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

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**FORM 8-K**

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**CURRENT REPORT  
Pursuant to Section 13 or 15(d)  
of the Securities Exchange Act of 1934**

**June 24, 2015 (June 18, 2015)  
Date of Report (date of Earliest Event Reported)**

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**NEWTEK BUSINESS SERVICES CORP.**  
(Exact Name of Company as Specified in its Charter)

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**MARYLAND**  
(State or Other Jurisdiction of  
Incorporation or Organization)

**814-01035**  
(Commission  
File No.)

**46-3755188**  
(I.R.S. Employer  
Identification No.)

**212 West 35<sup>th</sup> Street, Second Floor, New York, NY 10001**  
(Address of principal executive offices and zip code)

**(212) 356-9500**  
(Company's telephone number, including area code)

(Former name or former address, if changed from last report)

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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## **Forward-Looking Statements**

Statements in this Current Report on Form 8-K (including the exhibits), including statements regarding Newtek Business Services Corp.'s ("Newtek" or the "Company") beliefs, expectations, intentions or strategies for the future, may be forward-looking statements. All forward-looking statements involve a number of risks and uncertainties that could cause actual results to differ materially from the plans, intentions and expectations reflected in or suggested by the forward-looking statements. Such risks and uncertainties include, among others, intensified competition, operating problems and their impact on revenues and profit margins, anticipated future business strategies and financial performance, anticipated future number of customers, business prospects, legislative developments and similar matters. Risk factors, cautionary statements and other conditions which could cause Newtek's actual results to differ from management's current expectations are contained in Newtek's filings with the Securities and Exchange Commission. Newtek undertakes no obligation to update any forward-looking statement to reflect events or circumstances that may arise after the date of this filing.

### **ITEM 1.01 Entry Into a Material Definitive Agreement.**

On June 18, 2015, Newtek Small Business Finance, LLC ("NSBF"), a subsidiary of Newtek Business Services Corp, Inc. (the "Company"), the Company and the other guarantors party thereto (the "Other Guarantors"), entered into a First Amendment to Loan Documents (the "Amendment"), dated June 18, 2015, with Capital One, North America ("Capital One"), amending that certain Third Amended and Restated Loan and Security Agreement, dated as of October 29, 2014, by and between Capital One and NSBF, pursuant to which Capital One has been providing NSBF a credit facility of up to a maximum aggregate amount of \$50,000,000 (as amended by the Amendment, the "Amended Credit Facility"). As a result of the Amendment, the Amended Credit Facility is only guaranteed by the Company and is no longer guaranteed by the Other Guarantors.

In addition, the Amendment extended the date on which the Amended Credit Facility will convert into a term loan from May 16, 2016 to May 16, 2017 and the maturity date of such term loan from May 16, 2018 to May 16, 2019.

In connection with the Amendment, the Company has agreed to continue to guarantee NSBF's performance and repayment obligations under the Amended Credit Facility, pursuant to an Amended and Restated Guaranty of Payment and Performance, dated as of June 18, 2015 (the "2015 Guaranty Agreement").

The above description is a summary and is qualified in its entirety by the terms of the Amendment and the 2015 Guaranty Agreement, which are filed as Exhibits 10.1 and 10.2 respectively to this Current Report on Form 8-K and are incorporated by reference herein.

A press release announcing the Amended Credit Facility is filed as Exhibit 99.1 to this Current Report on Form 8-K.

### **ITEM 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.**

The information contained in Item 1.01 of this Current Report on Form 8-K is incorporated by reference herein.

**Item 9.01. Financial Statements and Exhibits.**

**(d) Exhibits.**

<u>Exhibit Number</u>	<u>Description</u>
10.1	First Amendment to Loan Documents, dated June 18, 2015, by and among Capital One, North America, Newtek Small Business Finance, LLC, Newtek Business Services Corp. and the other guarantors party thereto.
10.2	Amended and Restated Guaranty of Payment and Performance, dated as of June 18, 2015, by and between Capital One, National Association and Newtek Business Services Corp.
99.1	Press Release, dated June 24, 2015, announcing the Amended Credit Facility.

**SIGNATURES**

In accordance with the requirements of the Securities Exchange Act of 1934, the registrant has caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

**NEWTEK BUSINESS SERVICES CORP.**

Date: June 24, 2015

/s/ Barry Sloane

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Barry Sloane

Chairman of the Board and Chief Executive Officer

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**EXHIBIT INDEX**

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99.1	Press Release, dated June 24, 2015, announcing the Amended Credit Facility.

FIRST AMENDMENT TO LOAN DOCUMENTS

Amendment (this "Amendment") dated as of June 18, 2015 among Newtek Small Business Finance, LLC (the "Borrower"), Capital One, National Association (the "Lender"), and the guarantors listed on the signature pages hereto (collectively, the "Guarantors" and individually, a "Guarantor").

BACKGROUND

ARTICLE I The Borrower, as successor-in-interest by merger to Newtek Small Business Finance, Inc., and the Lender are parties to a Third Amended and Restated Loan and Security Agreement dated as of October 20, 2014 (the "Loan Agreement") pursuant to which, on the terms and conditions set forth in the Loan Agreement, the Lender has agreed to provide working capital financing to NSBF to finance the origination of SBA 7(a) Loans. The Borrower has requested certain amendments to the Loan Agreement and certain other Loan Documents, and the Lender has agreed to make such amendments, all upon the terms and conditions set forth in this Amendment.

## ARTICLE II

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Definitions. Capitalized terms used but not defined in this Amendment (including in the section above captioned "BACKGROUND") shall have the meanings given to them in the Loan Agreement.

2. Amendments to Loan Agreement and other Loan Documents.

(a) Composite Loan Agreement. The Loan Agreement is hereby amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in the pages of the Loan Agreement attached as Exhibit A hereto.

(b) Exhibits to Loan Agreement. Exhibits A-1, A-2, B-1, B-2, B-3, C and E to the Loan Agreement are each hereby amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in the pages of the Loan Agreement attached as Exhibit B hereto.

(c) Termination of Certain Guaranty Agreements and Guarantor Security Agreements.

(i) The Guaranty Agreements and Guarantor Security Agreements of each Guarantor other than Parent are hereby terminated and are of no further force or effect.

(ii) The Guaranty Agreement, Guarantor Security Agreement and Pledge Agreement of Parent are each hereby amended and restated in the form set forth as Exhibit C hereto.

3. Condition to Effectiveness. This Amendment shall become effective (the "Effective Date") upon the satisfaction, in form and substance satisfactory to the Lender, by the Borrower and the Guarantors of the following conditions precedent:

(a) The Borrower, the Lender and the other signatories hereto shall have duly executed and delivered to each other a fully executed counterpart of this Amendment and Parent and the Lender shall have duly executed and delivered to each other a fully executed counterpart of the Guaranty Agreement, Guarantor Security Agreement and Pledge Agreement of Parent in the form set forth on Exhibit C hereto;

(b) The Borrower shall have paid to (i) the Lender a non-refundable facility fee in the amount of \$200,000.00 and (ii) Troutman Sanders LLP all legal fees and expenses incurred in connection with the Loan Agreement, this Amendment, and the other Loan Documents through the date of this Amendment, in each case by wire transfer of immediately available funds;

(c) The Lender shall have received a closing certificate of each of the Borrower and Parent in form and substance reasonably satisfactory to the Lender;

(d) The Borrower shall have duly executed and delivered to the Lender an Amended and Restated Revolving Loan Note (Guaranteed Loans) and an Amended and Restated Revolving Loan Note (Non-Guaranteed Loans) in the forms set forth as Exhibit D hereto.

(e) The Lender shall have received updates of lien searches in each of the jurisdictions in which Uniform Commercial Code financing statements or other filings or recordations should be made to evidence or perfect security interests in all assets of the Borrower and Parent, and such search shall reveal no liens on any of the assets of the Borrower or Parent, except for Liens permitted under the Loan Documents;

(f) No Default or Event of Default shall have occurred and shall be continuing;

(g) The Lender shall have received each consent, approval or authorization of, or filing, registration or qualification with, any Governmental Authority required to be obtained or made in connection with this Amendment and the transactions contemplated hereby and by the Loan Documents, including, without limitation, any consent, approval and/or authorization by the SBA);

(h) The Lender shall have received evidence of insurance, including certificates of insurance and copies of policies with all required endorsements, in each case required to be maintained by Borrower and Parent pursuant to the Loan Agreement and the other Loan Documents;

(i) The Lender shall have received each of the documents set forth on Lender's closing checklist previously provided to Borrower; and

(j) All legal and other matters incident to the execution, delivery and performance of this Amendment and the transactions contemplated hereby shall be satisfactory in form and substance to the Lender and its counsel.

4. Representations and Warranties; Release.

(a) The Borrower and Parent each hereby represents and warrants that, both immediately before and after giving effect to this Amendment:

(i) except as expressly provided in this Amendment, the Loan Agreement and the other Loan Documents thereunder (collectively, the "Capital One Financing Documents") constitute legal, valid and binding obligations of the Borrower and Parent, as applicable, and are enforceable against the Borrower and Parent, as applicable, in accordance with their respective terms; (ii) the execution, delivery and performance of this Amendment will not violate any Law, government rule or regulation, court or administrative order or other such order, or the charter, minutes or bylaw provisions of the Borrower or any Guarantor, as applicable, or violate or result in a default (immediately or with the passage of time) under any contract, agreement or instrument to which the Borrower or any Guarantor is a party, or by which the Borrower or any Guarantor is bound; (iii) each of the Borrower and the Guarantors has all requisite power and authority to enter into and perform this Amendment and to incur the obligations herein provided for, and has taken all necessary action to authorize the execution, delivery and performance hereof and thereof; (iv) this Amendment, when delivered, will be valid and binding upon the Borrower and the Guarantors, enforceable in accordance with their respective terms except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and similar Laws affecting the enforcement of creditors' rights generally and by general equitable principles; and (v) none of the execution, delivery or performance of this Amendment requires any consent, approval or authorization of, or filing, registration or qualification with, any Governmental Authority on the part of the Borrower (other than with respect to the SBA, which has been obtained and a copy of which has been furnished to the Lender) or any Guarantor.

(b) The Borrower and Parent each hereby reaffirms all covenants, representations and warranties made by it in the Capital One Financing Documents and agree that all such covenants, representations and warranties shall be deemed to have been remade as of the effective date of this Amendment, except to the extent that any such representation or warranty relates to a specific date, in which case such representation or warranty shall be true and correct as of such earlier date. In addition, to induce the Lender to agree to this Amendment, the Borrower and the Guarantors each represents and warrants that as of the date of its execution of this Amendment, there are no claims or offsets against, or rights of recoupment with respect to, or defenses or counterclaims to its obligations under, the Capital One Financing Documents and, in accordance therewith, the Borrower and the Guarantors each hereby waives any and all such claims, offsets, rights of recoupment, defenses or counterclaims, whether known or unknown,



arising prior to the date of this Amendment, and releases and discharges the Lender and its officers, directors, employees, agents, stockholders, affiliates and attorneys (collectively, the “Released Parties”) from any and all obligations, indebtedness, liabilities, claims, rights, causes of action or demands whatsoever, whether known or unknown, suspected or unsuspected, in law or equity, which the Borrower or any Guarantor ever had or now has against the Released Parties, or any of them, arising prior to the date hereof and from, arising out of, or relating to Capital One Financing Documents, and the transactions contemplated thereby.

5. Effect on Capital One Financing Documents. Except as expressly set forth in this Amendment, the Capital One Financing Documents shall remain in full force and effect in accordance with their respective terms, and are hereby ratified and confirmed. The execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of the Lender, or any Default or Event of Default under the Capital One Financing Documents, nor constitute a consent to or waiver of any departure from or non-compliance with any other provision of the Capital One Financing Documents. This Amendment shall be deemed to be a Loan Document under the Loan Agreement. Any breach or default in, or any non-compliance with, any of the terms and conditions of this Amendment by the Borrower or any Guarantor shall constitute an Event of Default under the Capital One Loan Documents without notice or lapse of time or both.

6. Governing Law. This Amendment shall be governed by, and shall be construed and enforced in accordance with, the laws of the State of New York, without regard to conflicts of laws principles that would defer to the laws of a jurisdiction other than the State of New York.

7. Headings. Section headings in this Amendment are included herein for convenience of reference only and shall not constitute a part of this Amendment for any other purpose.

8. Counterparts; Facsimile or Electronic Transmission. This Amendment may be executed by the parties hereto in one or more counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same agreement. Any signature delivered by a party by facsimile transmission or other electronic transmission shall be deemed to be an original signature hereto.

9. Severability. In case any provision of or obligation under this Amendment shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

**(Page intentionally ends here)**

**SIGNATURE PAGE TO AMENDMENT TO LOAN DOCUMENTS**

IN WITNESS WHEREOF, this Amendment has been duly executed as of the date first above written.

NEWTEK SMALL BUSINESS FINANCE, LLC, successor-in-interest by merger to NEWTEK SMALL BUSINESS FINANCE, INC.

By: /s/ Barry Sloane

Name: Barry Sloane

Title: Chief Executive Officer

CRYSTALTECH WEB HOSTING, INC.

By: /s/ Barry Sloane

Name: Barry Sloane

Title: Chief Executive Officer

NEWTEK BUSINESS SERVICES CORP, successor-in-interest by merger to NEWTEK BUSINESS SERVICES, INC.

By: /s/ Barry Sloane

Name: Barry Sloane

Title: Chief Executive Officer

SMALL BUSINESS LENDING, INC.

By: /s/ Barry Sloane

Name: Barry Sloane

Title: Chief Executive Officer

UNIVERSAL PROCESSING SERVICES OF WISCONSIN LLC

By: /s/ Barry Sloane

Name: Barry Sloane

Title: Chief Executive Officer

**SIGNATURE PAGE TO AMENDMENT TO LOAN DOCUMENTS**

CCC REAL ESTATE HOLDING CO. LLC

By: /s/ Barry Sloane

Name: Barry Sloane

Title: Chief Executive Officer

NEWTEK INSURANCE AGENCY, L.L.C.

By: /s/ Barry Sloane

Name: Barry Sloane

Title: Chief Executive Officer

PMTWORKS PAYROLL, L.L.C.

By: /s/ Barry Sloane

Name: Barry Sloane

Title: Chief Executive Officer

**SIGNATURE PAGE TO AMENDMENT TO LOAN DOCUMENTS**

CAPITAL ONE, NATIONAL ASSOCIATION

By: /s/ Patrick J. McCarthy

Name: Patrick J. McCarthy

Title: Senior Vice President

**THIRD AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT**

**NEWTEK SMALL BUSINESS FINANCE, INC. LLC**

**(as Borrower)**

**and**

**CAPITAL ONE, NATIONAL ASSOCIATION**

**(as Lender)**

**Dated as of October 29, 2014  
(as amended as of June 18, 2015)**

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**List of Schedules**

Schedule A	Ineligible Financed SBA Loans
Schedule 1.1(a)	Indebtedness
Schedule 1.1(b)	Liens
Schedule 3.1(a)(xiv)	Commercial Tort Claims
Schedule 5.1	Qualification Jurisdictions
Schedule 5.2	Places of Business
Schedule 5.3	Litigation
Schedule 5.7	Tax ID Numbers/Organizational Numbers
Schedule 5.9	Subsidiaries
Schedule 5.10(b)	Leases
Schedule 5.11(c)	ERISA Plans
Schedule 5.13(a)	Names
Schedule 5.13(b)	Certain Intellectual Property Matters
Schedule 5.13(c)	Additional Intellectual Property Matters
Schedule 5.14	Other Associations
Schedule 5.15	Environmental Matters
Schedule 5.17	Capital Stock
Schedule 5.19	UCC Offices
Schedule 5.21	Letter of Credit Rights
Schedule 5.22	Deposit Accounts

This Third Amended and Restated Loan and Security Agreement ~~is dated as of October 29, 2014 (as amended as of June 18, 2015)~~ (as the same may be further amended, modified, or restated from time to time, this "Agreement") ~~is dated as of October 29, 2014~~ by and between NEWTEK SMALL BUSINESS FINANCE, INC. ~~LLC~~, a New York ~~corporation~~ limited liability company and successor-by-merger to Newtek Small Business Finance, Inc. ("Borrower"), and CAPITAL ONE, NATIONAL ASSOCIATION ("Lender").

## BACKGROUND

Capitalized terms used in this "BACKGROUND" section shall have the meanings assigned to those terms below in this Agreement.

~~On December 15, 2010, Lender established in favor of Borrower a revolving credit facility for the purpose of financing a stated percentage of SBA 7(a) Guaranteed Note Receivables.~~

~~On June 16, 2011, Lender established in favor of Borrower an additional revolving credit facility for the purpose of financing a stated percentage of SBA 7(a) Non-Guaranteed Note Receivables.~~

~~The Guarantors executed and delivered in favor of the Lender guarantees of payment and performance or amended and restated guarantees of payment and performance, as applicable (collectively, the "2011 Guarantees"), pursuant to which, among other things, the Guarantors each unconditionally guaranteed the prompt and unconditional payment of all of the Obligations, including the due and prompt performance of all of the terms, agreements, covenants and conditions of all of the Loan Documents.~~

~~The Guarantors also executed and delivered in favor of the Lender security agreements and amended and restated security agreements, as applicable, pursuant to which, among other things, the Guarantors each assigned and granted to the Lender a continuing Lien on, and security interest in, all of the properties and assets (other than real property) of such Guarantor to secure the payment of the Obligations, including the due and prompt performance of all of the terms, agreements, covenants and conditions of all of the Loan Documents.~~

~~Parent, Crystaltech and SBL executed and delivered in favor of the Lender amended and restated pledge agreements (collectively, the "2011 Pledge Agreements") pursuant to which, among other things, each has pledged, to secure prompt payment in full when due, and performance of, all obligations of each under its respective 2011 Pledge Agreement and its respective 2011 Guarantee, and of all Obligations, including the due and prompt performance of all of the terms, agreements, covenants and conditions of all of the Loan Documents, and granted to the Lender a first priority security interest in and to, certain collateral including, without limitation, the following: (a) Parent pledged to the Lender all of the ownership interests owned by it in Borrower and the other Guarantors, (b) Crystaltech has pledged to the Lender all of the ownership interests owned by it in CT Hosting, LLC (which pledged entity has since been dissolved), and (c) Small Business Lending, Inc. ("SBL") has pledged to the Lender all of the ownership interests owned by it in CCC Real Estate Holding~~

Co. LLC (“CCCRE”) and Borrower. All stock and other ownership certificates representing all such ownership interests prior to the date hereof have been delivered to the Lender in order to perfect the first priority security interests and Liens granted to the Lender therein.

Borrower and the Lender entered into an Amended and Restated Loan and Security Agreement dated as of July 16, 2013 pursuant to which, among other things, the maximum commitment for Loans to be made to Borrower hereunder was increased to \$27,000,000, and certain amendments were made on that date to the other Loan Documents.

Borrower and the Guarantors have requested that the Lender agree to make further amendments to this Agreement and the other Loan Documents, and the Lender is willing to do so upon the terms and subject to the conditions set forth herein.

Borrower and Lender entered into a Third Amended and Restated Loan and Security Agreement dated as of October 29, 2014. Borrower and the Guarantors have requested that Lender agree to make further amendments to this Agreement and the other Loan Documents, and Lender is willing to do so upon the terms and subject to the conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

## SECTION I. DEFINITIONS AND INTERPRETATION

1.1 Terms Defined. As used in this Agreement, the following terms have the following respective meanings:

“Account” means all of the “accounts” (as that term is defined in the UCC) of Borrower, whether now existing or hereafter arising.

“ACH Transactions” means any cash management or related services including the automatic clearing house transfer of funds by Lender for the account of Borrower pursuant to agreement or overdrafts.

“Administrative Fee” has the meaning set forth in Section 2.7(b).

“Advance” means any extension of credit pursuant to this Agreement; collectively, the “Advances”.

“Advances-Guaranteed Loans” means extensions of credit pursuant to Section 2.1(a).

“Advances-Non-Guaranteed Loans” means extensions of credit pursuant to Section 2.1(b).

“Affiliate” means, with respect to any Person, (a) any Person which, directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, such Person, or (b) any Person who is a director or officer (i) of such



Person, (ii) of any Subsidiary of such Person, or (iii) any person described in clause (a) above. For purposes of this definition, control of a Person shall mean the power, direct or indirect, (x) to vote 5% or more of the Capital Stock having ordinary voting power for the election of directors (or comparable equivalent) of such Person, or (y) to direct or cause the direction of the management and policies of such Person whether by contract or otherwise. Control may be by ownership, contract, or otherwise.

“Approved Forms” means the forms of SBA 7(a) Note Receivable Documents, approved and used by Borrower in the conduct of its business, together with such changes and modifications or additions thereto from time to time as allowed by this Agreement or as required by the SBA.

“Asset Sale” means the sale, transfer, lease, license or other disposition by Borrower, or by any Subsidiary of Borrower, to any Person other than Borrower, of any Property now owned, or hereafter acquired, of any nature whatsoever in any transaction or series of related transactions. An Asset Sale includes, but is not limited to, a merger, consolidation, division, conversion, dissolution or liquidation.

“Authorized Officer” means any officer (or comparable equivalent) of Borrower authorized by specific resolution of Borrower to request Advances or execute Compliance Certificates as set forth in the incumbency certificate referred to in Section 4.1(d) of this Agreement.

“Availability” means, as of any date of determination: (a) with respect to Advances-Guaranteed Loans, Availability—Guaranteed, and (b) with respect to Advances-Non-Guaranteed Loans, Availability-Non-Guaranteed.

“Availability-Guaranteed” means, as of any date of determination, with respect to Advances-Guaranteed Loans, the amount determined to be “Total net availability” determined from time to time in accordance with an appropriately completed Borrowing Base Certificate—Guaranteed in the form attached hereto as Exhibit A-1.

“Availability—Non-Guaranteed” means, as of any date of determination, with respect to Advances-Non-Guaranteed Loans, the amount determined to be “Total net availability” determined from time to time in accordance with an appropriately completed Borrowing Base Certificate—Non-Guaranteed in the form attached hereto as Exhibit A-2.

“Base Rate” means a variable per annum rate, as of any date of determination, equal to the rate of interest publicly announced from time to time by Lender as its prime rate, which is a rate set by Lender based upon various factors including Lender’s costs and desired return, general economic conditions, and other factors, and is used as a reference point for pricing some loans. However, Lender may price loans at, above, or below such announced rate and, accordingly, Borrower acknowledges that the Prime Rate may not necessarily be the lowest rate of interest charged by Lender to its customers. Any changes in the Base Rate shall take effect on the day specified in the public announcement of such change.

“Base Rate Margin” means (a) with respect to Advances-Guaranteed Loans and the other Obligations relating thereto, one percent (1.00%) per annum and (b) with respect to Advances-Non-Guaranteed Loans and the other Obligations relating thereto, one and seven-eighths percent (1.875%).

“Blocked Account” has the meaning set forth in Section 6.11.

“Blocked Account Agreement” means a blocked account agreement between Borrower and Lender as required herein, as the same may be amended, modified, or restated from time to time.

“Borrowing Base—Guaranteed” means, with regard to Advances—Guaranteed Loans, as of any date of determination by Lender from time to time, an amount equal to the lesser of: (a) the Maximum Commitment *less* any applicable Reserves, *or* (b) the difference between (i) 90% (subject to adjustment by Lender in the exercise of its reasonable credit discretion) of the aggregate outstanding principal amount of the SBA 7(a) Guaranteed Note Receivables related to Eligible SBA 7(a) Loans, *less* (ii) any applicable Reserves.

“Borrowing Base—Non-Guaranteed” means, with respect to Advances—Non-Guaranteed Loans, as of any date of determination by Lender from time to time, an amount equal to the lesser of: (a) the Maximum Commitment, *less* any applicable Reserves, *or* (b) the difference between (i) 55% (subject to adjustment by Lender in the exercise of its reasonable credit discretion) of the aggregate outstanding principal amount of the SBA 7(a) Non-Guaranteed Note Receivables related to Eligible SBA 7(a) Loans, *less* (ii) any applicable Reserves.

“Borrowing Base Certificate” means a certificate, duly executed by an Authorized Officer, appropriately completed and substantially in the form of Exhibit A-1 or Exhibit A-2 hereto, as applicable.

“Borrowing Notice” means a written notice to Lender requesting disbursement of an Advance hereunder.

“Business Day” means a day other than Saturday or Sunday or a national banking holiday when Lender is open for business in New York, New York.

“Capitalized Lease Obligations” means any Indebtedness represented by obligations under a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP, consistently applied.

“Capital Expenditures” means, for any period, the aggregate of all expenditures (including that portion of Capitalized Lease Obligations attributable to that period, which have not been financed) made in respect of the purchase, construction or other acquisition of fixed or capital assets, determined in accordance with GAAP.

“Capital Stock” means any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all other ownership interests in a Person (other than a corporation) and any and all warrants or options to purchase any of the foregoing.

“Cash Management System” has the meaning set forth in Section 2.4(b).

“Casualty Proceeds” means (a) the aggregate insurance proceeds received in connection with one or more related events under any insurance policy maintained by any Credit Party (other than Parent) covering losses with respect to tangible real or personal property or improvements or losses from business interruption, or (b) any award or other compensation with respect to any eminent domain, condemnation of property or similar proceedings (or any transfer or disposition of property in lieu of condemnation).

~~“CCCRE” means CCC Real Estate Holding Co. LLC, a Delaware limited liability company.~~

~~“Crystaltech” means Crystaltech Web Hosting, Inc., a New York corporation.~~

“Closing” has the meaning set forth in Section 4.2.

“Closing Date” has the meaning set forth in Section 4.2.

“Collateral” means all of the Property and interests in Property described in Section 3.1 of this Agreement and all other Property and interests in Property that now or hereafter secure payment of the Obligations and satisfaction by Borrower of all covenants and undertakings contained in this Agreement and the other Loan Documents.

“Compliance Certificate” has the meaning set forth in Section 6.9.

“Copyrights” means all copyrights, mask work rights, database rights and design rights arising under the Laws of the United States, any other country or any political subdivision thereof, whether registered or unregistered and whether published or unpublished, all registrations and recordings thereof, and all applications in connection therewith, together with all renewals, continuations, reversions and extensions thereof, including, without limitation, all registrations, recordings and applications in the United States Copyright Office, and the right to obtain all renewals, continuations, reversions and extensions thereof.

“Copyright Licenses” means any written agreement naming Borrower as licensor or licensee granting any right under any Copyright, including, without limitation, the grant of rights to manufacture, distribute, exploit and sell materials derived from any Copyright.

~~“Credit Parties” means Parent, Borrower, any present and future subsidiaries of the Credit Parties, and each and Borrower and, if applicable, each other Guarantor.~~

“Debt Service Coverage Ratio” means, as of any date, the ratio of (i) EBITDA for the for the immediately preceding four (4) Fiscal Quarters, divided by (ii) the aggregate sum of (a) interest expense for the immediately preceding four (4) Fiscal Quarters plus (b) the then current maturities of Indebtedness, including capitalized leases.

“Default” means any event, act, condition or occurrence which with notice, or lapse of time or both, would constitute an Event of Default hereunder.

“Default Rate” has the meaning set forth in Section 2.6(b).

“Disqualified Stock” means any Capital Stock that, by its terms (or by the terms of any security or other Capital Stock into which it is convertible or for which it is exchangeable) or upon the happening of any event or condition, (a) matures or is mandatorily redeemable pursuant to a sinking fund obligation or otherwise, (b) is redeemable at the option of the holder thereof, in whole or in part, (c) provides for the scheduled payment of dividends in cash or (d) is or becomes convertible into or exchangeable for Indebtedness or any other Capital Stock that would constitute Disqualified Capital Stock, in each case, prior to the date that is 91 days after the Term Loan Maturity Date.

“Environmental Laws” means any and all Federal, foreign, state, local or municipal Laws, rules, orders, regulations, statutes, ordinances, codes, decrees and any and all common Law requirements, rules and bases of liability regulating, relating to or imposing liability or standards of conduct concerning pollution, protection of the environment, or the impact of pollutants, contaminants or toxic or hazardous substances on human health or the environment, as now or may at any time hereafter be in effect.

“EBITDA” means net income (loss) plus goodwill impairment, interest, taxes (or less tax benefit), depreciation and amortization determined in accordance with GAAP. ~~For purposes of determining the EBITDA for Parent together with its consolidated Subsidiaries, net income shall be reduced by the amount of income from tax credits, and reduced (if a gain) or increased (if a loss) by the net change in the fair market value of credits in lieu of cash and notes payable in credits in lieu of cash, shall exclude the effect of any minority interests, and shall exclude the amount of any non-cash compensation expense in respect of stock-based compensation actually included in the determination of net income (loss) in accordance with GAAP.~~

“Eligible SBA 7(a) Loan” means an SBA 7(a) Loan that is not an Ineligible SBA 7(a) Loan and does not violate any SBA Rules and Regulations.

“ERISA” means the Employee Retirement Income Security Act of 1974, as the same may be amended, from time to time.

“Event of Default” has the meaning set forth in Section 8.1.

“Expenses” has the meaning set forth in Section 9.6.

“Facility Fee” has the meaning set forth in Section 2.7(a).

“FATCA”: Sections 1471 through 1474 of the Internal Revenue Code as of the date of this Agreement) and any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code.

“FAS 166” means Statement of Financial Accounting Standards No. 166 Accounting for Transfers of Financial Assets an amendment of FASB Statement No. 140 dated, June 2009.

“Financed Guaranteed Loans” means those Eligible SBA 7(a) Loans extended by Borrower to SBA 7(a) Loan Obligors using the proceeds of Advances-Guaranteed Loans, which SBA 7(a) Loans constitute Collateral for the Loan, as specifically set forth in each Request for Advance delivered by Borrower to Lender in accordance herewith.

“Financed Non-Guaranteed Loans” means those Eligible SBA 7(a) Loans extended by Borrower to SBA 7(a) Loan Obligors using the proceeds of Advances—Non-Guaranteed Loans, which SBA 7(a) Loans constitute Collateral for the Loan, as specifically set forth in each Request for Advance delivered by Borrower to Lender in accordance herewith.

“Fiscal Month” means a calendar month ending on the last day of such month.

“Fiscal Quarter” means a calendar quarter ended March 31, June 30, September 30 and December 31.

“Fiscal Year” means a calendar year ended December 31.

“Fixed Charge Coverage Ratio” means, calculated for Parent together with its consolidated Subsidiaries, as of the end of any calendar quarter, EBITDA for the previous four (4) Fiscal Quarters, less capital expenditures during the previous four (4) Fiscal Quarters, ~~divided by~~ the sum of the amounts paid during the previous four (4) Fiscal Quarters for (a) scheduled payments of principal of long term debt, (b) interest (excluding interest to the extent recognized as interest expense on Parent’s financial statements in accordance with GAAP for the applicable four (4) Fiscal Quarter period for which the Fixed Charge Coverage Ratio is being calculated solely in respect of the 2010 Newtek Securitization Notes), (c) dividends, and (d) treasury stock redemptions. For purposes of the foregoing, during the twelve calendar month period commencing with the first full calendar month following the Term Loan Conversion Date, item (a) in the denominator above will be increased by an amount equal to the first twelve monthly installments of principal required to be paid by Borrower in respect of the Term Loan (but without duplication of amounts during such period that shall actually be paid, and that are reflected in the calculation under such item (a) as paid, by Borrower in respect of such installments).

“FIRREA” means the Federal Financial Institution Reform, Recovery and Enforcement Act of 1989, as amended.

“FIA” means Colson Services Corp., as fiscal and transfer agent for the SBA and as the SBA’s agent to hold the original SBA 7(a) Loan Notes pursuant to the Multi-Party Agreement, and as bailee for Lender for purposes of perfecting Lender’s security interest in the original SBA 7(a) Loan Notes pursuant to the Multi-Party Agreement, or any other Person designated by the SBA or Lender, subject to the consent of the SBA in accordance with the terms of the Multi-Party Agreement to perform the same or similar function.

“GAAP” means generally accepted accounting principles as in effect on the Closing Date applied in a manner consistent with the most recent audited financial statements of Borrower furnished to Lender and described in Section 5.7 herein.

“Governmental Authority” means any federal, state or local government or political subdivision, or any agency, authority, bureau, central bank, commission, department or instrumentality of either, or any court, tribunal, grand jury, or arbitration.

“Guarantor” means each of: ~~(a) Parent; (b) Small Business Lending, Inc., a Delaware corporation; (c) Crystaltech; (d) Universal Processing Services of Wisconsin LLC (d/b/a Newtek Merchant Solutions), a New York limited liability company; (e) CCCRE; (f) Newtek Insurance Agency, LLC; (g) PMTWorks Payroll LLC; and (h) Parent and~~ any other Person that is or becomes a ~~Subsidiary of Borrower or is required to become a~~ Guarantor hereunder.

“Guarantor Security Agreement” means ~~each~~ the amended and restated security agreement of ~~the Guarantors other than Newtek Insurance Agency, LLC and PMTWorks Payroll LLC, and each~~ Parent in favor of Lender, and any other security agreement of ~~Newtek Insurance Agency, LLC and PMTWorks Payroll LLC~~ a Guarantor in favor of Lender, in each case in favor of Lender, as amended to date and as the same may be amended, modified, or restated from time to time, each in form and substance satisfactory to Lender.

“Guaranty Agreement” means ~~each~~ the amended and restated guaranty of payment and performance of ~~the Guarantors other than Newtek Insurance Agency, LLC and PMTWorks Payroll LLC, and each~~ guaranty of payment and performance of Newtek Insurance Agency, LLC and PMTWorks Payroll LLC, in each case in favor of Lender, as amended to date and Parent in favor of Lender, and any other guaranty of a Guarantor in favor of Lender, in each case as the same may be amended, modified, or restated from time to time, each in form and substance satisfactory to Lender.

“Hazardous Substances” means any substances defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic substance or similar term, under any Environmental Law.

“Hedging Agreements” means any Interest Hedging Instrument or any other interest rate protection agreement, foreign currency exchange agreement, commodity purchase or option agreement, or any other interest rate hedging device or swap agreement (as defined in 11 U.S.C. § 101 et seq.).

“Indebtedness” means, with respect to any Person at any date, without duplication: (a) all indebtedness of such Person for borrowed money (including with respect to Borrower, the Obligations) or for the deferred purchase price of property or services (other than current trade liabilities incurred to non-Affiliates of such Person in the ordinary course of business and payable in accordance with customary practices); (b) any other indebtedness of such Person which is evidenced by a note, bond, debenture or similar instrument; (c) all Capitalized Lease Obligations of such Person; (d) the face amount of all letters of credit issued for the account of such Person and all drafts drawn thereunder; (e) all obligations of other Persons which such Person has guaranteed; (f) Disqualified Stock; (g) all Obligations of such Person under Hedging Agreements; and (h) all liabilities secured by any Lien on any property owned by such Person even though such Person has not assumed or otherwise become liable for the payment thereof. For the avoidance of doubt, (x) any non-recourse Indebtedness of Borrower attributable to the Secondary Market Sale of SBA 7(a) Loans in connection with securitization transactions consistent with the past practices of Borrower, to the extent such non-recourse Indebtedness must be reflected as Indebtedness on Borrower’s balance sheet pursuant to GAAP notwithstanding the true sale of such SBA 7(a) Loans, shall not constitute Indebtedness for purposes of this Agreement, and (y) Inter-Company Obligations shall be considered Indebtedness for purposes of this Agreement.

“Ineligible Financed SBA Loans” shall have the meaning set forth on Schedule A hereto.

“Investments” means any investment in any Person, whether by means of acquiring (whether for cash, property, services, securities or otherwise) or holding securities, capital contributions, acquiring all or any portion of the business or assets of any other Person, loans, evidence of Indebtedness, advances, guarantees or otherwise (other than, to the extent applicable, current trade liabilities incurred in the ordinary course of business and payable in accordance with customary practices).

“Intellectual Property” means the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under United States, multinational or foreign Laws or otherwise, including, without limitation, the Copyrights, the Copyright Licenses, the Patents, the Patent Licenses, the Trademarks and the Trademark Licenses, all trade secrets, all Internet domain names, and all rights to sue at law or in equity for any past, present and future infringement, misappropriation, dilution, violation or other impairment thereof, including, without limitation, the right to receive all income, royalties, proceeds and damages therefrom, whether now or hereafter due or payable.

“Inter-Company Obligations” means any and all liabilities and obligations of Borrower to any of its Subsidiaries or other Affiliates of any kind or nature whatsoever, including, without limitation, liabilities and obligations in respect of (a) the provision of services to Borrower by Subsidiaries and other Affiliates of Borrower, (b) the payment of expenses on behalf of Borrower by Subsidiaries and other Affiliates of Borrower, and (c) the allocation of expenses to Borrower by Subsidiaries and other Affiliates of Borrower.

“Interest Hedging Instrument” means any documentation evidencing any interest rate swap, interest “cap” or “collar” or any other interest rate hedging device or swap agreement (as defined in 11 U.S.C. § 101 et seq.) between Borrower and Lender (or any Affiliate of Lender).

“Interest Rate” means the Base Rate plus the applicable Base Rate Margin, subject to the applicability of the Default Rate.

“Inventory” means all of the “inventory” (as that term is defined in the UCC) of Borrower, whether now existing or hereafter acquired or created.

“IRS” means the Internal Revenue Service.

“Laws” means any and all federal, state, local and foreign statutes, Laws, judicial decisions, regulations, guidances, guidelines, ordinances, rules, judgments, orders, decrees, codes, plans, injunctions, permits, concessions, grants, franchises, governmental agreements and governmental restrictions, whether now or hereafter in effect.

“Lien” means any interest of any kind or nature in property securing an obligation owed to, or a claim of any kind or nature in property by, a Person other than the owner of the Property, whether such interest is based on the common Law, statute, regulation or contract, and including, but not limited to, a security interest or lien arising from a mortgage, encumbrance, pledge, conditional sale or trust receipt, a lease, consignment or bailment for security purposes, a trust, or an assignment. For the purposes of this Agreement, Borrower shall be deemed to be the owner of any Property which it has acquired or holds subject to a conditional sale agreement or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person for security purposes.

“Loans” means the aggregate outstanding balance of all Advances made hereunder; each, a “Loan.”

“Loan Documents” means, collectively, this Agreement, the Notes, the Guaranty Agreements, the Guarantor Security Agreements, the Trademark Security Agreements, the Blocked Account Agreement, the Trust Account Agreement, the Multi-Party Agreement and all other agreements, instruments and documents executed or delivered in connection therewith, all as may be as the same may be amended, modified, or restated from time to time.

“Material Adverse Effect” means an occurrence or state of events which has resulted or could reasonably result in a material adverse effect upon (a) the business, assets, properties, financial condition, stockholders’ equity, contingent liabilities, prospects, material agreements or results of operations of Borrower ~~or any Guarantor~~, Parent and its consolidated Subsidiaries taken as a whole, or any other Guarantor, or (b) Borrower’s or any Guarantor’s ability to pay the Obligations in accordance with the terms hereof, or (c) the validity or enforceability of this Agreement or any of the other Loan Documents or the rights and remedies of Lender hereunder or thereunder.



“Maximum Commitment” means \$50,000,000.

“Multi-Draw SBA Loan” shall mean an SBA 7(a) Loan which (a) is a term loan that is not fully disbursed at the closing of such SBA 7(a) Loan, and (b) pursuant to its terms provides to the applicable SBA Loan Obligor the right to request that the loan be disbursed in multiple draws.

“Multi-Party Agreement” means the Fourth Amended and Restated Multi-Party Agreement by and among Borrower, Parent, the Guarantors, Lender, FTA, and the SBA, dated as of October 29, 2014, as the same may be amended, modified, or restated from time to time.

“Net Cash Proceeds” means, with respect to any transaction or event, an amount equal to the cash proceeds received by any Credit Party other than Parent from or in respect of such transaction or event (including any prior or subsequent proceeds of any non-cash proceeds of such transaction), less (i) any actual out-of-pocket expenses paid to a Person that are reasonably incurred by such Credit Party in connection therewith and (ii) in the case of an Asset Disposition, the amount of any Indebtedness secured by a Lien on the related asset and discharged from the proceeds of such Asset Disposition and any taxes actually paid or estimated (in the reasonable judgment of Lender) by ~~the applicable~~ such Credit Party to be payable by such Person in respect of such Asset Disposition (provided, that if the actual amount of taxes paid is less than such estimated amount, the difference shall immediately constitute Net Cash Proceeds).

“Non-Excluded Taxes” has the meaning set forth in Section 2.10.

“Notes” has the meaning set forth in Section 2.2.

“Note Participation” means a participation interest in a SBA 7(a) Loan.

“Obligations” means all existing and future debts, liabilities and obligations of every kind or nature at any time owing by Borrower to Lender, whether under this Agreement, or any other existing or future instrument, document or agreement, between Borrower or Lender, whether joint or several, related or unrelated, primary or secondary, matured or contingent, due or to become due (including debts, liabilities and obligations obtained by assignment), and whether principal, interest, fees, indemnification obligations hereunder or Expenses (specifically including interest accruing after the commencement of any bankruptcy, insolvency or similar proceeding with respect to Borrower, whether or not a claim for such post-commencement interest is allowed), including, without limitation, debts, liabilities and obligations in respect of the Loans and any extensions, modifications, substitutions, increases and renewals thereof; any amount payable by Borrower or any Subsidiary of Borrower pursuant to an Interest Hedging Instrument or any ACH Transactions; the payment of all amounts advanced by Lender to preserve, protect and enforce rights hereunder and in the Collateral; and all Expenses incurred by Lender. Without limiting the generality of the foregoing, Obligations shall include any other debts, liabilities or obligations owing to Lender in connection with any cash management, or other services

(including electronic funds transfers or automated clearing house transactions) provided by Lender to Borrower, as well as any other loan, advances or extension of credit, under any existing or future loan agreement, promissory note, or other instrument, document or agreement between Borrower and Lender.

“Outstanding Advances-Guaranteed Loans” means, of any date of determination, the aggregate sum of all outstanding Advances-Guaranteed Loans made pursuant to Section 2.1(a) hereof.

“Outstanding Advances-Non-Guaranteed Loans” means, of any date of determination, the aggregate sum of all outstanding Advances-Non-Guaranteed Loans made pursuant to Section 2.1(b) hereof.

“Other Taxes”: means any and all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

“Parent” means Newtek Business Services Corp., a Maryland corporation (the successor by merger to Newtek Business Services, Inc., a New York corporation).

“Parent Credit Agreement” means the Credit Agreement dated as of June 26, 2014 between ~~the~~ Parent and ~~the~~ Lender, as the same may be amended, modified, supplemented, renewed, or restated from time to time.

“Parent Loan Documents” means the “Loan Documents” as defined in the Parent Credit Agreement.

“Patents” means all letters patent of the United States, any other country or any political subdivision thereof, all reissues and extensions thereof and all goodwill associated therewith; all applications for letters patent of the United States or any other country and all divisions, continuations and continuations-in-part thereof, together with all reissues, reexaminations, renewals and extensions of the foregoing; and all rights to obtain any divisions, continuations, continuations-in-part, reissues, reexaminations, renewals and extensions of the foregoing.

“Patent License”: all agreements, whether written or oral, providing for the grant by or to Borrower of any right to manufacture, use or sell any invention covered in whole or in part by a Patent, including, without limitation, any of the foregoing referred to in Schedule 6.

“PBGC” means the Pension Benefit Guaranty Corporation.

“Permitted Capcos” means, collectively, Wilshire DC Partners, LLC, Wilshire Alabama Partners, LLC, Wilshire Louisiana BIDCO, LLC, Wilshire Texas Partners I, LLC.

“Permitted Disposition” means: (a) sales of SBA 7(a) Guaranteed Note Receivables; (b) sales of SBA 7(a) Non-Guaranteed Note Receivables; (c) sales of Note Participations; (d) sales to SBA of the SBA 7(a) Non-Guaranteed Note Receivable portion of any SBA 7(a) Note Receivable with respect to which SBA also holds the SBA 7(a) Guaranteed Note Receivable portion thereof; (e) other Secondary Market Sales of Financed SBA Loans; and (f) other dispositions of SBA 7(a) Note Receivables or the collateral therefor, in each case to the extent required or permitted by SBA in accordance with SBA Rules and Regulations; provided that (x) any sales of SBA 7(a) Guaranteed Note Receivables or any sales of Note Participations in any SBA 7(a) Guaranteed Note Receivables may not be for an amount less than par, and (y) any sale of a SBA 7(a) Non-Guaranteed Note Receivable or any sales of Note Participations in any SBA 7(a) Non-Guaranteed Note Receivable may not be for an amount less than the value attributable to the applicable SBA 7(a) Non-Guaranteed Note Receivable, or the participated portion thereof, in the Borrowing Base—Non-Guaranteed as of the date of such sale.

“Permitted Indebtedness” means: (a) Indebtedness to Lender in connection with the Loans, or otherwise pursuant to the Loan Documents, (b) intentionally omitted, (c) purchase money Indebtedness (including Capitalized Lease Obligations) hereafter incurred by Borrower to finance the purchase of fixed assets; provided, that (i) such Indebtedness incurred in any Fiscal Year shall not exceed ~~(x) as to Borrower, \$200,000 and (y) as to Crystaltech Web Hosting, Inc., \$100,000, \$200,000~~, (ii) such purchase money Indebtedness shall not exceed the purchase price of the assets funded and (iii) no such purchase money Indebtedness may be refinanced for a principal amount in excess of the principal amount outstanding at the time of such refinancing, (d) Indebtedness existing on the Closing Date that is disclosed on Schedule 1.1(a) hereto, (e) Indebtedness of Borrower to ~~another Credit Party~~ Parent and the Permitted Capcos and all other Inter-Company Obligations; provided, the same is at all times fully subordinated to Lender, in each case pursuant to Subordination Documents, and (f) ~~Indebtedness of Borrower to the Permitted Capcos~~; provided, the same is at all times fully subordinated to Lender pursuant to Subordination Documents.

“Permitted Investments” means: (a) Investments and advances existing on the Closing Date that are disclosed on Schedule 5.10(a) hereto; and (b) each of (i) obligations issued or guaranteed by the United States of America or any agency thereof, (ii) commercial paper with maturities of not more than 180 days and a published rating of not less than A-1 or P-1 (or the equivalent rating) by a nationally recognized investment rating agency, (iii) (A) certificates of time deposit and bankers’ acceptances having maturities of not more than 180 days and repurchase agreements backed by United States government securities of a commercial bank and (B) provided Borrower is at all times in compliance with Section 6.5 hereof, demand deposit accounts located at a commercial bank and in which deposit accounts Lender shall have a perfected, first priority security interest, in each case if (x) such bank has a combined capital and surplus of at least \$500,000,000 or (y) its debt obligations, or those of a holding company of which it is a Subsidiary, are rated not less than A (or the equivalent rating) by a nationally recognized investment rating agency, (iv) U.S. money market funds that invest solely in obligations issued or guaranteed by the United States of America or an agency thereof and (v) except during the continuance of a Default or Event of Default, loans, advances, dividends or other distributions to Parent; provided, that in the event Borrower

shall make any loans, advances, dividends or other distributions to Parent the proceeds thereof shall be used solely (A) for working capital by Guarantor (but not any other Credit Party) in the operation of its business in the ordinary course, or (B) except during the continuance of a Default or Event of Default for making loans and advances to any other Guarantor which has executed and delivered to Lender a Guaranty Agreement and Guarantor Security Agreement; provided, such loans and advances are each at all times fully subordinated to Lender pursuant to Subordination Documents and are permitted by the Parent Credit Agreement and the other Parent Credit Documents.

“Permitted Liens” means: (a) Liens securing taxes, assessments or governmental charges or levies or the claims or demands of materialmen, mechanics, carriers, warehousemen, and other like persons not yet due; (b) Liens incurred or deposits made in the ordinary course of business in connection with workers’ compensation, unemployment insurance, social security and other like Laws; (c) Liens on fixed assets securing purchase money Indebtedness permitted under clause (c) of the definition of “Permitted Indebtedness”; provided, that, (i) such Lien attached to such assets concurrently, or within 20 days of the acquisition thereof, and only to the assets so acquired, and (ii) a description of the asset acquired is furnished to Lender in writing; and (d) Liens existing on the Closing Date and shown on Schedule 1.1(b) hereto.

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

“Pledge Agreement” means ~~each of the amended and restated Pledge Agreements~~ Agreement dated as of July 16, 2013 executed by ~~Pledgors~~ Parent in favor of Lender, and any pledge agreements entered into after the Closing Date by any Credit Party (as required by the Agreement or any other Loan Document), in each case as the same have been or may be amended, modified, or restated from time to time.

“Pledgors” means, collectively, Parent, ~~Small Business Finance Inc.~~ and each other Person, if any, that executes a Pledge Agreement or other similar agreement in favor of Lender in connection with the transactions contemplated by the Agreement and the other Loan Documents.

“Projections” has the meaning set forth in Section 6.8(a)(vi).

“Property” means any interest of Borrower in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

“REO Property” means real estate owned by Borrower or any other Credit Party, which real estate has been acquired and is owned by such Credit Party as a result of foreclosure or acceptance by such Credit Party of a deed in lieu of foreclosure, or similar transaction, whether previously constituting SBA 7(a) Note Receivable Collateral or otherwise), together with all of such Credit Party’s now owned or hereafter acquired interests in the improvements thereon, the fixtures attached thereto and the easements appurtenant thereto.

“Request for Advance” has the meaning set forth in Section 2.3(a).

“Required Procedures” means procedures, including credit and underwriting standards, loan to value ratio limitations and the use of Approved Forms with respect to the financing and servicing of SBA 7(a) Note Receivables as in effect on the Closing Date, together with such changes and modifications thereto from time to time as shall be required by SBA Rules and Regulations or as have been approved in writing by Lender, in Lender’s reasonable credit judgment.

“Reserves” means such reserves against SBA 7(a) Loans, Availability, the Borrowing Base-Guaranteed, or the Borrowing Base-Non Guaranteed that Lender may, in its reasonable credit judgment, establish from time to time. Without limiting the generality of the foregoing, Reserves established to ensure the payment of accrued Interest Expenses or Indebtedness shall be deemed to be a reasonable exercise of Lender’s credit judgment.

“Restricted Payments” means the declaration or payment of any dividend on, or any payment or other distribution on account of, or the purchase, redemption, retirement, or other acquisition (directly or indirectly) of, or the setting apart of assets for a sinking or other analogous fund for the purchase, redemption, retirement or other acquisition of, any class of Capital Stock of any Person, or the making of any distribution of cash, property or assets to the holders of shares of any Capital Stock of any Person.

“SBA” means the United States Small Business Administration or any other federal agency administering the SBA Act.

“SBA Act” means the Small Business Act of 1953, as the same may be amended from time to time.

“SBA Lender’s License” means that authority given to a lender by the SBA to make SBA 7(a) Loans as permitted under the SBA Act, as amended and further authorized by the SBA in CFR Title 13 Part 120-470 and 471, as amended.

“SBA Rules and Regulations” means the SBA Act, as amended, any other legislation binding on SBA relating to financial transactions, any “Loan Guaranty Agreement”, all rules and regulations promulgated from time to time under the SBA Act, and SBA Standard Operating Procedures and any Official Notices issued by the SBA, all as from time to time in effect.

“SBA 7(a) Guaranteed Note Receivable” means that portion of any SBA 7(a) Note Receivable that is actually guaranteed by the SBA.

“SBA 7(a) Loan Notes” means any promissory notes that at any time evidence SBA 7(a) Loans.

“SBA 7(a) Loan Obligor” means any Person, other than the SBA, who is or may become obligated to Borrower under an SBA 7(a) Loan.

“SBA 7(a) Loans” means any loans made by Borrower (or its predecessors in interest) to small businesses and partially guaranteed by the SBA, all originated in accordance with the SBA Rules and Regulations and pursuant to the authorization contained in Section 7(a) of the SBA Act.

“SBA 7(a) Non-Guaranteed Note Receivable” means that portion of any SBA 7(a) Note Receivable that is not guaranteed by the SBA.

“SBA 7(a) Note Receivable” means the obligation of an SBA 7(a) Loan Obligor to pay an SBA 7(a) Loan made by Borrower (or its predecessors in interest) to such SBA 7(a) Loan Obligor, whether or not evidenced by a promissory note or other instrument.

“SBA 7(a) Note Receivable Collateral” means any and all property or interests in property, whether personal property (including without limitation accounts, chattel paper, instruments, documents, deposit accounts, contract rights, general intangibles, inventory or equipment) or real property, or both, whether owned by an SBA 7(a) Loan Obligor or any other Person, that secures an SBA 7(a) Note Receivable or an SBA 7(a) Loan Obligor’s obligations under an SBA 7(a) Loan Note or SBA 7(a) Note Receivable Document, and all supporting obligations in respect thereof.

“SBA 7(a) Note Receivable Documents” means, with respect to any SBA 7(a) Note Receivable, all original documents, instruments, and chattel paper, executed or delivered to or for the account of Borrower by the applicable SBA 7(a) Loan Obligor and evidencing such SBA 7(a) Note Receivable.

“SBA Standard Operating Procedures and Official Notices” means Public Law 85-536, as amended; those Rules and Regulations, as defined in 13 CFR Part 120, “Business Loans” and 13 CFR Part 121, “Size Standards”; Standard Operating Procedures, (SOP) 50-10 for loan processing, 50-50 for loan servicing and 50-51 for loan liquidation as may be published and or amended from time to time by the SBA.

“SBA Reduced Guaranty Ineligible Amount” means as of any date of determination with respect to any SBA Reduced Guaranty Receivable, the difference between (a) the product of (i) the amount of such SBA Reduced Guaranty Receivable *times* (ii) the applicable percentage of the SBA guarantee relating to such SBA Reduced Guaranty Receivable on the date Lender shall have made the Financed Guaranteed Loan as to such SBA Reduced Guaranty Receivable, *less* (b) the product of (i) the amount of such SBA Reduced Guaranty Receivable *times* (ii) the applicable reduced percentage of the SBA guarantee relating to such SBA Reduced Guaranty Receivable on the applicable date of determination.

“SBA Reduced Guaranty Receivable” means each SBA 7(a) Note Receivable relating to a Financed SBA 7(a) Loan as to which the applicable percentage or dollar amount

of the SBA guarantee relating thereto at any time or from time to time shall have been reduced below the applicable percentage or dollar amount on the date Lender shall have made the Financed Guaranteed Loan as to such SBA 7(a) Note Receivable.

“Secondary Market Net Sales Proceeds” means, as to any Financed Guaranteed Loan or Financed Non-Guaranteed Loan: (i) at any time other than during the continuance of a Default or Event of Default, the gross sales proceeds received from a Secondary Market Sale thereof up to an amount equal to the proceeds of Advances made by Lender hereunder in respect thereof or (ii) during the continuance of a Default or Event of Default, the gross proceeds received from a Secondary Market Sale thereof.

“Secondary Market Sale” means the sale or participation of ~~an~~ SBA 7(a) Loan, or any interest therein, to the secondary market in accordance with the SBA Rules and Regulations.

“Subordinated Debt” means any Indebtedness of Borrower which is subordinated, pursuant to Subordination Documents.

“Subordination Documents”: a subordination agreement substantially in the form of Exhibit E, as the same may be amended, modified or supplemented by Lender from time to time, and such other subordination related documents and agreements as Lender may reasonably request.

“Subsidiary” means, with respect to any Person at any time: (a) any corporation more than fifty percent (50%) of whose voting stock is legally and beneficially owned by such Person or owned by a corporation more than fifty percent (50%) of whose voting stock is legally and beneficially owned by such Person; (b) any trust of which a majority of the beneficial interest is at such time owned directly or indirectly, beneficially or of record, by such Person or one or more Subsidiaries of such Person; and (c) any partnership, joint venture, limited liability company or other entity of which ownership interests having ordinary voting power to elect a majority of the board of directors or other Persons performing similar functions are at such time owned directly or indirectly, beneficially or of record, by, or which is otherwise controlled directly, indirectly or through one or more intermediaries by, such Person or one or more Subsidiaries of such Person.

~~“2010 Newtek Securitization Notes” means the issuance in December 2010 by Newtek Small Business Loan Trust 2010-1 of \$16 million of its Standard & Poor’s AA rated notes to securitize a portion of its SBA 7(a) Non-Guaranteed Note Receivables.~~

“Term Loan” means the term loan referred to in Section 2.1(c).

“Term Loan Conversion Amount” means the outstanding principal balance of all Advances as at the close of business on the Business Day immediately preceding the Term Loan Conversion Date.

“Term Loan Conversion Date” shall mean May 16, ~~2016~~, 2017.

“Term Loan Maturity Date” means May 16, ~~2018~~, 2019.

“Termination Date” means the earlier to occur of: (a) (i) with respect to Advances—Guaranteed Loans and Advances—Non-Guaranteed Loans, May 16, ~~2016~~2017 or (ii) with respect to the Term Loan, May 16, ~~2018~~, 2019, and (b) with respect to all Loans, otherwise any date on which Lender elects to cease making Advances pursuant to this Agreement or if the Obligations are declared by Lender or automatically become due and payable (whether at stated maturity, by acceleration or otherwise), in either case in accordance with the terms and provisions of this Agreement.

“Trademarks” means all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos and other source or business identifiers, and all goodwill associated therewith, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and all applications in connection therewith, whether in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof or any other country or any political subdivision thereof, or otherwise, and all common-law rights related thereto; and all renewals and extensions thereof and all rights to obtain such renewals and extensions.

“Trademark License”: any agreement, whether written or oral, providing for the grant by or to Borrower of any right to use any Trademark, including, without limitation, any of the foregoing referred to in Schedule 6.

“Trademark Security Agreements” means those certain Trademark Security Agreements executed by Borrower and the Guarantors in favor of Lender, as the same may be amended, modified, or restated from time to time.

“Trust Account” shall have the meaning ascribed to such term it in the Trust Account Agreement.

“Trust Account Agreement” means that certain Third Amended and Restated Trust Account Agreement, dated as of ~~July 16, 2013~~, October 29, 2014, by and between Borrower and the Trustee, as the same may be amended, modified, or restated from time to time.

“UCC” means the Uniform Commercial Code as adopted in the state where Lender’s office identified in Section 9.8 is located, as the same may be amended from time to time.

“Upfront Fee” ~~has the meaning set forth in Section 2.7(a).~~

1.2 Other Capitalized Terms. Any other capitalized terms used without further definition herein shall have the respective meaning set forth in the UCC.

1.3 Accounting Principles. Where the character or amount of any asset or liability or item of income or expense is required to be determined or any consolidation or other accounting computation is required to be made for the purposes of this Agreement, this shall be done in accordance with GAAP, consistently applied, to the extent applicable, except as otherwise expressly provided in this Agreement.



1.4 Construction: No doctrine of construction of ambiguities in agreements or instruments against the interests of the party controlling the drafting shall apply to any Loan Documents.

## SECTION II. THE LOANS

### 2.1 Loans.

#### (a) Advances—Guaranteed Loans.

(i) On the terms and subject to the conditions set forth herein (including, without limitation, the conditions precedent set forth in Section IV hereof), Lender agrees to make Advances to Borrower from time to time from the date hereof to and including the Business Day immediately prior to the Termination Date to provide short-term financing of SBA 7(a) Guaranteed Note Receivables with respect to Eligible SBA 7(a) Loans; provided that after giving effect thereto, the aggregate sum of all such outstanding Advances made pursuant to this Section 2.1(a) shall not exceed (A) the Availability—Guaranteed Loans or (B) any other amount that would require any prepayment of Advances under Section 2.5 or any other provisions of the Loan Documents. Within such limitations and subject to Section 2.1(a)(iii), Borrower may borrow, prepay or repay such Advances from time to time and may reborrow Advances.

(ii) In no event shall any such Advance be made when any Default or Event of Default has occurred and is continuing.

(iii) Notwithstanding anything contained in this Agreement or any other Loan Document to the contrary, Borrower may not prepay or repay any such Advance on the same day as such Advance shall be made hereunder, except for any prepayment or repayment of any such Advance on the same day as such Advance shall be made (i) as a result of any mandatory prepayment required by Section 2.5(d) or (e), or (ii) as a result of the maturity of the Advances or if the Obligations are declared by Lender or automatically become due and payable (whether at stated maturity, by acceleration or otherwise) in accordance with the terms and provisions of this Agreement.

#### (b) Advances—Non-Guaranteed Loans.

(i) On the terms and subject to the conditions set forth herein (including, without limitation, the conditions precedent set forth in Section IV hereof), Lender agrees to make Advances to Borrower from time to time from the date hereof to and including the Business Day immediately prior to the Termination Date to provide short-term financing of SBA 7(a) Non-Guaranteed Note Receivables with respect to Eligible SBA 7(a) Loans; provided, that after giving effect thereto, the aggregate sum of all such outstanding Advances made pursuant to this Section 2.1(b) shall not exceed (A) the Availability-Non-Guaranteed or (B) any other amount that would require any prepayment of Advances under Section 2.5 or any other provisions of the Loan Documents. Within such limitations and subject to Section 2.1(b)(iii) and Section 2.1(c), Borrower may borrow, prepay or repay Advances from time to time and may reborrow Advances.

(ii) In no event shall any such Advance be made when any Default or Event of Default has occurred and is continuing.

(iii) Notwithstanding anything contained in this Agreement or any other Loan Document to the contrary, Borrower may not prepay or repay any such Advance on the same day as such Advance shall be made hereunder, except for any prepayment or repayment of any such Advance on the same day as such Advance shall be made (A) as a result of any mandatory prepayment required by Section 2.5(d) or (e), or (B) as a result of the maturity of the Advances or if the Obligations are declared by Lender or automatically shall become due and payable in accordance with the terms and provisions of this Agreement (whether at stated maturity, by acceleration or otherwise).

(c) Term Loan.

(i) On the Term Loan Conversion Date, the Term Loan Conversion Amount shall automatically convert into a term loan (the "Term Loan"), which shall become due and payable, and Borrower shall repay the Term Loan, as follows: payments equal to 1/24<sup>th</sup> of the original principal amount of the Term Loan shall be made on the first day of each calendar month commencing with the first day of the calendar month immediately following the Term Loan Conversion Date through and including May 1, ~~2018~~, 2019, with the remaining outstanding principal balance to be paid on the Term Loan Maturity Date. On the Term Loan Conversion Date, as a condition precedent to such conversion, Borrower shall execute and deliver to ~~the~~ Lender the Note evidencing the Term Loan, substantially in the form attached to this Agreement as Exhibit B-3 hereto with insertions as to the amount of the Term Loan, the date of such Note, and the date upon which the monthly installments of the Term Loan shall commence.

(ii) Borrower may prepay or repay all or any portion of the Term Loan commencing on the Business Day after the Term Loan Conversion Date, each such prepayment or repayment to be applied to the outstanding balance of the Term Loan on the date deemed received pursuant to Section 2.4(a) and otherwise in such manner as shall be determined by Lender.

## 2.2 Notes.

(a) The Advances—Guaranteed Loans, the Advances—Non-Guaranteed Loans, and the Term Loan each shall be evidenced by a promissory note of Borrower substantially in the respective forms of Exhibit B-1, B-2 and B-3 attached hereto (the “Notes”).

(b) The date, amount and Interest Rate of each Loan made by Lender to Borrower, and each payment made on account of the principal balance thereof, shall be recorded by Lender on its books; provided that the failure of Lender to make any such recordation shall not affect the obligations of Borrower to make a payment when due of any amount owing hereunder or under the Notes in respect of the Loans.

## 2.3 Procedures for Borrowing Advances.

(a) Borrower may request an Advance hereunder for an Advance-Guaranteed Loans or an Advance-Non-Guaranteed Loan on any Business Day during the period from and including the Closing Date to and including the applicable Termination Date by delivering to Lender a written request for an Advance—Guaranteed Loans or an Advance—Non-Guaranteed Loans, as applicable, substantially in the form of Exhibit C attached hereto (each, a “Request for Advance”). Borrower shall deliver each Request for Advance with respect to each proposed Advance no later than noon (New York City time) on the day of such proposed Advance. Once given, a Request for Advance shall be irrevocable and Borrower shall be bound thereby.

(b) Each Request for Advance shall: (i) attach a schedule identifying the Financed Guaranteed Loans or Financed Non-Guaranteed Loans, as applicable, that Borrower proposes to fund using the proceeds of the Advance, which schedule shall contain such information with respect to each Financed Guaranteed Loans or Financed Non-Guaranteed Loans, as applicable, as Lender shall reasonably request; (ii) specify the requested funding date; and (iii) include such other matters as may be specified on the form of the Request for Advance or as may be reasonably requested by Lender from time to time. Each Advance shall be in a minimum amount of \$100,000 or an integral multiple thereof. Borrower shall indemnify Lender and hold it harmless against any costs incurred by Lender as a result of any failure of Borrower to timely deliver to FTA the SBA 7(a) Loan Note relating to any Financed Guaranteed Loan or Financed Non-Guaranteed Loan as required by Section 8.1(f).

(c) Unless otherwise agreed by Lender and Borrower, each Advance requested by Borrower and made by Lender hereunder shall be made to Borrower’s main operating account maintained with Lender.

## 2.4 Payments – General; Cash Management System.

(a) Except to the extent otherwise set forth in this Agreement, all payments of principal and of interest on the Loan and all Expenses, fees,

indemnification obligations and all other charges and any other Obligations of Borrower not made by automatic transfers from the Blocked Account or Borrower's accounts maintained with Lender, shall be made to Lender at its office at 275 Broadhollow Road, Melville, N.Y. 11747, in United States dollars, in immediately available funds. Lender shall have the unconditional right and discretion (and Borrower hereby authorizes Lender) to charge Borrower's operating and/or deposit account(s) for all of Borrower's Obligations as they become due from time to time under this Agreement including, without limitation, interest, principal, fees, indemnification obligations and reimbursement of Expenses; provided, that Lender may not charge the Trust Account in a manner inconsistent with the Trust Account Agreement. Any payments received prior to 2:00 p.m. Eastern time on any Business Day shall be deemed received on such Business Day. Any payments (including any payment in full of the Obligations) received after 2:00 p.m. Eastern time on any Business Day shall be deemed received on the immediately following Business Day.

(b) On or prior to the date hereof, Borrower shall establish and maintain until all Obligations shall have been fully and indefeasibly paid in full the cash management system described in Exhibit D attached hereto (the "Cash Management System").

## 2.5 Payment of Interest and Principal; Mandatory Prepayments.

(a) From and following the Closing Date, the Loans and the other Obligations shall bear interest at the Interest Rate.

(b) Interest on all Loans, including, without limitation, the Term Loan, shall be payable (i) in arrears on the first day of each month (beginning on the first day of the first full calendar month after the Closing Date), (ii) as provided in Sections 2.5(d) and (e), and (iii) upon the payment in full of any Advances or any or all of the Loans, and on the Termination Date.

(c) The outstanding principal amount of the Loans other than the Term Loan, plus all accrued but unpaid interest and all other sums due Lender hereunder in respect of such Loans, shall be due and payable in full on the Termination Date. The outstanding principal amount of the Term Loan shall be payable in accordance with Section 2.1(c) and, together with all accrued but unpaid interest and all other sums due Lender hereunder in respect of such Term Loan, shall be due and payable in full on the Termination Date. If on any payment date for the Term Loan the balance in the Blocked Account is less than the next due principal payment, Borrower shall remit the balance of such payment to Lender on such payment date.

(d) There shall become due and payable and Borrower shall prepay the Advances, together with all accrued but unpaid interest thereon, in an amount determined as follows:

(i) the amount by which: (A) Outstanding Advances—Guaranteed Loans exceeds (x) the Borrowing Base—Guaranteed or (y) Availability—Guaranteed, (B) Outstanding Advances—Non-Guaranteed Loans exceeds (x) the Borrowing Base—Non-Guaranteed or (y) Availability—Non-Guaranteed, or (C) the then outstanding principal amount of the Term Loan exceeds the aggregate of the Borrowing Base—Guaranteed plus the Borrowing Base—Non-Guaranteed or the aggregate of Availability-Guaranteed plus Availability-Non-Guaranteed;

(ii) the amount by which (A) prior to the Term Loan Conversion Date, the aggregate of (1) Outstanding Advances—Guaranteed Loans plus (2) Outstanding Advances—Non-Guaranteed Loans exceeds the lesser of (3) the Maximum Commitment or (4) the aggregate of the Borrowing Base—Guaranteed, plus the Borrowing Base—Non-Guaranteed; or (B) on and after the Term Loan Conversion Date, the outstanding principal amount of the Term Loan exceeds the lesser of (1) an amount equal to the Term Loan Conversion Amount less all payments and prepayments made or required to be made as of or prior to the date of determination or (2) the aggregate of the Borrowing Base—Guaranteed, plus the Borrowing Base—Non-Guaranteed;

(iii) an amount equal to the Secondary Market Net Sales Proceeds of any Secondary Market Sale of any Financed Guaranteed Loan or any Financed Non-Guaranteed Loans, including, without limitation, any such portion of any Multi-Draw SBA Loan (which proceeds shall be applied as set forth in the Cash Management System and this Agreement).

(e) Without limiting the generality of the foregoing, in the event that at any time (x) Outstanding Advances—Guaranteed Loans shall exceed, as applicable: 90% (subject to adjustment by Lender in the exercise of its reasonable credit discretion) of the outstanding principal amount of the SBA 7(a) Guaranteed Note Receivables related to such Outstanding Advances—Guaranteed Loans, (y) Outstanding Advances—Non-Guaranteed Loans shall exceed 55% (subject to adjustment by Lender in the exercise of its reasonable credit discretion) of the outstanding principal amount of the SBA 7(a) Non-Guaranteed Note Receivables related to such Advances—Non-Guaranteed Loans, or (z) the outstanding principal amount of the Term Loan shall exceed the lesser of (1) the Maximum Commitment or (2) the aggregate of the Borrowing Base—Guaranteed, plus the Borrowing Base—Non-Guaranteed, Borrower shall prepay such excess, together with accrued but unpaid interest thereon.

(f) Notwithstanding the foregoing, if clause (ii) of the definition of the term “Secondary Market Net Sales Proceeds” shall be applicable, then such Secondary Market Net Sales Proceeds received in respect of any Financed Guaranteed Loan shall be applied against Advances-Guaranteed Loans, and Secondary Market Net Sales Proceeds received in respect of any Financed Non-Guaranteed Loans shall be applied against Advances-Non-Guaranteed Loans and/or the Term Loan in such manner as Lender shall determine, with any excess after such application to be held by Lender, at its option, as cash collateral for the Obligations. Any prepayments received by Lender in respect of ~~clauses~~

~~subsection 2.5(d)(i)(A)~~ above shall be applied against Advances-Guaranteed Loans. Any prepayments received by Lender in respect of ~~clause subsection 2.5(d)(i)(B)~~ above shall be applied against Advances-Guaranteed Loans and/or the Term Loan in such manner as Lender shall determine. All such prepayments received by Lender pursuant to this Section 2.5(d) shall be applied against its respective Loan on the date deemed received pursuant to Section 2.4(a) and otherwise in such manner as shall be determined by Lender.

(g) There shall become due and payable and Borrower shall prepay the Advances-Non-Guaranteed Loans and the Term Loan, and shall cause the other Credit Parties to prepay the Advances-Non-Guaranteed Loans and the Term Loan, in each case together with all accrued but unpaid interest thereon, in an amount equal to in the following amounts and at the following times:

(i) ~~on~~On the date on which any Credit Party other than Parent (or Lender as loss payee or assignee) receives any Casualty Proceeds, an amount equal to one hundred percent (100%) of such Casualty Proceeds or such payment; *provided*, that, so long as no Default or Event of Default has occurred and is continuing, the recipient (other than Lender) of any Casualty Proceeds may reinvest the amount of such Casualty Proceeds within thirty (30) days in replacement assets comparable to the assets giving rise to such Casualty Proceeds; *provided, further* that the aggregate amount which may be reinvested by ~~Borrower and its Subsidiaries~~ such Credit Party pursuant to the preceding proviso may not exceed \$250,000 in any Fiscal Year; *and provided, further*, that if the applicable Credit Party does not intend to fully reinvest such Casualty Proceeds, or if the thirty (30) day time period set forth in this sentence expires without such Credit Party having reinvested such Casualty Proceeds, Borrower shall prepay such Advances or Loans, as applicable, in an amount equal to such Casualty Proceeds (to the extent not reinvested or intended to be reinvested within such time period);

(ii) upon receipt by any Credit Party other than Parent of the proceeds from the issuance and sale of any Debt or equity securities (other than (1) proceeds of Permitted Indebtedness, (2) proceeds from the issuance of equity securities to members of the management of any such Credit Party, (3) proceeds of the issuance to Parent of equity securities of Borrower or any ~~wholly-owned Subsidiary of Parent~~ other Credit Party, or (4) Indebtedness of any Credit Party to another Credit Party to the extent expressly permitted by the Loan Documents), an amount equal to one hundred percent (100%) of the Net Cash Proceeds of such issuance and sale; and

(iii) upon receipt by any Credit Party other than Parent of the proceeds of any Asset Sale (other than the proceeds of a Permitted Disposition), an amount equal to one hundred percent (100%) of the Net Cash Proceeds of such Asset Sale.

Notwithstanding the foregoing, each such Credit Party other than Borrower or Parent shall be required to remit amounts set forth in this Section 2.5(eg)(i)-(iii) during each Fiscal Year of such Credit Party only in the event and to the extent that the aggregate amount received by that Credit Party during such Fiscal Year of Casualty Proceeds, Net Cash Proceeds from the issuance and sale of Debt or equity securities, and Net Cash Proceeds of Asset Sales of such Credit Party shall exceed \$250,000.

(iv) Amounts paid pursuant to this Section 2.5(e) shall be applied to the Advanced-Non-Guaranteed Loans and/or the Term Loan on the date deemed received pursuant to Section 2.4(ba) and otherwise in such manner as shall be determined by Lender.

(h) Subject to Section 2.1, the Loans may be prepaid in whole or in part at any time from time to time, without penalty or premium; provided, however, that Borrower shall have given Lender at least ten (10) days prior written notice of the date of such prepayment. Any prepayment shall be accompanied by all accrued and unpaid interest thereon.

#### 2.6 Additional Interest Provisions.

(a) Interest on the Loans shall be calculated on the basis of a year of three hundred sixty (360) days but charged for the actual number of days elapsed. The date of funding of an Advance shall be included in the calculation of interest. The date of payment with respect to an Advance shall be excluded from the calculation of interest.

(b) After the occurrence and during the continuance of an Event of Default hereunder, the per annum effective rate of interest on all outstanding principal under the Loans shall be equal to the applicable Interest Rate plus five hundred (500) basis points (the "Default Rate"). All such increases may be applied retroactively to the date of the occurrence of the Event of Default. Borrower agrees that the Default Rate is a reasonable estimate of Lender's damages and is not a penalty.

(c) All contractual rates of interest chargeable on outstanding principal under the Loans shall continue to accrue and be paid even after Default, an Event of Default, maturity, acceleration, judgment, bankruptcy, insolvency proceedings of any kind or the happening of any event or occurrence similar or dissimilar.

(d) In no contingency or event whatsoever shall the aggregate of all amounts deemed interest hereunder and charged or collected pursuant to the terms of this Agreement exceed the highest rate permissible under any Law which a court of competent jurisdiction shall, in a final determination, deem applicable hereto. In the event that such court determines Lender has charged or received interest hereunder in excess of the highest applicable rate, Lender shall apply, in its sole discretion, and set off such excess interest received by Lender against other Obligations due or to become due and such rate shall automatically be reduced to the maximum rate permitted by such Law.

#### 2.7 Fees and Charges.

(a) On the ~~Closing Date~~date of the First Amendment to this Agreement, Borrower shall pay to Lender, a fully-earned, non-refundable ~~up-~~front facility fee (the "Upfront Facility Fee") in the amount of ~~\$225,000~~200,000.



(b) On June 16, 2011 and on each anniversary of such date, a fully-earned, non-refundable administrative fee (the "Administrative Fee") in the amount of \$12,000.

(c) From and following the Closing Date, Borrower shall pay Lender fees in an amount equal to (i) the difference between (A) the Maximum Commitment less (B) the sum of the average daily outstanding balance of Advances—Guaranteed Loans plus the average daily outstanding balance of Advances—Non-Guaranteed Loans during the preceding month, multiplied by (ii) one-quarter of one percent (1/4 of 1%) per annum. Such fees are to be paid quarterly in arrears on the last day of each calendar quarter.

(d) Borrower shall unconditionally pay to Lender a late charge equal to five percent (5%) of any and all payments of principal or interest on the Loans that are not paid within fifteen (15) days of the due date. Such late charge shall be due and payable regardless of whether Lender has accelerated the Obligations, or the Obligations automatically shall become due and payable. Borrower agrees that any late fee payable to Lender is a reasonable estimate of Lender's damages and is not a penalty.

2.8 Use of Proceeds. The proceeds of (a) Advances—Guaranteed Loans shall be used solely to provide Borrower with short-term financing of an amount not to exceed 90%, with respect to Financed Guaranteed Loans, and (b) Advances—Non-Guaranteed Loans shall be used solely to provide Borrower with short-term financing of an amount not to exceed 55% of the SBA 7(a) Non-Guaranteed Note Receivable in respect of each Financed Non-Guaranteed Loan.

#### 2.9 Requirements of Law.

(a) If Lender shall have determined that the adoption of or any change in any Requirement of Law regarding capital adequacy or in the interpretation or application thereof or compliance by Lender or any corporation controlling Lender with any request or directive regarding capital adequacy (whether or not having the force of law) from any Governmental Authority made subsequent to the date hereof shall have the effect of reducing the rate of return on Lender's or such corporation's capital as a consequence of its obligations hereunder to a level below that which Lender or such corporation could have achieved but for such adoption, change or compliance (taking into consideration Lender's or such corporation's policies with respect to capital adequacy as in effect as of the date of this Agreement) by an amount deemed by Lender to be material, then from time to time, after submission by Lender to Borrower of a written request therefor, Borrower shall pay to Lender such additional amount or amounts as will compensate Lender or such corporation for such reduction; provided, that Borrower shall not be required to compensate Lender pursuant to this paragraph for any amounts incurred more than six months prior to the date that Lender notifies Borrower of Lender's intention to claim compensation therefor; and provided, further that, if the circumstances giving rise to such claim have a retroactive effect, then such six-month period shall be extended to include the period of such retroactive effect.

(b) A certificate as to any additional amounts payable pursuant to this Section submitted by Lender to Borrower shall be conclusive in the absence of manifest error. The obligations of Borrower pursuant to this Section shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

(c) Failure or delay on the part of Lender to demand compensation pursuant to this Section 2.9 shall not constitute a waiver of Lender's right to demand such compensation; provided, that Borrower shall not be under any obligation to compensate Lender under clause (a) of this Section 2.9 for increased costs or reductions with respect to any period prior to the date that is 180 days prior to such request if Lender knew or could reasonably have been expected to know of the circumstances giving rise to such increased costs or reductions and of the fact that such circumstances would result in a claim for increased compensation by reason of such increased costs or reductions; provided, further, that the foregoing limitation shall not apply to any increased costs or reductions arising out of the retroactive application of any change in Law within such 180-day period. The protection of this Section 2.9 shall be available to Lender regardless of any possible contention of the invalidity or inapplicability of the change in any Requirement of Law that shall have occurred or been imposed. Notwithstanding anything herein to the contrary, the Dodd-Frank Wall Street Reform and Consumer Protection Act, and all requests, rules, guidelines and directives promulgated thereunder, all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case pursuant to Basel III, are in each case deemed to have been introduced or adopted after the date hereof, regardless of the date enacted, adopted, issued or implemented for all purposes under or in connection with this Agreement (including this Section 2.9) and any taxes imposed thereby (other than taxes described in Section 2.10) shall be deemed to be the adoption of or a change in a Requirement of Law regarding capital adequacy.

#### 2.10 Taxes.

(a) All payments made by Borrower under this Agreement shall be made free and clear of, and without deduction or withholding for or on account of, any present or future income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions or withholdings, now or hereafter imposed, levied, collected, withheld or assessed by any Governmental Authority, excluding net income taxes and franchise taxes (imposed in lieu of net income taxes) imposed on Lender as a result of a present or former connection between Lender and the jurisdiction of the Governmental Authority imposing such tax or any political subdivision or taxing authority thereof or therein (other than any such connection arising solely from Lender's having executed, delivered or performed its obligations or received a payment under, or enforced, this Agreement or any other Loan Document). If any such non-excluded taxes, levies, imposts, duties, charges, fees, deductions or withholdings ("Non-Excluded Taxes") or any Other Taxes are required to be withheld from any amounts payable to Lender hereunder, the amounts so payable to Lender shall be increased to the extent necessary to yield to Lender (after payment of all Non-Excluded Taxes and Other Taxes) interest or any such other amounts payable hereunder at the rates or in the amounts specified in this Agreement; provided, however, that Borrower shall not be required to increase any such amounts payable to Lender with respect to any Non-Excluded Taxes (i) that are attributable to Lender's failure to deliver the forms required by paragraph (d) of this Section,

unless such failure is solely a result of a change in Law occurring after the date hereof or (ii) that are United States withholding taxes (including FATCA) imposed on amounts payable to Lender at the time Lender becomes a party to this Agreement, except to the extent that Lender's assignor (if any) was entitled, at the time of assignment, to receive additional amounts from Borrower with respect to such Non-Excluded Taxes pursuant to this paragraph (a).

(b) In addition, Borrower shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(i) Whenever any Non-Excluded Taxes or Other Taxes are payable by Borrower, as promptly as possible thereafter Borrower shall send to Lender a certified copy of an original official receipt received by Borrower showing payment thereof. If Borrower fails to pay any Non-Excluded Taxes or Other Taxes when due to the appropriate taxing authority or fails to remit to Lender the required receipts or other required documentary evidence, Borrower shall indemnify Lender for any incremental taxes, interest or penalties that may become payable by Lender as a result of any such failure. The agreements in this Section shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

(ii) Unless otherwise excluded under the proviso in Section 2.10(a), Borrower agrees to indemnify Lender for, and hold Lender harmless against, (1) the full amount of Non-Excluded Taxes or Other Taxes (including any Non-Excluded Taxes or Other Taxes imposed or asserted by any jurisdiction on amounts payable under this Section 2.10) paid by Lender and (2) any liability (including additions to tax, penalties, interest and expenses) arising therefrom or with respect thereto, in each case whether or not such Non-Excluded Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. The indemnification payment under this Section 2.10(c) shall be made within thirty (30) days after the date Lender makes a written demand therefor.

(iii) If requested by Borrower, Lender shall deliver to Borrower two copies of U.S. Internal Revenue Service Form W-9, certifying that Lender is exempt from U.S. federal backup withholding tax. Such forms shall be delivered on or before the date Lender becomes a party to this Agreement. In addition, if requested by Borrower, Lender shall deliver such forms promptly upon the obsolescence or invalidity of any form previously delivered by Lender. Lender shall promptly notify Borrower at any time it determines that it is no longer in a position to provide any previously delivered certificate to Borrower (or any other form of certification adopted by the U.S. taxing authorities for such purpose).

(iv) If Lender reasonably determines that it has received a refund of any Non-Excluded Taxes or Other Taxes as to which it has been indemnified by Borrower or with respect to which Borrower has paid additional amounts pursuant to this Section 2.10, it shall pay over such refund to Borrower (but only to the extent of indemnity payments made, or additional amounts paid, by Borrower under this Section 2.10 with respect to the Non-Excluded Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of Lender and without interest (other than any interest paid by the relevant Governmental

Authority with respect to such refund); provided, that Borrower, upon the request of Lender, agrees to repay the amount paid over to Borrower (plus, any penalties, interest or other charges imposed by the relevant Governmental Authority) to Lender in the event Lender is required to repay such refund to such Governmental Authority. This paragraph shall not be construed to require Lender to claim any tax refund or make available its tax returns (or any other information relating to its taxes which it deems confidential) or disclose any information relating to its tax affairs or any computations in respect thereof or require Lender to do anything that would prejudice its ability to benefit from any other refunds, credits, reliefs, remissions or repayments to which it may be entitled.

### **SECTION III. COLLATERAL**

3.1 Collateral. As security for the payment of the Obligations, and satisfaction by Borrower of all covenants and undertakings contained in this Agreement and the other Loan Documents:

(a) Borrower hereby assigns and grants to Lender a continuing Lien on and first priority security interest in, upon and to all assets of Borrower (other than Borrower's SBA Lender's License), including any Real Property and including, without limitation, to the following Property, all whether now owned or hereafter acquired, created or arising and wherever located:

(i) Accounts - All Accounts;

(ii) Chattel Paper - All Chattel Paper;

(iii) Documents - All Documents;

(iv) Instruments - All Instruments;

(v) Inventory - All Inventory;

(vi) General Intangibles - All General Intangibles;

(vii) Equipment - All Equipment,

(viii) Fixtures - All Fixtures;

(ix) Deposit Accounts - All Deposit Accounts, including, without limitation, the Blocked Account and all operating accounts of Borrower maintained at or with Lender, but excluding the Trust Account to the extent prohibited by the Multi-Party Agreement and SBA Rules and Regulations;

(x) Goods - All Goods;

(xi) Letter of Credit Rights - All Letter of Credit Rights;

(xii) Supporting Obligations - All Supporting Obligations;

(xiii) Investment Property - All Investment Property;

(xiv) Commercial Tort Claims - All Commercial Tort Claims identified and described on Schedule 3.1(a)(xiv) (as amended or supplemented from time to time);

(xv) Property in Lender's Possession - All Property of Borrower, now or hereafter in Lender's possession; and

(xvi) Proceeds - The Proceeds (including, without limitation, insurance proceeds), whether cash or non-cash, of all of the foregoing property described in clauses (i) through ~~(viii)~~ (xv).

3.2 Lien Documents. At the Closing and thereafter as Lender deems necessary, Borrower shall execute and/or deliver to Lender, or have executed and delivered (all in form and substance satisfactory to Lender and its counsel):

(a) Financing statements pursuant to the UCC, which Lender may file in the jurisdiction where Borrower is organized and in any other jurisdiction that Lender deems appropriate; and

(b) Any other agreements, documents, instruments and writings, including, without limitation, intellectual property security agreements, required by Lender to evidence, perfect or protect the Liens and security interests in the Collateral or as Lender may reasonably request from time to time.

### 3.3 Other Actions.

(a) In addition to the foregoing, Borrower shall do anything further that may be reasonably required by Lender to secure Lender and effectuate the intentions and objects of this Agreement, including, without limitation, the execution and delivery of security agreements, contracts and any other documents required hereunder. At Lender's reasonable request, Borrower shall also immediately deliver (with execution by Borrower of all necessary documents or forms to reflect, implement or enforce the Liens described herein), or cause to be delivered to Lender all items for which Lender must receive possession to obtain a perfected security interest, including without limitation, all notes (other than SBA~~(7)~~(a) Notes are delivered to the FTA pursuant to the Multi-Party Agreement), stock powers, letters of credit, certificates and documents of title, Chattel Paper, Warehouse Receipts, Instruments, and any other similar instruments constituting Collateral.

(b) Lender is hereby authorized to file financing statements and amendments to financing statements without Borrower's signature, in accordance with the UCC. Borrower hereby authorizes Lender to file all such financing statements and amendments to financing statements describing the Collateral in any filing office as Lender, in its sole discretion may determine, including financing statements listing "All Assets," "All property and assets" and/or words of similar import in the collateral description therein. Borrower agrees to comply with the requests of Lender in order for Lender to have and

maintain a valid and perfected first security interest in the Collateral including, without limitation, executing and causing any other Person to execute such documents as Lender may require to obtain Control over all Deposit Accounts, Letter of Credit Rights and Investment Property.

#### 3.4 Searches, Certificates.

(a) Lender shall, prior to or at the Closing, and thereafter as Lender may reasonably determine from time to time, at Borrower's expense, obtain the following searches (the results of which are to be consistent with the warranties made by Borrower in this Agreement):

(i) UCC searches with the Secretary of State and local filing office of each state where Borrower (and each Guarantor) is organized, maintains its executive office, a place of business, or assets; and

(ii) judgment, state and federal tax lien and corporate tax lien searches, in all applicable filing offices of each state searched under subparagraph (i) above.

(b) Borrower shall, prior to or at the Closing and at its sole expense, obtain and deliver to Lender good standing certificates showing Borrower and each corporate Guarantor to be in good standing in its state of organization and in each other state in which it is doing and presently intends to do business for which qualification is required.

(c) Landlord's and Warehouseman's Waivers. Borrower will cause each owner of any premises occupied by Borrower or to be occupied by Borrower and each warehouseman of any warehouse, where, in either event Collateral is held, to execute and deliver to Lender an instrument, in form and substance satisfactory to Lender, under which such owner(s) or warehouseman subordinates its/his/their interests in and waives its/his/their right to distrain on or foreclose against the Collateral and agrees to allow Lender to remain on such premises to dispose of or deal with any Collateral located thereon.

3.5 Filing Security Agreement. A carbon, photographic or other reproduction or other copy of this Agreement or of a financing statement is sufficient as and may be filed in lieu of a financing statement.

3.6 Power of Attorney. Each of the officers of Lender is hereby irrevocably made, constituted and appointed the true and lawful attorney for Borrower (without requiring any of them to act as such) with full power of substitution to do the following: (a) endorse the name of Borrower upon any and all checks, drafts, money orders and other instruments for the payment of monies that are payable to Borrower and constitute collections on Borrower's Accounts or proceeds of other Collateral; (b) execute and/or file in the name of Borrower any financing statements, schedules, assignments, instruments, documents and statements that Borrower is obligated to give Lender hereunder or is necessary to perfect (or continue or evidence the perfection of such security interest or Lien) Lender's security interest or Lien in the Collateral; and (c) during the continuance of an Event of Default, do such other and further acts and deeds in the name of Borrower that Lender may reasonably deem necessary or desirable to enforce any Account or other Collateral.

#### SECTION IV. THE CLOSING; CONDITIONS PRECEDENT TO EACH ADVANCE

4.1 Conditions to the Closing. The Closing of this Agreement is subject to the following conditions precedent (all instruments, documents and agreements to be in form and substance satisfactory to Lender and Lender's counsel):

(a) Loan Documents, Resolutions, Opinions, and Other Documents. Borrower shall have delivered, or caused to be delivered, to Lender the following, in each case in form and substance satisfactory to Lender and its counsel:

(i) this Agreement, the Notes (other than the Note representing the Term Loan) and each of the other Loan Documents all properly executed;

(ii) if requested by Lender, financing statements and each of the other documents to be executed and/or delivered by Borrower, the Guarantors, or any other Person pursuant to this Agreement;

(iii) certified copies of (1) resolutions of Borrower and each Guarantor's board of directors or managing members (as applicable) authorizing the execution, delivery and performance of this Agreement, the Notes to be issued hereunder and each of the other Loan Documents required to be delivered by such applicable party and (2) Borrower's and each Guarantor's articles or certificate of incorporation and by-Laws or certificate of formation and shareholders' agreement or operating agreement, as applicable;

(iv) an incumbency certificate for Borrower and each Guarantor identifying all Authorized Officers, with specimen signatures;

(v) a written opinion or opinions of Borrower's independent counsel addressed to Lender and opinions of such other counsel as Lender deems reasonably necessary;

(vi) such other financial statements, reports, certifications and other operational information as Lender may reasonably require, satisfactory in all respects to Lender;

(vii) certification by the president of Borrower that there has not occurred any Borrower Material Adverse Effect since December 31, 2013;

(viii) payment by Borrower of all fees including, without limitation, the Upfront Fee and all of Lender's fees and expenses associated with this Agreement;

(ix) searches and certificates required under Section 3.4;

(x) the Multi-Party Agreement together with any required consent of the SBA;

(xi) the documents set forth on ~~the~~ Lender's closing checklist previously furnished to Borrower;

(xii) such other documents reasonably required by Lender.

(b) Absence of Certain Events. On the Closing Date, no Default or Event of Default hereunder, or under any other agreement between Borrower, any Guarantor or any Affiliate of any of them and Lender, shall have occurred and be continuing.

(c) Warranties and Representations at Closing. The warranties and representations contained in Section 5 of this Agreement as well as any other Section of this Agreement shall be true and correct in all respects on the Closing Date with the same effect as though made on and as of that date. Borrower shall not have taken any action or permitted any condition to exist which would have been prohibited by any Section hereof.

(d) Compliance with this Agreement. Borrower shall have performed and complied with all agreements, covenants and conditions contained herein including, without limitation, the provisions of Sections 6 and 7 hereof, which are required to be performed or complied with by Borrower before or at the Closing Date.

(e) Officers' Certificate. Lender shall have received a certificate dated the Closing Date and signed by the chief financial officer of Borrower and Parent certifying that all of the conditions specified in this Section have been fulfilled.

4.2 The Closing. Subject to the conditions of this Section, Advances shall be available on such date (the "Closing Date") and at such time as may be mutually agreeable to the parties contemporaneously with the execution hereof (the "Closing") at Lender's office at ~~40018-10171~~ 4001299 Park Avenue of the Americas, New York, NY ~~40018-10171~~.

4.3 Waiver of Rights. By consummating the Closing hereunder, or by making Advances hereunder, Lender does not thereby waive a breach of any warranty or representation made by Borrower hereunder or under any agreement, document, or instrument delivered to Lender or otherwise referred to herein, and any claims and rights of Lender resulting from any breach or misrepresentation by Borrower are specifically reserved by Lender.

4.4 Conditions to the Making of Each Advance. The making of each Advance hereunder is subject to the fulfillment of the following conditions precedent in a manner satisfactory in form and substance to Lender and its counsel:

(a) Compliance. Borrower shall have complied and shall then be in compliance with all terms, covenants, conditions and provisions of this Agreement and the other Financing Documents that are binding upon it.



(b) Borrowing Base. Borrower shall have furnished all Borrowing Base Certificates required by Section 6.8(a) and as evidence thereof, Borrower shall have furnished to Lender such reports, schedules, certificates, records and other papers as may be requested by Lender, and Borrower shall be in compliance with the provisions of this Agreement both immediately before and immediately after the making of the Advance requested. The aggregate outstanding balance of the Loan immediately after giving effect to such Advance shall not exceed the Borrowing Base.

(c) Default. No Event of Default or Default shall exist hereunder.

(d) Representations and Warranties. The representations and warranties of Borrower contained among the provisions of this Agreement shall be true and with the same effect as though such representations and warranties had been made at the time of the making of, and of the request for, such Advance.

(e) Adverse Change. No Material Adverse Effect shall have occurred that would, in the good faith judgment of Lender, have a material adverse effect on Borrower or materially impair the ability of Borrower to pay or perform any of the Obligations.

(f) Legal Matters. All legal documents incident to such Advance shall be reasonably satisfactory to counsel for Lender.

(g) Eligibility Requirements. Each Financed Guaranteed Loan and each Financed Non-Guaranteed Loan shall be an Eligible SBA 7(a) Loan.

## SECTION V. REPRESENTATIONS AND WARRANTIES

To induce Lender to complete the Closing and make the Loan to Borrower, Borrower warrants and represents to Lender that:

### 5.1 Corporate Organization and Validity.

(a) Borrower: (i) is a ~~corporation~~ limited liability company, duly organized and validly existing under the Laws of the state of New York; (ii) has the appropriate power and authority to operate its business and to own its Property; and (iii) is duly qualified, is validly existing and in good standing and has lawful power and authority to engage in the business it conducts in each state where the nature and extent of its business requires qualification, except where the failure to so qualify does not nor could not reasonably be predicted to have a Material Adverse Effect. A list of all states and other jurisdictions where Borrower is qualified to do business is shown on Schedule 5.1 attached hereto and made part hereof.

(b) The making and performance of this Agreement and the other Loan Documents will not violate any Law, government rule or regulation, court or administrative order or other such order, or the ~~charter, minutes or bylaw provisions~~ articles or organization or other governing documents of Borrower, or of Borrower's shareholder's agreement, operating agreement or partnership agreement, as applicable, or violate or result in a default

(immediately or with the passage of time) under any contract, agreement or instrument to which Borrower is a party, or by which Borrower is bound. Borrower is not in violation of any term of any agreement or instrument to which it is a party or by which it may be bound which violation has caused or is reasonably likely to cause a Material Adverse Effect, or of its ~~charter, minutes or bylaw provisions~~ articles or organization or other governing documents, or of Borrower's operating agreement or partnership agreement, as applicable.

(c) Borrower has all requisite power and authority to enter into and perform this Agreement and to incur the obligations herein provided for, and has taken all necessary action to authorize the execution, delivery and performance of this Agreement, and the other Loan Documents as applicable.

(d) This Agreement, the Notes to be issued hereunder and all of the other Loan Documents, when delivered, will be valid and binding upon Borrower, and enforceable in accordance with their respective terms except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and similar Laws affecting the enforcement of creditors' rights generally and by general equitable principles.

5.2 Places of Business. The only places of business of Borrower, and the places where Borrower keeps and intends to keep its Property, are at the addresses shown on Schedule 5.2 attached hereto.

5.3 Pending Litigation. There are no judgments or judicial or administrative orders or proceedings pending, or to the knowledge of Borrower, threatened, against Borrower in any court or before any Governmental Authority relating to a claim in excess of \$100,000 (except for any proceeding relating to any license or seeking injunctive relief as to which no dollar threshold shall apply) except as shown on Schedule 5.3 attached hereto, other than counterclaims arising solely out of routine collection matters brought by Borrower against any Person. To the knowledge of Borrower, there are no investigations (civil or criminal) pending or threatened against Borrower in any court or before any Governmental Authority. Borrower is not in default with respect to any order of any Governmental Authority. To the knowledge of Borrower, no shareholder or executive officer of Borrower has been indicted in connection with or convicted of engaging in any criminal conduct, or is currently subject to any lawsuit or proceeding or under investigation in connection with any anti-racketeering or other conduct or activity which may result in the forfeiture of any property to any Governmental Authority.

5.4 Title to Properties. Borrower has good and marketable title in fee simple (or its equivalent under applicable Law) to all the Property it purports to own, free from Liens and free from the claims of any other Person, except for Permitted Liens.

5.5 Governmental Consent. Neither the nature of Borrower or of its business or Property, nor any relationship between Borrower and any other Person, nor any circumstance affecting Borrower in connection with the issuance or delivery of this Agreement, the Notes or any other Loan Documents is such as to require a consent, approval or authorization of, or filing, registration or qualification with, any Governmental Authority on the part of Borrower (other than with respect to the SBA).

5.6 Taxes. All tax returns required to be filed by Borrower in any jurisdiction have been filed, and all taxes, assessments, fees and other governmental charges upon Borrower, or upon any of its Property, income or franchises, which are shown to be due and payable on such returns have been paid, except for those taxes being contested in good faith with due diligence by appropriate proceedings for which appropriate reserves have been maintained under GAAP and as to which no Lien has been entered. Borrower is not aware of any proposed additional tax assessment or tax to be assessed against or applicable to Borrower.

5.7 Financial Statements. The audited consolidated financial statements of Parent as at and for the year ended December 31, ~~2012~~2013 (complete copies of which have been delivered to Lender), and the interim consolidated financial statements of Parent as at and for the three-month and ~~six~~nine-month periods ended ~~March 31, 2013~~September 30, 2014 have been prepared in accordance with GAAP and present fairly the financial position of Parent as of such dates and the results of its operations for such periods. The Fiscal Year for Parent and Borrower currently ends on December 31. Borrower's federal tax identification number and state organizational identification number for UCC purposes are as shown on Schedule 5.7 attached hereto. All projections provided to Lender represent Borrower's best estimate of Borrower's (and Parent's or any consolidated entity's) consolidated future financial performance as of the date thereof and the assumptions contained therein are believed by Borrower to be fair and reasonable in light of current business conditions.

5.8 Full Disclosure. The financial statements referred to in Section 5.7 of this Agreement do not, nor does any other written statement of Borrower to Lender in connection with the negotiation of the Loan, contain any untrue statement of a material fact. Such statements do not omit a material fact, the omission of which would make the statements contained therein misleading. There is no fact known to Borrower which has not been disclosed in writing to Lender which has or is reasonably likely to have a Material Adverse Effect.

5.9 Subsidiaries. Borrower does not have any Subsidiaries or Affiliates, except as shown on Schedule 5.9 attached hereto.

5.10 Investments, Guarantees, Contracts, etc.

(a) Borrower does not own or hold equity, long term debt or other Investments in any other Person, except as shown on Schedule 5.10(a) attached hereto.

(b) Borrower has not entered into any leases for real or personal Property (whether as landlord or tenant or lessor or lessee), except as shown on Schedule 5.10(b) attached hereto.

(c) Borrower is not a party to any contract or agreement, or subject to any charter or other corporate restriction, which has or is reasonably likely to have a Material Adverse Effect.

(d) Borrower, except as otherwise specifically provided in this Agreement, has not agreed or consented to cause or permit any of its Property whether now owned or hereafter acquired to be subject in the future (upon the happening of a contingency or otherwise), to a Lien not permitted by this Agreement.

#### 5.11 Government Regulations, etc.

(a) The use of the proceeds of and Borrower's issuance of the Notes will not directly or indirectly violate or result in a violation of Section 7 of the Securities Exchange Act of 1934, as amended, or any regulations issued pursuant thereto, including, without limitation, Regulations U, T and X of the Board of Governors of the Federal Reserve System, 12 C.F.R., Chapter II. Borrower does not own or intend to carry or purchase any "margin stock" within the meaning of said Regulation U.

(b) Borrower has obtained all licenses, permits, franchises or other governmental authorizations necessary for the ownership of its Property and for the conduct of its business.

(c) As of the date hereof, no employee benefit plan ("Pension Plan"), as defined in Section 3(2) of ERISA, maintained by Borrower or under which Borrower could have any liability under ERISA: (i) has failed to meet the minimum funding standards established in Section 302 of ERISA; (ii) has failed to comply in a material respect with all applicable requirements of ERISA and of the Internal Revenue Code, including all applicable rulings and regulations thereunder; (iii) has engaged in or been involved in a prohibited transaction under Section 406 of ERISA or Section 4975 of the Internal Revenue Code which would subject Borrower to any material liability; or (iv) has been terminated if such termination would subject Borrower to any material liability. Borrower has not assumed, or received notice of a claim asserted against Borrower for, withdrawal liability (as defined in Section 4207 of ERISA) with respect to any multi employer pension plan and is not a member of any Controlled Group (as defined in ERISA). Borrower has timely made all contributions when due with respect to any multi employer pension plan in which it participates and no event has occurred triggering a claim against Borrower for withdrawal liability with respect to any multi employer pension plan in which Borrower participates. All Employee Benefit Plans and multi employer pension plans in which Borrower participates are shown on Schedule 5.11(c) attached hereto.

(d) Borrower is not in violation of or receipt of written notice that it is in violation of any applicable statute, regulation or ordinance of the United States of America, or of any state, city, town, municipality, county or of any other jurisdiction, or of any agency, or department thereof, (including, without limitation, Environmental Laws or government procurement regulations), a violation of which causes or is reasonably likely to cause a Material Adverse Effect.

(e) Borrower (and each Guarantor) is current with all reports and documents required to be filed with any state or federal securities commission or similar agency and is in full compliance in all material respects with all applicable rules and regulations of such commissions.

5.12 Business Interruptions. Within five (5) years prior to the date hereof, none of the business, Property or operations of Borrower has been materially and adversely affected in any way by any casualty, strike, lockout, combination of workers, order of the United States of America, or any state or local government, or any political subdivision or agency thereof, directed against Borrower. There are no pending or, to Borrower's knowledge, threatened labor disputes, strikes, lockouts or similar occurrences or grievances affecting Borrower. No labor contract of Borrower is scheduled to expire prior to ~~December 1, 2015~~ May 16, 2019.

5.13 Names and Intellectual Property.

(a) Within five (5) years prior to the Closing Date, Borrower has not conducted business under or used any other name (whether corporate or assumed) except for the names shown on Schedule 5.13(a) attached hereto. Except to the extent that Borrower may conduct business under a name utilizing the word "Newtek" the ownership of which is with Parent, Borrower is the sole owner of all names listed on such Schedule 5.13(a) and any and all business done and all invoices issued in such trade names are Borrower's sales, business and invoices. Each trade name of Borrower, including business conducted under a name utilizing the word "Newtek", represents a division or trading style of Borrower and not a separate Subsidiary or Affiliate or independent entity.

(b) All trademarks, service marks, patents or copyrights which Borrower uses, plans to use or has a right to use are shown on Schedule 5.13(b) attached hereto and Borrower has the legal authority to use such intellectual property in the conduct of its business. Borrower is not in violation of any rights of any other Person with respect to such Property.

(c) Except as shown on Schedule 5.13(c) attached hereto: (i) Borrower does not require any copyrights, patents, trademarks or other intellectual property, or any license(s) to use any patents, trademarks or other intellectual property (other than software licenses generally available) in order to provide services to its customers in the ordinary course of business; and (ii) Lender will not require any copyrights, patents, trademarks or other intellectual property or any licenses to use the same in order to provide such services after the occurrence of an Event of Default.

5.14 Other Associations. Borrower has not engaged in, nor has it any interest in, any joint venture or partnership with any other Person except as shown on Schedule 5.14 attached hereto.

5.15 Environmental Matters. Except as shown on Schedule 5.15 attached hereto:

(a) To Borrower's knowledge after due inquiry, no Property presently owned, leased or operated by Borrower contains, or has previously contained, any Hazardous Substances in amounts or concentrations which (i) constitute or constituted a violation of, or (ii) could give rise to liability under, any Environmental Law.

(b) To Borrower's knowledge after due inquiry, Borrower is in compliance, and, for the duration of all applicable statutes of limitations periods, has been in compliance with all applicable Environmental Laws, and there is no contamination at, under or about any properties presently owned, leased, or operated by Borrower or violation of any Environmental Law with respect to such properties which could reasonably be expected to interfere with any of their continued operations or reasonably be expected to impair the fair saleable value thereof.

(c) Borrower has not received any notice of violation, alleged violation, non-compliance, liability or potential liability regarding environmental matters or compliance with Environmental Laws and Borrower has no knowledge that any such notice will be received or is being threatened.

(d) Hazardous Substances have not been transported or disposed of in a manner or to a location which are reasonably likely to give rise to liability of Borrower under any Environmental Law.

(e) No judicial proceeding or governmental or administrative action is pending, or to the knowledge of Borrower, threatened under any Environmental Law to which Borrower is, or to Borrower's knowledge will be, named as a party, nor are there any consent decrees or other decrees, consent orders, administrative orders or other orders, or other administrative or judicial requirements outstanding, the implementation of which is reasonably likely to have a Material Adverse Effect on Borrower's business, financial condition, Property or prospects under any Environmental Law.

5.16 Regulation O. No director, executive officer or principal shareholder of Borrower or any Guarantor is a director, executive officer or principal shareholder of Lender. For the purposes hereof the terms "director" "executive officer" and "principal shareholder" (when used with reference to Lender), have the respective meanings assigned thereto in Regulation O issued by the Board of Governors of the Federal Reserve System.

5.17 Capital Stock. The authorized and outstanding Capital Stock of Borrower is as shown on Schedule 5.17 attached hereto. All of the Capital Stock of Borrower has been duly and validly authorized and issued and is fully paid and non-assessable and has been sold and delivered to the holder thereof in compliance with, or under valid exemption from, all Federal and state Laws and the rules and regulations of all Governmental Authorities governing the sale and delivery of securities. Except for the rights and obligations shown on Schedule 5.17, there are no subscriptions, warrants, options, calls, commitments, rights or agreements by which Borrower or any of the shareholders of Borrower is bound relating to the issuance, transfer, voting or redemption of shares of its Capital Stock or any pre-emptive rights held by any Person with respect to the shares of Capital Stock of Borrower. Except as

shown on Schedule 5.17, Borrower has not issued any securities convertible into or exchangeable for shares of its Capital Stock or any options, warrants or other rights to acquire such shares or securities convertible into or exchangeable for such shares.

5.18 Solvency. After giving effect to the transactions contemplated under this Agreement, Borrower is solvent, is able to pay its debts as they become due, and has capital sufficient to carry on its business and all businesses in which it is about to engage, and now owns Property having a value both at fair valuation and at present fair salable value greater than the amount required to pay Borrower's debts. Borrower will not be rendered insolvent by the execution and delivery of this Agreement or any of the other Loan Documents executed in connection with this Agreement or by the transactions contemplated hereunder or thereunder.

5.19 Perfection and Priority. This Agreement and the other Loan Documents are effective to create in favor of Lender legal, valid, enforceable and perfected first priority Liens in all right, title and interest of Borrower in the Collateral, superior in right to any and all other Liens, existing or future.

5.20 Commercial Tort Claims. As of the Closing Date, Borrower is not a party to any Commercial Tort Claims, except as shown on Schedule 3.1(a) (xiv) attached hereto.

5.21 Letter of Credit Rights. As of the Closing Date, Borrower has no rights under an outstanding letter of credit, except as shown on Schedule 5.21 attached hereto.

5.22 Deposit Accounts. All deposit accounts of Borrower are shown on Schedule 5.22 attached hereto.

5.23 Preferred Lender Status. As of the Closing Date, Borrower has been approved as and continues to be a preferred lender under the SBA's Preferred Lender Program in accordance with the SBA Rules and Regulations. Borrower has not been advised, and has no reason to believe, that it will not continue to be such a preferred lender after the Closing Date.

## **SECTION VI. BORROWER'S AFFIRMATIVE COVENANTS**

Borrower covenants that until all of the Obligations are paid and satisfied in full, that:

6.1 Payment of Taxes and Claims. Borrower shall pay, before they become delinquent, all taxes, assessments and governmental charges, or levies imposed upon it, or upon Borrower's Property, and all claims or demands of materialmen, mechanics, carriers, warehousemen, landlords and other Persons, entitled to the benefit of statutory or common Law Liens which, in any case, if unpaid, would result in the imposition of a Lien upon its Property; provided, however, that Borrower shall not be required to pay any such tax, assessment, charge, levy, claim or demand if the amount, applicability or validity thereof, shall at the time, be contested in good faith and by appropriate proceedings by Borrower, and if Borrower shall have set aside on its books adequate reserves in respect thereof, if so required in accordance with GAAP; which deferment of payment is permissible so long as no Lien other than a Permitted Lien has been entered and Borrower's title to, and its right to use, its Property are not materially adversely affected thereby.

## 6.2 Maintenance of Properties and Corporate Existence.

(a) Property. Borrower shall maintain its Property in good condition (normal wear and tear excepted) make all necessary renewals, replacements, additions, betterments and improvements thereto and will pay and discharge when due the cost of repairs and maintenance to its Property, and will pay all rentals when due for all real estate leased by Borrower.

(b) Property Insurance, Public and Products Liability Insurance. Borrower shall maintain insurance (i) on all insurable tangible Property against fire, flood, casualty and such other hazards (including, without limitation, extended coverage, workmen's compensation, boiler and machinery, with inflation coverage by endorsement) and (ii) against public liability, product liability and business interruption, in each case in such amounts, with such deductibles and with such insurers as are customarily used by companies operating in the same industry and geographic area as Borrower. At or prior to Closing, Borrower shall furnish Lender with duplicate original policies of insurance or such other evidence of insurance as Lender may require, and any certificates of insurance shall be issued on Accord Form-27. In the event Borrower fails to procure or cause to be procured any such insurance or to timely pay or cause to be paid the premium(s) on any such insurance, Lender may do so for Borrower, but Borrower shall continue to be liable for the same. The policies of all such casualty insurance shall contain standard Lender's Loss Payable Clauses (and, with respect to liability and interruption insurance, additional insured clauses) issued in favor of Lender under which all losses thereunder shall be paid to Lender as Lender's interest may appear. Such policies shall expressly provide that the requisite insurance cannot be altered or canceled without thirty (30) days prior written notice to Lender and shall insure Lender notwithstanding the act or neglect of Borrower. With respect to any single claim which exceeds \$500,000 or any series of claims in any twelve month period which in the aggregate exceeds \$1,500,000, Borrower hereby appoints Lender as Borrower's attorney-in-fact, exercisable at Lender's option to endorse any check which may be payable to Borrower in order to collect the proceeds of such insurance and any amount or amounts collected by Lender pursuant to the provisions of this Section may be applied by Lender, in its sole discretion, to any Obligations or to repair, reconstruct or replace the loss of or damage to Collateral as Lender in its discretion may from time to time determine. Borrower further covenants that all insurance premiums owing under its current policies have been paid. Borrower shall notify Lender, immediately, upon Borrower's receipt of a notice of termination, cancellation, or non-renewal from its insurance company of any such policy. In addition Borrower shall, consistent with the requirements of the SBA, cause each SBA 7(a) Loan Obligor to maintain Borrower as a named as additional insured or loss payee, as appropriate, in all such policies.

(c) Financial Records. Borrower shall keep current and accurate books of records and accounts in which full and correct entries will be made of all of its business transactions, and will reflect in its financial statements adequate accruals and appropriations to reserves, all in accordance with GAAP. Borrower shall not change its Fiscal Year end date without the prior written consent of Lender.



(d) Corporate Existence and Rights. Borrower shall do (or cause to be done) all things necessary to preserve and keep in full force and effect its existence, good standing, rights and franchises.

(e) Compliance with Laws. Borrower shall be in compliance with any and all Laws, ordinances, governmental rules and regulations, and court or administrative orders or decrees to which it is subject, whether federal, state or local, (including, without limitation, Environmental Laws and government procurement regulations) and shall obtain any and all licenses, permits, franchises or other governmental authorizations necessary to the ownership of its Property or to the conduct of its businesses, which violation or failure to obtain causes or could cause a Material Adverse Effect. Borrower shall timely satisfy all assessments, fines, costs and penalties imposed (after exhaustion of all appeals, provided a stay has been put in effect during such appeal) by any Governmental Authority against Borrower or any Property of Borrower. Without limiting the foregoing, Borrower shall cause the Required Procedures, the SBA 7(a) Note Receivable Documents and all actions and transactions by Borrower in connection therewith (a) to comply with SBA Rules and Regulations, and (b) to comply with all other requirements of all applicable Laws except where the failure to comply with such other requirements of any applicable Law reasonably could not be expected to result in a Material Adverse Effect.

(f) Business Conducted. Borrower shall continue in the business presently operated by it using its best efforts to maintain its customers and goodwill. Borrower shall not engage, directly or indirectly, in any material respect in any line of business materially different from the businesses conducted by Borrower immediately prior to the Closing Date.

6.3 Litigation. Borrower shall give prompt notice to Lender of any litigation claiming in excess of One Hundred Thousand Dollars (\$100,000.00) from Borrower, or which is reasonably likely to have a Material Adverse Effect.

6.4 Issue Taxes. Borrower shall pay all taxes (other than taxes based upon or measured by any Lender's income or revenues or any personal property tax), if any, in connection with the issuance of the Notes and the recording of any lien documents. The obligations of Borrower hereunder shall survive the payment of Borrower's Obligations hereunder and the termination of this Agreement.

6.5 Bank Accounts. Borrower and each Guarantor shall maintain its primary depository and disbursement account(s) with Lender.

6.6 Employee Benefit Plans. Borrower shall (a) fund all of its Pension Plan(s) in a manner that will satisfy the minimum funding standards of Section 302 of ERISA, (b) furnish Lender, promptly upon Lender's request, with copies of all reports or other statements filed with the United States Department of Labor, the PBGC or the IRS with

respect to all Pension Plan(s), or which Borrower, or any member of a Controlled Group, may receive from the United States Department of Labor, the IRS or the PBGC, with respect to all such Pension Plan(s), and (c) promptly advise Lender of the occurrence of any reportable event (as defined in Section 4043 of ERISA, other than a reportable event for which the thirty (30) day notice requirement has been waived by the PBGC) or prohibited transaction (under Section 406 of ERISA or Section 4975 of the Internal Revenue Code) with respect to any such Pension Plan(s) and the action which Borrower proposes to take with respect thereto. Borrower will make all contributions when due with respect to any multi employer pension plan in which it participates and will promptly advise Lender upon (x) its receipt of notice of the assertion against Borrower of a claim for withdrawal liability, (y) the occurrence of any event which, to Borrower's knowledge, would trigger the assertion of a claim for withdrawal liability against Borrower, and (z) upon the occurrence of any event which, to Borrower's knowledge, would place Borrower in a Controlled Group as a result of which any member (including Borrower) thereof may be subject to a claim for withdrawal liability, whether liquidated or contingent.

#### 6.7 Financial Covenants.

(a) ~~Borrower shall cause Parent to at all times comply with the following financial covenants which shall be tested on Parent together with its consolidated Subsidiaries:~~ not permit its Debt Service Coverage Ratio at any time to be less than 1.25 to 1.00.

(i) ~~As at the last day of each Fiscal Quarter, Parent shall maintain a Fixed Charge Coverage Ratio of at least 1.50:1; and~~

(ii) ~~As of the last day of each Fiscal Quarter, Parent shall maintain a minimum EBITDA for the twelve (12) month period ending on each of the following dates of the following amounts: (A) as of the last day of each Fiscal Quarter during Fiscal Year 2011, \$7,000,000; (B) as of March 31, 2012, June 30, 2012 and September 30, 2012, \$7,500,000; and (C) as of the last day of each Fiscal Quarter thereafter, \$10,500,000; and~~

(iii) ~~There shall be at least \$4,000,000.00 in unrestricted cash on the consolidated balance sheet of the Parent at all times.~~

(b) ~~As of the last day of each Fiscal Quarter, Borrower shall maintain a minimum EBITDA for the twelve (12) month period ending on each of the following dates of the following amounts: (A) as of March 31, 2011 and June 30, 2011, \$2,200,000; (B) as of September 30, 2011 and December 31, 2011, \$2,400,000; (C) as of March 31, 2012, June 30, 2012 and September 30, 2012, \$2,600,000; and (D) as of the last day of each Fiscal Quarter thereafter, \$8,000,000;~~ such day of at least \$12,500,000.

(c) ~~Universal Processing Services of Wisconsin LLC (d/b/a Newtek Merchant Solutions) shall at all times comply with the following financial covenants which shall be tested on the basis of the results of the Electronic Payment Processing segment: as of the last day of each Fiscal Quarter, Universal Processing Services of Wisconsin LLC (d/b/a~~

Newtek Merchant Solutions) shall maintain a minimum EBITDA for the twelve (12) month period ending on each of the following dates of the following amounts: (A) as of March 31, 2011, June 30, 2011; \$5,000,000 (B) as of December 31, 2011, \$5,500,000; (B) as of March 31, 2012, June 30, 2012 and September 30, 2012, \$5,600,000; and (C) as of the last day of each Fiscal Quarter thereafter, \$6,800,000.

(d) As of the last day of each Fiscal Quarter, Crystaltech shall maintain a minimum EBITDA for the twelve (12) month period ending on each of the following dates of the following amounts: (A) as of the last day of each Fiscal Quarter through and including September 30, 2012, \$5,400,000; and (B) as of the last day of each Fiscal Quarter thereafter, \$4,000,000.

(c)(e) Borrower (on a stand-alone basis and without regard to the combination or consolidation of any Subsidiary or Affiliate otherwise permitted or required under GAAP) will have net income (as determined in accordance with GAAP except as provided in the parenthetical above) for each ~~fiscal quarter~~ Fiscal Quarter of Borrower of at least \$1.00.

6.8 Financial and Business Information; Other Reports. Borrower shall deliver or cause to be delivered to Lender the following:

(a) Financial Statements and Collateral Reports. Such data, reports, statements and information, financial or otherwise, as Lender may reasonably request, including, without limitation:

(i) (A) Within forty five (45) days after the end of each Fiscal Quarter (other than the last Fiscal Quarter in any Fiscal Year), financial information regarding Parent and its consolidated subsidiaries, certified by the Chief Financial Officer of Parent, consisting of consolidated (i) unaudited balance sheets as of the close of such Fiscal Quarter and the related statements of income and cash flows for that portion of the Fiscal Year ending as of the close of such Fiscal Quarter; (ii) unaudited statements of income and cash flows for such Fiscal Quarter, setting forth in comparative form the figures for the corresponding period in the prior year and on a trailing twelve month basis, and (iii) including an income statement for Parent on a consolidated basis by business segment as currently reported by Parent, all prepared in accordance with GAAP (subject to normal year-end adjustments) and (B) within forty five (45) days after the end of each Fiscal Quarter, the actual results of operations of Borrower for the Fiscal Quarter, compared to the Projections for such Fiscal Quarter.

(ii) Within ninety (90) days after the end of each Fiscal Year, audited financial statements for Parent and its Subsidiaries on a consolidated basis, consisting of balance sheets, cash flow statements and statements (including statements on a business segment basis) of income and retained earnings and, setting forth in comparative form in each case the figures for the previous Fiscal Year, which financial statements shall be prepared in accordance with GAAP and certified without qualification, by an independent certified public accounting firm of national standing and acceptable to Lender.

(iii) Within fifteen (15) days after the end of each Fiscal Month, Borrowing Base Certificates, which shall include, among other things, detailed reporting as to eligibility of Financed Guaranteed Loans and Financed Non-Guaranteed Loans.

(iv) Within forty five (45) days after the end of each Fiscal Quarter, financial information regarding Borrower and its consolidated subsidiaries, certified by the Chief Financial Officer of Borrower, consisting of consolidated (i) unaudited balance sheets as of the close of such Fiscal Quarter and the related statements of income and cash flows for that portion of the Fiscal Year ending as of the close of such Fiscal Quarter; (ii) unaudited statements of income and cash flows for such Fiscal Quarter, setting forth in comparative form the figures for the corresponding period in the prior year and on a trailing twelve month basis, and (iii) including an income statement for Borrower on a consolidated basis by business segment as currently reported by Parent, all as prepared in accordance with GAAP (subject to normal year-end adjustments).

(v) Within ninety (90) days after the end of each Fiscal Year, audited financial statements for Borrower and its Subsidiaries on a consolidated basis, consisting of balance sheets, cash flow statements and statements (including statements on a business segment basis) of income and retained earnings and, setting forth in comparative form in each case the figures for the previous Fiscal Year, which financial statements shall be prepared in accordance with GAAP and certified without qualification, by an independent certified public accounting firm of national standing and acceptable to Lender.

(vi) Within ninety (90) days after the end of each Fiscal Year, three-year projections for Parent and for Borrower, prepared in light of the past operations of their respective businesses, but including future payments of known contingent liabilities, prepared on a quarterly basis for the then current Fiscal Year and annually for the following two years ("Projections"). The Projections shall be based upon the same accounting principles as those used in the preparation of the financial statements described above and the estimates and assumptions stated therein, all of which Parent and Borrower each believe to be reasonable and fair in light of current conditions and current facts known to Parent and Borrower, as applicable, and reflect Parent's and Borrower's good faith and reasonable estimates of the future financial performance of Parent and Borrower, respectively, for the periods set forth therein.

(b) Management Letters. Within five (5) Business Days after receipt thereof by any Credit Party, copies of all management letters, exception reports or similar letters or reports received by such Credit Party from its independent certified public accountants.

(c) Governmental Reports. Borrower agrees that, if requested by Lender, it shall promptly furnish Lender with copies of all reports filed with any federal, state or local Governmental Authority.

(d) Notice of Event of Default. Promptly upon a director or executive officer of Borrower obtaining knowledge of the existence of any condition or event which

constitutes a Default or an Event of Default under this Agreement, Borrower shall provide Lender with a written notice specifying the nature and period of existence thereof and what action Borrower is taking (and proposes to take) with respect thereto.

(e) Notice of Claimed Default. Promptly upon receipt by Borrower of a notice of default, oral or written, given to Borrower by any creditor for Indebtedness for borrowed money, or otherwise holding long term Indebtedness of Borrower in excess of Fifty Thousand Dollars (\$50,000.00), Borrower shall give notice of the same to Lender.

(f) Securities and Other Reports. If Borrower shall be required to file reports with the Securities and Exchange Commission pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, Borrower shall promptly upon its becoming available, provide Lender with one copy of each financial statement, report, notice or proxy statement sent by Borrower to stockholders generally, and, a copy of each regular or periodic report, and any registration statement, or prospectus in respect thereof, filed by Borrower with any securities exchange or with federal or state securities and exchange commissions or any successor agency.

6.9 Officers' Certificates. Along with each set of financial statements and or reports delivered to Lender pursuant to Section 6.8 hereof, Borrower and each corporate Guarantor shall deliver to Lender a certificate ("Compliance Certificate") from the chief financial officer, chief executive officer or president of Borrower and each corporate Guarantor (and as to certificates accompanying the annual financial statements of Borrower and each corporate Guarantor, also certified by Borrower's independent certified public accountant) setting forth:

(a) Event of Default. That the signer has reviewed the relevant terms of this Agreement, and has made (or caused to be made under his/her supervision) a review of the transactions and conditions of Borrower and each corporate Guarantor from the beginning of the accounting period covered by the financial statements being delivered therewith to the date of the certificate, and that such review has not disclosed the existence during such period of any condition or event which constitutes a Default or an Event of Default or, if any such condition or event exists, specifying the nature and period of existence thereof and what action Borrower and/or each corporate Guarantor has taken or proposes to take with respect thereto.

(b) Covenant Compliance; The information (including detailed calculations) required in order to establish that Borrower is in compliance with the requirements of Section 6.7 of this Agreement, as of the end of the period covered by the financial statements delivered.

6.10 Audits and Inspection. Borrower shall permit any of Lender's officers or other representatives to visit and inspect upon reasonable notice during business hours any of the locations of Borrower, to examine and audit all of Borrower's books of account, records, reports and other papers, to make copies and extracts there from and to discuss its affairs, finances and accounts with its officers, employees and independent certified public

accountants all at Borrower's expense at the standard rates charged by Lender for such activities, plus Lender's reasonable out-of-pocket expenses (all of which amounts shall be Expenses). Borrower acknowledges that Lender intends to conduct such audits at least twice annually.

6.11 Blocked Account. On or before the Closing Date and until all Obligations have been fully and finally paid, Borrower shall establish a blocked account with Lender ("Blocked Account"), and deposit and/or shall cause to be deposited directly into such Blocked Account all payments swept from the Trust Account in a manner consistent with the Cash Management System.

6.12 Information to Participant. Lender may divulge to any participant, assignee or co-lender or prospective participant, assignee or co-lender it may obtain in the Loan or any portion thereof, all information, and furnish to such Person copies of any reports, financial statements, certificates, and documents obtained under any provision of this Agreement, or related agreements and documents.

6.13 Material Adverse Developments. Borrower agrees that immediately upon obtaining knowledge of any development or other information outside the ordinary course of business (and excluding matters of a general economic, financial or political nature) which would reasonably be expected to have a Material Adverse Effect it shall give to Lender telephonic notice specifying the nature of such development or information and such anticipated effect. In addition, such verbal communication shall be confirmed by written notice thereof to Lender on the same day such verbal communication is made or the next Business Day thereafter.

6.14 Places of Business. Borrower shall give thirty (30) days prior written notice to Lender of any changes in the location of any of their respective places of business, of the places where records concerning their Accounts or where its Inventory are kept, or the establishment of any new, or the discontinuance of any existing, place of business; provided that Borrower may not establish any place of business outside of the United States.

6.15 Commercial Tort Claims. Borrower will immediately notify Lender in writing in the event that Borrower becomes a party to or obtains any rights with respect to any Commercial Tort Claim. Such notification shall include information sufficient to describe such Commercial Tort Claim, including, but not limited to, the parties to the claim, the court in which the claim was commenced, the docket number assigned to such claim, if any, and a detailed explanation of the events that gave rise to the claim. Borrower shall execute and deliver to Lender all documents and/or agreements necessary to grant Lender a security interest in such Commercial Tort Claim to secure the Obligations. Borrower authorizes Lender to file (without Borrower's signature) initial financing statements or amendments, as Lender deems necessary to perfect its security interest in the Commercial Tort Claim.

6.16 Letter of Credit Rights. Borrower shall provide Lender with written notice of any letters of credit for which Borrower is the beneficiary. Borrower shall execute and deliver (or cause to be executed or delivered) to Lender, all documents and agreements as Lender may require in order to obtain and perfect its security interest in such letters of credit.

6.17 Inter-Company and Shareholder Loans. All inter-company loans to Borrower from a Guarantor or from any officer, director or employee, or affiliates shall be subordinate to this Loan pursuant to a subordination agreement in form and substance satisfactory to Lender.

6.18 Separateness Covenant. Borrower agrees and covenants that:

(a) Borrower will maintain Borrower's separate existence and identity and will take reasonable steps to make it apparent to third parties that Borrower is an entity with assets (in particular the Pledged Shares (as defined in the Pledge Agreement)) and liabilities distinct from those of each Guarantor.

(b) Not in limitation of the generality of the foregoing, Borrower agrees as follows:

(i) Borrower will not inadvertently commingle its assets in any material respects with those of any other Person and shall take all reasonable steps to maintain its assets in a manner that facilitates their identification and segregation from those of each Guarantor;

(ii) Borrower shall take all reasonable steps to prevent any of Borrower's funds from at any time being pooled with any funds of each Guarantor and shall not maintain joint bank accounts or other depository accounts to which Guarantors have access;

(iii) Borrower will conduct its business in its own name and from an office separate (or otherwise internally distinguishable) from that of Guarantors;

(iv) Borrower will maintain separate corporate records and books of account from those of any other Person;

(v) Borrower will maintain separate financial statements from those of any other Person; provided, however, financial information about Borrower may be contained in consolidated financial statements issued by Parent;

(vi) Borrower will pay its own liabilities, including the salaries of its own employees, consultants and agents and any liabilities referred to in clause (vii) below, from its own funds and bank accounts;

(vii) Borrower will compensate Guarantors at market rates for any services that such parties render to Borrower (which services may be evidenced on the financial statements of Borrower, Parent and other Affiliates of Borrower by the allocation of overhead by Parent or such other Affiliates of Borrower to Borrower); and

(viii) Borrower will observe the formalities of a ~~corporation~~ limited liability company in all material respects.

6.19 Borrower as Servicer. Borrower shall at its own expense service all of the SBA 7(a) Note Receivables, including (i) the billing, posting and maintaining of complete records applicable thereto, and (ii) subject to applicable SBA Rules and Regulations, the taking of such action with respect thereto as Borrower may deem advisable.

6.20 Negotiable Collateral. Borrower shall cause the original of each SBA 7(a) Loan Note to be delivered to FTA or such other Person designated in accordance with the Multi-Party Agreement and to be dealt with as provided therein. Subject to the Multi-Party Agreement, in the event that any other Collateral, including proceeds, is evidenced by or consists of collateral readily negotiable, and if and to the extent that perfection of priority of Lender's security interest is dependent on or enhanced by possession, Borrower, immediately upon the request of Lender, shall endorse and deliver physical possession of such negotiable collateral to Lender.

6.21 Collection of SBA 7(a) Note Receivables, Accounts, General Intangibles and Chattel Paper. Subject in each case to the Multi-Party Agreement, at any time after the occurrence and during the continuation of a Default or Event of Default under this Agreement or any other Loan Document, Lender or Lender's designee may (a) notify SBA 7(a) Loan Obligors or other obligors that SBA 7(a) Note Receivables, Accounts, Chattel Paper, or General Intangibles have been assigned to Lender or that Lender has a security interest therein, or (b) collect the SBA 7(a) Loan Receivables, Accounts, Chattel Paper or General Intangibles directly and charge the collection costs and expenses to the Loan Account. Subject in each case to the Multi-Party Agreement, Borrower agrees that it will hold in trust for Lender, as Lender's trustee, any payments with respect to or in connection with SBA 7(a) Note Receivables or SBA 7(a) Note Receivable Collateral that it receives and immediately will deliver said payments with respect to or in connection with SBA 7(a) Note Receivables or SBA 7(a) Note Receivable Collateral to a replacement servicer appointed or approved by the SBA or, at the request of Lender with the SBA's consent to Lender, in each case, in their original form as received by Borrower.

6.22 Records. Borrower shall maintain accurate and materially complete records regarding all SBA 7(a) Note Receivables, including without limitation all SBA 7(a) Note Receivables which have been guaranteed by the principals of the respective SBA 7(a) Loan Obligors; *provided* that in no event shall such records fail to comply with the requirements of the SBA Rules and Regulations.

6.23 Due Diligence. Borrower shall cooperate fully with Lender in connection with Lender's due diligence, from time to time, with respect to property proposed by Borrower as Collateral and SBA 7(a) Note Receivable Collateral. Lender shall be entitled to procure such appraisals, brokers' price opinions, lien search reports, tax filing reports, title reports, evaluations or other reports, certifications or information as it may require in connection with its evaluation or re-evaluation of any Collateral.



6.24 Multi-Party Agreement; Trust Account Agreement; Blocked Account Agreement. Borrower shall comply in a timely manner with all of its obligations and agreements under the Multi-Party Agreement, the Trust Account Agreement and the Blocked Account Agreement, including without limitation, providing complete and accurate instructions, in accordance with the terms of the Blocked Account Agreement.

6.25 REO Property. Promptly upon acquisition of any REO Property, the applicable Credit Party shall execute such deeds of trust, mortgages and other documentation with respect to such Credit Party's interest in such REO Property, and to the extent, if any, required by SBA Rules and Regulations, obtain and deliver or cause to be delivered to Lender, an appraisal that is compliant with the requirements of FIRREA, a mortgagee policy of title insurance, environmental report, engineering report or other documentation as Lender may reasonably request in connection therewith.

6.26 Foreclosure (or Deed in Lieu) Regarding SBA 7(a) Note Receivable Collateral. Borrower shall notify Lender of sending or recording any notice of default on a SBA 7(a) Note Receivable within fifteen (15) days of such sending or recording, and notify Lender thereof in writing with each Borrowing Base Certificate delivered to Lender. Borrower shall also notify Lender in writing with each Borrowing Base Certificate delivered to Lender, the date upon which any notice of foreclosure sale was recorded and the initial date set for related foreclosure sale. In the case of a notice of foreclosure sale, Borrower will also notify Lender in writing of the recordation of any related notice of trustee sale within five (5) days of recordation thereof, and include in such notice the date first set for sale. Promptly upon consummation of any such foreclosure or trustee sale, or any deed or bill of sale in lieu of foreclosure, retention of collateral in satisfaction of debt or similar transaction, Borrower shall deliver to Lender true and complete copies of all documentation executed (in the case of notices, postings and the like), or to be executed (in the case of deeds, bills of sale or other documents related to consummation of such transaction or transfer of such property), by Borrower in respect thereof. In the event Borrower intends or expects, by means of any such foreclosure, deed or bill of sale in lieu of foreclosure, retention of collateral in satisfaction of debt or similar transaction, to acquire title to any personal property included in the SBA 7(a) Note Receivable Collateral, Borrower shall, contemporaneously upon acquiring such title, execute and deliver to Lender such security agreements, financing statements or other documents as may be required by Lender in order to maintain Lender's interest therein (Borrower hereby appoints Lender as its attorney-in-fact, and grants Lender a special power of attorney, coupled with an interest, to execute any such security agreements, financing statements or other documents, in Borrower's name and on its behalf, and file and record same as required to perfect Lender's interest therein). If permitted by applicable SBA Rules and Regulations, Borrower will not acquire title to, or take possession of, any such real property unless Borrower has determined, based on an environmental site assessment prepared by a credentialed consultant acceptable to Lender who regularly conducts environmental audits, either that such real property, including all improvements thereon, is in compliance with all applicable Environmental Laws and that there are no circumstances present on such real property relating to the use, management or disposal of any Hazardous Materials for which investigation, testing, monitoring, containment, clean-up or remediation could be required under any Environmental Law, or that the cost of any such actions is justified and appropriate in relation to the liquidation value of such real property.

6.27 Eligible SBA 7(a) Note Receivables. With regard to Financed Guaranteed Loans and Financed Non-Guaranteed Loans: (a) each related SBA 7(a) Guaranteed Note Receivable and each related SBA 7(a) Non-Guaranteed Note Receivable, as applicable, will (i) represent bona fide existing obligations created by the lending of money by Borrower to SBA 7(a) Loan Obligors in the ordinary course of Borrower's business, (ii) be unconditionally owed to Borrower without defenses, disputes, offsets or counterclaims, or rights of return or cancellation and is secured by SBA 7(a) Note Receivable Collateral in accordance with the Required Procedures, and (iii) be documented on Approved Forms in accordance with the Required Procedures. Unless otherwise clearly disclosed to Lender in writing prior to submission to Lender for evaluation for eligibility, Borrower will not have received notice of (a) actual or imminent bankruptcy, insolvency, or material impairment of the financial condition of any SBA 7(a) Loan Obligor regarding any such SBA 7(a) Guaranteed Note Receivable or any such SBA 7(a) Non-Guaranteed Note Receivable or (b) actual or threatened litigation regarding the validity or enforceability of any such SBA 7(a) Guaranteed Note Receivable or any such SBA 7(a) Non-Guaranteed Note Receivable or the validity, enforceability or priority of any such SBA 7(a) Note Receivable Collateral. With respect to each such SBA 7(a) Guaranteed Note Receivable and each such Eligible SBA 7(a) Non-Guaranteed Note Receivable, Borrower will, no later than the respective funding date of the related Financed Guaranteed Loan or Financed ~~non~~Non-Guaranteed Loan, as applicable, have taken the steps required to perfect Borrower's Liens in any SBA 7(a) Note Receivable Collateral for such SBA 7(a) Guaranteed Note Receivable or such SBA 7(a) Non-Guaranteed Note Receivable, as applicable, against the applicable SBA 7(a) Loan Obligor in all applicable jurisdictions. Unless otherwise clearly disclosed to Lender in writing prior to or simultaneously with submission to Lender for evaluation for eligibility, Borrower represents that it will be the sole legal and beneficial owner of each such SBA 7(a) Guaranteed Note Receivable, and that no participation interest or other ownership interest (legal, beneficial or otherwise) has been sold or is otherwise outstanding with respect thereto.

6.28 Compliance. The Required Procedures, the SBA 7(a) Note Receivable Documents and all actions and transactions by Borrower in connection therewith will comply in all material respects with all Applicable Laws. Borrower covenants and agrees that each Financed Guaranteed Loan and each Financed Non-Guaranteed Loan shall comply with the following: (a) all conditions precedent to the effectiveness of the guaranty of the SBA and all other obligations of the SBA under Applicable Laws with respect thereto shall have been met; (b) Borrower shall have perfected its security interests and Liens in and to all underlying collateral; (c) it shall conform to all SBA Rules and Regulations; and (d) it shall have been originated by Borrower.

6.29 Intellectual Property. Borrower agrees as follows:

(iv) it will notify ~~the~~Lender immediately if it knows, or has reason to know, that any application or registration relating to any Intellectual Property may become forfeited, abandoned or dedicated to the public, or of any

adverse determination or development (including, without limitation, the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office, the United States Copyright Office or any court or tribunal in any country) regarding Borrower's ownership of, or the validity of, any Intellectual Property or Borrower's right to register the same or to own and maintain the same;

(v) whenever Borrower, either by itself or through any agent, employee, licensee or designee, shall file an application for the registration of any Intellectual Property with the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency in any other country or any political subdivision thereof, it shall report such filing to ~~the~~Lender within five (5) Business Days thereafter. Upon request of ~~the~~Lender, Borrower, promptly but in any event no later than three (3) Business Days after such request, will execute and deliver, and have recorded, any and all agreements, instruments, documents, and papers as ~~the~~Lender may request to evidence ~~the~~Lender's security interest in any Copyright, Patent or Trademark and the goodwill and general intangibles of Borrower relating thereto or represented thereby including, without limitation, a copyright security agreement, patent security agreement and/or a trademark security agreement in form and substance satisfactory to ~~the~~Lender for filing;

(vi) it will take all reasonable and necessary steps, including, without limitation, in any proceeding before the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency in any other country or any political subdivision thereof, to maintain and pursue each application relating to any Intellectual Property (and to obtain the relevant registration) and to maintain each registration of the Intellectual Property, including, without limitation, filing of applications for renewal, affidavits of use and affidavits of incontestability; and

(vii) in the event that any Intellectual Property is infringed, misappropriated or diluted by a third party, Borrower shall (i) take such actions as it shall reasonably deem appropriate under the circumstances to protect such Intellectual Property and (ii) if such Intellectual Property is of material economic value, promptly notify ~~the~~Lender after it learns thereof and sue for infringement, misappropriation or dilution, to seek injunctive relief where appropriate and to recover any and all damages for such infringement, misappropriation or dilution.

6.30 Payments and Modifications of Subordinated Debt. Borrower will not, and will not permit any other Person to: (a) declare, pay, make or set aside any amount for payment in respect of, (b) amend, modify or restate any of the terms of, or (c) enter into any refinancing of ~~(+)~~ any Subordinated Debt other than the prepayment of Subordinated Debt of one Credit Party owing to another Credit Party that is expressly permitted by the applicable Subordination Documents.

## SECTION VII. BORROWER'S NEGATIVE COVENANTS

Borrower covenants that until all of the Obligations are paid and satisfied in full and, that:

### 7.1 Merger, Consolidation, Dissolution or Liquidation.

(a) Borrower shall not engage in any Asset Sale other than: (i) Inventory sold in the ordinary course of Borrower's business; (ii) equipment that is replaced by other equipment of comparable or superior quality and value within ninety (90) days of such Asset Sale; (iii) a sale of property in one transaction or a series of transactions with a fair market value of less than One Hundred Thousand Dollars (\$100,000) during any six month period; or (iv) Permitted Dispositions.

(b) Borrower shall not merge or consolidate with any other Person or commence a dissolution or liquidation.

7.2 Acquisitions. Borrower shall not acquire all or a material portion of the Capital Stock or assets of any Person in any transaction or in any series of related transactions or enter into any sale and leaseback transaction.

7.3 Liens and Encumbrances. Borrower shall not: (i) execute a negative pledge agreement with any Person covering any of its Property; or (ii) cause or permit or agree or consent to cause or permit in the future (upon the happening of a contingency or otherwise), its Property (including, without limitation, the Collateral), whether now owned or hereafter acquired, to be subject to a Lien or be subject to any claim except for Permitted Liens.

7.4 Transactions With Affiliates or Subsidiaries. Borrower shall not enter into any transaction with any Subsidiary or other Affiliate, including, without limitation, the purchase, sale, or exchange of Property, ~~or the provision of administrative or other similar services to or by Borrower in the ordinary course of business,~~ the loaning or giving of funds to any Affiliate or any Subsidiary, or the borrowing or receipt of funds from any Affiliate or Subsidiary, in each case unless: (i) (A) except with regard to loans or advances to Borrower by either the Permitted Capcos or by Parent expressly permitted under the Loan Documents, such Subsidiary or Affiliate is engaged in a business substantially related to the business conducted by Borrower, and (B) except with regard to loans or advances to Borrower by either the Permitted Capcos or by Parent expressly permitted under the Loan Documents, the transaction is in the ordinary course of Borrower's business (but nevertheless such loans or advances to Borrower by either the Permitted Capcos or by Parent must be consistent with past practices), and, in each case, pursuant to the reasonable requirements of Borrower's business and upon terms substantially the same and no less favorable to Borrower as it would obtain in a comparable arm's length transactions with any Person not an Affiliate or a Subsidiary, and so long as such transaction is not prohibited hereunder; (ii) such transaction is intended for incidental administrative purposes; or (iii) it is a dividend-~~or other Restricted Payment permitted by this Agreement;~~ provided, that with respect to each such transaction, any and all Inter-Company Obligations are at all times fully subordinated to Lender pursuant

to Subordination Documents. Borrower has previously provided to Lender a true, complete and correct schedule of all transactions between or among Borrower and any Subsidiary or other Affiliate of Borrower existing on the date of the First Amendment to Loan Documents dated as of June 18, 2015 between Borrower and Lender.

7.5 Guarantees. Excepting the endorsement in the ordinary course of business of negotiable instruments for deposit or collection (and the joint obligations to Lender hereunder), Borrower shall not become or be liable, directly or indirectly, primary or secondary, matured or contingent, in any manner, whether as guarantor, surety, accommodation maker, or otherwise, for the existing or future Indebtedness of any kind of any Person.

7.6 Distributions, Bonuses and Other Indebtedness. Borrower shall not: (i) declare or pay any cash bonus compensation to its officers if an Event of Default exists or would result from the payment thereof; (ii) incur, become liable for or suffer to exist any Indebtedness other than Permitted Indebtedness; (iii) make any prepayments on any existing or future Indebtedness (other than the Obligations and other than as to any subordinated Indebtedness to the extent permitted by the Subordination Documents applicable to such subordinated Indebtedness); or ~~(iv) make any Restricted Payments other than as permitted by clause (b)(v) of the definition of Permitted Investments, except that Borrower may declare and pay dividends and distributions to Parent if (a) both at the time of such declaration and payment, and after giving effect to such declaration and payment, no Default or Event of Default shall have occurred and is continuing and (b) the aggregate amount of such dividends and distributions made in respect of each Fiscal Year shall not exceed 100% of such Borrower's net income (on a stand-alone basis and without regard to the combination or consolidation of any Subsidiary or Affiliate otherwise permitted or required under GAAP, but otherwise determined in accordance with GAAP) for such Fiscal Year.~~

7.7 Loans and Investments. Borrower shall not make or have outstanding loans, advances, extensions of credit, capital contributions or other Investments in or to any Person other than (i) Permitted Investments, and (ii) SBA 7(a) Loans and other SBA loans, in each case (a) that are originated by Borrower in the ordinary course of Borrower's business, (b) that are in compliance with and conform to the Required Procedures and the SBA Rules and Regulations and in all material respects with all other Applicable Laws, (c) as to which Borrower shall have perfected its security interests and Liens in and to all underlying collateral, and (d) to the extent applicable, that otherwise meet the requirements applicable thereto set forth in the Loan Documents.

7.8 Use of Lenders' Name. Borrower shall not use Lender's name in connection with any of its business operations. Nothing herein contained is intended to permit or authorize Borrower to make any contract on behalf of Lender.

#### 7.9 Miscellaneous Covenants.

(a) Borrower shall not become or be a party to any contract or agreement which at the time of becoming a party to such contract or agreement materially impairs Borrower's ability to perform under this Agreement, or under any other instrument, agreement or document to which Borrower is a party or by which it is or may be bound.

(b) Borrower shall not carry or purchase any “margin stock” within the meaning of Regulations U, T or X of the Board of Governors of the Federal Reserve System, 12 C.F.R., Chapter II.

7.10 Jurisdiction of Organization. Borrower shall not change its jurisdiction of organization.

## **SECTION VIII. DEFAULT**

8.1 Events of Default. Each of the following events shall constitute an event of default (“Event of Default”):

(a) Payments. If Borrower fails to make any payment of principal or interest (including, without limitation, mandatory prepayments pursuant to Section 2.5(d) hereof) under the Obligations on the date such payment is due and payable; or

(b) Other Charges. If Borrower fails to pay any other charges, fees, Expenses or other monetary obligations owing to Lender arising out of or incurred in connection with this Agreement within five (5) Business Days after the date such payment is due and payable; or

(c) Particular Covenant Defaults. If Borrower fails any covenant or undertaking contained in this Agreement and (other than with respect to the covenants contained in Sections 2.1(b)(v), 6.7 and 7 for which no cure period shall exist other than as set forth in 8.1(d) below), such failure continues for ten (10) Business Days after the occurrence thereof;

(d) Financial Covenant Defaults. Subject to the Limitation in Section 8.7 below, if Borrower fails to perform, comply with or observe with respect to the covenants contained in Section 6.7, and such failure continues for five (5) Business Days after the occurrence thereof;

(e) Financial Information. If any statement, report, financial statement, or certificate made or delivered by Borrower or any of its officers, employees or agents, to Lender is not true and correct, in all material respects, when made; or

(f) Delivery of SBA 7(a) Loan Notes. Borrower shall not deliver any SBA 7(a) Loan Note to FTA pursuant to the Multi-Party Agreement by the close of business on the fifth Business Day after the funding date of any Financed Guaranteed Loan or Financed Non-Guaranteed loan, as the case may be.

(g) Uninsured Loss. If there shall occur any uninsured damage to or loss, theft, or destruction in excess of One Hundred Thousand Dollars (\$100,000.00) in the aggregate with respect to any portion of any Property of Borrower for which Borrower has not established a cash or cash equivalent reserve in the full amount of such loss; or

(h) Warranties or Representations. If any warranty, representation or other statement by or on behalf of Borrower contained in or pursuant to this Agreement, the other Loan Documents or in any document, agreement or instrument furnished in compliance with, relating to, or in reference to this Agreement, is false, erroneous, or misleading in any material respect when made; or

(i) Agreements with Others. (A) Borrower shall default beyond any grace period in the payment of principal or interest of any Indebtedness of Borrower (other than with respect to the Obligations) in excess of Twenty Five Thousand Dollars (\$25,000.00) in the aggregate; or (B) if Borrower otherwise shall default under the terms of any such other Indebtedness if the effect of such default is to enable the holder of such Indebtedness to accelerate the payment of Borrower's obligations, which are the subject thereof, prior to the maturity date or prior to the regularly scheduled date of payment;

(j) Other Agreements with Lender. If Borrower or any Guarantor breaches or violates the terms of, or if a default (and expiration of any applicable cure period), or an Event of Default, occurs under, any Interest Hedging Instrument or any other existing or future agreement (related or unrelated) (including, without limitation, the other Loan Documents) between Borrower or any Guarantor, on the one hand, and Lender on the other hand; or

(k) Judgments. If any final judgment for the payment of money in excess of One Hundred Thousand Dollars (\$100,000.00) in the aggregate (i) which is, in the reasonable opinion of Lender, not fully covered by insurance or (ii) for which Borrower has not established a cash or cash equivalent reserve in the full amount of such judgment, shall be rendered by a court of record against Borrower and such judgment shall continue unsatisfied and in effect for a period of thirty (30) consecutive days without being vacated, discharged, satisfied or bonded pending appeal; or

(l) Assignment for Benefit of Creditors, etc. If Borrower makes or proposes in writing, an assignment for the benefit of creditors generally, offers a composition or extension to creditors, or makes or sends notice of an intended bulk sale of any business or assets now or hereafter owned or conducted by Borrower; or

(m) Bankruptcy, Dissolution, etc. Upon the commencement of any action for the dissolution or liquidation of Borrower, or the commencement of any proceeding to avoid any transaction entered into by Borrower, or the commencement of any case or proceeding for reorganization or liquidation of Borrower's debts under the Bankruptcy Code or any other state or federal Law, now or hereafter enacted for the relief of debtors, whether instituted by or against Borrower; provided, however, that Borrower shall have forty-five (45) days to obtain the dismissal or discharge of involuntary proceedings filed against it, it being understood that during such forty-five (45) day period, Lender shall not be obligated to make Advances hereunder and Lender may seek adequate protection in any bankruptcy proceeding; or

- (n) Receiver. Upon the appointment of a receiver, liquidator, custodian, trustee or similar official or fiduciary for Borrower or for Borrower's Property; or
- (o) Execution Process, etc. The issuance of any execution or distraint process against any Property of Borrower; or
- (p) Termination of Business. If Borrower ceases any material portion of its business operations as presently conducted; or
- (q) Pension Benefits, etc. If Borrower fails to comply with ERISA so that proceedings are commenced to appoint a trustee under ERISA to administer Borrower's employee plans or the PBGC institutes proceedings to appoint a trustee to administer such plan(s), or a Lien is entered to secure any deficiency or claim or a "reportable event" as defined under ERISA occurs; or
- (r) Investigations. A determination by Lender that it is reasonable to conclude, based on one or more events which have occurred, such as an indictment, announcement of formal investigation or similar event, that Borrower is engaged, directly or indirectly, in any type of activity which would reasonably be likely to result in the forfeiture of property of Borrower to any governmental entity, federal, state or local, in an amount or of a value which would be material to Borrower's financial condition or business; or
- (s) Guaranty Agreements and Guarantor Security Agreements. If any breach or default occurs under a Guaranty Agreement or a Guarantor Security Agreement, or if a Guaranty Agreement or a Guarantor Security Agreement, or any obligation to perform thereunder, is terminated; or
- (t) Liens. If any Lien in favor of Lender shall cease to be valid, enforceable and perfected and prior to all other Liens other than Permitted Liens or if Borrower or any Governmental Authority shall assert any of the foregoing; or
- (u) Material Adverse Effect. If there is any change in Borrower's or any Guarantor's financial condition which, in Lender's reasonable good faith opinion, has or would be reasonably likely to have a Material Adverse Effect, or
- (v) Other Loan Documents. If any other Person (other than Lender) party to a Loan Document, breaches or violates any material (as determined by Lender) term, provision or condition of such Loan Document;
- (w) Enforceability of Loan Documents. Any of the Loan Documents shall for any reason fail to constitute the valid and binding agreement of any Credit Party thereto, or any such Credit Party shall so assert; or



(x) SBA Status. If Borrower shall lose, or have any material limitation imposed upon, its authority to process, close, service, collect enforce or liquidate any SBA 7(a) Loans, which material limitation may not include the loss of Borrower's status as a lender under the SBA Preferred Lender Program.

8.2 Cure. Nothing contained in this Agreement or the Loan Documents shall be deemed to compel Lender to accept a cure of any Event of Default hereunder.

### 8.3 Rights and Remedies on Default.

(a) In addition to all other rights, options and remedies granted or available to Lender under this Agreement or the Loan Documents (each of which is also then exercisable by Lender), or otherwise available at Law or in equity, upon or at any time after the occurrence and during the continuance of an Event of Default Lender may, in its discretion, cease making Advances hereunder, terminate the Loan and declare the Obligations immediately due and payable, all without demand, notice, presentment or protest or further action of any kind (it also being understood that the occurrence of any of the events or conditions set forth in Sections 8.1(~~k~~),(~~l~~)-~~o~~ (m) or (n) shall automatically cause an acceleration of the Obligations).

(b) In addition to all other rights, options and remedies granted or available to Lender under this Agreement or the Loan Documents (each of which is also then exercisable by Lender), or otherwise available at Law or in equity, upon or at any time after the acceleration of the Obligations following the occurrence of an Event of Default (other than the rights with respect to clause (iv) below which Lender may exercise at any time after an Event of Default and regardless of whether there is an acceleration), Lender may, in its discretion, exercise all rights under the UCC and any other applicable Law or in equity, and under all Loan Documents permitted to be exercised after the occurrence of an Event of Default, including the following rights and remedies (which list is given by way of example and is not intended to be an exhaustive list of all such rights and remedies):

(i) the right to take possession of, send notices regarding and collect directly the Collateral, with or without judicial process (including without limitation the right to notify the United States postal authorities to redirect mail addressed to Borrower to an address designated by Lender); or

(ii) by its own means or with judicial assistance, enter Borrower's premises and take possession of the Collateral, or render it unusable, or dispose of the Collateral on such premises in compliance with subsection (e) below, without any liability for rent, storage, utilities or other sums, and Borrower shall not resist or interfere with such action; or

(iii) require Borrower at Borrower's expense to assemble all or any part of the Collateral (other than real estate or fixtures) and make it available to Lender at any place designated by Lender; or

(iv) take additional reserves against the Borrowing Base; or

(v) the right to enjoin any violation of Section 7.1, it being agreed that Lender's remedies at Law are inadequate.

(c) Borrower hereby agrees that a notice received by it at least seven (7) days before the time of any intended public sale or of the time after which any private sale or other disposition of the Collateral is to be made, shall be deemed to be reasonable notice of such sale or other disposition. If permitted by applicable Law, any perishable inventory or Collateral which threatens to speedily decline in value or which is sold on a recognized market may be sold immediately by Lender without prior notice to Borrower. Borrower covenants and agrees not to interfere with or impose any obstacle to Lender's exercise of its rights and remedies with respect to the Collateral, after the occurrence of an Event of Default hereunder. Lender shall have no obligation to clean up or prepare the Collateral for sale. If Lender sells any of the Collateral upon credit, Borrower will only be credited with payments actually made by the purchaser thereof, that are received by Lender. Lender may, in connection with any sale of the Collateral specifically disclaim any warranties of title or the like.

8.4 Nature of Remedies. All rights and remedies granted Lender hereunder and under the Loan Documents, or otherwise available at Law or in equity, shall be deemed concurrent and cumulative, and not alternative remedies, and Lender may proceed with any number of remedies at the same time until all Obligations are satisfied in full. The exercise of any one right or remedy shall not be deemed a waiver or release of any other right or remedy, and Lender, upon or at any time after the occurrence of an Event of Default, may proceed against Borrower, at any time, under any agreement, with any available remedy and in any order.

8.5 Set-Off. If any bank account of Borrower with Lender or any participant is attached or otherwise liened or levied upon by any third party, Lender (and such participant) shall have and be deemed to have, without notice to Borrower, the immediate right of set-off and may apply the funds or amount thus set-off against any of Borrower's Obligations hereunder.

#### 8.6 Limitation on Remedies.

~~(a) Notwithstanding, anything else to the contrary contained herein, with respect to an Event of Default under Section 6.7 hereof, Lender agrees that it shall not be entitled to exercise its rights under Section 8.3(a) or 8.3(b), provided, that Lender is expressly permitted to take additional Reserves against Availability, or to impose the Default Rate on the Loan. The foregoing limitation shall not apply if there shall have occurred any other Event of Default hereunder in which case Lender's right of action shall not be impaired. Furthermore during such Event of Default nothing shall be deemed to limit Lender's right to pursue any action against any Guarantor.~~

(b) Notwithstanding any provision of Section 8.3(a) and (b), any exercise of the rights and remedies of Lender solely as it relates to the Loans and Borrower under Section 8.3(a) and (b) may be subject to the provisions of the Multi-Party Agreement.

## SECTION IX. MISCELLANEOUS

9.1 Governing Law. THIS AGREEMENT, AND ALL RELATED AGREEMENTS AND DOCUMENTS, SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW (OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW). THE PROVISIONS OF THIS AGREEMENT AND ALL OTHER AGREEMENTS AND DOCUMENTS REFERRED TO HEREIN ARE TO BE DEEMED SEVERABLE, AND THE INVALIDITY OR UNENFORCEABILITY OF ANY PROVISION SHALL NOT AFFECT OR IMPAIR THE REMAINING PROVISIONS WHICH SHALL CONTINUE IN FULL FORCE AND EFFECT.

9.2 Integrated Agreement. The Notes, the other Loan Documents, all related agreements, and this Agreement shall be construed as integrated and complementary of each other, and as augmenting and not restricting Lender's rights and remedies. If, after applying the foregoing, an inconsistency still exists, the provisions of this Agreement shall constitute an amendment thereto and shall control.

9.3 Waiver. No omission or delay by Lender in exercising any right or power under this Agreement or any related agreements and documents will impair such right or power or be construed to be a waiver of any Default, or Event of Default or an acquiescence therein, and any single or partial exercise of any such right or power will not preclude other or further exercise thereof or the exercise of any other right, and as to Borrower no waiver will be valid unless in writing and signed by Lender and then only to the extent specified.

### 9.4 Indemnity.

(a) Borrower releases and shall indemnify, defend and hold harmless Lender and its respective officers, employees and agents, of and from any claims, demands, liabilities, obligations, judgments, injuries, losses, damages and costs and expenses (including, without limitation, reasonable legal fees) resulting from (i) acts or conduct of Borrower under, pursuant or related to this Agreement and the other Loan Documents, (ii) Borrower's breach or violation of any representation, warranty, covenant or undertaking contained in this Agreement or the other Loan Documents, (iii) Borrower's failure to comply with any or all Laws, statutes, ordinances, governmental rules, regulations or standards, whether federal, state or local, or court or administrative orders or decrees, (including without limitation Environmental Laws, etc.), and (iv) any claim by any other creditor of Borrower against Lender arising out of any transaction whether hereunder or in any way related to the Loan Documents and all costs, expenses, fines, penalties or other damages resulting there from, unless resulting solely from acts or conduct of Lender constituting willful misconduct or gross negligence.

(b) Promptly after receipt by an indemnified party under subsection (a) above of notice of the commencement of any action by a third party, such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under such subsection, notify the indemnifying party in writing of the commencement thereof. The omission so to notify the indemnifying party shall relieve the indemnifying party from any liability which it may have to any indemnified party under such subsection only if the indemnifying party is unable to defend such actions as a result of such failure to so notify. In case any such action shall be brought against any indemnified party and it shall notify the indemnifying party of the commencement thereof, the indemnifying party shall be entitled to participate therein and, to the extent that it shall wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel satisfactory to such indemnified party (who shall not, except with the consent of the indemnified party, be counsel to the indemnified party), and, after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party shall not be liable to such indemnified party under such subsection for any legal expenses of other counsel or any other expenses, in each case subsequently incurred by such indemnified party, in connection with the defense thereof other than reasonable costs of investigation.

9.5 Time. Whenever Borrower shall be required to make any payment, or perform any act, on a day which is not a Business Day, such payment may be made, or such act may be performed, on the next succeeding Business Day. Time is of the essence in Borrower's performance under all provisions of this Agreement and all related agreements and documents.

9.6 Expenses of Lender. At the Closing and from time to time thereafter, Borrower will pay within five (5) Business Days of receipt of written demand of Lender all reasonable costs, fees and expenses of Lender in connection with (i) the analysis, negotiation, preparation, execution, administration, delivery and termination of this Agreement, and other Loan Documents and the documents and instruments referred to herein and therein, and any amendment, amendment and restatement, supplement, waiver or consent relating hereto or thereto, whether or not any such amendment, amendment and restatement, supplement, waiver or consent is executed or becomes effective, search costs, the reasonable fees, expenses and disbursements of counsel for Lender, any fees or expenses incurred by Lender under Section 6.10 for which Borrower are obligated thereunder, and reasonable charges of any independent appraisers and consultants to Lender (and without limiting the generality of all of the foregoing, the costs and expenses in connection with the creation and perfection of the Liens created by this Agreement and the other Loan Documents, including title investigations, Lien searches and other costs and expenses); (ii) the enforcement of Lender's rights hereunder, or the collection of any payments owing from, Borrower under this Agreement and/or the other Loan Documents or the protection, preservation or defense of the rights of Lender hereunder and under the other Loan Documents; and (iii) any refinancing or restructuring of the credit arrangements provided under this Agreement and other Loan Documents in the nature of a "work-out" or arising in connection with any insolvency or bankruptcy proceedings (including any action Lender deems necessary to protect its interest in such proceedings, or otherwise (including the reasonable fees and disbursements of counsel for Lender and, with respect to clauses (ii) and (iii), reasonable allocated costs of internal counsel)) (collectively, the "Expenses").

9.7 Brokerage. This transaction was brought about and entered into by Lender and Borrower acting as principals and without any brokers, agents or finders being the effective procuring cause hereof. Borrower represents that it has not committed Lender to the payment of any brokerage fee, commission or charge in connection with this transaction. If any such claim is made on Lender by any broker, finder or agent or other person alleging that it is based on actions of Borrower, a Guarantor or any affiliate, officer director or employee of either of them, Borrower hereby indemnifies, defends and saves such party harmless against such claim and further will defend, with counsel satisfactory to Lender, any action or actions to recover on such claim, at Borrower's own cost and expense, including such party's reasonable counsel fees. Borrower further agree that until any such claim or demand is adjudicated in such party's favor, the amount demanded shall be deemed an Obligation of Borrower under this Agreement.

9.8 Notices.

(a) Any notices or consents required or permitted by this Agreement shall be in writing and shall be deemed given if delivered in person to the person listed below or by nationally recognized overnight courier, as follows, unless such address is changed by written notice hereunder:

If to Lender to: Capital One, National Association  
~~1001299 Park Avenue of the Americas~~  
New York, NY ~~10018~~10171  
Attention: James Wohn and Patrick J. McCarthy  
Senior Vice ~~President~~Presidents

With a copy to Bank Counsel: Troutman Sanders LLP  
~~The Chrysler Building~~  
~~405 Lexington~~875 Third Avenue  
New York, NY ~~10174~~10022  
Attention: William D. Freedman, Esq.

If to Borrower to: Newtek Small Business Finance, ~~Inc.~~LLC  
60 Hempstead Avenue  
~~212 West 35th Street, 2nd Floor~~West  
Hempstead, NY 11552  
~~New York, NY 10001~~  
Attention: Peter Downs, President

With a copy to Borrower Counsel: Legal Department  
Newtek Business Services, ~~Inc.~~Corp.  
212 West 35th Street, 2nd Floor  
New York, NY 10001

(b) Any notice sent by Lender, or Borrower by any of the above methods shall be deemed to be given when so received. Failure to send a copy to counsel shall not invalidate any notice otherwise properly given.

(c) All parties shall be fully entitled to rely upon any telecopy transmission or other writing purported to be sent by any Authorized Officer (whether requesting an Advance or otherwise) as being genuine and authorized.

9.9 Headings. The headings of any paragraph or Section of this Agreement are for convenience only and shall not be used to interpret any provision of this Agreement.

9.10 Survival. All warranties, representations, and covenants made by Borrower herein, or in any agreement referred to herein or on any certificate, document or other instrument delivered by it or on its behalf under this Agreement, shall be considered to have

been relied upon by Lender, and shall survive the delivery to Lender of the Notes, regardless of any investigation made by Lender or on its behalf. All statements in any such certificate or other instrument prepared and/or delivered for the benefit of Lender shall constitute warranties and representations by Borrower hereunder. Except as otherwise expressly provided herein, all covenants made by Borrower hereunder or under any other agreement or instrument shall be deemed continuing until all Obligations are satisfied in full. All indemnification obligations under this Agreement, including, without limitation, under Section 6.4, 9.4 and 9.7, shall survive the termination of this Agreement and payment of the Obligations for a period of two (2) years.

9.11 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties. Borrower may not transfer, assign or delegate any of its duties or obligations hereunder. Borrower acknowledges and agrees that Lender may at any time, and from time to time, (a) sell participating interests in the Loan, and Lender's rights hereunder to other financial institutions, and (b) sell, transfer, or assign the Loan and Lender's rights hereunder, to any one or more additional banks or financial institutions, subject (as to Lender's rights under this clause (b)) to Borrower's written consent, which consent shall not be unreasonably withheld; provided that, no consent under this clause (b) shall be required if an Event of Default exists at the time of such sale, transfer or assignment.

9.12 Counterparts. Two or more duplicate originals of this Agreement may be signed by the parties, each of which shall be an original but all of which together shall constitute one and the same instrument.

9.13 Modification. No modification hereof or any agreement referred to herein shall be binding or enforceable unless in writing and signed by both Borrower and Lender.

9.14 Signatories. Each individual signatory hereto represents and warrants that he is duly authorized to execute this Agreement on behalf of his principal and that he executes the Agreement in such capacity and not as a party.

9.15 Third Parties. No rights are intended to be created hereunder, or under any related agreements or documents for the benefit of any third party donee, creditor or incidental beneficiary of Borrower. Nothing contained in this Agreement shall be construed as a delegation to Lender of Borrower's duty of performance, including, without limitation, Borrower's duties under any account or contract with any other Person.

9.16 Discharge of Taxes, Borrower's Obligations, Etc. Lender, in its sole discretion, shall have the right at any time, and from time to time, with at least ten (10) days prior notice to Borrower if Borrower fail to do so, to: (a) pay for the performance of any of Borrower's obligations hereunder, and (b) discharge taxes or Liens, at any time levied or placed on Borrower's Property in violation of this Agreement unless Borrower is in good faith with due diligence by appropriate proceedings contesting such taxes or Liens and maintaining proper reserves therefor in accordance with GAAP. Expenses and advances shall be added to the Loan, and bear interest at the rate applicable to the Loan, until reimbursed to Lender. Such payments and advances made by Lender shall not be construed as a waiver by Lender of a Default or Event of Default under this Agreement.

9.17 Withholding and Other Tax Liabilities. In the event that any Lien, assessment or tax liability against Borrower shall arise in favor of any taxing authority, whether or not notice thereof shall be filed or recorded as may be required by Law, Lender shall have the right (but shall not be obligated, nor shall Lender hereby assume the duty) to pay any such Lien, assessment or tax liability by virtue of which such charge shall have arisen; provided, however, that Lender shall not pay any such tax, assessment or Lien if the amount, applicability or validity thereof is being contested in good faith and by appropriate proceedings by Borrower. In order to pay any such Lien, assessment or tax liability, Lender shall not be obliged to wait until such lien, assessment or tax liability is filed before taking such action as hereinabove set forth. Any sum or sums which Lender shall have paid for the discharge of any such Lien shall be added to the Loan and shall be paid by Borrower to Lender with interest thereon at the rate applicable to the Loan, upon demand, and Lender shall be subrogated to all rights of such taxing authority against Borrower.

9.18 Consent to Jurisdiction. Borrower and Lender each hereby irrevocably consent to the non-exclusive jurisdiction of the federal and state courts located in the City of New York, Borough of Manhattan in any and all actions and proceedings whether arising hereunder or under any other agreement or undertaking. Borrower waives any objection which Borrower may have based upon lack of personal jurisdiction, improper venue or forum non conveniens. Borrower irrevocably agrees to service of process by certified mail, return receipt requested to the address of the appropriate party set forth herein.

9.19 Additional Documentation. Borrower shall execute and/or re-execute, and cause any Guarantor or other Person party to any Loan Document, to execute and/or re-execute and to deliver to Lender or Lender's counsel, as may be deemed appropriate, any document or instrument signed in connection with this Agreement which reflects manifest error in its drafting or incorrectly drafted and/or signed, as well as any document or instrument which should have been signed at or prior to the Closing, but which was not so signed and delivered. Borrower agrees to comply with any written request by Lender within ten (10) days after receipt by Borrower of such request.

#### 9.20 Advertisement.

(a) Lender, in its sole discretion, shall have the right to announce and publicize the financing established hereunder, as it deems appropriate, by means and media selected by Lender. Such publication shall include all pertinent information relating to such financing, including without limitation, the term, purpose, pricing, loan amount, and name of Borrower.

(b) The form and content of the published information shall be in the sole discretion of Lender and shall be considered the sole and exclusive property of Lender. All expenses related to publicizing the financing shall be the sole responsibility of Lender.



9.21 **Waiver of Jury Trial.** BORROWER AND LENDER EACH HEREBY WAIVE ANY AND ALL RIGHTS IT MAY HAVE TO A JURY TRIAL IN CONNECTION WITH ANY LITIGATION, PROCEEDING OR COUNTERCLAIM ARISING WITH RESPECT TO RIGHTS AND OBLIGATIONS OF THE PARTIES HERETO OR UNDER THE LOAN DOCUMENTS OR WITH RESPECT TO ANY CLAIMS ARISING OUT OF ANY DISCUSSIONS, NEGOTIATIONS OR COMMUNICATIONS INVOLVING OR RELATED TO ANY PROPOSED RENEWAL, EXTENSION, AMENDMENT, MODIFICATION, RESTRUCTURE, FORBEARANCE, WORKOUT, OR ENFORCEMENT OF THE TRANSACTIONS CONTEMPLATED BY THE LOAN DOCUMENTS.

9.22 Consequential Damages. Neither Lender nor agent or attorney of Lender, shall be liable for any consequential damages arising from any breach of contract, tort or other wrong relating to the establishment, administration or collection of the Obligations.

9.23 Intentionally Omitted.

9.24 USA Patriot Act. Lender hereby notifies Borrower that pursuant to the requirements of USA Patriot Act (Title III of Pub. L. 107-56 (signed into Law October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow Lender to identify Borrower in accordance with the Act.

9.25 Joinder of Guarantors. With respect to any new Subsidiary of Borrower or any other Credit Party (other than Parent) created or acquired after the Closing Date whose business activities are, in the opinion of Lender, the same or are substantially similar to, which are in a similar, supplemental or ancillary business as, Borrower or any such Credit Party (other than Parent), as the case may be, shall (i) execute and deliver to Lender such documents and agreements as Lender reasonably deems necessary or advisable to grant to Lender a perfected security interest in the Capital Stock of such new Subsidiary, (ii) deliver to Lender the certificates representing such Capital Stock, together with undated stock powers, in blank, executed and delivered by a duly authorized officer of such Credit Party, (iii) cause such new Subsidiary to become a Guarantor by executing and delivering a Guaranty Agreement and a Guarantor Security Agreement in form and substance satisfactory to Lender, (iv) execute and deliver, and cause such Subsidiary to execute and deliver, such security agreements, pledge agreements, amendments thereto and such other documents and instruments and to take such actions as Lender shall deem necessary or advisable for the to grant to Lender a perfected security interest (subject to Liens expressly permitted by such security agreements, pledge agreements, amendments thereto and such other documents and instruments) in the all of its properties and assets of such Subsidiary, including, without limitation, the filing of Uniform Commercial Code financing statements in such jurisdictions as may be required or requested by Lender, and (iv) if requested by Lender, deliver to Lender legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to Lender, and such other certificates, documents, instruments and agreements as Lender shall reasonably request.

9.26 Anti-Money Laundering/International Trade Law Compliance. Borrower represents and warrants to ~~the~~ Lender, as of the date of this Agreement, as of the date of the making of each Loan hereunder, and as of the date of any renewal, extension or modification of this Agreement, that: (A) none of Parent, Borrower, any Guarantor or any Subsidiary of any of them (i) is listed or otherwise recognized as a specially designated, prohibited, sanctioned or debarred person or entity, or subject to any limitations or prohibitions (including but not limited to the blocking of property or rejections of transactions) under any order or directive of any Compliance Authority (as hereinafter defined); (ii) has any of its assets in a Sanctioned Country in violation of any law or regulation enforced by any Compliance Authority or in the possession, custody or control of a Sanctioned Person; or (iii) does business in or with, or derives any of its operating income from investments in or transactions with, any Sanctioned Person or Sanctioned Country in violation of any law or regulation enforced by any Compliance Authority; (B) the proceeds of this Agreement will not be used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or, in violation of any law or regulation enforced by any Compliance Authority, a Sanctioned Country; and (C) each of Parent, Borrower, any Guarantor and each Subsidiary of any of them is in compliance with, and ~~none of~~ none of Parent, Borrower, any Guarantor or any Subsidiary of any of them engages in any dealings or transactions prohibited by, any laws of the United States including the USA Patriot Act, the Trading with the Enemy Act, or the U.S. Foreign Corrupt Practices Act of 1977, all as amended, supplemented or replaced from time to time. As used herein: "Compliance Authority" means each and all of the (a) U.S. Department of the Treasury's Office of Foreign Asset Control; (b) U.S. Treasury Department/Financial Crimes Enforcement Network; (c) U.S. State Department/Directorate of Defense Trade Controls; (d) U.S. Commerce Department/Bureau of Industry and Security; (e) U.S. Internal Revenue Service; (f) U.S. Justice Department; and (g) U.S. Securities and Exchange Commission; "Sanctioned Country" means a country subject to a sanctions program maintained by any Compliance Authority; and "Sanctioned Person" means any individual person, a group, regime, entity or thing subject to, or specially designated under, any sanctions program maintained by any Compliance Authority.

**[Remainder of Page Intentionally Left Blank]**

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement the day and year first above written.

**NEWTEK SMALL BUSINESS FINANCE, INC. LLC**

By: \_\_\_\_\_  
Name: Peter Downs  
Title: President

**CAPITAL ONE, NATIONAL ASSOCIATION**

By: \_\_\_\_\_  
Name: ~~James Wohn~~ Patrick J. McCarthy  
Title: Senior Vice President

## SCHEDULE A

### **DEFINITION OF INELIGIBLE FINANCED SBA LOANS**

The term "Ineligible Financed SBA Loans" means the portion of each SBA 7(a) Loan as to which any of the exclusionary criteria set forth below applies; provided, however, that Lender reserves the right, at any time and from time to time after the Closing Date, to adjust any of the criteria set forth below and to establish new criteria with respect to Eligible SBA 7(a) Loans, in its reasonable credit judgment; provided, further, however, that Lender shall provide twenty-five (25) days prior written notice to Borrower with respect to any adjustment of existing criteria or establishment of new criteria that would have the effect of reducing the availability of Advances to Borrower.

Ineligible Financed SBA Loans are SBA 7(a) Loans:

(i) as to which all conditions precedent to the effectiveness of the SBA guaranty with respect to the applicable SBA 7(a) Loan have not been met;

(ii) with respect to Financed Non-Guaranteed Loans and Advances-Non-Guaranteed Loans, with respect to which Borrower has not perfected its security interests and Liens in all underlying collateral for the applicable SBA 7(a) Loan; provided, that at the discretion of Lender, the perfection requirements of this clause may be deemed satisfied if escrow arrangements reasonably acceptable to Lender are in place to insure that all steps necessary for such perfection will be accomplished promptly, and in any event within seven (7) Business Days following the disbursement by Borrower of the proceeds of such SBA 7(a) Loan;

(iii) with respect to which the applicable SBA 7(a) Loan does not conform to all requirements of the SBA applicable to the initial approval and guaranty by the SBA thereof;

(iv) with respect to which the applicable SBA 7(a) Loan, SBA 7(a) Loan Notes or SBA 7(a) Note Receivable Documents do not comply in all material respects with applicable Laws;

(v) with respect to which an event or condition has occurred that would release the SBA from its obligations to Borrower with respect to the applicable SBA 7(a) Loan, or the SBA has rejected the applicable SBA 7(a) Loan or the applicable SBA 7(a) Note Receivable Documents in any respect, or an event pursuant to which the SBA has reduced the amount of its guarantee of any of the foregoing (but in such event only to the extent of such reduction);

(vi) with respect to Financed Non-Guaranteed Loans and Advances-Non-Guaranteed Loans, with respect to which the insurance coverage required by the applicable SBA Note Receivable Documents has been cancelled or lapsed or Borrower has not been named as loss payee or additional insured, as applicable, with respect thereto;

(vii) with respect to Financed Non-Guaranteed Loans and Advances-Non-Guaranteed Loans, with respect to which an event or condition has occurred that would release the SBA from its obligations to Borrower with respect to the applicable SBA 7(a) Loan, or the SBA has rejected the applicable SBA 7(a) Loan or the applicable SBA 7(a) Note Receivable Documents in any respect;

(viii) with respect to which the applicable SBA 7(a) Loan was not originated by Borrower;

(ix) with respect to which the applicable SBA 7(a) Loan does not conform in all material respects to Borrower's written credit and underwriting guidelines, as in effect on the date the applicable SBA 7(a) Loan was underwritten, copies of which have been previously delivered to Lender;

(x) to the extent that the outstanding principal amount of any SBA 7(a) Guaranteed Note Receivable exceeded the maximum amount permitted by the SBA Act at the time the applicable SBA 7(a) Loan was underwritten;

(xi) to the extent that the aggregate outstanding principal amount of both the SBA 7(a) Guaranteed Note Receivable portion and the SBA 7(a) Non-Guaranteed Note Receivable portion of the same SBA 7(a) Loan exceeded the maximum amount permitted by the SBA Act at the time the applicable SBA 7(a) Loan was underwritten, to the extent of such excess;

(xii) with respect to which the applicable SBA 7(a) Loan Obligor is the subject of an insolvency proceeding or a case commenced under the Bankruptcy Code;

(xiii) with respect to Financed Non-Guaranteed Loans and Advances-Non-Guaranteed Loans, with respect to which the applicable SBA 7(a) Loan is not a valid, legally enforceable obligation of the SBA 7(a) Loan Obligor or is subject to any offset or other defense on the part of such SBA 7(a) Loan Obligor or to any claim on the part of the SBA 7(a) Loan Obligor denying liability;

(xiv) with respect to Financed Non-Guaranteed Loans and Advances-Non-Guaranteed Loans, with respect to which the subject SBA 7(a) Note Receivable is subject to any Lien, except for the Lien of Lender and the interest of the SBA pursuant to the applicable Loan Guaranty Agreement;

(xv) to the extent that any payment of interest, principal or any other amount due under the applicable SBA 7(a) Loan is more than 61 days past due;

(xvi) to the extent that the subject SBA 7(a) Note Receivable has been sold pursuant to a Note Participation;

(xvii) with respect to which the applicable SBA 7(a) Loan does not conform in all material respects to forms provided by the SBA;

(xviii) with respect to Financed Non-Guaranteed Loans and Advances-Non-Guaranteed Loans, with respect to which the applicable SBA 7(a) Loan is not evidenced by legal documentation in form and substance satisfactory to Lender; provided, that legal documentation that conforms in all material respects to forms provided by the SBA, standard forms of mortgages or deeds of trust provided by Borrower's local counsel for use in specific jurisdictions, or other forms of documents previously approved by Lender shall be presumed to be satisfactory to Lender;

(xix) with respect to which the applicable SBA 7(a) Loan is made to an employee, officer, agent, director, stockholder, or Affiliate of Borrower or any Affiliate of any thereof;

(xx) with respect to which the applicable SBA 7(a) Loan has been turned over to the SBA or any other Person for servicing or collection;

(xxi) with respect to Financed Non-Guaranteed Loans and Advances-Non-Guaranteed Loans, with respect to which the applicable SBA 7(a) Loan and the respective rights of the parties thereto are not subject to the terms of the Multi-Party Agreement or such other agreement with SBA and Borrower that Lender, in its sole discretion, deems acceptable;

(xxii) as to which any of the representations or warranties in the Loan Documents with respect to the SBA 7(a) Loan are untrue;

(xxiii) with respect to Financed Non-Guaranteed Loans and Advances-Non-Guaranteed Loans, to the extent that any SBA 7(a) Note Receivable together with all other SBA 7(a) Note Receivables in any one industry, as determined by the applicable NAICS four digit code (except for the Retail Trade industry which shall be measured for this purpose as independent industries under NAICS codes 44 and 45), exceeds ten percent (10%) as of the end of each Fiscal Quarter (or, collectively, with respect to the Full-Service Restaurant and Limited-Service Eating Places industries (NAICS codes 7221 and 7222), as of the end of each Fiscal Quarter, fifteen percent (15%); with respect to the Traveler Accommodation industry (NAICS code 7211), as of the end of each Fiscal Quarter thirty percent (30%); and, with respect to the Auto Repair and Maintenance (including car wash) industry (NAICS code 8111), as of the end of each Fiscal Quarter, ten percent (10%)) of all Eligible SBA 7(a) Note Receivables;

(xxiv) with respect to Financed Non-Guaranteed Loans and Advances-Non-Guaranteed Loans, as to which Lender's Lien and any security in support thereof is not a first priority perfected Lien in favor of Lender;

(xxv) with respect to Financed Non-Guaranteed Loans and Advances-Non-Guaranteed Loans, with respect to which the SBA 7(a) Loan Note has been released from the possession of the FTA in excess of 10 calendar days or has been released from the possession of the FTA pursuant to the SBA's prior written consent or instruction as contemplated by the Multi-Party Agreement;

(xxvi) with respect to Financed Non-Guaranteed Loans and Advances-Non-Guaranteed Loans, as to which any amounts payable have been deferred within the last ninety (90) days or as to which any amounts payable have been deferred more than twice within the last twelve (12) months;

(xxvii) with respect to Financed Guaranteed Loans and Advances- Guaranteed Loans, with respect to any SBA Reduced Guaranty Receivable, to the extent of the SBA Reduced Guaranty Ineligible Amount;

(xxviii) with respect to Financed Non-Guaranteed Loans and Advances-Non-Guaranteed Loans, with respect to which any SBA 7(a) Loan that is not secured by any SBA 7(a) Note Receivable Collateral other than a first priority Lien on commercial real property, if and to the extent that the outstanding principal balance of such SBA 7(a) Loan exceeds seventy percent (70%) of the fair market value of such commercial real property;

(xxix) with respect to Financed Non-Guaranteed Loans and Advances-Non-Guaranteed Loans, with respect to which any SBA 7(a) Loan which is secured exclusively commercial real property to the extent Borrower's Lien is not a first priority mortgage Lien;

(xxx) with respect to Financed Non-Guaranteed Loans and Advances-Non-Guaranteed Loans, in the reasonable credit judgment of Lender, to the extent that any SBA 7(a) Note Receivable is secured by real property as to which there are potential industry-wide liabilities and Environmental Liabilities;

(xxxi) with respect to Financed Non-Guaranteed Loans and Advances-Non-Guaranteed Loans, where any Credit Party currently has established a reserve on its own books and records with respect to the applicable SBA 7(a) Loan; or

(xxxii) with respect to which the applicable SBA 7(a) Loan and the respective rights of the SBA, Lender, Borrower, and FTA with respect thereto are not subject to the terms of the Multi-Party Agreement or such other agreement with SBA and Borrower that Lender, in its sole discretion, deems acceptable;

(xxxiii) that is otherwise unacceptable to Lender in its reasonable credit judgment.

AMENDED AND RESTATED GUARANTY OF PAYMENT AND PERFORMANCE

THIS AMENDED AND RESTATED GUARANTY OF PAYMENT AND PERFORMANCE (this "Guaranty") is made as of June 18, 2015 by Newtek Business Services Corp., a Maryland corporation and successor-in-interest to Newtek Business Services, Inc., a New York corporation, with its principal executive offices at 212 West 35<sup>th</sup> Street, New York, New York 10001 ("Guarantor"), in favor of Capital One, National Association having an address at 299 Park Avenue, New York, New York 10171 ("Lender").

R E C I T A L S :

WHEREAS, Lender established a line of credit in favor of Newtek Small Business Finance, LLC (successor-in-interest by merger to Newtek Small Business Finance, Inc.), a wholly-owned subsidiary of the Guarantor (the "Borrower"), in the maximum principal amount not to exceed Fifty Million and No/100 Dollars (\$50,000,000) pursuant to a Third Amended and Restated Loan Agreement dated as of October 29, 2014 (as amended, modified, supplemented, or restated from time to time, the "Loan Agreement") and as evidenced by an Amended and Restated Revolving Loan Note (Guaranteed Loans) and an Amended and Restated Revolving Loan Note (Non-Guaranteed Loans); and

WHEREAS, it is a condition precedent to the execution and delivery of a First Amendment to Loan Documents dated as of the date hereof between the Borrower and Lender, that the Guarantor execute and deliver this Guaranty in favor of Lender.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged, and in order to induce Lender to make the Loans to Borrower, Guarantor hereby represents, warrants and covenants to Lender as follows:

1. Authorization and Enforceability of Loan Documents. Guarantor has taken all steps required to authorize and has in its capacity as the sole member of Borrower authorized the execution and delivery of the Loan Agreement and the other Loan Documents. To the best of its knowledge, the Loan Agreement and the other Loan Documents have been duly authorized and executed by Borrower and are legal, valid and binding instruments, enforceable against Borrower in accordance with their respective terms subject to the effect of bankruptcy, insolvency, reorganization, moratorium or other legal or equitable principles now or hereafter in effect generally affecting creditors' rights and remedies.

2. Obligations Guaranteed. Guarantor unconditionally guarantees to Lender (i) the prompt and unconditional payment of all of the Obligations under the Loan Agreement, including without limitation, the Loans and the interest thereon, whether now or hereafter advanced, as the same shall become due and payable under the Notes, the Loan Agreement and the other Loan Documents, whether at stated maturity, by acceleration or otherwise, and any and all sums of money which, at the time, may have become or become due and payable under the provisions of the Loan Agreement or any other Loan Document, and the due and prompt performance of all of the terms, agreements, covenants and conditions of the Notes, the Loan Agreement and the other Loan Documents; (ii) payment in full of any and all expenses that may be paid or incurred by Lender in the collection of all or any portion of Guarantors' obligations



hereunder or the exercise or enforcement of any one or more of the other rights, powers, privileges, remedies and interests of Lender under the Loan Documents or hereunder, irrespective of the manner or success of any such collection, exercise or enforcement, and whether or not such expenses constitute part of the Borrower's obligations; and (iii) performance of all of the Borrower's (and all of the other entities guaranteeing the Loans) covenants and obligations contained herein and/or therein. Guarantor's obligation to cause Borrower and any other guarantors to take any action with respect to their respective covenants and obligations shall be limited to those actions consistent with its status as the sole stockholder (or as a member or majority stockholder as applicable) of such parties and shall be exercised through the power consequent upon such status.

3. Unconditional Guaranty. This Guaranty is an absolute, unconditional, present and continuing guaranty of payment and performance and not of collection and is in no way conditioned or contingent upon any attempt to enforce Lender's rights against Borrower or to collect from the Borrower or upon any other condition or contingency; accordingly, Lender shall have the right to proceed against Guarantor immediately upon any Event of Default under the Loan Documents without taking any prior action or proceeding to enforce the Loan Documents or to liquidate or foreclose on any security Lender may at any time hold pursuant thereto. Guarantor hereby waives and releases any claim (within the meaning of 11 U.S.C. § 101) which Guarantor may have against Borrower arising from a payment made by Guarantor under this Guaranty and agrees not to assert or take advantage of any subrogation rights of Guarantor or any other right of Guarantor to proceed against Borrower for reimbursement. It is expressly understood that the waivers and agreements of Guarantor constitute additional and cumulative benefits given to Lender for its security and as an inducement for its extension of credit to Borrower.

4. Liability Unimpaired. Guarantor's liability hereunder shall in no way be limited or impaired by, and Guarantor hereby consents to and agrees to be bound by, any amendment, extension or modification of the provisions of any of the Loan Documents or any other instrument made to or with Lender by Borrower or any other guarantor, or any Person who succeeds Borrower as owner of all or part of any Collateral prior to foreclosure of the Loan Agreement or exercise of any power of sale contained therein. In addition, Guarantor's liability hereunder shall in no way be limited or impaired by (i) any extensions of time for performance required by any of said documents, (ii) any sale, assignment or foreclosure of the Notes or Loan Agreement or any sale or transfer of all or part of the property covered by the Loan Agreement, (iii) any exculpatory provision in any of said instruments limiting Lender's recourse to any Collateral or to any other security, or limiting Lender's rights to a deficiency judgment against Borrower, (iv) the release of Borrower or any other Person (including, without limit, any other guarantor) from performance or observance of any of the agreements, covenants, terms or conditions contained in any of said instruments by operation of law or otherwise, (v) the release or substitution in whole or in part of any security for the Loans, (vi) Lender's failure to record the Loan Agreement or file any UCC financing statements (or Lender's improper recording or filing of any thereof) or to otherwise perfect, protect, secure or insure any security interest or lien given as security for the Loans, (vii) the invalidity, irregularity or unenforceability, in whole or in part, of any of the Loan Documents, this Guaranty or any other instrument or agreement executed or delivered to Lender in connection with the Loans, except to the extent that there is a final adjudication by a court of competent jurisdiction of a valid defense to Borrower's obligations under the Loan Documents to payment of the Indebtedness, (viii) the inaccuracy of

any of the representations and warranties made by Borrower in the Loan Agreement, the other Loan Documents or any disbursement certificates or requests for disbursements made under the Loan Agreement, or (ix) any other action or circumstance whatsoever which constitutes, or might be construed to constitute, a legal or equitable discharge or defense (except full payment and satisfaction) of Borrower for its obligations under any of the Loan Documents or of any Guarantor under this Guaranty (whether as surety, guarantor or otherwise); and, in any such case, whether with or without notice to Guarantor and with or without consideration.

5. Preservation of Loan Documents. Guarantor will cause Borrower to maintain and preserve the enforceability of the Loan Documents as the same may be amended, modified, supplemented or restated at any time and from time to time, and will not permit Borrower to take or to fail to take actions of any kind, the taking of which or the failure to take which might be the basis for a claim that Guarantor has a defense to Guarantor's obligations hereunder.

6. Security; Events of Default. Pursuant to the terms of the Amended and Restated Security Agreement of even date herewith (the "Security Agreement"), as security for any and all of the obligations of Guarantor under this Guaranty, now existing or hereafter arising hereunder or otherwise (collectively, the "Liabilities"), Guarantor has granted to Lender a lien upon and a security interest in certain collateral more particularly described in the Security Agreement, including in the proceeds thereof.

Without limiting the generality of paragraphs 1-4, inclusive, of this Guaranty, and in addition to any and all rights and remedies Lender may have hereunder or under the other Loan Documents, upon the occurrence of any of the following events or any other agreement with Lender (each an "Event of Default"):

(a) Guarantor defaults under this Guaranty or any Loan Document or any other agreement with Lender to which Guarantor is a party;

(b) any representation or warranty made by Guarantor herein or in any other Loan Document to which Guarantor is a party is false or untrue as of the date such representation or warranty is made;

(c) Guarantor commences any case, proceeding, or other action under any law of any jurisdiction relating to bankruptcy, insolvency, reorganization, or relief of debtors or seeks to have an order for relief entered with respect to Guarantor or seeks to be adjudicated a bankrupt or insolvent, or seeks reorganization, arrangement, adjustment, liquidation, dissolution, composition or other relief with respect to Guarantor or Guarantor's debts, or seeks the appointment of a receiver, trustee, custodian, or other similar official for Guarantor or for all or any substantial part of Guarantor's property;

(d) Guarantor makes a general assignment for the benefit of creditors;

(e) there is commenced against Guarantor any case, proceeding or other action of the type referred to in clause (c) above or seeking the issuance of a warrant of attachment, execution, distraint, or similar process against all or any substantial part of Guarantor's property, which case, proceeding or other action results in an entry of an order for relief or is not dismissed, discharged or bonded within sixty days of the commencement thereof;

(f) Guarantor takes any action indicating Guarantor's consent to, approval of, or acquiescence in or in furtherance of, any of the acts set forth in clause (c) and (e) above;

(g) Guarantor admits in writing Guarantor's inability to pay Guarantor's debts as they mature;

(h) Guarantor terminates or dissolves or suspends Guarantor's usual business activities or conveys, sells, leases, transfers or otherwise disposes of all or a substantial part of Guarantor's property, business or assets other than in the ordinary course of business;

(i) there shall be any default under or demand made under any other financing agreement or guaranty to which it is a party; or

(j) the existence or occurrence at any time of one or more conditions or events which, in the reasonable good faith opinion of Lender, has resulted or is reasonably likely to result in a material adverse change in the business, properties or financial condition of Guarantor;

then, any or all of the obligations of Guarantor shall, at Lender's option, become (for the purpose of this Guaranty) immediately due and payable by Guarantor, without demand or notice. In addition, upon the occurrence of any Event of Default, Lender shall have all of the rights and remedies provided to a secured party by the Uniform Commercial Code as in effect in New York State at that time. Guarantor agrees that in the event that notice is necessary, written notice provided in accordance with paragraph 26 of this Guaranty and given below five Business Days prior to the date of public sale of the property subject to the lien and security interest created herein or prior to the date after which private sale or any other disposition of said property will be made shall constitute reasonable notice.

7. Indemnification; Payments; Certain Waivers. Guarantor (i) waives any right or claim of right to cause a marshalling of Borrower's assets or to cause Lender to proceed against any of the security for the Loans or for the obligations guaranteed hereby before proceeding against Guarantor, (ii) agrees that any payments required to be made by Guarantor hereunder shall become due on demand in accordance with the terms of paragraph 2 hereof and without presentment to Borrower, demand for payment or protest, or notice of non-payment or protest, and (iii) except as hereinafter provided, expressly waives and relinquishes all rights and remedies accorded by applicable law to guarantors. Without limiting the generality of the foregoing, Guarantor hereby waives all rights (x) to participate in any claim or remedy Lender may now or hereafter have against Borrower or in any collateral which Lender has or hereafter may acquire for the obligations guaranteed hereby and (y) except as provided below, to contribution, indemnification, set-off, exoneration or reimbursement, whether from Borrower, Guarantor, or any other Person now or hereafter primarily or secondarily liable for any of Borrower's obligations to Lender, and whether arising by contract or operation of law or otherwise by reason of Guarantor's execution, delivery or performance of this Guaranty.

Guarantor does not waive and hereby retains all rights of subrogation, contribution, indemnification, set-off or reimbursement against Borrower or any other guarantor that Guarantor may have (the “Undersigned’s Rights”); provided, however, that (i) this Guaranty shall neither be contingent upon the existence of the Undersigned’s Rights nor subject to any claims or defenses whatsoever which may be asserted in connection with the enforcement or attempted enforcement of the Undersigned’s Rights including, without limitation, any claim that the Undersigned’s Rights were abrogated by any of Lender’s acts, and (ii) until the Loans shall have been fully and finally paid and satisfied and Lender shall have no further commitment or other obligation to make Loans or other financial accommodations to Borrower and the Loan Agreement and all other Loan Documents shall have been terminated and shall be of no further force and effect, Guarantor hereby postpones and subordinates (A) the exercise of any and all of the Undersigned’s Rights to Lender’s rights against Guarantor under this Guaranty or against Borrower under any of the Loan Documents, and (B) any of the Undersigned’s Rights to any collateral securing the Loans.

8. Reinstatement. This Guaranty shall continue to be effective, or be reinstated automatically, as the case may be, if at any time payment, in whole or in part, of any of the obligations guaranteed hereby is rescinded or otherwise must be restored or returned by Lender (whether as a preference, fraudulent conveyance or otherwise) upon or in connection with the insolvency, bankruptcy, dissolution, liquidation or reorganization of Borrower, Guarantor or any other Person, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, either Borrower, Guarantor, any other Credit Party or any other Person or for a substantial part of Borrower’s, Guarantor’s, or any of such other Person’s property, as the case may be, or otherwise, all as though such payment had not been made. Guarantor further agrees that in the event any such payment is rescinded or must be restored or returned, all costs and reasonable expenses (including, without limitation, reasonable legal fees and expenses) incurred by or on behalf of Lender in defending or enforcing such continuance or reinstatement, as the case may be, shall constitute costs of enforcement, the payment of which is guaranteed by Guarantor pursuant to paragraph 2 above and covered by Guarantor’s indemnity pursuant to paragraph 7 above.

9. Litigation, Compliance with Judgments. Guarantor represents and warrants with respect to itself that there are no actions, suits or proceedings pending or threatened against or affecting Guarantor, at law, in equity or before or by any governmental authorities which would have a material adverse effect on Guarantor’s ability to perform its obligations hereunder and, to the best of Guarantor’s knowledge, Guarantor is not in default with respect to any order, writ, injunction, decree or demand of any court or governmental authorities.

10. No Conflicts. Guarantor represents and warrants with respect to itself that the consummation of the transactions contemplated hereby and the performance of this Guaranty and the other Loan Documents to which Guarantor is a party have not resulted and will not result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, bank loan or credit agreement, corporate charter, by-laws, partnership agreement or other instrument to which Guarantor is a party or by which Guarantor may be bound or affected.

11. Compliance with Laws. Guarantor represents and warrants with respect to itself that Guarantor is in compliance with, and the transactions contemplated by the Loan Documents and this Guaranty do not and will not violate any provision of, or require any filing,

registration, consent or approval under, any federal, state or local law, rule, regulation, ordinance, order, writ, judgment, injunction, decree, determination or award (hereinafter, "Laws") presently in effect having applicability to Guarantor, and agrees that Guarantor will comply promptly with all laws now or hereafter in effect having applicability to Guarantor.

12. Accuracy of Information; Full Disclosure. Guarantor represents and warrants with respect to itself that (a) neither this Guaranty nor any documents, financial statements, reports, notices, schedules, certificates, statements or other writings furnished by or on behalf of Guarantor to Lender in connection with the negotiation of the Loan Documents or the consummation of the transactions contemplated hereby or thereby, or required herein or by the other Loan Documents to be furnished by or on behalf of Guarantor, contains any untrue or misleading statement of a material fact, and (b) there is no fact which Guarantor has not disclosed to Lender in writing which materially affects adversely the business affairs or financial condition of Guarantor, or the ability of Guarantor to perform this Guaranty and the other Loan Documents to which Guarantor is a party.

13. Financial Statements and Covenants. (a) Guarantor represents and warrants with respect to itself that the most recent financial statements heretofore delivered by Guarantor to Lender are true and correct in all respects, have been prepared in accordance with sound accounting principles consistently applied and fairly present Guarantor's financial condition as of the date thereof, and no material adverse change has occurred in the financial condition reflected there in since the date thereof.

(b) Guarantor shall deliver to Lender within twenty (20) days of filing, but in no event more than fifteen (15) days after the last permitted extension for filing without penalty, its signed federal tax returns.

(c) Promptly after a written request therefor, such other financial data or information as Lender may reasonably request from time to time.

(d) Guarantor agrees and acknowledges that any now existing or hereinafter created loan from Guarantor to the Borrower shall at all times be subordinate to the Loans to the extent required by the Loan Agreement.

(e) Guarantor shall at all times during the term of the Loans maintain its primary bank accounts with Lender.

(f) Guarantor shall provide copies of all financial statements, reports and the like, as required pursuant to the Loan and Security Agreement.

(g) Promptly upon its becoming available, Guarantor shall provide Lender with one copy of each financial statement, report, notice or proxy statement sent by Guarantor to stockholders generally pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, and, a copy of each regular or periodic report, and any registration statement, or prospectus in respect thereof, filed by Guarantor with any securities exchange or with federal or state securities and exchange commissions or any successor agency.

(h) Guarantor agrees and acknowledges that it shall maintain all of its Subsidiaries and Affiliates as separate and independent entities consistent with the standards of

Section 6.18 of the Loan Agreement and shall not allow the Collateral under the Loan and Security Agreement to become intermingled with any Person that is not a Credit Party, nor shall it suffer or permit any of the Borrower's Collateral under the Loan Agreement to be directly or indirectly pledged to any party other than Lender.

14. Non-Waiver Remedies Cumulative. No failure or delay on Lender's part in exercising any right, power or privilege under any of the Loan Documents, this Guaranty or any other document made to or with Lender in connection with the Loans shall operate as a waiver of any such privilege, power or right or shall be deemed to constitute Lender's acquiescence in any default by Borrower or Guarantor under any of said documents. A waiver by Lender of any right or remedy under any of the Loan Documents, this Guaranty or any other document made to or with Lender in connection with the Loans on any one occasion shall not be construed as a bar to any right or remedy which Lender otherwise would have on any future occasion. The rights and remedies provided in said documents are cumulative, may be exercised singly or concurrently and are not exclusive of any rights or remedies provided by law.

15. Transfers of Interests in Loans. Guarantor recognizes that Lender may sell and transfer interests in the Loans to one or more participants and/or assignees (collectively, "Participants") and that all documentation, financial statements, appraisals and other data, or copies thereof, relevant to Borrower, Guarantor or the Loans, may be exhibited or delivered on a confidential basis to and retained by any such Participant or prospective Participant, with a request to any prospective Participant to return such information if it does not become a Participant.

16. Separate Indemnity. Guarantor acknowledges and agrees that Lender's rights (and Guarantor's obligations) under this Guaranty shall be in addition to all of Lender's rights (and all of Guarantor's obligations) under any indemnity agreement executed and delivered to Lender by Borrower and/or Guarantor or any other guarantor in connection with the Loans, and payments by Guarantor under this Guaranty shall not reduce any of Guarantor's obligations and liabilities under any such indemnity agreement.

17. Severability. Any provision of this Guaranty, or the application thereof to any Person or circumstance, which, for any reason, in whole or in part, is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Guaranty (or the remaining portions of such provision) or the application thereof to any other Person or circumstance, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision (or portion thereof) or the application thereof to any Person or circumstance in any other jurisdiction.

18. Entire Agreement; Amendments. This Guaranty contains the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior oral or written agreements or statements relating to such subject matter, and none of the terms and provisions hereof may be waived, amended or terminated except by a written instrument signed by the Person against whom enforcement of the waiver, amendment or termination is sought.

19. Successors and Assigns. This Guaranty shall be binding upon and shall inure to the benefit of Lender and Guarantor and their respective successors and assigns. This

Guaranty may be assigned by Lender with respect to all or any portion of the obligations guaranteed hereby, and when so assigned Guarantor shall be liable under this Guaranty to the assignee(s) of the portion(s) of the obligations guaranteed hereby so assigned without in any manner affecting the liability of Guarantor hereunder to Lender with respect to any portion of the obligations guaranteed hereby retained by Lender.

**20. WAIVER OF TRIAL BY JURY. GUARANTOR, AND BY ITS ACCEPTANCE HEREOF, LENDER, EACH HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY GUARANTOR AND LENDER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. GUARANTOR AND LENDER ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER.**

**21. ADDITIONAL WAIVERS IN THE EVENT OF ENFORCEMENT. GUARANTOR HEREBY EXPRESSLY AND UNCONDITIONALLY WAIVES, IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING BROUGHT BY OR ON BEHALF OF LENDER ON THIS GUARANTY, ANY AND EVERY RIGHT GUARANTOR MAY HAVE TO (I) INJUNCTIVE RELIEF, (II) INTERPOSE ANY COUNTERCLAIM THEREIN (OTHER THAN COMPULSORY COUNTERCLAIMS), AND (III) HAVE THE SAME CONSOLIDATED WITH ANY OTHER OR SEPARATE SUIT, ACTION OR PROCEEDING. NOTHING HEREIN CONTAINED SHALL PREVENT OR PROHIBIT GUARANTOR FROM INSTITUTING OR MAINTAINING A SEPARATE ACTION AGAINST LENDER WITH RESPECT TO ANY ASSERTED CLAIM.**

22. Governing Law; Submission To Jurisdiction. This Guaranty and the rights and obligations of the parties hereunder shall in all respects be governed by, and construed and enforced in accordance with, the laws of the State of New York (without giving effect to New York's principles of conflicts of law other than Section 5-1401 of the New York General Obligations Law). Guarantor hereby irrevocably submits to the non-exclusive jurisdiction of the federal and state courts located in the City of New York, Borough of Manhattan over any suit, action or proceeding arising out of or relating to this Guaranty, and Guarantor hereby agrees and consents that, in addition to any methods of service of process provided for under applicable law, all service of process in any such suit, action or proceeding in any of the Courts of New York State or the United States District Court for the Eastern District of New York may be made by certified or registered mail, return receipt requested, directed to Guarantor at the address indicated below, and service so made shall be complete five (5) days after the same shall have been so mailed.

23. Paragraph Headings. Any paragraph headings and captions in this Guaranty are for convenience only and shall not affect the interpretation or construction hereof.

24. Liability Unaffected by Release. Subject only to written notice to Guarantor, any other Person liable upon or in respect of any obligation hereby guaranteed, may be released without affecting the liability of Guarantor hereunder.

25. Joint and Several Obligations. If more than one Person comprises Guarantor, then each such Person's obligations and liability under this Guaranty shall be joint and several.

26. Notices. Notices shall be given in the manner provided in the Loan Agreement and with respect to Guarantor at the address set forth on the signature page hereto. Guarantor acknowledges reviewing the notice provision contained in the Loan Agreement and accepts the provisions thereof.

27. Intentionally Omitted.

28. Certain Defined Terms. Capitalized terms used but not defined herein shall have their respective meanings as set forth in the Loan Agreement.

29. Counterparts; Facsimile or Electronic Transmission. This Guaranty may be executed by the parties hereto in one or more counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same agreement. Any signature delivered by a party by facsimile transmission or other electronic transmission shall be deemed to be an original signature hereto.

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**SIGNATURE PAGE TO AMENDED AND RESTATED  
GUARANTY OF PAYMENT AND PERFORMANCE OF  
NEWTEK BUSINESS SERVICES CORP.**

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be duly executed and delivered by its duly authorized official as of the date first above stated.

NEWTEK BUSINESS SERVICES CORP., as  
successor-in-interest by merger to NEWTEK  
BUSINESS SERVICES, INC.

By: /s/ Barry Sloane  
Name: Barry Sloane  
Title: Chief Executive Officer  
Address: 212 West 35<sup>th</sup> Street  
New York, NY 10001



**FROM:**  
Newtek Business Services Corp.

<http://www.thesba.com>

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**The U.S. Small Business Administration Approves the Restructure of \$50 Million Revolving Line of Credit for  
Newtek Small Business Finance, LLC**

NEW YORK, June 23, 2015 - Newtek Business Services Corp. ("The Company"), (NASDAQ: NEWT), an internally managed business development company ("BDC"), today announced that The U.S. Small Business Administration approved the restructure of Newtek Small Business Finance, LLC's \$50 million revolving line of credit with Capital One, North America. As a result, the revolving line of credit now has a holding-company-only guarantee, and is no longer collateralized by The Company's portfolio companies. In addition, the term of the loan was extended by one additional year from May 16, 2016 to May 16, 2017. The restructure also enabled Newtek Merchant Solutions and Newtek Technology Solutions, two of the Company's wholly owned portfolio companies, to close a \$38.0 million four-year term loan with Goldman Sachs Bank USA.

Barry Sloane, President, Chairman and Chief Executive Officer of Newtek Business Services Corp. said, "Over the past several quarters we have discussed our ability to access debt and equity capital with more attractive terms and highlighted how we are better capitalized since our conversion to a BDC. As a result of our position in the market, Capital One, North America, subject to the recently received approval of the U.S. Small Business Administration, agreed to amend the terms of our current \$50 million revolving line of credit, thereby releasing the assets of our portfolio companies as collateral. With a holding-company-only guarantee, we believe that we now have the ability to leverage the assets in our portfolio companies, most recently illustrated by the close of the \$38.0 million term loan with Goldman Sachs Bank USA. This increased financial flexibility leaves us optimistic about our ability to acquire and finance new portfolio companies within our own business segments to further grow The Company's balance sheet and enhance shareholder value."

## **About Newtek Business Services Corp.**

Newtek Business Services Corp., *The Small Business Authority*®, is an internally managed BDC, which along with its controlled portfolio companies, provides a wide range of business services and financial products under the Newtek® brand to the small- and medium-sized business (“SMB”) market. Since 1999, Newtek has provided state-of-the-art, cost-efficient products and services and efficient business strategies to over 100,000 SMB accounts across all 50 States to help them grow their sales, control their expenses and reduce their risk.

Newtek’s products and services include: Business Lending, Electronic Payment Processing, Managed Technology Solutions (Cloud Computing), eCommerce, Accounts Receivable Financing, The Secure Gateway, The Newtek Advantage™, Insurance Services, Web Services, Data Backup, Storage and Retrieval and Payroll.

*The Small Business Authority*® is a registered trade mark of Newtek Business Services Corp., and neither are a part of or endorsed by the U.S. Small Business Administration.

### ***Note Regarding Forward Looking Statements***

*This press release contains certain forward-looking statements. Words such as “believes,” “intends,” “expects,” “projects,” “anticipates,” and “future” or similar expressions are intended to identify forward-looking statements. All forward-looking statements involve a number of risks and uncertainties that could cause actual results to differ materially from the plans, intentions and expectations reflected in or suggested by the forward-looking statements. Such risks and uncertainties include, among others, intensified competition, operating problems and their impact on revenues and profit margins, anticipated future business strategies and financial performance, anticipated future number of customers, business prospects, legislative developments and similar matters. Risk factors, cautionary statements and other conditions, which could cause Newtek’s actual results to differ from management’s current expectations, are contained in Newtek’s filings with the Securities and Exchange Commission and available through <http://www.sec.gov/>.*

For more information, please visit the following websites:

[www.thesba.com](http://www.thesba.com)

### **Contacts:**

#### **Newtek Business Services Corp.**

Barry Sloane

Chairman and CEO

212-356-9500

[bsloane@thesba.com](mailto:bsloane@thesba.com)

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