

District of: Newfoundland and Labrador

Division No: 01 – Newfoundland and Labrador

Court No: 22164

Estate No: 51-2397788

**Supreme Court of Newfoundland and Labrador**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A  
PROPOSAL OF:  
BURRY'S SHIPYARD INC.**

**First Report of the Licensed Insolvency Trustee pursuant to  
sections 50.4(7)(b)(ii) and 50.4(9) of the *Bankruptcy and  
Insolvency Act* ("BIA")**

**FIRST REPORT OF PROPOSAL TRUSTEE  
DELOITTE RESTRUCTURING INC.  
JULY 30, 2018**

## Table of contents

1.	INTRODUCTION AND BACKGROUND .....	1
2.	TERMS OF REFERENCE .....	1
3.	BACKGROUND, FINANCIAL POSITION AND CAUSES OF INSOLVENCY .....	2
4.	RESTRUCTURING EFFORTS TO DATE .....	4
5.	THE SALES PROCESS .....	5
6.	CASH FLOW STATEMENTS .....	5
7.	INTERIM FINANCING .....	6
8.	ADMINISTRATION CHARGE .....	7
9.	MILTON TRANSFER .....	8
10.	STAY EXTENSION APPLICATION .....	8
11.	CONCLUSION .....	9

## **1. INTRODUCTION AND BACKGROUND**

- 1.1 Burry's Shipyard Inc. ("Burry" or the "Company") was incorporated in Newfoundland and Labrador on December 20, 2011. The shares of Burry are equally owned by Glenn and Sonia Burry, who are married to each other.
- 1.2 Burry operates a shipyard located in Clarenville, Newfoundland and Labrador specializing in machining, fabrication, maintenance and the refit of vessels under 650 tonnes. Key customers of Burry include the Government of Newfoundland and Labrador, the Government of Canada, Canadian Coast Guard, Norcon Marine Services Limited and commercial fishing vessels.
- 1.3 Burry also operates two distinctive divisions: Eastern Foundry and Manta Ray Boats Inc. Eastern Foundry manufactures zinc and aluminum sacrificial anodes for marine and offshore applications. Manta Ray Boats Inc. ("Manta Ray") manufactures and sells fiberglass boats for pleasure and commercial markets.
- 1.4 On July 10, 2018, Burry filed a Notice of Intention to Make a Proposal pursuant to section 50.4 of the BIA (the "NOI Filing"). Deloitte Restructuring Inc. ("Deloitte") was appointed as the Licensed Insolvency Trustee (the "Proposal Trustee") under the NOI Filing.
- 1.5 Deloitte advises that this report (the "First Report") should be read in conjunction with the affidavit of Glenn Burry and the Affidavit of Tim Hill, Q.C., which have been filed in support of the Company's Application.

## **2. TERMS OF REFERENCE**

- 2.1 In preparing this First Report, the Proposal Trustee has relied upon financial information of the Company, discussions with the Company's management ("Management") and BoyneClarke LLP, the Company's legal counsel.
- 2.2 The financial information of the Company has not been audited, reviewed or otherwise verified by the Proposal Trustee as to its accuracy or completeness, nor has it necessarily been prepared in accordance with generally accepted accounting principles and the reader is cautioned that the First Report may not disclose all significant matters about the Company. Additionally, none of our procedures were intended to disclose defalcations or other irregularities. Were we to perform additional procedures or to undertake an audit examination of the financial statements in accordance with generally accepted auditing standards, additional matters may have come to our attention. Accordingly, the Proposal Trustee does not express an opinion or provide any other form of assurance on the financial or other information presented herein. The Proposal Trustee may refine or alter its observations as further information is obtained or brought to its attention after the date of the First Report.
- 2.3 The Proposal Trustee assumes no responsibility or liability for any loss or damage occasioned by any party as a result of the circulation, publication, reproduction or use of the First Report. Any use which any party makes of the First Report, or any reliance or decisions to be made on the First Report, is the sole responsibility of such party.
- 2.4 All dollar amounts identified in the First Report are expressed in or converted to Canadian dollars.

- 2.5 The purpose of the First Report is to inform this Court of the following:
- (i) Overview of Company's operations and causes of insolvency
  - (ii) The Company's restructuring efforts to date
  - (iii) The Company's sales and investment solicitation process (the "Sales Process")
  - (iv) The Company's statement of projected cash flow for the period of July 14 to October 12, 2018 (the "First Report Cash Flow Projection")
  - (v) The Company's request for an interim financing charge (the "DIP Charge")
  - (vi) The Company's request for an administration charge (the "Administration Charge")
  - (vii) The Company's transfer of real property located in Milton (the "Milton Transfer")
  - (viii) The Company's request for an extension order (the "Extension Order")

### 3. BACKGROUND, FINANCIAL POSITION AND CAUSES OF INSOLVENCY

3.1 Management has advised the Proposal Trustee that the assets of the Company were purchased in 2011 from Clarenville Dry Dock Limited, an entity that is owned by Austin and Kay Burry, parents of Glenn Burry. Prior to the purchase, the shipyard sat idle for a number of years.

3.2 During the initial years of operations, the Company encountered issues typical of a new business, however, despite these challenges Management was able to generate the operating results outlined below:

<b>Summary of operating results</b>					
<b>January 31,</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
Revenue	2,119,331	4,282,791	4,248,182	3,524,822	5,217,275
Expenses	1,901,461	4,159,247	4,256,157	3,442,104	4,942,107
Net Income	217,870	123,544	(7,975)	82,718	275,168
Cash flow from operations	(310,143)	213,838	238,466	188,290	529,728

<b>Summary of financial position</b>					
<b>January 31,</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
Current assets	944,083	1,356,013	1,042,418	1,158,245	1,553,738
Long-term assets	1,458,431	1,466,285	1,684,619	1,845,668	2,667,716
	2,402,514	2,822,298	2,727,037	3,003,913	4,221,454
Current liabilities	361,109	829,254	712,056	623,246	1,259,439
Long-term liabilities	1,823,551	1,651,646	1,681,558	1,964,526	2,270,706
	2,184,660	2,480,900	2,393,614	2,587,772	3,530,145
Equity	217,854	341,398	333,423	416,141	691,309
Total liabilities and equity	2,402,514	2,822,298	2,727,037	3,003,913	4,221,454
Current ratio	2.61	1.64	1.46	1.86	1.23
Total debt/total asset ratio	0.91	0.88	0.88	0.86	0.84

3.3 Over the past 19 months, a series of events have occurred which significantly impacted the financial position of the Company. These events are summarized below:

- (i) In November 2016, Management initiated a due diligence process in order to investigate an opportunity to purchase the Marystown Shipyard. In June 2017, it was determined that an arrangement could not be reached with the seller and as a result the Company incurred an approximately \$500 thousand write off.
- (ii) In May 2017, a significant refit customer, Bond Sea Transportation Inc. ("Bond Sea"), refused to pay for services provided, resulting in the Company incurring an approximately \$1.3 million write-off. This write-off resulted in decreased profitability and increased working capital pressure during fiscal 2018 and 2019. The Company is currently engaged in legal proceedings against Bond Sea.
- (iii) In September 2017, the Government of Newfoundland and Labrador ("GNL") awarded the Company a contract to refit the *M.V. Gallipoli*. In February 2018, during the completion of the refit, the vessel moved within the dry dock cradle, resulting in material damage to the marine railway and the issuance of a stop work order by WorkplaceNL. In May 2018, due to delays caused by the incident, GNL cancelled the contract and removed the vessel from the shipyard.

3.4 The Company's preliminary financial information for the fiscal year ending January 31, 2018 is presented below:

<b>Draft operating results</b>	
<b>January 31,</b>	<b>2018</b>
Revenue	8,513,760
Expenses	<u>9,367,612</u>
Net Income	(853,852)
Cash flow from operations	<u><u>(688,246)</u></u>

<b>Draft financial position</b>	
<b>January 31,</b>	<b>2018</b>
Current assets	2,955,175
Long-term assets	<u>2,963,179</u>
	<u>5,918,354</u>
Current liabilities	2,514,705
Long-term liabilities	<u>3,566,196</u>
	6,080,901
Equity	(162,547)
Total liabilities and equity	<u>5,918,354</u>
Current ratio	1.18
Total debt/total asset ratio	1.03

3.5 The Company's operating results highlighted above, along with the reduced ability of Norcon Marine Services Limited ("Norcon") to continue to financially support the Company, caused significant stress on the balance sheet and resulted in covenant violations with both Bank of Nova Scotia ("BNS") and Business Development Bank of Canada ("BDC")(collectively, the "Lenders").

- 3.6 As a result of the covenant violations discussed above, the Lenders and the Burry Group of Companies (the “Burry Group”) negotiated and executed forbearance agreements accompanied by an inter-creditor agreement designed to:
- (i) support the execution of the Sales Process;
  - (ii) allow the Lenders an opportunity to improve their security position;
  - (iii) restrict future transfers between Norcon and the Company; and
  - (iv) improve financial reporting and controls.
- 3.7 Due to the financial challenges, restrictions contained within the forbearance agreements and pressure from unsecured creditors, the Company felt it had no choice but to pursue the NOI Filing.

#### **4. RESTRUCTURING EFFORTS TO DATE**

- 4.1 Deloitte was initially retained by the Burry Group in February 2018 to act as its financial advisor to provide strategic advice relating to the financial challenges affecting its business. The Burry Group is comprised of the Company and Norcon.
- 4.2 Since being retained by the Company and prior to the NOI Filing, Deloitte has, amongst other things:
- (i) prepared a business review report dated March 20, 2018 that outlined the financial challenges facing the Burry Group and provided some recommendations moving forward;
  - (ii) prepared a restructuring plan report dated April 17, 2018 that outlined a plan to be implemented by the Company with support from the Lenders;
  - (iii) held discussions with the Management of the Burry Group;
  - (iv) assisted with the creation of financial projections to assist the restructuring process; and
  - (v) held discussions with stakeholders with respect to support provided to the Burry Group.
- 4.3 In addition to the engagement of Deloitte and executing forbearance agreements with the Lenders, the Company has taken the following steps to deal with the operational and financial challenges it faces:
- (i) engaged BoyneClarke LLP to act as legal counsel;
  - (ii) assisted Deloitte with the creation and presentation of an informal restructuring plan to the Lenders;
  - (iii) assisted Deloitte in order to initiate the Sales Process; and
  - (iv) taken steps to reduce operating expenses, including a reduction in headcount and the shutdown of operations at the shipyard.
- 4.4 The Proposal Trustee has been working with the Company since February 2018 and has been advised by Management on numerous occasions that it is committed to a restructuring of the Company, however the Company requires a formal process to provide it with time, protection and financial support to bring forth a Proposal.

## **5. THE SALES PROCESS**

- 5.1 Pursuant to the forbearance agreements agreed to by the Company and the Lenders, the Company has initiated a Sales Process designed to explore potential sale and investment opportunities.
- 5.2 In conjunction with Deloitte, the Company prepared a teaser which was circulated to 37 potential interested parties during the period June 28 to July 25, 2018. A copy of this teaser is enclosed as Appendix A.
- 5.3 Following the release of the teaser, the Company received 12 executed non-disclosure agreements from parties interested in the opportunity. These parties were provided with a copy of a Confidential Information Memorandum (the "Memorandum") between July 7 and July 27, 2018. This Memorandum was prepared by the Company with the assistance of Deloitte in order to provide additional detail to interested parties regarding the opportunity.
- 5.4 In addition to the information contained in the Memorandum, the Company has also set up a data room containing additional documents to assist interested parties with due diligence activities.

## **6. CASH FLOW STATEMENTS**

- 6.1 On July 19, 2018, pursuant to Section 50.4(2)(a)(b)(c) of the BIA, the Company filed the First Report Cash Flow Projection, along with the statutory declarations with the Official Receiver. A copy of the First Report Cash Flow Projection is enclosed as Appendix B.
- 6.2 The First Report Cash Flow Projection has been prepared by Management for the purpose described in the notes to the First Report Cash Flow Projection, using the probable and hypothetical assumptions set out in the notes to the First Report Cash Flow Projection.
- 6.3 The Proposal Trustee's review of the First Report Cash Flow Projection consisted of inquiries, analytical procedures and discussions on the information provided by Management of the Company. Since these hypothetical assumptions are not being supported, the Proposal Trustee's involvement with respect to them was limited to evaluating whether they were consistent with the purpose of the First Report Cash Flow Projection. The Proposal Trustee has also reviewed the supporting documentation provided by Management of the Company for the probable assumptions and the preparation and presentation of the First Report Cash Flow Projection.
- 6.4 Based on our review and the foregoing reserves and limitations, nothing has come to the attention of the Proposal Trustee that causes us to believe that, in all material respects:
  - (i) the hypothetical assumptions are not consistent with the purpose of the First Report Cash Flow Projection;
  - (ii) as at the date of this First Report, the probable assumptions developed by the Company are not suitably supported and consistent with the plans of the Company or do not provide a reasonable basis for the First Report Cash Flow Projection, given the hypothetical assumptions; or
  - (iii) the First Report Cash Flow Projection does not reflect the probable and hypothetical assumptions.

- 6.5 Since the First Report Cash Flow Projection is based on assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material. Accordingly, the Proposal Trustee does not express an opinion to whether the projections in the First Report Cash Flow Projection will be achieved.
- 6.6 The First Report Cash Flow Projection has been prepared solely for the purpose described in the notes to the First Report Cash Flow Projection, and readers are cautioned that the First Report Cash Flow Projection may not be appropriate for other purposes.
- 6.7 The Proposal Trustee has reviewed the First Report Cash Flow Projection and offers the following commentary:
- (i) Due to reduced operations, operating inflows projected to be received during the projection period consist primarily of existing receivables and insurance proceeds related to an insurable incident which occurred during February 2018.
  - (ii) Compensation and related expenses consist of compensation and statutory remittances of one employee retained by the Company to provide security and maintenance services during the NOI Filing.
  - (iii) General operating expenses consist of utilities, communication and insurance related costs based on historical levels taking into consideration the reduced activity at the shipyard.
  - (iv) Professional fees consist of estimates received from professionals involved in the restructuring process. These professionals include the Proposal Trustee, legal counsel of the Proposal Trustee, the Company's legal counsel and legal counsel to the Lenders.
  - (v) Based on the outcomes presented in the First Report Cash Flow Projection, it is assumed that debtor-in-possession financing (the "DIP Financing") will not be required during the thirteen week period covered by the First Report Cash Flow Projection. However, the ability of the Company to sustain the current level of operations is highly dependent on the receipt of insurance proceeds discussed above. Without these proceeds it is estimated that a capital injection of approximately \$300 thousand will be required.

## **7. INTERIM FINANCING**

- 7.1 In order to address the Company's potential financing needs during the NOI Filing, the Company has negotiated a DIP Financing agreement with BDC. BDC has committed, pending approval from the Court, to provide a senior secured super-priority DIP term loan of \$300 thousand (the "DIP Facility"). The final terms and conditions of the DIP Facility have not yet been determined.
- 7.2 As described above, the Company anticipates that access to the DIP Facility will not be required during the period covered by the First Report Cash Flow Projection, however, the Company has estimated its capital requirements up to the week ending November 2, 2018 and has determined it will require a capital injection. In an effort to improve efficiency and eliminate the requirement to return to Court at a future date, the Company wishes to request an Order authorizing DIP financing at this time.
- 7.3 The proceeds of the DIP Facility will only be used to fund working capital requirements in accordance with the Company's First Report Cash Flow Projection in support of the NOI Filing



and shall not be used to repay any indebtedness outstanding prior to the date of the NOI Filing.

- 7.4 The amount borrowed by the Company under the DIP Facility is proposed to be secured by, among other things, a court-ordered charge on the Company's property ranking in priority over all present and future mortgages, charges, security interest, liens, pledges, hypothecs, capital leases, or other security arrangements of any kind, subject only to the Administrative Charge proposed herein.
- 7.5 The Company, in conjunction with the Proposal Trustee, held discussions with several potential short-term financing lenders, as well as the Lenders, in regards to providing the Company with a DIP Facility.
- 7.6 BDC has expressed interest in providing a DIP Facility to the Company (the "Draft BDC Offer"). A copy of the Draft BDC Offer is attached as Appendix C. Pending approval by this Court, the Company wishes to proceed with the interim financing offered by BDC.
- 7.7 The Proposal Trustee was involved in discussions with potential lenders and notes that the terms and conditions contemplated in the Draft BDC Offer, including the costs, are in line with other DIP facilities that have been approved in recent Atlantic Canadian restructuring proceedings.
- 7.8 The Proposal Trustee has reviewed the First Report Cash Flow Projection prepared by the Company and concludes that a DIP charge of \$300 thousand is sufficient to fund the operations of the Company during the NOI Filing if the projected insurance proceeds are not received. Based on the foregoing, the Proposal Trustee supports the Company's application for an Order providing for DIP Financing.

## **8. ADMINISTRATION CHARGE**

- 8.1 A preliminary analysis of the Company's financial situation concluded that the NOI Filing was the most pragmatic strategy to stabilize the Company and generate a recovery for its stakeholders.
- 8.2 The Company requires the services of its legal counsel, the Proposal Trustee and the Proposal Trustee's legal counsel (the "Insolvency Professionals") to assist in the NOI Filing. With the exception of a small retainer provided to the Proposal Trustee, no other Insolvency Professionals have received retainers from the Company as at the date of the First Report.
- 8.3 Pursuant to Subsection 64.2(1) of the BIA, this Court may order security or a charge to cover certain costs related to the NOI Filing.
- 8.4 The Proposal Trustee understands that the Company is requesting from this Court that an order be granted that provides for a charge that ranks in priority over the claim of any secured creditor or persons in these proceedings (the "Administrative Charge").
- 8.5 The Company is requesting that the Insolvency Professionals, as security for the professional fees and disbursements incurred both before and after the granting of the Administrative Charge, shall be entitled to the benefits of a charge on all of the property of the Company, which charge shall not exceed an aggregate amount of \$50 thousand as security for their professional fees and disbursements incurred at the normal rate and charges of the Insolvency Professionals, both before and after the making of this Administrative Charge in respect of the NOI Filing.

- 8.6 The Company believes it is critical to the success of its restructuring to have such a charge in place to ensure that the Insolvency Professionals are protected with respect to their fees and costs.
- 8.7 Based on the foregoing, the Proposal Trustee supports the Company's request for an Administrative Charge pursuant to s. 64.2(1) of the BIA be granted by this Court, as it believes that it is appropriate under all of the circumstances.

## **9. MILTON TRANSFER**

- 9.1 On May 1, 2017, the Company entered into an agreement to purchase real property and equipment (the "Milton Assets") from Milton Fiberglass Products Limited ("Milton") for \$250 thousand (the "Milton Purchase"). The Company financed the Milton Purchase via a \$250 thousand vendor take back note from Milton.
- 9.2 The Proposal Trustee has obtained documentation from the Company relating to the Milton Purchase. Based on an initial review of the documentation, it appears that Milton took a registered interest in the Milton Assets.
- 9.3 Based on the books and records of the Company, between May 2017 and April 2018 the Company made principal payments totaling \$48 thousand to Milton, leaving an amount owing of \$202 thousand.
- 9.4 On the June 22, 2018, the Company entered into an agreement to transfer the Milton Assets back to Milton for \$1 and an offset of the amount owing.
- 9.5 The Proposal Trustee will update this Court in respect of this matter as further information becomes available.

## **10. STAY EXTENSION APPLICATION**

- 10.1 As discussed above, the ability of the Company to file a viable proposal is dependent on being provided the necessary time to complete the Sales Process. The Proposal Trustee has spoken on numerous occasions with Glenn Burry, who remains committed to the NOI Filing.
- 10.2 The Proposal Trustee is of the opinion that the Company has acted and is acting in good faith and with due diligence in connection with the preparation of a restructuring plan and a proposal to creditors.
- 10.3 The Proposal Trustee believes that a 45 day extension will enhance the prospects of the Company filing a viable proposal to its creditors. As described herein, the Company has engaged Deloitte to run a Sales Process, has taken the necessary steps to reduce operating expenses and has negotiated DIP Financing if it is required. However, the Company requires adequate time to complete the Sales Process.
- 10.4 The Proposal Trustee is of the opinion that no creditor would be materially prejudiced by the extension as requested by the Company.
- 10.5 In the absence of an extension, the Company will not be in a position to file a proposal before August 9, 2018 and as such will be deemed bankrupt. The Proposal Trustee is of the view that more time is required to allow the Company to assess its options in drafting a proposal which the Proposal Trustee believes will result in a higher return to the unsecured creditors of the

Company as compared to a liquidation scenario in the event the Company is deemed bankrupt.

- 10.6 Based on the foregoing, the Proposal Trustee supports the Company's application for an Order extending the amount of time for the Company to file a proposal to its creditors.

#### **11. CONCLUSION**

- 11.1 The First Report has been prepared to provide this Court with information regarding an overview of the Company's operations and causes of insolvency, restructuring efforts to date taken by the Company, an overview and update regarding the Sales Process, a summary of the First Report Cash Flow Projection and its outcomes, the Company's request for a DIP Charge, the proposed Administration Charge, an overview of the Milton Transfer and the Company's Application for an Extension Order pursuant to s. 50.4 (7) of the BIA.

All of which is respectfully submitted this 30 day of July, 2018.

#### **DELOITTE RESTRUCTURING INC.**

Acting in its capacity as  
Licensed Insolvency Trustee under the Notice of Intention to Make a Proposal of  
Burry's Shipyard Inc.  
and not in its personal capacity

Per:



**James Foran, CPA, CA, CIRP, LIT**  
Vice President

First Report of Deloitte Restructuring Inc.  
Estate No.: 51-2397788  
July 30, 2018

## Appendix A

## Shipyard Business Transaction Opportunity

An opportunity to engage with  
a longstanding participant within the Atlantic  
Canadian ship repair industry.

### Company Overview

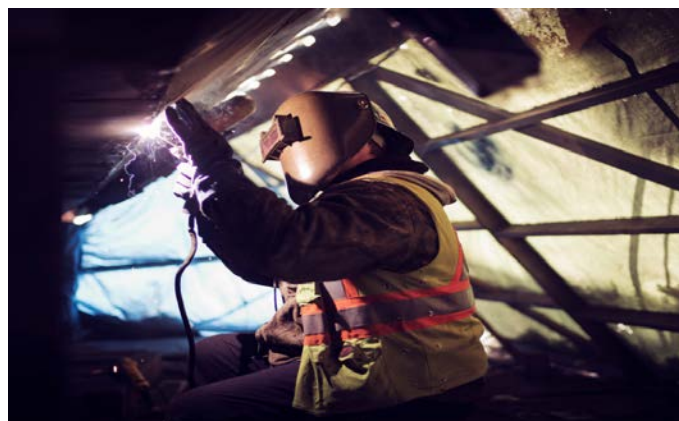
- The Company operates a shipyard located in Newfoundland and Labrador specializing in ship repair, refit services, machining, and fabrication work for vessels under 650 tonnes.
- In addition to the shipyard operations, the Company has diversified its operations to include an anode fabrication division.
- This division focuses on the manufacturing of zinc and aluminum sacrificial anodes. These anodes are widely utilized in marine industry and offshore applications.
- Key customers of the Company include the Government of Newfoundland and Labrador, the Government of Canada, Canadian Coast Guard and commercial fishing and transportation vessels.

A summary of the shipyard technical capabilities is as follows:

- The marine railway has a length of 150 feet (45.7 meters), a width of 42 feet (12.8 meters) and a weight capacity of 650 tonnes. This asset underwent a significant renovation in 2018.
- Two piers complete with fresh water, power (110, 220, 240, 440, and 600AC voltages), telephone, wireless internet and cable television connections.
- Shipyard assets also include a machine shop, welding shop, carpentry shop, paint shop and an administrative office building.

### Proposed Transaction

- The Company is seeking proposals from parties interested in exploring the following transaction opportunities:
  - Partnerships/joint ventures;
  - Share purchases/management buyouts; and
  - Asset purchases/divestitures.
- The proposed timeline related to this process is provided on the following page.



### Financial Performance

The Company's year end is January 31<sup>st</sup>

(\$CAD 000s)	FY14	FY15	FY16	FY17	FY18*	Average
<b>Revenue</b>	\$4,283	\$4,248	\$3,525	\$5,217	\$8,183	\$5,091
<b>EBITDA</b>	\$298	\$184	\$365	\$713	\$(518)	\$208
<b>EBITDA (%)</b>	6.9%	4.3%	10.4%	13.7%	(6.3)%	5.8%

\*Based on internal books and records of the Company.

## Key Investment Highlights

### Strong Industry Reputation

- Since purchasing the business in 2012, Management has developed a strong industry reputation attracting repeat business from key public and private sector clients.

### Barriers to Entry

- With its existing permits, access to Red Seal trades personnel and capital infrastructure, the Company offers an accelerated entry point to the industry.

### Strategic Location

- Located in Newfoundland and Labrador, the Company is well situated to provide services to coastal ferries, offshore oil supply, commercial fishing, aquaculture support and transportation vessels.

### Strategic Partnerships

- The Company maintains a strategic partnership with a coastal transportation and aquaculture support business which allows the shipyard to maintain increased visibility of its refit and maintenance pipeline.

### Historical Performance

- Since 2014, the Company has grown sales by approximately 91% and generated an average EBITDA of 5.8% of revenue.

### Newly Renovated Marine Railway

- The core asset of the Company is a 150 foot marine railway and carriage system with a carrying capacity of 650 tonnes. This system has recently undergone an extensive refit, reducing the need for future maintenance expenditure.

## Proposed Timeline

**June 28<sup>th</sup>**  
Circulation of Teaser

**July 6<sup>th</sup>**  
Release of Confidential Information Memorandum

**August 31<sup>st</sup>**  
Submission deadline for Letters of Intent

**October 31<sup>st</sup>**  
Transaction Closing

**August 13<sup>th</sup>**  
End of due diligence period

**September 30<sup>th</sup>**  
Negotiation deadline and execution of purchase and sale agreement

Recipients of this document interested in participating in the above outlined process must provide a fully executed NDA to DCFI before the Confidential Information Memorandum and access to the data room will be provided.

Deloitte Corporate Finance Inc. ("DCFI") is engaged as the Company's financial advisor. All inquiries and requests for additional information concerning the Company should be directed to DCFI. Under no circumstances should the management, employees, officers, or shareholders of the Company be contacted directly. Inquiries regarding the transaction should be directed only to the following:



**Deloitte Corporate Finance Inc.**  
Purdy's Wharf Tower II  
1969 Upper Water Street,  
Suite 1500  
Halifax, Nova Scotia B3J 3R7

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Director  
902-721-5602  
[kmacleod@deloitte.ca](mailto:kmacleod@deloitte.ca)

The Company is solely responsible for ensuring the accuracy and completeness of the information contained herein. The information contained herein has not been verified for accuracy by DCFI, and DCFI expressly disclaims any and all responsibility for the information contained herein and makes no representations or warranties, expressed or implied, regarding the information contained in, or omitted from, this document or any other written or oral communications transmitted or made available to a prospective investor. Any party wishing to pursue this opportunity must rely on its own inspection and due diligence.

## Appendix B

**Burry Shipyard Inc. (the "Company")**  
**Statement of projected cash flows**  
**For the period July 14 to October 12, 2018**

<b>Week ending (Friday)</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>	<b>13</b>	<b>Total</b>
	<b>7/20/2018</b>	<b>7/27/2018</b>	<b>8/3/2018</b>	<b>8/10/2018</b>	<b>8/17/2018</b>	<b>8/24/2018</b>	<b>8/31/2018</b>	<b>9/7/2018</b>	<b>9/14/2018</b>	<b>9/21/2018</b>	<b>9/28/2018</b>	<b>10/5/2018</b>	<b>10/12/2018</b>	
<b>Opening cash balance</b>	9,751	25,341	26,593	254,688	209,324	205,803	202,747	174,631	168,630	154,398	152,792	98,563	95,788	<b>9,751</b>
<b>Cash inflow</b>														
Collection of existing trade accounts	16,236	4,454	-	-	-	-	-	-	-	-	-	-	-	<b>20,690</b>
Collection of new sales	22,925	-	-	-	3,000	-	-	-	-	-	-	-	-	<b>25,925</b>
Insurance proceeds	-	-	275,000	-	-	-	-	-	-	-	-	-	-	<b>275,000</b>
<b>Total inflows A</b>	<b>39,161</b>	<b>4,454</b>	<b>275,000</b>	<b>-</b>	<b>3,000</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>321,615</b>
<b>Cash outflows</b>														
Operating costs														
Compensation and related expenses	-	1,452	-	1,895	-	1,356	1,110	1,356	686	1,356	686	1,779	686	<b>12,363</b>
General operating expenses	571	250	5,695	13,175	521	200	200	4,645	13,546	250	250	995	17,575	<b>57,873</b>
	<b>571</b>	<b>1,702</b>	<b>5,695</b>	<b>15,070</b>	<b>521</b>	<b>1,556</b>	<b>1,310</b>	<b>6,001</b>	<b>14,232</b>	<b>1,606</b>	<b>936</b>	<b>2,774</b>	<b>18,261</b>	<b>70,236</b>
<b>Professional Fees</b>														
Deloitte Restructuring Inc.	-	-	35,000	30,294	-	-	15,997	-	-	-	33,143	-	-	<b>114,433</b>
Paterson Law	-	1,500	-	-	-	1,500	-	-	-	-	1,500	-	-	<b>4,500</b>
Boyne Clarke	10,000	-	6,210	-	-	-	10,810	-	-	-	12,650	-	-	<b>39,670</b>
Cox & Palmer	13,000	-	-	-	3,000	-	-	-	-	-	3,000	-	-	<b>19,000</b>
Stewart McKelvey	-	-	-	-	3,000	-	-	-	-	-	3,000	-	-	<b>6,000</b>
	<b>23,000</b>	<b>1,500</b>	<b>41,210</b>	<b>30,294</b>	<b>6,000</b>	<b>1,500</b>	<b>26,807</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>53,293</b>	<b>-</b>	<b>-</b>	<b>183,603</b>
<b>Total outflows B</b>	<b>23,571</b>	<b>3,202</b>	<b>46,905</b>	<b>45,364</b>	<b>6,521</b>	<b>3,056</b>	<b>28,116</b>	<b>6,001</b>	<b>14,232</b>	<b>1,606</b>	<b>54,229</b>	<b>2,774</b>	<b>18,261</b>	<b>253,839</b>
<b>Weekly cash flow (A-B)</b>	<b>15,590</b>	<b>1,252</b>	<b>228,095</b>	<b>(45,364)</b>	<b>(3,521)</b>	<b>(3,056)</b>	<b>(28,116)</b>	<b>(6,001)</b>	<b>(14,232)</b>	<b>(1,606)</b>	<b>(54,229)</b>	<b>(2,774)</b>	<b>(18,261)</b>	<b>67,776</b>
<b>Projected ending cash balance</b>	<b>25,341</b>	<b>26,593</b>	<b>254,688</b>	<b>209,324</b>	<b>205,803</b>	<b>202,747</b>	<b>174,631</b>	<b>168,630</b>	<b>154,398</b>	<b>152,792</b>	<b>98,563</b>	<b>95,788</b>	<b>77,527</b>	<b>77,527</b>

**Burry's Shipyard Inc.**

Per:   
 Glenn Burry  
 President

**DELOITTE RESTRUCTURING INC.**

Acting in its capacity as  
 Trustee under the Notice of Intention to Make a Proposal of Burry's Shipyard Inc.  
 and not in its personal capacity

Per: 

**James Foran, CPA, CA, CIRP, LIT**  
 Vice President



## Appendix C



**PRIVATE & CONFIDENTIAL**

July 24, 2018

**DRAFT**

Glenn Burry  
Burry's Shipyard Inc.  
3 Wharf Road  
Clarenville, NL A5A 2B2

**RE: Debtor-in-Possession Financing**

Dear Glenn,

Burry's Shipyard Inc. (the "**Borrower**") has initiated proposal proceedings under Division I of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**"). The Supreme Court of Newfoundland and Labrador (the "**Court**") has jurisdiction over such proposal proceedings. Deloitte Restructuring Inc. ("**Deloitte**") acted as financial advisor to the Borrower prior to the initiation of the proposal proceedings and has subsequently been appointed as the Proposal Trustee.

Based on the information provided by the Borrower and Deloitte, Business Development Bank of Canada ("**BDC**") is prepared to offer the Borrower debtor-in-possession financing in the amount of up to \$300,000 (the "**DIP Loan**") according to the terms and conditions set forth in this letter of offer (the "**Letter of Offer**").

LOAN PURPOSE		FUNDING	
Financing only of the day-to-day expenses of the Borrower in accordance with the weekly cash flow forecast (the " <b>Cash Flow Forecast</b> "), approved and recommended by Deloitte and filed and approved by the Court by way of an Order (the " <b>DIP Order</b> ") in support of the request for DIP financing attached hereto as Schedule "A" (and referred to as the " <b>Project</b> "), subject to the terms and conditions of this Letter of Offer.	\$ 300,000	DIP Loan	\$ 300,000
	\$ 300,000		\$ 300,000

Neither the Project nor the terms and conditions of the DIP Loan may be changed without the prior written



consent of BDC. The amount of the DIP Loan may only be applied to this Project.

<b>Amount of Loan</b>	\$300,000
<b>Authorization Date</b>	July 24, 2018
<b>Term</b>	<p>The term of the DIP Loan shall be that period commencing on the date of issuance of the DIP Order (as hereinafter defined) and ending on the earliest of (such ending date, the "<b>Maturity Date</b>"): </p> <ul style="list-style-type: none"><li>(a) October 31, 2018;</li><li>(b) the effective date of a proposal of the Borrower under the BIA (a "<b>Proposal</b>") and the expiry of all relevant appeal periods in relation thereto;</li><li>(c) the closing of a sale of assets or equity interests that results in a change in control of the business conducted by the Borrower (a "<b>Sale Transaction</b>"); or</li><li>(d) the occurrence of an Event of Default (as hereinafter defined).</li></ul>
<b>Disbursement Procedure</b>	<p>The DIP Loan shall be disbursed in weekly instalments based on the Cash Flow Forecast. The Borrower may request disbursements in increments of \$50,000.</p> <p>In addition to the conditions precedent and underlying conditions set forth in this Letter of Offer, the Borrower agrees that each disbursement shall be conditional upon the fulfilment of each of the following conditions to the satisfaction of BDC:</p> <ul style="list-style-type: none"><li>(a) the Borrower shall have given BDC, in the form set out in Schedule "B" attached hereto, a draw notice signed by an officer of the Borrower confirming that the said disbursement falls within the Cash Flow Forecast; and</li><li>(b) Deloitte shall confirm that the disbursement requested in the draw notice is compliant with the terms and conditions of this Letter of Offer.</li></ul>
<b>Repayment</b>	<p>On the Maturity Date, the Borrower shall repay the entire outstanding principal amount of the DIP Loan in full, together with any accrued interest, fees and expenses without deduction or set-off.</p> <p>During the Term, the Borrower may repay any principal amount of the DIP Loan without penalty provided the minimum amount of any such repayment is no less than \$50,000. The amount of the DIP Loan shall automatically be reduced by the amount of such repayment and any</p>



repaid amount may not subsequently be reborrowed.

**Interest**

Interest is payable monthly, and is comprised of the BDC's Floating Base Rate plus an interest rate variance of 6.45%.

"BDC's Floating Base Rate" means the annual interest rate announced from time to time by BDC in its branches as being its floating prime rate applicable to each of the floating interest rate plans of BDC in effect at the time for the purpose of determining the floating interest rates on loans in Canadian dollars. As of the date hereof, that rate is set at 5.80% per annum so the interest rate applicable to the DIP Loan as of the date hereof would be 12.25%.

**Payment of Interest**

The Borrower shall pay the interest calculated monthly at the rate and in the manner set out in this Letter of Offer on the first Business Day of each month.

**Security**

As a specific and continuous guarantee of the performance by the Borrower of all its obligations toward BDC under the Loan Documents (including the payment of principal, interest, fees and any other sums), the Borrower agrees to grant the following security:

- (a) a Court authorized first-ranking, valid, enforceable financing charge with priority over all creditors of the Borrower, in the amount of \$360,000 (the "**DIP Charge**") charging all the property, assets and undertakings of the Borrower granted pursuant to the DIP Order (as hereinafter defined) that includes standard debtor-in-possession terms and conditions satisfactory to BDC acting reasonably, pursuant to section 50.6 of the BIA or section 11.2 of the CCAA, as the case may be, subject only to an administration charge not to exceed \$● (the "**Administration Charge**");
- (b) guarantee of Norcon Marine Services Ltd. (the "**Guarantor**") for 100% of the DIP Loan amount outstanding. The Guarantor agrees that it is directly responsible for the payment of the cancellation, standby and legal fees;
- (c) joint and several guarantee of Glenn Maxwell Burry and Sonia Burry for 100% of the DIP Loan amount outstanding. The guarantors agree that they are directly responsible for the payment of the cancellation, standby and legal fees; and
- (d) all existing security held by BDC in respect to the Borrower or the Guarantor shall also stand as security for the DIP Loan.

(collectively, the "**DIP Lender Security**")



### **DIP Documentation**

All documentation with respect to the DIP Loan, including the DIP Lender Security and DIP Order (as defined hereafter) (collectively, the “**DIP Loan Documentation**”) shall be in form and substance acceptable to BDC as confirmed by BDC’s legal counsel. All costs, charges, and expenses (including, without limitation, lawyers’ fees as between solicitor and his own client on a full indemnity basis) incurred by BDC in connection with the DIP Loan Documentation are for the account of the Borrower, and are payable by the Borrower to BDC.

### **Representations and Warranties**

The Borrower represents and warrants that it does not owe an amount in excess of \$● on account of any payables (including but not limited to amounts payable to Canada Revenue Agency and other taxation authorities) that would be potentially in priority to the claims of secured creditors (the “**Admitted Priority Payables**”).

### **Conditions Precedent**

Prior to any disbursement, the following conditions precedent will have been met in a manner satisfactory to BDC at its sole discretion:

- (a) the Borrower is subject to restructuring proceedings under the BIA or the CCAA, as the case may be;
- (b) the Borrower has obtained the DIP Order in form and content satisfactory to BDC, which DIP Order shall include, among other things: (a) the approval of the DIP Loan and all the terms and conditions hereof; (b) authorizing the Borrower to borrow on the terms and conditions outlined in this Letter of Offer and approving same; (c) creating various court-ordered priority charges including (i) the granting of the DIP Charge in favour of BDC as security over all present and future assets, property and undertaking of the Borrower notwithstanding the terms and conditions of any other agreement to which the Borrower is a party; (ii) the granting of the Administration Charge not to exceed \$● without the approval of the Court; (d) prohibiting the granting of any additional liens, charges, security interests or any other encumbrances upon any of the assets, property or undertaking of the Borrower, without the prior written consent of BDC; (e) granting BDC the right, upon the Maturity Date, to enforce the rights and remedies available to it, upon three (3) business days written notice to the Borrower and to Deloitte and their respective legal counsel, pursuant to the DIP Order, this Letter of Offer, the DIP Lender Security, and any additional rights and remedies available to it, at law or in equity; (f) prohibiting any further borrowing by the Borrower, without the prior written consent of BDC; (g) authorizing (but not obligating) BDC to effect such registrations, filings and recordings wherever BDC in its discretion deems appropriate regarding the DIP Loan Documentation including the DIP Lender Security and the DIP Charge; (h) declaring that the granting of the security by the



Borrower provided for in the DIP Loan Documentation including the DIP Lender Security and the DIP Charge and the execution and delivery of all other documents and instruments contemplated herein, the payment of all amounts by the Borrower to BDC, including any and all fees and interest, and the actions taken to perfect and record the DIP Lender Security do not constitute fraudulent preferences, fraudulent conveyances, transfers at undervalue, conduct meriting an oppression remedy, or other transactions which might be challenged or reviewed under applicable federal or provincial legislation; (i) declaring the DIP Order, and the DIP Charge granted thereunder, binding upon a trustee in bankruptcy of the Borrower, a proposal trustee, a monitor, a receiver, an interim-receiver, a receiver-manager or any other officer of the Court each a "**Receiver**"); (j) staying any other secured or unsecured creditor from exercising any rights against the Borrower and its property, without further order of the Court; (k) declaring BDC to be an "unaffected creditor" under any proposal under the BIA or plan of arrangement or compromise under the CCAA made by the Borrower and that the indebtedness owed to BDC shall not be compromised or arranged under such proposal or plan of arrangement or compromise; and (m) such other terms and conditions as BDC may reasonably deem necessary or appropriate;

- (c) the DIP Order shall be in full force and effect; final and non-appealable; and shall not have been reversed, stayed, modified, amended or varied, without the express written consent of BDC; and no application or motion shall have been made to the Court for any stay, modification or amendment of the DIP Order;
- (d) no Event of Default (as hereinafter defined) shall have occurred;
- (e) BDC has received Deloitte's report pursuant to subsection 50.4(2) of the BIA or subsection 23(1) of the CCAA, as the case may be, with respect to the Cash Flow Forecast. The conclusions of Deloitte's report shall be satisfactory to BDC;
- (f) the Borrower has paid when due all fees and expenses set out in this Letter of Offer. To this effect, the Borrower expressly and irrevocably authorize BDC to deduct from the DIP Loan all payments which are owed or which will be owed with respect to the fees any fees payable to BDC and any expenses incurred by or on behalf of BDC whether in respect of the DIP Loan or any other financing provided by BDC to the Borrower. Each of the said payments shall constitute an advance under the DIP Loan and shall be considered a payment made by the Borrower;
- (g) the Borrower shall have granted the DIP Lender Security;



- (h) BDC is satisfied that the Borrower has complied, in all material respects, with the laws and regulations applicable to its business, that no security ranks in priority to the security described above, other than as indicated herein or by operation of the law in the normal course of business of the Borrower without the Borrower having granted such security by agreement, and that the Borrower is not in default with respect to any of the terms and conditions of the loan documents; and
- (i) the Borrower shall have caused its legal counsel to issue a favourable opinion addressed to BDC and its legal counsel in form and substance satisfactory to them regarding the the corporate status, power and capacity of the Borrower and all matters relating to the DIP Loan as are usual and customary for a financing of this nature.

#### **Underlying Conditions**

During the Term of the DIP Loan, the following underlying conditions shall be met in a manner satisfactory to BDC at its sole discretion:

- (a) the Borrower shall only use the DIP Loan for the purposes set out in this Letter of Offer, unless otherwise agreed to in writing by BDC;
- (b) the Borrower shall comply with any order made by the Court;
- (c) the Borrower shall diligently continue its restructuring proceedings under the BIA;
- (d) the Borrower shall not pay any interest, dividends, salaries, remuneration, management fees or any other form of payments or distributions to the shareholders of the Borrower without the prior written consent of BDC;
- (e) the Borrower shall comply with the financial projections set forth in the Cash Flow Forecast in all material aspects;
- (f) the Borrower shall provide a weekly cash flow statement, aged accounts receivable trial balance, aged accounts payable trial balance on the second Business Day of each week. The weekly cash flow statement shall show actual results achieved compared to the Cash Flow Forecast along with notes and management comments on variances, together with an updated forecast for the forthcoming 13 weeks;
- (g) the Borrower shall undertake a sale and investment solicitation process for the business and assets of the Borrower (the "**SISP**"). Pursuant to the SISP, the Borrower shall satisfy the following milestones: (i) receipt of at least one non-binding letter of intention satisfactory to BDC, in its sole discretion, by August 31, 2018; (ii)



receipt of at least one executed binding offer satisfactory to BDC, in its sole discretion, by September 30, 2018; and (iii) closing of the transaction involving the selected offer by October 31, 2018;

- (h) the Borrower shall authorize Deloitte to disclose to BDC any financial or other information of which it is aware;
- (i) the Borrower shall provide written notice of an occurrence (an "**Occurrence**") of a default under a material contract to which the Borrower is a party which is likely to have a material adverse effect or of an Event of Default (as defined below) together with any notice, letter or other document (a "**Default Notice**") received by the Borrower from a third party advising of an Occurrence, within three days of the date of the Occurrence or of receipt of the Default Notice;
- (j) the Borrower shall provide all other documents or information reasonably required by BDC, which shall be provided within a reasonable time according to the circumstances;
- (k) the Borrower shall maintain the current insurance coverage over its assets and property and designate BDC as loss payee as its interest may appear; and
- (l) the Borrower shall not sell, transfer, assign or deal in any way with any of its property, assets or undertaking out of the ordinary course of business, without the prior written consent of BDC or an order of the Court.

#### **Events of Default**

In addition to the events of default set out in the DIP Lender Security, the following events shall constitute events of default (each, an "**Event of Default**"):

- (a) if the Borrower fails to pay to BDC when due any amount of principal, interest, fees or other amounts under the DIP Loan or otherwise, whether by acceleration or otherwise;
- (b) if the Borrower defaults in the observance or performance of any underlying condition or covenant contained in this Letter of Offer, the DIP Lender Security or any other agreement between BDC and the Borrower;
- (c) if the Borrower deviates materially from the Cash Flow Forecast;
- (d) if BDC determines, acting reasonably, that a material adverse change has occurred after the date hereof in respect of the business, affairs or financial condition of the any of the Borrower;
- (e) if DIP Order is varied without the written consent of BDC or any





other order is made which is or may be prejudicial to BDC's interests;

- (f) except for the Admitted Priority Payables, if the Borrower fails to pay, when due, any statutory liens, trusts and other Crown claims including employee source deductions, GST and any payments required by any work place safety legislation, wages, vacation pay and insurance premiums;
- (g) if the stay of proceedings granted to the Borrower pursuant to the restructuring proceedings under the BIA or CCAA, as the case may be, is terminated or lifted; or
- (h) if any person challenges the enforceability of any of the rights of BDC hereunder or pursuant to any of the DIP Lender Security and any such challenge has not been dismissed or determined by the Court within the BIA or CCAA proceedings, as the case may be, within 15 days.

#### **Remedies**

Upon the Maturity Date, BDC may immediately terminate the DIP Loan and enforce, upon three (3) Business Days written notice to the Borrower and Deloitte, all of its rights and remedies against the Borrower and its property, assets and undertaking including, without limitation, the enforcement of the DIP Lender Security and the ability to apply to the Court for the appointment of a Receiver; and all amounts outstanding under the DIP Loan shall immediately become due and payable without further notice, demand or delay.

#### **Other Conditions**

This Letter of Offer does not affect novation of the terms, conditions and obligations of the Borrower with respect to the rights, security and recourses of BDC with respect to any other financing previously granted to the Borrower. The Borrower hereby acknowledges that all the rights, security and recourses given previously to BDC are not modified and remain in full force and effect with respect to the advances previously granted and that BDC retains all its rights.

The standard credit terms which are set out in Schedule "C" attached hereto form an integral part hereof and if there is any inconsistency between the terms set out in Schedule "C" and this Letter of Offer, this Letter of Offer shall govern.

#### **Indemnification**

The DIP Loan Documentation shall include an agreement by the Borrower to indemnify and hold BDC harmless from and against any and all claims, losses, obligations, liabilities, claims, actions or causes of action, and reasonable costs and expenses incurred, suffered, sustained or required to be paid by BDC by reason of or resulting from the DIP Loan, this Letter of Offer, and the transactions and documents contemplated by this Letter of Offer, except to the extent resulting from the gross



negligence or willful misconduct of the BDC as determined by a court.

**Loan Processing Fee**

The Borrower agrees to pay a non-refundable Loan Processing Fee in the amount of \$6,000 which Loan Processing Fee is fully earned as of the date of acceptance of this Letter of Offer and payable in full as of the date of the first disbursement of the DIP Loan.

**Administration Fee**

The Borrower agrees to pay a non-refundable monthly Administration Fee in the amount of \$250 payable on the first disbursement of the DIP Loan and monthly thereafter on the first Business Day of each month.

**Other Costs**

In addition, any and all costs, charges, and expenses (including, without limitation, lawyers' fees as between solicitor and his own client, on a full indemnity basis, as well as accounting, appraisal, environmental and consulting fees) incurred by BDC in connection with the restructuring proceedings, the DIP Loan, the DIP Loan Documentation, the DIP Lender Security, the DIP Order, the DIP Charge, the Proposal, the enforcement of any rights and remedies regarding the aforementioned and the restructuring of the Borrower including, are for the account of the Borrower. Such costs shall be paid out of the disbursements of the DIP Loan as and when they become due and shall be secured by the DIP Lender Security.

**Governing Law**

This Letter of Offer as well as the interpretation and exercise of the recourses hereunder shall be subject to and governed by the laws of the Province of Newfoundland and Labrador and the laws of Canada applicable therein.

**Solidary Liability**

When there is more than one borrower, their obligations shall be solidary and each of them shall constitute a principal debtor.

**Information**

The Borrower authorizes BDC to obtain credit and other information about it from any financial institution, credit agency or credit bureau.

**Further Assurances**

Upon notice from BDC, the Borrower shall sign (or cause to be signed) all further documents, do (or cause to be done) all further acts, and provide all reasonable assurances as BDC may reasonably require to give effect to this Letter of Offer and the financing contemplated hereunder.

**Amendments**

This Letter of Offer may only be amended by a written agreement signed by BDC and the Borrower.

**Counterparts**

This Letter of Offer may be signed in any number of counterparts and by facsimile or portable electronic document format, each of which when taken together shall constitute one and the same original document.



**Expiry Date**

This Letter of Offer shall become null and void if it is not accepted by 2 p.m. (St. John's, NL time) on July ●, 2018.

Thank you for giving us the opportunity to meet your financing requirements. We look forward to continuing to work with you.

Yours truly,

Robert Prince  
Director, Business Restructuring

Russell W. French  
Assistant Vice President, Business Restructuring

**DRAFT**

**DRAFT**

**ACCEPTANCE**

To: Business Development Bank of Canada  
Business Restructuring  
121 King Street West, Suite 1200  
Toronto, ON M5H 3T9

Attention: Robert Prince

We certify that all the information provided to BDC is true, we accept the terms set forth herein and we acknowledge receipt of a copy of this Letter of Offer and the schedules forming part thereof.

We further acknowledge that today we paid BDC a sum of \$6,000 for the non-refundable loan processing fee related to the DIP Loan. The said non-refundable loan processing fee does not create any right in favour of the Borrower and does not require BDC to make any disbursement of the DIP Loan, as such rights and obligations can only be generated to the extent that the terms and conditions set out herein are met to the complete satisfaction of BDC.

Accepted in the Town of Clarendville on \_\_\_\_\_, 2018.

**BURRY'S SHIPYARD INC.**

Per: \_\_\_\_\_  
Name:  
Title:

**NORCON MARINE SERVICES LTD.**

Per: \_\_\_\_\_  
Name:  
Title:

**GLENN MAXWELL BURRY**

\_\_\_\_\_

**SONIA BURRY**

\_\_\_\_\_

Schedule "A"

**CASH FLOW FORECAST**

DRAFT

Schedule "B"

**DRAW NOTICE**

To: Business Development Bank of Canada  
Business Restructuring  
121 King Street West, Suite 1200  
Toronto, ON M5H 3T9

Attention: Robert Prince

**RE: Debtor-in-Possession Financing**

Dear Sir,

We refer you to the Letter of Offer of debtor-in-possession financing entered into on July 24, 2018 between Burry's Shipyard Inc., as Borrower, and BDC, as DIP Lender. Capitalized terms which are used but not defined in this draw notice have the meaning given to them in the Letter of Offer.

We confirm our draw notice concerning a disbursement as follows:

Amount of disbursement:       \$

Disbursement date:

As of the date hereof, we confirm that the representations made or given in the DIP Loan are still true and accurate in all material respects, that the said disbursement falls within the Cash Flow Forecast and that no Event of Default has occurred.

We also confirm the execution of the previous draw by each of the parties.

**BURRY'S SHIPYARD INC.**

Per: \_\_\_\_\_  
Name:  
Title:

## Schedule "C"

### Standard Credit Terms

#### 1. INTERPRETATION

##### 1.1 Definitions.

Unless indicated otherwise or unless context requires otherwise, the terms and expressions used as definitions in the Agreement, its schedules and any related documents which are incidental thereto shall have the meaning indicated below:

1.1.1 **"Agreement"** means this offer of interim restructuring financing and its schedules, where applicable, as amended from time to time;

1.1.1(A) **"Borrower"** means the Borrowers identified in the Letter of Offer to which this Schedule "C" is attached and forms an integral part hereof;

1.1.2 **"Business Day"** means any day, other than a Saturday or Sunday, on which BDC is open for business in the Province of Newfoundland and Labrador;

1.1.3 **"Change of Control"** means the sale, assignment or transfer of Control of a corporation or any written or verbal agreement resulting in the control of a corporation or entity being transferred to another;

1.1.4 **"Control"** means the direct or indirect holding of more than fifty percent (50%) of the Voting Shares of a corporation;

1.1.5 **"Default"** means an event of default pursuant to sections 9 and 10 below;

1.1.6 **"Dollars" or "\$"** means the lawful money of Canada;

1.1.7 **"Environmental Laws"** means all applicable federal, provincial, state, municipal, local and foreign laws and regulations respecting pollution or the environment (including, without limiting the generality of the foregoing, laws and regulations relating to the emission, discharge, spill or risk of spill of chemicals, pollutants, contaminants, waste, toxic substances, oil, oil products and other substances affecting the environment, or relating to the manufacturing, transformation, distribution, use, treatment, storage, removal, transportation or handling of chemicals, pollutants, contaminants, waste, dust, toxic substances, oil, oil products and other substances affecting the environment);

1.1.8 **"Environmental Permits"** means all permits, licences, certificates, certificates of authorization, approvals, authorizations, consents, written agreements and registrations issued, granted or signed by any Government Authority having jurisdiction under any Environmental Law;

1.1.9 **"GAAP"** means generally accepted accounting principles in Canada as recognized or established by the Canadian Institute of Chartered Accountants, as they may be amended from time to time, applied consistently;

1.1.10 **"Government Authority"** means Canada, the Province of Newfoundland and Labrador and any other country, state or province, and any other regional, municipal or local subdivision or other country, state or province and any government body of such jurisdiction and includes any

agency, department, commission, bureau, ministry, organization, etc.;

1.1.10(A) **"Guarantor"** means the Guarantors identified in the Letter of Offer to which this Schedule "C" is attached and forms an integral part hereof;

1.1.11 **"Loan"** means all amounts of principal, interest, costs, incidentals and all other sums owed to BDC under the Loan Documents;

1.1.12 **"Loan Documents"** means the letter offering interim restructuring financing (the Agreement), the Security and all other documents related to the Loan, as such documents may be amended from time to time;

1.1.13 **"Material Adverse Effect"** refers to the occurrence or non-occurrence of any event or series of events which has or could have a material adverse effect on the activities, assets, liabilities, financial situation, operating results or business prospects of the Borrower [or the Guarantor] or on the ability of the Borrower [or the Guarantor] to perform its obligations pursuant to the Loan Documents;

1.1.14 **"Security"** means, individually or collectively, all acts, documents and agreements (including any amendment, substitution or replacement thereof, as well as any act, document or agreement necessary to complete and confirm the security in accordance with the *Civil Code of Québec* or, as the case may be, under any law of another Government Authority having jurisdiction) entered into or to be entered into between the Borrower (and the Guarantor) and BDC to guarantee the repayment of the Loan and the obligations of the Borrower relating thereto (including, without limitation, those set forth in the Loan Documents);

1.1.15 **"Subsidiary"** means a legal person of which more than fifty percent (50%) of the Voting Shares are held beneficially, directly or indirectly, by or on behalf of another legal person;

1.1.16 **"Voting Shares"** means the shares of any class in the capital stock of a corporation conferring in all circumstances the right to elect the majority of the directors thereof.

1.2 **Headings.** The headings are for ease of reference only and shall not affect the interpretation of this Agreement.

1.3 **Recitals and schedules.** The recitals and schedules form an integral part hereof.

1.4 **Accounting terms.** Every accounting term used in this Agreement has the meaning generally ascribed to it according to GAAP unless another definition is given herein and any reference to an item on a balance sheet or statement shall be construed according to its presentation in the appropriate statements prepared according to GAAP as amended from time to time by any accounting standard adopted by the Canadian Institute of Chartered Accountants.

1.5 **Singular and plural.** In this Agreement, the singular includes the plural and vice versa, and "person" or "persons" includes an individual, firm, corporation,

government, government organization or agency, unincorporated group of persons or association. The information to be provided in the schedules hereof shall be provided according to the definitions, terms and conditions of this Agreement.

## 2. LOAN

2.1 The obligation of the Borrower to pay the Loan may, at the option of BDC, be witnessed by one or more notes, which shall be given to BDC in recognition of receipt of the funds, not as payment of this Loan.

2.2 BDC shall not be required to disburse the Loan if the pre-disbursement conditions are not met or if the Borrower is in Default under the Loan Documents or if a circumstance arises which could lead to a Material Adverse Effect.

2.3. BDC may cancel any portion of the Loan which is undisbursed on the Maturity Date (as defined in the Letter of Offer).

## 3. USE OF PROCEEDS OF LOAN

3.1 No change shall be made in the use of the Loan or the proposed financing without the prior written consent of BDC.

3.2 The Borrower shall bear all risks of superior force, so that the obligations of the Borrower under the Loan Documents may not be reduced or cancelled, even in the case of superior force.

## 4. INTEREST

4.1 **Interest rate.** The Loan or any unpaid balance thereof shall bear interest, before and after maturity and before and after default and judgement, until it is repaid in full.

4.2 **Calculation of interest.** The interest payable on the Loan shall be calculated and compounded monthly and not in advance on the unpaid principal as of the date of the first disbursement of the Loan before and after maturity and before and after default and judgement.

4.3 **Interest on amounts not repaid when due.** Any amount of principal, costs or interest payable hereunder which is not repaid when due shall bear interest during the period in which such amount remains unpaid at the annual interest rate indicated for the Loan calculated daily and compounded monthly, the whole until payment in full and payable on demand (the "Interest Arrears").

4.4 **Late payment interest.** The Interest Arrears shall bear interest and the additional interest thereon which is not paid when due shall bear interest at the annual interest rate indicated for the Loan calculated delay and compounded monthly, the whole until payment in full and payable on demand. Any other amount which is not paid when due shall bear interest at the same rate and the interest shall be calculated and paid in the same manner as interest on the principal which is not outstanding.

4.5 **Reduction of interest.** If the aggregate amount of costs payable as interest, Interest Arrears and additional interest and all other costs paid or payable in connection with the loan (collectively, the "Costs") constitutes at any

time whatsoever the application of an actual annual interest rate which exceeds the limit permitted under an applicable law, the Costs shall be reduced so that the costs paid or payable do not exceed the ceiling allowed under such law. BDC shall reimburse any surplus which was paid thirty (30) days after setting the amount of the repayment.

## 5. REPAYMENT

5.1 **Loan not renewable.** No amount repaid on the Loan may be borrowed again.

5.2 **Advance repayment.** The Borrower may repay the Loan in advance at any time without notice and without indemnity.

## 6. DEBITS AND AUTOMATIC WITHDRAWAL

6.1 The Borrower hereby authorizes BDC to manually or electronically withdraw from its bank account any payment which the Borrower must make to BDC hereunder.

6.2 Any payment to be made by the Borrower hereunder will be made by way of pre-authorized withdrawal from its bank account. The Borrower shall sign all the documents necessary for such purposes and shall provide BDC with a sample cheque from its financial institution marked "void".

6.3 The Borrower agrees that the repayment of any amount owed hereunder may be made by cheque if BDC considers this means of payment preferable under the circumstances.

## 7. UNDERTAKINGS

7.1 **Undertakings to be complied with by the Borrower (and the Guarantor, where applicable).** As of the date hereof, the Borrower (and the Guarantor) agrees that the following undertakings shall be complied with as long as the Borrower owes any amount whatsoever to BDC hereunder or otherwise, and the Borrower (and the Guarantor) acknowledges that BDC is relying on such undertakings for the purposes hereof:

7.1.1 The Borrower (and the Guarantor) shall, at its own expense, insure all its assets including the property charged with the Security, and keep it insured at all times against the risk of loss or damage caused by theft, fire and any other risk which is normally insured or for which a prudent administrator would insure, or for which BDC requires insurance, the whole up to its full insurable value, on the terms and with insurers acceptable to BDC. Each insurance policy shall provide that it may not be terminated for any reason whatsoever or become void before thirty (30) days' prior written notice is given to BDC. BDC is hereby designated as beneficiary of the indemnities payable under each insurance policy (except with respect to civil liability), and the Borrower (and the Guarantor) shall have such designation indicated on the policies. If BDC so requests, the Borrower (and the Guarantor) shall assign to BDC the policies or indemnities payable thereunder or ensure that each policy contains a hypothecary clause acceptable to BDC. The Borrower (and the Guarantor) shall provide to BDC, at its request, proof of payment of the premiums and a copy of each policy. The Borrower (and the Guarantor) further agrees to renew or replace any policy before it expires and to provide written confirmation from the insurer



within twenty-four (24) hours of such renewal or replacement. The Borrower (and the Guarantor) shall give BDC a copy of such renewal or replacement as soon as possible. If the Borrower (and the Guarantor) fails to set up such insurance or keep it in effect, BDC may, but shall not be required to, take out such insurance in its name or in the name of the Borrower (and the Guarantor), and the premiums or Costs paid or incurred by BDC in this regard shall become due and payable by the Borrower (and the Guarantor) to BDC forthwith, with interest as set out herein. The Borrower (and the Guarantor) shall notify BDC forthwith of any damage or loss suffered by the property. If the Borrower (and the Guarantor) does not maintain insurance in accordance with the above requirements, BDC may take out insurance to protect its interests and the Borrower (and the Guarantor) shall pay the premiums therefor.

7.1.2 The Borrower (and the Guarantor) shall keep its accounting books and records up to date according to GAAP;

7.1.3 The Borrower (and the Guarantor) agrees to make its remittances to the Government Authorities as required by law. The Borrower shall confirm that the amounts were paid to each Government Authority by means of documents prepared by its external accountant which shall be sent to BDC along with the annual financial statements. In addition, the Borrower agrees to sign a standard consent form allowing BDC to obtain information about the said remittances;

7.1.4 The Borrower (and the Guarantor) shall ensure that any Subsidiary or other person, partnership or affiliate complies with and agrees to comply with the undertakings set out herein;

7.1.5 The Borrower shall deal on a business basis and "at arm's length" with any person;

7.1.6 The Borrower shall notify BDC forthwith of any Default or event which, following a notice or the expiry of a time limit, could constitute a Default and send BDC a copy of any Default or Default notice received from any other authority having jurisdiction;

7.1.7 The Borrower shall disclose to BDC forthwith any lawsuit or proceeding before a court of law or tribunal, commission or Government Agency to which it is a party;

7.1.8 The Borrower (and the Guarantor) shall comply at all times with the laws governing it;

7.1.9 The Borrower shall conduct itself in a socially and politically responsible manner at all times;

7.1.10 The Borrower shall maintain its operations;

7.1.11 The Borrower shall use the Loan made available hereunder for the purposes hereof;

7.1.12 The Borrower shall pay all costs incurred by BDC to exercise its rights hereunder, including those allowing the enforcement of all the obligations of the Borrower to protect, execute or preserve any Security granted to guarantee the Loan or have the assets of the Borrower (and the Guarantor) appraised at the request of BDC, including all legal costs, charges or other legal expenses, and the costs and fees of an agent, trustee or otherwise;

7.1.13 The Borrower (and the Guarantor) shall allow any representative of the BDC, upon prior notice to the Borrower (and the Guarantor), to enter the premises of the Borrower during normal business hours and examine therein, at the expense of BDC, the books, physical facilities and stock of the business and obtain a copy of any document.

**7.2 Decisions requiring the prior consent of BDC.**  
No decision, resolution, action or settlement affecting the following matters relating to the Borrower (and the Guarantor, where applicable) as well as any Subsidiary or affiliate may be taken or made without having first obtained the consent of BDC, which may not refuse to give its consent without valid reason:

7.2.1 any amendment of the articles of the Borrower (and the Guarantor);

7.2.2 the winding up or voluntary liquidation of the Borrower (and the Guarantor), as well as its consolidation or amalgamation with any other person, business or corporation;

7.2.3 any payment of dividends by the Borrower (or the Guarantor), the redemption of shares in its capital stock or any other form of distribution of its assets;

7.2.4 any change in the nature of the business activities of the Borrower (or the Guarantor);

7.2.5 a change of the fiscal year-end of the Borrower (or the Guarantor);

7.2.6 the creation of a hypothec or security of any nature whatsoever charging the property of the Borrower (or the Guarantor) covered by the Security;

7.2.7 any direct or indirect change of Control of the Borrower (or the Guarantor);

7.2.8 any loans or advances to employees or shareholders of the Borrower (or the Guarantor) outside the normal course of business and any loan or advance to any person outside the normal course of business;

7.2.9 the acquisition of any business (through a purchase of shares or assets) by the Borrower (or the Guarantor);

7.2.10 the signing by the Borrower (or the Guarantor) of any contract outside the normal course of business;

7.2.11 any capital expenditures, including lease-to-buy contracts outside the normal course of business;

7.2.12 the moving of a substantial part of its activities;

7.2.13 the creation of a Subsidiary;

7.2.14 take out any form of borrowing other than to the extent allowed herein;

7.2.15 make repayments of capital in favour of its shareholders or make any other form of repayment of debts with respect to its secured creditors not provided for in the cash flow statement;

7.2.16 assign or otherwise dispose of all or part of its assets without the prior written consent of BDC.

7.3. **Environment.** The Borrower (and the Guarantor) agrees and undertakes: to comply with all applicable Environmental Laws; to operate in conformity with all Environmental Laws and regulations; to make certain that its assets are and shall remain free of environmental damage; to inform BDC immediately upon becoming aware of any environmental issue and promptly provide BDC with copies of all communications with environmental authorities and all environmental assessments; to pay the cost of any external environmental consultant engaged by BDC to effect an environmental audit and the cost of any environmental rehabilitation or removal necessary to protect, preserve or remediate the assets, including any fine or penalty BDC is obligated to incur by reason of any statute, order or directive by a competent authority;

7.4 **Prohibited activities.** The Borrower (and the Guarantor) agrees and undertakes not engage in, or permit its premises to be used by a tenant or other person, for any activity which BDC, from time to time, deems ineligible, including without limitation any of the following ineligible activities:

- a) businesses that are sexually exploitive or that are inconsistent with generally accepted community standards of conduct and propriety, including those that feature sexually explicit entertainment, products or services; businesses that are engaged in or associated with illegal activities; businesses trading in countries that are proscribed by the Federal Government;
- b) businesses that operate as stand-alone nightclubs, bars, lounges cabarets, casinos, discotheques, video arcades pool and billiard halls, and similar operations; or
- c) businesses that promote nudism and naturism.

BDC's finding that there is an ineligible activity shall be final and binding between the parties and will not be subject to review. The prohibitions set out in this paragraph 7.4 shall also apply to any entity that controls, is controlled by, or that is under the common control with, any Loan Party.

## 8. REPRESENTATIONS AND WARRANTIES

As of the date hereof, the Borrower (and the Guarantor) represents and warrants to BDC as follows and acknowledges that BDC is relying on such representations and warranties for the purposes hereof:

### 8.1 With respect to corporate status:

8.1.1 The Borrower (and the Guarantor) is a validly constituted and organized corporation, in good standing with the laws governing it, and holds all the powers necessary to carry on its business and to hold, manage and administer its property, and have full ability to bind itself toward BDC hereunder and under the Loan Documents signed by it;

8.1.2 all necessary authorizations and approvals have been given by the Borrower (and the Guarantor), their shareholders, administrators, business partners, creditors or other persons whose authorization is required for the signing of the Loan Documents, the whole in accordance with the articles, by-laws and resolutions of the Borrower (and the Guarantor) and in accordance with the constituting act and other applicable laws;

8.1.3 the articles and by-laws of the Borrower (and the Guarantor) given to BDC this day are those in effect as of the date hereof and there is no undertaking providing for their amendment.

8.2 **Loan Documents.** The representations and warranties set forth in the Loan Documents are complete and accurate.

8.3 **Effects of representations and warranties.** The representations and warranties set out herein shall remain in effect until repayment in full of the Loan and any other amount owed to BDC under the Loan Documents.

## 9. DEFAULT AND RECOURSE PRIOR TO DISBURSEMENT OF THE LOAN

9.1 **Default.** The Borrower (and the Guarantor) shall be in default if:

9.1.1 any of the representations and warranties herein or in the schedules hereto and in the Loan Documents is found to be erroneous, inaccurate or false;

9.1.2 any of the pre-disbursement conditions is not met;

9.1.3 a Material Adverse Change with respect to the Borrower (or the Guarantor) has occurred, in the opinion of BDC;

9.1.4 The projections set forth in the cash flow statement are not met or complied with;

9.1.5 The audited annual financial statements or the internal monthly financial statements of the Borrower reflect a deterioration of the financial situation of the Borrower [or of the Guarantor] in comparison with the financial situation when the loan was authorized;

9.1.6 the due diligence is not to the complete satisfaction of BDC, including the statement of prior claims, such as deductions at source and constructive trusts;

9.1.7 the Borrower (or the Guarantor) does not take any action or do not sign any document considered necessary or useful by BDC to give full effect hereto and to the Loan Documents;

9.1.8 the Borrower (or the Guarantor) fails to comply with the terms and conditions set out herein and in the Loan Documents.

9.2 **Recourse.** In the event of any Default prior to the disbursement of all or part of the Loan, BDC reserves the right not to disburse the Loan in accordance with the terms hereof.

## 10. DEFAULT AND RECOURSE

Notwithstanding any provision to the contrary contained herein and even if the terms have been complied with, BDC reserves the right, at its discretion, to terminate the Loan or any undisbursed portion thereof or to postpone the disbursement and terminate any moratorium on the repayment of principal, and the Borrower (and the Guarantor) agrees to repay, upon request, all or part of the amounts disbursed on the Loan, with interest, Costs and accessories, in the following cases:

10.1 any Court order lifting or modifying the protection or suspension of the recourses against the Borrower or any of its assets;

10.2 any other Court order granting a recourse or a right to a creditor to any security ranking before or *pari passu* with BDC;

10.3 any Court order amending the Loan or the restructuring process undertaken by the Borrower under the CCAA or BIA, as applicable, without the prior consent of BDC;

10.4 the failure by the Borrower (or the Guarantor) to pay interest or Costs which are owed hereunder or to repay the principal when due;

10.5 if any representation or warranty found herein, in the Security documents or in any other document or certificate provided to BDC by the Borrower (or the Guarantor) is incorrect, erroneous or inaccurate;

10.6 The Borrower (or the Guarantor) is in breach or terminate any material undertaking or obligation in the opinion of BDC;

10.7 If the Borrower (or the Guarantor) makes an assignment of its property, is placed under receivership pursuant to BIA, or if it is under a liquidation order under BIA or any other statute to the same effect;

10.8 if the Borrower (or the Guarantor) does not maintain its legal existence;

10.9 if there is a Change in Control of the Borrower or in the ultimate Control of the Borrower which has not received the prior written consent of BDC;

10.10 if the Borrower (or the Guarantor) fails to fulfil any of its undertakings stipulated herein;

10.11 if, at any time, any Security ceases for any reason whatsoever to be in effect, have full effect and keep the ranking it should have in accordance herewith and the Loan Documents, whether or not BDC has been informed;

10.12 If any of the events of Default provided for hereunder occurs with respect to the loan(s) granted to the Borrower by BDC which is not covered by the restructuring process, and the Borrower further acknowledges that a Default hereunder or under the Loan Documents shall also constitute a Default within the meaning of its other loans;

10.13 In all cases of Default, there will be loss of the benefit of the term and BDC may move up the date the Loan is due or terminate the Loan and declare the amount owed to it in principal on the Loan and any accrued interest, Costs and accessories thereon, as well as any indebtedness of the Borrower toward BDC hereunder and under the Loan Documents, to be due and payable immediately, in which case the Borrower shall pay BDC forthwith all amounts owed or payable under the Loan, failing which BDC may exercise all its recourses hereunder or under any guarantee held by BDC, as it sees fit without further notice to the Borrower with the exception of the notices required by law; in addition, BDC or its assigns shall have the right to exercise all its recourses and the rights available to it, without any control on the part of the Borrower, but BDC shall not be required to realize such

guarantee or exercise any such right or recourse and shall not be responsible for any loss which may be caused by such decision not to exercise such recourse. The Borrower shall indemnify BDC for any loss or expense which BDC may suffer or incur due to any delay in the payment of the Loan or any portion thereof or any accrued interest thereon or any other amount owed hereunder or resulting from a Default including, without limiting the generality of the foregoing, any cost, loss or expense incurred by BDC due to the Default of the Borrower.

10.14 In all cases of Default, BDC may also refuse to advance the Borrower any portion of the Loan which has not been advanced to the Borrower.

10.15 No notice or formal demand shall be required (unless provided for herein or under the Security) nor shall have to be given to the Borrower or, as the case may be, to the Guarantor, by BDC for the purpose of putting the Borrower and, as the case may be, the Guarantor in default, and the Borrower and, as the case may be, the Guarantor shall be in Default by the mere passage of the time given for the performance of an obligation constituting a Default under the Loan Documents or by the occurrence of an event constituting a Default under the Loan Documents, to the extent allowed by law.

10.16 If a Default occurs, BDC may incur and pay any reasonable sum for services rendered (including professional fees and the fees of agents) with respect to the realization, payment, sale, transfer, delivery or payment to be made with respect to any guarantee referred to herein and may deduct such sums as fees and disbursements from the proceeds of realization of the securities. The balance of any proceeds may be withheld by BDC and may, at the option of BDC, be applied to any indebtedness of the Borrower toward BDC, without prejudice to any other right or recourse of BDC. Any expense incurred or sum paid by BDC in order to realize, maintain or preserve any security referred to herein given by the Borrower to BDC hereunder or by law shall bear interest at the interest rate provided in the Loan until the date the said sum is paid.

10.17 BDC may grant extensions, take and give releases of any security and deal in any manner with the Borrower or any other party with respect to the guarantees given to BDC as BDC wishes and without prejudice to any rights of BDC with respect to the securities given and without reducing the responsibility of the Borrower toward BDC.

10.18 The rights and recourses of BDC hereunder are cumulative and are in addition to, and not a substitute for, those granted to it by Law. The partial exercise or the exercise of only one of such rights and recourses by BDC for a Default or breach of any term, undertaking, condition or agreement found herein shall not modify, affect or impair any other right or recourse to which BDC may be entitled under the Law for the same Default or breach; no waiver by BDC of the strict observance, performance or compliance with a term, undertaking, condition or agreement found herein or any accommodation granted by BDC shall be deemed to be a waiver with respect to any subsequent Default or breach.

## 11. GENERAL

11.1 The Borrower shall not have the right to assign or transfer the rights granted to it hereunder. Any assignment in breach of this paragraph shall, in addition to constituting a

Default hereunder, cancel any undertaking of BDC to disburse any portion of the Loan which has not been advanced.

11.2 BDC shall keep records of the transactions made under the Loan. Such registers shall be deemed to reflect such transactions and the amount of the Loan used by the Borrower and shall constitute, in the absence of manifest errors, *prima facie* evidence of the date and amount of any disbursement to the Borrower and the total amounts paid by the Borrower in principal and interest on the disbursements, costs and other amounts payable hereunder.

11.3 The Borrower shall take any action and sign any document necessary to give full effect to the terms hereof.

11.4 The Borrower agrees to a public announcement being made in the form of a press release by BDC.

11.5 The Borrower (and the Guarantor) authorize BDC to communicate with their accountants and auditors and to ask them, on their behalf, to give BDC financial information and to give BDC the financial statements of the Borrower (and the Guarantor) as soon as they are prepared. In addition to the documents and information indicated above, BDC may require the opinion of an independent and competent auditor.