

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 8-K
CURRENT REPORT**

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

March 28, 2022

Date of Report (date of Earliest Event Reported)

NEWTEK BUSINESS SERVICES CORP.

(Exact Name of Company as Specified in its Charter)

814-01035

(Commission File No.)

46-3755188

(I.R.S. Employer Identification No.)

MARYLAND

(State or Other Jurisdiction of Incorporation or Organization)

4800 T-Rex Avenue, Suite 120, Boca Raton, FL 33431

(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)

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

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
Common Stock, par value \$0.02 per share	NEWT	Nasdaq Global Market LLC
5.75% Notes due 2024	NEWTL	Nasdaq Global Market LLC
5.50% Notes due 2026	NEWTZ	Nasdaq Global Market LLC

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))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

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

Item 1.01. Entry into a Material Definitive Agreement.

On March 21, 2022, Newtek Business Services Corp. (the “Company”), entered into an employment agreement, effective as of April 4, 2022, with John M. McCaffery, Executive Vice President, Finance of the Company (the “McCaffery Employment Agreement”). Generally, under the McCaffery Employment Agreement, Mr. McCaffery is entitled to a set annual base compensation of \$350,000, and a cash bonus pursuant to the Company’s Annual Cash Bonus Plan. In addition, pursuant to the terms of the McCaffery Employment Agreement, the Compensation, Corporate Governance, and Nominating Committee of the Board of Directors of the Company has agreed to award Mr. McCaffery \$100,000 of restricted shares of Company common stock, with thirty-five percent vesting in April 2023 and sixty-five percent vesting in April 2024, unless accelerated pursuant to the terms of the McCaffery Employment Agreement. In addition, Mr. McCaffery is entitled to other benefits, such as participation in retirement and medical and other plans, executive benefits, and vacation and sick leave. The McCaffery Employment Agreement also provides for a severance payment in the case of Mr. McCaffery being terminated without just cause, as defined therein, Mr. McCaffery resigning with good reason, as defined therein, or a change of control, as defined therein. Under the McCaffery Employment Agreement, during the term of his employment, Mr. McCaffery agrees to devote substantially all of his business time to the Company and to not engage in any business or activity contrary to the business or affairs of the Company. The Company agrees to indemnify Mr. McCaffery for any and all loss, expenses, or liability that he may incur as a result of his services for the Company.

Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

On March 18, 2022, Newtek Small Business Finance, LLC (“NSBF”), the Company’s consolidated subsidiary, entered into an employment agreement, effective as of March 1, 2022, with Peter Downs, President of NSBF (the “Employment Agreement”). In addition, Mr. Downs serves as the Chief Lending Officer of the Company. Generally, under the Employment Agreement, Mr. Downs is entitled to a set annual base compensation of \$550,000, and a cash bonus pursuant to the Company’s Annual Cash Bonus Plan. In addition, Mr. Downs is entitled to other benefits, such as participation in retirement and medical and other plans, executive benefits, and vacation and sick leave. The Employment Agreement also provides for a severance payment in the case of Mr. Downs being terminated without just cause, as defined therein, Mr. Downs resigning with good reason, as defined therein, a change of control, as defined therein, or a non-renewal of Mr. Down’s Employment Agreement. Under the Employment Agreement, during the term of his employment, Mr. Downs agrees to devote substantially all of his business time to the Company and to not engage in any business or activity contrary to the business or affairs of the Company. The Company agrees to indemnify Mr. Downs for any and all loss, expenses, or liability that he may incur as a result of his services for the Company.

Cash bonuses are determined during the term of the Employment Agreements and therefore cannot be disclosed as this time.

The foregoing descriptions of the terms of the Employment Agreements of Mr. Downs and Mr. McCaffery are qualified in their entirety by the terms of the respective Employment Agreements, which are filed as Exhibits 10.1 through 10.2 to this Current Report on Form 8-K and are incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit Number</u>	<u>Description</u>
10.1	Employment Agreement by and between Newtek Small Business Finance, LLC and Peter Downs dated as of March 1, 2022
10.2	Employment Agreement by and between Newtek Business Services Corp. and John M. McCaffery dated as of April 4, 2022

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: March 28, 2022

By: _____ /S/ BARRY SLOANE
Barry Sloane
Chief Executive Officer, President and Chairman of the Board

NEWTEK SMALL BUSINESS FINANCE, LLC

**EMPLOYMENT AGREEMENT WITH
PETER DOWNS**

PREAMBLE. This EMPLOYMENT AGREEMENT (the “Agreement”) is entered into as of the 1st day of March 2022 (the “Effective Date”), by and between NEWTEK SMALL BUSINESS FINANCE, LLC (the “Company”) and PETER DOWNS (the “Executive”).

WHEREAS, the Executive is currently employed by the Company as President; and

WHEREAS, the Company is a wholly owned consolidated subsidiary of Newtek Business Services Corp. (“Parent”) and Executive serves as Chief Lending Officer of Parent; and

WHEREAS, the parties desire by this writing to set forth the employment relationship of the Company and the Executive as of the Effective Date.

NOW, THEREFORE, it is **AGREED** as follows:

1. Defined Terms

When used anywhere in the Agreement, the following terms shall have the meaning set forth herein.

(a) “*Board*” shall mean the Board of Managers of the Company.

(b) “*Change in Control*” shall mean any one of the following events: (i) the acquisition of ownership, holding or power to vote more than 25% of Company’s or Parent’s voting shares by any person or persons acting as a “group” (within the meaning of Section 13(d) of the Securities Exchange Act of 1934), (ii) the acquisition of the ability to control the election of a majority of the Company’s Board or Parent board of directors (“Parent Board”) by any person or persons acting as a “group” (within the meaning of Section 13(d) of the Securities Exchange Act of 1934), (iii) the acquisition of a controlling influence over the management or policies of the Company by any person or by persons acting as a “group” (within the meaning of Section 13(d) of the Securities Exchange Act of 1934), or (iv) during any period of two consecutive years, individuals (the “Continuing Directors”) who at the beginning of such period constitute the Parent Board (the “Existing Board”) cease for any reason to constitute at least two-thirds thereof, provided that any individual whose election or nomination for election as a member of the Existing Board was approved by a vote of at least two-thirds of the Continuing Directors then in office shall be considered a Continuing Director. For purposes of defining Change in Control, the term “person” refers to an individual or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization or any other form of entity not specifically listed herein. Notwithstanding the foregoing, a Change in Control as defined in this Section 1(b) shall not be treated as a Change in Control for purposes of this Agreement unless it constitutes a “change in control event” within the meaning of Section 1.409A-3(i)(5) of the

Treasury Regulations promulgated under section 409A of the Internal Revenue Code of 1986, as amended (the "Code") (the "Treasury Regulations").

(c) "*Common Stock*" shall mean shares of Parent's common stock, par value \$0.02 per share.

(d) "*Good Reason*" shall mean any of the following events, which has not been consented to in advance by the Executive in writing during the term of the Agreement: (i) the requirement that the Executive move his personal residence, or perform his principal executive functions, more than fifty (50) miles from his primary office as of the Effective Date; (ii) a material reduction in the Executive's Annual Base Compensation as the same may be increased from time to time; (iii) the failure by the Company to continue to provide the Executive with compensation and benefits provided for on the Effective Date, as the same may be increased from time to time, or with benefits substantially similar to those provided to him under any of the Executive benefit plans in which the Executive now or hereafter becomes a participant, or the taking of any action by the Company which would directly or indirectly reduce any of such benefits or deprive the Executive of any material fringe benefit enjoyed by him; (iv) the assignment to the Executive of duties and responsibilities that constitute a material diminution from those associated with his position on the Effective Date; or (v) a material diminution or reduction in the Executive's responsibilities or authority (including reporting responsibilities) in connection with his employment with the Company.

(e) "*Just Cause*" shall mean the Executive's willful misconduct, breach of fiduciary duty involving personal profit, intentional failure to perform stated duties, conviction for a felony, or material breach of any provision of this Agreement. No act, or failure to act, on the Executive's part shall be considered "willful" unless Executive has acted, or failed to act, with an absence of good faith and without a reasonable belief that Executive's action or failure to act was in the best interests of the Company.

2. Employment. The Executive is employed as President of the Company. The Executive shall render such administrative and management services for the Company, its Parent and Parent's subsidiaries and portfolio companies as are currently rendered and as are customarily performed by persons situated in a similar executive capacity and consistent with the duties of a President as set forth in the Amended and Restated Operating Agreement of the Company. The Executive shall report to the Chief Executive Officer and the Board. The Executive shall also promote, by entertainment or otherwise, as and to the extent permitted by law, the business of the Company and its Parent. The Executive's other duties shall be such as the Chief Executive Officer or Board may from time to time reasonably direct, including normal duties as an officer of the Company.

3. Annual Base Compensation. The Company agrees to pay the Executive during the term of this Agreement a salary at the rate of \$550,000 per annum, payable in cash not less frequently than monthly.

4. Cash Bonuses. The Chief Executive Officer shall determine the Executive's right to receive cash bonuses. Cash bonuses shall be awarded annually based upon the Executive's and the Company's annual performance pursuant to the Company's policy.

5. Other Benefits.

(a) *Participation in Retirement, Medical and Other Plans.* The Executive shall participate in any plan that the Company maintains for the benefit of its employees if the plan relates to (i) pension, profit-sharing, or other retirement benefits, (ii) medical insurance or the reimbursement of medical or dependent care expenses, or (iii) other group benefits, including disability and life insurance plans.

(b) *Executive Benefits; Expenses.* The Executive shall participate in any fringe benefits which are or may become available to the Company's senior management Executives, including for example incentive compensation plans, club memberships, and any other benefits which are commensurate with the responsibilities and functions to be performed by the Executive under this Agreement. The Executive shall be reimbursed for all reasonable out-of-pocket business expenses which he shall incur in connection with his services under this Agreement upon substantiation of such expenses in accordance with the policies of the Company.

6. Term. The Company hereby employs the Executive, and the Executive hereby accepts such employment, subject to the terms and conditions of this Agreement, for the period commencing on the Effective Date and ending on March 1, 2023 or such earlier date as is determined in accordance with Section 11 (the "Term")."

7. Loyalty; Noncompetition.

(a) During the period of Executive's employment hereunder and except for illnesses, reasonable vacation periods, and reasonable leaves of absence, the Executive shall devote substantially all of Executive's full business time, attention, skill, and efforts to the faithful performance of Executive's duties hereunder; provided, however, from time to time, Executive may serve on the boards of directors of, and hold any other offices or positions in, companies or organizations, at the request of the Company or Parent, or which will not present in the opinion of the Board any conflict of interest with the Company or Parent and any of Parent's subsidiaries or portfolio companies, nor unfavorably affect the performance of Executive's duties pursuant to this Agreement, nor violate any applicable statute or regulation. During the Term of Executive's employment under this Agreement, the Executive shall not engage in any business or activity contrary to the business affairs or interests of the Company or Parent.

(b) Nothing contained in this Paragraph 7 shall be deemed to prevent or limit the Executive's right to invest in the capital stock or other securities of any business dissimilar from that of the Company or Parent, or, solely as a passive or minority investor, in any business, provided such investment does not: (i) constitute a conflict of interest, (ii) violate laws or regulations applicable to the Company or Parent, including, without limitation, the Investment Company Act of 1940, or (iii) violate any rules or polices promulgated by the Board.

8. Standards. The Executive shall perform his duties under this Agreement in accordance with such reasonable standards as the Chief Executive Officer may establish from time

to time. The Company will provide Executive with the working facilities and staff customary for similar executives and necessary for him to perform his duties.

9. Vacation and Sick Leave. At such reasonable times according to Company policy the Executive shall be entitled, without loss of pay, to absent himself voluntarily from the performance of his employment under this Agreement, all such voluntary absences to count as vacation time; provided that:

(a) The Executive shall be entitled to an annual vacation in accordance with the policies that the Company periodically establishes for senior management Executives of the Company.

(b) The Executive shall not receive any additional compensation from the Company on account of his failure to take a vacation, and the Executive shall not accumulate unused vacation from one fiscal year to the next, except in either case to the extent authorized by the Chief Executive Officer.

(c) In addition to the aforesaid paid vacations, the Executive shall be entitled to absent himself voluntarily from the performance of his employment with the Company for such additional periods of time and for such valid and legitimate reasons as the Chief Executive Officer may in his discretion determine. Further, the Chief Executive Officer may grant to the Executive a leave or leaves of absence with or without pay.

(d) In addition, the Executive shall be entitled to an annual sick leave benefit as established by the Company.

10. Indemnification. The Company and Parent shall, to the extent permitted by the Company's Operating Agreement and Parent's Bylaws, indemnify and hold harmless Executive from any and all loss, expense, or liability that he may incur due to his services for the Company as an officer and or a director of the Company, Parent or any Parent's subsidiaries or portfolio companies (including any liability Executive may ever incur as the result of severance benefits Executive collects pursuant to Sections 11 or 13), during the full Term of this Agreement and shall at all times maintain adequate insurance for such purposes.

11. Termination and Termination Pay. Subject to Section 13 hereof, the Executive's employment hereunder may be terminated under the following circumstances:

(a) *Just Cause.* The Chief Executive Officer may, based on a good faith determination and only after giving the Executive written notice and a reasonable opportunity to cure, immediately terminate the Executive's employment at any time, for Just Cause. The Executive shall have no right to receive compensation or other benefits for any period after termination for Just Cause.

(b) *Without Just Cause.* The Chief Executive Officer may, by written notice to the Executive, immediately terminate Executive's employment for a reason other than Just Cause. In such event, the Executive shall be entitled to a total severance payment equal to one (1) times the sum of (i) Executive's Annual Base Compensation in effect at the time of termination, plus (ii) the amount of all compensation paid to Executive under Section 4 hereof with respect to the

immediately preceding fiscal year (the “Severance Payment”). The Severance Payment shall be paid in equal installments over a twelve (12) month period following the Executive’s termination of employment, payable in accordance with the Company’s regularly scheduled payroll (the “Installment Payments”). Each Installment Payment shall be treated as a separate payment for purposes of Treasury Regulations Section 1.409A-2(b)(2)(iii).

(c) *Resignation by Executive with Good Reason.* The Executive may at any time immediately terminate employment for Good Reason, in which case the Executive shall be entitled to receive the Severance Payment payable in the same manner and on the same basis as provided for under Section 11(b) herein upon a termination without Just Cause. In addition, the Executive will be entitled to health, life, disability and other benefits which the Executive would have been eligible to participate in through the expiration of the Term based on the benefit levels substantially equal to those that the Company provided for the Executive at the date of termination of employment, subject to any restrictions as may be required under Code Section 409A

(d) *Resignation by Executive without Good Reason.* The Executive may voluntarily terminate employment with the Company during the term of this Agreement, upon at least 60 days’ prior written notice to the Chief Executive Officer, in which case the Executive shall receive only his compensation, vested rights, and Executive benefits up to the date of Executive’s last day of employment.

(e) *Death, or Disability.* If the Executive’s employment terminates during the Term of this Agreement due to Executive’s death or a disability that results in Executive’s collection of any long-term disability benefits, the Executive (or the beneficiaries of Executive’s estate) shall be entitled to receive the compensation and benefits that the Executive would otherwise have become entitled to receive pursuant to subsection (d) hereof upon a resignation without Good Reason.

(f) *Non-Renewal Payment.* If the Term of this Agreement is not extended for at least one (1) additional year in circumstances in which the Executive is willing and able to execute such extension and continue performing services (the “Non-Renewal”), then the Executive’s employment shall be terminated by the Company effective as of the expiration of the Term, in which event Executive shall be entitled to fifty percent (50%) times the Severance Payment (the “Non-Renewal Payment”). The Non-Renewal Payment shall be paid in equal installments over the six (6) month period following the Executive’s termination of employment, payable in accordance with the Company’s regularly scheduled payroll. However, if the Non-Renewal occurs following a Change in Control, the Non-Renewal Payment shall be paid in a lump sum within thirty (30) days of Executive’s termination of employment.

(g) *Acceleration of Equity Awards.* All: (i) outstanding and unvested options to purchase Common Stock granted to Executive under any equity plan of the Parent, (ii) unvested shares of restricted Common Stock awarded to the Executive under any equity plan of the Parent, and (iii) other equity and equity equivalent awards then held by the Executive, shall be accelerated in full, and thereafter all such options, shares of restricted Common Stock and other equity awards shall be immediately vested and exercisable for such period of time as provided for by the specific agreements governing each such award, upon Executive’s termination pursuant to Sections 11(b), (c), (e) or (f) hereof.

12. No Mitigation. The Executive shall not be required to mitigate the amount of any payment provided for in this Agreement by seeking other employment or otherwise, and no such payment shall be offset or reduced by the amount of any compensation or benefits provided to the Executive in any subsequent employment.

13. Change in Control. Notwithstanding any provision in this Agreement to the contrary, if Executive's employment is terminated following a Change of Control: (i) by the Company or its successor in interest for any reason other than Just Cause, or (ii) by the Executive for Good Reason, the Executive shall be paid the Severance Payment in a lump sum within thirty (30) days of Executive's termination of employment.

14. Covenants.

(a) Definitions. For purposes of this Agreement:

(i) Restrictive Period. The term "Restrictive Period" shall mean the period beginning on the Effective Date and ending two (2) years after the termination of the Executive's employment hereunder.

(ii) Covered Customer. The term "Covered Customer" shall mean (A) during the Term, any customer, merchant, independent sales agency (ISA), independent sales organization (ISO), alliance partner, referral partner or any intermediary of the Company or Parent or Parent's portfolio companies and (B) after the Term, as of the end of the Term, a Covered Customer of the Company or Parent or Parent's portfolio companies within the prior three years.

(iii) Covered Business. The term "Covered Business" shall mean (A) during the term, any business in which the Company is engaged and (B) after the Term, any business in which the Company was engaged as of the end of the Term.

(iv) Covered State. The term "Covered State" shall mean (A) during the Term, any state in the United States and (B) after the Term, any state (1) in which, as of the end of the Term, the Company was engaged in business or (2) with respect to which the Company, as of the end of the Term, had expended material expense and/or efforts in connection with preparing to do business therein.

(b) Non-Interference. The Executive covenants and agrees that Executive will not at any time during the Restrictive Period for whatever reason, whether for Executive's own account or for the account of any other person, firm, corporation or other business organization: (i) interfere with contractual relationships between the Company or Parent or Parent's subsidiaries or portfolio companies and any of their Covered Customers or employees; (ii) hire, or solicit for hire, any person who is employed by the Company or Parent or Parent's subsidiaries or portfolio companies, without the express written consent of the Company or Parent; or (iii) other than on behalf of the Company or Parent or Parent's subsidiaries or portfolio companies, solicit any Covered Customer in connection with the engagement, by any person or entity, in any Covered Business in any Covered State.

(c) Confidentiality. The Executive will not, at any time whether during or after his termination of employment, (i) disclose to anyone, without proper authorization from the Company or Parent, or (ii) use, for his or another's benefit, any confidential or proprietary information of the Company or Parent or any subsidiary or portfolio company of Parent, which may include trade secrets, business plans or outlooks, financial data, marketing or sales programs, customer lists, brand formulations, training and operations manuals, products or price strategies, mergers, acquisitions, and/or Company or Parent personnel issues.

(d) Blue Pencil; Equitable Relief. The provisions contained in this Section 14 as to the time periods, scope of activities, persons or entities affected and territories restricted shall be deemed divisible so that if any provision contained in this Section is determined to be invalid or unenforceable, such provision shall be deemed modified so as to be valid and enforceable to the full extent lawfully permitted. The Executive acknowledges that the provisions of this Section 14 are reasonable and necessary for the protection of the Company and that the Company will be irrevocably damaged if such covenants are not specifically enforced. Accordingly, the Executive agrees that if he breaches or threatens to breach any of the covenants contained in this Section 14, the Company will be entitled (i) to damages sufficient to compensate the Company for any harm to the Company caused thereby and (ii) to specific performance and injunctive relief for the purpose of preventing the breach or threatened breach thereof without bond or other security or a showing that monetary damages will not provide an adequate remedy, in addition to any other relief to which the Company may be entitled under this Agreement.

15. Reimbursement for Litigation Expenses.

In the event that any dispute arises between the Executive and the Company as to the terms or interpretation of this Agreement, whether instituted by formal legal proceedings or otherwise, including any action that the Executive takes to enforce the terms of this Agreement or to defend against any action taken by the Company, the Executive shall be reimbursed for all costs and expenses, including reasonable attorneys' fees, arising from such dispute, proceedings or actions, provided that the Executive shall obtain a final judgement by a court of competent jurisdiction in favor of the Executive. Such reimbursement shall be paid within ten (10) days of Executive's furnishing to the Company written evidence, which may be in the form, among other things, of a cancelled check or receipt, of any costs or expenses incurred by the Executive.

16. Successors and Assigns.

(a) This Agreement shall inure to the benefit of and be binding upon any corporate or other successor of the Company or Parent which shall acquire, directly or indirectly, by merger, consolidation, purchase or otherwise, all or substantially all of the assets or stock of the Company.

(b) Since the Company is contracting for the unique and personal skills of the Executive, the Executive shall be precluded from assigning or delegating his rights or duties hereunder without first obtaining the written consent of the Company.

17. Corporate Authority. Company and Parent represent and warrant that the execution and delivery of this Agreement has been duly and properly authorized by their respective Board

and board of directors and that when so executed and delivered by them that this Agreement shall constitute the lawful and binding obligations of the Company and Parent.

18. Amendments. No amendments or additions to this Agreement shall be binding unless made in writing and signed by all of the parties, except as herein otherwise specifically provided.

19. Applicable Law. Except to the extent preempted by Federal law, the laws of the State of New York shall govern this Agreement in all respects, whether as to its validity, construction, capacity, performance or otherwise.

20. Severability. The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof.

21. Entire Agreement. This Agreement, together with any understanding or modifications thereof as agreed to in writing by the parties, shall constitute the entire agreement between the parties hereto with respect to the matters addressed and shall supercede all previous agreements with respect to such matters.

22. Tax Matters. All payments or benefits provided under this Agreement are subject to any applicable employment or tax withholdings or deductions. In addition, the parties hereby agree that it is their intention that all payments or benefits provided under this Agreement be exempt from, or if not so exempt, comply with, Code Section 409A and this Agreement shall be interpreted accordingly. Notwithstanding anything in this Agreement to the contrary, if any payments or benefits made or provided under the Agreement are considered deferred compensation subject to Code Section 409A payable on account of Employee's separation from service (but that do not meet an exemption under Code Section 409A, including without limitation the short term deferral or the separation pay plan exemption), such payments or benefits shall be paid no earlier than the date that is six (6) months following Employee's separation from service (or, if earlier, the date of death) to the extent required by Code Section 409A.

[signatures on following page]

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

NEWTEK SMALL BUSINESS FINANCE, LLC

By: _____
Barry Sloane, Chief Executive Officer

NEWTEK BUSINESS SERVICES CORP.

By: _____
Barry Sloane, Chief Executive Officer

EXECUTIVE

By: _____
Peter Downs

NEWTEK BUSINESS SERVICES CORP.

**EMPLOYMENT AGREEMENT WITH
JOHN M. MCCAFFERY**

PREAMBLE. This EMPLOYMENT AGREEMENT (the “Agreement”) is entered into as of the 4th day of April 2022 (the “Effective Date”), by and between NEWTEK BUSINESS SERVICES CORP. (the “Company”) and JOHN M. MCCAFFERY (the “Executive”).

WHEREAS, the Executive is currently employed by the Company as Executive Vice President, Finance; and

WHEREAS, the parties desire by this writing to set forth the employment relationship of the Company and the Executive as of the Effective Date.

NOW, THEREFORE, it is **AGREED** as follows:

1. Defined Terms

When used anywhere in the Agreement, the following terms shall have the meaning set forth herein.

(a) “*Board*” shall mean the Board of Directors of the Company.

(b) “*Change in Control*” shall mean any one of the following events: (i) the acquisition of ownership, holding or power to vote more than 25% of the Company’s voting shares by any person or persons acting as a “group” (within the meaning of Section 13(d) of the Securities Exchange Act of 1934), (ii) the acquisition of the ability to control the election of a majority of the Board by any person or persons acting as a “group” (within the meaning of Section 13(d) of the Securities Exchange Act of 1934), (iii) the acquisition of a controlling influence over the management or policies of the Company by any person or by persons acting as a “group” (within the meaning of Section 13(d) of the Securities Exchange Act of 1934), or (iv) during any period of two consecutive years, individuals (the “Continuing Directors”) who at the beginning of such period constitute the Board (the “Existing Board”) cease for any reason to constitute at least two-thirds thereof, provided that any individual whose election or nomination for election as a member of the Existing Board was approved by a vote of at least two-thirds of the Continuing Directors then in office shall be considered a Continuing Director. For purposes of defining Change in Control, the term “person” refers to an individual or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization or any other form of entity not specifically listed herein. Notwithstanding the foregoing, a Change in Control as defined in this Section 1(b) shall not be treated as a Change in Control for purposes of this Agreement unless it constitutes a “change in control event” within the meaning of Section 1.409A-3(i)(5) of the Treasury Regulations promulgated under section 409A of the Internal Revenue Code of 1986, as amended (the “Code”) (the “Treasury Regulations”).

(c) “*Common Stock*” shall mean shares of the Company’s common stock, par value \$0.02 per share.

(d) “*Good Reason*” shall mean any of the following events, which has not been consented to in advance by the Executive in writing during the term of the Agreement: (i) the requirement that the Executive move his personal residence, or perform his principal executive functions, more than fifty (50) miles from his primary office as of the Effective Date; (ii) a material reduction in the Executive’s Annual Base Compensation as the same may be increased from time to time; (iii) the failure by the Company to continue to provide the Executive with compensation and benefits provided for on the Effective Date, as the same may be increased from time to time, or with benefits substantially similar to those provided to him under any of the Executive benefit plans in which the Executive now or hereafter becomes a participant, or the taking of any action by the Company which would directly or indirectly reduce any of such benefits or deprive the Executive of any material fringe benefit enjoyed by him; (iv) the assignment to the Executive of duties and responsibilities that constitute a material diminution from those associated with his position on the Effective Date; or (v) a material diminution or reduction in the Executive’s responsibilities or authority (including reporting responsibilities) in connection with his employment with the Company.

(e) “*Just Cause*” shall mean the Executive’s willful misconduct, breach of fiduciary duty involving personal profit, intentional failure to perform stated duties, conviction for a felony, or material breach of any provision of this Agreement. No act, or failure to act, on the Executive’s part shall be considered “willful” unless Executive has acted, or failed to act, with an absence of good faith and without a reasonable belief that Executive’s action or failure to act was in the best interests of the Company.

2. Employment. The Executive is employed as Executive Vice President, Finance of the Company. The Executive shall render such administrative and management services for the Company, its subsidiaries and portfolio companies as are currently rendered and as are customarily performed by persons situated in a similar executive capacity and consistent with said role. The Executive shall report to the Chief Executive Officer and Chief Accounting Officer. The Executive shall also promote, by entertainment or otherwise, as and to the extent permitted by law, the business of the Company and its subsidiaries. The Executive’s other duties shall be such as the Chief Executive Officer, Chief Accounting Officer or Board may from time to time reasonably direct, including normal duties as an officer of the Company.

3. Annual Base Compensation. The Company agrees to pay the Executive during the term of this Agreement a salary at the rate of \$350,000 per annum, payable in cash not less frequently than monthly.

4. Cash Bonuses/Incentive Compensation. The Chief Executive Officer shall determine the Executive’s right to receive cash bonuses. Cash bonuses shall be awarded annually based upon the Executive’s and the Company’s annual performance pursuant to the Company’s policy. In addition, Executive will receive an award of \$100,000 of restricted shares of Common Stock pursuant to the terms and conditions to be set forth in a Restricted Stock Award Agreement (the “Award”), the Company 2015 Stock Incentive Plan and Terms and Conditions thereof, which Award shall be provided to Executive on the Effective Date, with the Award vesting thirty-five

percent on the one year anniversary of the Effective Date and sixty-five percent on the second anniversary of the Effective Date.

5. Other Benefits.

(a) *Participation in Retirement, Medical and Other Plans.* The Executive shall participate in any plan that the Company maintains for the benefit of its employees if the plan relates to (i) pension, profit-sharing, or other retirement benefits, (ii) medical insurance or the reimbursement of medical or dependent care expenses, or (iii) other group benefits, including disability and life insurance plans.

(b) *Executive Benefits; Expenses.* The Executive shall participate in any fringe benefits which are or may become available to the Company's senior management Executives, including for example incentive compensation plans, club memberships, and any other benefits which are commensurate with the responsibilities and functions to be performed by the Executive under this Agreement. The Executive shall be reimbursed for all reasonable out-of-pocket business expenses which he shall incur in connection with his services under this Agreement upon substantiation of such expenses in accordance with the policies of the Company.

6. Term. The Company hereby employs the Executive, and the Executive hereby accepts such employment, subject to the terms and conditions of this Agreement, for the period commencing on the Effective Date and ending on April 3, 2023 or such earlier date as is determined in accordance with Section 11 (the "Term")."

7. Loyalty; Noncompetition.

(a) During the period of Executive's employment hereunder and except for illnesses, reasonable vacation periods, and reasonable leaves of absence, the Executive shall devote substantially all of Executive's full business time, attention, skill, and efforts to the faithful performance of Executive's duties hereunder; provided, however, from time to time, Executive may serve on the boards of directors of, and hold any other offices or positions in, companies or organizations, at the request of the Company or which will not present in the opinion of the Board any conflict of interest with the Company or any of its subsidiaries or portfolio companies, nor unfavorably affect the performance of Executive's duties pursuant to this Agreement, nor violate any applicable statute or regulation. During the Term of Executive's employment under this Agreement, the Executive shall not engage in any business or activity contrary to the business affairs or interests of the Company.

(b) Nothing contained in this Paragraph 7 shall be deemed to prevent or limit the Executive's right to invest in the capital stock or other securities of any business dissimilar from that of the Company or, solely as a passive or minority investor, in any business, provided such investment does not: (i) constitute a conflict of interest, (ii) violate laws or regulations applicable to the Company, including, without limitation, the Investment Company Act of 1940, or (iii) violate any rules or polices promulgated by the Board.

8. Standards. The Executive shall perform his duties under this Agreement in accordance with such reasonable standards as the Chief Executive Officer may establish from time

to time. The Company will provide Executive with the working facilities and staff customary for similar executives and necessary for him to perform his duties.

9. Vacation and Sick Leave. At such reasonable times according to Company policy the Executive shall be entitled, without loss of pay, to absent himself voluntarily from the performance of his employment under this Agreement, all such voluntary absences to count as vacation time; provided that:

(a) The Executive shall be entitled to an annual vacation in accordance with the policies that the Company periodically establishes for senior management Executives of the Company.

(b) The Executive shall not receive any additional compensation from the Company on account of his failure to take a vacation, and the Executive shall not accumulate unused vacation from one fiscal year to the next, except in either case to the extent authorized by the Chief Executive Officer.

(c) In addition to the aforesaid paid vacations, the Executive shall be entitled to absent himself voluntarily from the performance of his employment with the Company for such additional periods of time and for such valid and legitimate reasons as the Chief Executive Officer may in his discretion determine. Further, the Chief Executive Officer may grant to the Executive a leave or leaves of absence with or without pay.

(d) In addition, the Executive shall be entitled to an annual sick leave benefit as established by the Company.

10. Indemnification. The Company shall, to the extent permitted by the Company's Bylaws, indemnify and hold harmless Executive from any and all loss, expense, or liability that he may incur due to his services for the Company as an officer and or a director of the Company or any of its subsidiaries or portfolio companies (including any liability Executive may ever incur as the result of severance benefits Executive collects pursuant to Sections 11 or 13), during the full Term of this Agreement and shall at all times maintain adequate insurance for such purposes.

11. Termination and Termination Pay. Subject to Section 13 hereof, the Executive's employment hereunder may be terminated under the following circumstances:

(a) *Just Cause.* The Chief Executive Officer may, based on a good faith determination and only after giving the Executive written notice and a reasonable opportunity to cure, immediately terminate the Executive's employment at any time, for Just Cause. The Executive shall have no right to receive compensation or other benefits for any period after termination for Just Cause.

(b) *Without Just Cause.* The Chief Executive Officer may, by written notice to the Executive, immediately terminate Executive's employment for a reason other than Just Cause. In such event, the Executive shall be entitled to a total severance payment equal to one-third of Executive's Annual Base Compensation in effect at the time of termination (the "Severance Payment"). The Severance Payment shall be paid within thirty days following the Executive's termination of employment.

(c) *Resignation by Executive with Good Reason.* The Executive may at any time immediately terminate employment for Good Reason, in which case the Executive shall be entitled to receive the Severance Payment payable in the same manner and on the same basis as provided for under Section 11(b) herein upon a termination without Just Cause. In addition, the Executive will be entitled to health, life, disability and other benefits which the Executive would have been eligible to participate in through the expiration of the Term based on the benefit levels substantially equal to those that the Company provided for the Executive at the date of termination of employment, subject to any restrictions as may be required under Code Section 409A

(d) *Resignation by Executive without Good Reason.* The Executive may voluntarily terminate employment with the Company during the term of this Agreement, upon at least 60 days' prior written notice to the Chief Executive Officer, in which case the Executive shall receive only his compensation, vested rights, and Executive benefits up to the date of Executive's last day of employment.

(e) *Death, or Disability.* If the Executive's employment terminates during the Term of this Agreement due to Executive's death or a disability that results in Executive's collection of any long-term disability benefits, the Executive (or the beneficiaries of Executive's estate) shall be entitled to receive the compensation and benefits that the Executive would otherwise have become entitled to receive pursuant to subsection (d) hereof upon a resignation without Good Reason.

(f) *Acceleration of Equity Awards.* All: (i) outstanding and unvested options to purchase Common Stock granted to Executive under any equity plan of the Company, (ii) unvested shares of restricted Common Stock awarded to the Executive under any equity plan of the Company, and (iii) other equity and equity equivalent awards then held by the Executive, shall be accelerated in full, and thereafter all such options, shares of restricted Common Stock and other equity awards shall be immediately vested and exercisable for such period of time as provided for by the specific agreements governing each such award, upon Executive's termination pursuant to Sections 11(b), (c) or (e) hereof.

12. No Mitigation. The Executive shall not be required to mitigate the amount of any payment provided for in this Agreement by seeking other employment or otherwise, and no such payment shall be offset or reduced by the amount of any compensation or benefits provided to the Executive in any subsequent employment.

13. Change in Control. Notwithstanding any provision in this Agreement to the contrary, if Executive's employment is terminated following a Change of Control: (i) by the Company or its successor in interest for any reason other than Just Cause, or (ii) by the Executive for Good Reason, the Executive shall be paid the Severance Payment in a lump sum within thirty (30) days of Executive's termination of employment.

14. Covenants.

(a) Definitions. For purposes of this Agreement:

(i) Restrictive Period. The term “Restrictive Period” shall mean the period beginning on the Effective Date and ending two (2) years after the termination of the Executive’s employment hereunder.

(ii) Covered Customer. The term “Covered Customer” shall mean (A) during the Term, any customer, merchant, independent sales agency (ISA), independent sales organization (ISO), alliance partner, referral partner or any intermediary of the Company or its portfolio companies and (B) after the Term, as of the end of the Term, a Covered Customer of the Company or its portfolio companies within the prior three years.

(iii) Covered Business. The term “Covered Business” shall mean (A) during the term, any business in which the Company is engaged and (B) after the Term, any business in which the Company was engaged as of the end of the Term.

(iv) Covered State. The term “Covered State” shall mean (A) during the Term, any state in the United States and (B) after the Term, any state (1) in which, as of the end of the Term, the Company was engaged in business or (2) with respect to which the Company, as of the end of the Term, had expended material expense and/or efforts in connection with preparing to do business therein.

(b) Non-Interference. The Executive covenants and agrees that Executive will not at any time during the Restrictive Period for whatever reason, whether for Executive’s own account or for the account of any other person, firm, corporation or other business organization: (i) interfere with contractual relationships between the Company or its subsidiaries or portfolio companies and any of their Covered Customers or employees; (ii) hire, or solicit for hire, any person who is employed by the Company or its subsidiaries or portfolio companies, without the express written consent of the Company; or (iii) other than on behalf of the Company or its subsidiaries or portfolio companies, solicit any Covered Customer in connection with the engagement, by any person or entity, in any Covered Business in any Covered State.

(c) Confidentiality. The Executive will not, at any time whether during or after his termination of employment, (i) disclose to anyone, without proper authorization from the Company, or (ii) use, for his or another’s benefit, any confidential or proprietary information of the Company or any subsidiary of the Company, which may include trade secrets, business plans or outlooks, financial data, marketing or sales programs, customer lists, brand formulations, training and operations manuals, products or price strategies, mergers, acquisitions, and/or Company personnel issues.

(d) Blue Pencil; Equitable Relief. The provisions contained in this Section 14 as to the time periods, scope of activities, persons or entities affected, and territories restricted shall be deemed divisible so that if any provision contained in this Section is determined to be invalid or unenforceable, such provision shall be deemed modified so as to be valid and enforceable to the full extent lawfully permitted. The Executive acknowledges that the provisions of this Section 14 are reasonable and necessary for the protection of the Company and that the Company will be irrevocably damaged if such covenants are not specifically enforced. Accordingly, the Executive agrees that if he breaches or threatens to breach any of the covenants contained in this Section 14, the Company will be entitled (i) to damages sufficient to compensate the Company for any harm

to the Company caused thereby and (ii) to specific performance and injunctive relief for the purpose of preventing the breach or threatened breach thereof without bond or other security or a showing that monetary damages will not provide an adequate remedy, in addition to any other relief to which the Company may be entitled under this Agreement.

15. Reimbursement for Litigation Expenses.

In the event that any dispute arises between the Executive and the Company as to the terms or interpretation of this Agreement, whether instituted by formal legal proceedings or otherwise, including any action that the Executive takes to enforce the terms of this Agreement or to defend against any action taken by the Company, the Executive shall be reimbursed for all costs and expenses, including reasonable attorneys' fees, arising from such dispute, proceedings or actions, provided that the Executive shall obtain a final judgement by a court of competent jurisdiction in favor of the Executive. Such reimbursement shall be paid within ten (10) days of Executive's furnishing to the Company written evidence, which may be in the form, among other things, of a cancelled check or receipt, of any costs or expenses incurred by the Executive.

16. Successors and Assigns.

(a) This Agreement shall inure to the benefit of and be binding upon any corporate or other successor of the Company which shall acquire, directly or indirectly, by merger, consolidation, purchase or otherwise, all or substantially all of the assets or stock of the Company.

(b) Since the Company is contracting for the unique and personal skills of the Executive, the Executive shall be precluded from assigning or delegating his rights or duties hereunder without first obtaining the written consent of the Company.

17. Corporate Authority. Company represents and warrants that the execution and delivery of this Agreement by it has been duly and properly authorized by the Board and that when so executed and delivered this Agreement shall constitute the lawful and binding obligation of the Company.

18. Amendments. No amendments or additions to this Agreement shall be binding unless made in writing and signed by all of the parties, except as herein otherwise specifically provided.

19. Applicable Law. Except to the extent preempted by Federal law, the laws of the State of New York shall govern this Agreement in all respects, whether as to its validity, construction, capacity, performance or otherwise.

20. Severability. The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof.

21. Entire Agreement. This Agreement, together with any understanding or modifications thereof as agreed to in writing by the parties, shall constitute the entire agreement between the parties hereto with respect to the matters addressed and shall supercede all previous agreements with respect to such matters.

22. Tax Matters. All payments or benefits provided under this Agreement are subject to any applicable employment or tax withholdings or deductions. In addition, the parties hereby agree that it is their intention that all payments or benefits provided under this Agreement be exempt from, or if not so exempt, comply with, Code Section 409A and this Agreement shall be interpreted accordingly. Notwithstanding anything in this Agreement to the contrary, if any payments or benefits made or provided under the Agreement are considered deferred compensation subject to Code Section 409A payable on account of Employee's separation from service (but that do not meet an exemption under Code Section 409A, including without limitation the short term deferral or the separation pay plan exemption), such payments or benefits shall be paid no earlier than the date that is six (6) months following Employee's separation from service (or, if earlier, the date of death) to the extent required by Code Section 409A.

[signatures on following page]

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

NEWTEK BUSINESS SERVICES CORP.

By: _____
Barry Sloane, Chief Executive Officer

EXECUTIVE

By: _____
John C. McCaffery

