

---

---

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

---

**FORM 10-Q**

---

**Quarterly Report Pursuant To Section 13 or 15(d) of the Securities Exchange Act of 1934**

For the quarterly period ended September 30, 2017

or

**Transition Report Pursuant To Section 13 or 15(d) of the Securities Exchange Act of 1934**

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number 1-32375

---

**Comstock Holding Companies, Inc.**

(Exact name of registrant as specified in its charter)

---

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**20-1164345**  
(I.R.S. Employer  
Identification No.)

**1886 Metro Center Drive, 4th Floor  
Reston, Virginia 20190  
(703) 883-1700**

(Address, including zip code, and telephone number, including area code, of principal executive offices)

---

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (Section 232.405) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act. (check one)

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

Emerging growth company

If an emerging growth company, indicate by checkmark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes  No

As of November 16, 2017, 3,347,789 shares of Class A common stock, par value \$0.01 per share, and 220,250 shares of Class B common stock, par value \$0.01 per share, of the registrant were outstanding.

---

---

COMSTOCK HOLDING COMPANIES, INC. AND SUBSIDIARIES

FORM 10-Q  
INDEX

	<u>Page</u>
	<u>1</u>
<b><u>PART I – FINANCIAL INFORMATION</u></b>	
ITEM 1.	1
<u>FINANCIAL STATEMENTS:</u>	1
<u>Consolidated Balance Sheets – September 30, 2017 (unaudited) and December 31, 2016</u>	1
<u>Consolidated Statements of Operations (unaudited) – Three and Nine Months Ended September 30, 2017 and 2016</u>	2
<u>Consolidated Statements of Cash Flows (unaudited) – Nine Months Ended September 30, 2017 and 2016</u>	3
<u>Notes to Consolidated Financial Statements</u>	4
ITEM 2.	18
<u>MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS</u>	18
ITEM 3.	23
<u>QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK</u>	23
ITEM 4.	23
<u>CONTROLS AND PROCEDURES</u>	23
<b><u>PART II – OTHER INFORMATION</u></b>	
ITEM 1.	23
<u>LEGAL PROCEEDINGS</u>	23
ITEM 1A.	23
<u>RISK FACTORS</u>	23
ITEM 2.	23
<u>UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS</u>	23
ITEM 6.	24
<u>EXHIBITS</u>	24
<u>SIGNATURES</u>	25

## PART I – FINANCIAL INFORMATION

## ITEM 1. FINANCIAL STATEMENTS

**COMSTOCK HOLDING COMPANIES, INC. AND SUBSIDIARIES**  
**CONSOLIDATED BALANCE SHEETS**  
(Amounts in thousands, except share and per share data)

	September 30, 2017 (unaudited)	December 31, 2016
<b>ASSETS</b>		
Cash and cash equivalents	\$ 2,086	\$ 5,761
Restricted cash	1,014	1,238
Trade receivables	1,332	613
Real estate inventories	48,501	49,842
Fixed assets, net	329	255
Goodwill	1,702	—
Other assets, net	1,049	2,112
<b>TOTAL ASSETS</b>	<b>\$ 56,013</b>	<b>\$ 59,821</b>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Accounts payable and accrued liabilities	\$ 8,828	\$ 7,721
Notes payable - secured by real estate inventories, net of deferred financing charges	27,572	26,927
Notes payable - due to affiliates, unsecured, net of discount and deferred financing charges	15,078	15,866
Notes payable - unsecured, net of deferred financing charges	1,396	911
Income taxes payable	29	19
<b>TOTAL LIABILITIES</b>	<b>52,903</b>	<b>51,444</b>
Commitments and contingencies (Note 8)		
<b>STOCKHOLDERS' EQUITY (DEFICIT)</b>		
Series C preferred stock \$0.01 par value, 3,000,000 shares authorized, 579,158 and 0 shares issued and outstanding liquidation preference of \$2,896 and \$0 at September 30, 2017 and December 31, 2016, respectively	\$ 442	\$ —
Series B preferred stock \$0.01 par value, 3,000,000 shares authorized, 0 and 841,848 shares issued and outstanding liquidation preference of \$0 and \$4,209 at September 30, 2017 and December 31, 2016, respectively	—	1,280
Class A common stock, \$0.01 par value, 11,038,071 shares authorized, 3,347,789 and 3,035,922 issued, and outstanding, respectively	33	30
Class B common stock, \$0.01 par value, 220,250 and 390,500 shares authorized, issued, and outstanding, respectively	2	4
Additional paid-in capital	177,374	176,251
Treasury stock, at cost (85,570 shares Class A common stock)	(2,662)	(2,662)
Accumulated deficit	(186,545)	(184,778)
<b>TOTAL COMSTOCK HOLDING COMPANIES, INC. DEFICIT</b>	<b>(11,356)</b>	<b>(9,875)</b>
Non-controlling interests	14,466	18,252
<b>TOTAL EQUITY</b>	<b>3,110</b>	<b>8,377</b>
<b>TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY</b>	<b>\$ 56,013</b>	<b>\$ 59,821</b>

The accompanying notes are an integral part of these consolidated financial statements.

**COMSTOCK HOLDING COMPANIES, INC. AND SUBSIDIARIES**  
**UNAUDITED CONSOLIDATED STATEMENTS OF OPERATIONS**  
**(Amounts in thousands, except per share data)**

	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2017	2016	2017	2016
<b>Revenues</b>				
Revenue—homebuilding	\$13,076	\$12,880	\$33,375	\$32,102
Revenue—other	739	223	1,228	685
Total revenue	<u>13,815</u>	<u>13,103</u>	<u>34,603</u>	<u>32,787</u>
<b>Expenses</b>				
Cost of sales—homebuilding	12,482	11,985	30,804	29,815
Cost of sales—other	846	85	1,366	329
Impairment charges and recovery, net	—	91	—	91
Sales and marketing	401	427	1,122	1,313
General and administrative	1,263	1,236	3,735	4,151
Interest and real estate tax expense	16	133	16	655
Operating loss	(1,193)	(854)	(2,440)	(3,567)
Other income, net	21	98	69	119
Loss before income tax expense	(1,172)	(756)	(2,371)	(3,448)
Income tax expense	(29)	—	(29)	(57)
Net loss	(1,201)	(756)	(2,400)	(3,505)
Net income (loss) attributable to non-controlling interests	309	290	(630)	1,174
Net loss attributable to Comstock Holding Companies, Inc.	(1,510)	(1,046)	(1,770)	(4,679)
Paid-in-kind dividends on Series B Preferred Stock	—	87	78	259
Extinguishment of Series B Preferred Stock	—	—	(1,011)	—
Net loss attributable to common stockholders	<u>\$ (1,510)</u>	<u>\$ (1,133)</u>	<u>\$ (837)</u>	<u>\$ (4,938)</u>
Basic net loss per share	\$ (0.45)	\$ (0.34)	\$ (0.25)	\$ (1.49)
Diluted net loss per share	\$ (0.45)	\$ (0.34)	\$ (0.25)	\$ (1.49)
Basic weighted average shares outstanding	3,374	3,326	3,299	3,317
Diluted weighted average shares outstanding	3,374	3,326	3,299	3,317

The accompanying notes are an integral part of these consolidated financial statements.

**COMSTOCK HOLDING COMPANIES, INC. AND SUBSIDIARIES**  
**UNAUDITED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(Amounts in thousands, except per share data)

	<u>Nine Months Ended September 30,</u>	
	<u>2017</u>	<u>2016</u>
<b>Cash flows from operating activities:</b>		
Net loss	\$ (2,400)	\$ (3,505)
Adjustment to reconcile net loss to net cash provided by operating activities		
Amortization of loan discount, loan commitment and deferred financing fees	876	832
Deferred income tax benefit	—	7
Depreciation expense	123	144
Earnings from unconsolidated joint venture, net of distributions	15	25
Stock compensation	238	56
Impairment charges	—	813
Changes in operating assets and liabilities:		
Purchaser escrow deposits	405	42
Trade receivables	(425)	(182)
Real estate inventories	1,497	(9,953)
Other assets	796	527
Accrued interest	793	391
Accounts payable and accrued liabilities	1,046	4,560
Income taxes payable	10	21
Net cash provided by (used in) operating activities	<u>2,974</u>	<u>(6,222)</u>
<b>Cash flows from investing activities:</b>		
Business acquisition, net of cash acquired	(582)	—
Purchase of fixed assets	(17)	(32)
Principal received on note receivable	27	26
Collateral for letters of credit	(181)	(32)
Net cash used in investing activities	<u>(753)</u>	<u>(38)</u>
<b>Cash flows from financing activities:</b>		
Proceeds from notes payable	19,936	24,157
Payments on notes payable	(22,442)	(28,390)
Loan financing costs	(145)	(70)
Distributions to non-controlling interests	(3,156)	(4,413)
Contributions from non-controlling interests	—	5,000
Repurchase of Series C preferred stock	(89)	—
Taxes paid related to net share settlement of equity awards	—	(8)
Net cash used in financing activities	<u>(5,896)</u>	<u>(3,724)</u>
Net decrease in cash and cash equivalents	(3,675)	(9,984)
Cash and cash equivalents, beginning of period	5,761	12,448
Cash and cash equivalents, end of period	<u>\$ 2,086</u>	<u>\$ 2,464</u>
<b>Supplemental cash flow information:</b>		
Interest paid, net of interest capitalized	\$ (686)	\$ (44)
<b>Supplemental disclosure for non-cash activity:</b>		
Business acquisition notes payable	\$ 1,710	\$ —
Seller's note payable	\$ 115	\$ —
Accrued liability settled through issuance of stock	\$ 63	\$ 43
Increase in Series B preferred stock value in connection with dividends paid in-kind	\$ 24	\$ 78
Conversion of Class B common stock to Class A common stock	\$ 2	\$ —
Extinguishment of Series B Preferred Stock	\$ 1,011	\$ —

The accompanying notes are an integral part of these consolidated financial statements.

**COMSTOCK HOLDING COMPANIES, INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**(Amounts are in thousands, except per share data, number of units, or as otherwise noted)**

**1. ORGANIZATION AND BASIS OF PRESENTATION**

The accompanying unaudited consolidated financial statements of Comstock Holding Companies, Inc. and subsidiaries (“Comstock” or the “Company”) have been prepared in accordance with accounting principles generally accepted in the United States of America (“GAAP”) for interim financial information and in accordance with the instructions to Form 10-Q and Article 8 of Regulation S-X. Such financial statements do not include all of the disclosures required by GAAP for complete financial statements. In our opinion, all adjustments, consisting only of normal recurring adjustments, considered necessary for a fair presentation have been included in the accompanying consolidated financial statements. For further information and a discussion of our significant accounting policies, other than discussed below, refer to our audited consolidated financial statements in our Annual Report on Form 10-K for the fiscal year ended December 31, 2016.

Comstock Holding Companies, Inc., incorporated in 2004 as a Delaware corporation, is a multi-faceted real estate development and construction services company focused in the Washington, D.C. metropolitan area (Washington, D.C., Northern Virginia and Maryland suburbs of Washington, D.C.). We have substantial experience with building a diverse range of products, including multi-family homes, single-family homes, townhouses, mid-rise condominiums, high-rise multi-family condominiums and mixed-use (residential and commercial) developments. References in these consolidated financial statements to “Comstock,” “Company,” “we,” “our” and “us” refer to Comstock Holding Companies, Inc. together in each case with our subsidiaries and any predecessor entities unless the context suggests otherwise.

The Company’s Class A common stock is traded on the NASDAQ Capital Market under the symbol “CHCI” and has no public trading history prior to December 17, 2004.

Throughout these consolidated financial statements, amounts are in thousands, except per share data, number of units, or as otherwise noted.

For the three and nine months ended September 30, 2017 and 2016, comprehensive income (loss) equaled net income (loss); therefore, a separate statement of comprehensive income (loss) is not included in the accompanying consolidated financial statements.

**Liquidity and Capital Resources**

We require capital to operate, to post deposits on new potential acquisitions, to purchase and develop land, to construct homes, to fund related carrying costs and overhead and to fund various advertising and marketing programs to generate sales. These expenditures include payroll, community engineering, entitlement, architecture, advertising, utilities and interest as well as the construction costs of our homes. Our sources of capital include, and we believe will continue to include, private equity and debt placements (which has included significant participation from Company insiders), funds derived from various secured and unsecured borrowings to finance acquisition, development and construction on acquired land, cash flow from operations, which includes the sale and delivery of constructed homes, finished and raw building lots and the potential sale of public debt and equity securities. The Company is involved in ongoing discussions with lenders and equity sources in an effort to provide additional growth capital to fund various new business opportunities. See Note 13 in the accompanying consolidated financial statements for more details on our credit facilities and Note 11 in the accompanying consolidated financial statements for details on private placement offerings.

We have outstanding borrowings with various financial institutions and other lenders that have been used to finance the acquisition, development and construction of real estate projects. The Company has generally financed its development and construction activities on a single or multiple project basis so it is not uncommon for each of our projects or collection of our projects to have a separate credit facility. Accordingly, the Company typically has had numerous credit facilities and lenders.

## [Table of Contents](#)

As of September 30, 2017, \$22.7 million of the Company's outstanding credit facilities and project related loans mature at various periods through the end of 2017. We are in active discussions with our lenders seeking long term extensions and modifications to these loans. These debt instruments impose certain restrictions on our operations, including speculative unit construction limitations, curtailment obligations, and financial covenant compliance. If we fail to comply with any of these restrictions, an event of default could occur. Additionally, events of default could occur if we fail to make required debt service payments or if we fail to come to agreement on an extension on a certain facility prior to a given loan's maturity date. Any event of default would likely render the obligations under these instruments due and payable as of that event. Any such event of default would allow certain of our lenders to exercise cross default provisions in our loan agreements with them, such that all debt with that institution could be called into default. We are anticipating that with the successful resolution of the debt extension discussions with our lenders, capital raises from our private placements, current available cash on hand, and additional cash from settlement proceeds at existing and under development communities, the Company will have sufficient financial resources to sustain its operations through the next 12 months, though no assurances can be made that the Company will be successful in its efforts. The Company will also continue to focus on its cost structure in an effort to conserve cash and manage expenses. Such actions may include cost reductions and/or deferral arrangements with respect to current operating expenses.

### **Recent Developments**

On July 17, 2017, JK Environmental Services, LLC, ("JK") a newly formed, wholly owned entity by CDS Capital Management, L.C., a subsidiary of Comstock, purchased all of the business assets of Monridge Environmental, LLC for \$2.3 million. JK has its principal office located in Conshohocken, Pennsylvania, and operates in Maryland, Pennsylvania, New Jersey, and Delaware. JK operates as an environmental services company, providing consulting, remediation, and other environmental services. Refer to Note 16 for further information regarding this transaction.

### **Use of Estimates**

Our consolidated financial statements have been prepared in accordance with GAAP. The preparation of these consolidated financial statements requires us to make estimates and judgments that affect the reported amounts for the reporting periods. We base these estimates and judgments on historical experience and on various other factors that we believe to be reasonable under the circumstances. We evaluate these estimates and judgments on an ongoing basis. Actual results may differ from those estimates under different assumptions or conditions.

### **Recently Issued Accounting Standards**

In May 2014, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2014-09, "Revenue from Contracts with Customers" ("ASU 2014-09"). ASU 2014-09 provides a single comprehensive model for entities to use in accounting for revenue arising from contracts with customers and supersedes most current revenue recognition guidance, including industry-specific guidance. ASU No. 2014-09 will require an entity to recognize revenue when it transfers promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. In August 2015, the FASB issued ASU 2015-14, which deferred the effective date of ASU 2014-09 for one year, which would make the guidance effective for the Company's first fiscal year beginning after December 15, 2017. Additionally, the FASB has also decided to permit entities to early adopt the standard, which allows for either full retrospective or modified retrospective methods of adoption, for reporting periods beginning after December 15, 2016. The Company has completed its preliminary evaluation of the impact of the adoption of ASU 2014-09 for its homebuilding revenue, and believe that there will likely be no material impact to its consolidated financial statements, except enhanced disclosure regarding revenue recognition, including disclosures of revenue streams, performance obligations, variable consideration and the related judgments and estimates necessary to apply the new standard. The Company is still in the process of evaluating the impact of the adoption of the standard as it pertains to the revenues from the newly formed entity, JK. The Company continues to evaluate the new standard against its existing accounting policies, including the timing of revenue recognition, and its contracts with customers to determine the effect the guidance will have on its consolidated financial statements and what changes to systems and controls may be warranted. The Company expects to adopt the modified retrospective method.

In February 2016, the FASB issued ASU 2016-02, "Leases". The core principle of the standard is that a lessee should recognize the assets and liabilities that arise from leases. A lessee should recognize in its statement of financial position a liability to make lease payments (the lease liability) and a right-of-use asset representing its right to use the underlying asset for the lease term. ASU 2016-02 is effective for public companies for annual reporting periods beginning after December 15, 2018 and interim periods within those fiscal years. Early adoption is permitted. We are currently evaluating the impact this new standard will have on our consolidated financial statements.

In January 2017, the FASB issued ASU 2017-01, "Business Combinations (Topic 805), Clarifying the Definition of a Business", which provides a more robust framework to use in determining when a set of assets and activities (collectively referred to as a "set") is a business. The standard requires that when substantially all of the fair value of the gross assets acquired (or disposed of) is concentrated in a single identifiable asset or a group of similar identifiable assets, the set is not a business. This standard reduces the number of transactions that need to be further evaluated. ASU 2017-01 is effective for public business entities for annual periods beginning after December 15, 2017, including interim periods within those periods. The amendments in ASU 2017-01 should be applied prospectively on or after the effective date. We do not expect the adoption of ASU 2017-01 to have a material effect on our consolidated financial statements.

In May 2017, the FASB issued ASU 2017-09, "Compensation—Stock Compensation (Topic 718)—Scope of Modification Accounting." ASU 2017-09 reduces both diversity in practice and cost and complexity when changing the terms or conditions of a share-based payment award. The amendments in this update provide guidance about which changes to the terms or conditions of a share-based payment award require an entity to apply modification accounting. ASU 2017-09 is effective for fiscal years, including interim periods within those fiscal years, beginning after December 15, 2017. Early adoption is permitted, including adoption in any interim period for which financial statements have not yet been issued. The amendments in this update should be applied prospectively to an award modified on or after the adoption date. We do not expect the adoption of ASU 2017-09 to have a material effect on our consolidated financial statements.

## [Table of Contents](#)

We assessed other accounting pronouncements issued or effective during the three and nine months ended September 30, 2017 and deemed they were not applicable to us and are not anticipated to have a material effect on our consolidated financial statements.

### 2. REAL ESTATE INVENTORIES

After impairments and write-offs, real estate held for development and sale consists of the following:

	September 30, 2017	December 31, 2016
Land and land development costs	\$ 27,810	\$ 33,355
Cost of construction (including capitalized interest and real estate taxes)	20,691	16,487
	<u>\$ 48,501</u>	<u>\$ 49,842</u>

### 3. WARRANTY RESERVE

Warranty reserves for units settled are established to cover potential costs for materials and labor with regard to warranty-type claims expected to arise during the typical one-year warranty period provided by the Company or within the two-year statutorily mandated structural warranty period for condominiums. Because the Company typically subcontracts its homebuilding work, subcontractors are required to provide the Company with an indemnity and a certificate of insurance prior to receiving payments for their work. Claims relating to workmanship and materials are generally the primary responsibility of the subcontractors and product manufacturers. The warranty reserve is established at the time of closing, and is calculated based upon historical warranty cost experience and current business factors. This reserve is an estimate and actual warranty costs could vary from these estimates. Variables used in the calculation of the reserve, as well as the adequacy of the reserve based on the number of homes still under warranty, are reviewed on a periodic basis. Warranty claims are directly charged to this reserve as they arise.

The following table is a summary of warranty reserve activity which is included in 'Accounts payable and accrued liabilities' within the consolidated balance sheets:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2017	2016	2017	2016
Balance at beginning of period	\$ 282	\$ 294	\$ 288	\$ 312
Additions	48	111	144	197
Releases and/or charges incurred	(58)	(46)	(160)	(150)
Balance at end of period	<u>\$ 272</u>	<u>\$ 359</u>	<u>\$ 272</u>	<u>\$ 359</u>

### 4. CAPITALIZED INTEREST AND REAL ESTATE TAXES

Interest and real estate taxes incurred relating to the development of lots and parcels are capitalized to real estate inventories during the active development period, which generally commences when borrowings are used to acquire real estate assets and ends when the properties are substantially complete or the property becomes inactive. A project becomes inactive when development and construction activities have been suspended indefinitely. Interest is capitalized based on the interest rate applicable to specific borrowings or the weighted average of the rates applicable to other borrowings during the period. Interest and real estate taxes capitalized to real estate inventories are expensed as a component of cost of sales as related units are sold.

## [Table of Contents](#)

The following table is a summary of interest and real estate taxes incurred and capitalized and interest and real estate taxes expensed for units settled:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2017	2016	2017	2016
Interest incurred and capitalized	\$ 1,063	\$ 811	\$ 3,338	\$ 2,404
Real estate taxes incurred and capitalized	64	53	243	170
Total interest and real estate taxes incurred and capitalized	\$ 1,127	\$ 864	\$ 3,581	\$ 2,574
Interest expensed as a component of cost of sales	\$ 829	\$ 579	\$ 1,838	\$ 1,285
Real estate taxes expensed as a component of cost of sales	66	64	183	165
Interest and real estate taxes expensed as a component of cost of sales	\$ 895	\$ 643	\$ 2,021	\$ 1,450

The amount of interest from entity level borrowings that we are able to capitalize in accordance with Accounting Standards Codification (“ASC”) 835 is dependent upon the average accumulated expenditures that exceed project specific borrowings. For the three and nine months ended September 30, 2017, the Company expensed \$0 of interest from entity level borrowings. For the three and nine months ended September 30, 2016, the Company expensed \$133 and \$645, respectively, of interest from entity level borrowings.

Additionally, when a project becomes inactive or is not a qualifying entity, its interest, real estate taxes and indirect production overhead costs are no longer capitalized but rather expensed in the period they are incurred. For the three and nine months ended September 30, 2017, the Company expensed \$16 of interest and real estate taxes. For the three and nine months ended September 30, 2016, the Company expensed \$0 and \$10 of interest and real estate taxes.

## 5. LOSS PER SHARE

The weighted average shares and share equivalents used to calculate basic and diluted earnings (loss) per share for the three and nine months ended September 30, 2017 and 2016 are presented in the accompanying consolidated statements of operations. Restricted stock awards, stock options and warrants are included in the diluted earnings (loss) per share calculation using the treasury stock method and average market prices during the periods, unless their inclusion would be anti-dilutive.

As a result of the net loss attributable to common stockholders for the three months ended September 30, 2017, approximately 23 restricted stock awards and 15 warrants were included in the computation of dilutive loss per share. As a result of the net loss attributable to common stockholders for the nine months ended September 30, 2017, approximately 29 restricted stock awards and 18 warrants were included in the computation of dilutive loss per share. For the three and nine months ended September 30, 2016, there were no anti-dilutive shares, therefore, no shares were excluded from the computation of dilutive loss per share.

## 6. SEGMENT DISCLOSURES

We operate our business through three segments: Homebuilding, Multi-family, and Real Estate Services. We are currently focused on the Washington, D.C. area market.

In our Homebuilding segment, we develop properties with the intent to sell as fee-simple properties or condominiums to individual buyers or to private or institutional investors. Our for-sale products are designed to attract first-time, early move-up, and secondary move-up buyers. We focus on products that we are able to offer for sale in the middle price points within the markets where we operate, avoiding the very low-end and high-end products.

In our Multi-family segment, we focus on projects ranging from approximately 75 to 200 units in locations that are supply constrained with demonstrated demand for stabilized assets. We seek opportunities in the multi-family rental market where our experience and core capabilities can be leveraged. We will either position the assets for sale when completed or operate the asset within our own portfolio as rental property. Operating the asset for our own account affords us the flexibility of converting the units to condominiums in the future.

In our Real Estate Services segment, we pursue projects in all aspects of real estate management, including strategic planning, land development, entitlement, property management, sales and marketing, workout and turnaround strategies, financing and general construction. We are able to provide a wide range of construction management and general contracting services to other property owners. Our newly formed entity, JK, also provides real estate related environmental services.

## [Table of Contents](#)

The following table includes the Company's three reportable segments of Homebuilding, Multi-family, and Real Estate Services. The Homebuilding and Multi-family segments operate solely within the Company's single Washington, D.C. area reportable geographic segment, while the Real Estate Services operates in the Washington, D.C., New Jersey, and Pennsylvania geographic segments.

	<u>Homebuilding</u>	<u>Multi-family</u>	<u>Real Estate Services</u>	<u>Total</u>
<b>Three Months Ended September 30, 2017</b>				
Gross revenue	\$ 13,076	\$ —	\$ 739	\$13,815
Gross profit (loss)	594	—	(110)	484
Net loss	(1,000)	—	(201)	(1,201)
Depreciation and amortization	15	—	83	98
Interest expense	—	—	16	16
Total assets	53,258	—	2,755	56,013
<b>Three Months Ended September 30, 2016</b>				
Gross revenue	\$ 12,880	\$ —	\$ 223	\$13,103
Gross profit (loss)	895	—	138	1,033
Net (loss) income	(894)	—	138	(756)
Depreciation and amortization	89	—	—	89
Interest expense	133	—	—	133
Total assets	56,427	—	148	56,575
<b>Nine Months Ended September 30, 2017</b>				
Gross revenue	\$ 33,375	\$ —	\$ 1,228	\$34,603
Gross profit (loss)	2,571	—	(138)	2,433
Net loss	(2,168)	—	(232)	(2,400)
Depreciation and amortization	125	—	126	251
Interest expense	—	—	16	16
Total assets	53,258	—	2,755	56,013
<b>Nine Months Ended September 30, 2016</b>				
Gross revenue	\$ 32,102	\$ —	\$ 685	\$32,787
Gross profit (loss)	2,287	—	356	2,643
Net (loss) income	(3,861)	—	356	(3,505)
Depreciation and amortization	144	—	—	144
Interest expense	650	—	—	650
Total assets	56,427	—	148	56,575

The Company allocates sales, marketing and general and administrative expenses to the individual segments based upon specifically allocable costs.

## 7. INCOME TAX

For the three and nine months ended September 30, 2017 the Company recognized income tax expense of \$29, and the effective tax rate is 1%. For the three and nine months ended September 30, 2016, the Company recognized income tax expense of \$0 and \$57, respectively, and the effective tax rate was 2%.

The Company has not recorded any accruals related to uncertain tax positions as of September 30, 2017 and 2016. We file U.S. and state income tax returns in jurisdictions with varying statutes of limitations. The 2014 through 2016 tax years remain subject to examination by federal and most state tax authorities.

At September 30, 2017 and December 31, 2016, due to the uncertainties surrounding the realization of the deferred tax assets, the Company recorded a full valuation allowance.

## [Table of Contents](#)

The Company currently has approximately \$139 million in federal and state Net Operating Losses (“NOLs”), which based on current statutory tax rates, have potential fair value of approximately \$54 million in tax savings. If unused, these NOLs will begin expiring in 2027. Under Code Section 382 (“Section 382”) rules, if a change of ownership is triggered, the Company’s NOL assets and possibly certain other deferred tax assets may be impaired. We estimate that as of September 30, 2017, the cumulative shift in ownership of the Company’s stock would not cause an impairment of our NOL asset. However, if an ownership change were to occur, the Section 382 limitation would not be expected to materially impact the Company’s financial position or results of operations as of September 30, 2017, because of the Company’s full valuation allowance on its net deferred tax assets.

## 8. COMMITMENTS AND CONTINGENCIES

### *Litigation*

Currently, we are not subject to any material legal proceedings. From time to time, however, we are named as a defendant in legal actions arising from our normal business activities. Although we cannot accurately predict the amount of our liability, if any, that could arise with respect to legal actions pending against us; we do not expect that any such liability will have a material adverse effect on our financial position, operating results and cash flows. We believe that we have obtained adequate insurance coverage, rights to indemnification, or where appropriate, have established appropriate reserves in connection with any such legal proceedings.

### *Letters of credit, performance bonds and compensating balances*

The Company has commitments as a result of contracts with certain third parties, primarily local governmental authorities, to meet certain performance criteria outlined in such contracts. The Company is required to issue letters of credit and performance bonds to these third parties as a way of ensuring that the commitments entered into are met. These letters of credit and performance bonds issued in favor of the Company and/or its subsidiaries mature on a revolving basis, and if called into default, would be deemed material if assessed against the Company and/or its subsidiaries for the full amounts claimed. In some circumstances, we have negotiated with our lenders in connection with foreclosure agreements for the lender to assume certain liabilities with respect to the letters of credit and performance bonds. We cannot accurately predict the amount of any liability that could be imposed upon the Company with respect to maturing or defaulted letters of credit or performance bonds. At September 30, 2017 and 2016, the Company had \$1.1 million and \$1.4 million in outstanding letters of credit, respectively. At September 30, 2017 and 2016, the Company had \$4.0 million and \$4.3 million in outstanding performance bonds, respectively. No amounts have been drawn against the outstanding letters of credit or performance bonds.

We are required to maintain compensating balances in escrow accounts as collateral for certain letters of credit, which are funded upon settlement and release of units. The cash contained within these escrow accounts is subject to withdrawal and usage restrictions. As of September 30, 2017 and December 31, 2016, we had approximately \$0.9 million and \$0.8 million, respectively, in these escrow accounts, which are included in ‘Restricted cash’ in the accompanying consolidated balance sheets.

## 9. RELATED PARTY TRANSACTIONS

The Company leases its corporate headquarters from an affiliated entity that is wholly-owned by our Chief Executive Officer. Future minimum lease payments under this lease are as follows:

2017	\$ 54
2018	160
Total	<u>\$214</u>

For the three months ended September 30, 2017 and 2016, total payments made under this lease agreement were \$52 and \$84, respectively. For the nine months ended September 30, 2017 and 2016, total payments made under this lease agreement were \$156 and \$246, respectively.

On February 23, 2009, Comstock Homes of Washington, L.C., a wholly-owned subsidiary of the Company, entered into a Services Agreement with Comstock Asset Management, L.C., an entity wholly-owned by our Chief Executive Officer, to provide services related to real estate development and improvements, including legal, accounting, marketing, information technology and other additional support services. For the three months ended September 30, 2017 and 2016, the Company billed Comstock Asset Management, L.C. \$269 and \$222, respectively, for services and out-of-pocket expenses. For the nine months ended September 30, 2017 and 2016, Comstock Asset Management, L.C. was billed \$757 and \$684, respectively. Revenues from this arrangement are included within ‘Revenue – other’ in the accompanying consolidated statements of operations. As of September 30, 2017 and December 31, 2016, the Company was owed \$91 and \$132, respectively, under this contract, which is included in ‘Trade receivables’ in the accompanying consolidated balance sheets.

## [Table of Contents](#)

On October 17, 2014, Comstock Growth Fund (“CGF”), an administrative entity managed by the Company, entered into a subscription agreement with Comstock Development Services, LC (“CDS”), an entity wholly-owned by our Chief Executive Officer, pursuant to which CDS purchased membership interests in CGF for a principal amount of \$10 million. Other purchasers who purchased interests in the private placement included members of the Company’s management and board of directors and other third-party, accredited investors for an additional principal amount of \$6.2 million (the “CGF Private Placement”).

Simultaneously, on October 17, 2014, the Company entered into an unsecured promissory note with CGF whereby CGF made a loan to the Company in the initial principal amount of \$10 million and a maximum capacity of up to \$20 million. On December 18, 2014, the loan agreement was amended and restated to provide for a maximum capacity of \$25 million. All of the other terms of the unsecured promissory note remained the same. The Company borrowed an additional principal loan amount of \$6.2 million under the amended and restated CGF promissory note bringing the total aggregate principal amount borrowed to \$16.2 million. The CGF loan has a three year term carrying a floating interest rate of LIBOR plus 9.75% with a 10% floor. The loan requires an annual principal repayment in the amount of 10% of the average outstanding balance and a monthly interest payment that will be made in arrears. Purchasers other than CDS who purchased membership interests in CGF received warrants that represent the right to purchase an amount of shares of our Class A common stock, depending upon the investment amount. As of September 30, 2017, and December 31, 2016, there were 76 warrants issued in connection with the CGF Private Placement outstanding, representing the right to purchase shares of our Class A common stock having an aggregate fair value of \$433, which was considered as a debt discount. The Company amortizes the debt discount over the three year term of the loan to interest expense. As of September 30, 2017, \$11.6 million was outstanding in principal and accrued interest, net of discounts, on the CGF loan. For the three months ended September 30, 2017 and 2016, the Company made interest payments of \$0.1 million and \$0.4 million, respectively, on the CGF loan. For the nine months ended September 30, 2017 and 2016, the Company made interest payments on the CGF loan of \$0.9 million and \$1.2 million, respectively.

On December 18, 2014, CGF entered into amended and restated subscription agreements with CDS, members of the Company’s management and board of directors and the other third party accredited investors who participated in the CGF Private Placement (the “Amended CGF Private Placement”). Under the Amended CGF Private Placement, in addition to the warrants described above, the Company entered into a commitment to grant 226,857 shares of our Class A common stock to the purchasers in the Amended CGF Private Placement. On May 12, 2015, the Company issued 226,857 un-registered shares of its Class A common stock to the purchasers in the Amended CGF Private Placement. The Amended CGF Private Placement was closed for additional investments on May 15, 2015.

On December 29, 2015, the Company and Stonehenge Funding, L.C. (“Stonehenge”), an entity wholly owned by our Chief Executive Officer, entered into a Note Exchange and Subscription Agreement pursuant to which the note in the original principal amount of \$4.5 million issued to the Company by Stonehenge was cancelled in its entirety and exchanged for 772,210 shares of the Company’s Series B Non-Convertible Preferred Stock, par value \$0.01 per share and a stated value of \$5.00 per share (the “Series B Preferred Stock”). The number of shares of Series B Preferred Stock received by Stonehenge in exchange for the note represented the principal amount outstanding plus accrued interest under the note as of December 29, 2015, which was \$3.9 million. The holders of Series B Preferred Stock earn dividends at a rate of 8.75% per annum accruing from the effective date of the Note Exchange and Subscription Agreement.

On March 22, 2017, the Company entered into a Share Exchange Agreement with the holders of the Company’s Series B Preferred Stock pursuant to which the Company exchanged 772,210 shares of the Company’s Series B Preferred Stock for 772,210 shares of the Company’s newly created Series C Non-Convertible Preferred Stock, par value \$0.01 per share and a stated value of \$5.00 per share. The Series C Preferred Stock has a discretionary dividend feature, as opposed to the mandatory dividend feature in the Series B Preferred Stock. The Series B Preferred Stock, together with all accrued dividends earned through the conversion date, was retired upon re-acquisition and the fair value of the Series C Preferred Stock is recorded in ‘Stockholders’ equity’ in the accompanying consolidated balance sheets. The difference in fair value from the extinguishment of the Series B Preferred Stock and issuance of the Series C Preferred Stock of \$1,011 was recorded in ‘Stockholders’ equity’ in the accompanying consolidated balance sheets. For the three and nine months ended September 30, 2016, 17,411 and 51,848 shares of the Series B Preferred Stock, respectively, with a liquidation value of \$87 and \$259, respectively, were paid in-kind as dividends, and are included in ‘Stockholders’ equity’ in the accompanying consolidated balance sheets. For the nine months ended September 30, 2017, 15,663 shares of the Series B Preferred Stock with a liquidation value of \$78 were paid in-kind as dividends and are included in ‘Stockholders’ equity’ in the accompanying consolidated balance sheets.

## [Table of Contents](#)

On March 24, 2017, the Company entered into a share repurchase agreement with Investor Management, L.C., an entity owned by Gregory V. Benson, the former Chief Operating Officer of the Company, whereby the Company agreed to repurchase 193,052 shares of the Series C Preferred Stock held by Investor Management, L.C. for \$89. The Series C Preferred Stock acquisition closed on April 4, 2017, and the Series C Preferred Stock was retired.

On December 29, 2015, Comstock Growth Fund II, L.C. (“CGF II”), an administrative entity managed by the Company was created for the purpose of extending loans to the Company. CGF II entered into a subscription agreement with CDS pursuant to which CDS purchased membership interests in CGF II for an initial aggregate principal amount of \$5.0 million (the “CGF II Private Placement”).

Simultaneously, on December 29, 2015, the Company and CGF II entered into an unsecured revolving line of credit promissory note in the initial principal amount of \$5.0 million and a maximum amount available for borrowing of up to \$10.0 million with a two year term, which may be extended an additional year. The interest rate is 10% per annum, and interest payments will be accrued and paid in-kind monthly for the first year, and then paid current monthly in arrears beginning December 31, 2016. As of September 30, 2017 and December 31, 2016, \$3.5 million and \$3.3 million, respectively, was outstanding in principal and accrued interest on the CGF II loan.

See Note 11 to the consolidated financial statements for a description of the Comstock VIII and Comstock X Private Placements and Note 13 to the consolidated financial statements for a description of the CGF Private Placement and the CGF II Private Placement.

### **10. NOTE RECEIVABLE**

The Company originated a note receivable to a third party in the amount of \$180 in September 2014. This note has a maturity date of September 2, 2019 and is payable in monthly installments of principal and interest of \$3. This note bears a fixed interest rate of 6% per annum. As of September 30, 2017 and December 31, 2016, the outstanding balance of the note was \$75 and \$103, respectively, and is included within ‘Other assets’ in the accompanying consolidated balance sheets. The interest income of \$1 and \$2 for the three months ended September 30, 2017 and 2016, respectively, is included in ‘Other income, net’ in the consolidated statements of operations. The interest income of \$4 and \$6 for the nine months ended September 30, 2017 and 2016, respectively, is included in ‘Other income, net’ in the consolidated statement of operations.

### **11. VARIABLE INTEREST ENTITY**

Included within the Company’s real estate inventories at September 30, 2017 and December 31, 2016 are several projects that are determined to be variable interest entities (“VIEs”). These entities have been established to own and operate real estate property and were deemed VIEs primarily based on the fact that the equity investment at risk is not sufficient to permit the entities to finance their activities without additional financial support. The Company determined that it was the primary beneficiary of these VIEs as a result of its majority voting and complete operational control of the entities.

On August 23, 2012, the Company formed New Hampshire Ave. Ventures, LLC, a joint venture of its subsidiary, Comstock Ventures XVI, L.C., and 6000 New Hampshire Avenue, LLC, for the purpose of acquiring, developing and constructing a 111-unit project (the “NHA Project”) in Washington, D.C. The Company evaluated the joint venture and determined that the equity investment at risk is not sufficient to permit the entity to finance its activities without additional financial support. The Company determined that it was the primary beneficiary of the VIE as a result of its complete operational control of the activities that most significantly impact the economic performance and obligation to absorb losses, or receive benefits. The Company contributed its ownership interest in Comstock Ventures XVI, L.C. to Comstock Investors VII, L.C. (“Comstock VII”) on March 13, 2013. During the nine months ended September 30, 2016, New Hampshire Ave. Ventures, LLC distributed \$1.9 million to its non-controlling interest member, 6000 New Hampshire Avenue, LLC. No such distributions were made during the three and nine months ended September 30, 2017.

In December 2013, Comstock Investors VIII, L.C. (“Comstock VIII”) entered into subscription agreements with certain accredited investors (“Comstock VIII Class B Members”), pursuant to which Comstock VIII Class B Members purchased membership interests in Comstock VIII for an aggregate amount of \$4.0 million (the “Comstock VIII Private Placement”). In connection with the Comstock VIII Private Placement, the Company issued 15 warrants for the purchase of shares of the Company’s Class A common stock to the non-affiliated accredited investors, having an aggregate fair value of \$131. Comstock VIII Class B Members included unrelated third-party accredited investors along with members of the Company’s board of directors and the Company’s former Chief Operating Officer and the former Chief Financial Officer. The Comstock VIII Class B Members are entitled to a cumulative, preferred return of 20% per annum, compounded annually on their capital account balances. The Company has the right to repurchase the interests of the Comstock VIII Class B Members at any time, provided that (i) all of the Comstock VIII Class B Members’ interests are acquired, (ii) the purchase is made in cash and (iii) the purchase price equals the Comstock VIII Class B Members’ capital accounts plus an amount necessary to cause the preferred return to equal a cumulative cash on cash return equal to 20% per annum. The proceeds from the Comstock VIII Private Placement have been used for the construction of the following projects: The Townes at HallCrest in Sterling, Virginia consisting of 42 townhome units, and Townes at Maxwell Square Condominium in Frederick, Maryland consisting of 45 townhome condominium units (collectively, the “Investor VIII Projects”). Proceeds of the Comstock VIII Private Placement were utilized to provide capital needed to complete the Investor VIII Projects in conjunction with project financing for the Investor VIII Projects, to reimburse the Company for prior expenditures incurred on behalf of the Investor VIII Projects, and for general corporate purposes of the Company. The Company evaluated Comstock VIII and determined that the equity investment at risk is not sufficient to permit the entity to finance its activities without additional financial support and the Company was the primary beneficiary as a result of its complete operational control of the activities that most significantly impact the economic performance and its obligation to absorb losses, or receive benefits accordingly, the Company consolidates this entity. In January 2017, the Company fully redeemed the remaining equity interest of Class B Members in Comstock VIII after paying \$1.9 million in distributions. During the nine months ended September 30, 2016, the Company paid distributions in the amount of \$2.5 million to its non-controlling interest member.

## Table of Contents

In June 2015, Comstock Investors IX, L.C. (“Comstock IX”) entered into subscription agreements with third-party accredited investors (“Comstock IX Class B Members”), pursuant to which Comstock IX Class B Members purchased membership interests in Comstock IX for an aggregate amount of \$2.5 million (the “Comstock IX Private Placement”). The Comstock IX Class B Members are entitled to a cumulative, preferred return of 20% per annum, compounded annually on their capital account balances. The Company has the right to repurchase the interests of the Comstock IX Class B Members at any time, provided that (i) all of the Comstock IX Class B Members’ interests are acquired, (ii) the purchase is made in cash and (iii) the purchase price equals the Comstock IX Class B Members’ capital accounts plus any amount necessary to cause the preferred return to equal a cumulative cash on cash return equal to 20% per annum. The proceeds from the Comstock IX Private Placement have been utilized (A) for the current construction of the Marrwood East project of 35 single family homes in Loudoun County Virginia, (B) to reimburse the Company for prior expenditures incurred on behalf of the Marrwood East project and (C) for general corporate purposes of the Company. The Company evaluated Comstock IX and determined that the equity investment at risk is not sufficient to permit the entity to finance its activities without additional financial support and the Company was the primary beneficiary as a result of its complete operational control of the activities that most significantly impact the economic performance and its obligation to absorb losses or receive benefits. Accordingly, the Company consolidates this entity. During the three and nine months ended September 30, 2017, the Company paid distributions in the amount of \$0.2 million to its non-controlling interest member. No distributions were made in 2016. Subsequent to quarter end, in October 2017, the Company paid \$3.3 million, fully redeeming the remaining equity interest of the Comstock IX Class B Member. Refer to Note 17 for further discussion of this subsequent event.

In August 2016, Comstock Investors X, L.C. (“Comstock X”) entered into a subscription agreement with an accredited investor (“Comstock X Class B Member”), pursuant to which the Comstock X Class B Member purchased membership interests in Comstock X for an initial amount of \$5.0 million, which is part of an aggregate capital raise of \$14.5 million (the “Comstock X Private Placement”). The Comstock X Class B Member is Comstock Development Services, LC (“CDS”), an entity wholly owned by Christopher Clemente, our Chief Executive Officer. In October 2016, the Comstock X Class B Member purchased additional interests in the Comstock X Private Placement in an amount of \$9.5 million resulting in an aggregate subscription amount of \$14.5 million. In connection with the Comstock X Private Placement, the Company issued a total of 150 warrants for the purchase of shares of the Company’s Class A common stock, having an aggregate fair value of \$258. The Comstock X Member is entitled to a cumulative, preferred return of 6% per annum, compounded annually on the capital account balance. The Company has the right to repurchase the interest of the Comstock X Class B Member at any time, provided that (i) all of the Comstock X Class B Members’ interest is acquired, (ii) the purchase is made in cash and (iii) the purchase price equals the Comstock X Class B Members’ capital account plus accrued priority return. Proceeds of the Comstock X Private Placement are being utilized (A) to provide capital needed to complete the projects known as The Townes at Totten Mews, consisting of 40 townhomes in Washington, D.C., and The Towns at 1333, consisting of 18 townhomes in the City of Alexandria, Virginia (collectively, the “Investor X Projects”), (B) to reimburse the Company for prior expenditures incurred on behalf of the Investor X Projects, and (C) for general corporate purposes of the Company. The Company evaluated Comstock X and determined that the equity investment at risk is not sufficient to permit the entity to finance its activities without additional financial support and the Company was the primary beneficiary of the VIE as a result of its complete operational control of the activities that most significantly impact the economic performance and its obligation to absorb losses, or receive benefits. Accordingly, the Company consolidates this entity. On June 14, 2017, the Comstock X Private Placement was amended to provide for the first \$1.0 million of profit earned to be allocated first to the Company. During the nine months ended September 30, 2017, the Company paid distributions of \$1.0 million to its non-controlling interest member. No distributions were made in 2016. Subsequent to quarter end, in October 2017, the Operating Agreement for Investor X was amended to increase the maximum capital raise to \$19.5 million. The Company raised an additional \$5.0 million through the Investor X entity. Refer to Note 17 for further discussion of this subsequent event.

The distributions to and contributions from the VIEs discussed above are included within the ‘Non-controlling interest’ in the consolidated balance sheets for the periods presented.

At September 30, 2017 and December 31, 2016, total assets of these VIEs were approximately \$31.5 million and \$38.1 million, respectively, and total liabilities were approximately \$17.3 million and \$18.5 million, respectively. The classification of these assets is primarily within ‘Real estate inventories’ and the classification of liabilities are primarily within ‘Accounts payable and accrued liabilities’ and ‘Notes payable – secured by real estate inventories’ in the accompanying consolidated balance sheets.

## 12. UNCONSOLIDATED JOINT VENTURE

The Company accounts for its interest in its title insurance joint venture using the equity method of accounting and periodically adjusts the carrying value for its proportionate share of earnings, losses and distributions. The carrying value of the investment is included within 'Other assets' in the accompanying consolidated balance sheets and our proportionate share of the earnings from the investment are included in 'Other income, net' in the accompanying consolidated statements of operations for the periods presented. Our share of the earnings for the three and nine months ended September 30, 2017, are \$23 and \$47, respectively. During the three and nine months ended September 30, 2016, our share of earnings from this joint venture was \$34 and \$50, respectively. During the nine months ended September 30, 2017 and 2016, the Company collected total distributions of \$62 and \$75, respectively, as a return on investment.

Summarized financial information for the unconsolidated joint venture is as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2017	2016	2017	2016
<b>Statement of Operations:</b>				
Total net revenue	\$ 73	\$ 96	\$ 180	\$ 186
Total expenses	27	28	87	86
Net income	\$ 46	\$ 68	\$ 93	\$ 100
Comstock Holding Companies, Inc. share of net income	\$ 23	\$ 34	\$ 47	\$ 50

## 13. CREDIT FACILITIES

Notes payable consisted of the following:

	September 30, 2017	December 31, 2016
Construction revolvers	\$ 8,305	\$ 6,429
Development and acquisition notes	14,719	16,278
Mezzanine notes	1,472	1,424
Line of credit	2,132	2,929
Secured-other	1,100	—
Total secured notes	27,728	27,060
Deferred financing charges, net of amortization	(156)	(133)
Net secured notes	27,572	26,927
Unsecured financing, net of unamortized deferred financing charges of \$72 and \$121	1,396	911
Notes payable, unsecured, net of \$1.9 million and \$2.1 million discount and unamortized deferred financing charges, respectively	15,078	15,866
Total notes payable	\$ 44,046	\$ 43,704

As of September 30, 2017, maturities and/or curtailment obligations of all borrowings are as follows:

2017	\$22,713
2018	13,958
2019	5,543
2020	122
2021 and thereafter	1,710
Total	\$44,046

As of September 30, 2017, the Company had \$22.7 million of its credit facilities and project related loans scheduled to mature during the remainder of 2017, and we are in active discussions with our lenders seeking long-term extensions.

***Construction, development and mezzanine debt – secured***

The Company enters into secured acquisition and development loan agreements from time to time to purchase and develop land parcels. In addition, the Company enters into secured construction loan agreements for the construction of its real estate inventories. The loans are repaid with proceeds from home closings based upon a specific release price, as defined in each respective loan agreement.

As of September 30, 2017, and December 31, 2016, the Company had secured construction revolving credit facilities with a maximum loan commitment of \$24.8 million and \$26.6 million, respectively. The Company may borrow under these facilities to fund its home building activities. The amount the Company may borrow is subject to applicable borrowing base provisions and the number of units under construction, which may also limit the amount available or outstanding under the facilities. The facilities are secured by deeds of trust on the real property and improvements thereon, and the borrowings are repaid with the net proceeds from the closings of homes sold, subject to a minimum release price. As of September 30, 2017, and December 31, 2016, the Company had approximately \$16.5 million and \$20.2 million, respectively, of unused construction loan commitments. The Company had \$8.3 million and \$6.4 million of outstanding construction borrowings as of September 30, 2017 and December 31, 2016, respectively. Interest rates charged under these facilities include the London Interbank Offered Rate (“LIBOR”) and prime rate pricing options, subject to minimum interest rate floors. At September 30, 2017 and December 31, 2016, the weighted average interest rate on the Company’s outstanding construction revolving facilities was 4.8% and 4.6% per annum, respectively. The construction credit facilities have maturity dates ranging from October 2017 to March 2019, including extensions subject to the Company meeting certain conditions. Subsequent to September 30, 2017, \$0.5 million of the outstanding construction revolving credit facilities matured. We are in active discussions with the lender to secure an extension on this borrowing.

As of September 30, 2017, and December 31, 2016, the Company had approximately \$28.5 million and \$27.8 million, respectively, of aggregate acquisition and development maximum loan commitments of which \$14.7 million and \$16.3 million, respectively, were outstanding. These loans have maturity dates ranging from November 2017 to March 2019, including extensions subject to certain conditions, and bear interest at a rate based on LIBOR and prime rate pricing options, with interest rate floors ranging from 4.75% to 12.0% per annum. As of September 30, 2017, and December 31, 2016, the weighted average interest rate was 6.5% and 5.2% per annum, respectively.

As of September 30, 2017, the Company had one mezzanine loan that is being used to finance the development of the Momentum | Shady Grove project. The maximum principal commitment amount of this loan was \$1.1 million, of which \$1.2 million and \$1.4 million of principal and accrued interest was outstanding at September 30, 2017 and December 31, 2016, respectively. This financing carries an annual interest rate of 12% of which 6% is paid on a monthly basis with the remaining 6% being accrued and paid at maturity. This financing has a maturity date of December 31, 2017 and is guaranteed by the Company and our Chief Executive Officer.

***Line of credit – secured***

At September 30, 2017 and December 31, 2016, the Company had a secured revolving line of credit with a maximum capacity of \$3.0 million, of which \$2.1 million and \$2.9 million, respectively, were outstanding at September 30, 2017 and December 31, 2016. This line of credit is secured by the first priority security interest in the Company’s wholly owned subsidiaries’ in the Washington, D.C. metropolitan area and guaranteed by our Chief Executive Officer. The Company uses this line of credit to finance the predevelopment related expenses and deposits for current and future projects and bears a variable interest rate tied to a one-month LIBOR plus 3.25% per annum, with an interest rate floor of 5.0%. This line of credit calls for the Company to adhere to financial covenants, as defined in the loan agreement such as, minimum net worth and minimum liquidity, measured quarterly and minimum EBITDA measured on an annual basis and matures on December 31, 2017. The Company obtained a waiver from the financial institution for not meeting the minimum liquidity measure as of September 30, 2017, but it was in compliance with the minimum net worth requirement as dictated by the line of credit agreement as of September 30, 2017.

***Secured – other***

As of September 30, 2017, the Company had one secured loan related to the newly created entity, JK, with an outstanding balance of \$1.1 million. This financing carries a fixed interest rate of 6.0%, and has a maturity date of October 17, 2022. This financing is secured by the assets of JK and is guaranteed by our Chief Executive Officer.

***Unsecured financing***

As of September 30, 2017, and December 31, 2016, the Company had \$0.7 million and \$1.0 million, respectively, in outstanding balances under a 10-year unsecured note with a bank. Interest is charged on this financing on an annual basis at the Overnight LIBOR rate plus 2.2%. At September 30, 2017 and December 31, 2016, the interest rate was 3.4% and 2.9% per annum, respectively. The maturity date of this financing is December 28, 2018. The Company is required to make monthly principal and interest payments through maturity.

As of September 30, 2017, the Company had two unsecured seller-financed promissory notes with outstanding balances totaling \$0.7 million. The first note, in the amount of \$0.1 million, carries an annual interest rate of the prime rate plus 5%. This financing has a maturity date of February 27, 2020, and is guaranteed by our Chief Executive Officer. As of September 30, 2017, the interest rate was 9.3%. The second note, resulting from the newly created entity, JK, on July 17, 2017, has an outstanding balance of \$0.6 million as of September 30, 2017. This financing carries an annual interest rate of LIBOR plus 3% and has a maturity date of July 17, 2022. See Note 16 for further discussion of the business acquisition.

**Notes payable to affiliate – unsecured****Comstock Growth Fund**

On October 17, 2014, CGF entered into a subscription agreement with CDS, pursuant to which CDS purchased membership interests in CGF for a principal amount of \$10.0 million (the “CGF Private Placement”). Other investors who subsequently purchased interests in the CGF Private Placement included members of the Company’s management and board of directors and other third party accredited investors for an additional principal amount of \$6.2 million.

On October 17, 2014, the Company entered into an unsecured promissory note with CGF whereby CGF made a loan to the Company in the initial principal amount of \$10.0 million and a maximum amount available for borrowing of up to \$20.0 million with a three year term (the “Original Promissory Note”). On December 18, 2014, the loan agreement was amended and restated to provide for a maximum capacity of \$25 million. The loan bears interest at a floating rate based on the 30 day LIBOR plus 9.75% per annum with a 10% floor per annum. Interest payments will be made monthly in arrears. There is a principal curtailment requirement of 10% annually based on the average outstanding balance for the prior year. The loan will be used by the Company (i) to finance the Company’s current and future development pipeline, (ii) to repay all or a portion of the Company’s prior private placements, (iii) to repay all or a portion of the Company’s project mezzanine loans, and (iv) for general corporate purposes. The Company is the administrative manager of CGF but does not own any membership interests. The Company had approximately \$11.6 million and \$11.3 million of outstanding borrowings under the CGF loan, net of discounts, as of September 30, 2017 and December 31, 2016, respectively. As of September 30, 2017 and December 31, 2016, the interest rate was 11.0% and 10.4% per annum, respectively. For the three months ended September 30, 2017 and 2016, the Company made interest payments of \$0.1 million and \$0.4 million, respectively. For the nine months ended September 30, 2017 and 2016, the Company made interest payments of \$0.9 million and \$1.2 million, respectively. During the nine months ended September 30, 2017 and 2016, the Company made principal payments to CGF of \$1.5 million and \$1.6 million, respectively. Subsequent to the September 30, 2017 quarter end, the Company extended the CGF loan to April 16, 2018.

**Comstock Growth Fund II**

On December 29, 2015, the Company entered into a revolving line of credit promissory note with CGF II whereby CGF II made a loan to the Company in the initial principal amount of \$5.0 million and a maximum amount available for borrowing of up to \$10.0 million with a two year term, which may be extended an additional year. The interest rate is 10% per annum, and interest payments will be accrued and paid in kind monthly for the first year, and then paid current monthly in arrears beginning December 31, 2016. The funds obtained from the loan are being used by the Company (i) to capitalize the Company’s current and future development pipeline, (ii) to repay all or a portion of the Company’s prior private placements, and (iii) for general corporate purposes. As of September 30, 2017 and December 31, 2016, \$3.5 million and \$3.3 million, respectively, was outstanding in principal and accrued interest under the CGF II loan.

**14. FAIR VALUE DISCLOSURES**

The carrying amounts reported in the consolidated balance sheets for cash and cash equivalents, accounts receivable, accounts payable and accrued liabilities are reasonable estimates of their fair values based on their short maturities. The fair value of fixed and floating rate debt is based on unobservable market rates (Level 3 inputs).

The fair value of the fixed and floating rate debt was estimated using a discounted cash flow analysis on the blended borrower rates currently available to the Company for loans with similar terms. The following table summarizes the carrying amount and the corresponding fair value of fixed and floating rate debt:

	September 30, 2017	December 31, 2016
Carrying amount	\$ 44,046	\$ 43,704
Fair value	\$ 43,579	\$ 44,986

Fair value estimates are made at a specific point in time, based on relevant market information about the financial instruments. These estimates are subjective in nature and involve uncertainties and matters of significant judgment and therefore cannot be determined with precision. Changes in assumptions could significantly affect the estimates.

The Company may also value its non-financial assets and liabilities, including items such as real estate inventories and long lived assets, at fair value on a non-recurring basis if it is determined that impairment has occurred. Such fair value measurements use significant unobservable inputs and are classified as Level 3.

## 15. RESTRICTED STOCK, STOCK OPTIONS AND OTHER STOCK PLANS

The Company did not issue restricted stock awards during the three months ended September 30, 2017. During the nine months ended September 30, 2017, the Company issued 192 thousand stock options and 245 thousand restricted stock awards to employees. No stock options or restricted stock awards were issued during the three and nine months ended September 30, 2016.

Stock-based compensation expense associated with restricted stock and stock options is recognized based on the grant date fair value of the award over its vesting period. The following table reflects the consolidated balance sheets and statements of operations line items for stock-based compensation for the periods presented:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2017	2016	2017	2016
Real estate inventories - Assets	\$ 17	\$ 4	\$ 41	\$ 13
General and administrative - Expenses	116	15	238	56
	<u>\$ 133</u>	<u>\$ 19</u>	<u>\$ 279</u>	<u>\$ 69</u>

Under net settlement procedures currently applicable to our outstanding restricted stock awards for employees, upon each settlement date and election by the employees, restricted stock awards are withheld to cover the required withholding tax, which is based on the value of the restricted stock award on the settlement date as determined by the closing price of our Class A common stock on the trading day immediately preceding the applicable settlement date. The remaining amounts are delivered to the recipient as shares of our Class A common stock.

As of September 30, 2017, the weighted-average remaining contractual term of unexercised stock options was 7 years. As of September 30, 2017 and December 31, 2016, there was \$0.6 million and \$0.1 million, respectively, of unrecognized compensation cost related to stock grants.

## 16. BUSINESS ACQUISITION

On July 17, 2017, JK Environmental Services, LLC, ("JK") an entity wholly owned by CDS Capital Management, L.C., a subsidiary of Comstock, purchased all of the business assets of Monridge Environmental, LLC for \$2.3 million. The acquisition was consummated as part of the Company's efforts to expand its footprint in the real estate services market. JK has its principal office located in Conshohocken, Pennsylvania, and operates in Maryland, Pennsylvania, New Jersey, and Delaware. JK operates as an environmental services company, providing consulting, remediation, and other environmental services. JK's operations since the date of acquisition are included in the Company's consolidated statement of operations for the three and nine months ended September 30, 2017.

## [Table of Contents](#)

Based on an evaluation of the provisions of Accounting Standards Codification Topic 805, *Business Combinations*, (“ASC 805”), JK Environmental Services, LLC was determined to be the acquirer for accounting purposes. The table below summarizes the provisional purchase price allocation based on the estimated fair value of net assets acquired assumed at the date of acquisition. The purchase price allocation is provisional pending completion of the fair value analysis of the acquired assets and liabilities assumed:

<b>ASSETS</b>	
Net Working Capital	\$ 141
Net Fixed Assets	180
Intangible Assets (1)	268
Goodwill (2)	1,702
Total Purchase Price	<u>\$2,291</u>

- (1) Intangible assets include a non-compete agreement and customer relationships. The amortization period for these intangible assets is one year for the noncompete agreement; and four years for the customer relationships.
- (2) Goodwill represents the excess of the purchase price over the fair value of assets acquired and liabilities assumed, and it is not deductible for income tax purposes. As of the acquisition date, goodwill consisted primarily of synergies resulting from the combination, expected expanded opportunities for growth and production, and savings in corporate overhead costs.

### 17. SUBSEQUENT EVENTS

On October 10, 2017, the Company extended its note payable with Comstock Growth Fund I. This loan had an initial maturity date of October 17, 2017 and the extension provides for a maturity date of April 16, 2018. As of September 30, 2017, the Company had \$11.6 million of outstanding principal and interest, net of discounts under this facility.

On October 13, 2017, Comstock Investors X, L.C. amended its Operating Agreement to increase the amount of the aggregate capital raise to \$19.5 million. On October 19, 2017, Comstock Investors X received proceeds of \$5.0 million under the amended Operating Agreement to be used for the planned construction of the Company’s Totten Mews, Towns at 1333, Richmond Station, and Marrwood East projects. As part of this private placement, 50,000 warrants were issued for the purchase of Class A Common Stock at a strike price of \$1.73 per share.

On October 16, 2017, the Company redeemed the remaining equity interest of the Comstock IX Class B Members by paying \$3.3 million, representing final priority returns and capital return.

**COMSTOCK HOLDING COMPANIES, INC. AND SUBSIDIARIES**  
**MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND**  
**RESULTS OF OPERATIONS**

**ITEM 2. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our consolidated financial statements and related notes appearing elsewhere in this report. This discussion and analysis contains forward-looking statements that involve risks and uncertainties. Please see “Cautionary Notes Regarding Forward-looking Statements” for more information. Our actual results could differ materially from those anticipated in these forward-looking statements as a result of various factors including, but not limited to, those discussed below and elsewhere in this report, particularly under the headings “Cautionary Notes Regarding Forward-looking Statements.” References to dollar amounts are in thousands except per share data, or as otherwise noted.

***Cautionary Notes Regarding Forward-looking Statements***

This report includes forward-looking statements that are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. These forward-looking statements can be identified by the use of words such as “anticipate,” “believe,” “estimate,” “may,” “likely,” “intend,” “expect,” “will,” “should,” “seeks” or other similar words or expressions. Forward-looking statements are based largely on our expectations and involve inherent risks and uncertainties, many of which are beyond our control. You should not place undue reliance on any forward-looking statement, which speaks only as of the date made. Some factors which may affect the accuracy of the forward-looking statements apply generally to the real estate industry, while other factors apply specifically to us. Any number of important factors could cause actual results to differ materially from those in the forward-looking statements including, without limitation: general economic and market conditions, including interest rate levels; our ability to service our debt; inherent risks in investment in real estate; our ability to compete in the markets in which we operate; economic risks in the markets in which we operate, including actions related to government spending; delays in governmental approvals and/or land development activity at our projects; regulatory actions; our ability to maintain compliance with stock market listing rules and standards; fluctuations in operating results; our anticipated growth strategies; shortages and increased costs of labor or building materials; the availability and cost of land in desirable areas; natural disasters; our ability to raise debt and equity capital and grow our operations on a profitable basis; and our continuing relationships with affiliates. Additional information concerning these and other important risk and uncertainties can be found under the heading “Risk Factors” in our Annual Report on Form 10-K for the fiscal year ended December 31, 2016. Our actual results could differ materially from these projected or suggested by the forward-looking statements. The Company undertakes no obligation to update publicly or revise any forward-looking statements in light of new information or future events, except as required by law.

**Overview**

We are a multi-faceted real estate development and services company. We have substantial experience with building a diverse range of products, including multi-family homes, single-family homes, townhouses, mid-rise condominiums, high-rise multi-family condominiums and mixed-use (residential and commercial) developments. We operate our business through three segments: Homebuilding, Multi-family, and Real Estate Services as further discussed in Note 6 to the consolidated financial statements. Our homebuilding activities are currently focused in the Washington, D.C. metropolitan area, which is the sixth largest metropolitan statistical area in the United States, while our Real Estate Services activities are currently focused in the New Jersey, Pennsylvania, and Washington, D.C. metropolitan areas.

## Table of Contents

We are currently operating, or developing in multiple counties throughout the Washington, D.C. area market. The following table summarizes certain information for our owned or controlled communities as of September 30, 2017:

Pipeline Report as of September 30, 2017									
Project	State	Product Type (1)	Estimated Units at Completion	Units Settled	Backlog (8)	Units Owned Unsold	Units Under Control (2)	Total Units Owned, Unsettled and Under Control	Average New Order Revenue Per Unit to Date
City Homes at the Hampshires	DC	SF	38	38	—	—	—	—	\$ 747
Townes at the Hampshires (3)	DC	TH	73	73	—	—	—	—	\$ 551
Estates at Falls Grove	VA	SF	19	19	—	—	—	—	\$ 545
Townes at Falls Grove	VA	TH	110	110	—	—	—	—	\$ 304
Townes at Shady Grove Metro	MD	TH	36	27	—	9	—	9	\$ 583
Townes at Shady Grove Metro (4)	MD	SF	3	3	—	—	—	—	\$ —
Momentum   Shady Grove Metro (5)	MD	Condo	110	—	—	110	—	110	\$ —
Estates at Emerald Farms	MD	SF	84	84	—	—	—	—	\$ 426
Townes at Maxwell Square	MD	TH	45	45	—	—	—	—	\$ 421
Townes at Hallcrest	VA	TH	42	42	—	—	—	—	\$ 465
Estates at Leeland	VA	SF	24	11	2	11	—	13	\$ 451
Villas   Preserve at Two Rivers 28'	MD	TH	6	6	—	—	—	—	\$ 458
Villas   Preserve at Two Rivers 32'	MD	TH	10	10	—	—	—	—	\$ 504
Marrwood East (7)	VA	SF	35	13	16	6	—	22	\$ 638
Townes at Totten Mews (6)	DC	TH	40	5	3	32	—	35	\$ 540
The Towns at 1333	VA	TH	18	2	—	16	—	16	\$ 948
The Woods at Spring Ridge	MD	SF	21	1	6	14	—	20	\$ 674
Solomons Choice	MD	SF	56	—	—	56	—	56	\$ —
Townes at Richmond Station	VA	TH	104	—	—	104	—	104	\$ —
Condominiums at Richmond Station	VA	MF	54	—	—	54	—	54	\$ —
<b>Total</b>			<b>928</b>	<b>489</b>	<b>27</b>	<b>412</b>	<b>—</b>	<b>439</b>	

- (1) "SF" means single family home, "TH" means townhouse, "Condo" means condominium, "MF" means multi-family.
- (2) Under land option purchase contract, not owned.
- (3) 3 of these units are subject to statutory affordable dwelling unit program.
- (4) Units are subject to statutory moderately priced dwelling unit program; not considered a separate community.
- (5) 16 of these units are subject to statutory moderately priced dwelling unit program.
- (6) 5 of these units are subject to statutory affordable dwelling unit program.
- (7) 1 of these units is subject to statutory affordable dwelling unit program.
- (8) "Backlog" means we have an executed order with a buyer but the settlement did not occur prior to report date.

## Results of Operations

### Three and nine months ended September 30, 2017 compared to three and nine months ended September 30, 2016

#### Settlements, orders, cancellations and backlog

The following table summarizes certain information related to new orders, settlements, and backlog for the three and nine month periods ended September 30, 2017 and 2016:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2017	2016	2017	2016
Gross new orders	14	21	76	93
Cancellations	2	3	12	7
Net new orders	12	18	64	86
Gross new order revenue	\$ 8,075	\$ 9,249	\$ 38,612	\$ 40,690
Cancellation revenue	\$ 752	\$ 1,462	\$ 5,820	\$ 3,025
Net new order revenue	\$ 7,323	\$ 7,787	\$ 32,792	\$ 37,665
Average gross new order price	\$ 577	\$ 440	\$ 508	\$ 438
Settlements	24	33	72	76
Revenue - homebuilding	\$ 13,076	\$ 12,880	\$ 33,375	\$ 32,102
Gross margin - homebuilding	4.5%	7.0%	7.7%	7.0%
Average settlement price	\$ 545	\$ 390	\$ 464	\$ 422
Backlog units	27	35	27	35
Backlog revenue	\$ 16,369	\$ 16,421	\$ 16,369	\$ 16,421
Average backlog price	\$ 606	\$ 469	\$ 606	\$ 469

#### Revenue – homebuilding

Revenue from homebuilding increased by \$0.2 million to \$13.1 million for the three months ended September 30, 2017 as compared to \$12.9 million for the three months ended September 30, 2016. For the three months ended September 30, 2017, the Company settled 24 units (8 units at Marrwood, 1 unit at Emerald Farm, 1 unit at Leeland, 1 unit at The Towns at 1333, 7 units at Falls Grove, 1 unit at The Woods at Spring Ridge, and 5 units at Totten Mews), as compared to 33 units (19 units at Falls Grove, 4 units at Maxwell Square, 1 unit at Two Rivers, and 9 units at Hallcrest) for the three months ended September 30, 2016. Our homebuilding gross margin percentage for the three months ended September 30, 2017 decreased by 2.4% to 4.5%, as compared to 6.9% for the three months ended September 30, 2016.

Revenue from homebuilding increased by \$1.3 million to \$33.4 million for the nine months ended September 30, 2017 as compared to \$32.1 million for the nine months ended September 30, 2016. For the nine months ended September 30, 2017, the Company settled 72 units (31 units at Falls Grove, 12 units at Marrwood, 6 units at Emerald Farm, 6 units at Hallcrest, 6 units at Leeland, 1 unit at Shady Grove, 2 units at Two Rivers, 5 units at Totten Mews, 2 units at The Towns at 1333, and 1 unit at The Woods at Spring Ridge), as compared to 76 units (4 units at The Hampshires, 29 units at Falls Grove, 13 units at Maxwell Square, 8 units at Two Rivers, 20 units at Hallcrest, and 2 units at the Estates at Leeland), for the nine months ended September 30, 2016. Our homebuilding gross margin percentage for the nine months ended September 30, 2017 was 7.7%, an increase of 0.6% as compared to 7.1% for the nine months ended September 30, 2016. The overall increase noted in gross margins was mainly the result of the continued effort by the Company to reduce construction and other related costs.

Gross new order revenue, consisting of revenue from all units sold, for the three months ended September 30, 2017 was \$8.1 million on 14 units as compared to \$9.2 million on 21 units for the three months ended September 30, 2016. Gross new order revenue, consisting of revenue from all units sold, for the nine months ended September 30, 2017 was \$38.6 million on 76 units as compared to \$40.7 million on 93 units for the nine months ended September 30, 2016. Net new order revenue, representing revenue for all units sold less cancellations, for the three months ended September 30, 2017 was \$7.3 million on 12 units as compared to \$7.8 million on 18 units for the three months ended September 30, 2016. Net new order revenue, representing revenue for all units sold less cancellations, for the nine months ended September 30, 2017 was \$32.8 million on 64 units as compared to \$37.7 million on 86 units for the nine months ended September 30, 2016. The decreases are attributable to the number and mix of homes sold.

## [Table of Contents](#)

### *Revenue – other*

Revenue – other increased \$0.5 million to \$1.2 million for the nine months ended September 30, 2017 as compared to \$0.7 million for the nine months ended September 30, 2016. Revenue – other increased \$0.5 million to \$0.7 million for the three months ended September 30, 2017 as compared to \$0.2 million for the three months ended September 30, 2016. The increase in both periods was directly attributable to the acquisition of Monridge Environmental, LLC, by the newly created entity, JK Environmental, LLC (“JK”) in July 2017. The revenues generated from this entity were approximately \$0.5 million for the three and nine months ended September 30, 2017. There were no similar acquisitions or revenue components during the three and nine months ended September 30, 2016.

### *Cost of sales – homebuilding*

Cost of sales – homebuilding increased by \$0.5 million to \$12.5 million during the three months ended September 30, 2017, as compared to \$12.0 million during the three months ended September 30, 2016. Cost of sales – homebuilding increased by \$1.0 million to \$30.8 million during the nine months ended September 30, 2017, as compared to \$29.8 million during the nine months ended September 30, 2016. The increase noted was primarily attributable to the number of units settled and the mix of homes settled during the three and nine months ended September 30, 2017.

### *Cost of sales – other*

Cost of sales – other increased by \$0.7 million to \$0.8 million during the three months ended September 30, 2017, as compared to \$0.1 million during the three months ended September 30, 2016. Cost of sales – other increased by \$1.1 million to \$1.4 million during the nine months ended September 30, 2017, as compared to \$0.3 million during the nine months ended September 30, 2016. The increase primarily relates to our new initiatives within our real estate services segment to expand our footprint in the real estate consulting and environmental study fields which includes the acquisition of Monridge Environmental, LLC by JK during the three months ended September 30, 2017.

### *Sales and marketing*

Selling and marketing expenses for the three months ended September 30, 2017 and the three months ended September 30, 2016 was \$0.4 million. Selling and marketing expenses for the nine months ended September 30, 2017 decreased by \$0.2 million to \$1.1 million, as compared to \$1.3 million for the nine months ended September 30, 2016. The decrease is attributable to continued benefit from the cost saving measures.

### *General and administrative*

General and administrative expenses for the three months ended September 30, 2017 increased by \$0.1 million to \$1.3 million, as compared to \$1.2 million for the three months ended September 30, 2016. General and administrative expenses for the nine months ended September 30, 2017 decreased by \$0.5 million to \$3.7 million, as compared to \$4.2 million for the nine months ended September 30, 2016. The year-over-year decrease is attributable to attrition in employee head count and general overhead cost saving measures.

### *Income taxes*

For the three and nine months ended September 30, 2017, the Company recognized income tax expense of \$29, and the effective tax rate is 1%. For the three and nine months ended September 30, 2016, the Company recognized income tax expense of \$0 and \$57, respectively; and as of September 30, 2016 the effective tax rate was 2%.

## **Liquidity and Capital Resources**

We require capital to operate, to post deposits on new potential acquisitions, to purchase and develop land, to construct homes, to fund related carrying costs and overhead and to fund various advertising and marketing programs to generate sales. These expenditures include payroll, community engineering, entitlement, architecture, advertising, utilities and interest as well as the construction costs of our homes. Our sources of capital include, and we believe will continue to include, private equity and debt placements (which has included significant participation from Company insiders), funds derived from various secured and unsecured borrowings to finance acquisition, development and construction on acquired land, cash flow from operations, which includes the sale and delivery of constructed homes, finished and raw building lots and the potential sale of public debt and equity securities. The Company is involved in ongoing discussions with lenders and equity sources in an effort to provide additional growth capital to fund various new business opportunities.

We have outstanding borrowings with various financial institutions and other lenders that have been used to finance the acquisition, development and construction of real estate projects. The Company has generally financed its development and construction activities on a single or multiple project basis so it is not uncommon for each of our projects or collection of our projects to have a separate credit facility. Accordingly, the Company typically has had numerous credit facilities and lenders.

As of September 30, 2017, \$22.7 million of the Company’s outstanding credit facilities and project related loans mature at various periods through the end of 2017. We are in active discussions with our lenders seeking long term extensions and modifications to these loans. These debt instruments impose certain restrictions on our operations, including speculative unit construction limitations, curtailment obligations, and financial covenant compliance. If we fail to comply with any of these restrictions, an event of default could occur. Additionally, events of default could occur if we fail to make required debt service payments or if we fail to come to agreement on an extension on a certain facility prior to a given loan’s maturity date. Any event of default would likely render the obligations under these instruments due and payable as of that event. Any such event of default would allow certain of our lenders to exercise cross default provisions in our loan agreements with them, such that all debt with that institution could be called into default. We are anticipating that with the successful resolution of the debt extension discussions with our lenders, capital raises from our recent private placement, current available cash on hand, and additional cash from settlement proceeds at existing and under development communities, the Company will have sufficient financial resources to sustain its operations through the next 12 months, though no assurances can be made that the Company will be successful in its efforts. The Company will also continue to focus on its cost structure in an effort to conserve cash and manage expenses. Such actions may include cost reductions and/or deferral arrangements with respect to current operating expenses.

## [Table of Contents](#)

See Note 11 and Note 13 to the accompanying consolidated financial statements for details on private placement offerings and for more details on our credit facilities, respectively.

### **Cash Flow**

Net cash provided by operating activities was \$3.0 million for the nine months ended September 30, 2017 compared to the net cash provided by operating activities of \$0.6 million for the nine months ended September 30, 2016. The \$3.3 million net cash provided by operations during the nine months ended September 30, 2017 was primarily attributable to increases in accounts payable of \$1.0 million, \$1.5 million of releases of inventories associated with units settled, increases in accrued interest of \$0.8 million, the amortization of loan discounts and other financing fees of \$0.9 million, the issuances of \$0.2 million of stock compensation, and the increases of \$0.8 million of other assets, mainly attributable to the acquisition of Monridge Environmental, LLC, offset by the net loss of \$2.4 million. The \$6.2 million net cash used by operations during the nine months ended September 30, 2016 was primarily attributable to \$10.0 million of inventory acquired, primarily related to the acquisition of three properties during the three months ended September 30, 2016, coupled with a net operating loss of \$3.5 million. These were offset by the amortization of loan discounts and other financing fees of \$0.8 million, increases in prepaid projects costs of \$0.5 million, increases in accrued interest of \$0.4 million, and increases in accounts payable and other accrued liabilities of \$4.6 million.

Net cash used in investing activities was \$0.8 million for the nine months ended September 30, 2017. This was primarily attributable to the cash paid for the acquisition of Monridge Environmental, LLC of \$0.6 million and the decrease in collateral for letters of credit for \$0.2 million. Net cash used in investing activities was immaterial for the nine months ended September 30, 2016.

Net cash used in financing activities was \$5.9 million for the nine months ended September 30, 2017. This was primarily attributable to the distributions of \$1.9 million to the Comstock Investor VIII Class B Members to fully redeem their equity interest and a distribution to the Comstock Investor X Class B Members of \$1.0 million, along with the pay downs on notes payable of \$22.4 million, offset by borrowings of \$19.9 million. Net cash used in financing activities was \$3.7 million for the nine months ended September 30, 2016. This was primarily attributable to the distributions of \$1.9 million to the New Hampshire Avenue non-controlling interest member, the distributions of \$2.5 million to the Comstock Investors VIII Class B Members, along with the pay downs on notes payable of \$28.4 million, offset by borrowings of \$34.2 million, and a contribution of \$5.0 million from the Comstock Investors X Class B Member.

### **Seasonality**

The homebuilding industry usually experiences seasonal fluctuations in quarterly operating results and capital requirements. We typically experience the highest new home order activity in the Spring and Summer, although this activity is also highly dependent on the number of active selling communities, the timing of new community openings and other market factors. Because it typically takes four to six months to construct a new home, we deliver more homes in the second half of the year as Spring and Summer home orders convert to home deliveries. Because of this seasonality, home starts, construction costs and related cash outflows have historically been highest in the second and third quarters, and the majority of cash receipts from home deliveries occur during the second half of the year. We expect this seasonal pattern to continue over the long-term, although it may be affected by volatility in the homebuilding industry and the general economy.

### **Recently Issued Accounting Standards**

See Note 1 to the accompanying consolidated financial statements included in this Quarterly Report on Form 10-Q.

### **Critical Accounting Policies and Estimates**

There have been no significant changes to our critical accounting policies and estimates during the nine months ended September 30, 2017 from those disclosed in Item 7 included in our Annual Report on Form 10-K for the year ended December 31, 2016.

## [Table of Contents](#)

### **Off Balance Sheet Arrangements**

None.

### **ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

Not Applicable.

### **ITEM 4. CONTROLS AND PROCEDURES**

#### **Evaluation of Disclosure Controls and Procedures**

We have evaluated, with the participation of our Chief Executive Officer and our Chief Financial Officer, the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Exchange Act) as of September 30, 2017. Based on this evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures were effective as of September 30, 2017.

#### **Limitations on the Effectiveness of Controls**

We do not expect that our disclosure controls and internal controls will prevent all error and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

The design of any system of controls also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions; over time, a control may become inadequate because of changes in conditions or the degree of compliance with the policies or procedures may deteriorate. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and may not be detected.

#### **Changes in Internal Control**

No changes have occurred in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act) during the quarter ended September 30, 2017, that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## **PART II – OTHER INFORMATION**

### **ITEM 1. LEGAL PROCEEDINGS**

Information regarding legal proceedings is incorporated by reference from Note 8 to the accompanying consolidated financial statements included in Part I of this Quarterly Report on Form 10-Q.

### **ITEM 1A. RISK FACTORS**

There have been no material changes to the risk factors disclosed under “Item 1A. Risk Factors” in our Annual Report on Form 10-K for the year ended December 31, 2016.

### **ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS**

The descriptions of the offerings related to Comstock Investors VII, L.C., Comstock Investors VIII, L.C. and Comstock Investors X, L.C. in Notes 11 and 17, and the description of the offering related to Comstock Growth Fund in Note 13 to the accompanying consolidated financial statements are hereby incorporated by reference. The shares of our Class A common stock, the membership interests and the warrants, as applicable, were offered and sold to purchasers in such offerings in reliance upon exemptions from registration pursuant to Section 4(a)(2) of the Securities Act of 1933 (the “Securities Act”) and Rule 506 of Regulation D promulgated under the Securities Act and the certificates representing the securities shall bear legends to that effect. The shares of our Class A common stock, the membership interests, the warrants and the shares of our Class A common stock issuable upon the exercise of the warrants have not been registered under the Securities Act, and may not be offered or sold in the United States absent registration or an applicable exemption from registration requirements.

## Table of Contents

### ITEM 6. EXHIBITS

- 3.1 [Amended and Restated Certificate of Incorporation \(incorporated by reference to an exhibit to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on November 16, 2015\).](#)
- 3.2 [Amended and Restated Bylaws \(incorporated by reference to an Exhibit 3.2 to the Registrant's Annual Report on Form 10-K filed with the Commission on March 31, 2005\).](#)
- 3.3 [Certificate of Designation of Series A Junior Participating Preferred Stock filed with the Secretary of State of the State of Delaware on March 27, 2015 \(incorporated by reference to Exhibit 3.2 to the Registrant's Current Report on Form 8-K filed with the Commission on March 27, 2015\).](#)
- 3.4 [Certificate of Designation of Series B Non-Convertible Preferred Stock of the Company filed with the Secretary of State of the State of Delaware on December 29, 2015 \(incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed with the Commission on January 4, 2016\).](#)
- 3.5 [Certificate of Designation of Series C Non-Convertible Preferred Stock of the Company filed with the Secretary of State of the State of Delaware on March 22, 2017 \(incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed with the Commission on March 28, 2017\).](#)
- 4.1 [Specimen Stock Certificate \(incorporated by reference to Exhibit 4.1 to the Registrant's Registration Statement on Form S-1, as amended, initially filed with the Commission on August 13, 2004 \(File No. 333-118193\)\).](#)
- 10.61\* [Asset Purchase Agreement, dated July 14, 2017, between CDS Capital Management, L.C., and Monridge Environmental, LLC.](#)
- 10.62\* [Amendment to the Operating Agreement, dated October 13, 2017, between Comstock Investors X, L.C. and Comstock Development Services, L.C.](#)
- 10.63\* [Form of Warrant, dated October 13, 2017, between Comstock Investors X, L.C. and Comstock Development Services, L.C.](#)
- 31.1\* [Certification of Chief Executive Officer pursuant to Section 302 of Sarbanes-Oxley Act of 2002](#)
- 31.2\* [Certification of Chief Financial Officer pursuant to Section 302 of Sarbanes-Oxley Act of 2002](#)
- 32.1\* [Certification of Chief Executive Officer and Chief Financial Officer pursuant to Section 906 of Sarbanes-Oxley Act of 2002](#)
- 101\* The following materials from the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2017, formatted in eXtensible Business Reporting Language (XBRL): (i) the Consolidated Balance Sheet, (ii) the Consolidated Statements of Operations, (iii) the Consolidated Statements of Cash Flows and (iv) the Notes to the Consolidated Financial Statements.

\* Filed herewith.



## ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this “Agreement”), dated as of July , 2017, is entered into among Monridge Environmental, LLC d/b/a JK Environmental Services, LLC, a Pennsylvania limited liability company (“Seller”), JK Environmental Services, LLC, a Virginia limited liability company (“Buyer”), Kevin Brien (“**Brien**”) and John Krinis (“**Krinis**”). Seller, Brien and Krinis shall be collectively referred to as the “**Seller Parties**”, and each individually, a “**Seller Party**”.

**Background**

Seller is solely engaged in an environmental consulting and remediation business (the “**Business**”). Seller wishes to sell and assign to Buyer, and Buyer wishes to purchase and assume from Seller, substantially all the assets and liabilities of the Business, subject to the terms and conditions set forth herein.

**Agreement**

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**ARTICLE I  
DEFINITIONS**

The capitalized terms in this Agreement not otherwise defined herein shall have the following meanings:

“**Action**” means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity.

“**Affiliate**” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“**Business Day**” means any day except Saturday, Sunday or any other day on which commercial banks located in Philadelphia, Pennsylvania are authorized or required by Law to be closed for business.

“**Closing Working Capital**” means the Working Capital determined as of the open of business on the Closing Date.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“Contracts” means all legally binding written contracts, leases, mortgages, joint ventures, licenses, instruments, notes, commitments, undertakings, indentures and all other legally binding agreements, whether written or oral.

“Current Assets” means the current assets of the Business included in the line items set forth on Section 2.06(b)(i) of the Disclosure Schedules and only to the extent acquired pursuant to the terms of this Agreement.

“Current Liabilities” means the current liabilities of the Business included in the line items set forth on Section 2.06(b)(i) of the Disclosure Schedules and only to the extent assumed pursuant to the terms of this Agreement. For clarity, accrued personal time off (including accrued vacation) for employees of the Seller who become employed by the Buyer in accordance with Section 6.04 is considered Current Liabilities.

“Disclosure Schedules” means the Disclosure Schedules delivered by Seller and Buyer concurrently with the execution and delivery of this Agreement.

“Dollars or \$” means the lawful currency of the United States.

“Employees” means those Persons employed by Seller who worked for the Business immediately prior to the Closing.

“Encumbrance” means any charge, claim, community property interest, pledge, condition, equitable interest, lien (statutory or other), option, security interest, mortgage, easement, encroachment, right of way, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

“Environmental Claim” means any Governmental Order, action, suit, claim, lien, fine, penalty, investigation or other legal proceeding by any Person alleging liability of whatever kind or nature (including liability or responsibility for the costs of enforcement proceedings, investigations, cleanup, governmental response, removal or remediation, natural resources damages, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from: (a) the presence, Release of, or exposure to, any Hazardous Materials; or (b) any actual or alleged non-compliance with any Environmental Law or term or condition of any Environmental Permit.

“Environmental Law” means any applicable Law, and any Governmental Order or binding agreement with any Governmental Authority: (a) relating to pollution (or the cleanup thereof) or the protection of natural resources, endangered or threatened species, human health or safety, or the environment (including ambient air, soil, surface water or groundwater, or subsurface strata); or (b) concerning the presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal or remediation of any Hazardous Materials. The term “Environmental Law” includes the following (including their implementing regulations and any state analogs): the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. §§ 2601 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.; the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 U.S.C. §§ 7401 et seq.; and the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651 et seq.

“Environmental Notice means any written directive, notice of violation or infraction, or notice respecting any Environmental Claim relating to actual or alleged non-compliance with any Environmental Law or any term or condition of any Environmental Permit.

“Environmental Permit means any Permit, letter, clearance, consent, waiver, closure, exemption, decision or other action required under or issued, granted, given, authorized by or made pursuant to Environmental Law.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

“Estimated Closing Working Capital” means Seller’s good faith estimate of the Closing Working Capital.

“Estimated Closing Working Capital Adjustment” means an amount equal to the Estimated Closing Working Capital minus the Target Working Capital.

“GAAP” means United States generally accepted accounting principles in effect from time to time.

“Governmental Authority” means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

“Governmental Order” means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

“Hazardous Materials” means: (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally occurring or man-made, that is hazardous, acutely hazardous, toxic, or words of similar import or regulatory effect under Environmental Laws; and (b) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation and polychlorinated biphenyls.

“Intellectual Property” means all intellectual property and industrial property rights and assets, and all rights, interests and protections that are associated with, similar to, or required for the exercise of, any of the foregoing, however arising, pursuant to the Laws of any jurisdiction, all registrations and applications for, and renewals and extensions of, such rights, and the goodwill connected with the use of and symbolized by any of the foregoing, including any and all: trademarks, service marks, and similar designations of source or origin, websites and domain names; copyrights, designs and design registrations, and works of authorship, whether or not copyrightable; trade secrets, inventions and invention disclosures, whether or not patentable; and patents (including all reissues, divisionals, continuations, continuations-in-part and extensions thereof).

**“Intellectual Property Agreements”** means all licenses, sublicenses, consent to use agreements, settlements, coexistence agreements, covenants not to sue, permissions and other Contracts (including any right to receive or obligation to pay royalties or any other consideration), whether written or oral, relating to any Intellectual Property that is used in or necessary for the conduct of the Business as currently conducted to which Seller is a party, beneficiary or otherwise bound.

**“Intellectual Property Assets”** means all Intellectual Property that is owned by Seller and is used in or necessary for the conduct of the Business as currently conducted, including the Intellectual Property Registrations set forth on Section 4.14(a) of the Disclosure Schedules.

**“Intellectual Property Registrations”** means all Intellectual Property Assets that are subject to any issuance, registration, application or other filing by, to or with any Governmental Authority or authorized private registrar in any jurisdiction, including registered trademarks, domain names, and copyrights, issued and reissued patents and pending applications for any of the foregoing.

**“Knowledge of Seller or Seller’s Knowledge”** or any other similar knowledge qualification, means the actual or constructive knowledge of Brien or Krinis after having made due inquiry of Seller’s three project managers (Geoff Kristof, Julie Baniewicz and Brian Lettini).

**“Law”** means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority.

**“Losses”** means losses, damages, liabilities, deficiencies, Actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers; *provided, however*, that “Losses” shall not include punitive damages, except in the case of fraud or to the extent actually awarded to a Governmental Authority or other third party.

**“Material Adverse Effect”** means any event, occurrence, fact, condition or change that is, or could reasonably be expected to become, individually or in the aggregate, materially adverse to (a) the business, results of operations, condition (financial or otherwise) or assets of the Business, (b) the value of the Purchased Assets, or (c) the ability of Seller to consummate the transactions contemplated hereby on a timely basis.

**“Permits”** means all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances and consents and similar rights obtained or required to be obtained from Governmental Authorities.

“Permitted Encumbrances” means (a) liens for Taxes not yet due and payable or being contested in good faith by appropriate procedures; (b) mechanics’, carriers’, workmen’s, repairmen’s or other like liens arising or incurred in the ordinary course of business; (c) easements, rights of way, zoning ordinances and other similar encumbrances affecting the Leased Real Property; and (d) liens arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the ordinary course of business..

“Person” means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.

“Release” means any actual or threatened release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing or allowing to escape or migrate into or through the environment (including ambient air (indoor or outdoor), surface water, groundwater, land surface or subsurface strata or within any building, structure, facility or fixture).

“Representative” means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

“Target Working Capital” means \$0.00, which is based upon the average of the trailing 36 months of Working Capital of the Business.

“Taxes” means all federal, state, local, foreign and other income, gross receipts, sales, use, production, ad valorem, transfer, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.

“Tax Return” means any return, declaration, report, claim for refund, information return or statement or other document relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“Transaction Documents” means this Agreement, the Seller Note, the Guaranty Agreement, the Bill of Sale, the Assignment and Assumption Agreement, the Assignment and Assumption of Lease, the Brien Employment Agreement, the Non-Compete Agreements and the other agreements, instruments and documents required to be delivered at the Closing.

“Working Capital” means (a) Current Assets, less (b) Current Liabilities.

ARTICLE II  
PURCHASE AND SALE

Section 2.01 Purchase and Sale of Assets. Subject to the terms and conditions set forth herein, at the Closing, Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase from Seller, free and clear of all Encumbrances other than Permitted Encumbrances, all of Seller's right, title and interest in, to and under assets, properties and rights of every kind and nature, whether real, personal or mixed, tangible or intangible (including goodwill), wherever located and whether now existing or hereafter acquired (other than the Excluded Assets), which relate to, or are used or held for use in connection with, the Business (collectively, the "Purchased Assets"), including the following:

- (a) all accounts receivable, notes receivable, and other receivables of the Business and any security, claim, remedy or other right related to any of the foregoing ("Accounts Receivable");
- (b) all inventory, work in progress, packaging, supplies, parts and other inventories of the Business ("Inventory");
- (c) all Contracts set forth on Section 2.01(c) of the Disclosure Schedules, the Leases set forth on Section 4.13 of the Disclosure Schedules and the Intellectual Property Agreements set forth on Section 4.14(a) of the Disclosure Schedules (collectively, the "Assigned Contracts");
- (d) all Intellectual Property Assets;
- (e) all furniture, fixtures, equipment, supplies, tools, materials, prototypes, improvements and other tangible personal property (the "Tangible Personal Property");
- (f) the Leased Real Property (defined in Section 4.13);
- (g) all Permits, including Environmental Permits, listed on Section 2.01(g) of the Disclosure Schedules, but only to the extent such Permits may be transferred under applicable Law;
- (h) all prepaid expenses, credits, advance payments, security, deposits, charges, rights of set-off, rights of recovery or recoupment, sums and fees;
- (i) all of Seller's rights under warranties, indemnities, rights to reimbursement and all similar rights against third parties to the extent related to any Purchased Assets;
- (j) all rights to any action, suit or claim of any nature available to or being pursued by Seller, whether arising by way of counterclaim or otherwise relating to the Business, the Purchased Assets or the Assumed Liabilities;
- (k) all insurance benefits, including rights and proceeds, arising from or relating to the Business (to the extent not arising from or relating to the Excluded Assets or the Excluded Liabilities), the Purchased Assets or the Assumed Liabilities (subject to Section 8.04(c) below);
- (l) originals, or where not available, copies, of all books and records, including books of account, ledgers and general, financial and accounting records, machinery and equipment maintenance files, customer lists, customer purchasing histories, price lists, distribution lists, supplier lists, production data, quality control records and procedures, customer complaints and inquiry files, research and development files, records and data (including all correspondence with any Governmental Authority), sales material and records, strategic plans, internal financial statements and marketing and promotional surveys, material and research, that exclusively relate to the Business or the Purchased Assets, other than books and records set forth in Section 2.02(c) ("Books and Records"); and

(m) all goodwill and going concern associated with any of the assets described in the foregoing clauses, including the name “JK Environmental Services”, “Monridge Environmental” and variations thereof.

Section 2.02 Excluded Assets. Other than the Purchased Assets subject to Section 2.01, Buyer expressly understands and agrees that it is not purchasing or acquiring, and Seller is not selling or assigning, any other assets or properties of Seller, and all such other assets and properties shall be excluded from the Purchased Assets (the “Excluded Assets”). Excluded Assets include the following assets and properties of Seller:

(a) all cash and cash equivalents and bank accounts of Seller;

(h) all Contracts that are not Assigned Contracts;

(c) the corporate seals, organizational documents, minute books, stock books, Tax Returns, books of account or other records having to do with the organization of Seller, all employee-related or employee benefit-related files or records, other than personnel files of employees hired by Buyer, and any other books and records which Seller is prohibited from disclosing or transferring to Buyer under applicable Law and is required by applicable Law to retain;

(d) all Benefit Plans (defined in Section 4.19(a)) and trusts or other assets attributable thereto;

(c) all Tax assets (including duty and Tax refunds and prepayments) of Seller or any of its Affiliates accumulating prior to the Closing;

(t) the assets, properties and rights specifically set forth on Section 2.02(f) of the Disclosure Schedules;

(g) all insurance benefits, including rights and proceeds, arising from or relating to the Excluded Assets or the Excluded Liabilities;

(h) the rights which accrue or will accrue to Seller under the Transaction Documents; and the tangible assets set forth on Section 2.02(i) of the Disclosure Schedules.

Section 2.03 Assumed Liabilities. Subject to the terms and conditions set forth herein, Buyer shall assume and agree to pay, perform and discharge when due any and all liabilities and obligations of Seller arising out of or relating to the Business or the Purchased Assets on or after the Closing, other than the Excluded Liabilities (collectively, the "Assumed Liabilities"), including the following:

(a) all trade accounts payable of Seller to third parties in connection with the Business that remain unpaid and are not delinquent as of the Closing Date that arose in the ordinary course of business and are reflected on the Interim Balance Sheet or arise in the ordinary course of business consistent with past practices after the Interim Balance Sheet Date; and

(b) all liabilities and obligations arising under or relating to the Assigned Contracts, but only to the extent that such Liabilities thereunder are required to be performed after the Closing Date and do not relate to any failure to perform, improper performance, warranty or other breach, default or violation by Seller on or prior to the Closing.

Section 2.04 Excluded Liabilities. Except as expressly set forth in Section 2.03, Buyer shall not assume and shall not be responsible to pay, perform or discharge any Liabilities of Seller or any of its Affiliates of any kind or nature whatsoever other than the Assumed Liabilities (the "Excluded Liabilities"). Seller shall pay and satisfy in due course all Excluded Liabilities. Without limiting the generality of the foregoing, the Excluded Liabilities shall include the following:

(a) any liabilities or obligations arising out of or relating to Seller's ownership or operation of the Business and the Purchased Assets prior to the Closing Date (including professional liability claims), except to the extent such liabilities or obligations are Assumed Liabilities;

(b) any liabilities or obligations relating to or arising out of the Excluded Assets;

(c) any liabilities or obligations for (i) Taxes relating to the Business, the Purchased Assets or the Assumed Liabilities for any taxable period ending on or prior to the Closing Date; (ii) Taxes that arise out of the consummation of the transactions contemplated hereby (other than as set forth in Section 6.11); and (iii) any other Taxes of Seller or any stockholders or Affiliates of Seller for any taxable period;

(d) any Environmental Claims, or Liabilities under Environmental Laws, to the extent arising out of or relating to facts, circumstances or conditions existing on or prior to the Closing or otherwise to the extent arising out of any actions or omissions of Seller:

(e) any Liabilities of the Business relating or arising from unfulfilled commitments, quotations, purchase orders, customer orders or work orders that (i) do not constitute part of the Purchased Assets issued by the Business' customers to Seller on or before the Closing; (ii) did not arise in the ordinary course of business; or (iii) are not validly and effectively assigned to Buyer pursuant to this Agreement:

(f) any Liabilities arising out of in respect of or in connection with the failure by Seller or any of its Affiliates to comply with any Law or Governmental Order;

(g) any Liabilities to indemnify, reimburse or advance amounts to any present or former officer, member, manager, employee or agent of Seller;

(h) any liabilities or obligations of Seller relating to or arising out of (i) the employment, or termination of employment, of any Employee prior to the Closing, or (ii) workers' compensation claims of any Employee which relate to events occurring prior to the Closing Date; and

(i) any liabilities or obligations of Seller arising or incurred in connection with the negotiation, preparation, investigation and performance of this Agreement, the other Transaction Documents and the transactions contemplated hereby and thereby, including fees and expenses of counsel, accountants, consultants, advisers and others.

Section 2.05 Purchase Price. The aggregate purchase price for the Purchased Assets shall be \$2,040,000 (the "Purchase Price"), plus the assumption of the Assumed Liabilities. The Purchase Price shall be paid as follows:

(a) an amount at Closing equal to \$1,430,000 plus or minus the amount of the Estimated Closing Working Capital Adjustment, which shall be paid by wire transfer of immediately available funds to an account designated in writing by Seller to Buyer prior to the Closing Date; and

(b) \$610,000 shall be paid pursuant to the terms of a Promissory Note delivered by Buyer to Seller upon the Closing in substantially the form of Exhibit A hereto (the "Seller Note").

Section 2.06 Purchase Price Adjustment.

(a) Closing Adjustment. Not less than five (5) Business Days prior to the Closing Date, Seller shall prepare and deliver to Buyer, a statement containing the calculation of the Estimated Closing Working Capital and Estimated Closing Working Capital Adjustment, accompanied by reasonable supporting documentation. Such statement and the reasonable supporting documentation shall be subject to Buyer's review and comment. and Seller and Buyer shall work in good faith to resolve any differences they may have with respect thereto.

(b) Post-Closing Adjustment.

(i) Within 60 days after the Closing Date, Buyer shall prepare and deliver to Seller (A) a statement setting forth its calculation of Closing Working Capital, which statement shall be substantially in the form of Section 2.06(b)(i) of the Disclosure Schedules (the "Closing Working Capital Statement"), and (B) a certificate from a financial officer of Buyer that the Closing Working Capital Statement was prepared in accordance with GAAP applied using the same accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Reviewed Financial Statements for the most recent fiscal year end, subject to any modifications expressly set forth on Section 2.06(b)(i) of the Disclosure Schedules.

(ii) The "Post-Closing Adjustment" shall be an amount equal to the Closing Working Capital minus the Estimated Closing Working Capital. If the Post-Closing Adjustment is a positive number, Buyer shall pay to Seller an amount equal to the Post-Closing Adjustment. If the Post-Closing Adjustment is a negative number, Seller shall pay to Buyer an amount equal to the Post-Closing Adjustment.

(c) **Examination and Review.**

(i) Examination. After receipt of the Closing Working Capital Statement, Seller shall have 60 days (the “**Review Period**”) to review the Closing Working Capital Statement. During the Review Period, Seller and its accountants shall, upon request, have full access to the relevant financial records created or used by Buyer and its accountants to calculate the Closing Working Capital Statement.

(ii) Objection. On or prior to the last day of the Review Period, Seller may object to the Closing Working Capital Statement by delivering to Buyer a written statement setting forth Seller’s objections in reasonable detail, indicating each disputed item or amount and the basis for Seller’s disagreement therewith (the “**Statement of Objections**”). If Seller fails to deliver the Statement of Objections before the expiration of the Review Period, the Closing Working Capital Statement and the Post-Closing Adjustment, as the case may be, reflected in the Closing Working Capital Statement shall be deemed to have been accepted by Seller. If Seller delivers the Statement of Objections before the expiration of the Review Period, Buyer and Seller shall negotiate in good faith to resolve such objections within 15 days after the delivery of the Statement of Objections (the “**Resolution Period**”), and, if the same are so resolved within the Resolution Period, the Post-Closing Adjustment and the Closing Working Capital Statement with such changes agreed in writing by Buyer and Seller, shall be final and binding.

(iii) Resolution of Disputes. If Seller and Buyer fail to reach an agreement with respect to all of the matters set forth in the Statement of Objections before expiration of the Resolution Period, then any amounts remaining in dispute (“**Disputed Amounts**” and any amounts not so disputed, the “**Undisputed Amounts**”) shall be submitted for resolution to an impartial nationally recognized firm of independent certified public accountants mutually acceptable to Buyer and Seller (the “**Independent Accountants**”), who, acting as experts and not arbitrators, shall resolve the Disputed Amounts only and make any adjustments to the Post-Closing Adjustment, as the case may be, and the Closing Working Capital Statement. The parties agree that all adjustments shall be made without regard to materiality. The Independent Accountants shall only decide the specific items under dispute by the parties and their decision for each Disputed Amount must be within the range of values assigned to each such item in the Closing Working Capital Statement and the Statement of Objections, respectively.

(iv) Fees of the Independent Accountants. The fees and expenses of the Independent Accountant shall be paid by the party whose position is furthest from the Independent Accountant’s final determination.

(v) Determination by Independent Accountants. The Independent Accountants shall make a determination as soon as practicable within 30 days (or such other time as the parties shall agree in writing) after their engagement, and their resolution of the Disputed Amounts and their adjustments to the Closing Working Capital Statement and/or the Post- Closing Adjustment shall be conclusive and binding upon the parties.

(vi) Payments of Post-Closing Adjustment. Except as otherwise provided herein, any payment of the Post-Closing Adjustment, together with interest calculated as set forth below, shall (A) be due (x) within 30 days of acceptance of the applicable Closing Working Capital Statement or (y) if there are Disputed Amounts, then within 30 days of the resolution described in clause (v) above; and (B) be paid by wire transfer of immediately available funds to such account as is directed by Buyer or Seller, as the case may be. The amount of any Post-Closing Adjustment shall bear interest from and including the Closing Date to and including the date of payment at a rate per annum equal to 10%. Such interest shall be calculated daily on the basis of a 365 day year and the actual number of days elapsed, without compounding.

(d) Adjustments for Tax Purposes. Any payments made pursuant to Section 2.06 shall be treated as an adjustment to the Purchase Price by the parties for Tax purposes, unless otherwise required by Law.

Section 2.07 Allocation of Purchase Price. Seller and Buyer agree that the Purchase Price and the Assumed Liabilities (plus other relevant items) shall be allocated among the Purchased Assets for all purposes (including Tax and financial accounting) as shown on the allocation schedule attached hereto as Exhibit B (the "Allocation Schedule").

Section 2.08 Third Party Consents. To the extent that Seller's rights under any Contract or Permit constituting a Purchased Asset, or any other Purchased Asset, may not be assigned to Buyer without the consent of another Person which has not been obtained, this Agreement shall not constitute an agreement to assign the same if an attempted assignment would constitute a breach thereof or be unlawful, and Seller, at its expense, shall use its best efforts to obtain any such required consent(s) as promptly as possible. If any such consent is not obtained within 30 days of the Closing Date or if any attempted assignment would be ineffective or would impair Buyer's rights under the Purchased Asset in question so that Buyer would not in effect acquire the benefit of all such rights, Seller, to the maximum extent permitted by law and the Purchased Asset, shall act after the Closing as Buyer's agent to obtain for it the benefits thereunder and shall cooperate, to the maximum extent permitted by Law and the Purchased Asset, with Buyer in any other reasonable arrangement designed to provide such benefits to Buyer. Notwithstanding any provision in this Section 2.08 to the contrary, Buyer shall not be deemed to have waived its rights under Section 7.02(g) hereof unless and until Buyer either provides written waivers thereof or elects to proceed to consummate the transactions contemplated by this Agreement at Closing.

Section 2.09 Tail Insurance. At or prior to the Closing, Seller shall purchase and maintain, at Buyer's expense, tail insurance coverage (or extended reporting coverage) for Seller's professional liability coverage that runs for a period of twelve months (12) to thirty-six (36) months, as determined by Buyer, after the Closing and has the same limits and deductibles currently in effect for Seller.

Section 2.10 Payroll Reimbursement; Accounts Receivable. Notwithstanding anything in this Agreement to the contrary, (i) at the Closing Buyer shall reimburse Seller \$21,799.44 for payroll amounts paid by Seller for the pay period ending July 14, 2017, and (ii) no work performed by Seller in July of 2017 or corresponding accounts receivable shall be included as a Current Asset for purposes of determining Closing Working Capital.

ARTICLE III  
CLOSING

Section 3.01 Closing. Subject to the terms and conditions of this Agreement, the consummation of the transactions contemplated by this Agreement (the "Closing") shall take place at the offices of Fox Rothschild LLP, 747 Constitution Drive, Suite 100, Exton, Pennsylvania, at 10:00 a.m., on the second Business Day after all of the conditions to Closing set forth in ARTICLE VII are either satisfied or waived (other than conditions which, by their nature, are to be satisfied on the Closing Date), or at such other time, date or place as Seller and Buyer may mutually agree upon in writing. The date on which the Closing is to occur is herein referred to as the "Closing Date".

Section 3.02 Closing Deliverables.

(a) At the Closing, Seller shall deliver to Buyer the following:

(i) the Seller Note, duly executed by Seller;

(ii) the Guaranty Agreement in substantially the form of Exhibit C hereto (the "Guaranty Agreement"), duly executed by Seller;

(iii) the Seller Note Subordination Agreement in substantially the form of Exhibit D hereto, duly executed by Seller;

(iv) a bill of sale in substantially the form of Exhibit E hereto (the "Bill of Sale") and duly executed by Seller, transferring the tangible personal property included in the Purchased Assets to Buyer;

(v) an assignment and assumption agreement in substantially the form of Exhibit F hereto (the "Assignment and Assumption Agreement") and duly executed by Seller, effecting the assignment to and assumption by Buyer of the Purchased Assets and the Assumed Liabilities;

(vi) intellectual property assignments in substantially the form of Exhibit G hereto (the "Intellectual Property Assignments") and duly executed by Seller, transferring all of Seller's right, title and interest in and to the Intellectual Property Assets to Buyer;

(vii) with respect to the Lease, an Assignment and Assumption of Lease and Amendment in substantially the form of Exhibit H hereto (the "Assignment and Assumption of Lease"), duly executed by 806 Fayette Street Holdings LLC ("Landlord") and Seller and, if necessary, Seller's and Landlord's signature shall be witnessed and/or notarized;

(viii) the Seller Closing Certificate in substantially the form of Exhibit I hereto;

(ix) the certificates of the Secretary or Assistant Secretary of Seller required by Section 7.02(e) and Section 7.02(f);

(x) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to Buyer, as may be required to give effect to this Agreement;

(xi) the employment agreement between Buyer and Brien in substantially the form of Exhibit J hereto (the “**Brien Employment Agreement**”), duly executed by Brien; and

(xii) the mutually agreed upon non-competition, non-solicitation and non-disparagement agreements between Buyer and Brien and Krinis in substantially the form of Exhibit K hereto (the “**Non-Compete Agreements**”), duly executed by Brien and Krinis, respectively.

(b) At the Closing, Buyer shall deliver to Seller the following:

- (i) the cash portion of the Purchase Price pursuant to Section 2.05(a) above;
- (ii) the Seller Note, duly executed by Buyer;
- (iii) the Guaranty Agreement, duly executed by Comstock Holding Companies, Inc.;
- (iv) the Assignment and Assumption Agreement duly executed by Buyer;
- (v) with respect to the Lease, an Assignment and Assumption of Lease duly executed by Buyer;
- (vi) the Buyer Closing Certificate;
- (vii) the certificates of the Secretary or Assistant Secretary of Buyer required by Section 7.03(e) and Section 7.03(f);
- (viii) the Brien Employment Agreement, duly executed by Buyer; and
- (ix) the Non-Compete Agreements, duly executed by Buyer.

#### **ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLER**

Except as set forth in the corresponding section of the Disclosure Schedules, Seller Parties jointly and severally represent and warrant to Buyer that the statements contained in this ARTICLE IV are true and correct as of the date hereof

**Section 4.01 Organization and Qualification of Seller.** Seller is a limited liability company duly organized, validly existing and in good standing under the Laws of the state of Commonwealth of Pennsylvania and has all necessary limited liability company power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on the Business as currently conducted. Section 4.01 of the Disclosure Schedules sets forth each jurisdiction in which Seller is licensed or qualified to do business Seller is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the ownership of the Purchased Assets or the operation of the Business as currently conducted makes such licensing or qualification necessary.

Section 4.02 Authority of Seller. Seller has all necessary limited liability company power and authority to enter into this Agreement and the other Transaction Documents to which Seller is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Seller of this Agreement and any other Transaction Document to which Seller is a party, the performance by Seller of its obligations hereunder and thereunder and the consummation by Seller of the transactions contemplated hereby and thereby have been duly authorized by all requisite limited liability company action on the part of Seller. This Agreement (including other Transaction Documents) has been duly executed and delivered by Seller, and (assuming due authorization, execution and delivery by Buyer) this Agreement (including the Transaction Documents) constitutes a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms.

Section 4.03 No Conflicts; Consents. The execution, delivery and performance by Seller of this Agreement and the other Transaction Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) result in a violation or breach of any provision of the certificate of organization or operating agreement of Seller; (b) result in a violation or breach of any provision of any Law or Governmental Order applicable to Seller, the Business or the Purchased Assets; or (c) except as set forth in Section 4.03 of the Disclosure Schedules, require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default under or result in the acceleration of any Material Contract. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Seller in connection with the execution and delivery of this Agreement or any of the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby; provided, however, that the Permits set forth on Section 4.03 of the Disclosure Schedules are required to be obtained by Buyer for Buyer's continued operation of the Business following the Closing.

Section 4.04 Financial Statements. Complete copies of the reviewed financial statements of the Business as of December 31, 2016 consisting of the balance sheet, the related statements of income and retained earnings, stockholders' equity and cash flow for the year then ended (the "Reviewed Financial Statements"), and internally prepared financial statements for years ending December 31, 2015 and December 31, 2014 and months January 2017, February 2017, March 2017 and April 2017 (the "Interim Financial Statements" and together with the Reviewed Financial Statements, the "Financial Statements") are attached herein as Section 4.04 of the Disclosure Schedules. The Financial Statements have been prepared in accordance with GAAP applied on a consistent basis throughout the period involved, subject, in the case of the Interim Financial Statements, to normal and recurring year-end adjustments and the absence of notes, the effect to which are not materially adverse. The Financial Statements are based on the books and records of the Business and fairly present the financial condition of the Business as of the respective dates they were prepared and the results of the operations of the Business for the periods indicated. The balance sheet of the Business as of December 31, 2016 is referred to herein as the "Balance Sheet" and the date thereof as the "Balance Sheet Date". Except as set forth on Section 4.04 of the Disclosure Schedules, Seller maintains a standard system of accounting for the Business established and administered in accordance with GAAP.

Section 4.05 Undisclosed Liabilities. Seller has no Liabilities with respect to the Business, except (a) those which are adequately reflected or reserved against in the Balance Sheet as of the Balance Sheet Date, and (b) those which have been incurred in the ordinary course of business consistent with past practice since the Balance Sheet Date and which are not, individually or in the aggregate, material in amount.

Section 4.06 Absence of Certain Changes, Events and Conditions. Except as expressly contemplated by this Agreement or as set forth on Section 4.06 of the Disclosure Schedules, from the Balance Sheet Date until the date of this Agreement, Seller has operated the Business in the ordinary course of business in all material respects and there has not been, with respect to the Business, any:

(a) event, occurrence or development that has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;

(b) material change in any method of accounting or accounting practice for the Business, except as required by GAAP or as disclosed in the notes to the Financial Statements;

(c) entry into any Contract that would constitute a Material Contract (defined in Section 4.07(a));

(d) incurrence, assumption or guarantee of any indebtedness for borrowed money in connection with the Business except unsecured current obligations and liabilities incurred in the ordinary course of business consistent with past practices;

(e) transfer, assignment, sale or other disposition of any of the Purchased Assets shown or reflected in the Balance Sheet;

(f) cancellation of any debts or claims or amendment, termination or waiver of any rights constituting Purchased Assets, except in the ordinary course of business;

(g) capital expenditures in an aggregate amount exceeding \$10,000 which would constitute an Assumed Liability;

(h) imposition of any Encumbrance upon any of the Purchased Assets;

(i) material damage, destruction or loss, or any material interruption in use, of any Purchased Assets, whether or not covered by insurance;

(j) acceleration, termination, material modification to or cancellation of any Assigned Contract or Permit;

(k) increase in the compensation or term of employment of any Employees, other than as provided for in any written agreements or in the ordinary course of business;

(l) hiring or promoting a person except to fill a vacancy in the ordinary course of business;

(m) adoption, modification or termination (whether oral or written) of any: (i) employment, severance, retention or other agreement with any current or former employee, officer, director, independent contractor or consultant of the Business; or (ii) adoption, termination, amendment or modification of any Benefit Plan;

(n) any loan to (or forgiveness of any loan to), or entry into any other transaction with, any current or former directors, officers or employees of the Business;

(o) adoption of any plan of merger, consolidation, reorganization, liquidation or dissolution or filing of a petition in bankruptcy under any provisions of federal or state bankruptcy Law or consent to the filing of any bankruptcy petition against it under any similar Law;

(p) entry into an Related Party (defined in Section 4.22) transaction;

(q) purchase, lease or other acquisition of any property or asset that constitutes a Purchased Asset for an amount in excess of \$10,000 whether individually or in the aggregate, except for purchases of Inventory or supplies in the ordinary course of business; or

(r) any Contract to do any of the foregoing, or any action or omission that would result in any of the foregoing.

#### Section 4.07 Material Contracts.

(a) Section 4.07(a) of the Disclosure Schedules lists each of the following Contracts (x) by which any of the Purchased Assets are bound or affected or (y) to which Seller is a party or by which it is bound in connection with the Business or the Purchased Assets (together with all Leases listed in Section 4.13 of the Disclosure Schedules and all Intellectual Property Agreements listed in Section 4.14(a) of the Disclosure Schedules, collectively, the “Material Contracts”):

(i) all Contracts involving aggregate consideration in excess of \$10,000 or requiring performance by any party more than one year from the date hereof;

(ii) all Contracts that provide for the indemnification of any Person or the assumption of any Tax, environmental or other Liability of any Person;

(iii) all Contracts that relate to the sale of any of the Purchased Assets;

(iv) all Contracts that relate to the acquisition of any business, a material amount of equity or assets of any other Person or any real property (whether by merger, sale of equity, sale of assets or otherwise), in each case involving amounts in excess of \$25,000;

(v) except for agreements relating to trade receivables, all Contracts relating to indebtedness (including guarantees), in each case having an outstanding principal amount in excess of \$10,000; and

(vi) all Contracts between or among the Seller on the one hand and any Affiliate of Seller or members, managers or officers of Seller on the other hand.

(vii) all Contracts that limit or purport to limit the ability of Seller to compete in any line of business or with any Person or in any geographic area or during any period of time;

(viii) all joint venture, partnership or similar Contracts; and

(ix) all Contracts with any Governmental Authority.

(b) Except as set forth on Section 4.07(b) of the Disclosure Schedules, each Material Contract is valid and binding on Seller in accordance with its terms and is in full force and effect. None of Seller or, to Seller's Knowledge, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under), or has provided or received any notice of any intention to terminate, any Material Contract. No event or circumstance has occurred that, with notice or lapse of time or both, would constitute an event of default under any Material Contract or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder. Complete and correct copies of each Material Contract (including all modifications, amendments and supplements thereto and waivers thereunder) have been made available to Buyer. There are no material disputes pending or threatened under any Contract included in the Purchased Assets.

Section 4.08 Title to Purchased Assets. Except as set forth in Section 4.08 of the Disclosure Schedules, Seller has good and valid title to, or a valid leasehold interest in, all Purchased Assets (including those obtained from Caledonian (defined below)), free and clear of Encumbrances except for Permitted Encumbrances.

Section 4.09 Tangible Assets and Sufficiency of Assets. Section 4.09 of the Disclosure Schedule is a true, accurate and complete list of the Tangible Personal Property of the Seller used in or necessary for the conduct of the Business as currently conducted, except for certain assets with a value of less than \$500 each. The tangible Purchased Assets are in good operating condition and repair, and are adequate for the uses to which they are being put, and none of tangible Purchased Assets are in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost. The Purchased Assets are sufficient for the continued conduct of the Business after the Closing in substantially the same manner as conducted prior to the Closing and constitute all of the rights, property and assets necessary to conduct the Business as currently conducted. None of the Excluded Assets are material to the Business.

Section 4.10 Caledonian Assets. Section 4.10(a) of the Disclosure Schedule is a true, accurate and complete list of the Tangible Personal Property of Caledonian Holdings, LLC ("Caledonian"), except for certain assets with a value of less than \$500 each. Section 4.10(b) of the Disclosure Schedule is a true, accurate and complete list of the Tangible Personal Property of Caledonian that will not be transferred to Seller prior to execution of this Agreement. Section 4.10(c) of the Disclosure Schedule is a true, accurate and complete compilation of documents evidencing the transfer of all Caledonian Tangible Personal Property except those listed in Section 4.10(b) from Caledonian to Seller.

Section 4.11 Accounts Receivable. The Accounts Receivable reflected on the Interim Financial Statements and the Accounts Receivable arising after the date thereof (a) have arisen from bona fide transactions entered into by Seller involving the sale of goods or the rendering of services in the ordinary course of business consistent with past practice; and (b) constitute only valid, undisputed claims of Seller, are collectible in full within 90 days after billing, and are not subject to claims of set-off or other defenses or counterclaims.

Section 4.12 Customers. Seller has not received any notice, and has no reason to believe, that any of its customers with current contracts has ceased, or intends to cease after the Closing, to use the services of the Business or to otherwise terminate or materially reduce its relationship with the Business.

Section 4.13 Leased Real Property. Section 4.13 of the Disclosure Schedules sets forth the real property leased by Seller and used in or necessary for the conduct of the Business as currently conducted (together with all rights, title and interest of Seller in and to leasehold improvements relating thereto, including, but not limited to, security deposits, reserves or prepaid rents paid in connection therewith, collectively, the "Leased Real Property"), and a true and complete list of all leases, subleases, licenses, concessions and other agreements (whether written or oral), including all amendments, extensions renewals, guaranties and other agreements with respect thereto, pursuant to which Seller holds any Leased Real Property (collectively, the "Leases"). Seller has delivered to Buyer a true and complete copy of each Lease. Seller has not received any written notice of existing, pending or threatened (a) condemnation proceedings affecting the Leased Real Property, or (b) zoning, building code or other moratorium violations or proceedings, or similar matters. Neither the whole nor any material portion of the Leased Real Property has been damaged or destroyed by fire or other casualty. With respect to each Lease:

(i) such Lease is valid, binding, enforceable and in full force and effect, and Seller enjoys peaceful and undisturbed possession of the Leased Real Property;

(ii) Seller is not in breach or default under such Lease, and no event has occurred or circumstance exists which, with the delivery of notice, passage of time or both, would constitute such a breach or default, and Seller has paid all rent due and payable under such Lease;

(iii) Seller has not received nor given any notice of any default or event that with notice or lapse of time, or both, would constitute a default by Seller under any of the Leases and, to the Knowledge of Seller, no other party is in default thereof, and no party to any Lease has exercised any termination rights with respect thereto;

(iv) Seller has not subleased, assigned or otherwise granted to any Person the right to use or occupy such Leased Real Property or any portion thereof, and

(v) Seller has not pledged, mortgaged or otherwise granted an Encumbrance on its leasehold interest in any Leased Real Property.

#### Section 4.14 Intellectual Property.

(a) Section 4.14(a) of the Disclosure Schedules lists (i) all Intellectual Property Registrations and (ii) all Intellectual Property Assets and Agreements (except shrink-wrap software agreements used in the ordinary course of business). Except as set forth in Section 4.14(a) of the Disclosure Schedules, Seller owns or has the right to use all Intellectual Property Assets and the Intellectual Property licensed to Seller under the Intellectual Property Agreements.

(b) Except as set forth in Section 4.14(b) of the Disclosure Schedules: (i) the conduct of the Business as currently conducted does not infringe, misappropriate, dilute or otherwise violate the Intellectual Property of any Person; and (ii) no Person is infringing, misappropriating or otherwise violating any Intellectual Property Assets.

Section 4.15 Insurance. Section 4.15 of the Disclosure Schedules sets forth (a) a true and complete list of all current policies or binders of fire, liability, product liability, umbrella liability, real and personal property, errors and omissions, workers' compensation, vehicular, fiduciary liability and other casualty and property insurance maintained by Seller relating to the Business, the Purchased Assets or the Assumed Liabilities (collectively, the "Insurance Policies"); and (b) with respect to the Business, the Purchased Assets or the Assumed Liabilities, a list of all pending claims and the claims history for Seller during the past three years. There are no claims related to the Business, the Purchased Assets or the Assumed Liabilities pending under any such Insurance Policies. Neither Seller nor any of its Affiliates has received any written notice of cancellation of premium increase with respect to, or alteration of coverage under, any of such Insurance Policies. All premiums due on such Insurance Policies have either been paid or, if not yet due, accrued. All such Insurance Policies (a) are in full force and effect and enforceable in accordance with their terms; (b) are provided by carriers who are financially solvent; and (c) have not been subject to any lapse in coverage. The Seller is not in default under, or has otherwise failed to comply with, in any material respect, any provision contained in any such Insurance Policy. The Insurance Policies are of the type and in the amounts customarily carried by Persons conducting a business similar to the Business and are sufficient for compliance with all applicable Laws and Contracts to which Seller is a party or by which it is bound. True and complete copies of the Insurance Policies have been made available to Buyer.

#### Section 4.16 Legal Proceedings; Governmental Orders.

(a) Except as set forth in Section 4.16(a) of the Disclosure Schedules, there are no Actions pending or, to Seller's Knowledge, threatened against or by Seller (a) relating to or affecting the Business, the Purchased Assets or the Assumed Liabilities or (b) that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. No event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action.

(b) Except as set forth in Section 4.16(b) of the Disclosure Schedules, there are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against or affecting the Business, the Purchased Assets or Assumed Liabilities.

Section 4.17 Compliance With Laws; Permits.

(a) Except as set forth in Section 4.17(a) of the Disclosure Schedules, Seller is in compliance with all Laws applicable to the conduct of the Business as currently conducted or the ownership and use of the Purchased Assets.

(b) All Permits required for Seller to conduct the Business as currently conducted or for the ownership and use of the Purchased Assets have been obtained by Seller and are valid and in full force and effect. To Seller's Knowledge, no event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse or limitation of any Permit set forth in Section 4.17(b) of the Disclosure Schedules.

Section 4.18 Environmental Matters.

(a) Except as set forth in Section 4.18(a) of the Disclosure Schedules the operations of Seller with respect to the Business and the Purchased Assets are currently and have been in compliance with all Environmental Laws. Seller has not received from any Person, with respect to the Business or the Purchased Assets, any: (i) Environmental Notice or Environmental Claim; or (ii) written request for information pursuant to Environmental Law, which, in each case, either remains pending or unresolved, or is the source of ongoing obligations or requirements as of the Closing Date.

(b) Except as set forth in Section 4.18(b) of the Disclosure Schedules Seller has obtained and is in material compliance with all Environmental Permits (each of which is disclosed in Section 4.18(b) of the Disclosure Schedules) necessary for the conduct of the Business as currently conducted or the ownership, lease, operation or use of the Purchased Assets and the Leases.

(c) Except as set forth in Section 4.18(c) of the Disclosure Schedules, there has been no Release of Hazardous Materials in contravention of Environmental Law with respect to the Business, the Purchased Assets or the Leased Real Property, and Seller has not received any Environmental Notice that the Business or any of the Purchased Assets or Leased Real Property has been contaminated with any Hazardous Material which would reasonably be expected to result in an Environmental Claim against, or a violation of Environmental Law or term of any Environmental Permit by, Seller.

(d) Seller has previously made available to the Buyer through the data room (established by Brandywine Mergers & Acquisitions, LLC on One Hub on behalf of Seller) any and all material environmental reports, studies, audits, records, sampling data, site assessments and other similar documents with respect to the Business, the Purchased Assets or the Leased Real Property which are in the possession or control of Seller.

Section 4.19 Employee Benefit Matters.

(a) Section 4.19(a) of the Disclosure Schedules true and complete list of each pension, benefit, retirement, compensation, employment, consulting, profit-sharing, deferred compensation, incentive, bonus, performance award, phantom equity, stock or stock-based, change in control, retention, severance, vacation, paid time off, welfare, fringe-benefit and other similar agreement, plan, policy, program or arrangement (and any amendments thereto), in each case whether or not reduced to writing and whether funded or unfunded, including each “employee benefit plan” within the meaning of Section 3(3) of ERISA, whether or not tax-qualified and whether or not subject to ERISA, which is or has been maintained, sponsored, contributed to, or required to be contributed to by Seller for the benefit of any current or former employee, officer, director, retiree, independent contractor or consultant of the Business or any spouse or dependent of such individual, or under which Seller or any of its ERISA Affiliates has or may have any Liability, or with respect to which Buyer or any of its Affiliates would reasonably be expected to have any Liability, contingent or otherwise (as listed on Section 4.19(a) of the Disclosure Schedules, each, a “Benefit Plan”).

(b) Except as set forth in Section 4.19(b) of the Disclosure Schedules, each Benefit Plan and related trust complies with all applicable Laws (including ERISA, the Code and applicable local Laws). Each Benefit Plan that is intended to be qualified under Section 401(a) of the Code (a “**Qualified Benefit Plan**”) has received a favorable determination letter from the Internal Revenue Service, or with respect to a prototype plan, can rely on an opinion letter from the Internal Revenue Service to the prototype plan sponsor, to the effect that such Qualified Benefit Plan is so qualified and that the plan and the trust related thereto are exempt from federal income Taxes under Sections 401(a) and 501(a), respectively, of the Code, and, to Seller’s Knowledge, nothing has occurred that could reasonably be expected to cause the revocation of such determination letter from the Internal Revenue Service or the unavailability of reliance on such opinion letter from the Internal Revenue Service, as applicable. With respect to any Benefit Plan, to Seller’s Knowledge, no event has occurred or is reasonably expected to occur that has resulted in or would subject Seller to a Tax under Section 4971 of the Code or the Purchased Assets to a lien under Section 430(k) of the Code.

(c) No Benefit Plan: (i) is subject to the minimum funding standards of Section 302 of ERISA or Section 412 of the Code; or (ii) is a “multi-employer plan” (as defined in Section 3(37) of ERISA). Seller has not: (A) withdrawn from any pension plan under circumstances resulting (or expected to result) in liability; or (B) engaged in any transaction which would give rise to a liability under Section 4069 or Section 4212(c) of ERISA.

(d) Other than as required under Section 4980B of the Code or other applicable Law, no Benefit Plan provides benefits or coverage in the nature of health, life or disability insurance following retirement or other termination of employment (other than death benefits when termination occurs upon death).

(e) No Benefit Plan exists that could: (i) result in the payment to any Employee, director or consultant of the Business of any money or other property; or (ii) accelerate the vesting of or provide any additional rights or benefits (including funding of compensation or benefits through a trust or otherwise) to any Employee, director or consultant of the Business, in each case, as a result of the execution of this Agreement. Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will result in “excess parachute payments” within the meaning of Section 280G(b) of the Code.

Section 4.20 Employment Matters.

(a) Section 4.20(a) of the Disclosure Schedules contains a list of all persons who are employees, independent contractors or consultants of the Business as of the date hereof, including any employee who is on a leave of absence of any nature, paid or unpaid, authorized or unauthorized, and sets forth for each such individual the following: (i) name; (ii) title or position (including whether full or part time); (iii) hire date; (iv) current annual base compensation rate; (v) commission, bonus or other incentive-based compensation; and (vi) a description of the fringe benefits provided to each such individual as of the date hereof. Except as set forth in Section 4.20(a) of the Disclosure Schedules, as of the date hereof, all compensation, including wages, commissions and bonuses payable to all employees, independent contractors or consultants of the Business for services performed on or prior to the date hereof have been paid in full and there are no outstanding agreements, understandings or commitments of Seller with respect to any compensation, commissions or bonuses.

(b) Seller is not a party to, bound by, any collective bargaining or other agreement with a labor organization representing any of the Employees. There has not been, nor, to Seller's Knowledge, has there been any threat of, any strike, slowdown, work stoppage, lockout, concerted refusal to work overtime or other similar labor activity or dispute affecting Seller or any of the Employees.

(c) Seller is in compliance with all applicable Laws pertaining to employment and employment practices to the extent they relate to the Employees.

Section 4.21 Taxes.

(a) All Tax Returns required to be filed by Seller for any Pre-Closing tax period have been, or will be, timely filed. Such Tax Returns are, or will be, true, complete and correct in all respects. All Taxes due and owing by Seller (whether or not shown on any Tax Return) have been, or will be, timely paid.

(b) Seller has withheld and paid each Tax required to have been withheld and paid in connection with amounts paid or owing to any Employee, independent contractor, creditor, customer, member or other party, and complied with all information reporting and backup withholding provisions of applicable Law.

(c) All deficiencies asserted, or assessments made, against Seller as a result of any examinations by any taxing authority have been fully paid.

(d) Seller is not a party to any Action by any taxing authority. There are no pending or threatened Actions by any taxing authority.

(e) There are no Encumbrances for Taxes upon any of the Purchased Assets nor, to Seller's Knowledge, is any taxing authority in the process of imposing any Encumbrances for Taxes on any of the Purchased Assets (other than for current Taxes not yet due and payable).

Section 4.22 Related Party Transactions. Except as set forth in Section 4.22 of the Disclosure Schedules, no Related Party (defined below) has entered into, or has had any direct or indirect financial interest in, any Material Contract, transaction or business dealing involving the Seller in the conduct of the Business during the past two years. For purposes of this Agreement, each of the following shall be deemed to be a "Related Party": (i) each officer, member or manager of the Seller; and (ii) any trust or other entity (other than the Seller) in which any one of the persons referred to in clause (i) above holds (or in which more than one of such individuals collectively hold), beneficially or otherwise, a voting, proprietary or equity interest.

Section 4.23 Brokers. Except for Brandywine Mergers & Acquisitions, LLC, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any other Transaction Document based upon arrangements made by or on behalf of Seller.

Section 4.24 No Knowledge of Changes in Laws. Seller Parties have no knowledge of changes in the Laws of the Commonwealth of Pennsylvania, including changes in Underground Storage Indemnification Funds administration, which may adversely affect the Business.

Section 4.25 No other Representations and Warranties; Full Disclosure. Except as expressly set forth in this Agreement and the Disclosure Schedules to this Agreement, none of the Seller Parties nor any other Person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of the Seller Parties, including regarding future profitability or success of the Business, or any representation or warranty arising from statute or otherwise in law; *provided, however*, that no representation or warranty made in this Agreement or the Disclosure Schedules contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading.

## ARTICLE V REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller that the statements contained in this ARTICLE V are true and correct as of the date hereof.

Section 5.01 Organization and Authority of Buyer. Buyer is a limited liability company duly organized, validly existing and in good standing under the Laws of the Commonwealth of Virginia.

Section 5.02 Authority of Buyer. Buyer has all necessary limited liability company power and authority to enter into this Agreement and the other Transaction Documents to which Buyer is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Buyer of this Agreement and any other Transaction Document to which Buyer is a party, the performance by Buyer of its obligations hereunder and thereunder and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly authorized by all requisite limited liability company action on the part of Buyer. This Agreement has been duly executed and delivered by Buyer, and (assuming due authorization, execution and delivery by Seller) this Agreement constitutes a legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity). When each other Transaction Document to which Buyer is or will be a party has been duly executed and delivered by Buyer (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document will constitute a legal and binding obligation of Buyer enforceable against it in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity).

Section 5.03 No Conflicts; Consents. The execution, delivery and performance by Buyer of this Agreement and the other Transaction Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) result in a violation or breach of any provision of the certificate of organization or operating agreement of Buyer; (b) result in a violation or breach of any provision of any Law or Governmental Order applicable to Buyer; or (c) require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default under or result in the acceleration of any agreement to which Buyer is a party, except in the cases of clauses (b) and (c), where the violation, breach, conflict, default, acceleration or failure to give notice would not have a material adverse effect on Buyer's ability to consummate the transactions contemplated hereby. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Buyer in connection with the execution and delivery of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, except for such filings as set forth in Section 5.03 of the Disclosure Schedules and such consents, approvals, Permits, Governmental Orders, declarations, filings or notices which would not have a material adverse effect on Buyer's ability to consummate the transactions contemplated hereby and thereby.

Section 5.04 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any other Transaction Document based upon arrangements made by or on behalf of Buyer.

Section 5.05 Financing. Buyer has delivered to Seller duly executed copies of the commitment letter of Main Street Bank, dated as of June 7, 2017, pursuant to which such Person has agreed, subject to the terms and conditions set forth therein, to provide \$1,100,000 towards the Purchase Price (the "Commitment Letter"). The Commitment Letter is in full force and effect as of the date hereof. Subject to the funding of the financing set forth in the Commitment Letter in accordance with its terms, the aggregate proceeds of the financing contemplated by the Commitment Letter, together with other readily available funds of Buyer, shall be sufficient to enable Buyer to pay the Purchase Price and consummate the transactions contemplated by this Agreement.

Section 5.06 Solvency. Immediately after giving effect to the transactions contemplated hereby, Buyer shall be solvent and shall: (a) be able to pay its debts as they become due; (b) own property that has a fair saleable value greater than the amounts required to pay its debts (including a reasonable estimate of the amount of all contingent liabilities); and (c) have adequate capital to carry on its business. No transfer of property is being made and no obligation is being incurred in connection with the transactions contemplated hereby with the intent to hinder, delay or defraud either present or future creditors of Buyer or Seller. In connection with the transactions contemplated hereby, Buyer has not incurred, nor plans to incur, debts beyond its ability to pay as they become absolute and matured.

Section 5.07 Legal Proceedings. There are no Actions pending or, to Buyer's knowledge, threatened against or by Buyer or any Affiliate of Buyer that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement.

Section 5.08 Independent Investigation. Buyer has conducted its own independent investigation, review and analysis of the Business and the Purchased Assets, and acknowledges that it has been provided adequate access to the personnel, properties, assets, premises, books and records, and other documents and data of Seller for such purpose. Buyer acknowledges and agrees that in making its decision to enter into this Agreement and to consummate the transactions contemplated hereby, Buyer has relied solely upon its own investigation and the express representations and warranties of Seller set forth in ARTICLE IV of this Agreement (including related portions of the Disclosure Schedules).

## ARTICLE VI COVENANTS

Section 6.01 Conduct of Business Prior to the Closing. From the date hereof until the Closing, except as otherwise provided in this Agreement or consented to in writing by Buyer (which consent shall not be unreasonably withheld or delayed), Seller shall (a) conduct the Business in the ordinary course of business consistent with past practices (including timing of the collection of accounts receivables and payment of liabilities); and (b) use commercially reasonable efforts to maintain and preserve intact its current Business organization, operations and franchise and to preserve the rights, franchises, goodwill and relationships of its Employees, customers, lenders, suppliers, regulators and others having relationships with the Business. From the date hereof until the Closing Date, except as consented to in writing by Buyer (which consent shall not be unreasonably withheld or delayed), Seller shall not take any action that would cause any of the changes, events or conditions described in Section 4.06 to occur.

Section 6.02 Access to Information. From the date hereof until the Closing, Seller shall (a) afford Buyer and its Representatives full and free access to and the right to inspect all of the Leased Real Property, properties, assets, premises, Books and Records, Contracts and other documents and data related to the Business; (b) furnish Buyer and its Representatives with such financial, operating and other data and information related to the Business as Buyer or any of its Representatives may reasonably request; and (c) instruct the Representatives of Seller to cooperate with Buyer in its investigation of the Business; *provided, however*, that any such investigation shall be in such a manner as not to interfere with the conduct of the Business or any other businesses of Seller. All requests by Buyer for access pursuant to this Section 6.02 shall be submitted or directed exclusively to Brien or such other individuals as Seller may designate in writing from time to time. Notwithstanding anything to the contrary in this Agreement, Seller shall not be required to disclose any information to Buyer if such disclosure would, in Seller's reasonable discretion, jeopardize any attorney-client or other privilege, provided that Seller shall identify in writing the nature of any item or information withheld based on a claim of privilege. Prior to the Closing, without the prior consent of Seller, which may be withheld for any reason, Buyer shall not contact any suppliers to, or customers of, the Business and Buyer shall have no right to perform invasive or subsurface investigations of the Leased Real Property. Buyer shall, and shall cause its Representatives to, keep all such information confidential as further provided in Section 6.05 below.

Section 6.03 Additional Disclosures. From the date hereof until the Closing, Seller shall promptly notify Buyer in writing of

(a) any fact, circumstance, event or action the existence, occurrence or taking of which (i) has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (ii) has resulted in, or could reasonably be expected to result in, any representation or warranty made by Seller hereunder not being true and correct or (iii) has resulted in, or could reasonably be expected to result in, the failure of any of the conditions set forth in Section 7.02 to be satisfied:

any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement;

(c) any notice or other communication from any Governmental Authority in connection with the transactions contemplated by this Agreement; and

(d) any Actions commenced or, to Seller's Knowledge, threatened against, relating to or involving or otherwise affecting the Business, the Purchased Assets or the Assumed Liabilities that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to Section 4.16 or that relates to the consummation of the transactions contemplated by this Agreement.

Buyer's receipt of information pursuant to this Section 6.03 shall not operate as a waiver or otherwise affect any representation, warranty or agreement given or made by Seller in this Agreement unless set forth in a written supplement or amendment to the Disclosure Schedules approved by and delivered by Buyer to Seller prior to the Closing, which approval shall not be unreasonably withheld, conditioned or delayed.

#### Section 6.04 Employees and Employee Benefits.

(a) Commencing on the Closing Date, Seller shall terminate all employees of the Business who are actively at work on the Closing Date, and, at Buyer's sole discretion, Buyer may offer employment, on an "at will" basis, to any or all of such employees.

(b) Seller shall be solely responsible, and Buyer shall have no obligations whatsoever for, any compensation or other amounts payable to any current or former employee, officer, director, independent contractor or consultant of the Business, including, without limitation, hourly pay, commission, bonus, salary, fringe, pension or profit sharing benefits or severance pay for any period relating to the service with Seller at any time on or prior to the Closing Date and Seller shall pay all such amounts to all entitled persons on or prior to the Closing Date.

(c) Seller shall remain solely responsible for the satisfaction of all claims for medical, dental, life insurance, health accident or disability benefits brought by or in respect of current or former employees, officers, directors, independent contractors or consultants of the Business or the spouses, dependents or beneficiaries thereof, which claims relate to events occurring on or prior to the Closing Date. Seller also shall remain solely responsible for all worker's compensation claims of any current or former employees, officers, directors, independent contractors or consultants of the Business which relate to events occurring on or prior to the Closing Date. Seller shall pay, or cause to be paid, all such amounts to the appropriate persons as and when due.

(d) Each employee of the Business who becomes employed by Buyer in connection with the transactions contemplated by this Agreement shall be eligible to receive the salary and benefits maintained for employees of Buyer on substantially similar terms and conditions in the aggregate as are provided to similarly situated employees of Buyer, and Buyer shall provide each such employee with credit for any vacation days of such employee with respect to Seller that are accrued but unused in the 2017 calendar year as of the Closing Date.

Section 6.05 Confidentiality. Prior to the Closing, Buyer and Seller covenant and agree to keep confidential and not to disclose to any third party (other than Buyer's representatives and advisors who have a need to know such information in connection with the transactions contemplated by this Agreement and are bound by obligations of confidentiality) any information provided to Buyer by Seller (directly or indirectly).

#### Section 6.06 Governmental Approvals and Consents.

(a) Each party hereto shall, as promptly as possible, use its reasonable best efforts to obtain, or cause to be obtained, all consents, authorizations, orders and approvals from all Governmental Authorities that may be or become necessary for its execution and delivery of this Agreement and the performance of its obligations pursuant to this Agreement and the other Transaction Documents. Each party shall cooperate fully with the other party and its Affiliates in promptly seeking to obtain all such consents, authorizations, orders and approvals. The parties shall not willfully take any action that will have the effect of delaying, impairing or impeding the receipt of any required consents, authorizations, orders and approvals.

(h) All analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals made by or on behalf of either party before any Governmental Authority or the staff or regulators of any Governmental Authority, in connection with the transactions contemplated hereunder (but, for the avoidance of doubt, not including any interactions between Seller or Buyer with Governmental Authorities in the ordinary course of business, any disclosure which is not permitted by Law or any disclosure containing confidential information) shall be disclosed to the other party hereunder in advance of any filing, submission or attendance, it being the intent that the parties will consult and cooperate with one another, and consider in good faith the views of one another, in connection with any such analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals. Each party shall give notice to the other party with respect to any meeting, discussion, appearance or contact with any Governmental Authority or the staff or regulators of any Governmental Authority, with such notice being sufficient to provide the other party with the opportunity to attend and participate in such meeting, discussion, appearance or contact.

(c) Seller and Buyer shall use reasonable best efforts to give all notices to, and obtain all consents from, all third parties that are described in Section 4.03 and Section 5.03 of the Disclosure Schedules.

Section 6.07 Books and Records.

(a) In order to facilitate the resolution of any claims made against or incurred by Seller prior to the Closing, or for any other reasonable purpose, for a period of two years after the Closing, Buyer shall:

(i) retain the Books and Records (including personnel files) relating to periods prior to the Closing in a manner reasonably consistent with the prior practices of Seller; and

(ii) upon reasonable notice, afford the Seller's Representatives reasonable access (including the right to make, at Seller's expense, photocopies), during normal business hours, to such Books and Records.

(b) In order to facilitate the resolution of any claims made by or against or incurred by Buyer after the Closing, or for any other reasonable purpose, for a period of two years after the Closing, Seller shall:

(i) retain the books and records (including personnel files) of Seller which relate to the Business and its operations for periods prior to the Closing; and

(ii) upon reasonable notice, afford the Buyer's Representatives reasonable access (including the right to make, at Buyer's expense, photocopies), during normal business hours, to such books and records.

(c) Neither Buyer nor Seller shall be obligated to provide the other party with access to any books or records (including personnel files) pursuant to this Section 6.07 where such access would violate any Law.

Section 6.08 Closing Conditions. From the date hereof until the Closing, each party hereto shall use commercially reasonable efforts to take such actions as are necessary to expeditiously satisfy the closing conditions set forth in ARTICLE VII hereof.

Section 6.09 Public Announcements. Unless otherwise required by applicable Law or stock exchange requirements (based upon the reasonable advice of counsel), no party to this Agreement shall make any public announcements in respect of this Agreement or the transactions contemplated hereby or otherwise communicate with any news media without the prior written consent of the other party (which consent shall not be unreasonably withheld or delayed), and the parties shall cooperate as to the timing and contents of any such announcement.

Section 6.10 Bulk Sales Laws. The parties hereby waive compliance with the provisions of any bulk sales, bulk transfer or similar Laws of any jurisdiction that may otherwise be applicable with respect to the sale of any or all of the Purchased Assets to Buyer; it being understood that any Liabilities arising out of the failure of Seller to comply with the requirements and provisions of any bulk sales, bulk transfer or similar Laws of any jurisdiction which would not otherwise constitute Assumed Liabilities shall be treated as Excluded Liabilities.

Section 6.11 Transfer Taxes. All transfer, documentary, sales, use, stamp, registration, value added and other such Taxes and fees (including any penalties and interest) incurred in connection with this Agreement and the other Transaction Documents (including any real property transfer Tax and any other similar Tax) shall be borne and paid by Seller when due; provided, however, that Buyer shall pay the transfer tax and registration fees for any vehicles included in the Purchased Assets. Seller shall, at its own expense, timely file any Tax Return or other document with respect to such Taxes or fees (and Seller shall cooperate with respect thereto as necessary).

Section 6.12 Further Assurances. Following the Closing, each of the parties shall, and shall cause their respective Affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement and the other Transaction Documents.

Section 6.13 Financing. Buyer shall use its commercially reasonable efforts to cause the financing contemplated by the Commitment Letter, subject to the terms and conditions set forth therein, to be available at Closing; *provided, however*, that if funds in the amount set forth in the Commitment Letter become unavailable to Buyer on the terms and conditions set forth therein, Buyer shall use its commercially reasonable efforts to obtain such funds to the extent available on terms and conditions no less favorable in the aggregate to Buyer than as set forth in the Commitment Letter (the "Alternate Financing").

Section 6.14 Cooperation With Financing. Upon request of Buyer, Seller shall provide reasonable cooperation and assistance to Buyer in connection with the arrangement of the financing contemplated by the Commitment Letter or any Alternate Financing.

Section 6.15 Prohibition on Related Party Transactions. Unless agreed to otherwise in writing with CDS Capital Management, LLC, during the term of the Brien Employment Agreement, Brien shall (i) devote his full time, energy and skill to Buyer and not directly or indirectly undertake, either as an owner, director, shareholder, member, manager, employee or otherwise, the performance of services for a Related Party except those associated with winding down the Related Party entity and (ii) not enter into a Related Party transaction.

## ARTICLE VII CONDITIONS TO CLOSING

Section 7.01 Conditions to Obligations of All Parties. The obligations of each party to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to the Closing, of each of the following conditions:

(a) No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Governmental Order which is in effect and has the effect of making the transactions contemplated by this Agreement illegal, otherwise restraining or prohibiting consummation of such transactions or causing any of the transactions contemplated hereunder to be rescinded following completion thereof.

(b) Seller shall have received all consents, authorizations, orders and approvals from the Governmental Authorities referred to in Section 4.03 and Buyer shall have received all consents, authorizations, orders and approvals from the Governmental Authorities referred to in Section 5.03, in each case, in form and substance reasonably satisfactory to Buyer and Seller, and no such consent, authorization, order and approval shall have been revoked.

(c) The Seller Parties, Buyer and Mainstreet Bank (as applicable) shall have entered into a mutually acceptable Subordination Agreement subordinating Buyer's obligations to Seller under the Seller Note to the obligations of Buyer to Mainstreet Bank in connection with the financing described in Section 5.05.

**Section 7.02 Conditions to Obligations of Buyer.** The obligations of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Buyer's waiver, at or prior to the Closing, of each of the following conditions:

(a) The representations and warranties of Seller contained in ARTICLE IV shall be true and correct in all respects as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, which shall be true and correct in all respects as of that specified date).

(b) Seller shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the other Transaction Documents to be performed or complied with by it prior to or on the Closing Date.

(c) Seller shall have delivered to Buyer duly executed counterparts to the Transaction Documents (other than this Agreement) and such other documents and deliveries set forth in Section 3.02(a).

(d) Buyer shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Seller, that each of the conditions set forth in Section 7.02(a) and Section 7.02(b) have been satisfied (the "**Seller Closing Certificate**").

(e) Buyer shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Seller certifying that attached thereto are true and complete copies of all resolutions adopted by the board of directors of Seller authorizing the execution, delivery and performance of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby.

(f) Buyer shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Seller certifying the names and signatures of the officers of Seller authorized to sign this Agreement, the Transaction Documents and the other documents to be delivered hereunder and thereunder.

(g) All approvals, consents and waivers that are listed on Section 4.03 of the Disclosure Schedules shall have been received, and executed counterparts thereof shall have been delivered to Buyer at or prior to the Closing.

(h) No Action shall have been commenced against Buyer or Seller, which would prevent the Closing. No injunction or restraining order shall have been issued by any Governmental Authority, and be in effect, which restrains or prohibits any transaction contemplated hereby.

(i) From the date of this Agreement, there shall not have occurred any Material Adverse Effect, nor shall any event or events have occurred that, individually or in the aggregate, with or without the lapse of time, could reasonably be expected to result in a Material Adverse Effect.

(j) Buyer shall have received the financing on the terms provided for in the Commitment Letter or any Alternate Financing.

(k) Seller shall have delivered to Buyer such other documents or instruments as Buyer reasonably requests and are reasonably necessary to consummate the transactions contemplated by this Agreement.

Section 7.03 Conditions to Obligations of Seller. The obligations of Seller to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Seller's waiver, at or prior to the Closing, of each of the following conditions:

(a) The representations and warranties of Buyer contained in ARTICLE V shall be true and correct in all respects as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, which shall be true and correct in all respects as of that specified date), except where the failure of such representations and warranties to be true and correct would not have a material adverse effect on Buyer's ability to consummate the transactions contemplated hereby.

(b) Buyer shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the other Transaction Documents to be performed or complied with by it prior to or on the Closing Date.

(c) Buyer shall have delivered to Seller the Purchase Price, duly executed counterparts to the Transaction Documents (other than this Agreement) and such other documents and deliveries set forth in Section 3.02(b).

(d) Seller shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Buyer, that each of the conditions set forth in Section 7.03(a) and Section 7.03(b) have been satisfied (the "Buyer Closing Certificate").

(e) Seller shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Buyer certifying that attached thereto are true and complete copies of all resolutions adopted by the board of directors of Buyer authorizing the execution, delivery and performance of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby.

(0 Seller shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Buyer certifying the names and signatures of the officers of Buyer authorized to sign this Agreement, the Transaction Documents and the other documents to be delivered hereunder and thereunder.

## **ARTICLE VIII INDEMNIFICATION**

**Section 8.01 Survival.** Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein shall survive the Closing and shall remain in full force and effect until the date that is 24 months from the Closing Date, provided that Section 4.01, Section 4.02, Section 4.08, Section 4.18, Section 4.21, Section 4.23, Section 5.01, Section 5.02 and Section 5.04 (collectively, **“Fundamental Representations”**) shall survive until the expiration of the applicable statute of limitations. None of the covenants or other agreements contained in this Agreement shall survive the Closing Date other than those which by their terms contemplate performance after the Closing Date, and each such surviving covenant and agreement shall survive the Closing for the period contemplated by its terms or the applicable statute of limitations, as applicable. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the non-breaching party to the breaching party prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of such survival period and such claims shall survive until finally resolved.

**Section 8.02 Indemnification By Seller Parties.** Subject to the other terms and conditions of this ARTICLE VIII, Seller Parties shall severally and jointly indemnify Buyer, its Affiliates and their respective Representatives against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, them based upon, arising out of, with respect to or by reason of:

- (a) any inaccuracy in or breach of any of the representations or warranties of Seller contained in this Agreement (including all Transaction Documents and certificates);
- (b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Seller pursuant to this Agreement (including all Transaction Documents and certificates);
- (c) any Excluded Asset or any Excluded Liability; or
- (d) any Third Party Claim (defined in Section 8.05(a)) based upon, resulting from or arising out of the business, operations, properties, assets or obligations of Seller (other than the Purchased Assets or Assumed Liabilities) conducted, existing or arising on or prior to the Closing Date.

Notwithstanding the foregoing, (i) Krinis shall have no indemnification obligations with respect to Brien’s breach of the Brien Employment Agreement or the Non-Compete Agreement to which Brien is a party, and (ii) Brien shall have no indemnification obligations with respect to Krinis’ breach of the Non-Compete Agreement to which Krinis is a party.

Section 8.03 Indemnification By Buyer. Subject to the other terms and conditions of this ARTICLE VIII, Buyer shall indemnify Seller against, and shall hold Seller harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, Seller based upon, arising out of, with respect to or by reason of:

- (a) any inaccuracy in or breach of any of the representations or warranties of Buyer contained in this Agreement;
- (b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Buyer pursuant to this Agreement; or
- (c) any Assumed Liability.

Section 8.04 Certain Limitations. The party making a claim under this ARTICLE VIII is referred to as the “Indemnified Party”, and the party against whom such claims are asserted under this ARTICLE VIII is referred to as the “Indemnifying Party”. For purposes of this Section 8.04, the Seller Parties shall collectively be considered an “Indemnifying Party”. The indemnification provided for in Section 8.02 and Section 8.03 shall be subject to the following limitations:

(a) Except for Losses from Fundamental Representations, Section 4.11 and breach of covenants (including Section 10.01), the Indemnifying Party shall not be liable to the Indemnified Party for indemnification under Section 8.02(a) or Section 8.03(a), as the case may be, until the aggregate amount of all Losses in respect of indemnification under Section 8.02(a) or Section 8.03(a) exceeds \$50,000 (the “Deductible”), in which event the Indemnifying Party shall only be required to pay or be liable for Losses in excess of the Deductible.

(b) The aggregate amount of all Losses for which an Indemnifying Party shall be liable pursuant to Section 8.02(a) or Section 8.03(a), as the case may be, shall not exceed 100% of the Purchase Price (“Cap”) except for Fundamental Representations which shall not be subject to a Cap.

(c) Payments by an Indemnifying Party pursuant to Section 8.02 or Section 8.03 in respect of any Loss shall be limited to the amount of any liability or damage that remains after deducting therefrom any insurance proceeds and any indemnity, contribution or other similar payment received by the Indemnified Party in respect of any such claim. The Indemnified Party shall use its commercially reasonable efforts to recover under insurance policies or indemnity, contribution or other similar agreements for any Losses prior to seeking indemnification under this Agreement; provided, however that the Indemnifying Party shall not be required to initiate litigation to recover under the applicable insurance policies.

(d) Except in the event of fraud or other intentional material misrepresentation, in no event shall any Indemnifying Party be liable to any Indemnified Party for any punitive, incidental, consequential, special or indirect damages, including loss of future revenue or income, loss of business reputation or opportunity relating to the breach or alleged breach of this Agreement, or diminution of value or any damages based on any type of multiple.

(e) Each Indemnified Party shall take, and cause its Affiliates to take, commercially reasonable steps to mitigate any Loss upon becoming aware of any event or circumstance that would be reasonably expected to, or does, give rise thereto, including incurring reasonable costs if reasonably necessary to remedy a breach giving rise to future Loss.

#### Section 8.05 Indemnification Procedures.

(a) Third Party Claims. If any Indemnified Party receives notice of the assertion or commencement of any action, suit, claim or other legal proceeding made or brought by any Person who is not a party to this Agreement or an Affiliate of a party to this Agreement or a Representative of the foregoing (a "Third Party Claim") against such Indemnified Party with respect to which the Indemnifying Party is obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party prompt written notice thereof. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the indemnified Party shall describe the Third Party Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have the right to participate in, or by giving written notice to the Indemnified Party, to assume the defense of any Third Party Claim at the Indemnifying Party's expense and by the Indemnifying Party's own counsel, and the Indemnified Party shall cooperate in good faith in such defense. In the event that the Indemnifying Party assumes the defense of any Third Party Claim, subject to Section 8.05(b), it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third Party Claim in the name and on behalf of the Indemnified Party. The Indemnified Party shall have the right, at its own cost and expense, to participate in the defense of any Third Party Claim with counsel selected by it subject to the Indemnifying Party's right to control the defense thereof. If the Indemnifying Party elects not to compromise or defend such Third Party Claim or fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, the Indemnified Party may, subject to Section 8.05(b), pay, compromise, defend such Third Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third Party Claim. Seller and Buyer shall cooperate with each other in all reasonable respects in connection with the defense of any Third Party Claim, including making available (subject to the provisions of Section 6.05) records relating to such Third Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third Party Claim.

(b) Settlement of Third Party Claims. Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third Party Claim without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld or delayed), except as provided in this Section 8.05(b). If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party and provides, in customary form, for the unconditional release of each Indemnified Party from all liabilities and obligations in connection with such Third Party Claim and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to that effect to the Indemnified Party. If the Indemnified Party fails to consent to such firm offer within ten days after its receipt of such notice, the Indemnified Party may continue to contest or defend such Third Party Claim and in such event, the maximum liability of the Indemnifying Party as to such Third Party Claim shall not exceed the amount of such settlement offer. If the Indemnified Party fails to consent to such firm offer and also fails to assume defense of such Third Party Claim, the Indemnifying Party may settle the Third Party Claim upon the terms set forth in such firm offer to settle such Third Party Claim. If the Indemnified Party has assumed the defense pursuant to Section 8.05(a), it shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

(c) Direct Claims. Any claim by an Indemnified Party on account of a Loss which does not result from a Third Party Claim (a “**Direct Claim**”) shall be asserted by the Indemnified Party giving the Indemnifying Party prompt written notice thereof. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have 30 days after its receipt of such notice to respond in writing to such Direct Claim. During such 30 -day period, the Indemnified Party shall allow the Indemnifying Party and its professional advisors to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim and the Indemnified Party shall assist the Indemnifying Party’s investigation by giving such information and assistance (including access to the Indemnified Party’s premises and personnel and the right to examine and copy any accounts, documents or records) as the Indemnifying Party or any of its professional advisors may reasonably request. If the Indemnifying Party does not so respond within such 30-day period, the Indemnifying Party shall be deemed to have rejected such claim, in which case the Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this Agreement.

**Section 8.06 Tax Treatment of Indemnification Payments.** All indemnification payments made under this Agreement shall be treated by the parties as an adjustment to the Purchase Price for Tax purposes, unless otherwise required by Law.

**Section 8.07 Effect of Investigation.** The representations, warranties and covenants of the Indemnifying Party, and the Indemnified Party’s right to indemnification with respect thereto, shall not be affected or deemed waived by reason of any investigation made by or on behalf of the Indemnified Party (including by any of its Representatives) or by reason of the fact that the Indemnified Party or any of its Representatives knew or should have known that any such representation or warranty is, was or might be inaccurate or by reason of the Indemnified Party’s waiver of any condition set forth in Section 7.02 or Section 7.03, as the case may be.

**Section 8.08 Exclusive Remedies.** Subject to Section 10.12, the parties acknowledge and agree that their sole and exclusive remedy with respect to any and all claims for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement, shall be pursuant to the indemnification provisions set forth in this ARTICLE VIII. In furtherance of the foregoing, each party hereby waives, to the fullest extent permitted under Law, any and all rights, claims and causes of action for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement it may have against the other parties and their Affiliates and each of their respective Representatives arising under or based upon any Law, except pursuant to the indemnification provisions set forth in this ARTICLE VIII. Nothing in this Section 8.08 shall limit any Person's right to seek and obtain any equitable relief to which any Person shall be entitled pursuant to Section 10.12.

## **ARTICLE IX TERMINATION**

**Section 9.01 Termination.** This Agreement may be terminated at any time prior to the Closing:

(a) by the mutual written consent of Seller and Buyer;

(b) by Buyer by written notice to Seller if

(i) Buyer is not then in material breach of any provision of this Agreement and there has been a material breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Seller pursuant to this Agreement that would give rise to the failure of any of the conditions specified in ARTICLE VII and such breach, inaccuracy or failure cannot be cured by Seller by July 14, 2017 (the "**Drop Dead Date**"); or

(ii) any of the conditions set forth in Section 7.01 or Section 7.02 shall not have been fulfilled by the Drop Dead Date, unless such failure shall be due to the failure of Buyer to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing;

(c) by Seller by written notice to Buyer if:

(i) Seller is not then in material breach of any provision of this Agreement and there has been a material breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Buyer pursuant to this Agreement that would give rise to the failure of any of the conditions specified in ARTICLE VII and such breach, inaccuracy or failure cannot be cured by Buyer by the Drop Dead Date; or

(ii) any of the conditions set forth in Section 7.01 or Section 7.03 shall not have been fulfilled by the Drop Dead Date, unless such failure shall be due to the failure of Seller to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing; or

(d) by Buyer or Seller in the event that:

(i) there shall be any Law that makes consummation of the transactions contemplated by this Agreement illegal or otherwise prohibited;

or

(ii) any Governmental Authority shall have issued a Governmental Order restraining or enjoining the transactions contemplated by this Agreement, and such Governmental Order shall have become final and non-appealable.

Section 9.02 Effect of Termination. In the event of the termination of this Agreement in accordance with this Article, this Agreement shall forthwith become void and there shall be no liability on the part of any party hereto except:

(a) as set forth in this ARTICLE IX, Section 6.05 and ARTICLE X hereof; and

(b) that nothing herein shall relieve any party hereto from liability for any intentional breach of any provision hereof.

#### ARTICLE X MISCELLANEOUS

Section 10.01 Expenses. Except as otherwise expressly provided herein (including Section 6.11 hereof), all costs and expenses, including fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses, whether or not the Closing shall have occurred; *provided, however*, that Seller shall pay all amounts payable to Brandywine Mergers & Acquisitions, LLC.

Section 10.02 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 10.02):

If to Seller:            Monridge Environmental, LLC P.O.  
                                  Box 509  
                                  Lafayette Hill, PA 19444  
                                  Email: [kbrien@jkenv.com](mailto:kbrien@jkenv.com)  
                                  Attn: Kevin Brien

With a copy to:        Fox Rothschild LLP  
                                  747 Constitution Drive, Suite 100 P.O.  
                                  Box 673  
                                  Exton, PA 19341  
                                  Email: [tkerwin@foxrothschild.com](mailto:tkerwin@foxrothschild.com)  
                                  Attn: Terrence M. Kerwin

If to Brien: Kevin Brien  
28 Scarlet Oak Drive  
Lafayette Hill, PA 19444  
Email: [kbriengjkenv.com](mailto:kbriengjkenv.com)

If to Krinis: John Krinis  
324 Woods Road  
Glenside, PA 19038  
Email: [jkrinisjkenv.com](mailto:jkrinisjkenv.com)

If to Buyer: JK Environmental Services, LLC  
c/o CDS Capital Management  
1886 Metro Center Drive, 4<sup>th</sup> Floor  
Reston, VA 20190  
Email: [JSqueri@cdscapitalmanagement.com](mailto:JSqueri@cdscapitalmanagement.com) Attn: Joseph Squeri

With a copy to: Bean Kinney and Korman  
2300 Wilson Blvd., 7<sup>th</sup> Floor  
Arlington, VA 22201  
Email: [dcanfieldbeankinney.com](mailto:dcanfieldbeankinney.com)  
Attn: David Canfield

Section 10.03 Interpretation. For purposes of this Agreement. (a) the words “include,” “includes- and -including” shall be deemed to be followed by the words “without limitation”; (b) the word -or” is not exclusive; and (c) the words “herein,” “hereof,” “hereby,” “hereto” and -hereunder” refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Articles, Sections, Disclosure Schedules and Exhibits mean the Articles and Sections of, and Disclosure Schedules and Exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Disclosure Schedules and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

Section 10.04 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 10.05 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

**Section 10.06 Entire Agreement.** This Agreement and the other Transaction Documents constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous representations, warranties, understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and those in the other Transaction Documents, the Exhibits and Disclosure Schedules (other than an exception expressly set forth as such in the Disclosure Schedules), the statements in the body of this Agreement will control.

**Section 10.07 Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed; provided, however, that Buyer may assign all or any portion of its rights under this Agreement to an Affiliated entity without Seller's consent. No assignment shall relieve the assigning party of any of its obligations hereunder.

**Section 10.08 No Third Party Beneficiaries.** This Agreement is for the sole benefit of the parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**Section 10.09 Amendment and Modification; Waiver.** This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

**Section 10.10 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.**

(a) This Agreement shall be governed by and construed in accordance with the internal laws of the Commonwealth of Virginia without giving effect to any choice or conflict of law provision or rule (whether of the Commonwealth of Virginia or any other jurisdiction).

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY BE INSTITUTED IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA OR THE COURTS OF THE COMMONWEALTH OF VIRGINIA, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

**Section 10.11 Attorney Fees for Enforcement of Indemnification Rights.** If a party brings an Action to enforce its right to be indemnified under Article VIII (Indemnification) and prevails, it may recover any expenses and costs, including reasonable attorneys' fees, costs and expense, incurred in connection with the Action and any appeal from the non-prevailing party.

**Section 10.12 Specific Performance.** The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

**Section 10.13 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[signature page follows]

IN WITNESS WHEREOF, the parties have caused this Asset Purchase Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

**SELLER PARTIES:**

MONRIDGE ENVIRONMENTAL, LLC D/B/A JK  
ENVIRONMENTAL SERVICES, LLC

By:

Name: Kevin Brien

Title: President and CEO

Kevin Brien

John Krinis

**BUYER:**

JK ENVIRONMENTAL SERVICES, LLC

By:

Name:

Title:

**SECOND AMENDMENT TO OPERATING AGREEMENT OF  
COMSTOCK INVESTORS X, L.C.**

THIS SECOND AMENDMENT TO OPERATING AGREEMENT OF COMSTOCK INVESTORS X, L.C. (this "Amendment") is made effective this day of September, 2017, by COMSTOCK HOLDING COMPANIES, INC. ("CHCI"), as the Class A Member and Manager, and Comstock Development Services, LC ("CDS"), as the Class B Member (or "Priority Member").

W I T N E S S E T H

RECITALS:

R-1. CHCI and CDS entered into that certain Operating Agreement ("Operating Agreement") for Comstock Investors X, L.C. ("Company") dated August 15, 2016, as amended by the First Amendment to Operating Agreement of Comstock Investors X, L.C.;

R-2. The parties desire to amend certain portions of the Operating Agreement in accordance with the provisions herein.

NOW, THEREFORE, in consideration of the agreements herein contained, the parties hereby agree as follows:

1. Incorporation of Recitals and Exhibits. The Recitals set forth above are incorporated herein and made a part of this Amendment to the same extent as if set forth herein in full.

2. Defined Terms. The following definitions shall be amended or included as new definitions in Article I, Section 1.1 of the Operating Agreement:

"New Projects" shall mean Marwood East, consisting of real property originally approved for the development of up to 35 single family residential units located in Loudoun County, Virginia and Richmond Station, consisting of real property approved for the development of up to 54, sixteen foot wide townhome condominium lots and units, 104, twenty two foot wide townhome lots and up to eight retail or commercial units located in Manassas, Virginia.

"Project(s)" shall mean the residential real estate construction projects commonly known as: (i) Totten Mews, consisting of real property approved for construction of 35 single family attached residential townhouse units and five affordable dwelling units located on Sixth Street in Washington DC, NE; (ii) the Towns at 1333, consisting of real property approved for construction of 18 single family attached residential townhouse units located on Powhatan Street in Alexandria, Virginia; and (iii) the New Projects, or any other residential project as may be approved by the Requisite Members in their sole and absolute discretion.

"Project Entity" shall mean each of Powhatan, Sixth Street, Stone Ridge I, Stone Ridge II, and Richmond Station.

"Richmond Station" shall mean Richmond Station Ventures, L.C.

"Stone Ridge I" shall mean Comstock Stone Ridge, L.C.

"Stone Ridge II" shall mean Comstock Stone Ridge II, L.C.

"Total Capital Contribution" shall mean the aggregate amount of the Capital Contributions made to the Company up to but in no event to exceed \$19,500,000.

All capitalized terms used herein shall have the same meanings given to them in the Operating Agreement, unless specific definitions for such terms are set forth herein.

3. Distributions. The following shall be inserted as the last sentence in Section 9.1 of the Operating Agreement:

Notwithstanding any other provision in this Section to the contrary, all Distributable Cash Flow of the Company from the New Projects shall be distributed as follows:

First, to the Priority Members in proportion to their respective Unpaid Priority Returns, until their respective Unpaid Priority Returns have been reduced to zero; and

Second, seventy percent (70%) to the Priority Members in proportion to their Unreturned Capital Contributions until their respective Unreturned Capital Contributions have been reduced to zero and thirty percent (30%) to the holders of Class A Units.

4. Representations of Comstock. Paragraph 14.3(a) of the Agreement shall be deleted in its entirety, and the following shall be inserted in lieu thereof:

Comstock has or will contribute to the Company 100% of the membership interests in the Project Entities and the Project Entities shall own the Projects.

5. Exhibit A-2. Exhibit A-2 of the Operating Agreement shall be deleted in its entirety and replaced with the revised Exhibit A-2 attached hereto and incorporated herein.

6. Recycled Capital: The Priority Member, in its sole and absolute discretion, is permitted, but is not required, to recycle Distributable Cash Flow back into the Company for the purposes of investment in any of the Projects from time to time.

7. Warrant Coverage. In conjunction with the Class B Member's additional Capital Contribution of Five Million Dollars (\$5,000,000), CHCI shall cause to be issued to the Class B Member a warrant agreement to purchase 50,000 shares of CHCI's Class A common stock.

8. Ratified and Confirmed. The Operating Agreement, as amended by this Amendment, is hereby ratified and confirmed. To the extent of any inconsistency between this Amendment and the Operating Agreement, this Amendment will govern.

9. Governing Law. This Amendment shall be governed and construed in conformity with the laws of the Commonwealth of Virginia.

10. Counterparts. This Amendment may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed under seal as of the date above written.

WITNESS:

\_\_\_\_\_  
\_\_\_\_\_  
Name: \_\_\_\_\_  
\_\_\_\_\_

CHCI:  
Comstock Holding Companies, Inc.

\_\_\_\_\_  
By: \_\_\_\_\_  
Christopher Conover, Chief Financial Officer

WITNESS:

Comstock Development Services, LC

\_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

Christopher Clemente, Manager

**EXHIBIT A-2  
TO THE OPERATING AGREEMENT OF COMSTOCK INVESTORS X, L.C.**

**Total Class B Units (\$50,000 per Unit)**

<u>Capital Contribution</u>	<u>Class B Percentage Interest</u>	<u>Class B Units</u>
-----------------------------	--	--------------------------

**“THE TRANSFER OF THIS WARRANT IS SUBJECT TO RESTRICTIONS CONTAINED HEREIN. THIS SECURITY HAS BEEN ISSUED IN RELIANCE UPON THE REPRESENTATION OF THIS SECURITY HOLDER THAT IT HAS BEEN ACQUIRED FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TOWARD THE RESALE OR OTHER DISTRIBUTION THEREOF. NEITHER THIS WARRANT NOR THE SECURITIES ISSUABLE UPON EXERCISE HEREOF HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”), OR REGISTERED OR QUALIFIED UNDER THE PROVISIONS OF ANY APPLICABLE STATE SECURITIES LAWS. NEITHER THIS WARRANT NOR THE SECURITIES ISSUABLE UPON EXERCISE HEREOF MAY BE SOLD, OFFERED FOR SALE, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS, OR AN OPINION OF COUNSEL SATISFACTORY TO COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED.”**

**FORM OF WARRANT**

**COMSTOCK HOLDING COMPANIES, INC.**

**WARRANTS FOR THE PURCHASE OF SHARES OF COMMON STOCK**

No. [            ]

**50,000 Shares**

THIS CERTIFIES that, for value received, Comstock Holding Companies, Inc., a Delaware corporation (the “Company”), upon the surrender of this Warrant to the Company at the address specified herein, at any time during the Exercise Period (as defined below) will upon receipt of the Exercise Price (as defined below), sell and deliver to **Comstock Development Services, LC** (the “Holder”), up to the number of duly authorized, validly issued and fully paid and nonassessable shares of Class A common stock of the Company, par value \$0.01 per share (the “Common Stock”), set forth above, as appropriately adjusted pursuant to Section G. The term “Common Stock” shall mean the aforementioned common stock of the Company together with any other equity securities that may be issued by the Company in connection therewith or in substitution therefor, as provided herein, that is not limited as to final sum or percentage in respect of the rights of the holders thereof to participate in dividends or in distribution of assets upon the voluntary or involuntary liquidation, dissolution or winding up of the Company. The “Exercise Period” shall begin on the date six months from the date hereof and shall end on October 13, 2017. During the Exercise Period and subject to the restrictions set forth in Section D, the Holder may purchase such number of shares of Common Stock at a purchase price per share equal to the average of the closing stock price of the 20 trading days preceding execution of this Warrant which is shown on Schedule A hereto, and as appropriately adjusted pursuant to Section G (the “Exercise Price”).

The number of shares of Common Stock to be received upon the exercise of this Warrant and the price to be paid for a share of Common Stock are subject to adjustment from time to time as hereinafter set forth. The shares of Common Stock deliverable upon such exercise, as adjusted from time to time, are hereinafter sometimes referred to as “Warrant Shares.”

**Section A. Exercise of Warrant.** Subject to the terms and conditions of this Warrant and applicable securities laws, the purchase right represented by this Warrant may be exercised in whole or in part, at any time or from time to time, during the Exercise Period by presentation and surrender of this Warrant to the Company at its principal office at 1886 Metro Center Dr., 4th Floor, Reston, Virginia 20190 (or at such other address in the United States of America as the Company may hereafter designate in writing to the Holder), with the Notice of Exercise, contained herein as Exhibit A, duly executed and accompanied by a wire transfer of immediately available funds, cash or a certified or official bank check drawn to the order of “Comstock Holding Companies, Inc.” in the amount of the Exercise Price multiplied by the number of Warrant Shares specified in such form. The Exercise Price may also be paid in whole or in part, by delivery of such a Notice of Exercise and shares of Common Stock owned by the Holder having an aggregate Fair Market Value (as defined below) on the last business day ending immediately prior to the exercise date equal to the portion of the aggregate Exercise Price being paid in such shares. In addition, each Warrant may be exercised, pursuant to a cashless exercise by providing irrevocable instructions to the Company, through delivery of a Notice of Exercise with an appropriate reference to this Section A as set forth below in this Section A. If this Warrant should be exercised in part only, the Company shall, upon surrender of this Warrant, promptly execute and deliver a new Warrant evidencing the rights of the Holder to purchase the balance of the Warrant Shares purchasable hereunder. Upon receipt by the Company during the Exercise Period of this Warrant and such Notice of Exercise, in proper form for exercise, together with proper payment of the Exercise Price, at such office, the Holder shall be deemed to be the holder of record of the number of Warrant Shares specified in such Notice of Exercise; provided, however, that if the date of such receipt by the Company or its agent is a date on which the stock transfer books of the Company are closed, such person shall be deemed to have become the record holder of such shares on, and such certificate shall be dated, the next succeeding business day on which the stock transfer books of the Company are open. Any new or substitute Warrant issued under this Section A, or any other provision of this Warrant, shall be dated the date of this Warrant. Upon exercise of this Warrant, the Company shall, as soon as possible and in any event within 30 days after such exercise, cause to be issued and shall promptly deliver upon written order of the Holder, and in such name or names as the Holder may designate, a certificate or certificates for the Warrant Shares. If the Company fails to deliver to the Holder such certificate or certificates representing the Warrant Shares pursuant to this Section A by the 30<sup>th</sup> business day after exercise hereof, then, without limiting any of its other rights or remedies, the Holder will have the right to rescind such exercise in its sole discretion.

Notwithstanding the foregoing, in the event that at any time, the Holder elects to exercise all or any part of this Warrant, this Warrant may also be exercised at such time by means of a “cashless exercise” in which the Holder shall be entitled to receive a certificate for the number of Warrant Shares equal to the quotient obtained by dividing  $[(A-B) (X)]$  by (A), where:

(A) = the Fair Market Value;

(B) = the Exercise Price of this Warrant, as adjusted (to the date of such calculation); and

(X) = the number of Warrant Shares issuable in accordance with the terms of this Warrant for which a cashless exercise has been requested (which shall be zero if B equals or exceeds A).

The “Fair Market Value” of a share of Common Stock on any day means (a) if the principal market for the Common Stock is The Nasdaq Stock Market or any other national securities exchange, the average of the closing stock price of the 20 trading days preceding such day as reported by such exchange or market, or on a consolidated tape reflecting transactions on such exchange or market, or (b) if the principal market for the Common Stock is not a national securities exchange or The Nasdaq Stock Market and the Common Stock is quoted on the National Association of Securities Dealers Automated Quotations System, the average of the mean between the closing bid and the closing asked prices for the Common Stock of the 20 trading days preceding such day as quoted on such System, or (c) if the Common Stock is not quoted on the National Association of Securities Dealers Automated Quotations System, the average of the mean between the highest bid and lowest ask prices for the Common Stock of the 20 trading days preceding such day as reported by the National Quotation Bureau, Inc.; provided, that if none of (a), (b) or (c) above is applicable, or if no trades have been made or no quotes are available for such day, the Fair Market Value of the Common Stock shall be determined by a generally recognized source selected by the Board of Directors of the Company reasonably acceptable to the Holder.

In addition to any other rights available to the Holder, if the Company fails to cause its transfer agent to transmit to the Holder a certificate or certificates representing the Warrant Shares pursuant to an exercise of this Warrant on or before the 30<sup>th</sup> business day following such exercise, and if after such date the Holder is required by its broker to purchase (in an open market transaction or otherwise) Common Stock to deliver in satisfaction of a sale by the Holder of Warrant Shares which the Holder anticipated receiving upon such exercise (a “Buy-In”), then the Company shall (1) pay in cash to the Holder the amount by which (x) the Holder’s total purchase price (including brokerage commissions, if any) for the Common Stock so purchased exceeds (y) the amount obtained by multiplying (A) the number of Warrant Shares that the Company was required to deliver to the Holder in connection with the exercise at issue times (B) the price at which the sell order giving rise to such purchase obligation was executed, and (2) at the option of the Holder, either reinstate the portion of this Warrant and equivalent number of Warrant Shares for which such exercise was not honored or deliver to the Holder the number of Warrant Shares that would have been issued had the Company timely complied with its exercise and delivery obligations hereunder. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In, together with applicable confirmations and other evidence reasonably requested by the Company. Nothing herein shall limit the Holder’s right to pursue any other rights or remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company’s failure to timely deliver a certificate or certificates representing the Warrant Shares upon exercise of this Warrant as required pursuant to the terms hereof.

**Section B. Stock Fully Paid; Reservation of Shares.** All Warrant Shares that may be issued upon the exercise of the rights represented by this Warrant will, upon issuance pursuant to the terms and conditions herein, be validly issued, fully paid and nonassessable, and free and clear from all liens and all contractual restrictions and preemptive rights with respect to the issue thereof. During the period within which the rights represented by this Warrant may be exercised, the Company will at all times have authorized, and reserved for the purpose of the issue upon exercise of the rights represented by this Warrant, a sufficient number of shares of its Common Stock to provide for the exercise of the rights represented by this Warrant.

**Section C. Warrant Register; Transfer and Exchange.** The Company will maintain a register containing the names and addresses of each Holder of this Warrant. Any registered Holder may change such registered Holder's address as shown on the warrant register by written notice to the Company requesting such change. Any notice or written communication required or permitted to be given to the Holder may be delivered or given by mail to the Holder as shown on the warrant register and at the address shown on the warrant register. Until any transfer of this Warrant is made in the warrant register, the Company may treat the registered Holder of this Warrant as the absolute owner hereof for all purposes; provided, however, that if and when this Warrant is properly assigned in blank, the Company may (but shall not be required to) treat the bearer hereof as the absolute owner hereof for all purposes, notwithstanding any notice to the contrary. This Warrant may not be transferred or assigned without compliance with all applicable federal and state securities laws by the transferor and the transferee (including the delivery of investment representation letters and legal opinions reasonably satisfactory to the Company). Subject to the provisions of this Warrant with respect to compliance with the Act, this Warrant and all rights hereunder may be transferred by Holder, in whole or in part, on the books of the Company maintained for such purpose at the principal office of the Company, upon surrender of this Warrant with a properly executed assignment in the form of Exhibit B hereto (the "Assignment Form") and upon payment of any necessary transfer tax or other governmental charge imposed upon such transfer. If this Warrant should be transferred in part only, the Company shall, upon surrender of this Warrant, promptly execute and deliver a new Warrant evidencing the rights of the Holder thereof to purchase the balance of the Warrant Shares purchasable hereunder.

**Section D. Compliance with Securities Laws.** The Holder, by acceptance hereof, agrees that, absent an effective registration statement filed with the Securities and Exchange Commission (the "SEC") under the Act, covering the disposition or sale of this Warrant or the Warrant Shares issued or issuable upon exercise hereof, as the case may be, and registration or qualification under applicable state securities laws, the Holder will not sell, transfer, pledge, or hypothecate any or all such Warrants or Warrant Shares, as the case may be, unless either (a) the Company has received an opinion of counsel, in form and substance reasonably satisfactory to the Company, to the effect that such registration is not required in connection with such disposition, or (b) the sale of such securities is made pursuant to Rule 144 under the Act. By acceptance of this Warrant, the Holder hereby represents, warrants and covenants that (i) it is an "accredited investor" as defined in Rule 501 of Regulation D promulgated under the Act; (ii) any Warrant Shares shall be acquired for investment only and not with a view to, or for sale in connection with, any distribution thereof; (iii) that the Holder has had such opportunity as such Holder has deemed adequate to obtain from representatives of the Company such information as is necessary to permit the Holder to evaluate the merits and risks of its investment in the Company; (iv) that the Holder is able to bear the economic risk of holding such shares as may be acquired pursuant to the exercise of this Warrant for an indefinite period; (v) that the Holder understands that the shares of stock acquired pursuant to the exercise of this Warrant will not be registered under the Act (unless otherwise required pursuant to exercise by the Holder of the registration rights, if any, previously granted to the registered the Holder) and will be "restricted securities" within the meaning of Rule 144 under the Act and that the exemption from registration under Rule 144 will not be available until the applicable holding period has been satisfied and unless a public market then exists for the stock, adequate information concerning the Company is then available to the public, and other terms and conditions of Rule 144 are complied with; and (vi) that all stock certificates representing shares of stock issued to the Holder upon exercise of this Warrant may have affixed thereto a legend substantially in the following form:

THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AND HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH SALE OR DISTRIBUTION MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL IN A FORM REASONABLY SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933.

The legend set forth above shall be removed and the Company shall issue a certificate without such legend to the holder of the Warrant Shares upon which it is stamped or issue to such holder by electronic delivery at the applicable balance account at DTC, if (A) such Warrant Shares are sold or transferred pursuant to Rule 144 (assuming the transferor is not an Affiliate of the Company (as defined below)), (B) such Warrant Shares are eligible for sale under Rule 144 free from any volume or other restrictions, or (C) if such legend is not required under applicable requirements of the Act (including controlling judicial interpretations and pronouncements issued by the SEC).

**Section E. Lost, Mutilated or Missing Warrant.** Upon receipt by the Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant, and (in the case of loss, theft or destruction) of reasonably satisfactory unsecured indemnification, and upon surrender and cancellation of this Warrant, if mutilated, the Company, at its expense, shall execute and deliver a new Warrant of like tenor and date.

**Section F. Rights of the Holder.** Subject to applicable law, the Holder shall not, by virtue hereof, be entitled to any rights or subject to any obligation or liability of a shareholder in the Company, either at law or equity, and the rights of the Holder are limited to those expressed in this Warrant, except to the extent the Holder has duly exercised this Warrant.

**Section G. Adjustments.** The Exercise Price and the number of shares purchasable hereunder are subject to adjustment from time to time as follows:

1. **Subdivision and Combination.** If the Company shall at any time subdivide its outstanding shares of Common Stock into a greater number or combine into a smaller number, the number of Warrant Shares and the Exercise Price shall forthwith be proportionately decreased in the event of subdivision or increased in the event of combination.

2. **Adjustment in Number of Securities.** Upon each adjustment of the Exercise Price pursuant to the provisions of this Section G, the number of securities issuable upon the exercise of this Warrant shall be adjusted to the nearest full amount by multiplying (a) a number equal to the Exercise Price in effect immediately prior to such adjustment by (b) the number of Warrant Shares issuable upon exercise of this Warrant immediately prior to such adjustment and dividing the product so obtained by the adjusted Exercise Price.

3. **Merger or Consolidation.** In the event that at any time or from time to time after the date hereof, (a) the Company shall (i) effect a reorganization, (ii) consolidate with or merge into any other person, or (iii) sell, transfer or otherwise dispose of all or substantially all of its properties or assets or (b) more than 50% of the voting equity securities of the Company (whether issued and outstanding, newly issued, from treasury, or any combination thereof) is acquired by any other person or group under any plan or arrangement contemplating the consolidation or merger, sale, transfer or disposition, or dissolution of the Company (each, a "Trigger Event"), the corporation or entity formed by or resulting from such consolidation or merger or the recipient of such properties, assets or equity securities shall execute and deliver to the Holder a supplemental warrant agreement whereby the Holder shall thereafter be entitled to purchase pursuant to such supplemental warrant agreement (in lieu of the number of Warrant Shares which the Holder would have been entitled to purchase immediately prior to such Trigger Event) the kind and number of shares of stock or other securities or property to which the Holder would have been entitled upon such Trigger Event if the Holder had exercised this Warrant in full immediately prior to such Trigger Event and acquired the applicable number of Warrant Shares then issuable hereunder as a result of such exercise, at an aggregate purchase price equal to that which would have been payable if such number of Warrant Shares had been purchased immediately prior thereto. In case of any such Trigger Event, lawful, adequate and appropriate provision shall be made with respect to the rights and interests thereafter of the Holder such that all the provisions of each Warrant shall thereafter be applicable, as nearly as practicable, to such stock or other securities ("Replacement Securities") and/or property thereafter deliverable upon the exercise of each Warrant. The supplemental warrant agreement shall contain the express assumption by such successor corporation or entity of the due and punctual performance and observation of every provision of each Warrant to be performed and observed by the Company and of all liabilities and obligations of the Company hereunder and thereunder. Upon consummation of any such transaction, the term "Common Stock" as used herein, shall be deemed to mean, as appropriate, such Replacement Securities and/or property, including without limitation, the definition of Warrant Shares as used herein.

4. No Adjustment of Exercise Price in Certain Cases. No adjustment of the Exercise Price shall be made:

(a) if the amount of said adjustment shall be less than one cent (\$.01) per share of Common Stock issuable upon exercise of this Warrant; provided, however, that in such case any adjustment that would otherwise be required then to be made shall be carried forward and shall be made at the time of and together with the next subsequent adjustment which, together with any adjustment so carried forward, shall amount to at least one cent (\$.01) per share of Common Stock issuable upon exercise of this Warrant;

(b) based upon the issuance of Common Stock to employees, consultants or directors pursuant to the Company's 2004 Long-Term Incentive Compensation Plan (as may be amended from time to time);

(c) based upon the issuance of equity securities of the Company in consideration for the acquisition (whether by merger or otherwise) by the Company or any of its subsidiaries of all or substantially all of the stock or assets of any other entity; provided that such transaction, and the issuance of shares in connection therewith, (i) has been approved by a majority of the Board of Directors of the Company and (ii) is on commercially reasonable terms and does not involve an Affiliate (as defined in the Amended and Restated Indenture, dated as of March 14, 2008, between the Company and Wells Fargo Bank, N.A., as may be amended from time to time); or

(d) based upon the issuance of equity securities of the Company issued or issuable to banks or similar institutional credit financing sources pursuant to a debt financing or similar transaction; provided that such transaction, and the issuance of shares in connection therewith, is on commercially reasonable terms and does not involve an Affiliate.

5. Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment pursuant to this Section G, the Company, at its own expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each Holder a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Company shall, upon the written request, at any time, of any such Holder, furnish or cause to be furnished to such Holder a like certificate setting forth: (a) such adjustments and readjustments; (b) the Exercise Price at the time in effect; and (c) the number of shares of Common Stock and the amount, if any, of other property that at the time would be received upon the exercise of this Warrant.

**Section H. Fractional Shares.** No fractional shares of Common Stock will be issued in connection with any exercise hereunder but in lieu of such fractional shares the Company shall make a cash refund therefor equal in amount to the product of the applicable fraction multiplied by the Exercise Price paid by the Holder for one Warrant Share upon such exercise.

**Section I. Notices of Certain Events.** In the event of:

1. any capital reorganization or reclassification of the Common Stock (other than a subdivision or combination of the outstanding Common Stock and other than a change in par value of the Common Stock) or of any consolidation or merger to which the Company is a party or of the conveyance or transfer of all or substantially all of the properties and assets of the Company;
2. the voluntary or involuntary dissolution, liquidation or winding-up of the Company; or
3. any other actions would require an adjustment under Section G,

the Company will cause to be mailed to the Holder, at least ten business days before the applicable record or effective date hereinafter specified, a notice stating (A) the date as of which the holders of Common Stock of record entitled to receive any such rights, warrants or distributions are to be determined, or (B) the date on which any such consolidation, merger, conveyance, transfer, dissolution, liquidation or winding-up is expected to become effective, and the date as of which it is expected that holders of Common Stock of record will be entitled to exchange their shares of Common Stock for securities or other property, if any, deliverable upon such reorganization, reclassification, consolidation, merger, conveyance, transfer, dissolution, liquidation or winding-up. Nothing herein shall prevent the Holder from exercising this Warrant during such 10 business day period.

**Section J. Listing on Securities Exchanges.** Subject to the restrictions on the securities stated herein, the Company will list on The Nasdaq Stock Market and each national securities exchange on which any Common Stock may at any time be listed all shares of Common Stock from time to time issuable upon the exercise of this Warrant, subject to official notice of issuance upon the exercise of this Warrant, and will maintain such listing so long as any other shares of its Common Stock are so listed; and the Company shall so list on The Nasdaq Stock Market and each national securities exchange, and shall maintain such listing of, any other shares of capital stock of the Company issuable upon the exercise of this Warrant if and so long as any shares of capital stock of the same class are listed on The Nasdaq Stock Market and such national securities exchange by the Company. Any such listing will be at the Company's expense.

**Section K. Successors.** All of the provisions of this Warrant by or for the benefit of the Company shall bind and inure to the benefit of its respective successors and assigns.

**Section L. Headings.** The headings of sections of this Warrant have been inserted for convenience of reference only, are not to be considered a part hereof and shall in no way modify or restrict any of the terms or provisions hereof.

**Section M. Amendments.** Except as otherwise provided herein, the terms and provisions of this Warrant may not be modified or amended, or any provisions hereof waived, temporarily or permanently, except by written consent of the Company and the Holder.

**Section N. Notices.** Unless otherwise provided in this Warrant, all notices, requests, consents and other communications hereunder shall be in writing, shall be sent by first-class U.S. Mail or a nationally recognized overnight express courier postage prepaid, and shall be deemed given five business days after being sent by U.S. mail and one business day after being sent by such courier, or if delivered by hand shall be deemed given on the date of such delivery to such party, or if sent to such party (in the case of a Holder) at its address in the warrant register that will be maintained by the Company or its agent in accordance with Section B hereof or (in the case of the Company) at its address set forth above, Attention: Chief Financial Officer, or to such other address as is designated by written notice, similarly given to each other party hereto.

**Section O. Governing Law.** This Warrant shall be deemed to be a contract made under the laws of the State of Delaware and for all purposes shall be construed in accordance with the laws of said State as applied to contracts made and to be performed in Delaware between Delaware residents.

**Section P. Closing of Books.** The Company shall at no time close its transfer books against the transfer of any shares issued or issuable upon the exercise of this Warrant in a manner that interferes with the timely exercise of this Warrant.

**Section Q. Severability.** If any provision of this Warrant shall be held to be invalid and unenforceable, such invalidity or unenforceability shall not affect any other provision of this Warrant.

**Section R. Counterparts.** This Warrant may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Warrant delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Warrant.

IN WITNESS WHEREOF, the Company has duly caused this Warrant to be signed and attested by its duly authorized officer and to be dated as of

COMSTOCK HOLDING COMPANIES, INC.

By: \_\_\_\_\_

Name:

Title: Chief Executive Officer

---

**SCHEDULE A**  
**[NOTE: PLEASE INSERT PRICES INTO SCHEDULE A.]**

**EXHIBIT A  
NOTICE OF EXERCISE**

Date: \_\_\_\_\_, 20\_\_\_\_

The undersigned hereby elects to exercise this Warrant to purchase \_\_\_\_\_ shares of Common Stock and herewith:

- makes a cash payment of \$ \_\_\_\_\_, representing the full purchase price for such shares at the price per share provided for in such Warrant.
- delivers \_\_\_\_\_ shares of Common Stock having a Fair Market Value as of the last trading day preceding the date hereof of \$ \_\_\_\_\_, representing the full purchase price for such shares at the price per shares provided for in such Warrant.
- acquires in a cashless exercise \_\_\_\_\_ shares of Common Stock pursuant to the terms of Section A of such Warrant.

Warrant Shares shall be delivered to the following address:

The undersigned represents that (i) it is an "accredited investor" as defined in Rule 501 under Regulation D promulgated under the Securities Act of 1933, as amended, and (ii) the aforesaid shares are being acquired for the account of the undersigned for investment and not with a view to, or for resale in connection with, the distribution thereof and that the undersigned has no present intention of distributing or reselling such shares, except as in compliance with applicable securities laws.

\_\_\_\_\_  
[Holder's Name]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT B  
ASSIGNMENT FORM

FOR VALUE RECEIVED, the undersigned registered owner of this Warrant for the purchase of shares of Common Stock of Comstock Holding Companies, Inc. hereby sells, assigns and transfers unto the Assignee named below all of the rights of the undersigned under this Warrant, with respect to the number of shares of Common Stock set forth below:

Name of Assignee

Address/ Number

No. of Shares

and does hereby irrevocably constitute and appoint \_\_\_\_\_ attorney-in-fact to register such transfer on the books of the Company, maintained for the purpose, with full power of substitution in the premises.

The undersigned also represents that, by assignment thereof, the Assignee acknowledges that the attached Warrant and the shares of stock to be issued upon exercise thereof are being acquired for investment and that the Assignee will not offer, sell, or otherwise dispose of the attached Warrant or any shares of stock to be issued on exercise thereof, except under circumstances that will not result in a violation of the Securities Act of 1933, as amended, or any state securities laws. Further, the Assignee has acknowledged that upon exercise of the attached Warrant, the Assignee shall, if requested by the Company, confirm in writing, in form satisfactory to the Company, that the shares of stock so purchase are being acquired for investment and not with a view toward distribution or resale.

Dated: \_\_\_\_\_ Signature: \_\_\_\_\_

Dated: \_\_\_\_\_ Witness: \_\_\_\_\_

**CERTIFICATION OF CHAIRMAN AND CHIEF EXECUTIVE OFFICER  
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Christopher Clemente, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Comstock Holding Companies, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 16, 2017

/s/ Christopher Clemente

---

Christopher Clemente  
Chairman and Chief Executive Officer  
(Principal Executive Officer)

**CERTIFICATION OF CHIEF FINANCIAL OFFICER  
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Christopher L. Conover, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Comstock Holding Companies, Inc.
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 16, 2017

/s/ Christopher L. Conover

Christopher L. Conover

Chief Financial Officer

(Principal Financial Officer and Principal Accounting Officer)

CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report on Form 10-Q of Comstock Holding Companies, Inc. (the "Company") for the quarter ended September 30, 2017, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of Christopher Clemente, Chairman and Chief Executive Officer of the Company, and Christopher L. Conover, Chief Financial Officer of the Company, certifies, to his best knowledge and belief, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)); and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 16, 2017

/s/ Christopher Clemente

Christopher Clemente  
Chairman and Chief Executive Officer

Date: November 16, 2017

/s/ Christopher L. Conover

Christopher L. Conover  
Chief Financial Officer