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

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**Form 10-K**

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(Mark One)

**ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2016

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 001-32375

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**Comstock Holding Companies, Inc.**

(Exact name of registrant as specified in its charter)

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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  
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code (703) 883-1700

Securities registered pursuant to Section 12(b) of the Act:

<u>Title of each class</u>	<u>Name of each exchange on which registered</u>
Class A common stock, par value \$0.01 per share	The Nasdaq Stock Market LLC
Preferred Stock Purchase Rights	Nasdaq Capital Market

Securities registered pursuant to Section 12(g) of the Act:

None

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Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes  No

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 (§232.405 of this chapter) 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 if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this

Form 10-K or any amendment to this Form 10-K

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

The aggregate market value of voting and non-voting common equity held by non-affiliates of the registrant based on the last reported sale price of the registrant’s common equity on the Nasdaq Capital Market (“NASDAQ”) on June 30, 2016, which was the last business day of the registrant’s most recently completed second fiscal quarter, was \$3,472,127. For purposes of this computation, all officers, directors, and 10% beneficial owners of the registrant are deemed to be affiliates. This determination of affiliate status is not necessarily conclusive for other purposes.

As of April 17, 2017, there were 3,220,996 outstanding shares of the registrant’s Class A common stock, par value \$0.01 per share, and 220,250 shares of the registrant’s Class B common stock, par value \$0.01 per share.

#### DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant’s definitive Proxy Statement for the 2017 Annual Meeting of Stockholders or Annual Report on Form 10-K, to be filed within 120 days after the registrant’s fiscal year ended December 31, 2016, are incorporated by reference into Part III of this Form 10-K.

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COMSTOCK HOLDING COMPANIES, INC.

ANNUAL REPORT ON FORM 10-K  
For the Fiscal Year Ended December 31, 2016

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**PART I**

**CAUTIONARY NOTES REGARDING FORWARD-LOOKING STATEMENTS**

Some of the statements contained in this Annual Report on Form 10-K include forward-looking statements. 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 expressions. Forward-looking statements are based largely on our expectations and involve inherent risks and uncertainties including certain risks described in this Annual Report on Form 10-K. When considering those forward-looking statements, you should keep in mind the risks, uncertainties and other cautionary statements made in this Annual Report on Form 10-K. 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 directly to us. Any number of important factors which could cause actual results to differ materially from those in the forward-looking statements include: 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; the market conditions in the markets in which we operate; regulatory actions; 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; adverse weather conditions and natural disasters; our ability to raise debt and equity capital and grow our operations on a profitable basis and our continuing relationships with affiliates.

Many of these factors are beyond our control. For a discussion of factors that could cause actual results to differ, please see the discussion in this Annual Report on Form 10-K under the heading “Risk Factors” in Item 1A.

**Item 1. Business**

The following business description should be read in conjunction with our consolidated financial statements and related notes appearing elsewhere in this Annual Report on Form 10-K.

**Overview**

Comstock Holding Companies, Inc., incorporated in 2004 as a Delaware corporation, is a multi-faceted real estate development and services company primarily focused in the Washington, D.C. metropolitan area. We have substantial experience with building a diverse range of products including multi-family, single-family homes, townhouses, mid-rise condominiums, high-rise multi-family condominiums and mixed-use (residential and commercial) developments. References in this Annual Report on Form 10-K 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.

**Available Information**

We make available, as soon as reasonably practicable, on our website, [www.comstockhomes.com](http://www.comstockhomes.com), all of our reports required to be filed with the Securities and Exchange Commission (SEC). These reports can be found on the “Investor Relations” page of our website under “SEC Filings” and include our annual and quarterly reports on Form 10-K and Form 10-Q (including related filings in XBRL format), current reports on Form 8-K, proxy statements and amendments to such reports. In addition to our SEC filings, our corporate governance documents, including our Code of Ethics for the Chief Executive Officer and senior financial officers and Code of Conduct applicable to all employees and directors are available on the “Investor Relations” page of our website under “Corporate Governance.”

Our principal executive offices are located at 1886 Metro Center Drive, 4th Floor, Reston, Virginia 20190 and our telephone number is (703) 883-1700. Information on or linked to our website is not incorporated by reference into this Annual Report on Form 10-K unless expressly noted.

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### **Our Operating Market**

We are primarily focused on the Washington, D.C. market (Washington, D.C. and the Northern Virginia and Maryland suburbs of Washington, D.C.), which is the sixth largest metropolitan statistical area in the United States. Our expertise in developing traditional and non-traditional housing products enables us to focus on a wide range of opportunities within our core market. We build homes and multi-family buildings in suburban communities, where we focus on low density products such as single-family detached homes, townhomes and mid-rise multi-family buildings, and in urban areas, where we focus on high density multi-family and mixed use products. For our homebuilding operations, we develop properties with the intent to sell either as fee-simple properties or condominiums to individual unit buyers or as investment properties to investors. Our homebuilding 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. We believe our middle market strategy positions our products such that they are affordable to a significant segment of potential home buyers in our market.

Our multi-family buildings are developed as rental properties to be held and operated for our own purposes, converted at some point to for-sale condominium units or sold on a merchant build basis. When developing rental communities, we design our products to be readily convertible to condominiums. Our multi-family communities primarily target two groups: (i) young first time tenants and (ii) renters by choice.

We believe that our significant experience over the past 30 years in the Washington, D.C. market provides us with the experience necessary to identify attractive opportunities in our core market. We believe that our focus in the Washington, D.C. market, which has historically been characterized by economic conditions less volatile than many other major homebuilding markets, should provide us with an opportunity to generate attractive returns on investment and for growth.

Financial information for each of our reportable business segments is included in Note 2 to our consolidated financial statements.

Throughout this annual report on Form 10-K, amounts in thousands, except per share data, number of units, or as otherwise noted.

### **Our Business Strategy**

Our business strategy is designed to leverage our extensive capabilities and market knowledge to maximize returns on invested capital on our various real estate related activities. We execute our strategy through three related business segments:

- *Homebuilding* – We target new homebuilding opportunities where our building experience and ability to manage highly complex entitlement, development and related issues provides us with a competitive advantage.
- *Multi-family* – 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 to institutional buyers when completed or operate the asset within our own portfolio. Operating the asset for our own account affords us the flexibility of converting the units to condominiums in the future.
- *Real Estate Services* – Our management team has significant experience 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, general contracting and real estate related services to other property owners. This business line not only allows us to generate positive fee income from our highly qualified personnel but also serves as a potential catalyst for joint venture and acquisition opportunities.

These business units work in concert to leverage the collective skill sets of our organization. The talent and experience of our personnel allows workflow flexibility and a multitasking approach to managing various projects. In a capital constrained environment, we use creative problem solving and financing approaches by working closely with land owners, banks, borrowers and other parties in an effort to generate value for all constituents. We believe that our business network in the Washington, D.C. real estate market provides us with a competitive advantage in sourcing and executing investment opportunities.

Our land acquisition strategy is designed to maximize potential overall returns generated by homebuilding operations. We pursue land acquisition opportunities that generally fit into three categories:

- *Finished building lots* – We purchase fully developed building lots from sellers that have secured necessary entitlements and permits. This enables us to minimize the amount of land we hold in inventory and to time our acquisition of such lots with the sales of homes to be built on such lots, thereby reducing the hold time and carrying costs associated with holding the lots.

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- *Entitled building lots* – We purchase certain development sites after the land seller has secured substantially all entitlements, allowing for prompt development of the land into building lots. This affords us the opportunity to secure building lots in locations where finished building lots are not readily available, or where the price of obtaining finished lots is determined to be unaffordable.
- *Land options* – We contract to purchase certain development sites in advance of entitlements being secured. This affords us the opportunity to design the layout of the building lots to fit our home products, while the land continues to be held by the land seller and minimizes our costs associated with carrying such land in our inventory while development permits are secured.

With respect to our homebuilding operations, we seek to minimize risk associated with fluctuating market conditions by primarily building pre-sold units and limiting the number of speculative units or “spec units” (units that are under construction without an executed sales contract) held in inventory. In each new community that we develop, we build model homes to demonstrate our products and to house our on-site sales operations. When practical, we execute sale-leaseback transactions on model homes. We limit building spec units in locations where there is a demand for immediate delivery of homes or where a significant number of the units in a multi-family building (such as townhouses or condominiums) have been pre-sold. We believe that by limiting the number of model homes and spec units held in inventory, we reduce our exposure to cyclical fluctuations in market values and minimize costs associated with holding inventory, such as debt service.

### **Our Operations**

We believe that we are properly staffed for current market conditions and that we have the ability to manage growth as market conditions warrant. Our operations are focused mainly in the Washington, D.C. market, where we believe our over 30 years of market experience provides us the best opportunity to enhance stockholder value.

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**Our Communities**

We are currently operating, or developing projects in multiple counties throughout the Washington, D.C. market. The following table summarizes certain information for our owned or controlled communities as of December 31, 2016:

**Pipeline Report as of December 31, 2016**

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 (in 000's)
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	18	—	1	—	1	\$ 546
Townes at Falls Grove	VA	TH	110	80	9	21	—	30	\$ 302
Townes at Shady Grove Metro	MD	TH	36	26	—	10	—	10	\$ 581
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	78	5	1	—	6	\$ 431
Townes at Maxwell Square	MD	TH	45	45	—	—	—	—	\$ 421
Townes at Hallcrest	VA	TH	42	36	6	—	—	6	\$ 464
Estates at Leeland	VA	SF	24	5	5	14	—	19	\$ 461
Villas   Preserve at Two Rivers 28'	MD	TH	6	5	—	1	—	1	\$ 458
Villas   Preserve at Two Rivers 32'	MD	TH	10	9	—	1	—	1	\$ 506
Marrwood East (6)	VA	SF	35	1	8	26	—	34	\$ 638
Townes at Totten Mews (7)	DC	TH	40	—	1	39	—	40	\$ 650
The Towns at 1333	VA	TH	18	—	—	18	—	18	\$ —
The Woods at Spring Ridge	MD	SF	21	—	1	20	—	21	\$ 645
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>417</b>	<b>35</b>	<b>262</b>	<b>214</b>	<b>511</b>	

- (1) "SF" means single family home, "TH" means townhouse, "Condo" means condominium and "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.
- (5) 16 of these units are subject to statutory moderately priced dwelling unit program.
- (6) 1 of these units is subject to statutory affordable dwelling unit program.
- (7) 5 of these units are subject to statutory inclusionary zoning program.
- (8) "Backlog" means we have an executed order with a buyer but the settlement did not occur prior to report date.

**Northern Virginia Market**

The *Estates at Falls Grove* and *The Townes at Falls Grove* projects are located in northern Prince William County near Centreville, Virginia. The properties are being developed as 19 single family homes and 110 condominium townhouses. We are actively selling both the single family homes and the townhomes in this community. As of December 31, 2016, we closed on 18 single family units and 80 townhome units. At December 31, 2016, there were 9 townhomes in backlog.

The *Townes at Hallcrest* is a community located in Sterling, Virginia. The property is being developed as 42 townhomes. As of December 31, 2016, we have closed on 36 units with the remaining 6 units delivered in the first quarter of 2017.

The *Estates at Leeland* is a community located in Fredericksburg, Virginia. The property is being developed as 24 single-family units. We are actively selling in this community and as of December 31, 2016, we have closed on 5 units and have 5 units in backlog.

*Marrwood East* is a residential project in Loudoun County, Virginia. The property is being developed as 35 single-family units. We are actively selling in this community and as of December 31, 2016, we have closed on 1 unit and have 8 units in backlog.

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The *Towns at 1333* is a community located in Alexandria, Virginia. The property is being developed as 18 condominium townhome units in this community. We began sales and marketing activity in January of 2017 and the first settlements are estimated to occur in mid-2017.

The *Townes at Richmond Station and the Condominiums at Richmond Station* are projects located in Prince William County, Virginia. The properties are under a land option agreement. We plan to construct 104 townhomes and 54 multi-family units on this site. Development is expected to commence in mid-2017.

### **Maryland**

The *Estates at Emerald Farms* consists of 84 finished single-family lots that we own in a large development of single-family homes in Frederick, Maryland. As of December 31, 2016, we have closed on a total of 76 units and have 5 units in backlog.

The *Townes at Shady Grove Metro and Momentum | Shady Grove* are residential projects in Rockville, Maryland, adjacent to the Shady Grove metro rail station. The projects will be developed as 36 upscale townhomes, 3 single-family homes, and 110 multifamily dwelling units. As of December 31, 2016, we have closed on 29 units including the 3 single-family units. We are currently developing the land for the multifamily units.

The *Townes at Maxwell Square project* is located in downtown Frederick, Maryland. The property was developed as 45 condominium townhomes. We closed on all 45 units as of September 30, 2016.

The *Villas | Preserve at Two Rivers 28' and Villas | Preserve at Two Rivers 32'* projects are active adult communities in Anne Arundel County, Maryland. We are constructing a total of 16 villas in these communities. As of December 31, 2016, we have closed on a total of 14 units.

The *Woods at Spring Ridge* is a residential project in Frederick, Maryland. The property is being developed as 21 single-family units. We are actively selling in this community and as of December 31, 2016, we have 1 unit in backlog.

*Solomons Choice* is a residential project located in Anne Arundel County, Maryland. The property is being developed as 56 single-family units. Construction and sales activity commenced in early 2017.

### **District of Columbia**

The *City Homes at the Hampshires and The Townes at the Hampshires* projects are located in the Northeast quadrant of Washington, D.C. The property was developed as 111 units, consisting of 38 single-family homes and 73 townhomes. As of June 30, 2016, we closed on all 111 units at this project.

The *Townes at Totten Mews* are located in the Northeast quadrant of Washington, D.C. This property is being developed as 40 townhome units. We are actively selling in this community and as of December 31, 2016, there was 1 unit in backlog.

### **Land/Lot Acquisition and Inventory Management**

As discussed in 'Our Business Strategy' section above, we acquire land after we have completed due diligence and generally after we have obtained the rights (entitlements) to begin development or construction work resulting in an acceptable number of residential lots. Before we acquire lots or tracts of land, we complete a feasibility study, which includes soil tests, independent environmental studies, other engineering work and financial analysis. We also evaluate the status of necessary zoning and other governmental entitlements required to develop and use the property for home construction.

We also enter into land/lot option contracts, in which we obtain the right, but generally not the obligation, to buy land or lots at predetermined prices on a defined schedule commensurate with anticipated home closings or planned development. Our option contracts generally are non-recourse, which limits our financial exposure to our earnest money deposited with land and lot sellers and any pre-acquisition due diligence costs we incur. This enables us to control land and lot positions with limited capital investment in order to substantially reduce the risks associated with land ownership and development.

We directly acquire almost all of our land and lot positions. We are a party to a number of joint ventures, all of which are consolidated in our financial statements.



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We attempt to mitigate our exposure to real estate inventory risks by:

- Managing our supply of land/lots controlled (owned and optioned) based on anticipated future home closing levels;
- Monitoring market and demographic trends, housing preferences and related economic developments, based on the quality of schools, new job opportunities and local growth initiatives;
- Utilizing land/lot option contracts, where possible;
- Seeking to acquire developed lots which are substantially ready for home construction, where possible;
- Limiting the size of acquired land parcels to smaller tracts, where possible, and controlling our investments in land acquisition, land development and housing inventory to match the anticipated housing demand;
- Generally commencing construction of custom features or optional upgrades on homes under contract only after the buyer's receipt of mortgage approval and receipt of satisfactory deposits from the buyer; and
- Monitoring and managing the number of speculative units built in each community.

### **Land Development and Home Construction**

Substantially all of our land development and home construction work is performed by subcontractors. Subcontractors typically are selected after a competitive bidding process and retained for a specific community pursuant to a contract that obligates the subcontractor to complete the scope of work at an agreed-upon price. Agreements with the subcontractors and suppliers generally are negotiated for each community. We compete with other homebuilders for qualified subcontractors, raw materials and lots in the markets where we operate. We employ land development supervisors and construction superintendents to monitor land development and home construction activities, participate in major design and building decisions, coordinate the activities of subcontractors and suppliers, review the work of subcontractors for quality and cost control and monitor compliance with zoning and building codes. In addition, our construction superintendents play a significant role in working with our homebuyers by assisting with option selection and home modification decisions, educating buyers on the construction process and instructing buyers on post-closing home maintenance.

Our home designs are selected or prepared in each of our communities to appeal to the tastes and preferences of local homebuyers. We also offer optional interior and exterior features to allow homebuyers the opportunity to enhance the basic home design and to allow us to generate additional revenue from each home sold. Construction time for our homes depends on the weather, availability of labor, materials and supplies, size of the home, and other factors. We typically complete construction of a home within three to six months.

We typically do not maintain significant inventories of land development or home construction materials, except for work in progress materials for homes under construction. Generally, the construction materials used in our operations are readily available from numerous sources.

### **Marketing and Sales**

We market and sell our homes primarily through commissioned employees. A significant number of our home closings also involve an independent real estate broker representing the buyer. We typically conduct home sales from sales offices and/or furnished model homes in each community. Our sales personnel assist prospective homebuyers by providing floor plans and price information, demonstrating the features and layouts of model homes and assisting with the selection of options and other custom features. We train and inform our sales personnel on the availability of financing, construction schedules, and marketing and advertising plans. As market conditions warrant, to be competitive, we may provide potential homebuyers with one or more of a variety of incentives, including closing cost assistance, discounts and free upgrades.

We market our homes and communities to prospective homebuyers and real estate brokers through electronic media, including email, social networking sites and our company website, as well as brochures, flyers, newsletters and promotional events. We also use billboards, radio, magazine and newspaper advertising as necessary. We attempt to position our communities in locations that are desirable to potential homebuyers and convenient to or visible from local traffic patterns, which helps to reduce advertising costs. Model homes play a substantial role in our marketing efforts, and we expend significant effort and resources to create an attractive atmosphere in our model homes.

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We manage inventory to build a limited number of speculative homes in our communities. Speculative homes enhance our marketing and sales efforts to prospective homebuyers who are relocating to these markets, as well as to independent brokers, who often represent homebuyers requiring a home within a short time frame. We determine our speculative homes strategy based on local market factors, such as new job growth, the number of job relocations, housing demand and supply (including new homes), seasonality, current sales contract cancellation trends and our past experience in the local markets. We maintain a low level of speculative home inventory in each community based on our current and planned sales pace, and we monitor and adjust speculative home inventory on an ongoing basis as conditions warrant. Speculative homes help to provide us with opportunities to compete effectively with existing homes available in the market and improve our profits and returns on our inventory of owned lots.

### **Quality Control**

We provide our single-family and townhouse home buyers with a one-year limited warranty covering workmanship and materials. The limited warranty is transferable to subsequent buyers not under direct contract with us and requires that all home buyers agree to the definitions and procedures set forth in the warranty. Typically, we provide our condominium home buyers with a two-year limited warranty, or as required by statute. In addition, we periodically provide structural warranty of longer durations pursuant to applicable statutory requirements. From time to time, we assess the appropriateness of our warranty reserves and adjust accruals as necessary. Based on historical experience and when deemed appropriate by us, we will accrue additional warranty reserves. We require our general contractors and sub-contractors to warrant the work they perform and they are contractually obligated to correct defects in their work that arise during the applicable warranty period. We seek to minimize our risk associated with warranty repairs through our quality assurance program and by selecting contractors with good reputations, sufficient resources and adequate insurance. It is typical that there is a gap in the warranty coverage provided by contractors and by home builders, which we have self-insured in the past. It is our experience that the warranty claims which we have self-insured have not been significant in nature, but we periodically obtain additional insurance to protect against this unquantifiable risk.

### **Competition**

The real estate development industry is highly competitive. We compete primarily on the basis of price, location, design, quality, service and reputation. We compete with small private builders and large regional or national builders. In addition to competing for home buyers and renters, builders compete for construction financing, raw materials and skilled labor. Additionally, under normal market conditions, competition exists within the industry for prime development sites, especially those where developed building lots are available under option lot contracts. We compete with other local, regional and national builders in all of these areas. Many of our competitors have significantly greater financial, sales and marketing and other resources than we have. Some of the national builders that we compete against include Pulte Homes, Beazer Homes, M/I Homes, DR Horton, Toll Brothers, CalAtlantic Homes, NVR, K. Hovnanian and Lennar.

Competition among home builders and multi-family developers is often specific to product types being offered in a particular area. Often we do not find ourselves competing with the large national developers in the urban communities where we develop high-rise and mixed use products. This is primarily because most national builders tend to focus on a narrower range of products than what we offer. We believe this provides us with a distinct advantage in terms of attracting potential home buyers and renters in certain areas. We believe the factors that home buyers consider in deciding whether to purchase or rent from us include the product type, location, value quality, and reputation of the developer. We believe that our projects and product offerings compare favorably on these factors, and we continually strive to maintain our reputation of building quality products.

### **Governmental Regulation and Environmental Matters**

We are subject to various local, state and federal statutes, ordinances, rules and regulations concerning zoning, building design, construction, density requirements and similar matters. We and our competitors may also be subject to periodic delays or may be precluded entirely from developing in certain communities due to building moratoriums or “slow-growth” or “no-growth” initiatives that could be implemented in the future in the states where we operate. Local and state governments also have broad discretion regarding the imposition of development fees for projects in their jurisdiction.

We and our competitors are also subject to a variety of local, state and federal statutes, ordinances, rules and regulations concerning protection of the environment. Some of the laws to which we and our properties are subject to may impose requirements concerning development in waters of the United States, including wetlands, the closure of water supply wells, management of asbestos-containing materials, exposure to radon and similar issues. The particular environmental laws that apply to any given community vary based on several factors, including but not limited to the environmental conditions related to a particular property and the present and former uses of the property. These environmental laws may result in delays, may cause us and our competitors to incur substantial compliance related costs, and may prohibit or severely restrict development in certain environmentally sensitive areas. To date, environmental laws have not had a material adverse impact on our operations.

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**Technology and Intellectual Property**

We utilize our technology infrastructure to facilitate marketing of our projects. Through our web site, *www.comstockhomes.com*, our customers and prospective customers receive automatic electronic communications from us on a regular basis. Our corporate marketing directors work with in-house marketing and technology specialists to develop advertising and public relations programs for each project that leverage our technology capabilities. During 2016, we continued utilization of media and internet based marketing platforms, primarily in lieu of print advertisements. We believe that the home buying population will continue to increase its reliance on information available on the internet to help guide its home buying decision. Accordingly, through our marketing efforts, we will continue to seek to leverage this trend to lower per sale marketing costs while maximizing potential sales.

Our Chief Executive Officer and Chairman of the Board, Christopher Clemente, has licensed his ownership interest in the “Comstock” brand and trademark to us in perpetuity and free of charge. We routinely take steps, and occasionally take legal action, to protect it against infringement from third parties. Mr. Clemente has retained the right to continue to use the “Comstock” brand and trademark including for real estate development projects in our current or future markets that are unrelated to the Company but excluding products developed as for sale homes.

Although significant changes in market conditions have impacted our seasonal patterns in the past and could do so again in the future, we generally have more homes under construction, close more homes and have greater revenues and operating income in the third and fourth quarters of our fiscal year. The seasonal activity increases our working capital requirements for our homebuilding operations during the third and fourth quarters of our fiscal year. As a result of seasonal activity, our quarterly results of operations and financial position at the end of a particular fiscal quarter are not necessarily representative of the balance of our fiscal year.

**Employees**

At December 31, 2016, we had 34 full-time and 2 part time employees. Our employees are not represented by any collective bargaining agreements and we have never experienced a work stoppage. We believe we have good relations with our employees.

**Executive Officers of the Registrant**

Our executive officers and other management employees and their respective ages and positions as of December 31, 2016 are as follows:

<u>Name</u>	<u>Age</u>	<u>Current Position</u>
Christopher Clemente	57	Chairman and Chief Executive Officer
Christopher Conover	35	Chief Financial Officer
Jubal R. Thompson	47	General Counsel and Secretary

*Christopher Clemente* founded Comstock in 1985 and has been a director since May 2004. Since 1992, Mr. Clemente has served as our Chairman and Chief Executive Officer. Mr. Clemente has over 30 years of experience in all aspects of real estate development and homebuilding, and more than 30 years of experience as an entrepreneur.

*Christopher Conover* was named our Chief Financial Officer effective September 2016. Prior to that, Mr. Conover served in various positions in the Company, most recently as Interim Chief Financial Officer. Mr. Conover joined the Company in January 2012 and prior to joining the Company, served seven years in public accounting in assurance services developing extensive experience providing audit and highly technical consulting services for real estate companies of various sizes and asset classes.

*Jubal R. Thompson* has served as our General Counsel since October 1998 and our Secretary since December 2004. Mr. Thompson has significant experience in the areas of real estate acquisitions and dispositions, real estate and corporate finance, corporate governance, mergers and acquisition and risk management.

**Item 1A. Risk Factors**

**Risks Relating to Our Business**

We engage in construction and real estate activities, which involve a high degree of risk. Our business, financial condition, operating results and cash flows may be impacted by a number of factors. A discussion of the risks associated with these factors is included below.

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***Our operations require significant capital and our continuing operations and future growth depends on the availability of construction, acquisition, and development loans and project level capital raises which may not be available at the time it is needed or at favorable terms.***

The real estate development industry is capital intensive and requires significant expenditures for operations, land purchases, land development and construction as well as potential acquisitions of other homebuilders or developers. In order to maintain our operations, we will need to obtain additional financing. These funds can be generated through public or private debt or equity financings, operating cash flow, additional bank borrowings or from strategic alliances or joint ventures. In light of our current financial condition, we may not be successful in obtaining additional funds in a timely manner, on favorable terms or at all. Moreover, certain of our bank financing agreements contain provisions that limit the type and amount of debt we may incur in the future without our lenders' consent. We have historically utilized construction, acquisition and development loans to finance our projects. These credit facilities tend to be project-oriented and generally have variable rates and require significant management time to administer. Further, these types of financings are typically characterized by short-term loans, which are subject to call. The availability of borrowed funds, especially for land acquisition and construction financing, has been greatly reduced, and lenders may require us to invest increased amounts of equity in a project in connection with both new loans and the extension of existing loans. In addition, we may need to further refinance all or a portion of our debt on or before maturity, which we may not be able to do on favorable terms or at all. Furthermore, if financial institutions discontinue providing these facilities to us, we would lose our primary source of financing for our operations or the cost of retaining or replacing these credit facilities could increase dramatically. If we do not have access to additional capital or funds to continue our operations or grow our business, we may be required to delay, scale back or abandon some or all of our operating strategies or reduce capital expenditures and the size of our operations. As a result, such an inability to access additional capital would likely cause us to experience a material adverse effect on our business, results of operations and financial condition.

***Our ability to sell homes and, accordingly, our results of operations, will be affected by the availability of mortgage financing to potential home buyers.***

Most home buyers finance their purchase of new homes through third-party mortgage financing. As a result, residential real estate demand is adversely affected by increases in interest rates and decreases in the availability of consumer mortgage financing. Increased monthly mortgage costs and the continued constraints on obtaining financing for potential home buyers have depressed the market for new homes. For instance, regulations which tighten underwriting standards have made mortgage financing more difficult to obtain for some of our entry-level home buyers, which has led to decreased demand from these buyers. Even if potential home buyers do not experience difficulty securing mortgage financing for their purchases of new homes, increases in interest rates and decreased mortgage availability or significant alterations to mortgage product types could make it harder for them to sell their existing homes. This could continue to adversely affect our operating results and financial condition.

***Fluctuations in market conditions may affect our ability to sell our land and home inventories at expected prices, or at all, which could adversely affect our revenues, earnings and cash flows.***

We could be subject to significant fluctuations in the market value of our land and home inventories. We must continually locate and acquire new tracts of land if we are to support growth in our homebuilding operations. There is a lag between the time we acquire the land and the time that we can bring communities built on that land to market. This lag time varies from site to site as it is impossible to predict with any certainty the length of time it will take to obtain governmental approvals and building permits. The risk of owning undeveloped land, developed land and homes can be substantial. The market value of undeveloped land, buildable lots and housing inventories can fluctuate significantly as a result of changing economic and market conditions. Inventory carrying costs can be significant and can result in losses in a poorly performing development or market. Material write-downs of the estimated value of our land and home inventories could occur if market conditions deteriorate or if we purchase land or build home inventories at higher prices during stronger economic periods and the value of those land or home inventories subsequently declines during weaker economic periods. We could also be forced to sell homes, land or lots for prices that generate lower profit than we anticipated, or at a loss, and may not be able to dispose of an investment in a timely manner when we find dispositions advantageous or necessary. Furthermore, a continued decline in the market value of our land or home inventories may give rise to additional impairments of our inventory and write-offs of contract deposits and feasibility cost, which may result in a breach of financial covenants contained in one or more of our credit facilities, and possibly cause a default under those credit facilities. Defaults in these credit facilities are often times the responsibility of Comstock, as Comstock is the guarantor of most of its subsidiaries debts.

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During 2016 and 2015, we evaluated all of our projects, to the extent of the existence of any impairment indicators requiring evaluation to determine if carrying amounts were recoverable by evaluating discount rates, sales prices, absorption and our analysis of the best approach to marketing our projects for sale. During 2016, as a result of our impairment analysis, the Company wrote off \$2.4 million in feasibility, site securing, predevelopment, design, carry costs and related costs for certain of our communities in the Washington, D.C. metropolitan area due to unsuccessful negotiations and changes in market conditions. Additionally, during 2016, the Company, through its subsidiaries, and the land seller of a community in the Washington, D.C. area entered into a settlement agreement, and the Company received a refund of \$0.7 million representing a portion of the deposit deemed impaired during the Company's impairment analysis in 2015.

During 2015, as a result of our impairment analysis, the Company wrote off \$2.8 million in feasibility, site securing, predevelopment, design, carry costs and related costs for certain communities in the Washington, D.C. metropolitan area due to inventory delivery delays and inefficiencies which led to the Company re-evaluating the lot takedown strategy. The inventory was deemed impaired in December 2015 and was written down due to changes made to the scheduled lot take down strategy, offers received for the properties or changes in zoning requirement.

***Our ability to use our Net Operating Losses (“NOLs”) and, in certain circumstances, future built-in losses and depreciation deductions can be negatively affected if there is an “ownership change” as defined under Section 382 of the Internal Revenue Code.***

We currently have approximately \$138 million in federal and state NOLs with a potential value of up to approximately \$54 million in tax savings. These deferred tax assets are currently fully reserved. If unused, these NOLs will begin expiring in 2027. Under Internal Revenue Code Section 382 rules, if a change of ownership is triggered, our NOL asset and possibly certain other deferred tax assets may be impaired. We estimate that as of December 31, 2016, the cumulative shift in the Company's stock would not cause an inability to utilize any of our NOLs.

The Company's ability to use its NOLs (and in certain circumstances, future built-in losses and depreciation deductions) can be negatively affected if there is an “ownership change” as defined under Internal Revenue Code Section 382. In general, an ownership change occurs whenever there is a shift in ownership by more than 50 percentage points by one or more 5% stockholders over a specified time period (generally three years). Given Internal Revenue Code Section 382's broad definition, an ownership change could be the unintended consequence of otherwise normal market trading in the Company's stock that is outside of the Company's control. In an effort to preserve the availability of these NOLs, in 2011, Comstock adopted an Internal Revenue Code Section 382 rights agreement, which expired in May 2014. In June 2015, the Company's stockholder's approved a new Section 382 rights agreement (the “Rights Agreement”) to protect stockholder value. The Rights Agreement expires on March 27, 2025. The Rights Agreement was adopted to reduce the likelihood of such an unintended “ownership change”, thus preserving the value of these tax benefits.

***Home prices and sales activities in the Washington, D.C. market have a large impact on our results of operations because we primarily conduct our business in this market.***

We currently develop and sell homes primarily in the Washington, D.C. market; consequently, home prices and sales activities in the Washington, D.C. geographic market have a large impact on our results of operations. Although demand in this area historically has been strong, the historical slowdowns in residential real estate demand and continued constraints on obtaining consumer mortgage financing continue to reduce the likelihood of consumers seeking to purchase new homes. As a result of the specific market and general economic conditions, potential customers may be less willing or able to buy our homes, or we may take longer or incur more costs to build them. We may not be able to recapture increased costs by raising prices in many cases because of market conditions or because we fix our prices in advance of delivery by signing home sales contracts. We may be unable to change the mix of our homes or our offerings or the affordability of our homes to maintain our margins or satisfactorily address changing market conditions in other ways. Our limited geographic diversity means that adverse general economic, weather or other conditions in this geographic market could adversely affect our results of operations and cash flows or our ability to grow our business.

***Because our business depends on the acquisition of new land, the potential limitations on the supply of land in our geographic market could reduce our revenues or negatively impact our results of operations and financial condition.***

We experience competition for available land and developed home sites in the Washington, D.C. market. We have experienced competition for home sites from other, better capitalized, home builders. Our ability to continue our homebuilding activities over the long term depends upon our ability to locate and acquire suitable parcels of land or developed home sites to support our homebuilding operations. If competition for land increases, the cost of acquiring it may rise, and the availability of suitable parcels at acceptable prices may decline. Any need for increased pricing could increase the rate at which consumer demand for our homes declines and, consequently, reduce the number of homes we sell and lead to a decrease in our revenues, earnings and cash flows.

***Our business is subject to governmental regulations that may delay, increase the cost of, prohibit or severely restrict our development and homebuilding projects and reduce our revenues and cash flows.***

We are subject to extensive and complex laws and regulations that affect the land development and homebuilding processes, including laws and regulations related to zoning, permitted land uses, levels of density (number of dwelling units per acre), building design, access to water and other utilities, water and waste disposal and use of open spaces. In addition, we and our subcontractors are subject to laws and regulations relating to worker health and safety. We are also subject to a variety of local, state and federal laws and regulations concerning the protection of health and the environment. In some of our markets, we are required to pay environmental impact fees, use energy saving construction materials and give commitments to provide certain infrastructure such as roads and sewage systems. We are also subject to real estate taxes and other local government fees on real estate purchases. We must also obtain permits and approvals from local authorities to complete residential development or home construction. The laws and regulations under which we and our subcontractors operate, and our and their obligations to comply with them, may result in delays in construction and development, cause us to incur substantial compliance and other increased costs, and prohibit or severely restrict development and homebuilding activity in certain areas in which we operate. If we are unable to continue to develop communities and build and deliver homes as a result of these restrictions or if our compliance costs increase substantially, our revenues, earnings and cash flows may be reduced.

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### ***Cities and counties in which we operate have adopted, or may adopt, slow or no-growth initiatives that would reduce our ability to build and sell homes in these areas and could adversely affect our revenues, earnings and cash flows.***

From time to time, certain cities and counties in which we operate have approved, and others in which we operate may approve, various “slow-growth” or “no-growth” initiatives and other similar ballot measures. Such initiatives restrict development within localities by, for example, limiting the number of building permits available in a given year. Approval of slow- or no-growth measures could reduce our ability to acquire land, obtain building permits and build and sell homes in the affected markets and could create additional costs and administration requirements, which in turn could have an adverse effect on our revenues, earnings and cash flows. Increased regulation in the housing industry increases the time required to obtain the necessary approvals to begin construction and has prolonged the time between the initial acquisition of land or land options and the commencement and completion of construction. These delays increase our costs, decrease our profitability and increase the risks associated with the land inventories we maintain.

Municipalities may restrict or place moratoriums on the availability of utilities, such as water and sewer taps. If municipalities in which we operate take actions like these, it could have an adverse effect on our business by causing delays, increasing our costs or limiting our ability to build in those municipalities. This, in turn, could reduce the number of homes we sell and decrease our revenues, earnings and cash flows.

### ***Limitations on, or reduction or elimination of, tax benefits associated with owning a home could have an adverse effect on the demand for our home products.***

Existing tax laws generally permit significant expenses associated with owning a home, to be deducted for the purpose of calculating an individual’s federal, and in many cases, state, taxable income, primarily including mortgage interest expenses and real estate taxes. Proposals have been publicly discussed to limit mortgage interest deductions and to limit the exclusion of gain from the sale of a principal residence. If such proposals were enacted without offsetting provisions, the after-tax cost of owning a home would increase for many of our potential customers and may have an adverse effect on the homebuilding industry in general, as the loss or reduction of homeowner tax deductions could decrease the demand for new homes.

### ***The competitive conditions in the homebuilding industry could increase our costs, reduce our revenues and earnings and otherwise adversely affect our results of operations and cash flows.***

The homebuilding industry is highly competitive and fragmented. We compete with a number of national, regional and local builders for customers, undeveloped land and home sites, raw materials and labor. For example, in the Washington, D.C. market, we compete against multiple publicly-traded national home builders, and many privately-owned regional and local home builders. We do not compete against all of the builders in all of our product types or submarkets, as some builders focus on particular types of projects within those markets, such as large estate homes, that are not in competition with our projects.

We compete primarily on the basis of price, location, design, quality, service and reputation. Some of our competitors have greater financial resources, more established market positions and better opportunities for land and home site acquisitions, greater amounts of unrestricted cash resources on hand, and lower costs of capital, labor and material than us. The competitive conditions in the homebuilding industry could, among other things:

- make it difficult for us to acquire suitable land or home sites in desirable locations at acceptable prices and terms, which could adversely affect our ability to build homes;
- require us to increase selling commissions and other incentives, which could reduce our profit margins;
- result in delays in construction if we experience delays in procuring materials or hiring trades people or laborers;
- result in lower sales volume and revenues; and
- increase our costs and reduce our earnings.

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Our homes also compete with sales of existing homes and condominiums, foreclosure sales of existing homes and condominiums and available rental housing. A continued oversupply of competitively priced resale, foreclosure or rental homes in our markets could adversely affect our ability to sell homes profitably.

***Increases in our cancellation rate could have a negative impact on our home sales revenue and homebuilding margins.***

The cancellation rate of buyers who contracted to buy a home from us but did not close escrow (as a percentage of overall orders) was approximately 7% and 15% during the years ended December 31, 2016 and 2015, respectively. Home order cancellations negatively impact the number of closed homes, net new home orders, home sales revenue and results of operations, as well as the number of homes in backlog. Home order cancellations can result from a number of factors, including declines or slow appreciation in the market value of homes, increases in the supply of homes available to be purchased, increased competition, higher mortgage interest rates, homebuyers' inability to sell their existing homes, homebuyers' inability to obtain suitable financing, including providing sufficient down payments, and adverse changes in economic conditions including unemployment. Upon a home order cancellation, the homebuyer's escrow deposit is returned to the homebuyer (other than certain miscellaneous deposits, which we retain). An increase in the level of our home order cancellations could have a negative impact on our business, prospects, liquidity, financial condition and results of operations.

***We are dependent on the services of certain key employees, and the loss of their services could harm our business.***

Our success largely depends on the continuing services of certain key employees, including Christopher Clemente, our Chairman and Chief Executive Officer; Christopher Conover, our Chief Financial Officer; and Jubal Thompson, our General Counsel and Secretary. Our continued success also depends on our ability to attract and retain qualified personnel. We believe that Messrs. Clemente, Conover and Thompson each possess valuable industry and Company knowledge, experience and leadership abilities that would be difficult in the short term to replicate. The loss of these or other key employees could harm our operations, business plans and cash flows.

***Our sources of liquidity are limited and may not be sufficient to meet our needs.***

We are largely dependent on private placements of debt and equity (which rely heavily on insider participation) to cover our operating expenses and/or fund our liquidity needs. If we are unable to secure capital from private placements, we may be forced to reduce our capital expenditures, delay investments, seek other forms of financing or restructure our indebtedness. These alternative measures may not be successful or may not be on desirable terms that could have an adverse impact on our operations.

***A portion of our business plan involves and may continue to involve mixed-use developments and high-rise projects with which we have less experience.***

We have been involved in and continue to pursue the construction and development of mixed-use and high-rise residential projects. Our experience is largely based on smaller wood-framed structures that are less complex than high-rise construction or the development of mixed-use projects. A mixed-use project is one that integrates residential and non-residential uses in the same structure or in close proximity to each other, on the same land. As we continue to expand into these new product types, we expect to encounter operating, marketing, customer service, warranty and management challenges with which we have less familiarity. If we are unable to successfully manage the challenges of this portion of our business, we may incur additional costs and our results of operations and cash flows could be adversely affected.

***If we experience shortages of labor or supplies or other circumstances beyond our control, there could be delays or increased costs associated with developing our projects, which would adversely affect our operating results and cash flows.***

We, from time to time, may be affected by circumstances beyond our control, including:

- work stoppages, labor disputes and shortages of qualified trades people, such as carpenters, roofers, electricians and plumbers;
- lack of availability of adequate utility infrastructure and services;
- increases in transportation costs for delivery of materials;
- our need to rely on local subcontractors who may not be adequately capitalized or insured; and
- shortages or fluctuations in prices of building materials.

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These difficulties have caused and likely will cause unexpected construction delays and short-term increases in construction costs. In an attempt to protect the margins on our projects, we often purchase certain building materials with commitments that lock in the prices of these materials for 90 to 120 days or more. However, once the supply of building materials subject to these commitments is exhausted, we are again subject to market fluctuations and shortages. We may not be able to recover unexpected increases in construction or materials costs by raising our home prices because, typically, the price of each home is established at the time a customer executes a home sale contract. Furthermore, sustained increases in construction and material costs may, over time, erode our profit margins and may adversely affect our results of operations and cash flows.

***We depend on the availability and skill of subcontractors and their willingness to work with us.***

Substantially all of our land development and construction work is done by subcontractors with us acting as the general contractor or by subcontractors working for a general contractor we select for a particular project. Accordingly, the timing and quality of our land development and construction depends on the availability and skill of those subcontractors. We do not have long-term contractual commitments with subcontractors or suppliers. Although we believe that our relationships with our suppliers and subcontractors are good, we cannot assure that skilled subcontractors will continue to be available at reasonable rates and in the areas in which we conduct our operations. The inability to contract with skilled subcontractors or general contractors at reasonable costs on a timely basis could limit our ability to build and deliver homes and could erode our profit margins and adversely affect our results of operations and cash flows.

***Construction defect and product liability litigation and claims that arise in the ordinary course of business may be costly or negatively impact sales, which could adversely affect our results of operations and cash flows.***

Our homebuilding business is subject to construction defect and product liability claims arising in the ordinary course of business. These claims are common in the homebuilding industry and can be costly. Among the claims for which developers and builders have financial exposure are property damage, environmental claims and bodily injury claims and latent defects that may not materialize for an extended period of time. Damages awarded under these suits may include the costs of remediation, loss of property and health-related bodily injury. In response to increased litigation, insurance underwriters have attempted to limit their risk by excluding coverage for certain claims associated with environmental conditions, pollution and product and workmanship defects. As a developer and a home builder, we may be at risk of loss for mold-related property, bodily injury and other claims in amounts that exceed available limits on our comprehensive general liability policies and those of our subcontractors. In addition, the costs of insuring against construction defect and product liability claims are high and the amount of coverage offered by insurance companies is limited. Uninsured construction defect, product liability and similar claims, claims in excess of the limits under our insurance policies, defense costs and the costs of obtaining insurance to cover such claims could have a material adverse effect on our revenues, earnings and cash flows.

***Increased insurance risk could negatively affect our business, results of operations and cash flows.***

Insurance and surety companies frequently reassess many aspects of their business and, as a result, may take actions that could negatively affect our business. These actions could include increasing insurance premiums, requiring higher self-insured retentions and deductibles, requiring additional collateral on surety bonds, reducing limits, restricting coverage's, imposing exclusions, and refusing to underwrite certain risks and classes of business. Any of these actions may adversely affect our ability to obtain appropriate insurance coverage at reasonable costs, which could have a material adverse effect on our business. Additionally, coverage for certain types of claims, such as claims relating to mold, is generally unavailable. Further, we rely on surety bonds, typically provided by insurance companies, as a means of limiting the amount of capital utilized in connection with the public improvement sureties that we are required to post with governmental authorities in connection with land development and construction activities. The cost of obtaining these surety bonds is, from time to time, unpredictable and these surety bonds may be unavailable to us for new projects. These factors can delay or prohibit commencement of development projects and adversely affect revenue, earnings and cash flows.

***We are subject to warranty claims arising in the ordinary course of business that could be costly.***

We provide service warranties on our homes for a period of one year or more following closing and provide warranties on occasion as required by applicable statutes for extended periods. We self-insure our warranties from time to time and reserve an amount we believe will be sufficient to satisfy any warranty claims on homes we sell and periodically purchase insurance related coverage to cover the costs associated with potential claims. Additionally, we attempt to pass much of the risk associated with potential defects in materials and workmanship on to the subcontractors performing the work and the suppliers and manufacturers of the materials and their insurance carriers. In such cases, we still may incur unanticipated costs if a subcontractor, supplier, manufacturer or its insurance carrier fails to honor its obligations regarding the work or materials it supplies to our projects. If the amount of actual claims materially exceeds our aggregate warranty reserves, any available insurance coverage and/or the amounts we can recover from our subcontractors and suppliers, our results of operations, cash flows, and financial condition may be adversely affected.



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***Our business, results of operations and financial condition may be affected by adverse weather conditions or natural disasters.***

Adverse weather conditions, such as extended periods of rain, snow or cold temperatures, and natural disasters, such as hurricanes, tornadoes, floods and fires, can delay completion and sale of homes, damage partially complete or other unsold homes in our inventory and/or decrease the demand for homes or increase the cost of building homes. To the extent that natural disasters or adverse weather events occur, our business and results may be adversely affected. To the extent our insurance is not adequate to cover business interruption losses or repair costs resulting from these events, our results of operations and financial conditions may be adversely affected.

***We are subject to certain environmental laws and the cost of compliance could adversely affect our business, results of operations and cash flows.***

As a current or previous owner or operator of real property, we may be liable under federal, state, and local environmental laws, ordinances and regulations for the costs of removal or remediation of hazardous or toxic substances on, under or in the properties or in the proximity of the properties we develop. These laws often impose liability whether or not we knew of, or were responsible for, the presence of such hazardous or toxic substances. The cost of investigating, remediating or removing such hazardous or toxic substances may be substantial. The presence of any such substance, or the failure to promptly remediate any such substance, may adversely affect our ability to sell the property, to use the property for our intended purpose, or to borrow funds using the property as collateral. In addition, the construction process involves the use of hazardous and toxic materials. We could be held liable under environmental laws for the costs of removal or remediation of such materials. In addition, our existing credit facilities also restrict our access to the loan proceeds if the properties that are used to collateralize the loans are contaminated by hazardous substances and require us to indemnify the bank against losses resulting from such occurrence for significant periods of time, even after the loan is fully repaid.

***If we are not able to develop our communities successfully, our results of operations, cash flows, and financial condition could be adversely impacted.***

Before a community generates any revenues, material expenditures are required to acquire land, to obtain development approvals and to construct significant portions of project infrastructure, amenities, model homes and sales facilities. It can take a year or more for a community development to achieve cumulative positive cash flow. Our inability to develop and market our communities successfully and to generate positive cash flows from these operations in a timely manner could have a material adverse effect on our ability to service our debt and to meet our working capital requirements.

***Our operating results, including revenue, earnings, and losses, have varied over time due to a number of conditions. If we are unable to successfully manage these conditions or factors, our operating results may continue to vary and may also suffer.***

The homebuilding industry is cyclical and we expect to experience variability in our revenues and net income. The volume of sales contracts and closings typically varies from month to month and from quarter to quarter depending on several factors, including the stages of development of our projects, the uncertain timing and cost of real estate closings, weather and other factors beyond our control. In the early stages of a project's development, we incur significant start-up costs associated with, among other things, project design, land acquisition and development, construction and marketing expenses. Since revenues from sales of properties are generally recognized only upon the transfer of title at the closing of a sale, no revenue is recognized during the early stages of a project unless land parcels or residential home sites are sold to other developers. Periodic sales of properties may be insufficient to fund operating expenses. Further, if sales and other revenues are not adequate to cover operating expenses, we will be required to seek sources of additional operating funds. Accordingly, our financial results will vary from community to community and from time to time.

***Acts of war or terrorism may seriously harm our business.***

Acts of war, any outbreak or escalation of hostilities between the United States and any foreign power or acts of terrorism may cause disruption to the entire U.S. economy, or the Washington, D.C. metro area, cause shortages of building materials, increase costs associated with obtaining building materials, result in building code changes that could increase costs of construction, affect job growth and consumer confidence, or cause economic changes that we cannot anticipate, all of which could reduce demand for our homes and adversely impact our revenues, earnings and cash flows.

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***We do not own the Comstock brand or trademark, but use the brand and trademark pursuant to the terms of a perpetual license granted by Christopher Clemente, our Chief Executive Officer and Chairman of the Board.***

Our Chief Executive Officer and Chairman of the Board, Christopher Clemente, has licensed his ownership interest in the “Comstock” brand and trademark to us in perpetuity and free of charge. We routinely take steps, and occasionally take legal action, to protect it against infringement from third parties. Mr. Clemente has retained the right to continue to use the “Comstock” brand and trademark individually and through his affiliates, with respect to real estate development projects in our current or future markets that are unrelated to the Company but excluding products developed as new homes for sale. We will be unable to control the quality of projects undertaken by Mr. Clemente or others using the “Comstock” brand and trademark and therefore will be unable to prevent any damage to its goodwill that may occur. Consequently, our brand’s reputation could be damaged which could have a material adverse effect on our business, operations and cash flows.

***Information technology failures or data security breaches could harm our business.***

We use information technology and other computer resources to perform important operational and marketing activities and to maintain our business records. Certain of these resources are provided to us and/or maintained by data hosting facilities and third party service providers to assist in conducting our day to day operations. Our computer systems and those of our third-party providers are subject to damage or interruption from power outages, computer and telecommunication failures, computer viruses, hackers, unauthorized accesses, IT security breaches, natural disasters, usage errors by our employees or contractors, etc. Although we have implemented administrative and technical controls to address, mitigate and minimize these IT security issues, a significant and extended disruption of or breach of security related to our computer systems and third party service providers may damage our reputation and cause us to lose customers, sales and revenue, result in the unintended misappropriation of proprietary, personal and confidential information and require us to incur significant expense to remediate or otherwise resolve these issues.

### **Risks Related to our Common Stock and Level of Indebtedness**

***Our level of indebtedness may harm our financial condition and results of operations.***

Our consolidated indebtedness as of December 31, 2016 is approximately \$43.7 million, net of discounts and deferred financing charges, and matures at different periods in fiscal years 2017 and 2018. We are in active discussions with our lenders with respect to these maturities and are seeking extensions and modifications to the credit facilities and loans as necessary. If, for any reason, we are unable to refinance, extend or modify the existing indebtedness, these projects may be in default of their existing obligations, which may result in a foreclosure on the project collateral and loss of the project. Any such events could have a material adverse effect on our business, financial condition and results of operations.

Our level of indebtedness could impact our future operations in many important ways, including, without limitation, by:

- Requiring a portion of our cash flows from operations to be dedicated to the payment of any interest or amortization required with respect to outstanding indebtedness;
- Increasing our vulnerability to adverse changes in general economic and industry conditions, as well as to competitive pressure; and
- Limiting our ability to obtain additional financing for working capital, acquisitions, capital expenditures, general corporate and other purposes.

At the scheduled maturity of our credit facilities or in the event of an acceleration of a debt facility following an event of default, the entire outstanding principal amount of the indebtedness under such facility, together with all other amounts payable thereunder from time to time, will become due and payable. It is possible that we may not have sufficient funds to pay such obligations in full at maturity or upon such acceleration. If we default and are not able to pay any such obligations due, our lenders have liens on substantially all of our assets and could foreclose on our assets in order to satisfy our obligations.

***Our stock price has been volatile and we expect that it will continue to be volatile.***

Our stock price has been volatile, and we expect it will continue to be volatile. During the year ended December 31, 2016, the closing price of our common stock ranged from a high of \$2.25 to a low of \$1.50. The volatility of our stock price may also be due to many factors including:

- quarterly variations in our operating results;
- general conditions in the homebuilding industry;

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- interest rate changes;
- changes in the market's expectations about our operating results;
- our operating results failing to meet the expectation of securities analysts or investors in a particular period;
- changes in financial estimates and recommendations by securities analysts concerning our Company or of the homebuilding industry in general;
- operating and stock price performance of other companies that investors deem comparable to us;
- news reports relating to trends in our markets;
- changes in laws and regulations affecting our business;
- material announcements by us or our competitors;
- material announcements by our construction lenders or the manufacturers and suppliers we use;
- sales of substantial amounts of Class A common stock by our directors, executive officers or significant stockholders or the perception that such sales could occur; and
- general economic and political conditions such as recessions and acts of war or terrorism.

Investors in our Class A common stock may not be able to resell their shares of Class A common stock following periods of volatility because of the market's adverse reaction to the volatility of the stock price. Our Class A common stock may not trade at the same levels as the stock of other homebuilders, and the market in general may not sustain its current prices.

### ***We may not be able to maintain compliance with The NASDAQ Capital Market's continued listing requirements.***

Our Class A common stock is listed on The NASDAQ Capital Market. In order to maintain the listing of our Class A common stock on The NASDAQ Capital Market, we must meet minimum financial, operating and other requirements, including requirements for a minimum amount of capital, a minimum price per share and active operations. We may fail to satisfy certain of these listing requirements. In the past, we have at times not met the minimum trading price and stockholders' equity amount required for continued listing on the NASDAQ Capital Market. We have taken steps to remedy these deficiencies, including by completing a reverse stock split to increase our trading price. However, if we fail to satisfy these or other continued listing requirements, we would be required to take steps to satisfy the applicable continued listing requirement or suffer delisting from The NASDAQ Capital Market. A delisting of our Class A common stock could adversely affect the market liquidity of our common stock, our ability to obtain financing and our ability to fund our operations.

### ***Investors in our Class A common stock may experience dilution with the future issuance of stock, exercise of stock options and warrants, the grant of restricted stock and issuance of stock in connection with our capital raising transactions and acquisitions of other companies.***

From time to time, we have issued and we will continue to issue stock options or restricted stock grants to employees and non-employee directors pursuant to our equity incentive plan. We expect that these options or restricted stock grants will generally vest commencing one year from the date of grant and continue vesting over a four-year period. Investors may experience dilution as the options vest and are exercised by their holders and the restrictions lapse on the restricted stock grants. In addition, we may issue stock to raise capital to fund our growth initiatives, in connection with acquisitions of other companies, or warrants in connection with the settlement of obligations and or indebtedness with vendors and suppliers, which may result in investors experiencing dilution.

### ***Substantial sales of our Class A common stock, or the perception that such sales might occur, could depress the market price of our Class A common stock.***

A substantial amount of the shares of our Class A common stock are eligible for immediate resale in the public market. Any sales of substantial amounts of our Class A common stock in the public market, or the perception that such sales might occur, could depress the market price of our Class A common stock.

### ***The holders of our Class B common stock exert control over us and thus limit the ability of other stockholders to influence corporate matters.***

As of December 31, 2016, Mr. Christopher Clemente, our Chief Executive Officer, and Mr. Greg Benson, a former member of our board of directors and Chief Operating Officer owned 100% of our outstanding Class B common stock, which, together with their shares of Class A common stock, represent approximately 75% of the combined voting power of all classes of our voting stock. On March 24, 2017, Mr. Clemente and an entity wholly owned by certain officers, directors and employees of the Company entered into a series of transactions with Mr. Benson pursuant to which Mr. Benson sold all of his Class B common stock. As a result of such transactions, the shares of Class B common stock purchased by Mr. Clemente remained Class B common stock but all other shares of Class B common stock were converted to Class A common stock. As of April 17, 2017, Mr. Clemente owns 100% of our Class B common stock, which, together with his shares of Class A common stock, represent approximately 60% of the combined voting power of all classes of our voting stock. As a result, Mr. Clemente has control over the election of our board of directors and our management and policies. Mr. Clemente, also has control over all matters requiring stockholder approval, including the amendment of certain provisions of our amended and restated certificate of incorporation, the approval of any equity-based employee compensation plans and the approval of significant corporate transactions, including mergers or acquisition transactions. In light of this control, other companies could be discouraged from initiating a potential merger, takeover or any other transaction resulting in a change of control. Such a transaction potentially could be beneficial to our business or to our stockholders. This may in turn reduce the price that investors are willing to pay in the future for shares of our Class A common stock.

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### ***The limited voting rights of our Class A common stock could limit its attractiveness to investors and its liquidity and, as a result, its market value.***

The holders of our Class A common stock and Class B common stock generally have identical rights, except that holders of our Class A common stock are entitled to one vote per share and holders of our Class B common stock are entitled to 15 votes per share on all matters to be voted on by stockholders. The difference in the voting rights of the Class A common stock and Class B common stock could diminish the value of the Class A common stock to the extent that investors or any potential future purchasers of our Class A common stock ascribe value to the superior voting rights of the Class B common stock.

### ***It may be difficult for a third party to acquire us, which could inhibit stockholders from realizing a premium on their stock price.***

We are subject to the Delaware anti-takeover laws regulating corporate takeovers. These anti-takeover laws prevent Delaware corporations from engaging in business combinations with any stockholder, including all affiliates and employees of a stockholder, who owns 15% or more of the corporation's outstanding voting stock, for three years following the date that the stockholder acquired 15% or more of the corporation's voting stock unless specified conditions are met.

Our amended and restated certificate of incorporation and bylaws contain provisions that have the effect of delaying, deferring or preventing a change in control that stockholders could consider favorable or beneficial. These provisions could discourage proxy contests and make it more difficult for stockholders to elect directors and take other corporate actions. These provisions could also limit the price that investors might be willing to pay in the future for shares of our common stock. These provisions include:

- a staggered board of directors, so that it would take three successive annual meetings to replace all directors;
- a prohibition of stockholders taking action by written consent; and
- advance notice requirements for the submission by stockholders of nominations for election to the board of directors and for proposing matters that can be acted upon by stockholders at a meeting.

### ***Our issuance of shares of preferred stock could delay or prevent a change of control of us.***

Our board of directors has the authority to cause us to issue, without any further vote or action by the stockholders, up to 20,000,000 shares of Series A Junior Participating Preferred Stock, par value \$0.01 per share, in one or more series, to designate the number of shares constituting any series, and to fix the rights, preferences, privileges and restrictions thereof, including dividend rights, voting rights, rights and terms of redemption, redemption price or prices and liquidation preferences of such series. The issuance of shares of preferred stock may have the effect of delaying, deferring or preventing a change in control of us without further action by the stockholders, even where stockholders are offered a premium for their shares. The issuance of shares of preferred stock with voting and conversion rights may adversely affect the voting power of the holders of Class A common stock, including the loss of voting control. Any issuance of this type of preferred stock could impact the perception of potential future purchasers of our Class A common stock and could depress its market price.

During the period ended December 31, 2015, the Company authorized 3,000,000 shares of a new series of preferred stock designated as Series B Non-Convertible Preferred Stock (the "Series B Preferred Stock"). The shares of Series B Preferred Stock have a par value of \$0.01 per share and a stated value of \$5.00 per share. The Series B Preferred Stock has no conversion rights or voting rights other than required by applicable law. The Series B Preferred Stock earn dividends at a rate of 8.75% per annum. The dividends will accrue whether or not declared. The dividends are also cumulative and payable quarterly in arrears at the last day of each quarterly reporting period in the form of additional Series B Preferred Stock or in the sole discretion of the board of directors, in cash. On December 29, 2015, the Company issued 772,210 shares of Series B Preferred Stock in exchange for the conversion of an outstanding promissory note. On March 24, 2017, the Company and our Chief Executive Officer entered into a series of transactions which converted the Series B Preferred Stock to a newly created Series C Preferred Stock. Refer to Note 19 to the consolidated financial statements for further discussion of these transactions.

### **Item 1B. Unresolved Staff Comments**

None.

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**Item 2. Properties**

On December 31, 2009, the Company, through its affiliate, Comstock Property Management, L.C., entered into a three-year lease for approximately 7,620 square feet of office space for its corporate headquarters at 1886 Metro Center Drive, Reston, Virginia from Comstock Asset Management, L.C., an affiliate, wholly-owned by our Chief Executive Officer. On September 19, 2012, the Company amended the lease to add an additional 2,436 square feet of office space, or a total of 10,056 square feet, for its corporate headquarters, with an effective date of July 1, 2012. Concurrent with the amendment, the Company agreed to extend the term of the lease for five-years from the effective date of the amendment. On October 1, 2016, the Company amended the lease reducing the leased space to 6,398 square feet, and extended the term to two years, expiring on September 30, 2018. See related party transactions in Note 10 in the accompanying consolidated financial statements for additional information.

For information regarding our projects, see Item 1 ‘Business – Our Communities.’

**Item 3. Legal Proceedings**

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 or cash flows. We believe that we have obtained adequate insurance coverage, rights to indemnification, or where appropriate, have established reserves in connection with these legal proceedings.

**Item 4. Mine Safety Disclosures**

Not applicable.

PART II

**Item 5. Market for the Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities Market for Common Stock**

Our Class A common stock is traded on NASDAQ under the symbol “CHCI”. On September 25, 2015, the Company effected a 1-for-7 reverse stock split of its issued and outstanding shares of Class A common stock and Class B common stock (the “Reverse Stock Split”). The Company’s Class A common stock continued trading on The Nasdaq Capital Market on a post-split basis on September 28, 2015. Pursuant to the reverse split, common stockholders received 1 share of common stock for every 7 shares of common stock owned with substantially the same terms and conditions prior to the split.

All shares related and per share information has been adjusted to give the effect to the Reverse Stock Split from the beginning of the earliest period presented. The following table sets forth the high and low sale prices of our Class A common stock, as reported on NASDAQ, for the periods indicated:

Fiscal Year Ended 2016	<b>High</b>	<b>Low</b>
First quarter	\$1.97	\$1.50
Second quarter	\$1.94	\$1.71
Third quarter	\$2.25	\$1.59
Fourth quarter	\$2.05	\$1.70
Fiscal Year Ended 2015	<b>High</b>	<b>Low</b>
First quarter	\$7.70	\$6.44
Second quarter	\$6.51	\$3.64
Third quarter	\$5.81	\$2.94
Fourth quarter	\$3.61	\$1.46

**Holders**

As of December 31, 2016, there were approximately 44 record holders of our Class A common stock. As of December 31, 2016, there were two holders of our Class B common stock. As of December 31, 2016, there were three holders of our Series B Preferred Stock.

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**Dividends**

We have never paid any cash dividends on our Class A and Class B common stock and do not intend to do so in the foreseeable future. During the year ended December 31, 2016, the Company recorded \$348 thousand of dividends paid-in-kind on its Series B Preferred Stock.

**Issuer Purchases of Equity Securities**

In November 2014, our board of directors approved a new share repurchase program authorizing the Company to repurchase up to 429 thousand shares of our Class A common stock in one or more open market or privately negotiated transactions. During 2015, we repurchased 11 thousand shares of our Class A common stock pursuant to our share repurchase program and 404 thousand shares remained available for purchase. During 2016, no shares of our Class A common stock were repurchased.

**Item 6. Selected Financial Data**

Not Applicable.

**Item 7. 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 Annual Report on Form 10-K. This discussion and analysis contains forward-looking statements that involve risks and uncertainties. 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 Annual Report on Form 10-K, particularly under the headings "Risk Factors" and "Cautionary Notes Regarding Forward-looking Statements."

**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, 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 2 of our consolidated financial statements. We are primarily focused on the Washington, D.C. market, which is the sixth largest metropolitan statistical area in the United States.

*Homebuilding*

Our expertise in developing various housing products enables us to focus on a wide range of opportunities within our core market. For our homebuilding operations, we develop properties with the intent that they be sold either as fee-simple properties or condominiums to individual unit buyers or as investment properties sold 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. We believe our middle market strategy positions our products such that they are affordable to a significant segment of potential home buyers in our market.

*Multi-family*

For Comstock's multi-family sector, we develop 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 assets within our own portfolio. Operating the assets for our own account affords us the flexibility of converting the units to condominiums in the future. When developing rental communities, we design our products to be affordable for tenants that fit one of two groups: (i) young first-time renters or (ii) renters by choice.

*Real Estate Services*

Our management team has significant experience 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, general contracting and other real estate related services to other property owners. This business line not only allows us to generate fee income from our highly qualified personnel but also serves as a potential catalyst for joint venture and acquisition opportunities.

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We believe that our significant experience, combined with our ability to navigate through two major housing downturns (early 1990s and late 2000s), have provided us the experience necessary to capitalize on attractive opportunities in our core market of Washington, D.C. and to rebuild stockholder value. We believe that our focus on the Washington, D.C. market, which has historically been characterized by economic conditions less volatile than many other major homebuilding markets, should provide an opportunity to generate attractive returns on investment and for growth.

### **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 8 in the accompanying consolidated financial statements for more details on our credit facilities and Note 3 in the accompanying consolidated financial statements for details on private placement offerings in 2016 and 2015.

As of December 31, 2016, \$21.7 million of the Company's secured project related notes were set to mature at various periods through the end of 2017. As of April 17, 2017, the Company has successfully extended or repaid all obligations with Lenders through April 27, 2017, as more fully described in Note 8 and Note 19, and we are actively engaging our lenders seeking long term extensions and modifications to the loans where necessary. 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.

At December 31, 2016, \$15.8 million of our notes payable to affiliates were set to mature at the end of 2017. These funds were primarily obtained from entities wholly owned by our Chief Executive Officer, who has unilateral ability to extend the maturity dates beyond 2017 as needed.

The current performance of our projects has met all required servicing obligations required by the facilities. We are anticipating that with successful resolution of the debt extension discussions with our lenders, the recently completed 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. Refer to Note 8 and 19 for further discussion regarding our debts, extension of loan maturity date and other subsequent events impacting our credit facilities.

### **Cash Flow**

Net cash used in operating activities was \$11.8 million for the year ended December 31, 2016. The \$11.8 million net cash used in operations in 2016 was primarily due to \$11.1 million of net purchases of real estate inventories associated with the Townes at Totten Mews, the Towns at 1333, and the Woods at Spring Ridge projects, which commenced during the year. The \$2.6 million net cash provided from operations in 2015 was primarily due to \$1.6 million of net releases of inventories associated with the increased number of units settled and \$0.6 million of net reductions in other assets mainly due to deposit refunds related to land purchase options.

Net cash provided by investing activities was \$0.2 million for the year ended December 31, 2016. This was primarily attributable to the net releases of deposits from escrow accounts held as collateral for certain letters of credit of \$0.2 million. Net cash used in investing activities was \$0.7 million for the year ended December 31, 2015. This was primarily attributable to the increase in deposits to escrow accounts held as collateral for certain letters of credit of \$0.6 million and \$0.2 million in purchases of capital assets.

Net cash provided by financing activities was \$4.9 million for the year ended December 31, 2016. This was primarily attributable to an increase in contributions from non-controlling interests, net of distributions paid, of \$9.6 million, offset by a decrease in borrowings, net of payments, on notes payable of \$4.5 million. Net cash provided by financing activities was \$3.1 million for the year ended December 31, 2015. This was primarily attributable to an increase in borrowings, net of payments, on notes payable of \$3.2 million and an increase in contributions from non-controlling interests, net of distributions paid, of \$0.1 million.

### **Share Repurchase Program**

In November 2014, our board of directors approved a new share repurchase program authorizing the Company to repurchase up to 429 thousand shares of our Class A common stock in one or more open market or privately negotiated transactions.

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During the year ended December 31, 2015, we repurchased 11 thousand shares, respectively, of our Class A common stock under the repurchase program. No such repurchases were made in 2016. As of December 31, 2016, 404 thousand shares of our Class A common stock remain available for repurchase pursuant to our share repurchase program.

### **Recent Accounting Pronouncements**

Information regarding recent accounting pronouncements is contained in Note 2 in the accompanying consolidated financial statements.

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

Our consolidated financial statements are prepared in accordance with generally accepted accounting principles in the United States (“GAAP”), which require us to make certain estimates and judgments that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses during the reporting periods. On an ongoing basis, we evaluate our estimates including those related to the consolidation of variable interest entities (“VIEs”), revenue recognition, impairment of real estate inventories, warranty reserve and our environmental liability exposure. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances. Actual results may differ materially from these estimates.

A summary of significant accounting policies is provided in Note 2 in the accompanying consolidated financial statements. The following section is a summary of certain aspects of those accounting policies that require the most difficult, subjective or complex judgments and estimates.

#### ***Real estate inventories***

Real estate inventories include land, land development costs, construction and other costs. Real estate held for development and use is stated at cost, or when circumstances or events indicate that the real estate is impaired, at estimated fair value. Real estate held for sale is carried at the lower of cost or fair value less estimated costs to sell. Land, land development and indirect land development costs are accumulated by specific project and allocated to various units within that project using specific identification and allocation based upon the relative estimated sales value method. Direct construction costs are assigned to units based on specific identification, when practical, or based upon the relative sales value method. Construction costs primarily include direct construction costs and capitalized field overhead. Other costs are comprised of fees, capitalized interest and real estate taxes. We also use our best estimate at the end of a reporting period to capitalize estimated construction and development costs. Costs incurred to sell real estate are capitalized to the extent they are reasonably expected to be recovered from the sale of the project or are incurred to obtain regulatory approval of sales. Other selling costs are expensed as incurred.

For assets held for development and use, a write-down to estimated fair value is recorded when the net carrying value of the property exceeds its estimated undiscounted future cash flows. Estimated fair value is based on comparable sales of real estate in the normal course of business under existing and anticipated market conditions. These evaluations are made on a property-by-property basis whenever events or changes in circumstances indicate that the net book value may not be recoverable.

If the project is considered held for sale, it is valued at the lower of cost or fair value less estimated selling costs. The evaluation takes into consideration the current status of the property, carrying costs, costs of disposition, various restrictions, and any other circumstances that may affect fair value including management’s plans for the property. As of December 31, 2016 and 2015, the Company did not have any development projects considered to be held for sale.

#### ***Revenue recognition***

We recognize revenues and related profits or losses from the sale of residential properties and units, finished lots and land sales when closing has occurred, full payment has been received, title and possession of the property has transferred to the buyer and we have no significant continuing involvement in the property. Other revenues include revenue from land sales, rental revenue from leased multi-family units, which is recognized ratably over the terms of the respective leases, and revenue earned from management and administrative support services provided, which is recognized as the services are provided.

We consider revenue to be from homebuilding when there is a structure built or being built on the lot at closing when we have received cash and the title is transferred along with the risks and rewards of ownership. Sales of lots occur, and are included in other revenues, when we sell raw land or finished home sites in advance of any home construction.

#### ***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. 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 the reserve as they arise. This reserve is an estimate and actual warranty costs could vary from these estimates.



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***Equity-based compensation***

Compensation costs related to our equity-based compensation plans are recognized within our income statement, or capitalized to real estate inventories for awards issued to employees that are involved in production. The costs recognized are based on the grant-date fair value. Compensation costs for share-based grants are recognized on a straight-line basis over the requisite service period for the entire award (from the date of grant through the period of the last separately vesting portion of the grant).

The fair value of each option award is calculated on the date of grant using the Black-Scholes option pricing model which includes certain subjective assumptions. Expected volatilities are calculated based on our historical trading activities. We estimate forfeitures using a weighted average historical forfeiture rate. Our estimates of forfeitures will be adjusted over the requisite service period based on the extent to which actual forfeitures differ, or are expected to differ, from their estimate. The risk-free rate for the periods is based on the U.S. Treasury rates in effect at the time of grant. The expected term of options is based on the simplified method which assumes that the option will be exercised midway between the vesting date and the contractual term of the option. The Company is able to use the simplified method as the options qualify as “plain vanilla” options as defined by Accounting Standards Codification (“ASC”) 718, *Stock Compensation*.

***Income taxes***

Income taxes are accounted for under the asset and liability method in accordance with ASC 740, *Accounting for Income Taxes*. Deferred tax assets and liabilities are recognized for future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax basis. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect of a change in tax rates on the deferred tax assets and liabilities is recognized in income in the period that includes the enactment date. We provide a valuation allowance when we consider it “more likely than not” (greater than a 50% probability) that a deferred income tax asset will not be fully recovered. Adjustments to the valuation allowance are a component of the deferred income tax expense or benefit in the consolidated statement of operations.

***Use of estimates***

The preparation of the financial statements, in conformity with GAAP, requires management to make estimates and assumptions that affect the reported amounts in the financial statements and accompanying notes. Actual results could differ from those estimates. Material estimates are utilized in the valuation of real estate inventories, including estimated construction and development costs, valuation of deferred tax assets, valuation of equity-based compensation, capitalization of costs, consolidation of variable interest entities and warranty reserves.

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The following table summarizes certain information related to new orders, settlements and backlog for the twelve months ended December 31, 2016 and 2015.

	Twelve Months Ended December	
	2016	2015
Gross new orders	114	146
Cancellations	10	22
Net new orders	104	124
Gross new order revenue	\$ 51,153	\$ 69,070
Cancellation revenue	\$ 4,818	\$ 10,971
Net new order revenue	\$ 46,335	\$ 58,099
Average gross new order price	\$ 449	\$ 473
Settlements	94	123
Settlement revenue - homebuilding	\$ 40,696	\$ 60,132
Average settlement price	\$ 433	\$ 489
Backlog units	35	25
Backlog revenue	\$ 16,670	\$ 10,785
Average backlog price	\$ 476	\$ 431

*Revenue – homebuilding*

The number of units delivered for the year ended December 31, 2016 decreased by 29 to 94 as compared to 123 units for the year ended December 31, 2015. Average revenue per unit delivered decreased by \$56 to \$433 for the year ended December 31, 2016 as compared to \$489 for the year ended December 31, 2015. Revenue from homebuilding decreased by \$19.4 million to \$40.7 million for the year ended December 31, 2016 as compared to \$60.1 million for the year ended December 31, 2015. For the year ended December 31, 2016, the Company settled 94 units (4 units at The Hampshires, 33 units at Falls Grove, 13 units at Maxwell Square, 29 units at Townes at Hallcrest, 9 units at Villas at Two Rivers, 5 units at Estates at Leeland, and 1 unit at Marrwood East), as compared to 123 units (37 units at The Hampshires, 30 units at Falls Grove, 24 units at Maxwell Square, 20 units at Townes at Shady Grove, 7 units at Townes at Hallcrest, and 5 units at Villas at Two Rivers) for the year ended December 31, 2015. Gross new order revenue, consisting of revenue from all units sold, for the year ended December 31, 2016 was \$51.2 million on 114 units as compared to \$69.1 million on 146 units for the year ended December 31, 2015. Net new order revenue, representing revenue for all units sold less revenue from cancellations, for the year ended December 31, 2016 was \$46.3 million on 104 units as compared to \$58.1 million on 124 units for the year ended December 31, 2015. The decreases noted in sales, revenue and average sales price were a result of the decrease in the number of homes settled and mix of units settled. Our homebuilding gross margin percentage for the year ended December 31, 2016 decreased by 8.2% to 6.0%, as compared to 14.2% for the year ended December 31, 2015. The decrease noted in margins was mainly a result of the number of units settled and the mix of homes settled and higher construction and overhead costs as a percentage of homebuilding revenue in certain of our communities that started settling during the latter part of 2015 and 2016, which included our first settlements at the Estates at Leeland and Marrwood East projects.

*Revenue – other*

Revenue – other decreased approximately \$0.3 million to \$0.9 million during the year ended December 31, 2016, as compared to \$1.2 million for the year ended December 31, 2015. The decrease primarily relates to revenue from real estate services.

*Cost of sales – homebuilding*

Cost of sales – homebuilding for the year ended December 31, 2016 decreased by \$13.4 million to \$38.2 million as compared to \$51.6 million for the year ended December 31, 2015. The number of units settled and mix of homes settled during the year ended December 31, 2016 accounted for the decrease in cost of sales.

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### *Cost of sales – other*

Cost of sales – other decreased approximately \$0.2 million to \$0.4 million during the year ended December 31, 2016 as compared to \$0.6 million for the year ended December 31, 2015. The decrease primarily relates to our real estate services activities and is consistent with the decrease in Revenue – other.

### *Impairment charges and recovery, net*

We evaluate all of our projects to the extent of the existence of any impairment indicators requiring evaluation to determine if recorded carrying amounts were recoverable by evaluating discount rates, sales prices, absorption and our analysis of the best approach to marketing our projects for sale.

During 2016, as a result of our impairment analysis, the Company wrote off \$2.4 million in feasibility, site securing, predevelopment, design, carry costs and related costs for certain of our communities in the Washington, D.C. metropolitan area due to unsuccessful negotiations and changes in market conditions. Additionally, during 2016, the Company, through its subsidiaries, and the land seller of a community in the Washington, D.C. area entered into a settlement agreement, and the Company received a refund of \$0.7 million representing a portion of the deposit deemed impaired during the Company's impairment analysis in 2015.

In 2015, we wrote off \$2.8 million in feasibility, site securing, predevelopment, design, and related costs due to inventory delivery delays and inefficiencies which led to the Company re-evaluating the lot takedown strategy. The inventory was deemed impaired in December 2015 and was written down due to changes made to the scheduled lot take down strategy, offers received for the properties or changes in zoning requirement.

### *Interest and real estate tax expense*

Interest and real estate tax expense for the year ended December 31, 2016 increased to \$0.9 million from \$0.5 million for the year ended December 31, 2015. The primary reason for the increase is due to the amount of interest charges that did not qualify for interest capitalization because the interest charges were in excess of the weighted average of the rates applicable to entity level borrowings.

### *Income taxes*

During the year ended December 31, 2016, the Company recognized income tax expense of \$55 thousand and the effective tax rate was 0.82%. During the year ended December 31, 2015, the Company recorded an out of period adjustment to reverse the valuation allowance, resulting in the recognition of a deferred tax benefit of \$0.1 million, offset by income tax expense of \$0.4 million, both related to the New Hampshire Avenue project in Washington, D.C. Additionally, as a result of the conversion of the Stonehenge Note to Series B Preferred Stock, the Company realized a taxable gain on conversion, releasing \$1.0 million of the deferred valuation allowance. The effective tax rate for the year ended December 31, 2015 was 5.64%.

## **Seasonality and Weather**

Our business is affected by seasonality with respect to orders and deliveries. In the market in which we operate, the primary selling season is from January through May as well as September and October. Orders in other months typically are lower. In addition, the markets in which we operate are four-season markets that experience significant periods of rain and snow. Construction cycles and efforts are often adversely affected by severe weather.

## **Inflation**

Inflation can have a significant impact on our business performance and the homebuilding industry in general. Rising costs of land, transportation costs, utility costs, materials, labor, overhead, administrative costs and interest rates on floating credit facilities can adversely affect our business performance. In addition, rising costs of certain items, such as lumber, can adversely affect the expected profitability of our backlog. Generally, we have been able to recover any increases in costs through increased selling prices. However, there is no assurance we will be able to increase selling prices in the future to cover the effects of inflation and other cost increases.

## **Item 7A. Quantitative and Qualitative Disclosures About Market Risk**

Not applicable.

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**Item 8. Financial Statements and Supplementary Data**

Reference is made to the consolidated financial statements, the notes thereto, and the report thereon, commencing on page F-1 of this Annual Report on Form 10-K.

**Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure**

None.

**Item 9A. 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 of 1934, as amended (the "Exchange Act")) as of December 31, 2016. Based on this evaluation, our Chief Executive Officer and Chief Financial Officer have concluded, as of December 31, 2016, that our disclosure controls and procedures were effective, and designed to ensure that (a) information required to be disclosed in our reports filed under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in the SEC's rules and instructions, and (b) information is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosures.

**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 assurance, at the reasonable assurance level, 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.

**Management's Report on Internal Control Over Financial Reporting**

Management is responsible for establishing and maintaining adequate internal control over our financial reporting, as such term is defined in Rule 13a-15(f) and 15d-15(f) of the Exchange Act.

Our management assessed the effectiveness of our internal control over financial reporting as of December 31, 2016, based on criteria set forth in the framework in *Internal Control – Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission. This evaluation included review of the documentation of controls, evaluation of the design effectiveness of controls, testing of the operating effectiveness of controls and a conclusion on this evaluation. Our management determined that, as of December 31, 2016, our internal control over financial reporting is effective.

**Changes in Internal Control**

No change has occurred in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act) during our last fiscal quarter ended December 31, 2016, that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

**Item 9B. Other Information**

None.

**PART III**

**Item 10. Directors, Executive Officers and Corporate Governance**

The information required by this Item is incorporated herein by reference to the definitive Proxy Statement to be filed pursuant to Regulation 14A of the Exchange Act for our 2017 Annual Meeting of Stockholders or the Annual Report on Form 10-K, except that the information relating to our executive officers is included in Item 1, “Business – Executive Officers” of this Annual Report on Form 10-K.

**Item 11. Executive Compensation**

The information required by this Item is incorporated herein by reference to the definitive Proxy Statement to be filed pursuant to Regulation 14A of the Exchange Act for our 2017 Annual Meeting of Stockholders or the Annual Report on Form 10-K.

**Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters**

The information required by this Item is incorporated herein by reference to the definitive Proxy Statement to be filed pursuant to Regulation 14A of the Exchange Act for our 2017 Annual Meeting of Stockholders or the Annual Report on Form 10-K.

**Item 13. Certain Relationships and Related Transactions, and Director Independence**

The information required by this Item is incorporated herein by reference to the definitive Proxy Statement to be filed pursuant to Regulation 14A of the Exchange Act for our 2017 Annual Meeting of Stockholders or the Annual Report on Form 10-K.

**Item 14. Principal Accountant Fees and Services**

The information required by this Item is incorporated herein by reference to the definitive Proxy Statement to be filed pursuant to Regulation 14A of the Exchange Act for our 2017 Annual Meeting of Stockholders.

**PART IV**

**Item 15. Exhibits and Financial Statement Schedules**

(a) The following documents are filed as part of this Annual Report on Form 10-K:

(1) Consolidated Financial Statements are listed in the Index to Financial Statements on page F-1 of this Annual Report on Form 10-K.

(2) Schedules have been omitted because they are not applicable or because the information required to be set forth therein is included in the consolidated financial statements or notes thereto.

(3) Exhibits

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<u>Exhibit Number</u>	<u>Exhibit</u>
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 to the Registrant's Annual Report on Form 10-K filed with the Commission on March 31, 2005).
3.3	Certificate of Elimination of the Series A Junior Participating Preferred Stock of the Company filed with the Secretary of State of the State of Delaware on March 26, 2015 (incorporated by reference to an exhibit 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 A Junior Participating Preferred Stock of the Company filed with the Secretary of State of the State of Delaware on March 26, 2015 (incorporated by reference to an exhibit to the Registrant's Current Report on Form 8-K filed with the Commission on March 27, 2015).
3.5	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 an exhibit to the Registrant's Current Report on Form 8-K filed on January 4, 2016).
4.1	Specimen Stock Certificate (incorporated by reference to an exhibit to the Registrant's Registration Statement on Form S-1, as amended, initially filed with the Commission on August 13, 2004 (No. 333-118193)).
10.1	Form of Indemnification Agreement (incorporated by reference to an exhibit to the Registrant's Registration Statement on Form S-1, as amended, initially filed with the Commission on August 13, 2004 (No. 333-118193)).
10.2	2004 Long-Term Incentive Compensation Plan (incorporated by reference to an exhibit to the Registrant's Registration Statement on Form S-1, as amended, initially filed with the Commission on August 13, 2004 (No. 333-118193)). +
10.3	Form Of Stock Option Agreement under the 2004 Long-Term Incentive Compensation Plan (incorporated by reference to an exhibit to the Registrant's Registration Statement on Form S-1, as amended, initially filed with the Commission on August 13, 2004 (No. 333-118193)). +
10.4	Form Of Restricted Stock Grant Agreement under the 2004 Long-Term Incentive Compensation Plan (incorporated by reference to an exhibit to the Registrant's Annual Report on Form 10-K filed with the Commission on March 31, 2005). +
10.5	Employee Stock Purchase Plan (incorporated by reference to an exhibit to the Registrant's Registration Statement on Form S-1, as amended, initially filed with the Commission on August 13, 2004 (No. 333-118193)). +
10.6	Services Agreement, dated March 4, 2005, with Comstock Asset Management, L.C. (incorporated by reference to an exhibit to the Registrant's Annual Report on Form 10-K filed with the Commission on March 31, 2005).
10.7	Employment Agreement with Christopher Clemente (incorporated by reference to an exhibit to the Registrant's Registration Statement on Form S-1, as amended, initially filed with the Commission on August 13, 2004 (No. 333-118193)). +

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<u>Exhibit Number</u>	<u>Exhibit</u>
10.8	Confidentiality and Non-Competition Agreement with Christopher Clemente (incorporated by reference to an exhibit to the Registrant's Registration Statement on Form S-1, as amended, initially filed with the Commission on August 13, 2004 (No. 333-118193)). +
10.9	Trademark License Agreement (incorporated by reference to an exhibit to the Registrant's Registration Statement on Form S-1, as amended, initially filed with the Commission on August 13, 2004 (No. 333-118193)).
10.10	Loan and Security Agreement, dated as of February 2008, by and between the Registrant and Stonehenge Funding, L.C. (incorporated by reference to an exhibit to the Registrant's Annual Report on Form 10-K filed with the Commission on March 24, 2008).
10.11	Guaranty Agreement, dated as of February 2008, by Comstock Potomac Yard, L.C. in favor of Stonehenge Funding, LC (incorporated by reference to an exhibit to the Registrant's Annual Report on Form 10-K filed with the Commission on March 24, 2008).
10.12	Sixth Loan Modification Agreement, dated as of November 26, 2008, by and among the Registrant and Bank of America, N.A. (incorporated by reference to an exhibit to the Registrant's Annual Report on Form 10-K filed with the Commission on March 31, 2009).
10.13	Third Amendment of Loan Agreement, dated September 16, 2009, by and among Comstock Penderbrook, L.C., the Registrant and Guggenheim Corporate Funding, LLC (incorporated by reference to an exhibit to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on November 13, 2009).
10.14	First Amendment to Loan Agreement, dated October 30, 2009, by and among Comstock Station View, L.C., Comstock Potomac Yard, L.C., the Registrant and Key Bank National Association (incorporated by reference to an exhibit to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on November 13, 2009).
10.15	Forbearance Agreement and Second Amendment to Loan Agreement, dated January 27, 2009, by and among Comstock Penderbrook, L.C., the Registrant and Guggenheim Corporate Funding, LLC (incorporated by reference to an exhibit to the Registrant's Annual Report on Form 10-K filed with the Commission on March 31, 2010).
10.16	Fourth Amendment to Sublease Agreement and Services Agreement, dated February 26, 2009, with Comstock Asset Management (incorporated by reference to an exhibit to the Registrant's Annual Report on Form 10-K filed with the Commission on March 31, 2010).
10.17	Lease Agreement, dated on or about December 31, 2009, with Comstock Asset Management, L.C. by Comstock Property Management, L.C., a subsidiary of Registrant (incorporated by reference to an exhibit to the Registrant's Annual Report on Form 10-K filed with the Commission on March 31, 2010).
10.18	Seventh Loan Modification Agreement dated as of February 25, 2010, by and among the Registrant and Bank of America, N.A. (incorporated by reference to an exhibit to the Registrant's Annual Report on Form 10-K filed with the Commission on March 31, 2010).

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<u>Exhibit Number</u>	<u>Exhibit</u>
10.19	Memorandum Opinion, filed February 23, 2010, by the US District Court in favor of Comstock Potomac Yard, L.C., a subsidiary of Registrant, against Balfour Beatty Construction, LLC (incorporated by reference to an exhibit to the Registrant's Annual Report on Form 10-K filed with the Commission on March 31, 2010).
10.20	Second Amended and Restated Indenture, dated as of February 12, 2010, by and among the Registrant and Comstock Asset Management, L.C. (incorporated by reference to an exhibit to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on November 12, 2010).
10.21	Loan Agreement, dated as of January 27, 2011, by and among Comstock Potomac Yard, L.C. and Eagle Bank (incorporated by reference to an exhibit to the Registrant's Annual Report on Form 10-K filed with the Commission on March 31, 2011).
10.22	Credit Enhancement and Indemnification Agreement, dated February 17, 2011, by and between Registrant and Christopher D. Clemente and Gregory V. Benson (incorporated by reference to an exhibit to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on May 13, 2011).
10.23	Right of First Refusal and First Offer Agreement, dated as of July 12, 2011, between Comstock Homebuilding Companies, Inc. and BridgeCom Development I, LLC (incorporated by reference to an exhibit to the Current Report on Form 8-K filed with the Commission on July 15, 2011).
10.24	Loan Agreement, dated as of October 5, 2011, by and among Comstock Penderbrook, L.C. and BCL Penderbrook, LLC (incorporated by reference to an exhibit to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on November 14, 2012).
10.25	Loan Agreement, dated as of May 29, 2012, by and among Eagle Bank and Comstock Potomac Yard, L.C. and Comstock Penderbrook, L.C. (incorporated by reference to an exhibit to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on November 14, 2012).
10.26	Loan agreement, dated as of August 23, 2012, by and between Eagle Bank and New Hampshire Ave. Ventures, LLC (incorporated by reference to an exhibit to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on November 14, 2012).
10.27	Loan agreement, dated as of September 27, 2012, by and between Cardinal Bank and Comstock Eastgate, L.C. (incorporated by reference to an exhibit to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on November 14, 2012).
10.28	Loan agreement, dated as of March 25, 2013, by and between Eagle Commercial Ventures, LLC and Comstock Redland Road, L.C. (incorporated by reference to an exhibit to the Registrant's Annual Report on Form 10-K filed with the Commission on March 27, 2013).
10.29	Loan agreement, dated as of March 25, 2013, by and between Eagle Commercial Ventures, LLC and Comstock Redland Road, L.C. (incorporated by reference to an exhibit to the Registrant's Annual Report on Form 10-K filed with the Commission on March 27, 2013).
10.30	Loan agreement, dated as of March 25, 2013, by and between Eagle Bank and Comstock Redland Road, L.C. (incorporated by reference to an exhibit to the Registrant's Annual Report on Form 10-K filed with the Commission on March 27, 2013).
10.31	Loan agreement, dated as of March 25, 2013, by and between Eagle Bank and Comstock Redland Road, L.C. (incorporated by reference to an exhibit to the Registrant's Annual Report on Form 10-K filed with the Commission on March 27, 2013).
10.32	Form of Subscription Agreement, dated March 14, 2013, between Comstock Investors VII, L.C. and Subscriber, with accompanying Schedule A identifying the other Subscription Agreements (incorporated by reference to an exhibit to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on May 15, 2013).
10.33	Loan agreement, dated as of May 8, 2013, by and between Cardinal Bank and Comstock Yorkshire, L.C. (incorporated by reference to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on August 13, 2013).



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<u>Exhibit Number</u>	<u>Exhibit</u>
10.34	Loan agreement, dated as of September 30, 2013, by and between Eagle Bank and Comstock Maxwell Square, L.C. (incorporated by reference to an exhibit to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on November 12, 2013).
10.35	Deferred Purchase Money Promissory Note and a Secured First Deed of Trust dated September 13, 2013 between Comstock Hall Road L.C. and certain of the sellers named therein (incorporated by reference to an exhibit to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on November 12, 2013).
10.36	Form of Subscription Agreement, dated December 12, 2013, between Comstock Investors VIII L.C., and [-], with accompanying Schedule A identifying other Subscription (incorporated by reference to an exhibit to the Registrant's Annual Report on Form 10-K filed with the Commission on March 31, 2014).
10.37	Loan agreement, dated December 30, 2013, between Comstock Hall Road, L.C. and Cardinal Bank (incorporated by reference to an exhibit to the Registrant's Annual Report on Form 10-K filed with the Commission on March 31, 2014).
10.38	Guidance Line of Credit and Security Agreement, dated July 15, 2014 between the Registrant and Eagle Bank (incorporated by reference to an exhibit to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on November 13, 2014).
10.39	Revolving Line of Credit Note, dated July 15, 2014, between the Registrant and Eagle Bank (incorporated by reference to an exhibit to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on November 13, 2014).
10.40	Revolving Line of Credit Note, dated July 23, 2014, between Comstock Yorkshire, L.C. and Cardinal Bank (incorporated by reference to an exhibit to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on November 13, 2014).
10.41	Amended and Restated Promissory Note, dated December 18, 2014, between Comstock Holding Companies, Inc. and Comstock Growth Fund, L.C. (incorporated by reference to an exhibit to the Registrant's Annual Report on Form 10-K filed with the Commission on April 14, 2015).
10.42	Form of warrant issued in connection with private placement by Comstock Growth Fund, L.C. (incorporated by reference to an exhibit to the Registrant's Annual Report on Form 10-K filed with the Commission on April 14, 2015).
10.43	Loan agreement, dated December 19, 2014, between Comstock Two Rivers II, L.C. and Cardinal Bank (incorporated by reference to an exhibit to the Registrant's Annual Report on Form 10-K filed with the Commission on April 14, 2015).
10.44	Section 382 Rights Agreement between Comstock Holding Companies, Inc. and American Stock Transfer & Trust Company, LLC dated March 27, 2015 (incorporated by reference to an Exhibit to the current report on Form 8-K filed with the Commission on March 27, 2015).
10.45	Loan agreement, dated February 20, 2015, between Comstock Stone Ridge, L.C. and Cardinal Bank (incorporated by reference to an exhibit to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on May 15, 2015).
10.46	Loan agreement, dated March 17, 2015, between Comstock Two Rivers I, L.C. and Eagle Bank (incorporated by reference to an exhibit to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on May 15, 2015).
10.47	Subscription Agreement and Operating Agreement, dated June 26, 2015, between Comstock Investors IX, L.C., and [-], with accompanying Schedule A identifying other Subscription (incorporated by reference to an exhibit to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on August 14, 2015).
10.48	Note Exchange and Subscription Agreement, dated December 29, 2015, between Comstock Holding Companies, Inc. and Stonehenge Funding, LC (incorporated by reference to an exhibit to the Registrant's Annual Report on Form 10-K filed with the Commission on April 4, 2016).
10.49	Revolving Line of Credit Promissory Note, dated December 29, 2015, between Comstock Holding Companies, Inc. and Comstock Growth Fund II, L.C. (incorporated by reference to an exhibit to the Registrant's Annual Report on Form 10-K filed with the Commission on April 4, 2016).

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<u>Exhibit Number</u>	<u>Exhibit</u>
10.50	Form of Subscription Agreement and Operating Agreement dated August 15, 2016, between Comstock Investors X, L.C. and [-], with accompanying Schedule A identifying subscribers (incorporated by reference to an exhibit to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on November 14, 2016).
10.51	Form of Warrant issued in connection with private placement by Comstock Investors X, L.C. (incorporated by reference to an exhibit to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on November 14, 2016).
10.52	Land Purchase Agreement, between Comstock Sixth Street, LLC and Thos. Somerville Co. (incorporated by reference to an exhibit to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on November 14, 2016).
10.53	Membership Interests Agreement, between Comstock Beshers, L.C. and Dresden, LLC (incorporated by reference to an exhibit to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on November 14, 2016).
10.54	Loan agreement, between Dresden, LLC, Comstock Emerald Farm, L.C. and Cardinal Bank (incorporated by reference to an exhibit to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on November 14, 2016).
10.55	Promissory note, between Comstock Beshers, L.C. and Year 2003 Trust for Descendants, Pleasants Associates Limited Partnership, and CJC, LLC (incorporated by reference to an exhibit to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on November 14, 2016).
10.56	Loan agreement, between Comstock Powhatan, L.C. and Cardinal Bank (incorporated by reference to an exhibit to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on November 14, 2016).
10.57*	Purchase and Sale Agreement, dated October 24, 2016, between Comstock Redland Road II, L.C. and Momentum Apartments, LLC.
10.58*	Operating Agreement, dated October 24, 2016, between Comstock Redland Road III, L.C. and SCG Development Partners, LLC to form Momentum General Partners, LLC.
14.1(2)	Code of Ethics (incorporated by reference to an exhibit to the Registrant's Annual Report on Form 10-K filed with the Commission on March 31, 2005).
21.1*	List of subsidiaries
23.1*	Consent of BDO USA, LLP
23.2*	Consent of PricewaterhouseCoopers, LLP
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 Annual Report on Form 10-K for the year ended December 31, 2016, formatted in eXtensible Business Language (XBRL): (i) the Consolidated Balance Sheet, (ii) the Consolidated Statements of Operations, (iii) the Consolidated Statements of Changes in Stockholder's Equity, (iv) the Consolidated Statement of Cash Flows and (v) the Notes to the Consolidated Financial Statements.

\* Filed herewith.

+ Management contracts or compensatory plans, contracts or arrangements

**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

**COMSTOCK HOLDING COMPANIES, INC.**

Date: April 17, 2017

By: /s/ CHRISTOPHER CLEMENTE  
Christopher Clemente  
Chairman and Chief Executive Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the date indicated.

<u>Signature</u>	<u>Capacity</u>	<u>Date</u>
/s/ CHRISTOPHER CLEMENTE Christopher Clemente	Chairman of the Board of Directors and Chief Executive Officer (Principal Executive Officer)	April 17, 2017
/s/ CHRISTOPHER L. CONOVER Christopher L. Conover	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	April 17, 2017
/s/ A. CLAYTON PERFALL A. Clayton Perfall	Director	April 17, 2017
/s/ DAVID M. GUERNSEY David M. Guernsey	Director	April 17, 2017
/s/ JAMES A. MACCUTCHEON James A. MacCutcheon	Director	April 17, 2017
/s/ NORMAN D. CHIRITE Norman D. Chirite	Director	April 17, 2017
/s/ ROBERT P. PINCUS Robert P. Pincus	Director	April 17, 2017
/s/ SOCRATES VERSES Socrates Verses	Director	April 17, 2017
/s/ JOSEPH M. SQUERI Joseph M. Squeri	Director	April 17, 2017

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**Report of Independent Registered Public Accounting Firm**

Board of Directors and Stockholders  
Comstock Holding Companies, Inc.  
Reston, Virginia

We have audited the accompanying consolidated balance sheet of Comstock Holding Companies, Inc. and subsidiaries (the “Company”) as of December 31, 2016 and the related consolidated statements of operations, changes in stockholders’ equity, and cash flows for the year then ended. These financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audit included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company’s internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Comstock Holding Companies, Inc. and subsidiaries at December 31, 2016, and the results of their operations and their cash flows for the year then ended, in conformity with accounting principles generally accepted in the United States of America.

/s/ BDO USA, LLP

McLean, Virginia  
April 17, 2017

**Report of Independent Registered Public Accounting Firm**

To the Board of Directors and Shareholders of Comstock Holding Companies, Inc.:

In our opinion, the consolidated balance sheet as of December 31, 2015, and the related consolidated statements of operations, of changes in stockholders' equity, and of cash flows for the year ended December 31, 2015 present fairly, in all material respects, the financial position of Comstock Holding Companies, Inc. and its subsidiaries as of December 31, 2015, and the results of their operations and their cash flows for the year ended December 31, 2015 in conformity with accounting principles generally accepted in the United States of America. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit of these financial statements in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

/s/ PricewaterhouseCoopers LLP  
McLean, VA  
April 1, 2016

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

	December 31, 2016	December 31, 2015
<b>ASSETS</b>		
Cash and cash equivalents	\$ 5,761	\$ 12,448
Restricted cash	1,238	2,566
Trade receivables	613	332
Real estate inventories	49,842	38,223
Fixed assets, net	255	394
Other assets, net	2,112	4,197
TOTAL ASSETS	<u>\$ 59,821</u>	<u>\$ 58,160</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Accounts payable and accrued liabilities	\$ 7,721	\$ 7,638
Notes payable - secured by real estate inventories, net of deferred financing charges	26,927	24,692
Notes payable - due to affiliates, unsecured, net of discount and deferred financing charges	15,866	19,028
Notes payable - unsecured, net of deferred financing charges	911	1,361
Income taxes payable	19	—
TOTAL LIABILITIES	<u>51,444</u>	<u>52,719</u>
Commitments and contingencies (Note 14)		
<b>STOCKHOLDERS' EQUITY (DEFICIT)</b>		
Series B preferred stock, \$0.01 par value, 3,000,000 shares authorized, 841,848 and 772,210 shares issued and liquidation preference of \$4,209 and \$3,861 at December 31, 2016 and 2015, respectively	\$ 1,280	\$ 1,174
Class A common stock, \$0.01 par value, 11,038,071 shares authorized, 3,035,922 and 2,997,437 issued and outstanding, respectively	30	30
Class B common stock, \$0.01 par value, 390,500 shares authorized, issued and outstanding	4	4
Additional paid-in capital	176,251	175,963
Treasury stock, at cost (85,570 shares Class A common stock)	(2,662)	(2,662)
Accumulated deficit	(184,778)	(175,785)
TOTAL COMSTOCK HOLDING COMPANIES, INC. DEFICIT	(9,875)	(1,276)
Non-controlling interests	18,252	6,717
TOTAL EQUITY	<u>8,377</u>	<u>5,441</u>
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	<u>\$ 59,821</u>	<u>\$ 58,160</u>

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

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

	<b>For the years ended December 31,</b>	
	<b>2016</b>	<b>2015</b>
<b>Revenues</b>		
Revenue—homebuilding	\$ 40,696	\$ 60,132
Revenue—other	884	1,244
Total revenue	41,580	61,376
<b>Expenses</b>		
Cost of sales—homebuilding	38,236	51,583
Cost of sales—other	427	551
Impairment charges and recovery, net	1,703	2,765
Sales and marketing	1,606	2,076
General and administrative	5,586	7,410
Interest and real estate tax expense	886	547
Operating loss	(6,864)	(3,556)
Other income, net	157	861
Loss before income tax expense	(6,707)	(2,695)
Income tax (expense) benefit	(55)	732
Net loss	(6,762)	(1,963)
Net income attributable to non-controlling interests	2,231	2,604
Net loss attributable to Comstock Holding Companies, Inc.	(8,993)	(4,567)
Paid-in-kind dividends on Series B Preferred Stock	348	—
Net loss attributable to common stockholders	<u>\$ (9,341)</u>	<u>\$ (4,567)</u>
Basic loss per share	\$ (2.81)	\$ (1.43)
Diluted loss per share	\$ (2.81)	\$ (1.43)
Basic weighted average shares outstanding	3,321	3,198
Diluted weighted average shares outstanding	3,321	3,198

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



**COMSTOCK HOLDING COMPANIES, INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CHANGES IN**  
**STOCKHOLDERS' EQUITY**  
(Amounts in thousands, except per share data)

	Series B Preferred Stock		Class A		Class B		Additional paid-in capital	Treasury stock	Retained earnings (deficit)	Non- controlling interest	Total
	Shares	Amount	Shares	Amount	Shares	Amount					
Balance at January 1, 2015	—	\$ —	2,726	\$ 27	390	\$ 4	\$171,639	\$ (2,583)	\$ (171,218)	\$ 3,986	\$ 1,855
Stock compensation and issuances	—	—	271	3	—	—	1,125	—	—	—	1,128
Warrants	—	—	12	—	—	—	304	—	—	—	304
Shares withheld related to net share settlement of restricted stock awards	—	—	(12)	—	—	—	(32)	—	—	—	(32)
Stonehenge note conversion	772	1,174	—	—	—	—	1,642	—	—	—	2,816
Stock repurchases	—	—	—	—	—	—	—	(79)	—	—	(79)
Non-controlling interest contributions	—	—	—	—	—	—	—	—	—	2,450	2,450
Non-controlling interest distributions	—	—	—	—	—	—	—	—	—	(2,323)	(2,323)
Discount on related party note payable	—	—	—	—	—	—	1,285	—	—	—	1,285
Net (loss) income	—	—	—	—	—	—	—	—	(4,567)	2,604	(1,963)
Balance at December 31, 2015	772	\$1,174	2,997	\$ 30	390	\$ 4	\$175,963	\$ (2,662)	\$ (175,785)	\$ 6,717	\$ 5,441
Stock compensation and issuances	—	—	43	—	—	—	144	—	—	—	144
Shares withheld related to net share settlement of restricted stock awards	—	—	(5)	—	—	—	(8)	—	—	—	(8)
Dividends paid in-kind	70	106	—	—	—	—	(106)	—	—	—	—
Non-controlling interest contributions	—	—	—	—	—	—	258	—	—	14,242	14,500
Non-controlling interest distributions	—	—	—	—	—	—	—	—	—	(4,938)	(4,938)
Discount on related party note payable	—	—	—	—	—	—	—	—	—	—	—
Net (loss) income	—	—	—	—	—	—	—	—	(8,993)	2,231	(6,762)
Balance at December 31, 2016	842	\$1,280	3,035	\$ 30	390	\$ 4	\$176,251	\$ (2,662)	\$ (184,778)	\$ 18,252	\$ 8,377

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

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

	<b>For the years ended December 31,</b>	
	<b>2016</b>	<b>2015</b>
<b>Cash flows from operating activities:</b>		
Net loss	\$ (6,762)	\$ (1,963)
Adjustment to reconcile net loss to net cash (used in) provided by operating activities		
Amortization of loan discount, loan commitment and deferred financing fees	1,046	283
Deferred income tax benefit	7	(1,057)
Depreciation expense	181	164
Gain on derivative	—	(696)
Earnings from unconsolidated joint venture, net of distributions	16	(36)
Impairment charges	2,425	2,765
Stock compensation	69	94
Changes in operating assets and liabilities:		
Purchaser escrow deposits	1,096	(177)
Trade receivables	(281)	(222)
Real estate inventories	(11,090)	1,562
Other assets	569	649
Accrued interest	748	980
Accounts payable and accrued liabilities	141	257
Income taxes payable	19	(43)
Net cash (used in) provided by operating activities	<u>(11,816)</u>	<u>2,560</u>
<b>Cash flows from investing activities:</b>		
Purchase of fixed assets	(42)	(163)
Principal received on note receivable	37	32
Collateral for letters of credit	232	(610)
Net cash provided by (used in) investing activities	<u>227</u>	<u>(741)</u>
<b>Cash flows from financing activities:</b>		
Proceeds from notes payable	29,235	43,301
Payments on notes payable	(33,735)	(40,078)
Loan financing costs	(152)	(108)
Distributions to non-controlling interests	(4,938)	(2,323)
Contributions from non-controlling interests	14,500	2,450
Taxes paid related to net share settlement of equity awards	(8)	(32)
Repurchase of stock	—	(79)
Net cash provided by financing activities	<u>4,902</u>	<u>3,131</u>
Net (decrease) increase in cash and cash equivalents	(6,687)	4,950
Cash and cash equivalents, beginning of period	12,448	7,498
Cash and cash equivalents, end of period	<u>\$ 5,761</u>	<u>\$ 12,448</u>
<b>Supplemental cash flow information:</b>		
Interest paid, net of interest capitalized	\$ (73)	\$ (412)
Income taxes paid	\$ —	\$ (519)
<b>Supplemental disclosure for non-cash activity:</b>		
Increase in class A common stock par value in connection with issuance of stock compensation	\$ —	\$ 1
Increase in class A common stock par value in connection with CGF Private Placement	\$ —	\$ 2
Increase in additional paid-in capital in connection with issuance of class A common stock under the CGF Private Placement	\$ —	\$ 903
Increase in Series B preferred stock at par value in connection with Stonehenge Note conversion	\$ —	\$ 1,174
Increase in additional paid-in capital in connection with issuance of preferred stock related to the Stonehenge Note conversion	\$ —	\$ 2,687
Discount on notes payable related to the CGF loan	\$ —	\$ (605)
Accrued liability settled through issuance of stock	\$ 58	\$ 99
Seller's note related to the Woods at Spring Ridge project	\$ 2,124	\$ —
Loan commitment on related party line of credit - CGF II	\$ —	\$ 1,285

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

**COMSTOCK HOLDING COMPANIES, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**(Amounts in thousands, except per share data, number of units, or as otherwise noted)**

**1. ORGANIZATION**

Comstock Holding Companies, Inc. is a multi-faceted real estate development and construction services company focused on the Washington, D.C. metropolitan area (Washington, D.C., Northern Virginia and Maryland suburbs of Washington, D.C.). The Company builds products including multi-family units, 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 (“NASDAQ”) under the symbol “CHCF”.

On September 25, 2015, the Company effected a 1-for-7 reverse stock split of its issued and outstanding Class A common stock and Class B common stock. Throughout these consolidated financial statements, a reference to a number of shares of the Company’s common stock, refers to the number of shares of common stock after giving effect to the reverse stock split, unless otherwise indicated.

**Liquidity Developments**

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 have historically included, 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 order to obtain additional growth capital to fund various new business opportunities. See Note 8 for more details on our credit facilities and Note 3 for details on private placement offerings in 2016 and 2015.

As of December 31, 2016, \$21.7 million of the Company’s secured project related notes were set to mature at various periods through the end of 2017. As of April 17, 2017, the Company has successfully extended or repaid all obligations with Lenders through April 27, 2017, as more fully described in Note 8 and Note 19, and we are actively engaging our lenders seeking long term extensions and modifications to the loans where necessary. 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 if we default on an obligation, all debt with that particular institution could be called into default.

At December 31, 2016, \$15.8 million of our notes payable to affiliates were set to mature at the end of 2017. These funds were primarily obtained from entities wholly owned by our Chief Executive Officer, who has unilateral ability to extend the maturity dates beyond 2017 as needed.

The current performance of our projects has met all required servicing obligations required by the facilities. We are anticipating that with successful resolution of the debt extension discussions with our lenders, the recently completed 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. Refer to Note 19 for further discussion regarding extensions and other subsequent events impacting our credit facilities.

## 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

A summary of the significant accounting policies and practices used in the preparation of the consolidated financial statements is as follows:

### *Basis of presentation*

The accompanying consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States (“GAAP”) and include the accounts of the Company and all of its majority-owned and controlled subsidiaries. All significant intercompany accounts and transactions have been eliminated. Investments in 50% or less owned partnerships and affiliates are accounted for using the equity method unless it is determined that the Company has control of the entity, in which case the entity would be consolidated. The Company had one joint venture investment accounted for using the equity method as of December 31, 2016 and 2015.

### *Cash and cash equivalents and restricted cash*

Cash and cash equivalents are comprised of cash and short-term investments with maturities of three months or less when purchased. At times, the Company may have deposits with institutions in excess of federally insured limits. We monitor the cash balances in our bank accounts and adjust the balance as appropriate. To date, we have not experienced loss or lack of access to our invested cash or cash equivalents; however, we can provide no assurance that access to our cash and cash equivalents will not be impacted by adverse conditions in the financial market. At December 31, 2016 and 2015, the Company had restricted cash of \$1.2 million and \$2.6 million, respectively, related to restricted purchaser escrow deposits and cash held in escrow as collateral for letters of credit.

### *Real estate inventories*

Real estate inventories include land, land development costs, construction and other costs. Real estate held for development and use is stated at cost, or when circumstances or events indicate that the real estate is impaired, at estimated fair value. Real estate held for sale is carried at the lower of cost or fair value less estimated costs to sell. Land, land development and indirect land development costs are accumulated by specific project and allocated to various units within that project using specific identification and allocation based upon the relative sales value, unit or area methods. Direct construction costs are assigned to units based on specific identification. Construction costs primarily include direct construction costs and capitalized field overhead. Other costs are comprised of fees, capitalized interest and real estate taxes. We also use our best estimate at the end of a reporting period to capitalize estimated construction and development costs. Costs incurred to sell real estate are capitalized to the extent they are reasonably expected to be recovered from the sale of the project and are tangible assets or services performed to obtain regulatory approval of sales. Other selling costs are expensed as incurred.

If the project is considered held for sale, it is valued at the lower of cost or fair value less estimated selling costs. The evaluation takes into consideration the current status of the property, carrying costs, costs of disposition, various restrictions and any other circumstances that may affect fair value including management’s plans for the property. For assets held for development and use, a write-down to estimated fair value is recorded when the net carrying value of the property exceeds its estimated undiscounted future cash flows. Estimated fair value is based on comparable sales of real estate in the normal course of business under existing and anticipated market conditions. These evaluations are made on a property-by-property basis whenever events or changes in circumstances indicate that the net book value may not be recoverable. As of December 31, 2016 and 2015, the Company did not have any development projects considered to be held for sale.

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**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 settled.

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

	Twelve Months Ended December 31	
	2016	2015
Total interest incurred and capitalized	\$ 3,227	\$ 3,295
Total real estate taxes incurred and capitalized	240	400
Total interest and real estate taxes incurred and capitalized	<u>\$ 3,467</u>	<u>\$ 3,695</u>
Interest expensed as a component of cost of sales	\$ 1,833	\$ 2,346
Real estate taxes expensed as a component of cost of sales	235	258
Interest and real estate taxes expensed as a component of cost of sales	<u>\$ 2,068</u>	<u>\$ 2,604</u>

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. Additionally, when a project becomes inactive, its interest, real estate taxes and indirect production overhead costs are no longer capitalized but rather expensed in the period they are incurred.

The following is a breakdown of the interest and real estate taxes expensed in the consolidated statement of operations for the periods presented:

	Twelve Months Ended December	
	2016	2015
Interest incurred and expensed from entity level borrowings	\$ 876	\$ 530
Interest incurred and expensed for inactive projects	5	4
Real estate taxes incurred and expensed for inactive projects	5	13
	<u>\$ 886</u>	<u>\$ 547</u>

**Fixed assets**

Fixed assets are carried at cost less accumulated depreciation and are depreciated on the straight-line method over their estimated useful lives as follows:

Furniture and fixtures	7 years
Office equipment	5 years
Computer equipment and capitalized software	3 years
Leasehold improvements	Life of related lease

When assets are retired or otherwise disposed of, the cost and accumulated depreciation are removed from their separate accounts and any gain or loss on sale is reflected in operations. Expenditures for maintenance and repairs are charged to expense as incurred.

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### ***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 the reserve as they arise.

The following table is a summary of warranty reserve activity, which is included in accounts payable and accrued liabilities:

	Years ended	
	December 31,	
	2016	2015
Balance at beginning of period	\$ 312	\$ 492
Additions	233	246
Releases and/or charges incurred	(258)	(426)
Balance at end of period	<u>\$ 287</u>	<u>\$ 312</u>

### ***Revenue recognition***

The Company recognizes revenues and related profits or losses from the sale of residential properties and units, finished lots and land sales when closing has occurred, full payment has been received, title and possession of the property has transferred to the buyer and the Company has no significant continuing involvement in the property. Other revenues include revenue from land sales, rental revenue from leased multi-family units – which is recognized ratably over the terms of the respective leases, revenue from construction services – which is recognized under the percentage-of-completion method, and revenue earned from management and administrative support services provided to related parties – which is recognized as the services are provided.

### ***Advertising costs***

The total amount of advertising costs charged to operations for the year ended December 31, 2016 was \$586, of which \$542 was charged to sales and marketing and \$44 was charged to general and administrative expenses. The total amount of advertising costs charged to operations for the year ended December 31, 2015 was \$725, of which \$714 was charged to sales and marketing and \$11 was charged to general and administrative expenses.

### ***Stock compensation***

As discussed in Note 12, the Company sponsors stock option plans and restricted stock award plans. The Company accounts for its share-based awards pursuant to Accounting Standards Codification (“ASC”) 718, *Share Based Payments*. ASC 718 requires all share-based payments to employees, including grants of employee stock options, to be recognized in the financial statements over the vesting period based on their fair values at the date of grant. For the year ended December 31, 2016, total stock based compensation cost was \$86 of which, \$69 was charged to expenses within ‘general and administrative’ and ‘cost of sales-other’ in the consolidated statement of operations, and \$17 was capitalized to ‘Real estate inventories’. For the year ended December 31, 2015, total stock based compensation cost was \$124, and of this amount, \$93 was charged to expenses within ‘general and administrative’ and ‘cost of sales-other’ in the consolidated statement of operations, and \$31 was capitalized to ‘Real estate inventories’.

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***Income taxes***

Income taxes are accounted for under the asset and liability method in accordance with ASC 740, *Accounting for Income Taxes*. Deferred tax assets and liabilities are recognized for future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax basis. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect of a change in tax rates on the deferred tax assets and liabilities is recognized in income in the period that includes the enactment date. We provide a valuation allowance when we consider it “more likely than not” (greater than a 50% probability) that a deferred income tax asset will not be fully recovered. Adjustments to the valuation allowance are a component of the deferred income tax expense or benefit in the consolidated statement of operations.

***Loss per share***

The weighted average shares and share equivalents used to calculate basic and diluted loss per share for the years ended December 31, 2016 and 2015 are presented on the consolidated statement of operations. Restricted stock awards, stock options and warrants for the years ended December 31, 2016 and 2015 are included in the diluted loss per share calculation using the treasury stock method and average market prices during the periods, unless the restricted stock award, stock options and warrants would be anti-dilutive.

As a result of net losses for the years ended December 31, 2016 and 2015, the following shares have been excluded from the diluted share computation as their inclusion would be anti-dilutive:

	Twelve Months Ended December	
	2016	2015
Restricted stock awards	—	10
	—	10

***Comprehensive income***

For the years ended December 31, 2016 and 2015, comprehensive income equaled net income; therefore, a separate statement of comprehensive income is not included in the consolidated financial statements.

***Segment reporting***

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

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The following disclosure includes the Company's three reportable segments of Homebuilding, Multi-family and Real Estate Services. Each of these segments operates within the Company's single Washington, D.C. reportable geographic segment.

	<u>Homebuilding</u>	<u>Multi-Family</u>	<u>Real Estate Services</u>	<u>Total</u>
<b>Twelve Months Ended December 31, 2016</b>				
Gross revenue	\$ 40,696	\$ —	\$ 884	\$41,580
Gross profit	2,460	—	457	2,917
Net (loss) income	(7,219)	—	457	(6,762)
Total assets	59,688	—	133	59,821
Depreciation, amortization, and stock based compensation	258	—	10	268
Interest expense	881	—	—	881
<b>Twelve Months Ended December 31, 2015</b>				
Gross revenue	\$ 60,132	\$ —	\$ 1,244	\$61,376
Gross profit	8,549	—	693	9,242
Net (loss) income	(2,656)	—	693	(1,963)
Total assets	58,069	—	91	58,160
Depreciation, amortization, and stock based compensation	269	—	19	288
Interest expense	534	—	—	534

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

### *Use of estimates*

The preparation of the financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts in the financial statements and accompanying notes. Actual results could differ from those estimates. Material estimates are utilized in the valuation of real estate inventories, valuation of deferred tax assets, capitalization of costs, consolidation of variable interest entities and warranty reserves.

### *Reclassifications*

Certain amounts in the prior year consolidated financial statements have been reclassified to the current year presentation. The impact of the reclassifications made to prior year amounts is not material and did not affect net loss.

### *Recent accounting pronouncements*

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 is continuing to evaluate the impact of ASU 2014-09.

In April 2015, the FASB issued ASU 2015-03, Interest – Imputation of Interest: Simplifying the Presentation of Debt Issuance Costs ("ASU 2015-03"). ASU 2015-03 requires debt issuance costs to be presented on the balance sheet as a direct deduction from the related debt liability, similar to the presentation of debt discounts or premiums. The costs will continue to be amortized to interest expense using the effective interest method. ASU 2015-03 requires retrospective application to all prior periods presented in the financial statements. Upon transition, an entity is required to comply with the applicable disclosures for a change in accounting principle. The adoption of this guidance did not have a material effect on the Company's consolidated financial statements. As of December 31, 2016 and 2015, \$0.3 million was reclassified from 'Other assets' to 'Notes payable' within the consolidated balance sheets.

In July 2015, the FASB issued ASU 2015-11, Inventory: Simplifying the Measurement of Inventory ("ASU 2015-11"). The standard simplifies the subsequent measurement of inventory by requiring inventory to be measured at the lower of cost or net realizable value. The amendments in the standard do not apply to inventory that is measured using last-in, first-out (LIFO) or the retail inventory method. The standard became effective for us on January 1, 2017. The amendments in the standard are to be applied prospectively. The adoption of this guidance is not expected to have a material impact on our consolidated financial statements.



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In February 2016, the FASB issued ASU No. 2016-02, Leases (“ASU 2016-02”). 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 financial statements.

In March 2016, the FASB issued ASU No. 2016-09, Compensation – Stock Compensation (“ASU 2016-09”). The standard simplifies and clarifies certain aspects of share-based payment accounting and presentation. ASU 2016-09 is effective for public companies for annual reporting periods beginning after December 15, 2016 and interim periods within those fiscal years. Early adoption is permitted. The adoption of this guidance is not expected to have a material impact on our consolidated financial statements.

In August 2016, the FASB issued ASU 2016-15, Statement of Cash Flows: Classification of Certain Cash Receipts and Cash Payments (“ASU 2016-15”). ASU 2016-15 addresses eight specific cash flow issues with the objective of reducing the existing diversity in practice for certain cash receipts and cash payments. The amendments in this guidance are effective for public companies for annual reporting periods beginning after December 15, 2017, and interim periods within those fiscal years. Early adoption is permitted. The adoption of this guidance is not expected to have a material impact on our consolidated financial statements.

In December 2016, the FASB issued ASU No. 2016-18, Statement of Cash Flows – Restricted Cash (“ASU 2016-18”). ASU 2016-18 will require companies to include restricted cash and restricted cash equivalents when reconciling the beginning-of-period and end-of-period total amounts shown on the statement of cash flows. It also requires a reconciliation between the statement of financial position and the statement of cash flows when the statement of financial position includes more than one line item for cash, cash equivalents, restricted cash, and restricted cash equivalents. Entities that have material restricted cash and restricted cash equivalents will be required to disclose the nature of the restrictions. ASU 2016-18 is effective for public companies for annual reporting periods beginning after December 15, 2017. Early adoption is permitted. We are currently evaluating the impact this new standard will have on our consolidated financial statements.

Other accounting pronouncements issued or effective during the year ended December 31, 2016 are not applicable to us or are not anticipated to have a material effect on our consolidated financial statements.

### **3. CONSOLIDATION OF VARIABLE INTEREST ENTITIES**

GAAP requires a VIE to be consolidated by the company that is the primary beneficiary. The primary beneficiary of a VIE is the entity that has both of the following characteristics: (a) the power to direct the activities of a VIE that most significantly impact the VIE’s economic performance and (b) the obligation to absorb losses of the VIE that could potentially be significant to the VIE or the right to receive benefits from the VIE that could potentially be significant to the VIE. Entities determined to be VIEs, for which we are not the primary beneficiary, are accounted for under the equity method. Comstock’s variable interests in VIEs may be in the form of (1) equity ownership, (2) contracts to purchase assets and/or (3) loans provided and or guaranteed to a VIE. We examine specific criteria and use judgment when determining if Comstock is the primary beneficiary of a VIE. Factors considered in determining whether we are the primary beneficiary include risk and reward sharing, experience and financial condition of other partner(s), voting rights, involvement in day-to-day capital and operating decisions and contracts to purchase assets from VIEs.

#### **Consolidated Real Estate Inventories**

Included within the Company’s real estate inventories at December 31, 2016 and 2015 are several projects that are determined to be 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 2016 and 2015, New Hampshire Ave. Ventures, LLC distributed \$1.9 million and \$2.0 million to its non-controlling interest member, 6000 New Hampshire Avenue, LLC, respectively.

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On September 27, 2012, the Company formed Comstock Eastgate, L.C., a joint venture of the Company and BridgeCom Development II, LLC, for the purpose of acquiring, developing and constructing 66 condominium units in Loudoun County, Virginia (the “Eastgate Project”). 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 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. During 2015, Comstock Eastgate, L.C. distributed \$73 to its non-controlling interest member. No such distributions were made during 2016. The Company exited the Eastgate Project in the second quarter of 2014 after closing on all 66 units.

In March 2013, Comstock Investors VII entered into subscription agreements with certain accredited investors (“Comstock VII Class B Members”), pursuant to which the Comstock VII Class B Members purchased membership interests in Comstock VII for an aggregate amount of \$7.3 million (the “Comstock VII Private Placement”). Comstock VII Class B Members included unrelated third-party accredited investors along with members of the Company’s board of directors and the former Chief Financial Officer, the General Counsel and the former Chief Operating Officer, of the Company. The proceeds from the Comstock VII Private Placement were used for the construction of the Company’s following projects: Townes at Shady Grove Metro in Rockville, Maryland consisting of 36 townhomes, Momentum | Shady Grove consisting of 117 condominium units, City Homes at the Hampshires in Washington, D.C. consisting of 38 single family residences, Townes at the Hampshires in Washington, D.C. consisting of 73 townhomes, Single Family Homes at the Falls Grove project in Prince William County, Virginia consisting of 19 single family homes and Townes at the Falls Grove project in Prince William County consisting of 110 townhomes (collectively, the “Investor VII Projects”). In connection with the Comstock VII Private Placement, the Company issued 17 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 \$146. In October 2014, the Company fully redeemed the equity interest of the Comstock VII Class B Members.

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. During 2016 and 2015, the Company paid distributions in the amount of \$3.1 million and \$0.3 million, respectively, to the Comstock VIII Class B Members. Subsequent to year end, in January 2017, the Company paid \$1.9 million, fully redeeming the remaining equity interest of the Comstock VIII Class B Members. Refer to Note 19 for further discussion of this subsequent event.

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. No distributions have been paid to the Comstock IX Class B Members through December 31, 2016.

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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. No distributions have been paid to the Comstock X Class B Members through December 31, 2016.

At December 31, 2016 and December 31, 2015, the distributions and contributions for the VIEs discussed above are included within the ‘non-controlling interest’ classification in the consolidated statement of changes in stockholder’s equity.

At December 31, 2016 and December 31, 2015, total assets of these VIEs were approximately \$38.1 million and \$22.7 million, respectively, and total liabilities were approximately \$18.5 million and \$13.0 million, respectively. The classification of these assets is primarily within ‘real estate inventories’ and the classification of liabilities are primarily within ‘notes payable – secured by real estate inventories’ and ‘accounts payable and accrued liabilities’ in the consolidated balance sheets.

### Land purchase options

The Company typically acquires land for development at market prices under fixed price purchase agreements. The purchase agreements require deposits that may be forfeited if the Company fails to perform under the agreements. The deposits required under the purchase agreements are in the form of cash or letters of credit in varying amounts. The Company may, at its option, choose for any reason and at any time not to perform under these purchase agreements by delivering notice of its intent not to acquire the land under contract. The Company’s sole legal obligation and economic loss for failure to perform under these purchase agreements is typically limited to the amount of the deposit pursuant to the liquidated damages provision contained within the purchase agreement. As a result, none of the creditors of any of the entities with which the Company enters into forward fixed price purchase agreements have recourse to the general credit of the Company.

The Company does not share in an allocation of either the profit earned or loss incurred by any of these entities with which the Company has fixed price purchase agreements. The Company has concluded that whenever it options land or lots from an entity and pays a significant non-refundable deposit as described above, a variable interest entity is created under the provisions of ASC 810-10, *Consolidation*. This is because the Company has been deemed to have provided subordinated financial support, which creates a variable interest which limits the equity holder’s returns and may absorb some or all of an entity’s expected theoretical losses if they occur. The Company, therefore, examines the entities with which it has fixed price purchase agreements for possible consolidation by the Company under the provision of ASC 810-10. The Company does not have any contractual or ownership interests in the entities with which it contracts to buy the land. The Company concluded that it does not have the power to direct the activities that most significantly impact the economic performance of the VIEs, including the power to site plan and engineer the developments, finance the parcels under option contract, and develop the raw parcels under option contract into finished lots. The third party retains these rights under the fixed purchase price agreements until title is transferred to the Company upon settlement of the transaction, or a portion of the transactions as defined. Therefore, the Company has not consolidated these VIEs in the consolidated balance sheets.

#### 4. REAL ESTATE INVENTORIES

Real estate inventories include land, land development costs, construction and other costs. Real estate held for development and use is stated at cost, or when circumstances or events indicate that the real estate is impaired, at estimated fair value. Real estate held for sale is carried at the lower of cost or fair value less estimated costs to sell. Land, land development and indirect land development costs are accumulated by specific project and allocated to various units within that project using specific identification and allocation based upon the relative sales value, unit or area methods. Direct construction costs are assigned to units based on specific identification. Construction costs primarily include direct construction costs and capitalized field overhead. Other costs are comprised of fees, capitalized interest and real estate taxes. We also use our best estimate at the end of a reporting period to capitalize estimated construction and development costs. Costs incurred to sell real estate are capitalized to the extent they are reasonably expected to be recovered from the sale of the project and are tangible assets or services performed to obtain regulatory approval of sales. Other selling costs are expensed as incurred.

For assets held for development and use, a write-down to estimated fair value is recorded when the net carrying value of the property exceeds its estimated undiscounted future cash flows. Estimated fair value is based on comparable sales of real estate in the normal course of business under existing and anticipated market conditions. These evaluations are made on a property-by-property basis whenever events or changes in circumstances indicate that the net book value may not be recoverable.

If the project is considered held for sale, it is valued at the lower of cost or fair value less estimated selling costs. The evaluation takes into consideration the current status of the property, carrying costs, costs of disposition, various restrictions and any other circumstances that may affect fair value including management's plans for the property. At December 31, 2016 and 2015, the Company had no projects classified as held for sale.

During 2016, as a result of our impairment analysis, the Company wrote off \$2.4 million in feasibility, site securing, predevelopment, design, carry costs and related costs for certain of our communities in the Washington, D.C. metropolitan area due to unsuccessful negotiations and changes in market conditions. Additionally, during 2016, the Company, through its subsidiaries, and the land seller of a community in the Washington, D.C. area entered into a settlement agreement, and the Company received a refund of \$0.7 million representing a portion of the deposit deemed impaired during the Company's impairment analysis in 2015.

In 2015, we wrote off \$2.8 million in feasibility, site securing, predevelopment, design, and related costs due to inventory delivery delays and inefficiencies which led to the Company re-evaluating the lot takedown strategy. The inventory was deemed impaired in December 2015 and was written down due to changes made to the scheduled lot take down strategy, offers received for the properties or changes in zoning requirement.

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

	<b>December 31,</b> <b>2016</b>	<b>December 31,</b> <b>2015</b>
Land and land development costs	\$ 33,355	\$ 22,896
Cost of construction (including capitalized interest and real estate taxes)	16,487	15,327
	<u>\$ 49,842</u>	<u>\$ 38,223</u>

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**5. FIXED ASSETS, NET**

Fixed assets consist of the following:

	December 31, 2016	December 31, 2015
Computer equipment and capitalized software	\$ 704	\$ 669
Furniture and fixtures	52	52
Office equipment	45	45
	801	766
Less: accumulated depreciation	(546)	(372)
	<u>\$ 255</u>	<u>\$ 394</u>

Depreciation and amortization expense, included in 'general and administrative' in the accompanying consolidated statements of operations, amounted to \$181 and \$164 for the years ended December 31, 2016 and 2015, respectively.

**6. OTHER ASSETS**

Other assets consist of the following:

	December 31, 2016	December 31, 2015
Prepaid project costs	\$ 989	\$ 1,630
Deposits on land purchase options	—	760
Deferred financing cost—line of credit	1,286	1,286
Other	1,067	1,102
	3,342	4,778
Less: accumulated amortization	(1,230)	(581)
	<u>\$ 2,112</u>	<u>\$ 4,197</u>

**7. ACCOUNTS PAYABLE AND ACCRUED LIABILITIES**

Accounts payable and accrued liabilities consist of the following:

	December 31, 2016	December 31, 2015
Trade and accrued payables	\$ 6,925	\$ 6,720
Warranty	287	312
Customer deposits	497	591
Other	12	15
	<u>\$ 7,721</u>	<u>\$ 7,638</u>

## 8. CREDIT FACILITIES

Notes payable consisted of the following:

	December 31, 2016	December 31, 2015
Construction revolvers	\$ 6,429	\$ 5,832
Development and acquisition notes	16,278	13,833
Mezzanine notes	1,424	1,367
Line of credit	2,929	3,791
Total secured notes	27,060	24,823
Deferred financing charges, net of amortization	(133)	(131)
Net secured notes	26,927	24,692
Unsecured financing, net of unamortized deferred financing charges of \$121 and \$187	911	1,361
Notes payable to affiliates, unsecured, net of \$ 2.1 million and \$ 2.3 million discount and unamortized deferred financing charges	15,866	19,028
Total notes payable	<u>\$ 43,704</u>	<u>\$ 45,081</u>

As of December 31, 2016, maturities of all of our borrowings are as follows:

2017	\$37,434
2018	<u>6,270</u>
Total	<u>\$43,704</u>

We are in active discussions with our lenders with respect to the 2017 maturities and are seeking extensions and modifications to the credit facilities and loans as necessary. See Note 19 for further discussion on repayments and extensions subsequent to December 31, 2016.

### *Construction, development and mezzanine debt - secured*

The Company enters into secured acquisition and development loan agreements 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 December 31, 2016 and 2015, the Company had secured construction revolving credit facilities with a maximum loan commitment of \$26.6 million and \$40.5 million, respectively. The Company may borrow under these facilities to fund its homebuilding 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 December 31, 2016 and 2015, the Company had approximately \$20.2 million and \$34.7 million, respectively, of unused loan commitments. The Company had \$6.4 million and \$5.8 million of outstanding construction borrowings as of December 31, 2016 and 2015, 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 December 31, 2016 and 2015, the weighted average interest rate on the Company's outstanding construction revolving facility was 4.6% and 4.8%, respectively. The secured debt facilities have maturity dates ranging from February 2017 to September 2018, including extensions subject to certain conditions. Subsequent to year end, during the first quarter of 2017, \$2.2 million of the outstanding construction revolving credit facilities at December 31, 2016 matured therefore, the Company paid off \$1.3 million related to one of our communities and secured an extension for the remaining \$0.9 million. See Note 19 for further discussions on the extensions.

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As of December 31, 2016 and 2015, the Company had approximately \$27.8 million and \$37.8 million, respectively, of aggregate acquisition and development maximum loan commitments of which \$16.3 million and \$13.8 million, respectively, was outstanding, of which \$5.2 million of the outstanding acquisition and development loans related to two of our projects matured in the first quarter of 2017. All other loans have maturity dates ranging from May 2017 to September 2018, including auto extension subject to certain conditions and bear interest at a rate based on LIBOR and Prime Rate pricing options, with interest rate floors ranging from 4.5% to 5.5%. As of December 31, 2016 and 2015, the weighted average interest rates were 5.2% per annum and 4.7% per annum, respectively. Subsequent to year end, the Company secured extensions on \$5.2 million which was scheduled to mature in the first quarter of 2017. See Note 19 for further discussions on the extensions.

During 2016, 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 \$1.4 million of principal and accrued interest was outstanding at December 31, 2016 and 2015. 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 December 31, 2016 and 2015, the Company had a secured revolving line of credit amounting to \$3.0 million and \$4.0 million, respectively, of which \$2.9 million and \$3.8 million was outstanding at December 31, 2016 and 2015, respectively. 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 is used to finance the predevelopment related expenses and deposits for current and future projects. This line of credit bears a variable interest rate tied to one-month LIBOR plus 3.25% per annum, with an interest rate floor of 5.0%. This line of credit also calls for the Company to adhere to financial covenants such as, minimum net worth and minimum liquidity, measured quarterly and minimum EBITDA, as defined in the agreement, measured on a twelve month basis. The Company obtained a waiver from the financial institution for not meeting the minimum EBITDA measure as of December 31, 2016, but was in compliance with the minimum liquidity and minimum net worth requirements as dictated by the line of credit agreement as of December 31, 2016. This line of credit is guaranteed by our Chief Executive Officer. This line of credit matures on December 31, 2017.

### *Unsecured note*

At December 31, 2016 and December 31, 2015, the Company had \$1.0 million and \$1.5 million, respectively, outstanding to a bank under a 10-year unsecured note maturing December 28, 2018. Interest is charged on this financing at LIBOR plus 2.2%. At December 31, 2016 and 2015, the interest rate was 2.9% and 2.5%, respectively. The Company is required to make monthly principal and interest payments through maturity.

### *Notes payable to affiliate—unsecured*

#### **Comstock Growth Fund**

On October 17, 2014, Comstock Growth Fund (“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 purchasers who subsequently 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.

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 \$25.0 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 is being 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 \$12.6 million and \$14.0 million of outstanding borrowings under the CGF loan, net of discounts, as of December 31, 2016 and 2015, respectively. As of December 31, 2016, and 2015, the interest rate was 10.4% and 10.0% per annum, respectively. For the years ended December 31, 2016 and 2015, the Company made interest payments of \$1.6 million and \$1.5 million, respectively. During the second quarter of 2016, the Company made the first principal curtailment to CGF in the amount of \$1.6 million.

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On December 18, 2014, CGF entered into amended and restated subscription agreements with CDS, management and members of the Company's board of directors who participated in the CGF Private Placement (the "Amended Private Placement"). Under the Amended CGF Private Placement, the Company entered into a commitment to issue 226,857 shares of our Class A common stock to purchasers of membership interests of CGF. As of December 31, 2014, the fair value of the stock, \$1,091, was included within 'Accounts payable and accrued liabilities' with a corresponding offset to 'Notes payable - due to affiliates' in the form of debt discount on the consolidated balance sheets. For the year ended December 31, 2015, the resulting change in fair value of \$696 was recorded as a gain on derivative and was included within 'Other income' on the consolidated statement of operations. In addition to the commitment to issue shares of our Class A common stock, the Company issued warrants which represent the right to purchase an aggregate amount of up to 76 shares of our Class A common stock.

On May 12, 2015, the Company issued an aggregate 226,857 shares of our Class A common stock to the purchasers in the Amended CGF Private Placement. Upon issuance of these shares, the derivative liability was satisfied and was no longer an obligation, and therefore the value of the shares was recorded within 'Stockholders' equity' as an increase to Class A common stock and 'Additional paid-in capital' within the consolidated balance sheets based on the fair value the stock on the date of issuance. The shares of our Class A common stock were issued pursuant to exemptions from the registration requirements of the Securities Act provided by Section 4(a)(2) thereof and Rule 506 promulgated thereunder.

### ***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 December 31, 2016 and December 31, 2015, \$3.3 million and \$5.0 million, respectively, was outstanding in principal and accrued interest under the CGF II loan.

## **9. WARRANTS**

As part of the Comstock VII Private Placement discussed in Note 3, the Company issued warrants to purchase shares of the Company's Class A common stock to the Comstock VII Class B Members who are not officers, directors or affiliates of the Company and who purchased membership interests in the offering that equaled or exceeded an initial investment amount of \$250. The warrants represent the right to purchase an aggregate amount of up to 16 shares of the Company's Class A common stock. The warrants have an initial exercise price which is equal to the average of the closing price of the Company's Class A common stock of the 20 trading days preceding the issuance of the warrants. The warrants contain a cashless exercise provision. In the event the purchasers exercise the warrants on a cashless basis, the Company will not receive any proceeds. The warrants may be exercised at any time prior to March 14, 2023.

In addition, as part of the Comstock VIII Private Placement discussed in Note 3, the Company issued warrants to purchase shares of the Company's Class A common stock to the Comstock VIII Class B Members who are not officers, directors or affiliates of the Company and who purchased membership interests that equaled or exceeded an initial investment amount of \$250. The warrants represent the right to purchase an aggregate amount of up to 15 shares of the Company's Class A common stock. The warrants have an initial exercise price which is equal to the average of the closing price of the Company's Class A common stock of the 20 trading days preceding the issuance of the warrants. The warrants contain a cashless exercise provision. In the event the purchasers exercise the warrants on a cashless basis, the Company will not receive any proceeds. The warrants may be exercised at any time prior to December 12, 2023.

Also, as part of the Comstock X Private Placement discussed in Note 3, the Company issued warrants to purchase shares of the Company's Class A common stock to the Comstock X Class B Member. The warrants represent the right to purchase an aggregate amount of up to 150 shares of the Company's Class A common stock. The warrants have an initial exercise price which is equal to the average of the closing price of the Company's Class A common stock of the 20 trading days preceding the issuance of the warrants. The warrants contain a cashless exercise provision. In the event the purchasers exercise the warrants on a cashless basis, the Company will not receive any proceeds. The warrants may be exercised at any time prior to August 15, 2026.



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As discussed in Note 8, as part of the CGF Private Placement, depending upon the investment amount, purchasers of interests in CGF other than CDS received warrants that represent the right to purchase a certain number of shares of the Company's Class A common stock. For purchasers who are not affiliates or insiders, the warrants have initial exercise prices ranging from \$4.91 to \$7.63. The exercise prices of the warrants to affiliates and insiders range from \$7.30 to \$7.63. The warrants contain a cashless exercise provision. In the event a purchaser exercises the warrant on a cashless basis, the Company will not receive any proceeds. The warrants may be exercised at any time within ten years from the date of issuance. As of December 31, 2016, the warrants represent the right to purchase an aggregate amount of up to 76 shares of our Class A common stock.

In connection with entering into the SunBridge ("BridgeCom") loan agreement in 2011, the Company issued warrants to purchase shares of the Company's Class A common stock to BridgeCom Development I, LLC, an affiliate of SunBridge. The warrants represent the right to purchase an aggregate amount of up to 143 shares of the Company's Class A common stock. The warrants have an initial exercise price of \$7.21. The warrants contain a cashless exercise provision. In the event the purchasers exercise the warrants on a cashless basis, the Company will not receive any proceeds. The warrants may be exercised at any time prior to July 12, 2021. On May 29, 2012, the Company repaid the SunBridge loans in full and the SunBridge warrants remain unexercised as of December 31, 2016.

## 10. RELATED PARTY TRANSACTIONS

The Company has a lease for its corporate headquarters from an affiliate wholly-owned by our CEO. Future minimum lease payments under this lease are as follows:

2017	\$209
2018	160
Total	<u>\$369</u>

For each of the years ended December 31, 2016 and 2015, total rental payments made were \$0.3 million. Rent expense for the years ended December 31, 2016 and 2015 was \$0.3 million.

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 the Chief Executive Officer, to provide services related to real estate development and improvements, legal, accounting, marketing, information technology and additional support services. For the years ended December 31, 2016 and 2015, the Company billed Comstock Asset Management, L.C. \$0.9 million, for services and out-of-pocket expenses incurred. Revenues from this arrangement are included within 'Revenue – other' within the accompanying consolidated statements of operations. As of December 31, 2016 and 2015, the Company was owed \$132 and \$81, respectively, under this contract, which is included in 'Trade receivables' in the accompanying consolidated balance sheets.

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. Other purchasers who purchased interest 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.

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 \$10.0 million and a maximum capacity of up to \$20.0 million. On December 18, 2014, the loan agreement was amended and restated to provide for a maximum capacity of \$25.0 million. All of the other terms of the unsecured promissory note remained the same. The Company borrowed 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. See Note 8 for further discussion of transactions entered with CGF.

On December 29, 2015, the Company and 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 \$4,500 issued by the Company to Stonehenge was 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 all accrued but unpaid interest under the note as of December 29, 2015, which was \$3,861. The note was cancelled in its entirety on December 29, 2015. The holders of Series B Preferred Stock will earn dividends at a rate of 8.75% per annum accruing from the effective date of the Note Exchange and Subscription Agreement. The dividends will accrue whether or not declared. The dividends are also cumulative and payable quarterly in arrears on the last day of each quarterly reporting period in the form of additional Series B Preferred Stock (PIK) or in the sole discretion of the board of directors, in cash. For the year ended December 31, 2016, 69,639 shares, with a liquidation value of \$348, were paid in-kind, and are included in 'Stockholders' equity' in the accompanying consolidated balance sheets. No dividends were paid in-kind during 2015.

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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 upon payment of a \$10 thousand extension fee. 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 Company pays an origination fee of 1% on the amount of the advance, up to an aggregate amount of \$100 thousand, and a maintenance fee of 0.25% of the average outstanding balance of the loan on a quarterly basis. As of December 31, 2016 and 2015, \$3.3 million and \$5.0 million, respectively, was outstanding in principal and accrued interest. See Note 8 for further discussion of transactions entered with CGF II.

See Note 3 for a summary of the Comstock VII Private Placement and the Comstock VIII Private Placement which involved certain of our officers and directors and Note 8 to the consolidated financial statements for further description of the CGF Private Placement and the CGF II Private Placement.

See Note 3 for a summary of the Comstock X Private Placement which involved a wholly owned entity of the Chief Executive Officer of the Company.

### **11. EMPLOYEE BENEFIT PLANS**

The Company maintains a defined contribution retirement savings plan pursuant to Section 401(k) of the Internal Revenue Code (the "Code"). Eligible participants may contribute a portion of their compensation to their respective retirement accounts in an amount not to exceed the maximum allowed under the Code. The Company matches 100% of the employee's contribution, up to 3% of each participant's gross salary and 50% of the employee's contribution above 3% not exceeding 5% of the participant's gross salary, per pay period. Contributions made by the Company become fully vested after six years of service. The total amount matched during the years ended December 31, 2016 and 2015 was \$56 and \$70, respectively.

### **12. RESTRICTED STOCK, STOCK OPTIONS AND OTHER STOCK PLANS**

On December 14, 2004, the Company adopted the 2004 Long-Term Compensation Plan (the "Plan"). The Plan provides for the issuance of stock options, stock appreciation rights, or SARs, restricted stock, deferred stock, dividend equivalents, bonus stock and awards in lieu of cash compensation, other stock-based awards and performance awards. Any shares issued under the Plan typically vest over service periods that range from one to five years. Stock options issued under the plan expire 10 years from the date they are granted.

The Plan provided an initial authorization of 0.4 million shares of Class A common stock for issuance and allows an automatic annual increase equal to the lesser of (i) 3% of the Class A common stock outstanding (ii) 107 shares or (iii) such lesser amount as may be determined by the Company's board of directors. On April 27, 2012, the Company authorized an increase in the number of shares of our Class A common stock reserve to 1.0 million. On June 22, 2012, the Company's stockholders approved the Amended and Restated 2004 Long-Term Incentive Compensation Plan, including an increase in the reserve, with an automatic annual increase on January 1 of each successive year of the lesser of (i) 3% of the Class A common stock outstanding or (ii) 107 shares. As of December 31, 2016 and 2015, there were 0.3 million shares available for issuance under the Plan (as amended). The authorization limits set forth in the Plan (as amended) have been proportionately reduced, as set forth above, as a result of the 1-for-7 reverse stock split on September 25, 2015.

The fair value of each option award is calculated on the date of grant using the Black-Scholes option pricing model and certain subjective assumptions. Expected volatilities are calculated based on our historical trading activities. We estimate forfeitures using a weighted average historical forfeiture rate. Our estimates of forfeitures will be adjusted over the requisite service period based on the extent to which actual forfeitures differ, or are expected to differ, from their estimate. The risk-free rate for the periods is based on the U.S. Treasury rates in effect at the time of grant. The expected term of options is based on the simplified method which assumes that the option will be exercised midway between the vesting date and the contractual term of the option. The Company is able to use the simplified method as the options qualify as "plain vanilla" options as defined by ASC 718, *Stock Compensation*.

No stock options were granted during the years ended December 31, 2016 and 2015.

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The following table summarizes information about stock option activity:

	Shares	Weighted Average Exercise Price	Aggregate Intrinsic Value
Outstanding at January 1, 2015	191	\$ 8.68	
Granted	—	—	
Exercised	—	—	
Forfeited or Expired	(17)	11.55	
Outstanding at December 31, 2015	174	\$ 8.39	
Granted	—	—	
Exercised	—	—	
Forfeited or Expired	(62)	8.82	
Outstanding at December 31, 2016	112	\$ 8.16	\$ —
Exercisable at December 31, 2016	94	\$ 7.93	\$ —

As of December 31, 2016 and 2015, the weighted-average remaining contractual term of unexercised stock options was 4.8 years and 5.6 years, respectively.

A summary of the Company's restricted share activity is presented below:

	Shares	Weighted Average Grant Date Fair Value
Restricted nonvested at January 1, 2015	31	\$ 12.46
Granted	—	—
Vested	(15)	12.48
Forfeited or Expired	(4)	12.67
Outstanding at December 31, 2015	12	\$ 12.42
Granted	20	1.89
Vested	(12)	12.42
Forfeited or Expired	—	—
Nonvested at December 31, 2016	20	\$ 1.89

As of December 31, 2016 and 2015, there was \$0.1 million of unrecognized compensation cost related to stock options and restricted stock issuances granted under the Plan. The Company intends to issue new shares of its common stock upon vesting of restricted stock grants or the exercise of stock options.

In November 2014, our board of directors approved a share repurchase program authorizing the Company to repurchase up to 429 thousand shares of our Class A common stock in one or more open market or privately negotiated transactions depending on market price and other factors.

For the year ended December 31, 2015, we purchased 11 thousand shares of our Class A common stock under the repurchase program for approximately \$79 (including commissions of \$2). No such repurchases were made during 2016. At December 31, 2016, 404 thousand shares of our Class A common stock remain available for repurchase pursuant to our share repurchase agreement.

### 13. NOTE RECEIVABLE

The Company originated a note receivable to a third party in the amount of \$180 during 2014. This note has a maturity date of September 2, 2019 and is payable in monthly installments of principal and interest. The note bears a fixed interest rate of 6% per annum. As of December 31, 2016 and 2015, the outstanding balance of the note was \$103 and \$141, respectively, and was included within 'Other assets' in the accompanying consolidated balance sheets, the interest income of \$7 and \$9 for the years ended December 31, 2016 and 2015, respectively, was included in 'Other income, net' in the consolidated statements of operations.

## 14. COMMITMENTS AND CONTINGENCIES

### *Litigation*

Currently, we are not subject to any material legal proceedings. From time to time, 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 or cash flows. We have obtained insurance coverage, rights to indemnification, or where appropriate, have established reserves in connection with these legal proceedings.

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

The Company has commitments as a result of contracts entered into with certain third parties, primarily local governmental authorities, to meet certain performance criteria as 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 December 31, 2016 and 2015, the Company had issued \$1.1 million and \$2.7 million, respectively, in letters of credit. At December 31, 2016 and 2015, the Company had \$4.2 million and \$4.6 million in performance and payment bonds, respectively, outstanding to third parties. No amounts have been drawn against these 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 December 31, 2016 and 2015, we had approximately \$0.8 million and \$1.0 million, respectively, in these escrow accounts, which are included in 'Restricted cash' in the consolidated balance sheets.

## 15. FAIR VALUE DISCLOSURES

ASC 820, *Fair Value Measurement*, establishes a framework for measuring fair value, expands disclosures regarding fair value measurements and defines fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. ASC 820 specifies a hierarchy of valuation techniques based on whether the inputs to a fair value measurement are considered to be observable or unobservable in a marketplace. The three measurement input levels for determining fair value are as follows

- Fair values determined by Level 1 inputs utilize quoted prices in active markets for identical assets or liabilities that the Company has the ability to access.
- Fair values determined by Level 2 inputs utilize inputs other than quoted prices included in Level 1 that are observable for the asset or liability, either directly or indirectly. Level 2 inputs include quoted prices for similar assets and liabilities in active markets, and inputs other than quoted prices that are observable for the asset or liability, such as interest rates and yield curves that are observable at commonly quoted intervals.
- Level 3 inputs are unobservable inputs for the asset or liability, and include situations where there is little, if any, market activity for the asset or liability. An asset's or liability's level within the fair value hierarchy is based on the lowest level of input that is significant to the fair value measurement.

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.

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The fair value of fixed and floating rate debt is based on unobservable inputs (Level 3 inputs). The fair value of the 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 fair value of fixed and floating rate debt and the corresponding carrying value of fixed and floating rate debt as of:

	December 31, 2016	December 31, 2015
Carrying amount	\$ 43,704	\$ 45,081
Fair value	\$ 44,986	\$ 45,166

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, such as an acceleration of amounts due and payable, could significantly affect the estimates.

In connection with the Stonehenge Note conversion discussed in Note 10, we issued 772,210 shares of Series B Non-Convertible Preferred Stock with a liquidation preference value of \$5.00 per share. Dividends on the Series B Preferred Stock are cumulative and payable quarterly in arrears at an annual rate of 8.75%. The dividends are paid in the form of additional Series B Preferred Stock or in the sole discretion of the board of directors, in cash. The Company recorded these shares based on the fair value calculation on the effective date of the agreement. The Company used various assumptions and inputs such as current market condition and financial position in calculating the fair value of the Series B Preferred Stock by back solving from the Company's equity value using the option pricing model adjusted for lack of marketability of the Series B Preferred Stock. During the year ended December 31, 2016, the Company recorded \$348 of dividends paid-in-kind on its Series B Preferred Stock. See Note 19 for a discussion about the exchange of all the Series B Preferred Stock for the Company's newly created Series C Non-Convertible Preferred Stock subsequent to December 31, 2016.

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. See Notes 2 and 4 for further discussion of the valuation techniques and inputs used.

During 2016, as a result of our impairment analysis, the Company wrote off \$2.4 million in feasibility, site securing, predevelopment, design, carry costs and related costs for certain of our communities in the Washington, D.C. metropolitan area due to unsuccessful negotiations and changes in market conditions. Additionally, during 2016, the Company, through its subsidiaries, and the land seller of a community in the Washington, D.C. area entered into a settlement agreement, and the Company received a refund of \$0.7 million representing a portion of the deposit deemed impaired during the Company's impairment analysis in 2015.

In 2015, we wrote off \$2.8 million in feasibility, site securing, predevelopment, design, and related costs due to inventory delivery delays and inefficiencies which led to the Company re-evaluating the lot takedown strategy. The inventory was deemed impaired in December 2015 and was written down due to changes made to the scheduled lot take down strategy, offers received for the properties or changes in zoning requirement.

## **16. UNCONSOLIDATED JOINT VENTURE**

The Company accounts for its interest in its title insurance joint venture using the equity method of accounting and adjusts the carrying value for its proportionate share of earnings, losses and distributions. The investment in the unconsolidated joint venture is included within 'Other assets, net' in the accompanying consolidated balance sheets. Earnings for the years ended December 31, 2016 and 2015, from this unconsolidated joint venture of \$87 and \$129, respectively, is included in 'Other income, net' in the accompanying consolidated statement of operations. During the years ended December 31, 2016 and 2015, the Company collected and recorded a distribution of \$102 and \$93, respectively, from this joint venture as a return on investment.

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

	Twelve Months Ended December 31,	
	2016	2015
<b>Statement of Operations:</b>		
Total net revenue	\$ 290	\$ 385
Total expenses	117	127
Net income	\$ 173	\$ 258
Comstock Holding Companies, Inc. share of net income	\$ 87	\$ 129

## 17. INCOME TAXES

During the year ended December 31, 2016, the Company recognized income tax expense of \$55 thousand and the effective tax rate was 0.82%. During the year ended December 31, 2015, the Company recorded an out of period adjustment to reverse its valuation allowance specific to its Washington, D.C. tax positions, resulting in the recognition of a deferred tax benefit of \$0.1 million, offset by income tax expense of \$0.4 million, both related to the New Hampshire Avenue project. Because this error was not material to any previously filed consolidated financial statements and the impact of correcting this error in 2015 is not material, the Company recorded the correction in the first quarter of 2015. The effective tax rate for the year ended December 31, 2015 was 5.64%.

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. The Company recorded valuation allowances for certain tax attributes and other deferred tax assets. At this time, sufficient uncertainty exists regarding the future realization of these deferred tax assets through future taxable income. If, in the future, the Company believes that it is more likely than not that these deferred tax benefits will be realized, the valuation allowances will be reversed. With a full valuation allowance, any change in the deferred tax asset or liability is fully offset by a corresponding change in the valuation allowance.

The Company currently has approximately \$138 million in federal and state 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 December 31, 2016, 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 December 31, 2016, because of the Company's full valuation allowance on its net deferred tax assets.

The Company's ability to use its NOLs (and in certain circumstances, future built-in losses and depreciation deductions) can be negatively affected if there is an "ownership change" as defined under Section 382. In general, an ownership change occurs whenever there is a shift in ownership by more than 50 percentage points by one or more 5% stockholders over a specified time period (generally three years). Given Section 382's broad definition, an ownership change could be the unintended consequence of otherwise normal market trading in the Company's stock that is outside of the Company's control. In an effort to preserve the availability of these NOLs, Comstock adopted a Section 382 rights agreement, which expired in May 2014. In June 2015, at the 2015 Annual Meeting of Stockholders, the Company's stockholders approved a new Internal Revenue Code Section 382 Rights Agreement (the "Rights Agreement") to protect stockholder value. The Rights Agreement expires on March 27, 2025. The Rights Agreement was adopted to reduce the likelihood of such an unintended "ownership change", thus preserving the value of these tax benefits. Similar plans have been adopted by a number of companies holding similar significant tax assets over the past several years.

The Company has not recorded any accruals related to uncertain tax positions as of December 31, 2016 and 2015, respectively. We file U.S. and state income tax returns in jurisdictions with varying statutes of limitations. The 2012 through 2015 tax years remain subject to examination by federal and most state tax authorities.

As a result of the conversion of the Stonehenge Note to Series B Preferred Stock in 2015, the Company realized a taxable gain on conversion, and accordingly released \$1.0 million of the Company's federal deferred tax asset valuation allowance. Pursuant to the requirements of ASC 740-20-45, the tax on the conversion gain credited directly to equity is reported net in equity; whereas, the tax benefit realized from the reversal of the valuation allowance was recorded in the income tax line in the Company's statement of operations.

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Income tax provision consists of the following as of December 31:

	<u>2016</u>	<u>2015</u>
Current:		
Federal	\$ —	\$ —
State	37	(327)
	37	(327)
Deferred:		
Federal	3,967	918
State	742	180
	4,709	1,098
Valuation allowance	(4,691)	(1,086)
Total income tax expense	<u>\$ 55</u>	<u>\$ (315)</u>

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Components of the Company's deferred tax assets and liabilities at December 31, 2016 and 2015 are as follows:

	<u>2016</u>	<u>2015</u>
Deferred tax assets:		
Inventory	\$ 1,766	\$ 2,094
Warranty	113	122
Net operating loss and tax credit carryforwards	53,721	47,974
Accrued expenses	7	4
Stock based compensation	387	411
Investment in affiliates	—	480
	55,994	51,085
Less - valuation allowance	(55,739)	(51,048)
Net deferred tax assets	255	37
Deferred tax liabilities:		
Depreciation and amortization	(46)	(35)
Investment in affiliates	(209)	—
Net deferred tax liabilities	(255)	(35)
Net deferred tax assets (liabilities)	<u>\$ —</u>	<u>\$ 2</u>

A reconciliation of the statutory rate and the effective tax rate after adjustments for non-includable partnership income arising from non-controlling interest follows:

	<u>2016</u>	<u>2015</u>
Federal statutory rate	(35.00%)	(35.00%)
State income taxes - net of federal benefit	(3.90%)	(3.90%)
Permanent differences	(12.87%)	18.80%
Return to provision adjustments	(18.16%)	38.54%
Change in valuation allowance	69.93%	(19.46%)
Current state income tax	0.82%	7.81%
Other, net	0.00%	(1.15%)
Effective tax rate	<u>0.82%</u>	<u>5.64%</u>

## 18. QUARTERLY RESULTS (unaudited)

Quarterly results for the years ended December 31, 2016 and 2015 are as follows (in thousands, except per share amounts):

	Three months ended			
	March 31, 2016	June 30, 2016	September 30, 2016	December 31, 2016
Revenues	\$ 9,706	\$ 9,978	\$ 13,103	\$ 8,793
Operating loss	(1,271)	(1,442)	(854)	(3,297)
Pretax loss	(1,263)	(1,429)	(756)	(3,259)
Net loss	(1,288)	(1,461)	(756)	(3,257)
Net loss attributable to common stockholders	(1,724)	(1,995)	(1,046)	(4,576)
Basic loss per share	(0.55)	(0.60)	(0.34)	(1.38)
Diluted loss per share	(0.55)	(0.60)	(0.34)	(1.38)

	Three months ended			
	March 31, 2015	June 30, 2015	September 30, 2015	December 31, 2015
Revenues	\$ 10,317	\$ 12,564	\$ 12,288	\$ 26,207
Operating loss	(930)	(799)	(1,015)	(812)
Pretax loss	(738)	(217)	(987)	(753)
Net (loss) income	(668)	(274)	(1,023)	2
Net loss attributable to common stockholders	(943)	(808)	(1,091)	(1,725)
Basic loss per share	(0.31)	(0.25)	(0.33)	(0.54)
Diluted loss per share	(0.31)	(0.25)	(0.33)	(0.54)

## 19. SUBSEQUENT EVENTS

On January 26, 2017, the Company redeemed the remaining equity interest of the Comstock VIII Class B Members by paying \$1.9 million, representing final priority returns and capital return.

On February 13, 2017, the Company paid off the construction note related to the Hallcrest project of \$1.3 million that was outstanding at December 31, 2016.

On February 15, 2017, the Company entered into a secured construction loan for \$4.9 million in connection with its Totten Mews townhome project in Washington, D.C. The loan provides for a variable interest rate of LIBOR plus 3.5% per annum, with an interest rate floor of 4.75% per annum. This loan matures in February 2019.

On February 20, 2017, the Company extended its revolving construction, acquisition, and development loans related to the Marrwood East project. The loans had an initial maturity date of February 20, 2017 and the extension provides for a maturity date of May 20, 2017. All other terms of the original agreements remain in full force and effect. As of December 31, 2016, the Company had \$5.1 million in outstanding borrowings under this revolving credit facility.

On February 24, 2017, the Company extended its acquisition and development loan related to the Estates at Leeland project. This loan had an initial maturity date of March 27, 2017 and the extension provides for a maturity date of May 31, 2018. The loan was further modified to include quarterly lot take down schedule effective second quarter of 2017. All other terms of the original agreement remain in full force and effect. As of December 31, 2016, the Company had \$0.6 million in outstanding borrowings under this credit facility.

On March 6, 2017, the Company extended its revolving construction loan related to the Two Rivers II project. This loan had an initial maturity date of March 19, 2017 and the extension provides for a maturity date of June 19, 2017. All other terms of the original agreement remain in full force and effect. As of December 31, 2016, the Company had \$0.3 million in outstanding borrowings under this credit facility.

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 state value of \$5.00 per share (the "Series C Preferred Stock"). 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 dividend earned through the conversion date, was retired upon re-acquisition.



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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 193,052.50 shares of the Series C Preferred Stock held by Investor Management, L.C. for \$88,619.33. The Series C Preferred Stock acquisition closed on April 4, 2017, and the Series C Preferred Stock was retired.

On March 24, 2017, Comstock Acquisitions II, L.C. ("Purchaser"), an entity wholly owned by certain officers, directors, and employees of the Company, entered into a share repurchase agreement with Mr. Benson and Clareth, LLC, an entity wholly owned by Mr. Benson ("Clareth"), pursuant to which it agreed to purchase 64,563 shares of the Company's Class A common stock and 170,250 shares of the Company's Class B common stock held by Clareth for \$234,813. The purchase transaction closed on April 4, 2017. Upon Purchaser's repurchase of the Company's Class B common stock, pursuant to the Amended and Restated Certificate of Incorporation of the Company, the Class B common stock automatically converted to Class A common stock.

On March 24, 2017, Christopher Clemente, the Chief Executive Officer of the Company entered into a share repurchase agreement with Clareth pursuant to which he agreed to purchase 25,000 shares of the Company's Class B common stock held by Clareth for \$25,000. The purchase transaction closed on April 4, 2017.

On March 31, 2017, the Company entered into a secured acquisition and construction loan for \$3.0 million in connection with its Solomons Choice project in Anne Arundel County, Maryland. The loan provided for a variable interest rate of Prime plus one half percent, with a rate of no less than 4.5%. This loan has an initial maturity date of March 31, 2019, with a potential for two automatic extensions, if the Company meets certain sales criteria.

**AGREEMENT FOR PURCHASE  
AND SALE OF REAL PROPERTY**

THIS AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY (the "**Agreement**") is entered into this 24<sup>th</sup> day of October, 2016, by and between COMSTOCK REDLAND ROAD II, L.C., a Virginia limited liability company (the "**Seller**"), and MOMENTUM APARTMENTS, LLC, a Virginia limited liability company (the "**Purchaser**").

**WHEREAS**, Seller is the owner of certain real property in Montgomery County ("**County**"), State of Maryland, as more particularly described on Exhibit "A", attached hereto and made a part hereof (the "**Property**"); and

**WHEREAS**, the "**Property**" shall include all rights, privileges, easements and appurtenances belonging or appertaining thereto, including any right, title and interest of Seller, if any (none represented or warranted hereby), in and to (i) adjacent streets, alleys, rights-of-way, waterways, creeks or streams, and (ii) impact fee credits or prepaid fees related to the Property, and all of Seller's right, title and interest, if any (none represented or warranted hereby), in all (a) engineering plans and work documents, (b) takeoffs, (c) federal, state and local permits of any kind, valid or expired, and (d) warranty or punch list agreements with city, county, state or federal government agencies ((a) through (d) being collectively the "**Development Documents**"); and

**WHEREAS**, Seller desires to sell and Purchaser wishes to purchase the Property pursuant to the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, in consideration of the Purchase Price (defined below) and the mutual promises of the parties as set forth herein, Seller does hereby agree to sell to Purchaser and Purchaser agrees to purchase from Seller in fee simple the Property pursuant to the following covenants, conditions, terms and obligations:

1. **PURCHASE AND SALE**. Seller agrees to sell the Property to Purchaser, and Purchaser agrees to purchase the Property as provided herein.

2. **DEPOSIT**. Upon execution of this Agreement by all parties, Purchaser shall deposit with Stewart Title & Escrow, Inc. ("**Escrow Agent**") the sum of Fifty Thousand Dollars (\$50,000) ("**Initial Deposit**"), which Initial Deposit shall be refundable until the expiration of the Feasibility Period (defined below). Upon the expiration of the Feasibility Period, provided Purchaser has not terminated this Agreement, Purchaser shall deposit an additional sum of Fifty Thousand Dollars (\$50,000) ("**Additional Deposit**") with the Escrow Agent. The Initial Deposit and the Additional Deposit shall be referred to herein collectively as the "**Deposit**." The Deposit shall be non-refundable except in the event of (i) a Seller default, (ii) the failure of Purchaser to obtain an award of Low Income Housing Tax Credits and lender financing for the development of the Property ("**Financing**"), or (iii) as otherwise provided herein.

3. **FEASIBILITY PERIOD**. All engineering, development, marketing and other inspections, tests and examinations shall be conducted within twenty-one (21) days of the Effective Date ("**Feasibility Period**") by parties qualified and, where applicable, licensed to conduct such inspections, tests and/or examinations. Purchaser shall pay the costs of all tests, inspections, examinations, investigations, and reviews conducted pursuant to this Agreement. After the performance of any tests, inspections, examinations, investigations and reviews, Purchaser shall promptly repair any damage to the Property to substantially the same condition as existed prior to the conduct of said tests, inspections, examinations, investigations and reviews, and this obligation of Purchaser shall survive any termination of this Agreement. Prior to undertaking any activity or exercising any rights granted in this Agreement, Purchaser shall obtain, and subsequently maintain in full force and effect throughout the duration of this Agreement, commercial general liability insurance in an amount not less than One Million and No/100 Dollars (\$1,000,000.00). Such policy or policies shall name Seller as an additional insured, and shall cover damage to property and persons resulting from or connected with any activity of Purchaser as contemplated under this Agreement. Notwithstanding anything to the contrary set forth in this Agreement, Purchaser agrees to indemnify and hold Seller harmless from any and all liability, loss or damage, including reasonable attorneys' fees and related costs and expenses arising out of, or resulting from, any and all engineering, development, marketing and other studies that may be conducted by Purchaser, including, without limitation, physical damage to the Property (and any adjoining property) and claims of mechanics and materialmen arising out of such activities. Furthermore, and notwithstanding anything in this Agreement to the contrary, Purchaser shall not be permitted to perform a Phase II environmental audit and inspection of the Property or any other form of invasive property testing without Seller's prior written approval, which may be withheld for any reason or no reason; provided, however, that Seller hereby expressly acknowledges that Purchaser shall be permitted to make customary and reasonable soil borings and test pits during its examination of the Property. Purchaser's obligations to Seller under this Paragraph 3 shall survive any termination of this Agreement for one hundred eighty (180) days.

4. **PURCHASE PRICE AND CLOSING**. Upon satisfaction of the Conditions Precedent to Closing (as defined in Paragraph 5), Seller shall sell, and Purchaser agrees to purchase the Property in accordance with the terms of this Agreement. The purchase price for the Property is Three Million Five Hundred Thousand and NO/100 Dollars (\$3,500,000.00) (the "**Purchase Price**"). The Deposit will be applied towards the Purchase Price and the balance thereof shall be paid by Purchaser at Closing (defined below) via wire transfer to the Escrow Agent. The closing (the "**Closing**") of the Property shall occur no later than June 30, 2017; provided; however; that if the Conditions Precedent to Closing have not occurred by such date, then Closing may be extended to December 31, 2017 ("**Outside Closing Date**"). In no event shall the Closing occur later than the Outside Closing Date; provided, however, that Purchaser may elect for Closing to occur on an earlier date upon providing Seller three (3) days prior notice. The Closing shall be held at the offices of Escrow Agent or such other place as mutually agreed by Seller and Purchaser. Time is of the essence with respect to the date of Closing.

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5. CONDITIONS PRECEDENT TO CLOSING. The obligation of Purchaser to purchase the Property shall be conditioned upon satisfaction of the following at or prior to Closing, any of which may be waived by Purchaser in its sole and absolute discretion (the “**Conditions Precedent to Closing**”):

5(a) All conditions of title have been met pursuant to Subparagraph 6(a) and Seller shall have cured any title objection Seller has agreed to cure in accordance with Subparagraph 6(d).

5(b) Seller is not in default of this Agreement.

5(c) The representations and warranties by Seller contained in this Agreement must be true.

5(d) Purchaser shall have received approvals from Montgomery County, Maryland, a funding commitment letter from a third party lender, and an award letter for Low Income Housing Tax Credits from the Maryland Department of Housing and Community Development to build an affordable, multi-family residential unit building on the Property.

5(e) Purchaser and Seller’s affiliate, Comstock Redland Road, L.C., shall enter into a Temporary Construction and Easement Agreement for the use of adjacent property (no more than 1 building pad on the adjacent property) for staging and storage of materials by Purchaser for construction of the building on the Property.

In the event that any of the foregoing Conditions Precedent to Closing are not satisfied on or prior to the date of Closing, then Seller or Purchaser may elect to either (i) waive the applicable unsatisfied Conditions Precedent to Closing and proceed to Closing on the scheduled Closing date, in the Purchaser’s sole discretion, or (ii) immediately terminate this Agreement by written notice to the other party, in which case the Deposit shall be returned to Purchaser within five (5) days of such termination and thereafter the parties shall be relieved of all further liability hereunder with the exception of Purchaser’s obligations to Seller that survive any termination of this Agreement. In the event of a termination of this Agreement by Purchaser, Purchaser shall, at no additional cost or expense to Seller, assign to Purchaser all contracts, permits, applications, or any other documents requested by Purchaser that were prepared for the Property or performed for Purchaser.

6. TITLE.

6(a) Title to the Property is to be conveyed hereunder, free of liens, judgments, tenancies, and reservations, subject, however, to any matters of title not objected to by Purchaser, or deemed approved by Purchaser, during Purchaser’s examination of title (as described in this Paragraph 6) (collectively, the “**Permitted Exceptions**”).

6(b) Purchaser, at Purchaser’s expense, shall obtain a commitment for an owner’s policy of title insurance (hereafter “**Title Commitment**”) from Escrow Agent (or such other title insurance company selected by Purchaser), in the amount acceptable to Purchaser’s lender, insuring Purchaser as the prospective owner of fee simple marketable title to the Property.

6(c) Purchaser, in Purchaser’s sole discretion, and at Purchaser’s sole expense, may cause to be prepared a survey of the Property (the “**Survey**”).

6(d) At the Closing, the Escrow Agent shall agree to issue to Purchaser an ALTA Owners Title Insurance Policy (2006) with coverage in an amount acceptable to Purchaser’s lender showing title to the Property vested in Purchaser subject only to the Permitted Exceptions and the standard printed exceptions, exclusions and conditions in the policy of title insurance (“**Title Policy**”). Seller shall not provide endorsements or extended or additional coverage to the Title Policy and the Purchaser’s inability to obtain endorsements or additional or extended coverage to the Title Policy shall not be a closing condition or a cause to delay the Closing.

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## 7. CLOSINGS, CONVEYANCE

7(a) Any escrow fee shall be equally shared between Purchaser and Seller. Any transfer or conveyance taxes or fees, filing fees and/or costs associated with the recordation of the deed shall be at Seller's expense. Purchaser shall pay all costs and expenses associated with Purchaser's financing, procurement of a survey, and procurement of title insurance.

7(b) Subject to Section 7(d) below, Seller shall be responsible for all real estate taxes, assessments, homeowner's association dues or other charges accruing prior to the date of the Closing and Purchaser shall be responsible for such real estate taxes, assessments, homeowner's association dues and other charges accruing on or after the date of the Closing. At Closing, real estate taxes and other charges payable on an annual or periodic basis shall be prorated to the date of Closing based on the most recent available tax information.

7(c) Seller shall be responsible for any agricultural land, recapture or rollback tax due in connection with the conveyance or deed under any applicable law, regulation or ordinance (or any similar tax or assessment) levied as of the date of the Closing.

7(d) At Closing, Purchaser shall reimburse Seller for any and all amounts expended by Seller for Seller's interest carry on its existing loan with Eaglebank from November 1, 2016 to the date of Closing, and for Seller's payment of real estate taxes on the Property up to the amount of \$100,000.

7(e) At Closing, the Property shall be conveyed by Seller to Purchaser or Purchaser's designee by Special Warranty Deed, in proper form for recording in the County.

7(f) If required, at or prior to Closing, Seller shall deliver to Purchaser a "Certification of Non-Foreign Status" which meets the requirements of Section 1445 of the Internal Revenue Code and Internal Revenue Regulations for the purpose of informing the transferee that withholding of Federal taxes is not required.

7(g) If any mechanics' or materialmen's liens are filed against the Property at the time of Closing pursuant to any work performed or materials furnished pursuant to any agreement made by Seller, Seller will forthwith pay or bond same in order to release the Property from the operation and effect of such lien, or obtain affirmative title insurance over such lien reasonably acceptable to Purchaser.

## 8. DEFAULT; LIABILITY OF PARTIES.

8(a) In the event Purchaser breaches this Agreement, Seller's sole and exclusive remedy shall be to terminate this Agreement and receive the Deposit. Thereafter, Purchaser and Seller shall be relieved of further liability hereunder, at law or in equity, it being the agreement of the parties that Purchaser shall have no other liability or obligation for default hereunder (except with respect to such obligations as may, pursuant to the terms hereof, survive termination of this Agreement).

8(b) Notwithstanding anything to the contrary contained herein, in the event Seller breaches this Agreement (which breach, failure or default is not remedied or cured by Seller pursuant to any other provisions hereof), Purchaser's sole and exclusive remedy shall be either:

(i) to receive the return to Purchaser of the Deposit as full, fixed and liquidated damages, not as a penalty, the parties hereby acknowledging the difficulty of ascertaining Purchaser's damages in such a circumstance and agreeing that this remedy represents a reasonable and mutual attempt by Seller and Purchaser to anticipate the consequence to Purchaser of Seller's breach, whereupon this Agreement shall terminate. Thereafter, Purchaser and Seller shall be relieved of further liability hereunder, at law or in equity, it being the agreement of the parties that Seller shall have no liability or obligation for default hereunder except to the extent of the amounts set forth herein, and except obligations that survive termination, and in no event shall Seller's liability or responsibility for any failure, breach or default hereunder exceed the total amounts set forth herein; or

(ii) to commence an action against Seller for specific performance of this Agreement or similar legal or equitable action; provided, however, that Purchaser shall not be entitled to pursue any action for specific performance against Seller if Seller is prevented from performing as a result of any of the following: (A) an order or regulation of any governmental or regulatory authority having jurisdiction over Seller or any affiliate thereof, or (B) the levy of a fine, imposition of any reserve requirement or any other action that has a material adverse effect (apart from the act of specific performance) on Seller or any affiliate undertaken by any such governmental or regulatory authority, or (C) Seller having received an opinion of reputable counsel or its internal legal department that Seller's performance hereunder could result in a violation of any law, rule, regulation, or order of any such governmental or regulatory authority or the levy of any fine, imposition of an additional reserve requirement or any other action that has a material adverse effect (apart from the act of specific performance) on Seller or any affiliate.

8(c) Seller and Purchaser acknowledge and represent that neither has engaged the services of a real estate broker in connection with the transaction described in this Agreement. Should any claim for commission be asserted or established, the party in breach of its representation in this Paragraph 8(c) hereby expressly agrees to hold the other harmless with respect to all costs relating thereto (including reasonable attorneys' fees) to the extent that the breaching party is shown to have been responsible for the creation of such claim. Anything to the contrary in this Agreement notwithstanding, such agreement of each party to hold the other harmless shall survive the Closing and any termination of this Agreement.

8(d) No failure(s) or default(s) by Purchaser or Seller shall result in the termination or limitation of any right hereunder or the exercise of any rights or remedies with respect to such failure(s) or default(s) unless and until the defaulting party shall have been notified in writing by a document specifically entitled "Notice of Default" and shall have failed to remedy the specified failure(s) or default(s) within fifteen (15) days after the receipt of said written notice or if the cure thereof cannot be completed within fifteen (15) days, then a reasonable period of time not to exceed an additional thirty (30) days provided the party diligently and continuously pursues such cure. The scope of the breach or default and of the required cure shall be limited to the failure(s) or default(s) specifically stated in the Notice of Default, and any right to claim or pursue a breach of or default under this Agreement following any such failure to cure shall be limited to the specific failure(s) or default(s) stated in such Notice of Default. The provisions of this Subparagraph 8(d) shall not apply to Purchaser's failure to timely deliver the Deposit to Seller (which failure shall result in this Agreement being null and void without any further action of Seller), or to a default by Purchaser for failure to close on the purchase of the Property as and when required hereunder.

9. SELLER'S REPRESENTATIONS, WARRANTIES AND COVENANTS. Seller hereby represents, warrants and covenants to Purchaser that:

9(a) To the best of Seller's knowledge, Seller is currently the fee simple owner of the Property.

9(b) Seller has full authority to execute this Agreement and transfer the Property to Purchaser at Closing.

9(c) Except as may be required by law or agreed to by Purchaser, during the term of this Agreement, Seller will not make any commitments or representations to the applicable governmental authorities, or to adjoining or surrounding property owners, which would materially interfere with Purchaser's ability to improve the Property.

9(d) Seller has granted no person any contract right or other right to possession of all or any portion of the Property.

9(e) Except as may be required by law or agreed to by Purchaser, Seller shall not materially alter the condition of the Property during the term of this Agreement.

9(f) As of the date of this Agreement, to the actual knowledge of Seller:

(i) Seller has received no notice that any substance, material or waste which is or becomes designated, classified or regulated as being "toxic" or "hazardous" or a "pollutant" or which is or becomes similarly designated, classified or regulated under any Environmental Law (a "**Hazardous Substance**") is now or has been used or stored on or within any portion of the Property in violation of Environmental Laws ("**Environmental Law**" includes without limitation any law, statute, ordinance or regulation pertaining to health, industrial hygiene or the environment, including, without limitation, CERCLA (Comprehensive Environmental Response, Compensation and Liability Act of 1980) and RCRA (Resources Conservation and Recovery Act of 1976).

(ii) Seller has received no notice of federal, state or local enforcement, clean-up, removal, remedial or other governmental or regulatory actions instituted or completed affecting the Property; and

(iii) Seller has received no notice of a claim made by any third party against Seller relating to any Hazardous Substances on or within the Property.

9(g) From the Effective Date through the Closing, Seller shall promptly notify Purchaser if to the actual knowledge of Seller there are any threatened or pending investigations by any governmental agency under any law, regulation or ordinance, including those pertaining to any Hazardous Substance, zoning violations, erosion control violations or violations or any permits or approvals.

10. AS-IS. PURCHASER ACKNOWLEDGES TO AND AGREES WITH SELLER THAT PURCHASER IS PURCHASING THE PROPERTY IN AN "AS IS" CONDITION "WITH ALL FAULTS" AND SPECIFICALLY AND EXPRESSLY WITHOUT ANY WARRANTIES, REPRESENTATIONS OR GUARANTEES, EITHER EXPRESS OR IMPLIED, OF ANY KIND, NATURE OR TYPE WHATSOEVER FROM OR ON BEHALF OF SELLER OTHER THAN THOSE EXPRESSLY STATED IN THIS AGREEMENT OR IN THE DEED.

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PURCHASER HEREBY ACKNOWLEDGES THAT IT SHALL NOT BE ENTITLED TO, AND SHALL NOT, RELY ON SELLER, ITS AGENTS, EMPLOYEES OR REPRESENTATIVES, AND SELLER HEREBY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, EITHER UNDER COMMON LAW, BY STATUTE, OR OTHERWISE, AS TO (I) THE QUALITY, NATURE, ADEQUACY OR PHYSICAL CONDITION OF THE PROPERTY INCLUDING, BUT NOT LIMITED TO, ANY STRUCTURAL ELEMENTS, FOUNDATION, ACCESS, LANDSCAPING, SEWAGE OR UTILITY SYSTEMS AT THE PROPERTY, IF ANY; (II) THE QUALITY, NATURE, ADEQUACY OR PHYSICAL CONDITION OF SOILS AND GROUND WATER OR THE EXISTENCE OF GROUND WATER AT THE PROPERTY; (III) THE EXISTENCE, QUALITY, NATURE, ADEQUACY OR PHYSICAL CONDITION OF ANY UTILITIES SERVING THE PROPERTY; (IV) THE DEVELOPMENT POTENTIAL OF THE PROPERTY, ITS VALUE, ITS PROFITABILITY, ITS HABITABILITY, MERCHANTABILITY OR FITNESS, SUITABILITY OR ADEQUACY OF THE PROPERTY FOR ANY PARTICULAR PURPOSE; (V) THE ZONING OR OTHER LEGAL STATUS OF THE PROPERTY; (VI) THE COMPLIANCE OF THE PROPERTY OR ITS OPERATIONS WITH ANY APPLICABLE CODE, STATUTE, LAW, ORDINANCE, RULE, REGULATION, COVENANT, PERMIT, AUTHORIZATION, STANDARD, CONDITION OR RESTRICTION OF ANY GOVERNMENTAL OR REGULATORY AUTHORITY; (VII) THE QUALITY OF ANY LABOR OR MATERIALS RELATING IN ANY WAY TO THE PROPERTY; (VIII) THE SQUARE FOOTAGE OR ACREAGE OF THE PROPERTY; OR (IX) THE OPERATION OF THE PROPERTY FROM THE DATE OF THIS AGREEMENT UNTIL THE CLOSING.

PURCHASER ACKNOWLEDGES THAT SELLER HOLDS TITLE TO THE PROPERTY, THROUGH FORECLOSURE OR OTHERWISE, PRIMARILY TO PROTECT ITS SECURITY INTEREST WITHIN THE MEANING OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT ("CERCLA"), 42 U.S.C. § 9601 ET SEQ. AND THE RULES AND REGULATIONS PROMULGATED THEREUNDER.

WITHOUT IN ANY WAY LIMITING THE GENERALITY OF THE PRECEDING, PURCHASER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT IT HEREBY WAIVES, RELEASES AND DISCHARGES ANY CLAIM IT HAS, MIGHT HAVE HAD OR MAY HAVE IN THE FUTURE AGAINST THE SELLER WITH RESPECT TO COSTS, DAMAGES, OBLIGATIONS, PENALTIES, CAUSES OF ACTION AND OTHER LIABILITIES (WHETHER ACCRUED, CONTINGENT, ARISING BEFORE OR AFTER THIS AGREEMENT, OR OTHERWISE) ARISING AS A RESULT OF (I) THE CONDITION OF THE PROPERTY, EITHER PATENT OR LATENT (EXCEPT TO THE EXTENT THAT THE AFFIRMATIVE ACTS OF SELLER DURING SELLER'S PERIOD OF DIRECT OWNERSHIP OF THE PROPERTY DIRECTLY RESULTED IN ANY DAMAGE TO THE PHYSICAL CONDITION OF THE PROPERTY OR VIOLATIONS OF APPLICABLE LEGAL REQUIREMENTS WITH RESPECT TO THE PHYSICAL CONDITION OF THE PROPERTY), (II) ITS ABILITY OR INABILITY TO OBTAIN OR MAINTAIN BUILDING PERMITS, EITHER TEMPORARY OR FINAL CERTIFICATES OF OCCUPANCY OR OTHER LICENSES FOR THE USE OR OPERATION OF THE PROPERTY, AND/OR CERTIFICATES OF COMPLIANCE FOR THE PROPERTY, (III) THE ACTUAL OR POTENTIAL INCOME OR PROFITS TO BE DERIVED FROM THE PROPERTY, (IV) THE REAL ESTATE TAXES OR ASSESSMENTS NOW OR HEREAFTER PAYABLE THEREON, (V) EXCEPT TO THE EXTENT THAT THE AFFIRMATIVE ACTS OF SELLER DURING SELLER'S PERIOD OF DIRECT OWNERSHIP OF THE PROPERTY DIRECTLY RESULTED IN ANY VIOLATIONS OF APPLICABLE ENVIRONMENTAL LAWS WITH RESPECT TO PROPERTY, THE PAST, PRESENT OR FUTURE CONDITION OR COMPLIANCE OF THE PROPERTY, OR COMPLIANCE OF PAST OWNERS AND OPERATORS OF THE PROPERTY, IN REGARD TO ANY PAST, PRESENT AND FUTURE FEDERAL, STATE AND LOCAL ENVIRONMENTAL PROTECTION, POLLUTION CONTROL, POLLUTION CLEANUP, AND CORRECTIVE ACTION LAWS, RULES, REGULATIONS, ORDERS, AND REQUIREMENTS (INCLUDING WITHOUT LIMITATION CERCLA, RCRA, AND OTHERS PERTAINING TO THE USE, HANDLING, GENERATION, TREATMENT, STORAGE, RELEASE, DISPOSAL, REMOVAL, REMEDIATION OR RESPONSE TO, OR NOTIFICATION OF GOVERNMENTAL ENTITIES CONCERNING, TOXIC, HAZARDOUS, OR OTHERWISE REGULATED WASTES, SUBSTANCES, CHEMICALS, POLLUTANTS OR CONTAMINANTS), OR LAND USE LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS, (VI) EXCEPT TO THE EXTENT THAT THE AFFIRMATIVE ACTS OF SELLER DURING SELLER'S PERIOD OF DIRECT OWNERSHIP OF THE PROPERTY DIRECTLY RESULTED IN ANY VIOLATIONS OF APPLICABLE ENVIRONMENTAL LAWS, THE PRESENCE ON, IN, UNDER OR NEAR THE PROPERTY OF (INCLUDING WITHOUT LIMITATION ANY RESULTANT OBLIGATION UNDER CERCLA, THE RESOURCE CONSERVATION AND RECOVERY ACT ("RCRA"), 42 U.S.C. § 6973 et seq., ANY STATE STATUTE OR REGULATION, OR OTHERWISE, TO REMOVE, REMEDIATE OR RESPOND TO) ASBESTOS CONTAINING MATERIAL, RADON, UREA FORMALDEHYDE OR ANY OTHER TOXIC, HAZARDOUS OR OTHERWISE REGULATED WASTE, SUBSTANCE, CHEMICAL, POLLUTANT OR CONTAMINANT, AND (VII) ANY OTHER STATE OF FACTS WHICH EXIST WITH RESPECT TO THE PROPERTY.

PURCHASER ACKNOWLEDGES AND AGREES THAT THE TERMS AND CONDITIONS OF THIS PARAGRAPH 10 SHALL EXPRESSLY SURVIVE THE TERMINATION OF THIS AGREEMENT AND/OR THE RECORDATION OF A SPECIAL WARRANTY DEED FOR THE PROPERTY.

11. MISCELLANEOUS.

11(a) All notices and other communications hereunder shall be in writing, and be deemed duly given: (i) when given, if personally delivered or sent by electronic mail; (ii) three (3) days after mailing, if mailed by certified mail, return receipt requested, postage prepaid; or (iii) one business (1) day after shipping via FedEx or other nationally recognized overnight courier service:

If to Purchaser:	Stratford Capital Group 8245 Boone Boulevard, Suite 640 Vienna, Virginia 22182 Attention: Stephen P. Wilson
If to Seller:	Comstock Redland Road II, L.C. 1886 Metro Center Drive, 4 <sup>th</sup> Floor Reston, VA 20190 Attention: Christopher Clemente, CEO
and, with copy to:	Comstock Redland Road II, L.C. 1886 Metro Center Drive, 4 <sup>th</sup> Floor Reston, VA 20190 Attention: Jubal Thompson, General Counsel
If to Escrow Agent:	Stewart Title and Escrow, Inc. 10505 Judicial Drive, #300 Fairfax, VA 22030 Attn: Mark Fitzgerald, Senior Vice President

The parties hereto shall be responsible for notifying each other of any change of address.

11(b) If any term, covenant or condition of this Agreement, or the application thereof to any party or circumstance, shall be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term shall be valid and enforceable to the fullest extent permitted by law.

11(c) It is the intention of the parties hereto that all questions with respect to the construction of this Agreement, and the rights or liabilities of the parties hereunder, shall be determined in accordance with the laws of the State of Maryland, without regard to conflicts of law rules. Time is hereby declared to be of the essence in the performance of each of Seller's and Purchaser's obligations hereunder.

11(d) Any date specified in this Agreement which is a Saturday, Sunday or legal holiday shall be extended to the first regular business day after such date, which is not a Saturday, Sunday or legal holiday.

11(e) This Agreement, together with the Exhibits attached hereto, contains the final and entire agreement between the parties hereto with respect to the subject matter hereof. The recitals set forth in the beginning of this Agreement are incorporated herein. No change or modification of this Agreement, or any waiver of the provisions hereof, shall be valid unless the same is in writing and signed by the parties hereto. Waiver from time to time of any provision hereunder will not be deemed to be a full waiver of such provision, or a waiver of any other provisions hereunder. The terms of this Agreement are mutually agreed to be clear and unambiguous, shall be considered the workmanship of all of the parties and shall not be construed against the drafting party.

11(f) Titles to Paragraphs and Subparagraphs are for convenience only, and are not intended to limit or expand the covenants and obligations expressed thereunder.

11(g) This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

11(h) In the event of any dispute or controversy arising out of or relating to this Agreement or the parties' compliance therewith, it is agreed that the exclusive forum for determination of any and all such disputes or controversies shall be the appropriate trial court for the jurisdiction in which the Property is located. Moreover, in addition to any other relief to which it may be entitled, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred in regard to such dispute or controversy. **THE PARTIES WAIVE THEIR RESPECTIVE RIGHTS OF TRIAL BY JURY.**

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11(i) The parties acknowledge that Seller and/or its affiliates currently maintain signage and marketing information on the Property. The parties agree that unless said signage and/or marketing information interferes with the construction of the building on the Property, Seller and its affiliates shall be entitled to continue to place signage and marketing materials on the Property for its adjacent development.

12. ASSIGNMENT; SURVIVAL. Seller may not assign this Agreement to any party without the express written consent of Purchaser, which consent may not be unreasonably withheld or delayed; provided, however, Seller may assign this Agreement without the Purchaser's consent to any entity controlling, controlled by, under common control with or otherwise affiliated with Seller. Purchaser may not assign this Agreement to any party without the express written consent of Seller, which consent may be withheld for any reason or no reason; provided, however, Purchaser may assign this Agreement without Seller's consent to any entity controlling, controlled by, under common control with or otherwise affiliated with Purchaser. This Agreement shall be binding upon the parties hereto and each of their respective heirs, executors, administrators, successors and assigns. The provisions of this Agreement and the obligations of the parties shall survive the execution and delivery of the deed executed hereunder and shall not be merged therein, except that any representations and warranties of the parties hereunder shall survive Closing for only six (6) months.

13. ESCROW AGENT. The terms and conditions set forth in this Agreement shall constitute both an agreement between Seller and Purchaser and instructions for Escrow Agent, which Escrow Agent shall acknowledge and agree to be bound by, as evidenced by its execution of this Agreement. Seller and Purchaser shall promptly execute and deliver to Escrow Agent any separate or additional escrow instructions requested by Escrow Agent which are consistent with the terms of this Agreement. Any separate or additional instructions shall not modify or amend the provisions of this Agreement unless otherwise expressly agreed by mutual consent of Purchaser and Seller. Purchaser and Seller both hereby acknowledge and agree that Escrow Agent shall hold and deliver the Deposit and all other deposits which may be made under this Agreement in accordance with the terms and conditions of this Agreement and that Escrow Agent shall be relieved of all liability and held harmless by both Seller and Purchaser in the event Escrow Agent makes any disbursement of such monies in accordance with the terms and provisions of this Agreement. Escrow Agent shall be relieved from any responsibility or liability and held harmless by both Purchaser and Seller in connection with the discharge of Escrow Agent's duties hereunder provided that Escrow Agent exercises ordinary and reasonable care in the discharge of such duties.

15. OFAC COMPLIANCE. Purchaser represents and warrants that: (i) it is not on an SDN List (defined below), nor is it directly or indirectly owned or controlled by an SDN (defined below); and (ii) the purchase and sale of the Property, and the consummation of any other transaction contemplated by this Agreement, will not violate any country sanctions program administered and enforced by the Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury. For the purposes hereof, an "SDN List" is defined as one of the lists published by OFAC of individuals and companies owned or controlled by, or acting for or on behalf of, OFAC targeted countries, as well as individuals, groups, and entities, such as terrorists and narcotics traffickers, designated under OFAC programs that are not country-specific, and an "SDN" is one of the individuals or companies listed on an SDN List.

16. EFFECTIVE DATE. This Agreement shall become effective on the date last signed by Purchaser and Seller ("**Effective Date**").

**(SIGNATURES FOLLOW ON NEXT PAGE)**



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WITNESS, the following signatures.

SELLER:

COMSTOCK REDLAND ROAD II, L.C.

By: Comstock Holding Companies, Inc.,  
Manager

By: \_\_\_\_\_  
Christopher Clemente, Chief Executive Officer

Date: \_\_\_\_\_

(SIGNATURES CONTINUE ON NEXT PAGE)

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PURCHASER:

**MOMENTUM APARTMENTS, LLC**, a Virginia limited liability company

By: Momentum General Partners, LLC a Virginia limited liability company, its managing member

By: SCG Development Partners, LLC, a Delaware limited liability company, its managing member

By: SCG Development Manager, LLC, a Delaware limited liability company, its managing member

By: SCG Capital Corp., a Delaware corporation, its sole member

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

Name: Stephen P. Wilson

Title: President – Virginia Office

Date: \_\_\_\_\_

(SIGNATURES CONTINUE ON NEXT PAGE)

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Escrow Agent executes this Agreement for the sole purpose of evidencing its agreement to the matters set forth in Paragraph 13 hereof.

ESCROW AGENT:

STEWART TITLE & ESCROW, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

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**EXHIBIT "A"**

**PROPERTY**

**LIMITED LIABILITY COMPANY AGREEMENT**

**OF**

**MOMENTUM GENERAL PARTNERS, LLC,  
a Virginia limited liability company**

**BY AND BETWEEN**

**SCG DEVELOPMENT PARTNERS, LLC,  
a Delaware limited liability company**

**AND**

**COMSTOCK REDLAND ROAD III, L.C.,  
a Virginia limited liability company**

**OCTOBER 24, 2016**

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B	Legal Description of Property
C	Form of Capital Call Notice
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I	Development Services Agreement

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**LIMITED LIABILITY COMPANY AGREEMENT OF  
MOMENTUM GENERAL PARTNERS, LLC,  
A VIRGINIA LIMITED LIABILITY COMPANY**

This Limited Liability Company Agreement of MOMENTUM GENERAL PARTNERS, LLC, a Virginia limited liability company (this “*Agreement*”), is made as of the 24<sup>TH</sup> day of October, 2016, by and between COMSTOCK REDLAND ROAD III, L.C., a Virginia limited liability company (the “*Operating Member*” or “*COMSTOCK*”), with a principal place of business at the address set forth in Exhibit A, and SCG DEVELOPMENT PARTNERS, LLC, a Delaware limited liability company (the “*Managing Member*” or “*SCG*”), with a principal place of business at the address set forth in Exhibit A. The Managing Member and the Operating Member, together with any such additional parties as and when admitted to the Company (as defined below) as members shall be individually a “*Member*” and collectively, the “*Members*.”

**RECITALS**

- A. MOMENTUM GENERAL PARTNERS, LLC, a Virginia limited liability company (the “*Company*”), is a to-be-formed limited liability company under the Virginia Limited Liability Company Act (as amended from time to time, the “*Act*”); and
- B. The Members desire to enter into an agreement to develop the Property (as defined below) in accordance with the terms of this Agreement.
- C. The Members have performed and will continue to perform services in connection with the development of the Project (as defined below).
- D. The Members intend for this Agreement to govern their relationship, and to set forth the respective roles and obligations of the parties with respect to the development activities, to establish a scope of work to be performed by the Company, and to establish an initial schedule for the performance to the scope of work.
- E. The Members now desire to set out fully their respective rights, obligations and duties regarding the Company and its assets and liabilities.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants expressed herein, the parties hereby agree as follows:

**ARTICLE I  
GENERAL PROVISIONS**

Section 1.1 Organization. The Company will be formed by the filing of its Certificate of Formation with the Commonwealth of Virginia State Corporation Commission (“*SSC*”) pursuant to the Act. The Certificate of Formation, as same may be amended from time to time, is referred to herein as the “*LLC Certificate*.” The LLC Certificate states that the registered agent and registered office of the Company in Virginia are Stephen Wilson at 8245 Boone Blvd., Suite 640, Vienna, VA 22182.

Section 1.2 Business of the Company.

1.2.1 The business of the Company shall be to (a) act as developer to an Owner (as defined below) which Owner will: (i) acquire that certain real property consisting of approximately 41,030 square feet of land located at 16011 Redland Road in Derwood, MD, designated as Parcel D on the Residences at Shady Grove Record Plat # 24599, and more particularly described on Exhibit B (the “*Property*”), (ii) develop and construct upon the Property an approximately 110 unit apartment community, to be known as the Momentum at Shady Grove Metro, together with any and all related on-site and off-site improvements appurtenant thereto (collectively, the “*Improvements*”), (iii) own, operate, manage, maintain, market, lease, hold for long-term investment, finance, mortgage, encumber, refinance, sell, exchange, dispose of and otherwise realize the economic benefit from the Project, and (iv) conduct such other activities with respect to the Project as are necessary and/or appropriate to carry out the foregoing purposes and to do all things incidental to or in furtherance of such purposes, and (b) engage in any other lawful activity permitted by the Act.

1.2.2 The Members intend that the majority of the units of the Project will be operated and maintained as qualified low-income units under Section 42 of the Code for a period not less than the Compliance Period (as defined below) and any Extended Use Period (as defined below).

Section 1.3 Good Faith Efforts. The Managing Member and the Operating Member shall cooperate with one another in good faith to successfully consummate the Project in accordance with Good Industry Practices. Such cooperation shall include reasonable efforts to respond to one another as expeditiously as possible with regard to requests for information or approvals required hereby. With regard to materials or documents requiring the approval of one or more parties, if such materials or documents are not approved as initially submitted, then the parties shall engage in such communication as is necessary under the circumstances to resolve the issues resulting in such disapproval. A spirit of good faith and a mutual desire for the success of the Project, subject to applicable financial constraints and regulatory limitations, shall govern the parties' relationship under this Agreement.

Section 1.4 Principal Place of Business. The principal office and place of business of the Company shall initially be 8245 Boone Blvd, Suite 640, Vienna, Virginia 22182.

Section 1.5 Qualification in Other Jurisdictions. The Operating Member shall cause the Company to be qualified or registered under applicable laws of the States of Maryland, and every other jurisdiction in which the Company transacts business and is required to register, and the Operating Member shall be authorized to execute, deliver and file any certificates and documents necessary to effect such qualification or registration.

Section 1.6 Term. The term of the Company commenced as of the date of the filing of the LLC Certificate with SDAT and shall continue until dissolved in accordance with the provisions of this Agreement. The term of this Agreement may be extended upon the mutual agreement of the Members. Any provisions of this Agreement that are expressly identified to survive a termination of this Agreement shall survive such termination.

## ARTICLE II DEFINITIONS

Section 2.1 Definitions. For all purposes of this Agreement, including, without limitation, each of the Exhibits and Schedules attached hereto, the following terms shall have the meanings indicated or referred to below, inclusive of their singular and plural forms except where the context requires otherwise.

“*Act*” is defined in Recital A.

“*Adjusted Capital Account*” is defined in Section 4.5.

“*Agreement*” is defined in the introductory statement.

“*Annual Business Plan*” is defined in Section 6.3.2.

“*Bankruptcy*” means, with reference to any Member:

(i) the entry of an order of relief (or similar court order) against such Member which authorizes a case brought under Chapter 7, 11 or 13 of Title 11 of the United States Code (or successors to such Chapters and Title) to proceed;

(ii) the commencement of a federal, state or foreign bankruptcy, insolvency, reorganization, arrangement or liquidation proceeding by such Member;

(iii) the commencement of a federal, state or foreign bankruptcy, insolvency, reorganization, arrangement or liquidation proceedings against such Member if such proceeding is not dismissed within one hundred twenty (120) days after the commencement thereof;

(iv) the entry of a court decree or court order which remains unstayed and in effect for a period of one hundred twenty (120) consecutive days:

adjudging such Member insolvent under any federal, state or foreign law relating to bankruptcy, insolvency, reorganization, arrangement, liquidation, receivership or the like;

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approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of, or in respect of, such Member or of all, or of a substantial part, of such Member's properties under any federal, state or foreign law relating to insolvency, reorganization, arrangement, liquidation, receivership or the like;

appointing a receiver, liquidator, assignee, trustee, conservator, or sequester (or other similar official) of such Member, or of all, or of a substantial part, of such Member's properties; or

ordering the winding up, dissolution or liquidation of the affairs of such Member;

(v) the consent by such Member to the institution against it of any proceeding of the type described in subsection (a), (b), (c) and (d);

(vi) the consent by such Member to the appointment of a receiver, liquidator, assignee, trustee, conservator or sequester (or other similar official) of such Member, or of all, or of a substantial part, of its properties;

(vii) the making by such Member of an assignment for the benefit of creditors; or

(viii) the admission in writing by such Member of its inability to pay its debts generally as they come due.

**"Business Day"** means any day excluding a Saturday, Sunday, any other day during which there is no scheduled trading on the New York Stock Exchange and all other days on which the state government offices of the Commonwealth of Virginia are not open for business.

**"Buy Price"** is defined in [Section 8.3.2\(b\)](#).

**"Buy/Sell Deposit"** is defined in [Section 8.3.3](#).

**"Buy/Sell Election Date"** is defined in [Section 8.3.2\(b\)](#).

**"Buy/Sell Offering Notice"** is defined in [Section 8.3.1](#).

**"Capital Account"** is defined in [Section 4.1](#).

**"Capital Contribution"** means the total value of cash and net fair market value of property contributed and agreed to be contributed to the Company by the Member, as shown on [Exhibit A](#), as the same may be amended from time to time. Additional Capital Contributions may be made by a Member pursuant to **ARTICLE III**.

**"Capital Call Notice"** means a written notice, substantially in the form attached as [Exhibit C](#), requesting each Member to fund or make Additional Capital Contributions pursuant to [Section 3.2](#).

**"Closing"** means the closing of the Construction Loan.

**"Closing Date"** is defined in [Section 8.3.4](#).

**"Code"** means the Internal Revenue Code of 1986, as amended from time to time, and the regulations promulgated thereunder.

**"Company"** is defined in [Recital A](#).

**"Company Minimum Gain"** is defined in [Section 4.6.1](#).

**"Completion"** means, as to the Project, the date when:

(i) the construction of the Project is completed substantially in accordance with the Project plans and in accordance with all applicable local, state and federal laws, codes, rules, regulations and ordinances, as evidenced by (x) the issuance by the applicable governmental agency of a final certificate of occupancy (or its equivalent) permitting the occupancy of the Project without material condition or qualification; and (y) the issuance of a certificate of substantial completion on A.I.A. Form G-704 by the Architect for the Project with no material condition or qualification; and

(ii) all claims for work performed or materials provided for the construction and development of the Project have been paid in full, as evidenced by lien releases and lien waivers from all Persons providing such work or materials; provided, however, that such lien releases and lien waivers with respect to any Person shall not be required with respect to any claims made by such Person which are being contested in good faith by the Company after providing a bond or other security against liens therefor approved by the title insurance company insuring the Company or the Construction Lender.

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“**Compliance Period**” means, with respect to the Project, the entire period during which the “compliance period” in Section 42(i)(1) of the Code shall be applicable to any building.

“**Consent**” means the prior written consent or approval of a Person or the act of granting such consent, as the context may require, to do the act or thing for which the consent is solicited. Except as otherwise expressly indicated, Consent shall not be unreasonably withheld, delayed or conditioned in light of the facts and circumstances.

“**Construction Lender**” means the lender or lenders providing the Construction Loan.

“**Construction Loan**” is defined in Section 3.7.1.

“**Construction Loan Agreement**” means the loan agreement and other loan documents evidencing and governing the Construction Loan.

“**Deferred Development Fee**” is that fee payable to the Managing Member or its affiliate at or before stabilization of the Project.

“**Development Budget**” is defined in Section 6.3.1.

“**Development Services Agreement**” is defined in Section 6.3.6.

“**Distributions**” is defined in Section 5.1.

“**Economic Benefits**” means all paid development fees, including any deferred development fees, Distributions to the Members after the payment of all operating expenses, proceeds from sale of Company property, and any other financial benefits from the Interest of a Member.

“**Entity**” means any general partnership, limited partnership, corporation, limited liability company, limited liability partnership, joint venture, trust, business trust, cooperative or association or other comparable business entity.

“**Event of Default**” is defined in Section 11.1.

“**Extended Use Period**” means, with respect to the Project, the entire period during which the “compliance period” in Section 42(h)(6) of the Code shall be applicable to any building.

“**Extraordinary Cash Flow**” means all (a) net proceeds realized from the sale, exchange, condemnation, eminent domain taking or other disposition of a capital asset of the Company, (b) net proceeds from the dissolution, liquidation or termination of the Company (or a Member’s interest therein), and (c) all net proceeds from any borrowings or refinancings by the Company.

“**Final Development Budget**” means the Development Budget for the Project approved by the Construction Lender and used in connection with the funding of the Construction Loan.

“**Fiscal Year**” means (as applicable) (i) the period commencing on the effective date of this Agreement and ending on December 31, 2016, (ii) any subsequent twelve (12) month period commencing on January 1 and ending on December 31, or (iii) any portion of the period described in clause (ii) for which the Company is required to allocate Net Profits, Net Losses, and other items of Company income, gain, loss or deduction pursuant to **ARTICLE IV** hereof.

“**GAP Contributions**” is defined in Section 3.7.3.

“**General Partner**” shall mean a Related Party of the Company that serves as the general partner or managing member of the Owner.

“**Good Industry Practices**” means those practices, methods, standards and procedures as are commonly used by similar Persons engaged in providing low-income housing tax credit investment opportunities in investments similar in size and type to the Project, which in the exercise of reasonable judgment and in the light of the facts known at the time the decision was made, are considered good, safe and prudent practice in connection with the investment in low-income housing credit facilities, with commensurate standards of, performance, dependability, efficiency and economy. Good Industry Practices are not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather is a spectrum of possible practices, methods or acts employed by such persons and having due regard for current editions of laws, codes and regulations.

“**Gross Asset Value**” means, with respect to any asset, the asset’s adjusted basis for federal income tax purposes; provided, however, that (i) the initial Gross Asset Value of any asset contributed to the Company shall be adjusted to equal its gross fair market value (determined by the Members) at the time of its contribution and (ii) the Gross Asset Values of all assets held by the Company shall be adjusted to equal their respective gross fair market values (taking Code Section 7701(g) into account) upon an election by the Company to revalue its property in accordance with Treasury Regulation Section 1.704-1(b)(2)(iv)(f). The Gross Asset Value of any asset whose Gross Asset Value was adjusted pursuant to the preceding sentence thereafter shall be adjusted in accordance with the provisions of Treasury Regulation Section 1.704-1(b)(2)(iv)(g).

“**Improvements**” is defined in Section 1.2.

“**Initiating Member**” is defined in Section 8.3.1.

“**Insurance Program**” is defined in Section 6.3.

“**Interest**” means in respect to any Member, all of such Member’s right, title and interest in and to the Net Profits, Net Losses, Operating Cash, Extraordinary Cash Flow, Distributions and capital of, and any and all management rights pertaining to, the Company, and any and all other interests therein in accordance with the provisions of this Agreement and the Act.

“**Legal Successor**” means the legal representative, heir, successor or assign of any Person who is legally incompetent or has died or dissolved.

“**LLC Certificate**” is defined in Section 1.1.

“**Loan**” or “**Loans**” means any loan or loans obtained by the Company from any Third Party, including, without limitation, the Construction Loan, the Permanent Loan, and any Loan that may refinance the Permanent Loan.

“**Major Action**” is defined in Section 6.4.1.

“**Managing Member**” means SCG Development Partners, LLC, a Delaware limited liability company, or any permitted successor or assign.

“**Member**” or “**Members**” is defined in the introductory statement.

“**Member Loan**” is defined in Section 3.8.

“**Modified Capital Account**” means, for each Member, such Member’s Capital Account balance increased by such Member’s share of Company Minimum Gain and of “partner non-recourse debt minimum gain” (as determined pursuant to Treasury Regulation Sections 1.704-2(g) and 1.704-2(i)(5), respectively).

“**Net Profits**” and “**Net Losses**” mean the taxable income or loss, as the case may be, for a period as determined in accordance with Code Section 703(a) computed with the following adjustments:

items of gain, loss, and deduction shall be computed based upon the Gross Asset Values of the Company’s assets (in accordance with Treasury Regulations Sections 1.704-1(b)(2)(iv)(g) and 1.704-3(d) rather than upon the assets’ adjusted bases for federal income tax purposes);

any tax-exempt income received by the Company shall be included as an item of gross income;

the amount of any adjustments to the book values of any assets of the Company pursuant to Code Section 743 shall not be taken into account except to the extent required by Treasury Regulation Section 1.704-1(b)(2)(iv)(m);

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any adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734 as a result of a distribution other than in liquidation of a Member's Interest in the Company or pursuant to Treasury Regulation Section 1.734-2(b)(1) shall be treated as an item of gain or loss from the disposition of the asset;

any expenditure of the Company described in Code Section 705(a)(2)(B) (including any expenditures treated as being described in Section 705(a)(2)(B) pursuant to Treasury Regulations under Code Section 704(b)) shall be treated as a deductible expense;

the amount of gross income and "*non-recourse deductions*" (as defined in Section 4.6 hereof) specifically allocated to any Members pursuant to Section 4.6 and Section 4.7 shall not be included in the computation;

the amount of any increase (or decrease) in the Gross Asset Value of an asset pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(f) shall be treated as an item of revenue (or expense);

the amount of any unrealized gain (or loss) attributable to an asset distributed in kind to a Member shall be treated as an item of revenue (or expense); and

to the extent an adjustment to the Gross Asset Value of any asset of the Company pursuant to Code Section 734(b) or Code Section 743(b) is required pursuant to Treasury Regulations

Section 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Member's Interest in the Company, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the Gross Asset Value of the asset) or loss (if the adjustment decreases the basis of the asset) from the disposition of the asset.

"*Operating Member Buy-out*" means the option described in Article XIV.

"*Owner*" means a limited partnership or limited liability company to be formed to be the owner of the Project.

"*Partnership Agreement*" means the limited partnership agreement or operating agreement of the Owner to be executed by and among a Related Party of the Company, as General Partner, and one or more other parties in connection with the formation of the Owner.

"*Permanent Loan*" is defined in Section 3.7.1.

"*Person*" means any individual or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so permits.

"*Property*" is defined in Section 1.2.1.

"*Project*" means the Property and the Improvements, which Property and Improvements shall be developed in a manner to be eligible for Tax Credits.

"*Project Stabilization*" means the date that the Project achieves ninety-three percent (93%) occupancy with tenants paying rent for one hundred twenty (120) days.

"*Proportionate Share*" means, unless and until there has been a transfer of an interest in the Company or an admission of a new Member: (i) with respect to the Managing Member, seventy-five percent (75%) and (ii) with respect to the Operating Member, twenty-five percent (25%).

"*Proposed Value*" is defined in Section 8.3.1.

"*Purchaser*" is defined in Section 8.3.3.

"*Related Party*" means, when used with reference to a specified Person: (i) any Person that, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with the specified Person; (ii) any Person that is an officer of, partner in, or trustee of, or serves in a similar capacity with respect to the specified Person or of which the specified Person is an officer, partner, or trustee, or with respect to which the specified Person serves in a similar capacity; (iii) any Person that, directly or indirectly, is the beneficial owner of, or controls, 10% or more of any class of equity securities of, or otherwise has a substantial beneficial interest (10% or more) in, the specified Person, or of which the specified Person is directly or indirectly the owner of 10% or more of any class of equity securities, or in which the specified Person has a substantial beneficial interest (10% or more); and (iv) any relative or spouse of the specified Person.

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“**Reserves**” means cash set aside for capital improvements or replacements or FF&E in amounts required by any lender holding a mortgage on the Project or as otherwise approved by the Members.

“**Responding Member**” is defined in Section 8.3.1.

“**Sale Price**” is defined in Section 8.3.2(a).

“**Seller**” is defined in Section 8.3.3.

“**Target Balance**” means, for each Member at any point in time, either (i) a positive amount equal to the net amount, if any, the Member would be entitled to receive from the Company, or (ii) a negative amount equal to the net amount the Member would be required to pay or contribute to the Company, assuming, in each case, that (A) the Company sold all of its assets for an aggregate purchase price equal to their aggregate Gross Asset Value (assuming for this purpose only that the Gross Asset Value of any asset that secures a liability that is treated as “*non-recourse*” for purposes of Treasury Regulation Section 1.1001-2 is no less than the amount of such liability that is allocated to such asset in accordance with Treasury Regulation Section 1.704-2(d)(2)); (B) all liabilities of the Company were paid in accordance with their terms from the amounts specified in clause (A) of this sentence; (C) any Member that was obligated to contribute any amount to the Company pursuant to this Agreement or otherwise (including the amount a Member would be obligated to pay to any third party pursuant to the terms of any liability or pursuant to any guaranty, indemnity or similar ancillary agreement or arrangement entered into in connection with any liability of the Company) contributed such amount to the Company; (D) all liabilities of the Company that were not completely repaid pursuant to clause (B) of this sentence were paid in accordance with their terms from the amounts specified in clause (C) of this sentence; and (E) the balance, if any, of any amounts held by the Company was distributed in accordance herein.

“**Tax Credits**” means low-income housing tax credits under Section 42 of the Code.

“**Tax Return**” means any return, filing, report, declaration, questionnaire or other document required to be filed for any period with any taxing authority (whether domestic or foreign) in connection with any taxes (whether or not payment is required to be made with respect to such document).

“**Terminating Event**” means any of the following:

For a natural person: death; any disabling mental or physical condition which prevents such person from carrying on business activities and which continues for uninterrupted period of more than six (6) months; entry of an order adjudicating such person incompetent by a court of competent jurisdiction; appointment of a conservator; or execution of a certificate diagnosing such person’s incompetency by each of such person’s physician and two additional independent consulting physicians, each licensed to practice medicine in the state of such person’s residence.

For an Entity other than a natural person: filing of a certificate of dissolution or its equivalent for any corporation; dissolution of a partnership or limited liability company; termination of a trust; distribution of a trust estate’s entire Interest in the Company; or the dissolution, termination or Bankruptcy of any other entity that is a Member, whether voluntary or involuntary; provided that a tax termination of an Entity shall not alone be a Terminating Event.

For any Member: withdrawal, resignation or Transfer in contravention of this Agreement; the Bankruptcy of any Member.

“**Term Sheet**” means that certain term sheet regarding the development of the Project dated June 24, 2016 between SCG Development Partners, LLC and COMSTOCK Redland Road II, L.C.

“**Third Party**” means any Person who is not a Member or a Related Party to any Member.

“**Transfer**” is defined in Section 8.1.1.

“**Treasury Regulations**” means the Income Tax Regulations and Procedure and Administration Regulations promulgated under the Code, as amended from time to time.

“*Upfront Development Fee*” means the development fee payable to the Company, Members or Related Parties, which is currently estimated to be \$2,500,000, as provided herein. The Upfront Development Fee shall be shared in accordance with the Operating Member and Managing Member’s Proportionate Share, payable from capital sources (i.e. all mortgage loan financing, tax credit equity, and/or subordinate financing) as follows:

<u>Milestone</u>	<u>Estimated Upfront Development Fee</u>	<u>% of Upfront Development Fee</u>	<u>Operating Member</u>	<u>Managing Member</u>
Closing (est. May 2017)	\$ 625,000	25%	\$156,250	\$468,750
50% Construction Completion (est. Feb 2018)	\$ 625,000	25%	\$156,250	\$468,750
Substantial Completion (est. Nov 2018)	\$ 875,000	35%	\$218,750	\$656,250
Project Stabilization (est. Aug 2019)	\$ 375,000	15%	\$ 93,750	\$281,250

“*Unreturned Capital Contribution*” means, with respect to each Member, as of any applicable determination date, the aggregate amount of cash Capital Contributions made by the Member pursuant to **ARTICLE III** and the aggregate net fair market value (determined by the Members) of any non-cash Capital Contributions made by the Member to the Company pursuant to **ARTICLE III**, decreased by the amount of money distributed by the Company to such Member pursuant to Section 5.1 as of such date, and the fair market value (determined by the Members) of any property distributed to such Member by the Company (net of liabilities secured by such distributed property that such Member is considered to assume or take subject to under Code Section 752) pursuant to Section 5.1 as of such date.

**ARTICLE III  
CAPITAL CONTRIBUTIONS AND LOANS**

Section 3.1 Initial and Mandatory Contributions of Members. Each Member hereby agrees to make a Capital Contribution of up to the amount set forth opposite such Member’s name on its respective signature page under the caption “*Initial Cash Capital Contribution*.” The Initial Cash Capital Contribution will be used by the Company for the development activities described in Section 6.3. The Members acknowledge that the Operating Member has fully funded its Initial Cash Capital Contribution which has been expended in connection with predevelopment activities, including, without limitation, obtaining zoning approvals for the Project, permits, design, engineering and site planning for the Project and preparation of construction documents for the Project (e.g., architectural & engineering reimbursement) of \$1,000,000, and such expenses are third party expenditures and are supported with reasonable documentation and receipts. The Managing Member shall make installments of its Initial Cash Capital Contribution at such times and in such amounts, up to the amount of its Initial Cash Capital Contribution, as may be necessary to pay predevelopment costs incurred by the Company (on its own behalf or on behalf of Owner) after the date of this Agreement in accordance with the approved Development Budget. In no event shall the Managing Member be required to make an Initial Cash Capital Contribution in excess of \$1,000,000. Each installment of the Managing Member’s Initial Cash Contribution shall accrue simple interest at 6% per annum from the date made, which aggregate contribution and accrued interest will be repaid at Closing; provided that Operating Member’s Initial Cash Capital Contribution is fully repaid at Closing as provided below.

At Closing, the Company and Owner will enter into a Reimbursement, Assignment and Assumption Agreement in the form attached hereto as Exhibit H, providing for the Managing Member’s reimbursement of the aggregate predevelopment expenditures made in connection with the Project and paid from Capital Contributions to extent not paid at Closing.

Section 3.2 Additional Contributions of Capital. Subject in all events to the requirement of Section 6.4, after the Initial Cash Capital Contributions are made, if the Managing Member and Operating Member, in good faith, reasonably determine that the Project requires additional capital, the Managing Member shall deliver notice thereof to the Members (the “*Capital Call Notice*”) in the form of Exhibit C, setting forth the amount and purpose of the additional funds required (the “*Additional Capital Contribution*”). If the Additional Capital Contribution is approved by the Members as a Major Event, within five (5) Business Days of such Capital Call Notice, each Member shall then contribute its Proportionate Share of the Capital Contribution requested in the Capital Call Notice. The Members shall not be required to make any Additional Capital Contributions to the Company other than as set forth in this Article III.



Section 3.3 Form of Contributions. Except as specifically provided for herein, all Capital Contributions (including any Additional Capital Contributions) shall be paid in immediately available funds.

Section 3.4 No Right to Interest or Return of Capital. Except as specifically provided for herein, no Member shall be entitled to any return of, or interest on, its Capital Contributions (including any Additional Capital Contributions) to the Company.

Section 3.5 No Third Party Rights. Any obligations or rights of the Company or the Members to make or require any Capital Contribution under this **Article III** shall not result in the grant of any rights or confer any benefits upon any Person who is not a Member.

Section 3.6 Limitations. Except as set forth in **Article III** hereof, no Member shall be entitled or required to make any Capital Contribution to the Company including, without limitation, to restore any negative balance in such Member's Capital Account. Except as expressly provided herein, no Member shall have any liability for the repayment of the Capital Contribution of any other Member, and each Member shall look only to the assets of the Company for return of its Capital Contributions.

Section 3.7 Project Financing.

3.7.1 In order to finance the construction of the Project, the Managing Member shall use good-faith efforts to assist the Owner in obtaining a non-recourse third party fixed rate construction loan (the "**Construction Loan**") secured by the Project in an amount described in the Development Budget. The Managing Member shall use good faith efforts to assist the Owner in obtaining a non-recourse third party fixed rate permanent loan to refinance the Construction Loan (the "**Permanent Loan**") in an amount to be determined by the Owner and approved by the Members and on such terms and conditions as the Owner and Members may mutually agree.

3.7.2 The Managing Member will be responsible for arranging any required bridge financing which may be required by the Owner. Such financing will be on a non-recourse basis, and the costs of such financing will be borne by the Owner.

3.7.3 Except as provided in Section 3.1, the Members agree that, to the extent necessary to keep the approved Development Budget in balance, they will defer return of their Initial Cash Capital Contributions following Closing (the "**Gap Contributions**"). At Closing, each Member's outstanding GAP Contribution will be converted to a Member Loan in accordance with Section 3.8, and each Member's Capital Account will be reduced by the amount of its respective unreturned Initial Cash Capital Contribution so converted.

3.7.4 All guaranties required in order for each Owner to obtain its Construction Loan or as required under its Partnership Agreement or as otherwise required for the Project and approved by the Members will be provided by the Members or their respective Related Parties and the liability under such guaranties shall be joint and several, however pursuant to a separate contribution agreement to be executed by the members and the guarantor affiliate, shall be borne and shared by and between the Members or their respective designated affiliates on the basis of seventy percent (75%) to the Managing Member and twenty five percent (25%) to the Operating Member. Such guaranties may include, without limitation, a development deficit guaranty, an operating deficit guaranty, a completion guaranty, an environmental indemnification agreement, a recourse carve-out guaranty and other such guaranties as are commonly required in accordance with Good Industry Practice (the "**Guaranty Obligations**"). No Member shall be obligated to fund a Guaranty Obligation if such Guaranty Obligation was triggered as a result of the gross negligence or willful misconduct of the other Member. The failure to fund Guaranty Obligations (after any applicable notice and cure period) will constitute an Event of Default under Section 11.1.

Section 3.8 Member Loans. In addition to the loan(s) made under Section 3.7.3, a Member may make a loan to the Company upon commercially reasonable terms, only upon approval of such terms as provided in Section 6.4 herein (a "**Member Loan**"). A Member Loan shall not be considered a Capital Contribution. Any Member Loan shall accrue interest at the rate of eight percent (8%) per annum. Member Loans (including Gap Contributions) will be repaid *pro rata*, based on the balances of the Member Loans, ahead of any Distribution (as described in Sections Section 5.1 and Section 5.1(a) below).

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Section 3.9 Third Party Loans. In addition to the Loan(s) described in Section 3.7 and Section 3.8, in the event that the Company requires additional funds to carry out its purposes, to conduct its business, or to meet its obligations, or to make any expenditure authorized by this Agreement, if an additional Loan is approved as provided in Section 6.4, the Managing Member will be responsible for arranging such additional Loan. Company may borrow funds from such Third Party lender(s), and on such terms and conditions as may be acceptable to the Members.

Section 3.10 Third Party Rights. The right of the Company or any Member to require any Capital Contributions of any nature under the terms of this Agreement will not be construed to confer any right or benefit upon any person that is not a Member, including, without limitation, any creditor of the Company. No creditor of the Company or other person not a Member in this Company will be entitled to require any Member to solicit or demand any Capital Contributions from any other Member.

Section 3.11 Return of Capital Contributions. Each Member will look solely to the assets of the Company for the return of its Capital Contributions, and if the Company assets remaining after the payment or discharge of the debts and liabilities of the Company are insufficient to return the investment of each Member, no Member will have recourse against any other Member except under Section 11.2. No Member will have any right to demand or receive property other than immediately available funds upon dissolution, liquidation, and termination of the Company or to demand the return of its Capital Contributions prior to dissolution, liquidation, and termination of the Company except as expressly provided herein, including under Section 3.1. Any property distributed in kind in liquidation will be valued and treated as though the property was sold and cash proceeds distributed.

Section 3.12 Further Assurances. As of the date of this Agreement, the Project is in the construction documentation and permitting stage. As of the date hereof, the General Partner shall be responsible for raising tax credit equity capital for the Project and apply for 4% low income housing tax credits from the appropriate governmental authorities. The Owner will be required to negotiate various financing documents with the Construction Lender in connection with a Construction Loan for the Project. The Members agree to assist the General Partner with negotiating the terms and provisions of the Partnership Agreement and to assist the Owner in negotiating the Construction Loan Agreement so that the terms thereof shall conform as nearly as possible to the intentions of the Members reflected in the Term Sheet.

Section 3.13 Amendment. To the extent any amendment to this Agreement is necessary in connection with the Construction Loan Agreement or the Partnership Agreement, the Members agree to make such reasonable modifications to this Agreement as are necessary provided such changes are consistent with the intentions of the Members as reflected in the Term Sheet.

#### ARTICLE IV CAPITAL ACCOUNTS, ALLOCATIONS OF INCOME AND LOSS

Section 4.1 Capital Accounts. A separate capital account (each a "*Capital Account*") shall be maintained for each Member in accordance with the rules of Treasury Regulations Section 1.704-1(b)(2)(iv). To the extent consistent with such Treasury Regulations, the adjustments to such accounts shall include the following:

4.1.1 There shall be credited to each Member's Capital Account the amount of any cash contributed by such Member to the capital of the Company, the fair market value (determined by the Members) of any property contributed by such Member to the capital of Company (net of liabilities secured by such contributed property that the Company is considered to assume or take subject to under Section 752 of the Code) and such Member's share of the Net Profits of the Company and of any items in the nature of income or gain separately allocated to the Members; and there shall be charged against each Member's Capital Account the amount of all cash distributions to such Member, the fair market value (determined by the Members) of any property distributed to such Member by the Company (net of liabilities secured by such distributed property that such Member is considered to assume or take subject to under Section 752 of the Code) and such Member's share of the Net Losses of the Company and of any items in the nature of losses or deductions separately allocated to the Members.

4.1.2 In the event any interest in the Company is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred interest.

Section 4.2 Allocation of Net Profits. Except as provided in Section 4.6 and Section 4.7 below (which shall be applied first), Net Profits of the Company for any relevant period shall be allocated to the Members to cause, to the extent possible, their respective Modified Capital Account balances to equal their respective Target Balances.

Section 4.3 Allocations of Net Losses. Except as provided in Section 3.3(a), Section 4.6 and Section 4.7 below (which shall be applied first), Net Losses of the Company for any relevant period shall be allocated the Members to cause, to the extent possible, their respective Modified Capital Account balances to equal their respective Target Balances.

Section 4.4 If Insufficient Net Profits or Net Losses. If the amount of Net Profits allocable to the Members pursuant to Section 4.2 or the amount of Net Losses allocable to them pursuant to Section 4.3 is insufficient to allow the Modified Capital Account balance of each Member to equal such Member's Target Balance, such Net Profits or Net Losses shall be allocated among the Members in such a manner as to decrease the differences between the Members' respective Modified Capital Account balances and their respective Target Balances in proportion to such differences.

Section 4.5 Loss Limitation. Net Losses allocated pursuant to Section 4.3 shall not exceed the maximum amount of Net Losses that can be allocated without causing or increasing a deficit balance in a Member's Adjusted Capital Account. A Member's "**Adjusted Capital Account**" balance shall mean such Member's Capital Account balance increased by such Member's obligation to restore a deficit balance in its Capital Account, including any deemed obligation pursuant to the penultimate sentences of Treasury Regulations Section 1.704-2(g)(1) and 1.704-2(i)(5), and decreased by the amounts described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5), or (6).

Section 4.6 Minimum Gain Chargebacks and Nonrecourse Deductions.

4.6.1 Notwithstanding any other provisions of this Agreement, in the event there is a net decrease in Company Minimum Gain during a Fiscal Year, the Members shall be allocated items of income and gain (computed with the adjustments set forth in the definition of "**Net Profits**" and "**Net Losses**") in accordance with Treasury Regulations Section 1.704-2(f). For purposes of this Agreement, the term "**Company Minimum Gain**" shall mean "**partnership minimum gain**" as set forth in Treasury Regulations Section 1.704-2(b)(2), and any Member's share of Company Minimum Gain shall be determined in accordance with Treasury Regulations Section 1.704-2(g)(1). This Section 4.6.1 is intended to comply with the minimum gain charge back requirement of Treasury Regulations Section 1.704-2(f) and shall be interpreted and applied in a manner consistent therewith.

4.6.2 Notwithstanding any other provision of this Agreement other than subsection (c) of this Section 4.6, "**non-recourse deductions**" (within the meaning of Treasury Regulations Section 1.704-2(b)(1)) shall be allocated to the Members, *pari passu*, in proportion to their Proportionate Shares.

4.6.3 Notwithstanding any other provisions of this Agreement, to the extent required by Treasury Regulations Section 1.704-(i), any items of income, gain, loss or deduction of the Company (computed with the adjustments as set forth in the definition of "**Net Profits**" and "**Net Losses**") that are attributable to a nonrecourse debt of the Company that constitutes "**partner non-recourse debt**" as defined in Treasury Regulations Section 1.704-2(b)(4) (including chargebacks of partner non-recourse debt minimum gain) shall be allocated in accordance with the provisions of Treasury Regulations Section 1.704-2(i). This Section 4.6.3 is intended to satisfy the requirements of Treasury Regulations Section 1.704-2(i) (including the partner non-recourse debt minimum gain chargeback requirements) and shall be interpreted and applied in a manner consistent therewith.

Section 4.7 Qualified Income Offset. Any Member who unexpectedly receives an adjustment, allocation or distribution described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6) that causes a deficit balance in its Adjusted Capital Account, shall be allocated items of income and gain (computed with the adjustments set forth in the definition of "**Net Profits**" and "**Net Losses**") in an amount and a manner sufficient to eliminate, to the extent required by the Treasury Regulations, such deficit balance as quickly as possible. This Section 4.7 is intended to comply with the alternate test for economic effect set forth in Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted and applied in a manner consistent therewith.

Section 4.8 Tax Allocation - Code Section 704(c). Except as otherwise provided herein or as required by Code Section 704, for tax purposes, all items of income, gain, loss, deduction or credit shall be allocated to the Members in the same manner as are Net Profits and Net Losses; provided, however, that if the Gross Asset Value of any property of the Company differs from its adjusted basis for tax purposes, then items of income, gain, loss, deduction or credit related to such property for tax purposes shall be allocated among the Members so as to take account of the variation between the adjusted basis of the property for tax purposes and its Gross Asset Value in the manner provided for under Code Section 704(c).

Section 4.9 Code Section 704(b). The allocation provisions contained in this Article IV are intended to comply with Code Section 704(b) and the Treasury Regulations promulgated thereunder, and shall be interpreted and applied in a manner consistent therewith, and the Members agree that any provision of this **ARTICLE IV** that is reasonably subject to different interpretations shall be interpreted in a manner that comports with the foregoing intention. The Members further agree to make such amendments or changes to this Agreement as are reasonably requested by the Managing Member in good faith and consistent with the understanding of the parties, to effectuate such intent.

Section 4.10 No Deficit Restoration to Members. Notwithstanding anything to the contrary in this Agreement, no Member shall be required to contribute capital to the Company to restore a deficit balance in its Capital Account upon liquidation or otherwise.

Section 4.11 Timing of Allocations. Allocations of Net Profits, Net Losses and similar items provided for in this **ARTICLE IV** shall generally be made as of the end of the Fiscal Year of the Company; provided, however, that if the Gross Asset Values of the assets of the Company are adjusted in accordance with clause (ii) of the definition of "**Gross Asset Value**," the date of such adjustment shall be considered to be the end of a Fiscal Year for purposes of computing and allocating such Net Profits, Net Losses and other items of income, gain, loss and deduction.

## **ARTICLE V DISTRIBUTIONS**

Section 5.1 Distributions. The Managing Member shall distribute Cash Flow available (or property available to be distributed in-kind by the Company) to the Members ("**Distributions**") in accordance with this Section 5.1. "**Cash Flow**" means, with respect to the Company for a period of time, all funds of the Company which, in the reasonable discretion of the Members, are available for distribution to Members after provision has been made for payment of all operating expenses and of all outstanding and unpaid current obligations of the Company as of such time, including any Member Loan and for such reserves as the Members deem appropriate or necessary based on reasonable and customary industry practices. No Distribution shall be declared and paid if payment of such Distribution would cause the Company to violate any limitation on distributions provided in the Act, or any other mortgage, deed of trust, or regulatory agreement encumbering the Property.

- (a) First, to Operating Member and Managing Member for reimbursement of their Initial Cash Capital Contributions;
- (b) Second, to the Operating Member and Managing Member in the amount of any Upfront Development Fee;
- (c) Third, to any Member to repay any Member Loan;
- (d) Finally, to the Members in their Proportionate Share.

Section 5.2 Timing of Distributions. Distributions of Cash Flow from operations of the Company shall be made monthly no later than fifteen (15) days after the end of each month of operations. Distributions of the net proceeds from a capital transaction related to the Project or the Owner shall be distributed within fifteen (15) days after the consummation of the capital transaction giving rise to such proceeds. Distributions also may be made, in the discretion of the Managing Member, at any other time or times during any Fiscal Year and such Distributions shall be subject to year-end adjustment.

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**ARTICLE VI  
POWERS AND DUTIES**

Section 6.1 Appointment and General Responsibilities of the Managing Member. The Company will be member-managed. The Members hereby unanimously appoint SCG to serve as the Managing Member until its resignation or replacement as set forth herein. The Managing Member may resign in accordance with Section 8.2.2. Upon the resignation of the Managing Member as set forth above, Operating Member may elect to appoint a new Managing Member.

Section 6.2 Appointment and General Responsibilities of the Operating Member. The Members hereby unanimously appoint COMSTOCK to serve as the Operating Member until its resignation or replacement as set forth herein. The Operating Member may resign in accordance with Section 8.2.2. Upon the resignation of the Operating Member as set forth above, Managing Member may elect to appoint a new Operating Member.

Section 6.3 Development Budget and Business Plans.

6.3.1 Development Budget. Attached hereto as Exhibit E is a development and construction budget (the “*Development Budget*”) for the Project setting forth the estimated cost of developing and constructing the Project. The Development Budget is hereby approved by the Members.

6.3.2 Annual Business Plans. An annual business plan (the “*Annual Business Plan*”) for the Company and Owner shall be mutually developed and approved by the Members. Each Annual Business Plan shall include, as appropriate, the following:

- (a) a brief narrative description of any material activity planned to be undertaken;
- (b) capital budgets for the Project;
- (c) a projected annual income statement (accrual basis) on a month-by-month basis for the Project;
- (d) a projection as to the timing and amount of Distributions;
- (e) a leasing plan for the Project;
- (f) a schedule of total projected operating cash flow for the Project and projected uses of monies in any Reserves on a month-by-month basis, including a schedule of projected negative cash flow for the Project, if any;
- (g) a description of any planned Loans for the Company or the Owner; and
- (h) a description of any planned construction, capital, FF&E or other personal property expenditures for the Owner, including projected dates for commencement and completion of the foregoing.

6.3.3 Implementation of Annual Business Plan. The Managing Member shall, subject to the availability of Company revenues and other cash flow and the provisions of Section 6.4 below, use reasonably commercial efforts to implement the then applicable Annual Business Plan and shall have the authority to manage the Company’s business in accordance therewith.

6.3.4 Financing and Tax Credit Applications. The Members shall work jointly on budgeting, financial modeling and applications for financing including the application for low income housing tax credits.

6.3.5 Authority of the Managing Member. Subject to Section 6.4, the powers of the Managing Member shall include, but are not limited to, the following:

- (a) To oversee the Operating Member’s monitoring and direction of such persons, firms, or companies selected for the construction of the Project.

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- (b) Conduct all negotiations with funding sources in connection with the construction of the Project, and secure financing of the Project.
- (c) Supervise all communications to, and relations with, all state and local governmental authorities with respect to the financing, rehabilitation and construction of the Project.
- (d) Supervise the activities necessary to actually commence construction of the Project.
- (e) Advise the Company with respect to the availability, terms and conditions of construction financing.
- (f) Approve the plans and specifications and the Operating Member's recommendations concerning alternative solutions in the event that details of the Project's design adversely affect construction feasibility, schedules or costs.
- (g) Supervise the progress of construction of the Project.
- (h) Oversee construction of the Project to ensure it will be completed in substantially accordance with the plans and specifications, in such a manner as to enable the Owner to materially comply with any construction completion timeframes or requirements imposed by any of the funding sources.
- (i) Supervise the property manager.
- (j) Assist the Owner in obtaining Low Income Housing Tax Credits for the Project.
- (k) Engage in such other activities as the Managing Member may deem reasonably necessary or desirable for the rehabilitation and construction of the Project, so long as such activities are not inconsistent with any specific material provision of this Agreement.
- 6.3.6 Subject to the terms and conditions of this Agreement, the Operating Member shall have the power and duty to:
- (a) Monitor and direct such persons, firms, or companies selected for the construction of the Project, including oversight of the activities under the Development Services Agreement, the form of which is attached as Exhibit I hereto and incorporated herein.
- (b) Monitor and direct the performance of architects, engineers, legal counsel, accountants, financial advisers and other professionals.
- (c) Advise the Company with respect to governmental matters pertaining to the construction of the Project, including all necessary permits and approvals therefor.
- (d) Review the plans and specifications and recommend alternative solutions in the event that details of the Project's design adversely affect construction feasibility, schedules or costs.
- (e) Monitor actual costs of construction, identify variances between actual and budgeted costs, and advise the Company with respect to such variances.
- (f) Monitor the progress of construction of the Project, and submit periodic progress reports to the Company as and when reasonably requested by the Company, but no more frequently than once per calendar month.

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(g) Establish and implement appropriate administrative and financial controls for the design, rehabilitation and construction of the Project, including, but not limited to:

(i) coordination and administration of the Project's architect, the general contractor and other contractors, professionals and consultants employed in connection with the design or construction of the Project;

(ii) administration of any construction contracts on behalf of the Owner;

(iii) participation in conferences and the rendering of such advice and assistance as will aid in developing economical, efficient and desirable design and construction procedures;

(iv) rendition of advice and recommendations concerning the selection of subcontractors and suppliers;

(v) review requests for payment under any architectural agreement, general contractor's agreement or any loan agreements with any lending institution providing funds for the benefit of the Owner for the design or construction of any improvements;

(vi) submission of any suggestions or requests for changes which could in any reasonable manner improve the design, efficiency or cost of the Project.

(h) apply for and maintain in full force and effect any and all building permits required for the lawful construction of the Project;

(i) furnish such consultation and advice relating to the Project as may be reasonably requested from time to time by the Owner.

(j) Inspect the progress of construction of the Project, including verification of the materials and labor being furnished so as to be fully competent to approve or disapprove requests for payment made by the Project's architect and the general contractor, or by any other parties with respect to the design or construction of the Project.

(k) Procure such permits and approvals, and cause construction of the Project to progress and to be completed substantially in accordance with the plans and specifications, in such a manner as to enable the Owner to materially comply with any construction completion timeframes or requirements imposed by any of the funding sources.

(l) assist the Company in communicating with and interfacing with local municipal officials, neighborhood groups and local organizations with respect to the development, rehabilitation and construction of the Project, and respond to issues and matters raised by such persons or parties which may arise during the course of rehabilitating and constructing the Project.

(m) To operate the Company in accordance with the Annual Business Plans.

(n) To invest and reinvest cash of the Company in one or more interest bearing demand deposit accounts or other interest bearing accounts, which accounts are solely the property of the Company, with any state or national bank, provided that the deposits maintained in such accounts are fully insured by the Federal Deposit Insurance Corporation, or invested in United States government securities, or other investments and securities issued or fully guaranteed by the United States or its agencies, provided, however, that the Company funds shall not be deposited in commingled accounts;

(o) To maintain a program of insurance coverage for the Company which shall be with insurance companies and coverages and amounts and otherwise in form and substance as are standard in the industry (the "**Insurance Program**").

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(p) To pay out of the funds of the Company the taxes, premiums for liability insurance, casualty insurance (at replacement cost) and other expenses of the Company.

(q) At the direction of the Managing Member, to make distributions, in accordance with **ARTICLE V**, of cash assets and liquidation proceeds and proceeds from the sale, exchange or disposition of any and all property acquired.

(r) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted.

#### Section 6.4 Approval Rights of Members.

6.4.1 Prior to the Managing Member taking any action listed in Exhibit F (each, a “**Major Action**”), the Managing Member shall provide Notice to the Operating Member of such proposed Major Action, an analysis of the proposed Major Action and the reason for such Major Action. The Operating Member shall have ten (10) Business Days from its receipt of the Notice to review the information provided and either provide Notice of its Consent or non-Consent to such Major Action. If the Operating Member does not Consent to such Major Action, the Operating Member shall provide to the Managing Member a summary of the reason for its rejection and such additional information supporting such reason as the Managing Member may reasonably request. The Members shall then engage in good faith negotiations to come a joint consensus as to such action.

6.4.2 If, after the review period described above, the Operating Member has not delivered to the Managing Member the Notice of its Consent or non-Consent described above, the Managing Member may cause the Company to take the Major Action.

6.4.3 Notwithstanding Section 6.4.1, the Operating Member may request that the Managing Member cause the Company to take a Major Action. The Operating Member shall provide Notice to the Managing Member of such proposed Major Action, an analysis of the proposed Major Action and the reason for such Major Action. The Managing Member shall have ten (10) Business Days from its receipt of the Notice to review the information provided and either provide Notice of its Consent or non-Consent to such Major Action. If the Managing Member does not Consent to such Major Action, the Managing Member shall provide to the Operating Member a summary of the reason for its rejection of such action and such additional information supporting such reason as the Operating Member may reasonably request. The Members shall then engage in good faith negotiations to come a joint consensus as to such action.

6.4.4 If, pursuant to Section 6.4.1, the Operating Member does not give its Consent with respect to a Major Action, or pursuant to Section 6.4.3, the Managing Member does not give its Consent with respect to a Major Action (each, a “**Notice of Non-Consent to a Major Action**”), and the Members cannot reach agreement on a Major Action after engaging in good faith negotiations for ten (10) or more Business Days (which ten (10) Business Day period shall begin upon receipt of a Member of a Notice of Non-Consent to a Major Action), then the parties must engage in arbitration as more fully set forth in Section 12.1. Only after arbitration may either Member send a Buy/Sell Offer Notice pursuant to Section 8.3.

#### Section 6.5 Other Business Activities of the Members.

6.5.1 General Provisions. Notwithstanding anything else to the contrary, neither the Members nor any Related Parties of the Members shall be obligated to present any investment opportunity to the Company or other Members, even if the opportunity is of a character consistent with the Company’s other activities and interests. The Members and the Members’ Related Parties may engage in or possess any interest, directly or indirectly, in any other business venture of any nature or description independently or with others, including, but not limited to, the ownership, financing, leasing, operation, management, syndication, brokerage, or development of real property competitive with the Project. Membership in the Company and the assumption by either Member of any duties hereunder shall be without prejudice to such Member’s rights (or the rights of its affiliates) to have such other interests and activities and to receive and enjoy profits or compensation therefrom, and neither the Company nor the other Member(s) shall have any right by virtue of this Agreement in and to such ventures or the income or profits derived therefrom.



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Section 6.6 Limitation of Liability.

6.6.1 Exculpatory Provisions. None of the Managing Member, the Operating Member, any Related Party of any of the foregoing or any of their respective agents, officers, partners, members, employees, representatives, directors or shareholders shall be liable, responsible or accountable in damages or otherwise to the Company or any Member for (i) any act performed in good faith within the scope of the authority conferred by this Agreement, (ii) any good faith failure or refusal to perform any acts except those required by the terms of this Agreement; provided (i) and (ii) are determined to be in the best interests of the Company and provided, however, that each Member shall nevertheless be liable in all events for its own fraud, gross negligence or willful misconduct and its breach of this Agreement.

6.6.2 Indemnification. To the fullest extent permitted by law, the Company shall indemnify, defend and save harmless each Member and each of their respective Related Parties, agents, officers, partners, members, employees, representatives, directors and shareholders from any loss, cost, damage, fee (including without limitation, legal and expert witness fees and costs) or expense incurred by reason of (i) such party's status as a Member or the Related Party thereof or such party's status as agent, officer, partner, member, employee, representative, director or shareholder of such Member, (ii) any act performed in good faith within the scope of the authority conferred by this Agreement, (iii) any failure or refusal to perform any acts except those required by the terms of this Agreement; provided (i), (ii) and (iii) are determined to be in the best interests of the Company and provided that no indemnification shall be given with respect to acts or omissions that constitute fraud, gross negligence or willful misconduct.

Section 6.7 Duty; Devotion of Time. The Managing Member shall exercise its powers and discharge its duties in good faith with a view to the interests of the Company and its Members with that degree of diligence, care and skill that ordinarily prudent persons would exercise under similar circumstances in like positions. The Managing Member shall devote so much of its time to the business of the Company as the requirements of such business may dictate from time to time.

**ARTICLE VII  
LIABILITIES OF MEMBERS**

Section 7.1 General. No Member shall be liable for any debts, liabilities, contracts or other obligations of the Company nor shall any Member be required to lend funds to the Company. Except as otherwise specifically required by **ARTICLE III** or by applicable law, no Member shall be required to make any Capital Contributions to the Company.

**ARTICLE VIII  
TRANSFER OF COMPANY INTEREST**

Section 8.1 Transfer by the Members.

8.1.1 General Restrictions. No Member shall sell, pledge, hypothecate, assign, transfer, mortgage, charge or otherwise encumber, or contract to do or permit any of the foregoing, directly or indirectly, and whether voluntarily or by operation of law (collectively referred to as a "**Transfer**") any part or all of its Interest in the Company except as provided in this **ARTICLE VIII**. Any attempt to affect any of the foregoing prohibited actions shall be void *ab initio* and, in addition to other rights and remedies at law and in equity, the other Member or Members shall be entitled to injunctive relief enjoining the prohibited action. The Members expressly acknowledge that damages at law would be an inadequate remedy for a breach or threatened breach of the provisions concerning transfer set forth in this Agreement. The giving of consent or approval by the Member required under this **ARTICLE VIII** in any one or more instances shall not limit or waive the need for such consent or approval in any other or subsequent instances. Notwithstanding anything in this **ARTICLE VIII** or this Agreement to the contrary, no Member shall have the right to effect any Transfer of its Interest in the Company if the Transfer would constitute a breach or default under any material agreement by which the Company is bound (including, without limitation, any document executed in connection with a Loan) or would, in the opinion of counsel to the Company, constitute a violation of any state or federal securities laws or other applicable law. No Transfer by any Member of an Interest in the Company may be made to any Person if: (i) such Transfer would cause the Company to no longer be excluded from the definition of "**Investment Company**" under the Investment Company Act of 1940; or (ii) such Transfer would cause the Company to be considered for purposes of Section 1.7704-1(h)(1)(ii) of the Regulations to have more than 100 members at any time during any taxable year.

8.1.2 Transfers. The restrictions set forth in this **ARTICLE VIII** (including, without limitation, Section 8.1.3) shall not be construed to limit or restrict in any way (i) transfers otherwise permitted under this **ARTICLE VIII**; transfers of interests by or in a Member, or the direct or indirect constituent partners or members of a Member, without the consent of any other Member, including, without limitation, the right of a Member to transfer its Interest directly or indirectly to the holders of direct or indirect ownership interests in the Member or Related Party thereof. Notwithstanding anything to the contrary contained herein, no Transfer shall be made which causes a default or event of default under any Loan to which the Company is a party. Any expenses of a permitted Transfer and any transfer or similar taxes which are triggered by a permitted Transfer shall be borne by the Member whose Interest in the Company is the subject of the Transfer, except in the case of a Buy/Sell pursuant to Section 8.3 hereof, in which case such expenses shall be borne by the Member purchasing the Interest of the other Member and such transfer and similar taxes shall be divided equally among the Members.

8.1.3 Permitted Transfers. Without any requirement for obtaining approval, but subject to the restrictions contained in the final two sentences of Section 8.1.1 and the provisions of Section 8.2, each Member shall have the right to Transfer directly or indirectly all or a portion of its Interest in the Company to an Entity that is owned or controlled by, is under common ownership and control with, or owns and controls the original Member.

8.1.4 Conditions to Substitutions. An assignee or transferee of a Member shall not have any other rights of a Member other than its right to Distributions, unless and until the assignee is admitted as a substituted Member. Thereafter, subject to the last sentence of this Section, such assignee shall have all rights of a Member hereunder. An assignee or transferee shall become a substituted Member when and if the assignee or transferee (a) pays all Company expenses incurred in connection with its substitution; (b) submits a duly executed instrument of assignment, in a form reasonably satisfactory to the non-assigning Member, specifying the Interest assigned to it and setting forth the assigning Member's intention that the assignee succeed to such portion of the assigning Member's Interest; (c) executes a copy of this Agreement or an amendment to this Agreement; and (d) is approved by any Member whose consent is required for such transfer pursuant to the terms hereof. The admission of a substituted Member shall be effective as of the close of the day on which all of the conditions specified in this Section 8.1.4 have been satisfied.

#### Section 8.2 Members.

8.2.1 Terminating Event. Upon the occurrence of a Terminating Event with respect to a Member, the Legal Successor of the Member shall continue to possess the Member's interest in Company Distributions, but shall possess no rights of approval or decision otherwise attendant to such Member's Interest.

8.2.2 Withdrawal by Members. Subject to the Act, no Member may resign, withdraw or withdraw capital from the Company, except pursuant to a right expressly set forth in this Agreement. In furtherance of the foregoing, to the extent permitted by applicable law, each Member hereby waives any and all rights such Member may have to resign, withdraw and/or retire from the Company pursuant to Section 18-603 of the Act and hereby waives any and all rights such Member may have to receive the fair value of such Member's Interest in the Company upon such resignation, withdrawal and/or retirement pursuant to Section 18-604 of the Act. No Member shall be entitled to exercise its rights under this Section 8.2.2 prior to undergoing arbitration pursuant to Section 12.1.

#### Section 8.3 Buy/Sell.

8.3.1 Buy/Sell Offering Notice. The operation of this Section 8.3 may be triggered upon Notice (the "**Buy/Sell Offering Notice**"):

(a) by either Member if, after arbitration pursuant to Section 12.1, either Member desires to trigger this provision; or

(b) by the Enforcing Member (as defined below) given at any time after the occurrence of an Event of Default by the Defaulting Member (as defined below) provided, however, that there is no Event of Default with respect to the Enforcing Member initiating such notice.

The Member duly exercising such right shall be the "**Initiating Member**" and the other Member shall be the "**Responding Member**" for the purposes of this Section 8.3. The Buy/Sell Offering Notice shall set forth the assumed value of the Interests on the proposed purchase date based on the remaining Economic Benefits to be received by the Members under this Agreement (the "**Proposed Value**"). No Buy/Sell Offering Notice or Responsive Notice under Section 8.3.2 may be rescinded once given, without the Consent of the other Member.

8.3.2 Responsive Notice. Within forty five (45) days following the date of the Buy/Sell Offering Notice, the Responding Member shall deliver to the Initiating Member a responsive notice, without qualification or condition, electing either:

(a) To sell to the Initiating Member the entirety of the Responding Member's Interest in the Company at a price (the "**Sale Price**") equal to the amount of cash that would be distributed to the Responding Member under **ARTICLE V** (including the repayment of Member Loans or any other loans made by such Member to the Company) if the Company was sold in the amount of the Proposed Value; or

(b) To purchase from the Initiating Member the entirety of the Initiating Member's Interest in the Company at a price (the "**Buy Price**") equal to the amount of cash that would be distributed to the Initiating Member under **ARTICLE V** (including the repayment of Member Loans or any other loans made by such Member to the Company) if the Company was sold in the amount of the Proposed Value.

In calculating the amount that would be distributed to the applicable Member under either (a) or (b) above, the Initiating Member shall take into account in determining the Proposed Value that a sum will be required to be set aside for reasonable liquidation costs and reasonable reserves, and all Company indebtedness and other liabilities shall be deemed to be retired from the assets of the Company as of the Closing Date. The Sale Price or Buy Price shall not take into account any loan assumption costs, prepayment premiums, breakage costs or similar items unless the same will be incurred as a result of the consummation of the purchase and sale of any Interest of either Member pursuant to a Buy/Sell Offering Notice. The failure of the Responding Member to give such a responsive notice (without qualification or condition) within the required time period shall be deemed notice of an election, binding on all Members, to sell its Interest to the Initiating Member. The date as of which the Responding Member shall have given notice of its election (or be deemed to have made an election) shall be the "**Buy/Sell Election Date**."

8.3.3 Buy/Sell Deposit. If a Member is bound to purchase pursuant to the election referenced in Section 8.3.2 (the "**Purchaser**," and the other Member shall be the "**Seller**"), such Member shall be required to make an earnest money deposit, in immediately available funds, within five (5) Business Days after the Buy/Sell Election Date in an amount equal to two percent (2%) of the Buy Price or Sale Price, as applicable, for the Seller's interest in the Company as determined in accordance with the provisions of Section 8.3.2 hereof (the "**Buy/Sell Deposit**"). The Buy/Sell Deposit to serve as a good faith deposit for the purposes of the closing of the purchase in accordance with Section 8.3.4 below shall be delivered to a national title insurance company reasonably acceptable to the Members as escrow agent. The Buy/Sell Deposit shall be non-refundable to the Purchaser (except in the event that the closing of the purchase shall fail to occur due to a default of the Seller in performing its closing obligations pursuant to Section 8.3.4) and upon closing, the Buy/Sell Deposit will be credited against the purchase price and delivered to Seller.

8.3.4 Closing Process. Purchaser shall fix a closing date (the "**Closing Date**") which shall be not later than sixty (60) days following the date of receipt by the Initiating Member of the responsive notice within the period set forth in Section 8.3.2, by notifying the Seller in writing of the Closing Date not less than fifteen (15) days prior thereto. The closing shall take place on the Closing Date at the principal office of the Purchaser. The purchase price for the Seller's Interest shall be paid in immediately available funds and the Seller shall convey good and marketable title to its Interest to Purchaser or its designee free and clear of all liens and encumbrances. Each Member shall cooperate and take all actions and execute all documents reasonably necessary or appropriate to reflect the purchase of the Seller's Interest by the Purchaser.

## ARTICLE IX OBLIGATIONS FOR REPORTING RECORDS AND ACCOUNTING MATTERS

Section 9.1 Fiscal Year. Except as provided by the Code, the fiscal year and the taxable year of the Company shall be the calendar year.

Section 9.2 Bank Accounts. The Managing Member shall deposit all cash balances derived by the Company from any source in accounts in the name of the Company. In no event shall any Company funds be commingled with any accounts of any other party. Any investment of Company funds shall be made in the name of the Company and shall be consistent with investment guidelines stated in an Annual Business Plan.

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Section 9.3 Maintenance of Records.

9.3.1 The Managing Member shall maintain a uniform system of accounts with respect to the Company. All such records shall be maintained at the principal office of the Company.

9.3.2 The Managing Member shall maintain files related to the Project in a good and orderly fashion, all such files being the sole property of the Company.

Section 9.4 Certain Records. The Managing Member shall keep at the principal office of the Company a current list of the full name and last known business or residence address of each Member, a copy of the LLC Certificate and all certificates of amendment to any of them, together with executed copies of any powers of attorney pursuant to which any of the certificates or any amendments have been executed, copies of the Company's (to the extent applicable) federal, state and local income tax or information returns and reports, if any, for the duration of the Company, copies of this Agreement and any amendments thereto, copies of any and all financial statements of the Company for the duration of the Company, and the books and records of the Company as they relate to the internal affairs of the Company for the duration of the Company. Each Member has the right, upon reasonable request, to inspect and copy during normal business hours any of the Company's books, records agreements and other documents.

Section 9.5 Required Reports. The Managing Member shall promptly deliver to each Member, at the Company's expense, a copy of this Agreement as in effect from time to time, and any amendments thereto and, upon request, shall so deliver any additional documents required by the Act. The Managing Member shall furnish or arrange to be furnished to each Member the following reports prepared for the Company to the extent applicable:

9.5.1 Tax Returns. The Managing Member shall prepare or cause to be prepared and file all Tax Returns required of the Company not later than ninety (90) days after the end of each taxable year. The Managing Member shall determine any decisions regarding or affecting the reporting or characterization for tax purposes of items of income, gain, loss or deduction of the Company, including, but not limited to, whether to make any available election pursuant to the Code and the regulations.

9.5.2 Other Reports and Notices.

(a) The Managing Member shall prepare (or cause to be prepared) and deliver to each Member the budgets, reports and other items described in Exhibit G attached thereto and incorporated herein by this reference on or before the respective dates set forth therein.

(b) The Managing Member shall:

(i) Promptly notify the Operating Member of any legal action involving the Company where the amount in controversy exceeds One Hundred Thousand Dollars (\$100,000); and

(ii) Notify the Members within five (5) days after receiving notice of (A) any default under any Loan or breach of or default under any other material agreement to which the Company or the Owner is a party that continues beyond any applicable notice and cure period(s), (B) nonpayment of property taxes with respect to the Project, or (C) any matter that could result in a substantial and material loss (i.e., greater than One Hundred Thousand Dollars (\$100,000)) to the Company.

Section 9.6 Other Disclosures. The Managing Member shall provide any and all material information relating to the Owner and the Project and other periodic reports as the Members may reasonably request from time to time.

Section 9.7 Managing Member as Tax Matters Partner. The Managing Member is designated the tax matters partner of the Company as provided in Section 6231(a)(7) of the Code and corresponding provisions of applicable state law. This designation is effective only for the purpose of activities performed pursuant to the Code, corresponding provisions of applicable state law, the applicable laws of any non-U.S. jurisdiction (and political subdivisions thereof), and under this Agreement. The Managing Member shall inform the Members of any material decisions or actions taken by the Managing Member as the tax matters partner.

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Section 9.8 Taxation as a Partnership. It is the intent of the Company and its Members that the Company be treated as a partnership for income tax purposes, and the terms of this Agreement shall be construed so as to accomplish that goal, and the Members will use best efforts to cause the Company to be so treated.

Section 9.9 Quarterly Meetings. An officer or one or more other representatives of the Managing Member shall meet at least once per calendar quarter with representatives from the Operating Member to discuss the status of the development and operations of the Project. Such meetings shall occur on dates and times reasonably satisfactory to the Members and may be conducted in person or by teleconference.

## **ARTICLE X DISSOLUTION**

### Section 10.1 Dissolution.

10.1.1 Events of Dissolution. The Company shall dissolve, and its affairs shall be wound up, upon the first to occur of the following: (i) the expiration of the term of the Company unless such term has been extended by the unanimous election of the Members, (ii) at the election of the Members, (iii) the entry of a decree of judicial dissolution under Section 18-802 of the Act, or (iv) the sale, transfer or other disposition by the Company of all or substantially all of its assets and the collection by the Company of any and all cash flow derived therefrom.

10.1.2 Bankruptcy of a Member. Subject to the provisions of Section 11.1 below, the Bankruptcy of a Member or other Terminating Event will not cause the Member to cease to be a member of the Company and, upon the occurrence of such an event, the business of the Company shall continue without dissolution.

10.1.3 Liquidation and Winding Up. In the event of dissolution, the Company shall be wound up and its assets liquidated. In connection with the dissolution and winding up of the Company, the Managing Member or such other Person designated by the Members shall proceed with the sale, exchange or liquidation of all of the assets of the Company, and shall conduct only such other activities as are necessary to wind up the Company's affairs, and the assets of the Company shall be applied in the manner, and in the order of priority, set forth in Section 5.1 hereof.

## **ARTICLE XI EVENTS OF DEFAULT**

Section 11.1 Events of Default. There will be an "*Event of Default*" under this Agreement if any one or more of the following events or circumstances shall transpire or exist and shall not be cured within any applicable period of notice and grace specified below:

11.1.1 Breach of Obligations. If either Member is in breach in any material respect of (i) any obligation under this Agreement and such breach is not corrected within thirty (30) Business Days after written notice thereof from the other Member; unless such breach is of a nature that it is not capable of cure in such period, in which event the breaching party shall promptly commence such cure within such thirty (30) Business Day period and thereafter diligently pursue such cure to completion within such reasonable time, not to exceed an additional one hundred eighty (180) days, as may be necessary to complete such cure, or (ii) any representation or warranty made by such Member in this Agreement, including, without limitation, on Schedule 12.10 attached hereto.

11.1.2 Fraud, Gross Negligence or Willful Misconduct. If either Member shall commit an act involving fraud or willful misconduct in connection with any of its obligations hereunder or an act involving gross negligence, which with respect to any act of gross negligence is not corrected within fifteen (15) days after written notice thereof from the other Member.

11.1.3 Transfers. Any Transfer by either Member in violation of the provisions of Article VIII.

11.1.4 Bankruptcy of a Member. The Bankruptcy of a Member.

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11.1.5 Breach of Fiduciary Duty. Any breach of fiduciary duty of the Managing Member.

11.1.6 Failure to Satisfy Guaranty Obligations. Failure of the Managing Member to fund any Guaranty Obligation when due.

Section 11.2 Remedies. Upon an Event of Default, the non-defaulting Member (the “*Enforcing Member*”) may:

11.2.1 Enforce the provisions of this Agreement by legal proceedings for the specific performance of any covenant or agreement contained herein or for the enforcement of any other appropriate legal or equitable remedy and recover damages caused by any breach by the defaulting Member (the “*Defaulting Member*”) of the provisions of this Agreement, including court costs, reasonable attorneys’ fees and other expenses incurred in the enforcement of the obligations of the Defaulting Member hereunder;

11.2.2 Exercise any and all rights and remedies which the Enforcing Member may have under applicable law;

11.2.3 In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, the Enforcing Member may either (i) allocate any funds that would otherwise become available in the Distributions during the next one (1) year period following the Event of Default to repay the Enforcing Member for the amount of such payment default, and any penalties or interest provided herein, and/or (ii) either with respect to the entire amount of the payment in default or the remaining amount of the payment default after application of the funds in provision (i), permanently reduce the Proportionate Share of the Defaulting Member which shall be equal to:

(a) a fraction (expressed as a percentage, but not to exceed 100%), the numerator of which shall equal the sum of (w) the aggregate amount of all default amounts contributed by the Enforcing Member to cover the Defaulting Member’s unperformed obligations (the “*Default Amounts*”) since the inception of the Company (including the present one) times 1.5, plus (x) the amount of Capital Contributions and Member Loans made by the Enforcing Member under this Agreement, and the denominator of which shall equal the aggregate sum of (y) all Default Amounts, plus (z) the amount of all other Capital Contributions and Member Loans made by the Members under this Agreement; and

(b) the Proportionate Share of the Defaulting Member shall be adjusted to equal one hundred percent (100%) minus the adjusted Proportionate Share of the Enforcing Member as determined under Section 11.2.3(a); provided, however, notwithstanding anything to the contrary contained herein, if a Member’s Proportionate Share is reduced to zero as a result of the operation of this subsection (b), such Member shall not cease to be a Member merely as a result of the operation of this subsection and such Member shall continue to be entitled to receive Distributions in accordance with Section 5.1 hereof, subject to the recalculation of Proportionate Shares caused by this subsection (b) and shall have all other rights as a Member under this Agreement subject to all the other provisions of this Agreement.

11.2.4 Allocate distributable cash or Extraordinary Cash Flow, or any other funds that would otherwise become available to the Defaulting Member in the Distributions, following the Event of Default to repay the Company or Enforcing Member, as applicable, for the amount of actual monetary costs reasonably incurred by the Company or Enforcing Member as a direct result of the Event of Default;

11.2.5 Set off and to apply any fees, including without limitation development fee and deferred development fee, payable in connection with the Project to the Defaulting Member or its Related Party to repay the Company or Enforcing Member, as applicable, for the amount of actual monetary costs reasonably incurred by the Company or Enforcing Member as a direct result of the Event of Default; and/or

11.2.6 The Enforcing Member may automatically trigger a cross default with the contractual agreements between the Owner and Related Party of the Defaulting Member.

In the event the Enforcing Member exercises and satisfies any Event of Default pursuant to the Remedies in Sections 11.2.3 to 11.2.5 listed above, the Defaulting Member shall no longer be deemed to be in default hereunder. Until such remedy has fully satisfied the Event of Default, the Defaulting Member shall have no consent rights hereunder, including, without limitation, for any Major Actions.

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Section 11.3 Special Remedies on Default by the Managing Member. In the event the Managing Member commits an act described in Section 11.1.2 that has a material adverse effect on the Company and is not cured within fifteen (15) days after written notice thereof from the Operating Member or an act described in Section 11.1.3, the Operating Member may, in its sole discretion remove the Managing Member from having any role in the management or operation of the Company (including, without limitation, its role as managing member of the Company) and designate itself or its designee as the managing member of the Company in which event it will have full and complete authority to manage and operate the Company subject to the provisions of hereof. If the Operating Member exercises such right, the Managing Member shall automatically, without need for the execution and delivery of any instrument other than notice by the Operating Member to the Managing Member that it has exercised such right, cease to have any role in the management or operation of the Company.

## ARTICLE XII ARBITRATION

Section 12.1 General. In the event any dispute arises between any Members to this Agreement with respect to this Agreement or the Company, then upon written request of one Member served on the other Member, the matter shall be submitted promptly for arbitration with JAMS or the McCammon Group in accordance with their rules then pertaining unless the parties mutually agree otherwise. The Members shall cooperate in good faith to agree upon an arbitrator or arbitrators and shall proceed in accordance with any rules or requests of the arbitrator(s). If the Members are unable to agree on an arbitrator within seven (7) days after being provided with bios of the arbitrators, then the arbitrator shall be chosen by the selected arbitration tribunal. The arbitration shall be held in the Commonwealth of Virginia, unless the parties otherwise agree. The cost of such arbitration shall be split equally among the Members. If a Member does not agree to go to arbitration, as the case may be, then that party shall be liable for the other party's reasonable legal fees in any subsequent litigation regarding that same matter in which the party who refused to go to arbitration loses in that subsequent litigation. The award rendered by the arbitrator shall be final and binding, and judgment may be entered upon the award in accordance with applicable law in any United States court of competent jurisdiction.

Because of the unique relationship of the Members and the unique value of the Members' interests in the Company, this provision for arbitration shall not prevent any party from applying for and obtaining injunctive relief from a competent court in the United States of America where, in the absence thereof, the rights of such party cannot be adequately protected by mediation or an arbitrator's award.

The parties agree and acknowledge that, in addition to any other remedies specifically set forth herein, in the event of a breach of any provision of this Agreement by a Member, the Company and the Enforcing Member shall be entitled to receive from the Defaulting Member any and all damages suffered by them as a result of such breach, together with all expenses incurred in connection with the enforcement of this Agreement and the collection of such damages, including reasonable attorneys' fees and all costs and expenses in enforcing this Agreement. The obligations of the Members hereunder shall survive the withdrawal of any Member and the dissolution or termination of the Company.

## ARTICLE XIII MISCELLANEOUS

### Section 13.1 Notices.

13.1.1 Any and all notices, demands, consents, approvals, offers, elections and other communications required or permitted under this Agreement (collectively, "*notices*") shall be deemed adequately given if in writing and the same shall be delivered either in hand or by mail or Federal Express or similar expedited commercial carrier, addressed to the recipient of the notice, postpaid and registered or certified with return receipt requested (if by mail), or with all freight charges prepaid (if by Federal Express or similar carrier).

13.1.2 All notices required or permitted to be sent hereunder shall be deemed to have been given for all purposes of this Agreement upon the date of acknowledged receipt and in all other cases, upon the date of receipt or refusal, except that whenever under this Agreement a notice is either received on a day that is not a Business Day or is required to be delivered on or before a specific day that is not a Business Day, the day of receipt or required delivery shall automatically be extended to the next Business Day.

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13.1.3 All such notices shall be addressed:

If to the Operating Member, to:	COMSTOCK REDLAND ROAD III, L.C. 1886 Metro Center Drive, 4th Floor Reston, Virginia 20190 Attention: Christopher Clemente, CEO
with a copy to:	COMSTOCK REDLAND ROAD III, L.C. 1886 Metro Center Drive, 4th Floor Reston, Virginia 20190 Attention: Jubal Thompson
If to the Managing Member, to:	SCG Development Partners, LLC 8245 Boone Blvd, Suite 640 Vienna, VA 22182 Attention: Stephen P. Wilson
with a copy to:	Klein Homig LLP 1325 G St NW, Suite 770 Washington, DC 20005 Attention: Erik Hoffman

13.1.4 By notice given as herein provided, the parties hereto and their respective successors and assigns shall have the right from time to time and at any time during the term of this Agreement to change their respective addresses effective upon receipt by the other parties of such notice and each shall have the right to specify as its address any other address within the United States of America or to add one or two more parties to whom a copy of a notice must be given.

Section 13.2 Amendments. Except as otherwise provided herein, this Agreement may be amended only with the written approval of all Members.

Section 13.3 Interpretation. This Agreement shall be governed by and construed in accordance with the laws of the [State of Maryland], without regard to the principles of conflicts of law. Venue shall be proper in the [Circuit Court of Montgomery County, Maryland, or the U.S. District Court for Montgomery County]. To the extent not prohibited by applicable law that cannot be waived, each party hereby waives its right to trial by jury in connection with any dispute between any of the parties to this Agreement arising out of this Agreement or the rights or obligations of the parties hereunder. The table of contents and titles of the Articles and Sections in this Agreement are for convenience only and shall not be considered in construing this Agreement. Pronouns used herein shall be construed to refer to the masculine, feminine, neuter, singular and plural as the identity of the individual or entity referred to may require. This Agreement, together with the documents and agreements being executed on the date hereof, constitutes the entire agreement among the Members and supersedes any prior written or oral agreements with respect to the subject matter of this Agreement except as otherwise set forth herein. No provision of this Agreement (including, without limitation, any obligation of any Member to make Capital Contributions) shall be interpreted as bestowing any rights whatsoever upon any third party. A cross-reference to another section shall be deemed to be to such section of this Agreement, unless explicitly stated otherwise.

Section 13.4 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original. PDF, TIFF, facsimile, or other electronic images of signatures will be deemed originals for all purposes.

Section 13.5 No Partition. No Member, nor any Legal Successor of a Member, shall have the right to partition the Company or the Project or any part thereof or interest therein, or to file a complaint or institute any proceeding at law or in equity to partition the Company or the Project or any part thereof or interest therein. Each Member, for such Member and such Member's Legal Successor, hereby waives any such rights. The Members intend that, during the term of this Agreement, the rights of the Members and their successors in interest, as among themselves, shall be governed solely by the terms of this Agreement and by the Act.



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Section 13.6 Attorneys' Fees. If any Member seeks to enforce such Member's rights under this Agreement by legal proceedings or otherwise the non-prevailing party shall be responsible for all reasonable costs and expenses in connection therewith, including without limitation, reasonable attorneys' fees and expert witness fees. In this Section 13.6, non-prevailing party shall not be meant to refer to a Member who initiates or accepts a settlement offer with regards to such legal proceeding.

Section 13.7 Severability. If any provision of this Agreement is determined to be unenforceable for any reason, it shall be adjusted rather than voided, if possible, to achieve the intent of the parties. In any event, all other provisions shall be deemed valid and enforceable to the greatest possible extent.

Section 13.8 Binding on Successors. Subject to the provisions of **ARTICLE VIII**, the rights and obligations of the Members under this Agreement shall inure to the benefit of and bind their respective heirs, successors and assigns.

Section 13.9 Confidentiality. Both parties hereto agree to maintain the confidentiality of the financial terms and conditions of this Agreement and to maintain the confidentiality of (a) any financial information provided by one party to the other, and (b) all information contained in any plans, specifications, manuals, forms, contracts, books, records, computer discs and similar materials containing information, invoices and other documents received or maintained by the Company pursuant to this Agreement, other than information that is available from public sources. Either party may, however, disclose any of such information to its agents, directors, officers, employees, advisors, attorneys, affiliates or representatives who require such information for the purpose of performing or assisting in the performance of its obligations or services hereunder, and to investors or lenders or proposed investors or lenders, provided that in all such cases such parties shall be informed of the confidential nature of such information. Either party hereto may also disclose any such information (x) to the extent required by law, regulation (including SEC regulations) or court order provided that such party shall have first, to the extent reasonably practicable, advised the other of the requirement to disclose such information and shall have afforded the other an opportunity to dispute such requirement and seek relief therefrom by legal process, (y) in connection with any suit, action, arbitration or other proceedings between the parties hereto or their respective Related Parties, or (z) to the extent required in connection with the preparation or filing of any Tax Returns or other filings required by any applicable law.

Any press releases or other public announcements concerning the Company or the arrangement between the Members shall be mutually approved by both the Operating Member and the Managing Member in their reasonable discretion.

Section 13.10 Additional Representations, Warranties, Covenants and Agreements of Each Member. As an inducement to each Member to enter into this Agreement, in addition to the representations, warranties, covenants and agreements contained in this Agreement, the parties make the additional representations, warranties, covenants and agreements contained in Schedule 12.10 attached hereto and made a part hereof.

Section 13.11 Brokerage. The parties hereto represent and warrant to each other that they have not dealt with any brokers, consultants or other third parties in the negotiation of this Agreement and the transactions contemplated herein. Each Member shall indemnify, defend and hold the other harmless from and against any liability, claim, damage, cost or expense (including, without limitation, reasonable attorneys' and expert witness fees) arising out of or in connection with any breach by such Member of its representations and warranties under this Section 13.11.

Section 13.12 Exhibits and Schedules. Each of the Exhibits and Schedules attached hereto is incorporated herein by this reference and expressly made a part of this Agreement for all purposes.

Section 13.13 Scope of Representations. EACH OF THE MEMBERS HEREBY ACKNOWLEDGES AND AGREES THAT, IN CONNECTION WITH THE DRAFTING, PREPARATION AND NEGOTIATION OF THIS AGREEMENT, THE FORMATION OF THE COMPANY AND ANY OTHER MATTERS RELATED THERETO, (I) KLEIN HORNIG LLP HAS ONLY REPRESENTED THE INTERESTS OF THE MANAGING MEMBER AND NOT THE INTERESTS OF THE OPERATING MEMBER OR THE COMPANY. THE ATTORNEYS, ACCOUNTANTS AND OTHER EXPERTS WHO PERFORM SERVICES FOR ANY OF THE PARTIES HERETO MAY ALSO PERFORM SERVICES FOR THE COMPANY. TO THE EXTENT THE FOREGOING REPRESENTATION CONSTITUTES A CONFLICT OF INTEREST, EACH OF THE MEMBERS HEREBY EXPRESSLY WAIVES ANY SUCH CONFLICT OF INTEREST. THE MEMBERS FURTHER ACKNOWLEDGE THAT THE ATTORNEYS, ACCOUNTANTS AND OTHER EXPERTS WHO PERFORM SERVICES FOR THE COMPANY OR ANY MEMBER SHALL NOT BE DEEMED BY VIRTUE OF SUCH REPRESENTATION TO HAVE ALSO REPRESENTED ANY OTHER MEMBER IN CONNECTION WITH ANY SUCH MATTERS.

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**ARTICLE XIV**  
**OPERATING MEMBER BUY-OUT**

Section 14.1 Managing Member will have the option to purchase all of the Interest of the Operating Member for \$1.00 upon the occurrence of the following events:

14.1.1 the closing/conversion of the Project's permanent financing,

14.1.2 the release of the Operating Member from all obligations under this Agreement,

14.1.3 the release of the Operating Member and its Related Party from all Guaranty Obligations (including by any assumption thereof by the Managing Member or its affiliates), and

14.1.4 satisfaction by the Company of the obligations owed to the Operating Member under this Agreement, subject to Section 14.2 below.

The option may be exercised by the Managing Member by providing written notice thereof to the Operating Member, which notice will include the proposed closing date of the transfer of such Interest.

Section 14.2 If Managing Member exercises the option to purchase all of the Interest of the Operating Member as provided herein at the time that Montgomery County, Maryland or Department of Housing and Urban Development issues its final endorsement to the Property, Managing Member may exercise the option, but shall provide a Promissory Note for any remaining distributions or amounts owed to Operating Member under this Agreement.

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IN WITNESS WHEREOF, each of the Members has executed this Agreement as of the date first written above.

**OPERATING MEMBER:**

COMSTOCK REDLAND ROAD III, L.C.

By: COMSTOCK HOLDING COMPANIES, INC., Manager

By: \_\_\_\_\_  
Christopher Clemente, Chief Executive Officer

[SIGNATURES CONTINUED]

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**MANAGING MEMBER:**

SCG Development Partners, LLC  
a Delaware limited liability company  
its managing member

By: SCG Development Manager, LLC  
a Delaware limited liability company  
its managing member

By: SCG Capital Corp.  
a Delaware corporation  
its sole member

By: \_\_\_\_\_  
Name: Stephen P. Wilson  
Title: President – Virginia Office

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**EXHIBIT A**

**NAME, ADDRESS AND PROPORTIONATE SHARE OF MEMBERS**

<u>Members</u>	<u>Address</u>	<u>Proportionate Share</u>	<u>Initial Cash Capital Contribution</u>
SCG Development Partners, LLC	8245 Boone Blvd Suite 640 Vienna, VA 22182	75%	\$ 1,000,000
Comstock Redland Road III, L.C.	1886 Metro Center Drive 4th Floor Reston, Virginia 20190	25%	\$ 1,000,000

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**EXHIBIT B**

**LEGAL DESCRIPTION OF PROPERTY**

B-1

EXHIBIT C

FORM OF CAPITAL CALL NOTICE

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Re: Funding of Capital to MOMENTUM GENERAL PARTNERS LLC

Gentlemen:

Reference is hereby made to the Limited Liability Company Agreement of MOMENTUM GENERAL PARTNERS LLC, dated as of \_\_\_\_\_, 2016 (the "Operating Agreement"). Capitalized terms not otherwise defined shall have the meaning ascribed to them in the Operating Agreement.

Pursuant to 0 of the Operating Agreement, you are advised, as the \_\_\_\_\_ Member of the Company, that the \_\_\_\_\_ Member has determined that Capital is required to \_\_\_\_\_ in the aggregate amount of \$ \_\_\_\_\_.

Each Member is hereby requested to contribute, in the form of cash or cash equivalents, funds in the amount of its Proportionate Share (as set forth below) of such required Capital within *[insert appropriate time period which shall not be less than as set forth in Article III]* of the date of this notice.

	<u>Contributions</u>	<u>Proportionate Share</u>
Managing Member	\$	75%
Operating Member	\$	25%
<b>TOTAL</b>		<b>100%</b>

[MEMBER]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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**EXHIBIT D**  
**FORM OF NOTE**

**NOTE**

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FOR VALUE RECEIVED, MOMENTUM APARTMENTS, LLC, a Maryland limited liability company (the “Company”) promises to pay the order of COMSTOCK REDLAND ROAD III, L.C., a Virginia limited liability company (the “Developer”), the principal sum of AND /100 DOLLARS (\$ ), on or before (the “Maturity Date”) in accordance with that certain Development Services Agreement by and between the Company and the Developer, dated (the “Development Agreement”).

This Development Fee Note evidences the obligation of the Company to pay the Developer its prorata share of the outstanding portion of the Upfront Development Fee (the “Remaining Upfront Development Fee”) pursuant to the Development Agreement. The Remaining Upfront Development Fee is payable out of the Company’s Net Capital Proceeds received up to and including the date of Project Stabilization, as such terms are defined in the Amended and Restated Operating Agreement of the Company dated as of October 24, 2016.

The outstanding principal balance of this Development Fee Note shall unconditionally be due and payable within six (6) months of receipt of the Final Endorsement of the Project by Maryland DCHD, but no later than December 31, 2019.

Demand for payment shall be presumed to have been issued and the entire unpaid principal sum of this Development Fee Note, together with accrued interest thereon, if any, shall become immediately due in the event of the occurrence of any one or more of the following: default in the payment of any installment due hereunder continuing for a period in excess of ten (10) days after written notice from the Developer to the Company; the filing by the Company of a voluntary petition in bankruptcy; or the failure by the Company within thirty (30) days thereof to lift any filing against the Company of any involuntary petition, execution, or attachment; or the adjudication of the Company as bankrupt; or any assignment by the Company of all or substantially all of its assets for the benefit of its creditors; or the invalidity or illegality of any portion of this Note by reason of any act or omission by the Company.

This Development Fee Note shall not be assigned, hypothecated, pledged, sold, or otherwise transferred without the prior written consent of the Company, and any such other transfer without the Company’s consent shall be null and void.



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Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Development Agreement.

This Development Fee Note shall be governed by and construed in accordance with the internal laws of the State of Maryland.

IN WITNESS WHEREOF, the Company has executed this Development Fee Note as of the date written above.

**MOMENTUM APARTMENTS, LLC**, a Maryland limited liability company

By: Momentum General Partners, LLC a Maryland limited liability company, its managing member

By: SCG Development Partners, LLC, a Delaware limited liability company, its managing member

By: SCG Development Manager, LLC, a Delaware limited liability company, its managing member

By: SCG Capital Corp., a Delaware corporation, its sole member

By: \_\_\_\_\_  
Name: Stephen P. Wilson  
Title: President – Virginia Office

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**EXHIBIT E**

**DEVELOPMENT BUDGET**

E-1

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**EXHIBIT F**

**MAJOR ACTIONS**

1. Cause the Company to expend the greater of Twenty-Five Thousand Dollars (\$25,000) or five percent (5%) or more in excess of the amount budgeted for any expenditure for the Company or the Project in the Development Budget or Annual Business Plan.
2. Any changes to the aggregate amount of the Development Budget or any other changes or decisions which will materially increase the aggregate cost of developing the Project.
3. Confess a judgment against the Company or initiate, or take any action for foreclosure, bankruptcy or any other insolvency proceedings. For the purposes hereof, a plea of nolo contendere by the Managing Member shall be the equivalent of a guilty plea.
4. Take any action in contravention of the Annual Business Plan.
5. Institute any legal action involving a claim in excess of Twenty-Five Thousand Dollars (\$25,000); settle any legal action that involves an uninsured expense in excess of Twenty-Five Thousand Dollars (\$25,000) or confirm a judgment against the Company in excess of Twenty-Five Thousand Dollars (\$25,000).
6. Cause the Company to borrow money, refinance, extend, compromise or otherwise deal with any Loans (including securing such Loans) of the Company.
7. Approve any Development Budget and Annual Business Plan (and any modifications or deviations thereof). Except as otherwise provided in this Agreement, the entry into by the Company of any contract with, or the making of any payment to, any Member, or any Related Party of a Member, or with respect to any such contract, making any amendment, modification or rescission thereof; or consenting to the assignment of any rights or delegation of any duties by any party thereto.
8. Cause a merger, conversion, reorganization or similar transaction with respect to the Company.
9. Approve the terms of any Member Loan, except as otherwise provided in this Agreement.
10. Except as permitted in accordance with the terms of the Agreement, admit or remove any party as a Member or the Managing Member of the Company.
11. Dissolve, liquidate or otherwise terminate the Company.
12. Amend this Agreement or knowingly take or permit any action to occur that would materially adversely affect or otherwise alter the structure of the Company.
13. Require an Additional Capital Contribution under 3.2.
14. Any decisions related to or affecting or increasing the Guaranty Obligations or obligation to reimburse the Managing Member for payment thereof.
15. Selection and approval of general contractors, owner's representatives, property managers, engineers and the architects for the Project.
16. Amend the Operating Agreement of Owner or admit a new member to the Owner.
17. Amend the Development Services Agreement between the Company and Momentum Apartments, LLC.

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**EXHIBIT G**

**BUDGET/REPORTS**

G-1

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## SCHEDULE 12.10

### 1. Representations and Warranties of the Managing Member.

1.1 Authority; Good Standing. The Managing Member is a limited liability company duly organized and validly existing under the laws of the State of Delaware, with full power and authority and legal right to be a member of the Company and to carry on its business in the manner and in the locations in which such business has been and is now being conducted by it, to execute and deliver this Agreement and to perform its obligations hereunder.

1.2 Consent of Third Parties. No consent of any third party is required as a condition to the entering into of this Agreement by the Managing Member other than such consent as has been previously obtained.

1.3 Authority; Enforceability. The execution and delivery of this Agreement has been duly authorized by the Managing Member and this Agreement constitutes the valid and binding obligation and agreement of the Managing Member, enforceable in accordance with its terms (subject to the effect of bankruptcy, insolvency or creditor's rights generally, and to limitations imposed by general principles of equity).

1.4 Absence of Conflicts. Neither the execution and delivery of this Agreement, nor compliance with the terms and provisions hereof, will result in any breach of the terms, conditions or provisions of, or conflict with or constitute a default under, or result in the creation of any lien, charge or encumbrance upon the property or assets of the Managing Member pursuant to the terms of any indenture, mortgage, deed of trust, note, evidence of indebtedness, agreement or other instrument to which the Managing Member or any Related Party may be party or by which it or they or any of its or their properties or assets may be bound, or violate any provision of law, or any applicable order, writ, injunction, judgment or decree of any court, or any order or other public regulation of any governmental commission, bureau or administrative agency.

1.5 No Judgments. There are no judgments presently outstanding and unsatisfied against SCG or any of its assets and neither SCG nor any of its assets is involved in any litigation at law or in equity, or in any proceeding before any court, or by or before any governmental or administrative agency, which judgment, litigation or proceeding could reasonably be anticipated to have a material adverse effect on SCG, the Company, the Property or the Project, and no such material judgment, litigation or proceeding is, to the best of the Managing Member's knowledge, threatened against SCG or any of its assets, and to the best of the Managing Member's knowledge, no investigation looking toward such a proceeding has begun or is contemplated.

1.6 Litigation. To the actual knowledge of the Managing Member, there is no material action, suit or proceeding pending or threatened against or affecting the Property, or arising out of the ownership, management or operation of the Property, this Agreement or the transactions contemplated hereby.

### 2. Representations and Warranties of the Operating Member.

2.1 Authority; Good Standing. COMSTOCK is a limited liability company duly organized and validly existing under the laws of the Commonwealth of Virginia with full power and authority and legal right to be a Member of the Company and to carry on its business in the manner and in the locations in which such business has been and is now being conducted by it, to execute and deliver this Agreement and to perform its obligations hereunder.

2.2 Consent of Third Parties. No consent of any third party is required as a condition to the entering into of this Agreement other than such consent as has been previously obtained.

2.3 Authority; Enforceability. The execution and delivery of this Agreement has been duly authorized by COMSTOCK and this Agreement constitutes the valid and binding obligation and agreement of COMSTOCK, enforceable in accordance with its terms (subject to the effect of bankruptcy, insolvency or creditor's rights generally, and to limitations imposed by general principles of equity).

2.4 Absence of Conflicts. To our knowledge, neither the execution and delivery of this Agreement, nor compliance with the terms and provisions hereof, will result in any breach of the terms, conditions or provisions of, or conflict with or constitute a default under, or result in the creation of any lien, charge or encumbrance upon the property or assets of COMSTOCK pursuant to the terms of any indenture, mortgage, deed of trust, note, evidence of indebtedness, agreement or other instrument to which COMSTOCK or any Related Party may be party or by which it or they or any of its or their properties or assets may be bound, or violate any provision of law, or any applicable order, writ, injunction, judgment or decree of any court, or any order or other public regulation of any governmental commission, bureau or administrative agency.

2.5 No Judgments. To our knowledge, there are no judgments presently outstanding and unsatisfied against the COMSTOCK or any of its assets and neither COMSTOCK nor any of its assets is involved in any litigation at law or in equity, or in any proceeding before any court, or by or before any governmental or administrative agency, which judgment, litigation or proceeding could reasonably be anticipated to have a material adverse effect on COMSTOCK, the Company or the Property and no material judgment, litigation or proceeding over \$50,000, except as otherwise provided in Exhibit [ ] hereto and attached herein, is, to the best of COMSTOCK's knowledge, threatened against COMSTOCK or any of its assets, and to the best of the COMSTOCK's knowledge, no investigation looking toward such a proceeding has begun or is contemplated.

3. Indemnification Obligations.

3.1 Indemnification by the Managing Member. The Managing Member shall indemnify, defend, and hold harmless COMSTOCK and its members, managers, authorized signatories, officers, directors, employees, Related Parties, successors and assigns from and against, and pay or reimburse each of them for and with respect to, any and all out of pocket costs, obligations, liabilities, demands, claims, settlement payments, awards, judgments, fines, penalties, damages and other reasonable out of pocket expenses, including court costs and reasonable attorneys' and expert witness fees, arising out of a third-party claim (collectively, "**Loss**") relating to, arising out of or resulting from any breach by the Managing Member of any of its fiduciary duty, representations, warranties, covenants or agreements in this Agreement.

3.2 Indemnification by COMSTOCK. COMSTOCK shall indemnify, defend and hold harmless the Managing Member and its members, managers, authorized signatories, officers, directors, employees, agents, representatives, Related Parties, successors and assigns from and against, and pay or reimburse each of them for and with respect to any Loss relating to, arising out of or resulting from any breach by COMSTOCK of any of its representations, warranties, covenants or agreements in this Agreement.

3.3 Administration of Indemnification. For purposes of administering the indemnification provisions set forth in Sections Section 3.1 and 0, the following procedure shall apply:

(a) Whenever a claim shall arise for indemnification under this Article, the party entitled to indemnification (the "**Indemnified Party**") shall reasonably promptly give written notice to the party from whom indemnification is sought (the "**Indemnifying Party**") setting forth in reasonable detail, to the extent then available, the facts concerning, the nature of such claim and the basis upon which the Indemnified Party believes that it is entitled to indemnification hereunder.

(b) In the event of any claim for indemnification resulting from or in connection with any claim by a third party, the Indemnifying Party shall be entitled, at its sole expense, either (i) to participate in defending against such claim or (ii) to assume the entire defense with counsel which is selected by it and which is reasonably satisfactory to the Indemnified Party provided that (A) the Indemnifying Party agrees in writing that it does not and will not contest its responsibility for indemnifying the Indemnified Party in respect of such claim or proceeding, and (B) no settlement shall be made and no judgment consented to without the prior written consent of the Indemnified Party which shall not be unreasonably withheld. If, however, (i) the claim, action, suit or proceeding would, if successful, result in the imposition of damages for which the Indemnifying Party would not be solely responsible, or (ii) representation of both parties by the same counsel would otherwise be inappropriate due to actual or potential differing interests between them, then the Indemnifying Party shall not be entitled to assume the entire defense and each party shall be entitled to retain counsel who shall cooperate with one another in defending against such claim. In the case of Clause (i) of the preceding sentence, the Indemnifying Party shall be obligated to bear only that portion of the expense of the Indemnified Party's counsel that is in proportion to the damages indemnifiable by the Indemnifying Party compared to the total amount of the third-party claim against the Indemnified Party.

(c) If the Indemnifying Party does not choose to defend against a claim by a third party, the Indemnified Party may defend in such manner as it deems appropriate or settle the claim (after giving notice thereof to the Indemnifying Party) on such terms as the Indemnified Party may deem appropriate, and the Indemnified Party shall be entitled to periodic reimbursement of defense expenses incurred and prompt indemnification from the Indemnifying Party in accordance with this Article.

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Failure or delay by an Indemnified Party to give a reasonably prompt notice of any claim shall not release, waive or otherwise affect an Indemnifying Party's obligations with respect to the claim, except to the extent that the Indemnifying Party can demonstrate actual loss or prejudice as a result of such failure or delay.

3.4 Limitation on Damages. Notwithstanding anything to the contrary contained this Agreement, including, without limitation, this Schedule 12.10, neither party to this Agreement shall be liable for lost profits, or consequential, special or punitive damages.

## List of Subsidiaries

<u>Name</u>	<u>State of Incorporation or Organization</u>
1. Comstock Emerald Farm, L.C.	Virginia
2. Comstock Penderbrook, L.C.	Virginia
3. Comstock Potomac Yard, L.C.	Virginia
4. Comstock Ventures XVI, L.C.	Virginia
5. New Hampshire Ave. Ventures, L.L.C.	Virginia
6. Capitol Homes, L.L.C.	North Carolina
7. Comstock Homes of North Carolina, L.L.C.	North Carolina
8. Comstock Homes of Washington, L.C.	Virginia
9. Comstock Property Management, L.C.	Virginia
10. Comstock Realty, LLC	Virginia
11. Comstock Real Estate Services, L.C.	Virginia
12. Comstock Yorkshire, L.C.	Virginia
13. Comstock Contracting, L.C.	Virginia
14. Comstock Eastgate, L.C.	Virginia
15. Comstock Redland Road, L.L.C.	Virginia
16. Comstock Quarry Road, L.C.	Virginia
17. Comstock Popkins Lane, L.C.	Virginia
18. Comstock Maxwell Square, L.C.	Virginia
19. Comstock Investors VII, L.C.	Virginia
20. Comstock Hall Road, L.C.	Virginia
21. Comstock Highlands, L.C.	Virginia
22. Comstock Investors VIII, L.C.	Virginia
23. Comstock Redland Road II, L.C.	Virginia
24. Comstock Homes of the Carolinas, L.L.C.	North Carolina
25. Comstock Summerland, L.C.	Virginia
26. Comstock New Design, L.C.	Virginia
27. Comstock Sixth Street, L.C.	Virginia
28. Comstock Two Rivers I, L.C.	Virginia
29. Comstock Two Rivers II, L.C.	Virginia
30. Comstock Growth Fund, L.C.	Virginia
31. Superior Title Services, L.C.	Virginia
32. Richmond Station Ventures, L.C.	Virginia
33. Comstock Stone Ridge, L.C.	Virginia
34. Comstock Investors IX, L.C.	Virginia
35. Comstock Growth Fund II, L.C.	Virginia
36. Comstock Beshers, L.C.	Maryland
37. Comstock Powhatan, L.C.	Virginia
38. Comstock Sixth Street, LLC	Virginia
39. Comstock Investors X, L.C.	Virginia
40. Dresden, LLC	Maryland
41. Comstock Solomons, L.C.	Maryland
42. Comstock Redland Road III, L.C.	Maryland



**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We hereby consent to the incorporation by reference in the Registration Statements on Form S-3 (File number 333-196260) and Form S-8 (File numbers 333-123709 and 333-182838) of Comstock Holding Companies, Inc., of our report dated April 17, 2017 relating to the consolidated financial statements of Comstock Holding Companies, Inc., which appears in this Form 10-K.

/s/BDO USA, LLP

McLean, Virginia

April 17, 2017

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We hereby consent to the incorporation by reference in the Registration Statement on Form S-3 (No. 333-196260) and Registration Statements on Form S-8 (No. 333-123709 and No. 333-182838) of Comstock Holding Companies, Inc. of our report dated April 1, 2016 relating to the financial statements, which appears in this Form 10-K.

/s/ PricewaterhouseCoopers LLP

McLean, Virginia

April 17, 2017

**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 annual report on Form 10-K of Comstock Holding Companies, Inc. for the fiscal year ended December 31, 2016;

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: April 17, 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 annual report on Form 10-K of Comstock Holding Companies, Inc. for the fiscal year ended December 31, 2016;

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: April 17, 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 Annual Report on Form 10-K of Comstock Holding Companies, Inc. (the "Company") for the year ended December 31, 2016, 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: April 17, 2017

/s/ CHRISTOPHER CLEMENTE  
Christopher Clemente  
Chairman and Chief Executive Officer

Date: April 17, 2017

/s/ CHRISTOPHER L. CONOVER  
Christopher L. Conover  
Chief Financial Officer

