d at 564-65 (recognizing the paramount goal of any proposed sale of property of estate is to maximize value).

35. Entering into the Sullair Transaction is a prudent exercise of the Debtors’ business judgment. *First*, the Sullair Transaction is the result of the Debtors’ thorough, transparent, and fair marketing and sale process in accordance with the Canadian Court-approved SISP, which

included extensive stakeholder negotiations and engagement, and ultimately resulted in entry into the Purchase Agreement. Further, the Transaction provides a viable going-concern transaction available to the Debtors to monetize the Sellers' assets as a going-concern for the benefit of all stakeholders. Accordingly, the Foreign Representatives contends that the Debtors have a sound business reason justifying the sale of the Purchased Assets to Sullair pursuant to the Purchase Agreement. (Vounassis Sale Decl. ¶ 12.) As such, recognition of the Vesting Order is necessary and appropriate.

36. *Second*, the Purchase Agreement is the result of an extensive marketing process undertaken by the Debtors and their advisors and the product of arm's-length, good-faith negotiations between the Debtors and Sullair. (Vounassis Sale Decl. ¶ 13.) As discussed below, the Foreign Representative submits that Sullair is a "good faith" purchaser within the meaning of section 363(m) of the Bankruptcy Code. Moreover, considering that the SISP was crafted to ensure that the Purchased Assets were sold for the maximum potential price, the Foreign Representative submits that the Sullair Transaction has been proposed in good faith. (*Id.*)

37. *Third*, during the Canadian Proceeding, the Debtors have complied with all notice and service requirements under the CCAA, including notice of the SISP and the Sullair Transaction. (Abitan Sale Decl. ¶ 19.) In addition, the Foreign Representative provided notice of the Noticing Procedures Motion to, among others, all parties with a U.S. mailing address that had been served with filings in the Canadian Proceeding, and all other parties who had previously received notice from the Foreign Representation in these chapter 15 cases. (*See Notice of Service* [Docket No. 62].) Further, in compliance with the Noticing Procedures Order, the Foreign Representative intends on serving this Motion in accordance with the terms of the Noticing Procedures Order. As such, this Motion, together with the Noticing Procedures, will provide

notice reasonably calculated, under the circumstances, to inform all interested parties of the pendency of this Motion, notice of the objection deadline, and notice of the hearing on this Motion. Accordingly, the Foreign Representative submits that notice of the Sullair Transaction and the hearing on approval thereof is sufficient and appropriate.

38. *Fourth*, the Purchase Agreement is fair, reasonable, and the result of an extensive marketing process and negotiations between the Debtors, the Monitor, and Sullair. Accordingly, the Foreign Representative believes it provides the highest and best value to the Debtors and their stakeholders for the Purchased Assets. The fairness and reasonableness of the consideration to be received by the Debtors from Sullair is validated by a “market test” through the robust court-approved SISP—a reliable means for establishing whether a purchase price is fair and reasonable. The Purchase Agreement presents the best opportunity to maximize the value of the Purchased Assets on a going concern basis. For all of the foregoing reasons, the Debtors have determined that the sale of the Purchased Assets pursuant to the Purchase Agreement is in the best interests of their estates, creditors, and other parties in interest, thereby satisfying the sound business purpose test and section 1520 of the Bankruptcy Code. (*See Vounassis Sale Decl.* ¶ 14.)

39. Lastly, sections 1525 and 1527 of the Bankruptcy Code contemplate cooperation “to the maximum extent possible with the foreign court or a foreign representative,” which includes, “coordination of the administration and supervision of the debtor’s assets and affairs,” and “approval or implementation of agreements concerning the coordination of proceedings.” 11 U.S.C. §§ 1525, 1527. Accordingly, the Foreign Representative respectfully requests that the Court recognize and give effect to the Vesting Order and approve the sale of the Purchased Assets.

**B. The Court Should Authorize and Approve the Sale of the Purchased Assets “Free and Clear” Under Section 363(f) of the Bankruptcy Code**

40. Section 363(f) of the Bankruptcy Code permits a debtor to sell property free and

clear of another party's interest in the property if: (a) applicable nonbankruptcy law permits such a free and clear sale; (b) the holder of the interest consents; (c) the interest is a lien and the sale price of the property exceeds the value of all liens on the property; (d) the interest is the subject of a bona fide dispute; or (e) the holder of the interest could be compelled in a legal or equitable proceeding to accept a monetary satisfaction of its interest. *See* 11 U.S.C. § 363(f); *see also In re Kellstrom Indus., Inc.*, 282 B.R. 787, 793 (Bankr. D. Del. 2002) (“Section 363(f) is written in the disjunctive, not the conjunctive, and if any of the five conditions are met, the debtor has the authority to conduct the sale free and clear of all liens.”); *Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (same).

41. Section 363(f) of the Bankruptcy Code is supplemented by section 105(a) of the Bankruptcy Code, which provides that “[t]he Court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a). The Foreign Representative submits that the sale of the Purchased Assets free and clear of all liens, claims, interests, and encumbrances will satisfy one or more of the requirements under section 363(f) of the Bankruptcy Code.

42. More specifically, the Debtors have obtained the requisite consent from their prepetition secured lenders and the DIP Lenders to sell the Purchased Assets free and clear of their liens, claims, interests, or encumbrances. (Abitan Sale Decl. ¶ 20.) Moreover, as noted above, in accordance with the service requirements of the CCAA, and those approved and required by this Court pursuant to the Noticing Procedures Order, the Debtors have provided notice of the proposed Sullair Transaction to all lienholders. (*See id.* ¶ 21; *Notice of Service* [Docket No. 62].) Accordingly, the Foreign Representative requests that, unless a party asserting a prepetition lien, claim, or encumbrance on any of the Purchased Assets timely objects to this Motion, such party

shall be deemed to have consented to the sale of the Purchased Assets. *See In the Matter of Tabone, Inc. (Hargrave v. Twp. of Pemberton)*, 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (by not objecting to a sale motion, a creditor is deemed to consent to the relief requested therein).

43. Accordingly, the Foreign Representative submits that the sale of the Purchased Assets free and clear of all interests, as provided in the Vesting Order and the proposed Sale and Recognition Order, satisfies the statutory prerequisites of section 363(f) of the Bankruptcy Code, and, therefore, the Court should authorize the sale of the Purchased Assets free and clear of any liens, claims, interests, and encumbrances, in accordance with section 363(f) of the Bankruptcy Code.

44. The Foreign Representative submits that a sale to Sullair of the Purchased Assets free and clear of all liens, claims, encumbrances, and other interests is consistent with the best interests of the Debtors' estates and creditors. Pursuing a sale other than one free and clear of all liens, claims, encumbrances, and other interests would yield substantially less value for the Debtors and their creditors. (Vounassis Sale Decl. ¶ 15.) Therefore, a sale free and clear of all interests is in the best interests of the Debtors, their creditors, and other parties in interest, is consistent with the sale approved by the Vesting Order.

**C. The Court Should Afford Sullair All Protections Under Sections 363(m) and (n) of the Bankruptcy Code as a Good Faith Purchaser**

45. The Debtors also request that the Court find that Sullair is entitled to the benefits and protections set forth in sections 363(m) and (n) of the Bankruptcy Code. Specifically, section 363(m) of the Bankruptcy Code provides, in pertinent part: “[t]he reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the

appeal, unless such authorization and such sale or lease were stayed pending appeal.” 11 U.S.C. § 363(m). Section 363(m) of the Bankruptcy Code fosters the “policy of not only affording finality to the judgment of the [B]ankruptcy [C]ourt, but particularly to give finality to those orders and judgments upon which third parties rely.” *In re Abbotts Dairies*, 788 F.2d at 147; *see also Allstate Ins. Co. v. Hughes*, 174 B.R. 884, 888 (S.D.N.Y. 1994) (“Section 363(m) . . . provides that good faith transfers of property will not be affected by the reversal or modification on appeal of an unstayed order, whether or not the transferee knew of the pendency of the appeal.”).

46. While the Bankruptcy Code does not define “good faith,” the Third Circuit has held that “the phrase encompasses one who purchases in ‘good faith’ and for ‘value.’” *In re Abbotts Dairies*, 788 F.2d at 147 (to constitute lack of good faith, a party’s conduct in connection with the sale must usually amount to fraud, collusion between the purchaser and other bidders or the trustee or an attempt to take grossly unfair advantage of other bidders); *see also In re Bedford Springs Hotel, Inc.*, 99 B.R. 302, 305 (Bankr. W.D. Pa. 1989); *In re Perona Bros., Inc.*, 186 B.R. 833, 839 (D.N.J. 1995).

47. In other words, a party would have to show fraud or collusion between the Debtors and Sullair to demonstrate a lack of good faith. *See Kabro Assocs. of West Islip, LLC v. Colony Hill Assocs. (In re Colony Hill Assocs.)*, 111 F.3d 269, 276 (2d Cir. 1997) (“[t]ypically, the misconduct that would destroy a [buyer]’s good faith status at a judicial sale involves fraud, collusion between the [buyer] and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders”). Due to the absence of a bright-line test for good faith, the determination is based on the facts of each case, with a focus on the “integrity of [a bidder]’s conduct in the course of the sale proceedings.” *In re Pisces Leasing Corp.*, 66 B.R. 671, 673 (E.D.N.Y. 1986) (quoting *In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1998 (7th Cir. 1978)).

48. The Foreign Representative submits that Sullair is a “good faith purchaser” within the meaning of section 363(m) of the Bankruptcy Code. Further, the Foreign Representative submits that the parties did not engage in any conduct that would cause or permit the Sullair Transaction to be avoided under section 363(n) of the Bankruptcy Code. The Debtors and Sullair, and their respective advisors, have entered into the Purchase Agreement, and seek entry of the Vesting Order and the Sale and Recognition Order, without collusion, in good faith, and after extensive arm’s-length negotiations. There is no evidence of fraud or collusion in the terms of the Purchase Agreement. To the best of the Foreign Representative’s knowledge, information, and belief, no party has engaged in any conduct that would cause or permit the Sullair Transaction to be set aside under section 363(m) of the Bankruptcy Code. (*See* Vounassis Sale Decl. ¶ 16.)

49. Accordingly, the Foreign Representative submits that Sullair is a good faith purchaser under section 363(m) of the Bankruptcy Code and has not violated section 363(n) of the Bankruptcy Code.

**D. Assumption and Assignment of Assigned Contracts Should Be Authorized**

50. Section 1521(a)(7) of the Bankruptcy Code provides that the court may grant a foreign representative “any appropriate relief,” including “any relief that may be available to a trustee,” where necessary to effectuate the purpose of chapter 15 and to protect the assets of the debtor or the interests of creditors. *See* 11 U.S.C. § 1521(a)(7). Pursuant to this authority, the Foreign Representative requests that the Court extend the protections afforded by Section 365 of the Bankruptcy Code to these chapter 15 cases. Application of section 365 of the Bankruptcy Code in these chapter 15 cases is necessary to ensure that the Debtors can assume and assign the Assigned Contracts to Sullair as contemplated in the Purchase Agreement and the Vesting Order. Absent the application of section 365 of the Bankruptcy Code, there is a risk that the counterparties to the Assigned Contracts may assert that they are not bound by the Vesting Order or may try to

exercise contractual rights that may deprive Sullair of the benefits of performance under the Assigned Contracts.

51. Section 365(a) of the Bankruptcy Code provides that a debtor in possession “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). Courts employ the business judgment standard in determining whether to approve a debtor’s decision to assume or reject an executory contract or unexpired lease. *See, e.g., In re Market Square Inn, Inc.*, 978 F.2d 116, 121 (3d Cir. 1992) (assumption or rejection of lease “will be a matter of business judgment by the bankruptcy court”); *In re HQ Global Holdings, Inc.*, 290 B.R. 507, 511 (Bankr. D. Del. 2003) (finding that a debtor’s decision to assume or reject executory contract is governed by business judgment standard and may only be overturned if decision is product of bad faith, whim, or caprice). The “business judgment” test in this context only requires that a debtor demonstrate that assumption or rejection of a [Contract or] Lease benefits the estate. *See Sharon Steel Corp. v. Nat’l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 40 (3d Cir. 1989).

52. Any assumption and assignment of the Assigned Contracts is an exercise of the Debtors’ sound business judgment because the transfer of such Assigned Contracts is necessary to the Debtors’ ability to obtain the best value for the Purchased Assets. The Sellers are selling substantially all of their assets and, accordingly, will have no use for the Assigned Contracts after the Sullair Transaction closes. If the Debtors are unable to assign the Assigned Contracts, the Sullair Transaction will be jeopardized, causing a disruption in the administration of the Canadian Proceeding and a significant loss of value to the Debtors and their stakeholders. (Vounassis Sale Decl. ¶ 17.)

53. In addition, the Debtors, the Monitor, and their respective advisors have carefully



considered the economic terms of Assigned Contracts and determined that the assumption and assignment of Assigned Contracts would maximize the value of the Purchased Assets, which benefits all stakeholders. (Vounassis Sale Decl. ¶ 18.) Given that consummation of the Sullair Transaction is critical to the Debtors' efforts to maximize value, the Debtors' assumption and assignment of the Assigned Contracts is an exercise of sound business judgment and, therefore, should be approved.

54. Pursuant to the CCAA, as a condition to the assignment of the Assigned Contracts to Sullair and consummating the Sullair Transaction, the Debtors are required to cure any outstanding monetary defaults under the Assigned Contracts. Accordingly, the Debtors' assignment of the Assigned Contracts will be contingent upon payment of the cure amounts and effective only upon the closing of the Sullair Transaction. Each counterparty to an Assumed Contract has been notified of the assignment of their contract as required by the CCAA. (Abitan Sale Decl. ¶ 22.)

**E. Waiver of Notice and Stay Under Bankruptcy Rules 6004 and 6006**

55. To the extent that Bankruptcy Rule 6004(a) applies, the Foreign Representative respectfully requests a waiver of such notice requirement in order to successfully implement the foregoing requested relief. As discussed in the Noticing Procedures Motion, due to the compressed timeframe required between the execution of a purchase agreement, obtaining sale orders from the Canadian Court and the Court, and closing a sale transaction, by the Noticing Procedures Motion, and as recognized in the Noticing Procedures Order, the Foreign Representative provided notice of the sale process to all interested parties in the United States, and provided them an opportunity to object. Accordingly, the Foreign Representative respectfully requests a waiver of the requirements of Bankruptcy Rule 6004(a) to the extent applicable.

56. Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale, or lease

of property . . . is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). Similarly, Bankruptcy Rule 6006(d) further provides that an “order authorizing the trustee to assign an executory contract or unexpired lease under § 365(f) is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6006(d).

57. As described above, the relief sought by the Foreign Representative herein is time-sensitive and is necessary for the Debtors to implement the Sale in compliance with the timing requirements set forth in the Purchase Agreement and approved by the Canadian Court. Any delay in closing, could jeopardize the Sullair Transaction to the detriment of the Debtors and their stakeholders. Accordingly, the Foreign Representative respectfully requests that the Court waive the 14-day stay imposed by Bankruptcy Rules 6004(h) and 6006(d), as the exigent nature of the relief sought herein justifies immediate relief.

### **NOTICE**

58. Notice of this Motion will be provided to the following parties or their counsel via U.S. Mail: (a) any party that requested notice of this Motion pursuant to the procedures set forth in the Noticing Procedures Order; (b) any party who has received notice by mail from the Foreign Representative of any previous filing in these chapter 15 cases; (c) all parties to litigation in which any Debtor is a party and that is pending in the United States as of the date that these chapter 15 cases were filed; (d) the Office of the United States Trustee for the District of Delaware; (e) the United States Attorney’s Office for the District of Delaware; (f) National Bank of Canada; (g) Export Development Canada; and (h) the Monitor. Notice of this Noticing Procedures Motion will also be provided, via email, to all parties who receive notices in these chapter 15 cases automatically via the Court’s CM/ECF system.

**NO PRIOR REQUEST**

59. Except as set forth herein, no previous request for the relief sought herein has been made by the Foreign Representative or the Debtors to this or any other court.

*[Remainder of Page Intentionally Left Blank]*

**CONCLUSION**

**WHEREFORE**, the Foreign Representative respectfully requests that the Court grant the relief requested herein and such other and further relief as may be just and proper.

Dated: February 10, 2023  
Wilmington, Delaware

BIELLI & KLAUDER, LLC

*/s/ David M. Klauder*

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*Counsel for the Foreign Representative*

# Exhibit A

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

In re:

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

Debtors in a foreign proceeding.<sup>1</sup>

Chapter 15

Case No. 22- 10934 (KBO)

Jointly Administered

**ORDER (I) RECOGNIZING AND ENFORCING  
THE CCAA VESTING ORDER; (II) APPROVING THE SALE OF  
CERTAIN OF THE DEBTORS' ASSETS FREE AND CLEAR OF ANY AND ALL  
LIENS, CLAIMS, AND ENCUMBRANCES; (III) APPROVING THE ASSUMPTION  
AND ASSIGNMENT OF CERTAIN CONTRACTS; AND  
(IV) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)<sup>2</sup> of Xebec Adsorption Inc., in its capacity as the duly-appointed foreign representative (the “**Foreign Representative**”) for the above-captioned debtors (collectively, the “**Debtors**”), for entry of an order pursuant to sections 105(a) 363, 365, 1501, 1507, 1520, 1521, 1525, and 1527 of the Bankruptcy Code, Bankruptcy Rules 2002 and 6004, and Local Rules 2002-1 and 9006-1, for entry of an order (this “**Order**”), (a) recognizing and enforcing the CCAA Vesting Order, attached hereto as **Exhibit A**; (b) approving, under section 363 of the Bankruptcy Code, the sale of the Debtors’ rights, title, and interests in and to the Purchased Assets (as defined below) to Sullair, LLC or its designee (“**Purchaser**”), pursuant to that certain Asset Purchase Agreement, dated [●], 2023, by and between Debtors CDA Systems, LLC (“**CDA**”) and California Compression, LLC (“**California Compression**,” and together with CDA, “**Sellers**”)

<sup>1</sup> The Debtors in the chapter 15 proceedings and the last four digits of their federal tax identification numbers are: Xebec Adsorption Inc. (0228), Xebec RNG Holdings Inc. (N/A), Applied Compression Systems Ltd. (N/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: 700-1130 Sherbrooke Street West, Montréal, Québec H3A 2M8.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Motion.

and Purchaser (the “**Transaction Agreement**”), free and clear of any and all liens, claims, encumbrances, and other interests (other than the Permitted Encumbrances); (c) authorizing, under section 365 of the Bankruptcy Code, the assumption and assignment of the Assigned Contracts (as defined below) to Purchaser; and (d) granting such other relief as this Court deems just and proper, all as more fully set forth in the Motion; and upon consideration of the [●] Declaration and [●] Declaration; and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334 and sections 109 and 1501 of the Bankruptcy Code; and venue being proper before this Court pursuant to 28 U.S.C. § 1410(1) and (3); and the Motion being a core proceeding pursuant to 28 U.S.C. § 157(b); and that this Court may enter a final order consistent with Article III of the United States Constitution; and adequate and sufficient notice of the filing of the Motion having been given by the Foreign Representative; and it appearing that the relief requested in the Motion is necessary and beneficial to the Debtors; and this Court having held a hearing (the “**Hearing**”) to consider the relief requested in the Motion; and there being no objections or other responses filed that have not been overruled, withdrawn, or otherwise resolved; and after due deliberation and sufficient cause appearing therefore, **IT IS HEREBY FOUND AND DETERMINED THAT:**

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

B. This Court previously entered that certain Order Granting Recognition of Foreign Main Proceeding and Certain Related Relief [Docket No. 36] on October 27, 2022 (the

“**Recognition Order**”), pursuant to which this Court found that the Debtors had satisfied the requirements of, among others, sections 101(23) and (24), 1502(4), 1504, 1507, 1509, 1510, 1515, 1517, 1520, 1521, and 1522 of the Bankruptcy Code. All such findings by this Court are hereby incorporated by reference herein and such Recognition Order shall continue in effect in all respects except to the extent this Order directly modifies or directly contradicts such Recognition Order.

C. On September 29, 2022, the Canadian Court entered that certain Bidding Procedures Order that, among other things: (i) authorized the Debtors to implement a sale and investment solicitation process (the “**SISP**”) in accordance with the terms thereof; and (ii) provided other relief as set forth therein.

D. On January 9, 2023, this Court entered that certain Order (A) Approving Noticing Procedures for Debtors’ Motion for (I) Approval of the Sale of Debtors’ Assets; and (II) Recognition and Enforcement of Canadian Court Order Approving the Sale; (B) Setting a Sale Hearing; and (C) Granting Related Relief [Docket No. 65] (the “**Noticing Procedures Order**”), pursuant to which this Court, among other things, approved the Noticing Procedures (as defined therein) for the Motion.

E. On February [●], 2023, the Canadian Court entered the CCAA Vesting Order, approving, among other things, the Transaction Agreement, including the sale of Sellers’ rights, title, and interests in and to substantially all of Sellers’ assets (the “**Purchased Assets**”) to Purchaser, and the assumption and assignment by Sellers to Purchaser of those certain contracts listed in the Transaction Agreement (the “**Assigned Contracts**”).

F. Based on the affidavits of service filed with, and the representations made to, this Court: (i) notice of the Motion, the Hearing, and the CCAA Vesting Order complied with the Noticing Procedures Order and was proper, timely, adequate, and sufficient under the



circumstances of these chapter 15 cases and these proceedings and complied with the various applicable requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules; and (ii) no other or further notice of the Motion, the Hearing, the CCAA Vesting Order, or the entry of this Order is necessary or shall be required.

G. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a).

H. The relief granted herein is necessary and appropriate, is in the interest of the public, promotes international comity, is consistent with the public policies of the United States, is warranted pursuant to sections 105(a), 363(b), (f), (m) and (n), 365, 1501, 1507, 1520, 1521, 1525, and 1527 of the Bankruptcy Code, and will not cause any hardship to any parties in interest that is not outweighed by the benefits of the relief granted.

I. Based on information contained in the Motion, the [●] Declaration, the [●] Declaration, and the record made at the Hearing, the Debtors' advisors conducted the SISP to solicit interest in, among other of the Debtors' assets, the Purchased Assets in accordance with the terms of the SISP Orders, and such process was non-collusive, duly noticed, and provided a reasonable opportunity to make an offer to purchase the Purchased Assets. The Foreign Representative and the Monitor have recommended that the Debtors sell the Purchased Assets and assign the Assigned Contracts to Purchaser in accordance with the terms and conditions set forth in the Transaction Agreement.

J. Based on information contained in the Motion, the [●] Declaration, the [●] Declaration, and the record made at the Hearing, the relief granted herein relates to assets and interests that, under the laws of the United States, should be administered in the Canadian Proceedings.

K. The Debtors' and Sellers' performance under the Transaction Agreement and related agreements: (i) constitute a sound and reasonable exercise of the Debtors' and Sellers' business judgment; (ii) provide value and are beneficial to the Debtors and Sellers, and are in the best interests of the Debtors and Sellers, their estates, and their stakeholders; and (iii) are reasonable and appropriate under the circumstances. The consideration provided by Purchaser for the Purchased Assets under the Transaction Agreement constitutes fair consideration and reasonably equivalent value for the Purchased Assets under the Bankruptcy Code and other laws of the United States, any state, territory, possession thereof, or the District of Columbia.

L. Purchaser is not, and shall not be deemed to be, a mere continuation, and is not holding itself out as a mere continuation, of any of the Debtors and Sellers and there is no continuity between Purchaser and the Debtors or Sellers. The Transaction does not amount to a consolidation, merger, or *de facto* merger of Purchaser and any of the Debtors or Sellers.

M. Time is of the essence in consummating the Transaction. To maximize the value of the Purchased Assets, it is essential that the Transaction occur and be recognized and enforced in the United States promptly and become effective. The Foreign Representative, on behalf of the Debtors, has demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the immediate approval and consummation of the Transaction as contemplated by the Transaction Agreement. Accordingly, there is cause to waive the stay that would otherwise be applicable under Bankruptcy Rules 6004(a) and 6004(h), and accordingly the transactions contemplated by the Transaction Agreement and related agreements can be closed as soon as reasonably practicable upon entry of this Order.

N. Based upon information contained in the Motion, the [●] Declaration, the [●] Declaration, the other pleadings filed in these chapter 15 cases, and the record made at the Hearing,

the Transaction Agreement and each of the transactions contemplated therein were negotiated, proposed, and entered into by the Debtors, Sellers and Purchaser in good faith, without collusion, and from arm's-length bargaining positions. Purchaser is a "good faith purchaser" within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to all the protections afforded thereby. Neither the Debtors, the Foreign Representative, nor Purchaser has engaged in any conduct that would cause or permit the Transaction Agreement or the consummation of the Transaction to be avoided or costs and damages to be imposed under section 363(n) of the Bankruptcy Code. Purchaser is not an "insider" of any of the Debtors, as that term is defined in section 101 of the Bankruptcy Code, and no common identity of incorporators, directors, managers, or controlling stockholders exists between Purchaser and the Debtors or Sellers.

O. The Transaction Agreement was not entered into for the purpose of hindering, delaying, or defrauding any present or future creditors of the Debtors or Sellers.

P. The Foreign Representative, on behalf of itself and the Debtors and Sellers, may sell the Purchased Assets free and clear of any and all liens, claims (as defined in section 101(5) of the Bankruptcy Code), rights, liabilities, encumbrances, and other interests of any kind or nature whatsoever against the Debtors or the Purchased Assets, other than the Permitted Encumbrances, because with respect to each creditor asserting any liens, claims, encumbrances, and other interests, one or more of the standards set forth in section 363(f)(1) through (5) of the Bankruptcy Code has been satisfied. Each creditor that did not object to the Motion is deemed to have consented to the sale of the Purchased Assets free and clear of any and all liens, claims, encumbrances, and other interests (other than the Permitted Encumbrances) pursuant to section 363(f)(2) of the Bankruptcy Code. All such liens, claims, encumbrances, and other interests, including Claims and Encumbrances (as defined in the CCAA Vesting Order), shall attach to the 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.

Q. The total consideration to be provided under the Transaction Agreement reflects Purchaser's reliance on this Order to provide it, pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, with title to and possession of the Purchased Assets free and clear of any and all liens, claims, encumbrances, and other interests, other than the Permitted Encumbrances.

R. The sale of the Purchased Assets to Purchaser will be a legal, valid, and effective sale of the Purchased Assets, and, upon the filing of the Monitor's Certificate, will vest Purchaser with all rights, title, and interests of the Debtors and the Sellers in and to the Purchased Assets, free and clear of any and all liens, claims, encumbrances, and other interests, other than the Permitted Encumbrances.

S. The Foreign Representative, the Debtors, the Sellers, and the Monitor, as appropriate: (i) have full power and authority to execute the Transaction Agreement and all other documents contemplated thereby; (ii) have all the power and authority necessary to consummate the transactions contemplated by the Transaction Agreement; and (iii) upon entry of this Order, other than any consents identified in the Transaction Agreement (including with respect to antitrust matters, if any), need no consent or approval from any other Person (as defined in the CCAA Vesting Order) or governmental unit to consummate the Transaction. The Debtors and the Sellers are the sole and rightful owners of the Purchased Assets, no other Person has any ownership rights, title, or interests therein, and the Transaction has been duly and validly authorized by all necessary corporate action of the Debtors and the Sellers.

T. The Transaction Agreement is a valid and binding contract between the Debtors and Purchaser and shall be enforceable pursuant to its terms. The Transaction Agreement, the Transaction, and the consummation thereof shall be specifically enforceable against and binding upon (without posting any bond) the Debtors and the Foreign Representative in these chapter 15 cases and any trustee that may be appointed in any chapter 7 or chapter 11 successor cases, and shall not be subject to rejection or avoidance by the foregoing parties or any other Person.

U. Purchaser would not have entered into the Transaction Agreement and would not consummate the purchase of the Purchased Assets and the related transactions, thus adversely affecting the Debtors, their estates, and their creditors, and other parties in interest, if the sale of the Purchased Assets to Purchaser was not free and clear of any and all liens, claims, encumbrances, and other interests (other than the Permitted Encumbrances), or if Purchaser would, or in the future could, be liable on account of any such lien, claim, encumbrance, or any other interest, including, as applicable, certain liabilities related to the Purchased Assets that will not be assumed by Purchaser, as described in the Transaction Agreement.

V. A sale of the Purchased Assets other than free and clear of any and all liens, claims, encumbrances, and other interests (other than the Permitted Encumbrances) would yield substantially less value than the sale of the Purchased Assets pursuant to the Transaction Agreement; thus, the sale of the Purchased Assets free and clear of any and all liens, claims, encumbrances, and other interests (other than the Permitted Encumbrances), in addition to all of the relief provided herein, is in the best interests of the Debtors, the Sellers, their creditors, and other parties in interest.

W. The interests of the Debtors' and Sellers' creditors in the United States are sufficiently protected. The relief granted herein is necessary and appropriate, in the interests of

the public and international comity, consistent with the public policies of the United States, and warranted pursuant to sections 1521(b) and 1522 of the Bankruptcy Code.

X. The legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein.

Y. Any and all findings of fact and conclusions of law announced by this Court at the Hearing are incorporated herein.

Z. The legal and factual bases set forth in the Motion establish just cause for the relief granted herein. Entry of this Order is in the best interests of the Debtors, the Sellers, their creditors and interest holders, and all other parties in interest.

**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 in its entirety as set forth herein.
2. All objections, if any, to the Motion or the relief requested therein that have not been withdrawn, waived, or settled by stipulation filed with this Court, and all reservations of rights included therein, are hereby overruled on the merits.
3. The CCAA Vesting Order and all of its respective terms, including any immaterial or administrative amendments thereto, including those necessary to give effect to the substance of such order, either pursuant to the terms therein or as approved by the Canadian Court, are fully recognized and given full force and effect in the United States in their entirety.
4. The Transaction Agreement and the transactions contemplated thereunder, including, for the avoidance of doubt, (a) the sale of the Purchased Assets, (b) the assumption and assignment of the Assigned Contracts, and (c) the transfers of the Purchased Assets and any assets located within the United States on the terms set forth in the Transaction Agreement, the CCAA Vesting Order, including all transactions contemplated thereunder, this Order, including all

transactions contemplated hereunder, and all of the terms and conditions of each of the foregoing are hereby approved and authorized pursuant to sections 105, 363, 365, 1501, 1520, 1521, 1525, and 1527 of the Bankruptcy Code. The failure specifically to include any particular provision of the Transaction Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of this Court that the Transaction Agreement and the Transaction be authorized and approved in its entirety.

5. Pursuant to sections 105, 363, 365, 1501, 1520, 1521, 1525, and 1527 of the Bankruptcy Code, the CCAA Vesting Order, and this Order, the Debtors, Purchaser, and the Foreign Representative (as well as their respective officers, employees, and agents) are authorized to take any and all actions necessary or appropriate to: (a) consummate the Transaction, including the sale of the Purchased Assets and the assumption and assignment of the Assigned Contracts to Purchaser, in accordance with the Transaction Agreement, the CCAA Vesting Order, and this Order; and (b) perform, consummate, implement, and close fully the Transaction, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Transaction Agreement and the Transaction and to take such additional steps and all further actions as may be necessary or appropriate to the performance of the obligations contemplated by the Transaction Agreement, all without further order of this Court, and are hereby authorized and empowered to cause to be executed and filed such statements, instruments, releases, and other documents on behalf of such Person with respect to the Purchased Assets or Assigned Contracts that are necessary or appropriate to effectuate the transactions, any related agreements, the CCAA Vesting Order, and this Order, including amended and restated certificates or articles of incorporation and by-laws or certificates or articles of amendment, and all such other actions, filings, or recordings as may be required under appropriate provisions of the applicable laws of all

applicable governmental units or as any of the officers of the Debtors or Purchaser may determine are necessary or appropriate, and are hereby authorized and empowered to cause to be filed, registered, or otherwise recorded a certified copy of the CCAA Vesting Order, this Order, or the Transaction Agreement, which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all liens, claims, encumbrances, and other interests against the Purchased Assets. The CCAA Vesting Order and this Order are deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every federal, state, or local government agency, department, or office.

6. All Persons that are currently in possession of some or all of the Purchased Assets located in the United States or that are otherwise subject to the jurisdiction of this Court are hereby directed to surrender possession of such Purchased Assets to Purchaser on the Closing Date.

7. This Court shall retain exclusive jurisdiction to enforce this Order and any and all terms and provisions of the CCAA Vesting Order in the United States.

### **Releases**

8. The releases, exculpation, and injunctive provisions set forth in paragraphs [●] through [●] of the CCAA Vesting Order are expressly recognized by this Court and given full force and effect in the United States.

9. Any legal, factual, equitable, or other defenses (including, but not limited to, waiver, release, estoppel, or res judicata) held by any current or former officer, manager, or director of the Debtors in connection with any claim held by, asserted, or asserted in the future by any Person relating in any manner to such current or former officer's, manager's, or director's role, position, conduct, acts, or omissions as an officer, manager, or director of any Debtor are hereby preserved and shall not be limited, waived, released, modified, or affected whatsoever by the entry of this Order. Without limiting the foregoing, the rights of any current or former officer, manager,



or director of any of the Debtors to: (a) raise or assert that the releases, exculpation, and/or injunctive provisions contained in the CCAA Vesting Order entered in the Canadian Proceedings are applicable to them and are fully enforceable as a defense in any action brought in any court, tribunal, or forum within the United States, and (b) seek recognition of the releases, exculpation, and injunctions contained in the CCAA Vesting Order under the doctrine of comity or any other similar cross-border cooperation doctrine or treaty are fully preserved and retained in full.

10. Notwithstanding anything to the contrary in this Order, the CCAA Vesting Order, or any other document, this Court shall retain exclusive jurisdiction to hear and determine all disputes which are in any forum or court within the United States involving the existence, nature, scope, or enforcement of any exculpations, discharges, injunctions, and releases granted in the CCAA Vesting Order or recognized by this Order.

**Transfer of the Purchased Assets Free and Clear**

11. Pursuant to sections 105(a), 363, 365, 1501, 1520, 1521, 1525, and 1527 of the Bankruptcy Code, on the Closing Date, all rights, title, and interests of the Debtors and Sellers in the Purchased Assets shall be transferred and absolutely vest in Purchaser, without further instrument of transfer or assumption and assignment, and such transfer shall: (a) be a legal, valid, binding, and effective transfer of the Purchased Assets to Purchaser; (b) upon the filing of the Monitor's Certificate, vest Purchaser with all rights, title, and interests of the Debtors and Sellers in the Purchased Assets; and (c) be free and clear of any and all liens, claims, encumbrances, and other interests, other than the Permitted Encumbrances, with all such liens, claims, encumbrances, and other interests, including all Claims and Encumbrances (as defined in the CCAA Vesting Order), attaching to the 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.

12. Pursuant to sections 105(a), 363(f), 365, 1501, 1520, 1521, 1525 and 1527 of the Bankruptcy Code, upon the closing of the Transaction Agreement and except with respect to solely Permitted Encumbrances: (a) no holder of a lien, claim, encumbrance, or other interest shall interfere, and each and every holder of a lien, claim, encumbrance, or other interest is enjoined from interfering, with Purchaser's rights and title to or use and enjoyment of the Purchased Assets; and (b) the sale of the Purchased Assets, the Transaction Agreement, and any instruments contemplated thereby shall be enforceable against and binding upon, and not subject to rejection or avoidance by, the Debtors or any successor thereof. All Persons holding a lien, claim, encumbrance, or other interest (other than the Permitted Encumbrances) are forever barred and enjoined from asserting such lien, claim, encumbrance, or other interest (other than the Permitted Encumbrances) against the Purchased Assets, Purchaser or its affiliates and their respective officers, directors, employees, managers, partners, members, financial advisors, attorneys, agents, and representatives, and their respective affiliates, successors, and assigns from and after closing of the Transaction Agreement.

13. Pursuant to sections 105(a), 363, 365, 1501, 1520, 1521, 1525, and 1527 of the Bankruptcy Code, on the Closing Date, Sellers are authorized to assume the Assigned Contracts and assign such Assigned Contracts to Purchaser, and such transfer and assumption and assignment shall be deemed legal, valid, binding, and effective and shall be free and clear of any and all liens, claims, encumbrances, cure costs not assumed by Purchaser, and other interests, other than the Permitted Encumbrances. The Assigned Contracts shall be transferred to and remain in full force and effect for the benefit of Purchaser in accordance with their respective terms,

notwithstanding any provision in any such Assigned Contract that prohibits, restricts, or conditions such assumption and assignment or transfer.

14. For the avoidance of doubt, upon payment of the Purchase Price, transfer of title and possession of the Purchased Assets in and to the Purchaser shall be free and clear of any liabilities and other liens pursuant to any successor, successor-in-interest, successor employer or substantial continuation theory, including the following: (a) any employment or labor agreements, (b) all deeds of trust, security deeds, mortgages, liens, and security interests, (c) intercompany loans and receivables between the Debtors and any non-Debtor subsidiary; (d) any pension or medical benefit plan of the Debtors, any compensation or other employee benefit plan of the Debtors, or any other employee welfare agreements, practices and programs, (e) any other employee, workers' compensation, occupational disease or unemployment or temporary disability related claim, including, without limitation, claims and other liens that might otherwise arise under or pursuant to (i) the Employee Retirement Income Security Act of 1974, as amended, and state equivalents thereof, (ii) the Fair Labor Standards Act, and state equivalents thereof, (iii) Title VII of the Civil Rights Act of 1964, and state equivalents thereof, (iv) the Federal Rehabilitation Act of 1973, and state equivalents thereof, (v) the National Labor Relations Act, and state equivalents thereof, (vi) the Worker Adjustment and Retraining Act of 1988, and state equivalents thereof, (vii) the Age Discrimination and Employee Act of 1967 and Age Discrimination in Employment Act, as amended, and state equivalents thereof, (viii) the Americans with Disabilities Act of 1990, and state equivalents thereof, (ix) the Consolidated Omnibus Budget Reconciliation Act of 1985, and state equivalents thereof, (x) state discrimination laws, (xi) state unemployment compensation laws or any other similar state laws, or (xii) any other state or federal benefits or claims and other liens relating to any employment with the Debtors or any predecessors, (f) environmental or other

claims and other liens arising under any environmental laws with respect to any assets owned or operated by Debtor(s) or any corporate predecessor at any time on or prior to the Closing Date (including, without limitation, the presence of hazardous, toxic, polluting or contaminating substances or waste) that may be asserted on any basis, including, without limitation, under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601, et seq., or other state or federal statute, (g) any bulk sales or similar law, (h) any Tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended, and (i) any and all theories based upon successor liability, including any theories on successor products liability grounds or otherwise; (j) any claims arising prior to the Closing Date based on equity ownership; and (k) any claims arising prior to the Closing Date based upon or sounding in equity.

15. Each and every federal, state, and local governmental agency or department is authorized and directed to accept, file, register, or otherwise record (and not impose any fee, charge, or tax in connection therewith) any and all documents and instruments necessary or appropriate to consummate the sale of the Purchased Assets to Purchaser and the transactions generally. Effective as of the Closing Date, the CCAA Vesting Order and this Order shall constitute for any and all purposes a full and complete conveyance and transfer of the Debtors' interests in the Purchased Assets to Purchaser free and clear of any and all liens, claims, encumbrances, and other interests, other than the Permitted Encumbrances.

16. This Order (a) shall be effective as a determination that, as of the Closing Date, all liens, claims, encumbrances, and other interests, other than the Permitted Encumbrances, have been unconditionally released, discharged, and terminated as to Purchaser and the Purchased Assets, and that the conveyances and transfers described herein have been effected, and (b) is and shall be binding upon and govern the acts of all Persons, including all filing agents, filing officers,

title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal and local officials, and all other Persons who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease. Each of the foregoing Persons is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the Transaction Agreement and effect the discharge of all liens, claims, encumbrances, and other interests other than the Permitted Encumbrances pursuant to this Order and the CCAA Vesting Order and not impose any fee, charge, or tax in connection therewith.

17. Purchaser is not and shall not be deemed to: (a) be a legal successor, or otherwise be deemed a successor, to any of the Debtors; (b) have, *de facto* or otherwise, merged with or into any or all Debtors; or (c) be a mere continuation or substantial continuation of any or all Debtors or the enterprise or operations of any or all Debtors.

18. The Transaction Agreement, including the purchase of the Purchased Assets, is undertaken by Purchaser in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorizations provided herein shall neither affect the validity of the transactions nor the transfer of the Purchased Assets to Purchaser free and clear of any and all liens, claims, encumbrances, and other interests, unless such authorization is duly stayed before the closing of the Transaction Agreement pending such appeal.

19. Neither the Debtors nor Purchaser has engaged in any conduct that would cause or permit the Transaction Agreement to be avoided or costs and damages to be imposed under section 363(n) of the Bankruptcy Code.

20. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and this Order, and the requirements of Bankruptcy Rule 6004(a) and the Bankruptcy Local Rules are satisfied by such notice.

21. The terms and provisions of the Transaction Agreement, the CCAA Vesting Order, and this Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtors, Purchaser, the Foreign Representative, the Debtors' creditors, and all other parties in interest, and any successors of the Debtors, Purchaser, the Foreign Representative, and the Debtors' creditors, including any foreign representative(s) of the Debtors, trustee(s), examiner(s), or receiver(s) appointed in any proceeding, including, without limitation, any proceeding under any chapter of the Bankruptcy Code, the CCAA, or any other law, and all such terms and provisions shall likewise be binding on such foreign representative(s), trustee(s), examiner(s), or receiver(s) and shall not be subject to rejection or avoidance by the Debtors, their creditors, or any trustee(s), examiner(s), or receiver(s).

22. Subject to the terms and conditions of the CCAA Vesting Order, the Transaction Agreement, and any related agreements, documents, or other instruments, may be modified, amended, or supplemented by the parties thereto, in a writing signed by each party, and in accordance with the terms thereof, without further order of this Court; *provided* that any such modification, amendment, or supplement does not materially change the terms of the transactions, the Transaction Agreement, or any related agreements, documents, or other instruments and is otherwise in accordance with the terms of the CCAA Vesting Order.

23. The provisions of this Order and the Transaction Agreement are non-severable and mutually dependent. To the extent that there are any inconsistencies between the terms of this Order and the CCAA Vesting Order, on the one hand, and the Transaction Agreement, on the other, this Order and the CCAA Vesting Order shall govern.

24. Nothing in this Order shall be deemed to waive, release, extinguish, or estop the Debtors or the Foreign Representative from asserting, or otherwise impair or diminish, any right (including, without limitation, any right of recoupment), claim, cause of action, defense, offset, or counterclaim in respect of any asset or interest that is not a Purchased Asset.

25. All Persons subject to the jurisdiction of the United States are permanently enjoined and restrained from taking any actions inconsistent with, or interfering with, the enforcement and implementation of the CCAA Vesting Order or any documents incorporated by the foregoing and this Order.

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

27. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.

28. Notwithstanding any applicability of any Bankruptcy Rules, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry. For the avoidance of doubt, any stay pursuant to Bankruptcy Rule 6004(h) is hereby dispensed with and waived.

**EXHIBIT A**

**CCAA Vesting 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

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

**XEBEC ADSORPTION INC.**

-and-

**XEBEC RNG HOLDINGS INC.**

-and-

**APPLIED COMPRESSION SYSTEMS LTD.**

-and-

**COMPRESSED AIR INTERNATIONAL INC.**

-and-

**XEBEC HOLDING USA INC.**

-and-

**ENERPHASE INDUSTRIAL SOLUTIONS, INC.**

-and-

**CDA SYSTEMS, LLC**

-and-

**XEBEC ADSORPTION USA INC.**

-and-

**THE TITUS COMPANY**

-and-

**NORTEKBELAIR CORPORATION**

-and-

**XBC FLOW SERVICES – WISCONSIN INC.**

-and-

**CALIFORNIA COMPRESSION, LLC**

-and-

**XEBEC SYSTEMS USA, LLC**

Debtors / Petitioners

- 2 -

-and-

**DELOITTE RESTRUCTURING INC.**

Monitor

-and-

**IVYS ADSORPTION INC.**

-and-

**IVYS, INC.**

-and-

**SULLAIR, LLC**

-and-

**FONDS DE SOLIDARITÉ DES TRAVAILLEURS DU  
QUÉBEC (F.T.Q.)**

-and-

**THE REGISTRAR OF THE REGISTER OF  
PERSONAL AND MOVABLE REAL RIGHTS  
(QUÉBEC)**

-and-

**THE REGISTRAR OF THE PERSONAL PROPERTY  
SECURITY REGISTRATION SYSTEM (ONTARIO)**

Impleaded Parties

**APPLICATION FOR THE ISSUANCE OF A THIRD AMENDED AND  
RESTATED INITIAL ORDER AND APPROVAL AND VESTING  
ORDERS**

**(Sections 11, 11.2 and 36 of the *Companies' Creditors  
Arrangement Act*, RSC 1985, c C-36)**

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

**I. INTRODUCTION**

1. The Debtors / Petitioners Xebec Adsorption Inc., Xebec RNG Holdings Inc., Applied Compression Systems Ltd., Compressed Air International Inc., Xebec Holding USA Inc., Enerphase Industrial Solutions, Inc., California Compression, LLC, CDA Systems, LLC, Xebec Adsorption USA Inc., The Titus Company, Nortekbelair Corporation, Xebec Systems USA, LLC, 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 “**Third Amended and Restated Initial Order**”), substantially in the form of the draft order communicated herewith as **Exhibit P-1**, *inter alia*:
  - (a) extending the Stay (as defined below) until March 17, 2023 (the “**Extension Date**”);
  - (b) approving the Second DIP Facility (as defined below) and approving the execution by the Petitioners of the Second DIP Term Sheet (as defined below);
  - (c) granting the Second DIP Charge (as defined below);
  - (d) reducing the Administration Charge (as defined in the Second ARIO); and
  - (e) sealing the confidential exhibits filed in support of this Application.

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

3. The Petitioners are also seeking the issuance of:
  - (a) an approval, vesting and assignment order (the “**Ivys Approval, Vesting and Assignment Order**”), substantially in the form of the draft order communicated herewith as **Exhibit P-2**, *inter alia*:
    - i) authorizing *nunc pro tunc* the Petitioners Xebec Adsorption Inc. (“**Xebec Inc.**”) and Compressed Air International Inc. (“**Compressed**”) to have executed an asset purchase agreement dated February 8, 2023 (the “**Ivys APA**”) between Xebec Inc. and Compressed, as vendors, and Ivys, Inc. on behalf of a corporation to be incorporated and Ivys Adsorption Inc. as purchasers (collectively, “**Ivys**”) for the sale of the Ivys Purchased Assets (as defined below) (the “**Ivys Transaction**”);
    - ii) assigning all rights and obligations of Xebec Inc. and Compressed under the Assigned Contracts (as defined in the Ivys APA), upon the issuance to Xebec Inc., Compressed and Ivys of the relevant Monitor’s Certificate;
    - iii) providing for the assignment of all rights and obligations of Xebec of any Post-Closing Assigned/Assumed Contracts (as defined in the Ivys APA); and
    - iv) approving the Ivys Transaction;

- (b) an approval, vesting and assignment order (the “**Sullair Approval, Vesting and Assignment Order**”), substantially in the form of the draft order communicated herewith as **Exhibit P-3**, *inter alia*:
    - i) authorizing *nunc pro tunc* the Petitioners CDA Systems, LLC (“**CDA**”) and California Compression, LLC (“**California Compression**”) to have executed an asset purchase agreement dated February 8, 2023 (the “**Sullair APA**”) between CDA and California Compression, as vendors, and Sullair, LLC, as purchaser (“**Sullair**”) for the sale of the Sullair Purchased Assets (as defined below) (the “**Sullair Transaction**”);
    - ii) assigning all rights and obligations of CDA and California Compression under the Assigned Contracts (as defined in the Sullair APA), upon the issuance to CDA, California Compression and Sullair of the relevant Monitor’s Certificate; and
    - iii) approving the Sullair Transaction.
  - (c) an approval and vesting order (the “**FSTQ Approval and Vesting Order**”), substantially in the form of the draft order communicated herewith as **Exhibit P-4**, *inter alia*:
    - i) authorizing *nunc pro tunc* Xebec Inc. to have executed execute a final share purchase and unit repurchase agreement dated February 8, 2023 (the “**FSTQ Purchase Agreement**”) between Xebec Inc. and Xebec RNG Holdings Inc. (“**RNG Holdings**”), as vendors, and the Fonds de solidarité des travailleurs du Québec (F.T.Q.) (“**FSTQ**”) and GNR Quebec Capital L.P. as purchasers for the sale of Xebec Inc.’s limited partnership interests in the capital of GNR Québec Capital L.P. (“**GNR LP**”) and the shares of RNG Holdings in the capital of GNR Québec Capital Management Inc. (“**GNR GP**”) (the “**FSTQ Transaction**”); and
    - ii) approving the FSTQ Transaction.
4. Comparisons of the Ivys Approval, Vesting and Assignment Order, the Sullair Approval, Vesting and Assignment Order and the FSTQ Approval and Vesting Order with the model approval and vesting order published by the Barreau de Montréal are communicated herewith as **Exhibits P-2A, P-3A and P-4A**.

## II. PROCEDURAL BACKGROUND

- 5. 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.
- 6. 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.
7. 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.
8. The Bidding Procedures Order also approved the engagement of National Bank Financial Inc. ("**NBF**") to assist in the implementation of the SISP.
9. On October 7, 2022, at the Petitioners' request, the Court issued an Order Extending the Stay until October 20, 2022, as appears from the Court record.
10. 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.
11. The ARIO, *inter alia*:
  - (a) extended the Stay until November 28, 2022;
  - (b) approved a key employee retention plan, a key vice-president retention plan and a key executive incentive plan (collectively, the "**KERPs**") and granted a Court-ordered charge to secure the payment owed to the key employees in accordance with the KERPs; and
  - (c) approved the debtor-in-possession evolving multiple draw credit facility (the "**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 “**DIP Charge**”) in an amount sufficient to cover the potential exposure of the Interim Lenders under the DIP Facility.

12. On November 28, 2022, at the Petitioners’ request, the Court issued an Order Extending the Stay of Proceedings and Granting Ancillary Relief, which extended the Stay for a third time until February 3, 2023, as appears from the Court record.
13. 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.
14. On the same date, the Court also issued an Approval and Vesting Order with respect to the sale of substantially all assets of Allied Compression Systems Ltd., the whole as appears from the Court record.
15. 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.

### III. **SISP**<sup>1</sup>

16. In accordance with the Bidding Procedures Order, the SISP was conducted in accordance with the following milestones:
  - (a) non-binding letters of intent (“**LOIs**”) were due on or before November 11, 2022;
  - (b) NBF notified each Phase 1 Qualified Bidder as to whether its bid constituted a Phase 1 Satisfactory Bid on November 18, 2022; and
  - (c) Definitive offers by Phase 2 Qualified Bidders were due on or before January 6, 2023;

the whole as further provided for in the Bidding Procedures.

17. As previously reported to the Court, NBF distributed teasers to 479 potential targets, including potential investors and strategic acquirers.
18. A confidential virtual data room (the “**VDR**”) was made available to potential targets, provided that such potential targets execute a non-disclosure agreement (“**NDA**”).

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<sup>1</sup> Terms in this section not otherwise defined herein have the meaning ascribed to them in the SISP.

19. As a result, 101 potential targets executed NDAs and were thereafter granted access to the VDR. Of those 101 potential bidders, 67 were deemed Phase 1 Qualified Bidders.
20. Of the 67 Phase 1 Qualified Bidders, 32 submitted bids in the form of non-binding LOIs.
21. The Petitioners, in consultation with the Monitor and NBF, determined that 19 Phase 1 Qualified Bidders were Phase 2 Qualified Bidders, and invited them to participate in phase 2 of the SISP.
22. On January 6, 2023 (the "**Phase 2 Bid Deadline**"), a number of Binding Offers were submitted by Phase 2 Qualified Bidders. An updated summary of the Binding Offers received in the context of the SISP will be appended (under seal) to the Monitor's report to be filed in support of the present Application (the "**Monitor's Report**").
23. Further to a review of the Binding Offers, the Petitioners, in consultation with the Monitor and NBF determined that it would be in the best interests of the stakeholders that further clarifications in respect of the Binding Offers be sought.
24. Accordingly, NBF engaged with the Phase 2 Qualified Bidders to obtain clarifications regarding their Binding Offers and provided certain Phase 2 Qualified Bidders with an "Issues List" identifying key deficiencies in their respective Binding Offers.
25. NBF also held subsequent meetings to discuss the Binding Offers with each Phase 2 Qualified Bidder and requested that each Phase 2 Qualified Bidder address the identified issues and resubmit their "best and final offer" by no later than January 16, 2023.
26. On January 16, 2023, each of the Phase 2 Qualified Bidders submitted a revised Binding Offer.
27. Following receipt of same, the Petitioners, in consultation with NBF and the Monitor, conducted numerous meetings to review and evaluate the revised Binding Offers and engaged in negotiations with certain Phase 2 Qualified Bidders with a view to entering into definitive agreements.
28. In light of the revised Binding Offers, the Petitioners, in consultation with the Monitor and NBF, determined that it was in the best interest of the Petitioners and their stakeholders to not hold an auction amongst the Phase 2 Qualified Bidders.
29. Sustained discussions are ongoing with several Phase 2 Qualified Bidders in respect of various transactions, designed to ensure that the SISP results in the highest and best transactions available in the circumstances, the whole for the benefit of all stakeholders.



#### IV. IVYS TRANSACTION<sup>2</sup>

##### A. Description of the Ivys Transaction

30. Ivys is a Delaware-based leading provider of e-mobility fuelling solutions with a portfolio of both hydrogen and electric vehicle infrastructure solutions.
31. On or prior to the Phase 2 Bid Deadline, Ivys submitted a binding offer in the context of the SISP.
32. Subsequently, the Petitioners, with the assistance of NBF, negotiated a revised and improved offer from Ivys, which was made on January 16, 2023.
33. In light of the current context and after careful consideration of all alternatives, the Petitioners determined, in consultation with the Monitor and NBF, that the revised offer from Ivys was the most advantageous to the stakeholders of Xebec Inc., Compressed and of the Xebec Group generally.
34. The Ivys Transaction represents the divesture of substantially all Xebec Inc.'s and Compressed's assets which relate to the business carried on directly by Xebec Inc. at the Blainville facilities, including the product lines for various products (PSA, BioStream PSA, BioStream product, MicroStream product, BGX, NGX, ADX, AMX), all intellectual property assets related thereto, associated parts and services, and the parts distribution and maintenance services business carried on by Compressed, as well as the Asia Assets (as defined in the Ivys APA) (collectively, the "**Ivys Purchased Assets**").
35. The Ivys APA contemplates the sale of the Ivys Purchased Assets for a purchase price set out in section 3.1 of the Ivys APA, which should remain confidential (the "**Ivys Purchase Price**").
36. The Ivys APA also includes the following key terms:
  - (a) the Ivys Purchased Assets are being sold, and the Assumed Liabilities are being assumed, on an "as is, where is" basis;
  - (b) it is a condition of the Ivys APA that the Ivys Approval, Vesting and Assignment Order be issued by this Court;
  - (c) the Ivys APA provides that the Ivys Purchase Price is payable in full by Ivys to the Monitor at Closing;
  - (d) the Ivys Transaction must close on or before February 24, 2023.

A copy of the Ivys APA is communicated herewith under seal as **Exhibit P-5**.

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<sup>2</sup> Terms in this section not otherwise defined herein have the meaning ascribed to them in the Ivys APA.

37. The Ivys APA provides that certain contracts to which Xebec Inc. and/or Compressed are parties shall be assigned to Ivys by way of the Ivys Approval, Vesting and Assignment Order. Pursuant to the Ivys APA, any and all Cure Costs (as defined in the Ivys APA) constitute Assumed Liabilities thereunder. Cure Costs listed in Schedule C to the Ivys Approval, Vesting and Assignment Order shall be paid in full by Ivys no later than thirty (30) days following Closing (as defined in the Ivys APA), and any further liability under the assigned contracts shall be assumed by Ivys.
38. The Ivys APA also provides for a mechanism for post-closing assignment of contracts. The post-closing assignment mechanism is as follows:
- (a) Ivys shall be entitled to notify Xebec Inc., Compressed and the Monitor in writing, no later than 30 days following Closing, that it seeks the post-closing assignment of the rights, benefits and interests in the Contracts (other than the DIP Facilities (as defined below), the EDC Credit Agreement and the NBC Credit Agreement) to which Xebec Inc. or Compressed are party to and which did not form part of the Assumed Contracts as of the Closing (the “**Post-Closing Assigned/Assumed Contracts**”) to Ivys;
  - (b) within 5 days of receipt, the Monitor is to review the proposed assignment and if it approves the proposed assignment, send one or more notices of assignment to the parties to the proposed Post-Closing Assigned/Assumed Contracts, or if it does not, inform Ivys in writing;
  - (c) the parties to the proposed Post-Closing Assigned/Assumed Contracts have 15 days to notify the Monitor of their opposition following receipt of the notice of assignment sent by the Monitor, if applicable;
  - (d) if no party to a proposed Post-Closing Assigned/Assumed Contract has notified the Monitor of an opposition 15 days of the receipt of the notice of assignment sent by the Monitor, the Monitor shall issue forthwith and file with the Court a post-closing assignment certificate;
  - (e) alternatively, the Monitor (if a party to a proposed Post-Closing Assigned/Assumed Contracts has notified its opposition) or Ivys (if the Monitor has not approved the proposed assignment) shall be entitled to apply to the Court to seek the assignment of the proposed Post-Closing Assignment Contract;
  - (f) The Cure Costs associated with the Post-Closing Assigned/Assumed Contracts shall be paid by Ivys and any liability in connection with any Post-Closing Assigned/Assumed Contract shall be assumed by Ivys.
39. The Petitioners understand that Ivys will offer continued employment to a substantial number of active employees of Xebec Inc. and Compressed, other than senior management.

**B. Grounds for Approval of the Ivys Transaction**

40. Xebec Inc. and Compressed are satisfied that, should this Court grant this Application, the remaining conditions to Closing and closing mechanics should lead to the closing of the Ivys Transaction.
41. In addition, Xebec Inc. and Compressed submit that the following important factors favour the approval of the Ivys APA and Ivys Transaction:
  - (a) the Ivys Purchase Price for the sale of the Ivys Purchased Assets is reasonable and fair in the circumstances, and the highest and best transaction available resulting from the SISP;
  - (b) the Petitioners have consulted extensively with the Monitor as to the Ivys APA and Ivys Transaction and the Monitor has confirmed to the Petitioners that it supports the Ivys Transaction; and
  - (c) the Ivys Transaction is the best available option to Xebec Inc. and Compressed and will benefit their stakeholders as a whole.
42. As appears from above, the SISP was conducted in a fair and reasonable manner and in accordance with the Bidding Procedures Order.
43. Absent a transaction, Xebec Inc. and Compressed are not expected to have sufficient liquidity to continue their manufacturing, distribution and services operations in the ordinary course.
44. Considering that the Ivys Purchased Assets are in Canada, there is no requirement to obtain the approval of the U.S. Bankruptcy Court seized with the Chapter 15 Proceedings in respect of the Petitioners (the "**U.S. Bankruptcy Court**").
45. The Petitioners understand that the Interim Lenders support the Ivys Transaction.

**V. SULLAIR TRANSACTION<sup>3</sup>**

**A. Description of the Sullair Transaction**

46. California Compression is a compressed air distributor and provides the Xebec Group with distribution and service capabilities for customers located in Northern California. California Compression currently employs 14 employees.
47. CDA sells, rents and services compressed air products and supports all of Xebec Group's products in California. CDA currently employs 10 employees.

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<sup>3</sup> Terms in this section not otherwise defined herein have the meaning ascribed to them in the Sullair APA.

48. Sullair offers compressed air solutions. It was founded in Indiana in 1965 and has since expanded with a broad international network to serve customers globally. Sullair has offices in Chicago and facilities in the United States and China.
49. Prior to the Phase 2 Bid Deadline, Sullair made a binding offer to buy California Compression and CDA, which offer was conditional on the completion of certain remaining due diligence items and other conditions.
50. Subsequently, the Petitioners, with the assistance of NBF, worked with Sullair and its advisors to complete the remaining due diligence items and, ultimately, to negotiate and document a revised and improved offer from Sullair, in the form of the Sullair APA, which was executed between the parties on February 8, 2023.
51. In light of the current context and after careful consideration of all alternatives, the Petitioners determined, in consultation with the Monitor and NBF, that the revised offer from Sullair was the most advantageous to the stakeholders of California Compression, CDA and of the Xebec Group generally.
52. The Sullair Transaction contemplates the sale of substantially all assets of California Compression and CDA (collectively, the “**Sullair Purchased Assets**”).
53. The Sullair Transaction also contemplates the continuation of California Compression and CDA’s businesses by Sullair, including the continued employment of all or substantially all employees currently actively employed by California Compression and CDA.
54. The Sullair APA contemplates the sale of the Sullair Purchased Assets for a purchase price set out in section 3.1 of the Sullair APA, which should remain confidential (the “**Sullair Purchase Price**”).
55. The APA also includes the following key terms:
  - (a) the Sullair Purchased Assets are being sold on an “as is, where is” basis;
  - (b) it is a condition of the Sullair APA that the Sullair Approval, Vesting and Assignment Order be issued by this Court and that the U.S. Bankruptcy Court grant an order, among other things, recognizing the Sullair Approval, Vesting and Assignment Order and approving the Sullair Transaction (the “**U.S. Recognition Order**”);
  - (c) the Sullair APA provides that the Sullair Purchase Price is payable in full by Sullair to the Monitor at Closing, subject to (i) any potential purchase price adjustment for certain working capital items and (ii) certain payment mechanics and provisions in respect of the payment by Sullair of certain Cure Costs and other Trade Debt payable amounts;
  - (d) the Sullair Transaction must close on or before February 20, 2023.

A copy of the Sullair APA is communicated herewith *under seal* as **Exhibit P-6**.

56. The Sullair APA provides that certain contracts to which CDA and California Compression are parties shall be assigned to Sullair by way of the Sullair Approval, Vesting and Assignment Order. Any and all Cure Costs that may be associated with these assigned contracts, which are listed in Schedule 4.7 of the Disclosure Schedule of the Sullair APA, shall be paid in full by Sullair within thirty (30) days of the issuance of the Monitor's Closing Certificate, in accordance with paragraph 21 of the Sullair Approval, Vesting and Assignment Order, and any further post-closing liability under the assigned contracts shall be assumed by Sullair. However, as of the date of the Sullair APA, the parties understand that no Cure Costs are outstanding.

**B. Grounds for Approval of the Sullair Transaction**

57. California Compression and CDA are satisfied that, should this Court grant this Application, the remaining conditions to Closing and closing mechanics should lead to the closing of the Sullair Transaction.
58. Given the current circumstances, the Petitioners believe that:
- (a) the Sullair Purchase Price for the sale of the Sullair Purchased Assets is reasonable and fair in the circumstances, and the highest and best transaction available resulting from the SISP; and
  - (b) the closing of the Sullair Transaction, should this Court issue the Sullair Approval, Vesting and Assignment Order, will benefit all stakeholders including in particular the employees and customers of California Compression and CDA.
59. As appears from above, the SISP was conducted in a fair and reasonable manner and in accordance with the Bidding Procedures Order.
60. Should the Court authorize the Sullair Transaction, the Petitioners will be proceeding before the U.S. Bankruptcy Court to obtain the U.S. Recognition Order.
61. As will appear from the Monitor's Report, the Monitor supports the Sullair Transaction and the issuance of the Sullair Approval, Vesting and Assignment Order. In addition, the Petitioners understand that the Interim Lenders support the Sullair Transaction.
62. The Petitioners understand that the Interim Lenders support the Sullair Transaction.

## VI. FSTQ TRANSACTION<sup>4</sup>

### A. Description of the FSTQ Transaction

63. Xebec Inc. is a co-owner of GNR LP, a limited partnership based in Québec whose aim is to accelerate the development of projects generating renewable gas. The other co-owner is FSTQ.
64. To achieve this objective, GNR LP actively participates in renewable gas projects and acts as an active investor through strategic partnerships to support the growth of companies developing renewable energy and waste recovery projects.
65. GNR GP is the general partner managing GNR LP and is overseen by a board of directors nominated by Xebec Inc. and FSTQ.
66. Xebec Inc. holds directly and indirectly a 50% interest in GNR LP, and FSTQ holds the other 50% interest in GNR LP. Xebec Inc. also holds shares in the capital of GNR GP.
67. As at the Phase 2 Bid Deadline, no offers had been made with respect to GNR LP or GNR GP.
68. On January 27, 2022, FSTQ submitted a binding offer for the acquisition of all of the limited partnership interest held by Xebec Inc. in the capital of GNR LP and the shares held by GNR Holdings in the capital of GNR GP (the “**Purchased Interest and Shares**”).
69. Founded in 1983, FSTQ channels savings of Quebecers into investments to promote all sectors of the Quebec economy. With net assets standing over \$17.8B, FSTQ is partner in more than 3,620 businesses, supports more than 295,000 quality jobs and has a strong dedicated team in the renewal natural gas portfolio.
70. A consideration to be paid by FSTQ for the Purchased Interest and Shares is payable in cash at closing to the Monitor. A copy of the FSTQ Purchase Agreement is communicated herewith *under seal* as **Exhibit P-7**.
71. It is a condition of the FSTQ Purchase Agreement that the FSTQ Transaction be approved by the Court and that the FSTQ Approval and Vesting Order be issued by this Court.

### B. Grounds for approval of the FSTQ Transaction

72. In light of the current context and after careful consideration of all alternatives, the Petitioners determined, in consultation with the Monitor and NBF, that the offer

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<sup>4</sup> Terms in this section not otherwise defined herein have the meaning ascribed to them in the FSTQ APA.

from FSTQ was the most advantageous to the stakeholders of Xebec Inc. RNG Holdings, and of the Xebec Group generally.

73. In addition, the Petitioners submit that the following important factors favour the approval of the FSTQ Transaction:
- (a) FSTQ is an existing stakeholder in GNR LP, being the only other partner of GNR LP alongside Xebec Inc. and having a nominee on the board of GNR GP;
  - (b) The Transaction would effectively result in Xebec Inc. being released of its capital contribution commitment under the Amended and Restated Limited Partnership Agreement dated May 29, 2020, which commitment currently stands at CA \$8,700,000, including a CA \$400,000 capital call dated November 10, 2022 amended on November 21, 2022, which was not paid by Xebec Inc. due to the CCAA Proceedings;
  - (c) GNR LP and GNR GP have no material tangible assets and will in the very short term require additional capital to fund payroll and lease obligations, such that the FSTQ Transaction is the highest and best transaction available to the Petitioners.
74. As will appear from the Monitor's Report, the Monitor supports the FSTQ Transaction and the issuance of the FSTQ Approval and Vesting Order.

75. In addition, the Petitioners understand that the Interim Lenders support the FSTQ Transaction.

## **VII. D&O RELEASES**

### **A. Releases Generally**

76. Since the commencement of these CCAA Proceedings, the D&Os of each of the entities of the Xebec Group have continuously worked towards maximizing the value of the Xebec Group's assets and, in turn, the recovery of its creditors.
77. Given the outcome of the SISP, it is not anticipated that there will be sufficient funds to finance a plan of arrangement or compromise, including one that would provide for customary releases in favour of the D&Os.
78. It is appropriate and fair in the circumstances that the D&Os benefit from a release which they would customarily receive as part of a plan in consideration for their involvement throughout these CCAA Proceedings, so as to enable them to turn the page once these CCAA Proceedings will have been completed.
79. The board of directors of Xebec Inc. is composed of independent directors (with the exception of the CEO), who have been meeting on a no-less-than-weekly basis throughout these CCAA Proceedings, fully engaged with management and

providing continuous support in connection with the ongoing operations and the SISP and whose involvement has been instrumental in maximizing the value of the assets of the Xebec Group.

80. Similarly, the officers of the various entities of the Xebec Group have worked tirelessly throughout these CCAA Proceedings, the whole for the benefit of all stakeholders, including notably the employees.
81. Accordingly, the draft approval and vesting orders for the Ivys Transaction and the Sullair Transaction (Exhibits P-2 and P-3) sought herein contain releases in favour of the D&Os of each respective seller therein with respect to any and all claims, liabilities or obligations relating directly or indirectly to such seller, including with respect to its business, affairs or operations, its assets and liabilities, its proceedings initiated and conducted under the CCAA, but excluding any claim or obligation that is not permitted to be released pursuant to section 5.1 (2) of the CCAA (the “**D&O Releases**”).
82. The proposed approval and vesting orders provide that the D&O Releases become effective upon the issuance by the Monitor of a certificate, in each case, confirming that the relevant transaction has closed.
83. The D&O Releases contained in the draft approval and vesting orders (Exhibits P-2 and P-3) are in line with releases granted by Courts across Canada in similar CCAA proceedings.

#### **B. Channelling Injunction**

84. As appears from the Ivys Approval and Vesting Order, the Petitioners are also seeking a “channelling injunction”, the purpose of which is to allow for the pursuit of any D&O claims as against the D&Os insurance policies.
85. Notwithstanding the D&O Releases and effective as at the issuance of the Monitor’s closing certificate in the Ivys Transaction, parties alleging a D&O claim shall be entitled to enforce their rights to be paid by the applicable insurer(s) from the proceeds of the applicable D&O insurance policies.

#### **VIII. HYGEAR TRANSACTION**

86. As further appears from the *Application for the Issuance of a First Day Initial Order, a Deemed Extension of the Stay Period and a Bidding Procedures Order* dated September 28, 2022, in the Court record, Xebec Inc. is the sole shareholder of Xebec Europe B.V. (“**Xebec Europe**”) This is a holding company which has no operations and is, *inter alia*, the sole shareholder of Green Vision Holding B.V. (“**Green Vision**”).
87. In turn, Green Vision is the sole shareholder of HyGear Technologies and Services B.V., which itself has six subsidiaries: HyGear Operations B.V., HyGear B.V., Xebec Adsorption Asia Pte Ltd. (“**Xebec Asia**”), HyGear Fuel Cell B.V. and



HyGear Hydrogen Plant B.V., which are wholly owned, and Buse HyGear Ltd. (“**Buse**”) which is 50% owned. (Collectively, all entities named in this paragraph are referred to as the “**HyGear Entities**”.)

88. The HyGear Entities are based in the Netherlands, save for Xebec Asia which operates in Singapore and Buse which operates in the United Kingdom. Their primary business is manufacturing and marketing of on-site generation technologies of the Hy.Gen Systems, which generate hydrogen from natural gas, renewable natural gas or water and electricity, with conventional gas distribution methods.
89. As of early February 2023, in the aggregate, the HyGear Entities had approximately 80 employees.
90. As at the Phase 2 Bid Deadline, no offers had been made with respect to the HyGear Entities.
91. The going concern viability of the HyGear Entities was in serious jeopardy and the trustee representing the unsecured bondholders of the HyGear Entities (the “**Bond Trustee**”) had sent a notice of default and demanded repayment of the bonds, in the approximate amount of €13.2M.
92. The HyGear entities were also indebted to Rabobank as a secured lender.
93. Concurrently, HoSt Group, a Netherlands-based business specialized in small-scale on-site industrial biomass generation systems, as well as the Bond Trustee, approached Xebec Inc. regarding a possible purchase of Green Vision for a nominal consideration.
94. With the assistance of its advisors, Xebec Inc. entered into accelerated and complex multi-party negotiations with notably the HoSt Group, the Bond Trustee, the worker’s council representing the employees of the HyGear Entities in accordance with Dutch law and a client of the HyGear Entities holding a € 404,000 (approximately CAD 580,000) letter of credit issued by NBC (and guaranteed by EDC) (the “**HyGear LC**”).
95. The Monitor and the Interim Lenders were regularly updated on the status of discussions.
96. On February 6, 2023, an agreement was concluded (the “**HyGear Agreement**”) whereby:
  - (a) Hydrogen Solutions B.V. (“**Hydrogen Solutions**”), an affiliate of HoSt Group, purchases all issued and outstanding shares of Green Vision for nominal consideration;

- (b) Funded various settlements with employees of HyGear, with HoSt Group contemplating the continued employment of the other employees of the HyGear Entities;
  - (c) The Xebec Group (other than the HyGear Entities) waived intercompany claims against the HyGear Entities;
  - (d) The continued employment of substantially all employees of the HyGear Entities will be preserved;
  - (e) The HyGear LC will be replaced by HoSt Group; and
  - (f) The bondholders, represented by the Bond Trustee, consented to the HyGear Agreement and agreed to a partial compromise of their claims against the HyGear Entities.
97. The only alternative to the HyGear Agreement would have been bankruptcy and the termination of operations of the HyGear Entities in the very near term, with minimal liquidation value and very likely no recovery for Xebec Europe, Xebec Inc. or their stakeholders.
98. Absent the HyGear Agreement, the HyGear LC would have been drawn, resulting in a secured claim in an equal amount of NBC (and EDC as guarantor) against Xebec Inc. and other Xebec Group guarantors.
99. After due consideration, and consultation with the Monitor and the Interim Lenders, Xebec Inc. concluded that the HyGear Agreement was in the best interest of its stakeholders.
100. Accordingly, the HyGear Workout Agreement was fair and reasonable to the stakeholders of the Xebec Group in the circumstances.

**IX. GROUNDS FOR THE ISSUANCE OF THE THIRD AMENDED AND RESTATED INITIAL ORDER**

**A. Extension of the Stay**

101. Since the issuance of the Second ARIIO, the Petitioners have acted, and continue to act in good faith and with due diligence.
102. The Petitioners, with the assistance of NBF and under the supervision of the Monitor, have continued to diligently advance the SISF.
103. The Stay currently expires on February 13, 2023.
104. The Petitioners are seeking to extend the Stay to the Extension Date, which will provide the Petitioners with the sufficient time to notably:

- (a) close the Ivys Transaction, the Sullair Transaction and the FSTQ Transaction;
  - (b) conduct post-closing assignments of the Post-Closing Assigned/Assumed Contracts in the context of the Ivys Transaction, if required;
  - (c) seek approval of the Sullair Transaction by the U.S. Bankruptcy Court;
  - (d) proceed to the closing of such transaction(s); and
  - (e) advance and, if possible, complete negotiations with other Phase 2 Qualified Bidders determined to be Successful Bidders pursuant to the SISP.
105. Should this Honourable Court not extend the Stay, the Petitioners will not be able to complete the SISP, nor close the transactions resulting therefrom, to the detriment of their stakeholders.
106. Should the Court determine it appropriate to approve the second DIP Facility and Second DIP Charge as described below and to issue the Third Amended and Restated Initial Order substantially in the form of the Draft Third Amended and Restated Initial Order, the Petitioners' cash flow will be sufficient to continue operations up to and until the Extension Date, as will appear from the Monitor's report to be filed with the Court on or about the date hereof.
107. No creditor will be unduly prejudiced by the extension sought.

**B. Second DIP Facility and Second DIP Charge**

108. Pursuant to the 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 DIP Facility has been fully drawn by the Petitioners.
109. The DIP Facility is secured by the DIP Charge for an aggregate amount of \$3,600,000 in favour of the Interim Lenders. Provided that the orders sought herein are issued by this Court, the Petitioners anticipate that the maturity of the DIP Facility will be extended to March 10, 2023.
110. The Petitioners' current liquidity position does not allow them to continue operations up to and until the Extension Date without additional financing, as will appear from the Monitor's report to be filed with the Court.
111. In these circumstances, the Petitioners require additional interim financing to continue the SISP and complete the transactions resulting therefrom, for the benefit of their stakeholders.

112. In this context, EDC has agreed to continue to support the Petitioners through their restructuring efforts, with a view to maximizing recoveries and to provide the Petitioners with an additional debtor-in-possession facility (the “**Second DIP Facility**” and with the DIP Facility, the “**DIP Facilities**”). The related term sheet (the “**Second DIP Term Sheet**”) is communicated herewith *under seal* as **Exhibit P-8**.
113. The Second DIP Facility includes the following commercial terms:
- (a) Facility size: \$2,500,000, payable in two tranches of \$1,250,000, payable in accordance with the terms set out therein;
  - (b) Term: March 10, 2023; and
  - (c) Administration Charge: reduction of the Administration Charge in the amount of \$750,000 concurrently with the disbursement of the first tranche and a further reduction of the Administration Charge in the amount of \$750,000 concurrently with the disbursement of the second tranche, the whole in accordance with the terms set out in the Second DIP Term Sheet.
114. The Second DIP Facility is proposed to be secured by a Court-ordered charge (the “**Second DIP Charge**”) to a maximum amount of \$3,000,000, ranking behind the DIP Charge but before the Transaction Charge and the KERP Charge (as defined in the Second ARIO).
115. The Petitioners respectfully submit that it is essential to the viability of the Petitioners’ restructuring efforts and in the interest of all stakeholders including its employees, suppliers and customers that the Second DIP Facility and related Second DIP Charge be approved by this Court.

**C. Sealing of Confidential Documents**

116. The Petitioners are seeking an order declaring that the following be kept strictly confidential and under seal:
- (a) Second DIP Term Sheet (Exhibit P-8);
  - (b) the FSTQ Purchase Agreement (Exhibit P-7); and
  - (c) the Ivys APA and Sullair APA (Exhibits P-5 and P-6).
117. The Second DIP Term Sheet (Exhibit P-8) should be kept confidential and under seal as it contains commercially sensitive information.
118. The FSTQ Purchase Agreement should be kept confidential and under seal as the FSTQ Transaction concerns the interests of private parties that are not party to the CCAA Proceedings. In addition, the limited partnership agreement between Xebec

Inc. and FSTQ contains a confidentiality undertaking, which needs to be respected in the circumstances.

119. The Ivys APA and Sullair APA should be kept confidential and under seal considering that:
- (a) the SISP has not been completed, and disclosing the Purchase Price may affect negotiations with Phase 2 Qualified Bidders interested in other assets of the Xebec Group;
  - (b) the Ivys APA and Sullair APA contain individualized information on the compensation of employees. In the current competitive employment market, such information could be highly prejudicial to the Ivys Group and Sullair, allowing competitors to “poach” employees; and
  - (c) the Ivys APA and Sullair APA contains commercially sensitive information regarding trade payables, which can give an unfair advantage to the competitors of Ivys and Sullair, if disclosed.

**D. Execution Notwithstanding Appeal**

120. The Petitioners respectfully submit that they are justified to seek provisional execution of the order 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.

**X. CONCLUSION**

121. The Monitor has informed the Petitioners that it supports the present Application.
122. 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. With such relief, the Petitioners will be able to continue going concern operations and pursue the ongoing SISP to maximize value for the benefit of stakeholders.

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

**GRANT** the present *Application for the Issuance of a Third Amended and Restated Initial Order and Approval and Vesting Orders* (the “**Application**”);

**ISSUE** orders substantially in the form of the draft orders communicated in support of the Application as **Exhibits P-1, P-2, P-3 and P-4**;

**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, February 8, 2023

*Osler, Hoskin & Harcourt LLP*

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**Osler, Hoskin & Harcourt LLP**

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**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 Xebec Adsorption Inc. and a duly authorized representative of the Debtors / Petitioners for the purposes hereof.

I have taken cognizance of the attached *Application for the Issuance of a Third Amended and Restated Initial Order and Approval and Vesting Orders* (the "**Application**").

All of the facts alleged in the Application of which I have personal knowledge are true.

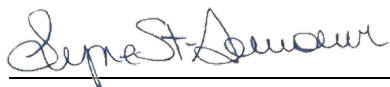
Where the facts alleged in the Application have been obtained from others, I believe them to be true.

AND I HAVE SIGNED:



**Dimitrios Vounassis**

SOLEMNLY DECLARED BEFORE ME BY  
VIRTUAL MEANS IN MONTRÉAL,  
QUÉBEC, ON FEBRUARY 8, 2023.



Lyne St-Amour  
Commissioner for Oaths for the Province of  
Québec

**NOTICE OF PRESENTATION  
COMMERCIAL DIVISION**

**TO: SERVICE LIST** (See attached)

**AND TO:**

<b>Konica Minolta</b>	<b>Attention: Camille Béchade</b> 8555 Route Transcanadienne, bureau #102 Saint-Laurent, QC, H4S 1Z6 Email: <a href="mailto:camille.bechade@bt.konicaminolta.ca">camille.bechade@bt.konicaminolta.ca</a>
<b>Colony Ford-Lincoln Sales Inc.</b>	<b>Attention: Michael Panetta</b> 300 Queen St. East Brampton, ON, L6V 1C2 Email: <a href="mailto:michael@colonyfordlincoln.com">michael@colonyfordlincoln.com</a>
<b>HumberviewGroup Leasing Inc.</b>	<b>Attention: Ernie Rasetta</b> 1900 Victori Park Avenue Toronto, ON, M1R 1T6 Email: <a href="mailto:erasetta@hgleasing.ca">erasetta@hgleasing.ca</a>
<b>Cominar Real Estate Investment Trust</b>	<b>Attention: Roberto Buzzetti / Michael Racine</b> 455 Du Marais Street Québec, QC G1M 3A2
<b>Alliance Hepyx Inc.</b>	<b>Attention: Vital Dumais</b> 48 rue des Pins Boisbriand, QC J7G 2T8 Email : <a href="mailto:vital.dumais@alliancehepyx.com">vital.dumais@alliancehepyx.com</a>
<b>AP International Inc.</b>	<b>Attention: Claude Dauphinais</b> 28 Chemin de la Côte Saint Louis Ouest Suite 207, Blainville, QC J7C 1B8 Email : <a href="mailto:CDauphinais@apinternational.ca">CDauphinais@apinternational.ca</a>
<b>N.E. Locicero Holdings Inc.</b>	<b>Attention: Nick Locicero</b>



	61 Sharer Road, Unit 1 Woodbridge, ON, L4L 8Z3 Email: <a href="mailto:n.locicero@greycresthomes.com">n.locicero@greycresthomes.com</a>
<b>Newlife and Hall</b>	<b>Attention: Don Beam</b> Yollesdee Holding Inc. (Hall Communications) 5477 RR#5, HWY 6 North Guelph, ON, N1H 6J2 Email: <a href="mailto:djbeam@halltel.com">djbeam@halltel.com</a>
<b>Les Systèmes NWD (Montréal) Inc (d/b/a MicroAge)</b>	<b>Attention: Phil Palmieri</b> 4209, Autoroute des Laurentides Laval, QC H7L 5W5 Email: <a href="mailto:Phil.Palmieri@nwd-microage.com">Phil.Palmieri@nwd-microage.com</a>
<b>Shanghai Shenergy Energy Innovation &amp; Development Co., Ltd.</b>	<b>Attention: Yao Zhijian / Chuhua Ye</b> 1 <sup>st</sup> Floor, Building 2, No.35, Lane 181, Donghuanlong Road Pudong District, Shanghai, China 200127 Email: <a href="mailto:yechuhua@icy-capital.com">yechuhua@icy-capital.com</a> Fax: 86-021-63900801
<b>Shanghai Liuhuan Investment Co., Ltd.</b>	<b>Attention: Peter Peng Cheng</b> Room H-1, Level 2, Block 14, No. 2 Songmi Road, Songjiang District, Shanghai, China 201613 Email: <a href="mailto:peterpcheng@outlook.com">peterpcheng@outlook.com</a> Fax: 8621-3352-8725
<b>Shanghai Chengyi New Energy Venture Capital Co., Ltd.</b>	<b>Attention: Song Xuefeng</b> Room 2502C, No. 958, Lujiazui Ring Road Pudong District, Shanghai, China 200120
<b>Shanghai Zhiyi Enterprise Management Consulting Co., Ltd.</b>	<b>Attention: Wang Yuxin</b> Room 709A, No. 1, Middle Fuxing Road Huangpu District, Shanghai, China, 200021
<b>Enbridge Gas Inc.</b>	<b>Attention: Roddi Bassermann</b> 500 Consumers Road North York, ONT M2J 1P8

	Email: <a href="mailto:Roddi.Bassermann@enbridge.com">Roddi.Bassermann@enbridge.com</a>
<b>Air Liquide Advanced Technology US LLC</b>	<b>Attention: Vikalp Singh and Paul Therrien</b> Air Liquide Global Markets & Technology US 9811 Katy Freeway Houston, TX 77024 Email: <a href="mailto:vikalp.singh@airliquide.com">vikalp.singh@airliquide.com</a> / <a href="mailto:paul.therrien@airliquide.com">paul.therrien@airliquide.com</a>
<b>NextWatts, Inc. (d/b/a CarbonQuest)</b>	<b>Attention: Shane Johnson</b> 1314 S Grand Blvd, Suite 2-106 Spokane, WA 99202 Email: <a href="mailto:shane@carbonquest.com">shane@carbonquest.com</a>
<b>Teichert Aggregates</b>	<b>Attention: Mike Goss</b> Teichert Aggregates - Tracy Vernalis Plant 36314 S. Bird Rd. Tracy, CA 95304
<b>Criterion Catalysts</b>	<b>Attention: Rick Speck</b> 2840 Willow Pass Rd Bay Point, CA 94566
<b>Earthbound Farm C/O Taylor Farms</b>	<b>Attention: Ricardo Nova</b> 1721 San Juan Hwy San Juan Bautista CA 95045
<b>Schnitzer Steel Industries Inc.</b>	<b>Attention: Patrick Lamos</b> 1101 Embarcadero West Oakland, CA 94604
<b>Cargill Salt</b>	<b>Attention: Michael Cannon</b> 7220 Central Ave Newark CA 94560
<b>Gallo Glass Company</b>	<b>Attention: Dan McDonald/Dan Silva</b> Santa Cruz Avenue Modesto, CA 95354
<b>Sonoco Exeter</b>	<b>Attention: Brian Shea</b> 1030 N. Anderson Road Exeter, CA 93221

<b>Coherent IOS</b>	<b>Attention: Bert DelCarmen</b> 4040 Lakeside Drive Richmond CA 94806
<b>Wadham Energy LP</b>	<b>Attention: Jim Fierce</b> 6247 Meyers Road Williams CA 95987
<b>Livermore Airway Business Park</b>	<b>Attention: Thomas S. Siewert</b> 3375 Scott Blvd., Suite 308 Santa Clara, CA 95054 Telephone: 408-496-1234 Facsimile: 408-988-4768
<b>Modified Motorsports, LLC</b>	<b>Colliers Parrish International, Inc.</b> <b>Attention: Steve Tovani and Mike Lloyd</b> 4301 Hacienda Drive, Suite 430 Pleasanton, CA 94588 Phone: 925-227-6231 Fax: 925-463-0747 Email: <a href="mailto:steve.tovani@colliers.com">steve.tovani@colliers.com</a>
<b>Arroyo/Livermore Business Park, L.P.</b>	<b>Arroyo/Livermore Business Park, L.P.</b> <b>c/o Pell Development Company</b> <b>Attention: Karen Pell</b> 100 Smith Ranch Road, Suite 325 San Rafael, CA 94903 Email: <a href="mailto:Karen@pelldev.com">Karen@pelldev.com</a>
<b>Rogers Machinery Company, Inc.</b>	<b>Attention: Lane D. Hawkinson</b> 14650 S.W. 72nd Avenue 97224-7943 P.O. Box 230429 Portland, Oregon 97281-0429 Phone : 503.639.0808 Fax: 503.639.0111
<b>SPX Flow Technology USA, Inc.</b>	<b>SPX Flow, Inc.</b>

	<b>Attention: General Counsel</b> 13320 Ballantyne Corporate Place Charlotte, NC 28277 Email: <a href="mailto:corp.legal.department@spxflow.com">corp.legal.department@spxflow.com</a>
<b>US Pipe</b>	<b>Attention: Monica Goulart</b> 1295, Whippie Road Union City, California 94587
<b>Zymergen, Inc.</b>	<b>5980 Horton Street, Suite 105</b> Emeryville, CA 94608
<b>Ardagh Metal Beverage USA</b>	<b>Attention: Royce Bradley</b> 2433 Crocker Circle Fairfield, CA 94533
<b>Northern California Power Agency</b>	<b>Attention: Chris Du Bose</b> Geo Thermal 12000 Ridge Road Middletown, CA 95461
<b>DJ Smith Family Partnership</b>	<b>DJ Smith Family Partnership</b> 4208 Chaboya Road San Jose, CA 95148 Email: <a href="mailto:smithpropmanagement@mail.com">smithpropmanagement@mail.com</a>
<b>5360 Gateway Plaza LLC</b>	<b>5360 Gateway Plaza</b> Benecia, CA 94150
<b>Public Storage</b>	<b>Public Storage</b> <b>Attention: Customer Service</b> P.O. Box 25050 Glendale, CA 91221-5050

## 1. PRESENTATION OF THE PROCEEDING

**TAKE NOTE** that the *Application for the Issuance of a Third Amended and Restated Initial Order and Approval and Vesting Orders* will be presented for adjudication before the

Commercial Division of the Superior Court of Québec, in Courtroom **15.09** of the Montréal Courthouse during the virtual calling of the roll on **February 13, 2023, at 9:30 a.m.**

## **2. HOW TO JOIN THE VIRTUAL CALLING OF THE ROLL**

The contact information to join the virtual calling of the roll in room 15.09 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: 374 042 205#

### **By VTC videoconference:** [teams@teams.justice.gouv.qc.ca](mailto:teams@teams.justice.gouv.qc.ca)

Videoconference ID: 1170227884

**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 15.09 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 February 10, 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, February 8, 2023

*Osler, Hoskin & Harcourt LLP*

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**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,  
c. C-36)

No.: 500-11-061483-224

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

**XEBEC ADSORPTION INC.**

-and-

**XEBEC RNG HOLDINGS INC.**

-and-

**APPLIED COMPRESSION SYSTEMS LTD.**

-and-

**COMPRESSED AIR INTERNATIONAL INC.**

-and-

**XEBEC HOLDING USA INC.**

-and-

**ENERPHASE INDUSTRIAL SOLUTIONS, INC.**

-and-

**CDA SYSTEMS, LLC**

-and-

**XEBEC ADSORPTION USA INC.**

-and-

**THE TITUS COMPANY**

-and-

**NORTEKBELAIR CORPORATION**

-and-

**XBC FLOW SERVICES – WISCONSIN INC.**

-and-

**CALIFORNIA COMPRESSION, LLC**

-and-

**XEBEC SYSTEMS USA, LLC**

Debtors / Petitioners

-and-

**DELOITTE RESTRUCTURING INC.**

Monitor

**LIST OF EXHIBITS**

- P-1: Draft Third Amended and Restated Initial Order
- P-1A: Comparison between the Third Amended and Restated Initial Order and the Second ARIO
- P-2: Draft Ivys Approval, Vesting and Assignment Order
- P-2A: Comparison between the Ivys Approval, Vesting and Assignment Order and the model approval and vesting order published by the Barreau de Montréal
- P-3: Draft Sullair Approval, Vesting and Assignment Order
- P-3A: Comparison between the Sullair Approval, Vesting and Assignment Order and the model approval and vesting order published by the Barreau de Montréal
- P-4: Draft FSTQ Approval and Vesting Order
- P-4A: Comparison between the FSTQ Approval and Vesting Order and the model approval and vesting order published by the Barreau de Montréal
- P-5: Copy of the Ivys APA (*under seal*)
- P-6: Copy of the Sullair APA (*under seal*)
- P-7: Copy of the FSTQ Purchase Agreement (*under seal*)
- P-8: Second DIP Term Sheet (*under seal*)

MONTRÉAL, February 8, 2023

*Osler, Hoskin & Harcourt LLP*

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



# Exhibit C

Filed Under Seal