



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**THE HONOURABLE MR. )  
JUSTICE MORAWETZ )  
 )  
 )** **TUESDAY, THE 9th  
DAY OF JULY, 2013**

**IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED  
  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF COMSTOCK CANADA LTD., CCL  
EQUITIES INC., AND COMSTOCK REALTY INC.**

**Applicants**

**INITIAL ORDER**

**THIS MOTION**, made by Comstock Canada Ltd. ("**Comstock**"), CCL Realty Inc. ("**CCL Realty**"), and CCL Equities Inc. ("**CCL Equities**" and together with Comstock and CCL Realty, the "**Applicants**" or the "**Comstock Group**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Affidavit of Geoffrey W. Birkbeck sworn July 9, 2013 (the "**Birkbeck Affidavit**") and the Exhibits thereto, and on hearing the submissions of counsel for Applicants, counsel for Bank of Montreal ("**BMO**"), counsel for Rio Tinto Alcan Inc. ("**RTAI**") and those other parties listed on the Counsel Slip, no one appearing for any other person although duly served as appears from the Affidavit of Service of **TBD** sworn July 9, 2013 and on reading the consent of PricewaterhouseCoopers Inc. ("**PwC**") to act as the Monitor (in such capacity, the "**Monitor**"),

## **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

## **CONTINUANCE UNDER THE CCAA**

2. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies.

3. **THIS COURT ORDERS AND DECLARES** that effective July 9, 2013, the Comstock Group's proposal proceedings (the "**Proposal Proceedings**") commenced under Part III of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") is hereby taken and continued under the CCAA and that as of such date, the provisions of Part III of the BIA shall have no further application to the Comstock Group.

## **PLAN OF ARRANGEMENT**

4. **THIS COURT ORDERS** that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

## **POSSESSION OF PROPERTY AND OPERATIONS**

5. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicants shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. **THIS COURT ORDERS** that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- (b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicants following the date of this Order.

8. **THIS COURT ORDERS** that the Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and



services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and

- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

9. **THIS COURT ORDERS** that, except where an Applicant is a landlord, until a real property lease is disclaimed in accordance with the CCAA, the Applicants shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicants and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

10. **THIS COURT ORDERS** that, except as specifically permitted herein, or as provided for in the Commitment Letter (as defined herein) the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

## **RESTRUCTURING**

11. **THIS COURT ORDERS** that the Applicants shall, subject to such requirements as are imposed by the CCAA or in the Commitment Letter and the Cashflow Forecasts as prepared by the Applicants and approved by the Monitor from time to time, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding \$50,000 in any one transaction or \$250,000 in the aggregate;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate;
- (c) pay no more than ninety percent (90%) of any amounts owing for certain pre-filing project payables in respect of related accounts receivable of the Applicants collected subsequent to June 28, 2014<sup>3 9 10</sup> as deemed necessary by the Applicants, and consented to by the Monitor, for the purpose of maintaining the going concern potential of the Applicants; and
- (d) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the "**Restructuring**").

12. THIS COURT ORDERS that any remaining amounts owing for pre-filing project payables, after payment of the 90% provided for in paragraph 11(c) above, may be paid to the Applicants to be used for any other use for which an advance under the DIP Credit Facility (as that term is defined below) may be used.

13. **THIS COURT ORDERS** that the Applicants shall provide each of the relevant landlords with notice of the Applicants' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicants' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicants, or by further Order of this Court upon application by the Applicants on at least two (2) days notice to such landlord and any such secured creditors. If the Applicants disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent



payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the Applicants' claim to the fixtures in dispute.

14. **THIS COURT ORDERS** that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicants of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

#### **COST REIMBURSEMENT AGREEMENT**

15. **THIS COURT ORDER AND DECLARES** that the Cost Reimbursement Agreement (the "CRA") made as of July 9, 2013 between Comstock and RTAI substantially in the form attached as Exhibit "Q" to the Birkbeck Affidavit be and is hereby approved, ratified and confirmed, and the execution of the CRA by Comstock be and is hereby authorized and approved. Comstock is hereby authorized and directed to take such additional steps and execute such additional documents as are contemplated by the CRA or as may be reasonably required by RTAI to carry out the intention of the CRA.

16. **THIS COURT ORDERS AND DECLARES** that, in accordance with the provisions of the CRA and this Order, RTAI shall be entitled to and is hereby granted a first ranking super priority lien on:

- (a) any account or accounts currently in place or established by Comstock from time to time for the deposit of Reimbursements from the Disbursement Account, as defined in the CRA (the "Comstock CRA Accounts"); and

- (b) any amounts held at any time in the Holdback Accounts (as defined in the CRA and hereinafter referred to as the “Holdback Accounts”) and, subject to the rights of lien claimants to the amounts in the Holdback Accounts, RTAI may set off against amounts in the Holdback Accounts any amounts which have been funded by RTAI as Overhead Costs or which represent Construction Costs for which RTAI would otherwise be double paying, in accordance with the CRA.

17. **THIS COURT ORDERS AND DECLARES** that, notwithstanding anything contained in this order or in any other order made in these proceedings, the rights and remedies of RTAI in connection with or pursuant to the CRA and the Affected Contracts shall be unaffected by this order or any order made in these proceedings. Without limiting the generality of the forgoing, any stay created in these proceedings shall not apply to RTAI, and RTAI may exercise its rights and remedies in respect of the CRA and Affected Contracts including, without limitation, that RTAI may terminate the CRA or any or all of the Affected Contracts by giving notice to Comstock, the Monitor and the Bank of Montreal as provided in the CRA.

18. **THIS COURT ORDERS** that the execution, delivery, or performance of the CRA shall neither create nor be deemed to constitute a breach by the Applicants of any Agreement to which they are a party.

19. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings and the Proposal Proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the BIA in respect of Comstock and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of Comstock,

the transactions contemplated under the CRA, as approved, ratified and confirmed pursuant to this Order, shall be binding on any trustee in bankruptcy that may be appointed in respect of Comstock and shall not be void or voidable by creditors of Comstock, nor shall they constitute



nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the CCAA, the BIA, or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

20. **THIS COURT ORDERS AND DECLARES** that, notwithstanding any other provision of this Order, the rights and remedies of RTAI under the CRA and the Affected Contracts shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of Comstock.

#### **NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY**

21. **THIS COURT ORDERS** that, except as provided in paragraph 17 herein, until and including Thursday, August 8, 2013, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

22. **THIS COURT ORDERS** that, except as provided in paragraph 17 herein, during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants to carry on any business which the Applicants is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, or (iii) prevent the filing of any registration to preserve or perfect a security interest.



## **NO INTERFERENCE WITH RIGHTS**

23. **THIS COURT ORDERS** that, except as provided in paragraph 17 herein, during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

## **CONTINUATION OF SERVICES**

24. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

## **NON-DEROGATION OF RIGHTS**

25. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Notwithstanding the foregoing, RTAI is hereby obligated, pursuant to the terms of the CRA, to reimburse Comstock for Reimbursement Costs and to pay any Transition Costs (as those terms are defined in the

CRA). Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

26. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

27. **THIS COURT ORDERS** that the Applicants shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

28. **THIS COURT ORDERS** that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, except that the Directors' Charge shall not attach to the Comstock CRA Accounts or the Holdback Accounts nor to any real property owned by any of the Applicants which is subject to an existing mortgage and charge in favour to BMO, such charge shall not exceed an aggregate amount of \$4,600,000, as security for the indemnity provided in paragraph ~~28~~<sup>27</sup> of this Order. The Directors' Charge shall have the priority set out in paragraphs 47 and 49 herein.

29. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under



any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 28 of this Order.

#### **APPOINTMENT OF MONITOR**

30. **THIS COURT ORDERS** that PwC is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

31. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicants, to the extent required by the Applicants, in its dissemination, to the DIP Lender and its counsel of financial and other information as agreed to between the Applicants and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;
- (d) advise the Applicants in its preparation of the Applicants' cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, , or as otherwise agreed to by the DIP Lender;
- (e) advise the Applicants in its development of the Plan and any amendments to the Plan;
- (f) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

- (g) carry out its prescribed duties pursuant to the CRA ( as defined herein) and report to this Court in respect thereof;
- (h) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;
- (i) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (j) perform such other duties as are required by this Order or by this Court from time to time.

32. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

33. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of



any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

34. **THIS COURT ORDERS** that that the Monitor shall provide any creditor of the Applicants with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

35. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

36. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, counsel to the Director and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor, counsel for the Applicants and the Directors on a weekly basis and, in addition, the Applicants is hereby authorized to pay to the Monitor, counsel to the Monitor, counsel to the Applicants, such reasonable retainers as may be requested to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

37. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

38. **THIS COURT ORDERS** that for the purpose of this Order, the fees and disbursements of the Monitor and its counsel may also include the fees and disbursements of PwC as Proposal

Trustee and Interim Receiver, in the Proposal Proceedings and those of its counsel in such respects.

39. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, if any, counsel to the Directors and the Applicants' counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, except that the Administration Charge shall not attach to the Comstock CRA Accounts or the Holdback Accounts, nor to any real property owned by any of the Applicants which is subject to an existing mortgage and charge in favour to BMO which charge shall not exceed an aggregate amount of \$750,000, ( of which amount, \$50,000 shall be allocated to counsel for the Directors) as security for their respective professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings and in respect of the Proposal Proceedings. The Administration Charge shall have the priority set out in paragraphs 47 and 49 hereof.

40. **THIS COURT ORDERS** that the Proposal Trustee, the Interim Receiver and counsel to the Proposal Trustee and the Interim Receiver shall also be entitled to the benefit of the Administration Charge for their respective professional fees and disbursements to the extent of any unpaid fees and disbursements which remain owing with regard to the Proposal Proceedings after the commencement of these proceedings.

#### **DIP FINANCING**

41. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to obtain and borrow under a Debtor-in-Possession Demand Revolving Credit Facility from BMO (the "DIP Lender") in order to finance the Applicant's working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed CDN \$7,800,000 unless permitted by further Order of this Court. (the "DIP Credit Facility").

42. **THIS COURT ORDERS THAT** the DIP Credit Facility shall be on the terms and subject to the conditions set forth in the commitment letter between the Applicant and the DIP Lender dated July 9, 2013 (the "Commitment Letter"),<sup>to be</sup> filed. *JR*



43. THIS COURT ORDERS that the Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "Definitive Documents"), as are contemplated by the Commitment Letter or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Commitment Letter and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

44. THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "DIP Lender's Charge") on the Property, except that the DIP Lender's Charge shall not attach to the Comstock CRA Accounts, or the Holdback Accounts and which DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs 47 and 49 hereof.

45. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender is not required to make any advances to the Applicant under the DIP Credit Facility, <sup>and</sup> upon two (2) days notice to the Applicants and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the Commitment Letter, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of the Applicants to the DIP Lender under the Commitment Letter, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim

receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and

- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

46. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the BIA , with respect to any advances made under the Definitive Documents.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

47. **THIS COURT ORDERS** that the priorities of the Directors' Charge, the DIP Lender's Charge and the Administration Charge, as between them, shall be as follows:

First Administration Charge (to the maximum amount of CDN\$750,000);

Second DIP Lender's Charge (to the maximum amount of CDN\$7,800,000)

Third Directors Charge (to the maximum amount of CDN\$4,600,000.

48. **THIS COURT ORDERS** that the filing, registration or perfection of the Directors Charge, DIP Lender's Charge and the Administration Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

49. **THIS COURT ORDERS** that each of the, the Director's Charge, the DIP Lender's Charge and the Administration Charge (all as constituted and defined herein) shall constitute a charge on the Property, except that the Director's Charge, the DIP Lender's Charge and the



Administration Charge shall not attach to the Comstock CRA Accounts, or the Holdback Accounts and the Administration Charge and the Director's Charge shall not attach to any real property owned by any of the Applicants which is subject to an existing mortgage and charge in favour to BMO, and such Charges shall rank in priority to all security interests, trusts, liens, construction liens, trust claims (whether of not perfected or preserved), charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person, provided that the DIP Lender's Charge shall be subordinate to the existing mortgages and charges of BMO on any real property owned by any of the Applicants which secures the amount of the indebtedness of Comstock outstanding to BMO prior to the date of this Order.

50. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property, that rank in priority to, or *pari passu* with, any of the Directors' Charge, DIP Lender's Charge and the Administration Charge, unless the Applicants also obtains the prior written consent of the Monitor and the beneficiaries of the Directors' Charge, DIP Lender's Charge and the Administration Charge, or further Order of this Court.

51. **THIS COURT ORDERS** that the Directors' Charge, the Administration Charge and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges, shall neither create nor be deemed to constitute a breach by the Applicants of any Agreement to which it is a party;

- (b) the payments made by the Applicants pursuant to this Order and the granting of any of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

## **SEALING OF CONFIDENTIAL MATERIALS**

52. **THIS COURT ORDERS** that Confidential Exhibit “J” to the Birkbeck Affidavit and the Unaudited Financial Statements for the Applicants be and are hereby sealed until further Order of this Court.

## **SERVICE AND NOTICE**

53. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in The Globe and Mail (National Edition) and the ~~Daily~~<sup>Daily</sup> Commercial News a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

54. **THIS COURT ORDERS** that the Applicants and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

55. **THIS COURT ORDERS** that the Applicants, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service



List from time to time, and the Monitor may post a copy of any or all such materials on its website at www.pwc.com.

56. **THIS COURT ORDERS** that personal service of the CCAA Application herein and this Order shall be effected on the all persons by the publication in The Globe & Mail (National Edition) and the Daily Commercial News on one occasion of an advertisement substantially as follows by ~~no later than Thursday, 11 July, 2013:~~ *as soon as practicable.*



Court File No. \_\_\_\_\_

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF COMSTOCK CANADA LTD., CCL EQUITIES INC., AND COMSTOCK REALTY INC.

TAKE NOTICE that:

An application pursuant to the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the "CCAA"), was heard in respect of Comstock Canada Ltd., CCL Equities Inc., and Comstock Realty Inc. (together, the "Comstock Group") and an Initial Order pursuant to the CCAA was issued in respect of the Comstock Group on July 9, 2013 by Ontario Superior Court of Justice (Commercial List) at 330 University Avenue, Toronto, Ontario.

Any person wishing to dispute the Initial Order shall (a) apply to this Court to vary or amend the Initial Order by no later than July 19, 2013 on two (2) business days notice to any other party or parties likely to be affected by the Initial Order; (b) serve a Notice of Motion and corresponding Motion Record on (i) the Comstock Group c/o Gowling Lafleur Henderson LLP at 1 First Canadian Place, Suite 1600-100 King Street West, Toronto, Ontario, Attention: Alex MacFarlane and Frank Lamie; (ii) the Monitor c/o of PricewaterhouseCoopers Inc., PwC Tower, 18 York Street, Suite 2600, Toronto, Attention: Duncan Lau; and (c) file a copy of the Notice of Motion

and Motion Record along with proof of service with the Ontario Superior Court of Justice (Commercial List) Court Office at 330 University Avenue, Toronto, Ontario, by no later than Thursday, July 18, 2013.

## GENERAL

57. **THIS COURT ORDERS** that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

58. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

59. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

60. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

61. **THIS COURT ORDERS** that, subject to paragraph <sup>56,</sup> ~~57~~ any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



62. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.



A handwritten signature in blue ink, appearing to read "A. Brown", is written over a horizontal line.

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

JUL 10 2013  
NB

**Court File No.**

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF COMSTOCK CANADA LTD., CCL  
EQUITIES INC., AND COMSTOCK REALTY INC.**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**INITIAL ORDER**

**GOWLING LAFLEUR HENDERSON LLP**

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**Lawyers for the Applicants, Comstock Canada  
Ltd., CCL Realty Inc., and CCL Equities Inc.**